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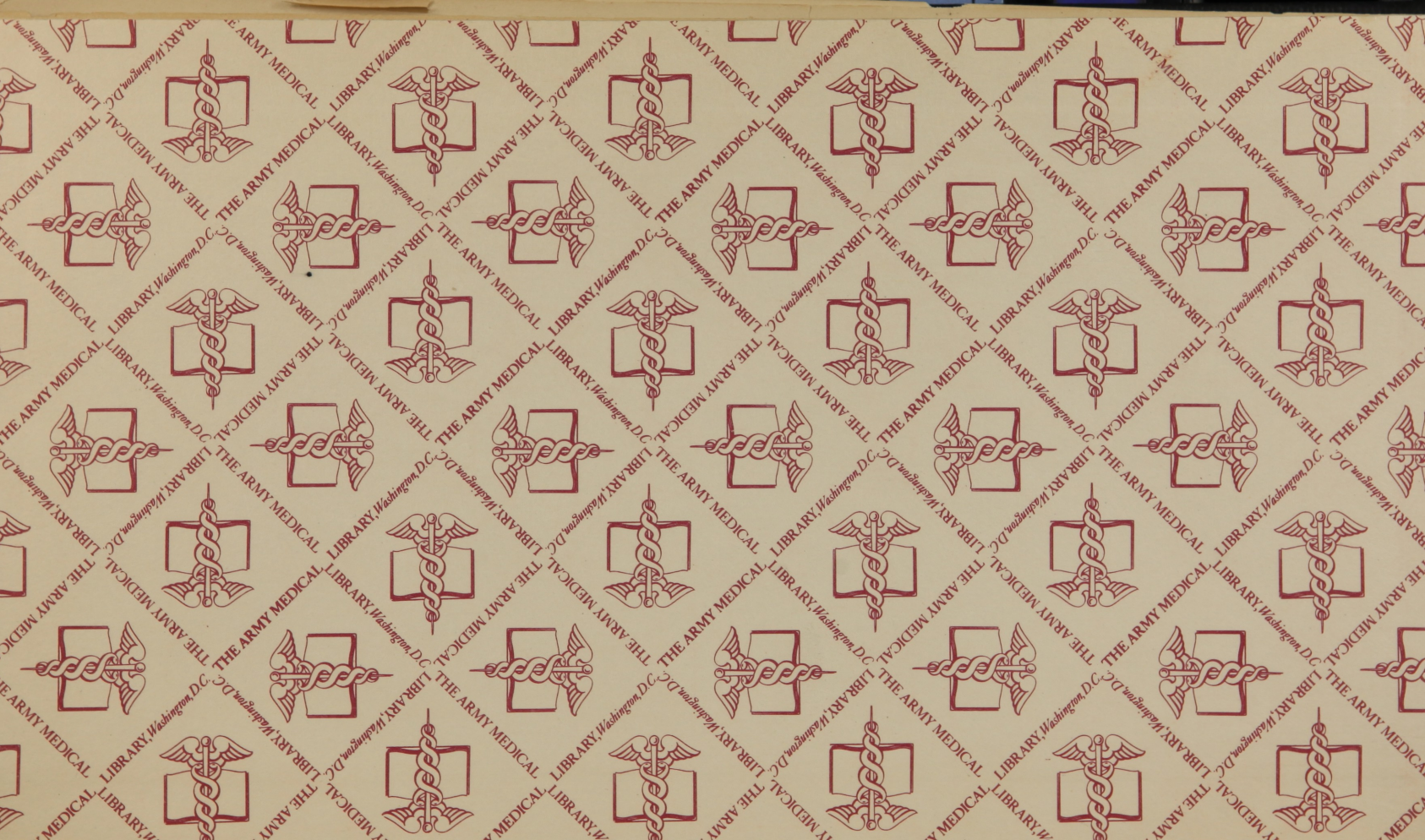
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PREFACE.

PROBABLY no case of poisoning has ever created so great an interest in this country as that which forms the subject of this Report. As a case of circumstantial evidence it possesses remarkable interest, while it is believed to be the only published trial for murder in which the presence of strychnine has been detected by chemical analysis in the body of the deceased.

In the celebrated English case of William Palmer, which has heretofore been the leading case upon this poison, the chemists could detect no trace of strychnine in the body of the deceased, while in this case it was reproduced in large quantity. The importance of the case requires that it should be published, and at the request of the counsel I have prepared this Report.

The necessity of having an accurate report of the evidence for the purposes of so important a case led the counsel who conducted the prosecution to employ me to be present and make a verbatim report of the testimony. Each of the counsel has furnished his argument from his own minutes, and all the papers reported are copies from the originals on the files of the courts and at the State House.

It is to be regretted that the engagements of the Chief Justice would not allow him to write out his charge to the jury; but he kindly furnished his minutes, and from them a full abstract was prepared by one of the counsel.

Neither time nor labor has been spared in the preparation of this work, and I submit it as a full and accurate report of the case of George C. Hersey.

THE REPORTER.

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REPORT

OF THE

CASE OF GEO. C. HERSEY,

INDICTED FOR THE

MURDER OF BETSY FRANCES TIRRELL,

BEFORE

The Supreme Judicial Court of Massachusetts;

INCLUDING THE

HEARING ON THE MOTION IN ARREST OF JUDGMENT, THE PRISONER'S PETITION FOR A COMMUTATION OF SENTENCE, THE DEATH WARRANT, OFFICER'S RETURN UPON IT, AND THE CONFESSION.

By JAMES M. W. YERRINTON.

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TRIAL OF GEORGE C. HERSEY,

BEFORE THE

SUPREME JUDICIAL COURT OF MASSACHUSETTS.

HON. GEORGE T. BIGELOW, *Chief Justice.*

HON. CHARLES A. DEWEY,
HON. PLINY MERRICK,
HON. REUBEN A. CHAPMAN,
} *Associate Justices.*

Counsel for the Commonwealth.

HON. DWIGHT FOSTER, *Attorney General.*
HON. BENJAMIN W. HARRIS, *District Attorney.*

Counsel for the Prisoner.

GEORGE S. SULLIVAN, ESQ.
HON. ELIHU C. BAKER.

The Grand Jury for the County of Norfolk returned into the Superior Court, held at Dedham, on the 4th Monday of April, A. D. 1861, the following indictment: —

COMMONWEALTH OF MASSACHUSETTS.

NORFOLK, ss.

At the Superior Court, begun and holden at Dedham, within and for the County of Norfolk, on the Fourth Monday of April, in the year of our Lord Eighteen Hundred and Sixty-One.

The jurors for the Commonwealth of Massachusetts, on their oaths present, that George C. Hersey, late of Weymouth, in

the County of Norfolk, on the third day of May, in the year of our Lord eighteen hundred and sixty, at Weymouth, in the County of Norfolk, in and upon one Betsy Frances Tirrell, in the peace of the said Commonwealth then and there being, wilfully, feloniously, and of his malice aforethought, did make an assault, and to her, the said Betsy Frances Tirrell, did feloniously, wilfully, and of his malice aforethought, then and there give and administer a certain large quantity, to wit, ten grains in weight, of a certain deadly poison called strychnine, he, the said George C. Hersey, then and there well knowing the same to be a deadly poison, with intent that the said Betsy Frances Tirrell should then and there take and swallow down the same into her body; and that the said Betsy Frances Tirrell, the said strychnine, so given and administered as aforesaid, did then and there take and swallow into her body, and by reason thereof became then and there mortally sick and distempered in her body, and of said mortal sickness and distemper did then and there languish, and languishing for the space of one half hour, did there live, and afterwards, on the day and year aforesaid, did there die of the mortal sickness and distemper then and there caused by the poison aforesaid, so, as aforesaid, by the said George C. Hersey, then and there feloniously, wilfully, and of his malice aforethought, given and administered to her, the said Betsy Frances Tirrell: and so the jurors aforesaid, on their oath aforesaid, do say and present that the said George C. Hersey, her, the said Betsy Frances Tirrell, in manner and form aforesaid, and by the means aforesaid, at Weymouth, in the county aforesaid, feloniously, wilfully, and of his malice aforethought, did kill, poison and murder, against the peace of said Commonwealth, and the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present, that George C. Hersey, of Weymouth, in the County of Norfolk, on the third day of May, in the year of our Lord eighteen hundred and sixty, with force and arms, at Weymouth aforesaid, in the county aforesaid, a certain quantity, to wit: ten grains of strychnine, the same being then and there a deadly poison, feloniously, wilfully, and of his malice aforethought, did put, mix, and mingle in and together with certain preserved fruit, the name of which is to the jurors aforesaid unknown, the said George C. Hersey then and there well knowing the said strychnine to be a deadly poison; and that the said George C. Hersey, the said strychnine so as aforesaid, put, mixed and mingled in and together with said preserved fruit, into a certain spoon did then and there put and place, and the said spoon with the said strychnine put, mixed

and mingled in and together with said preserved fruit so as aforesaid then and there contained therein, then and there, to wit, on said third day of May, in the year aforesaid, with force and arms, at said Weymouth, in the county aforesaid, feloniously, wilfully, and of his malice aforethought, into the hands of said Betsy Frances Tirrell did then and there put and place; he, the said George C. Hersey, then and there falsely, wilfully, feloniously, and of his malice aforethought, pretending to the said Betsy Frances Tirrell that the said strychnine, so as aforesaid put, mixed and mingled in the spoon aforesaid, with the preserved fruit aforesaid, was a medicinal preparation which would produce the miscarriage of said Betsy Frances Tirrell; she, the said Betsy Frances Tirrell, being then and there pregnant with child; and the said George C. Hersey then and there well knowing the same not to be such medicinal preparation, and then and there well knowing that the same was then and there a deadly poison; and the said George C. Hersey then and there feloniously, wilfully, and of his malice aforethought, intending that said Betsy Frances Tirrell should then and there and thereafterwards take and swallow down into her body the said strychnine, put, mixed and mingled in and together with the preserved fruit as aforesaid, in the spoon aforesaid, in the belief, then and there, that the said poison was then and there a medicinal preparation so as aforesaid intended and adapted to produce the miscarriage of her, the said Betsy Frances Tirrell.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Betsy Frances Tirrell, not knowing the said strychnine so as aforesaid put, mixed and mingled with the preserved fruit aforesaid, in the spoon aforesaid, so by the said George C. Hersey into the hands of said Betsy Frances Tirrell then and there put and placed, to be then and there a deadly poison, but believing the same to be a medicinal preparation as aforesaid; afterwards, to wit, on the aforesaid third day of May, in the year aforesaid, at Weymouth aforesaid, in the county aforesaid, the said strychnine so as aforesaid with said preserved fruit in the spoon aforesaid, then and there put, mixed and mingled as aforesaid, did then and there take and swallow down into her body: by means of which said taking and swallowing down into the body of said Betsy Frances Tirrell so as aforesaid of the said strychnine with said preserved fruit in the spoon aforesaid put, mixed and mingled by the said George C. Hersey as aforesaid, the said Betsy Frances Tirrell became then and there sick and distempered in her body; of which said sickness and distemper of body, so, by the said taking and swallowing down into her

said body of the poison aforesaid, so, as aforesaid put, mixed and mingled, caused and produced as aforesaid, the said Betsy Frances Tirrell did then and there languish, and languishing for the space of one half hour, did there live, at the end of which time the said Betsy Frances Tirrell, on the day and year aforesaid, at Weymouth aforesaid, in the county aforesaid, of the poison aforesaid, so by the said George C. Hersey, wilfully, feloniously, and of his malice aforethought, into the hands of said Betsy Frances Tirrell put and placed, and by said Betsy Frances Tirrell then and there into her said body, taken and swallowed down as aforesaid under the false representations of the said George C. Hersey aforesaid, did die: And so the jurors aforesaid, on their oath aforesaid, do say and present that the said George C. Hersey, her, the said Betsy Frances Tirrell, on the day and year aforesaid, at Weymouth aforesaid, in the county aforesaid, in manner and form aforesaid, wilfully, feloniously, and of his malice aforethought, did poison, kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present, that on the third day of May, in the year of our Lord eighteen hundred and sixty, at Weymouth, in the County of Norfolk, one Betsy Frances Tirrell, of Weymouth, feloniously, wilfully, and of her malice aforethought, did take and swallow down into her body a certain large quantity, to wit, ten grains in weight of a certain deadly poison called strychnine, then and there well knowing the same to be a deadly poison; and with intent herself, the said Betsy Frances Tirrell, then and there feloniously, wilfully, and of her malice aforethought, then and there to kill and murder; and that by reason of the said deadly poison, so as aforesaid taken and swallowed, she, the said Betsy Frances Tirrell, then and there became greatly sick and distempered in her body, and of such sickness and distemper did then and there languish, and languishing for the space of one half hour did there live; and afterwards, on the day and year aforesaid, of said sickness and distemper, did there die: And so the jurors aforesaid, on their oath aforesaid, do say and present that the said Betsy Frances Tirrell wilfully, feloniously, and of her malice aforethought, did in the manner and form aforesaid, and by the means aforesaid, at Weymouth, in the county aforesaid, on the day and year aforesaid, kill, poison and murder herself, the said Betsy Frances Tirrell, against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And that George C. Hersey, of Weymouth, in the county aforesaid, on the day and year aforesaid, and before the time when said Betsy Frances Tirrell feloniously, wilfully, and of her malice aforethought, herself did then and there, in manner and form aforesaid, kill and murder; did counsel, procure, hire, incite and persuade her, the said Betsy Frances Tirrell, then and there feloniously, wilfully, and of her malice aforethought, to kill and murder herself in manner and form aforesaid, against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And so the jurors aforesaid, on their oath aforesaid, do say and present, that the said George C. Hersey, her, the said Betsy Frances Tirrell, at Weymouth aforesaid, in the county aforesaid, in manner and form aforesaid, and by the means aforesaid, on the day and year aforesaid, feloniously, wilfully, and of his malice aforethought, did poison, kill and murder, against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further say and present, that the said George C. Hersey, at Weymouth aforesaid, in the county aforesaid, on the day and year aforesaid, in and upon said Betsy Frances Tirrell, wilfully, feloniously, and of his malice aforethought, did make an assault, and the said Betsy Frances Tirrell, in some way and manner, and by some means and agencies, to the jurors not known, did deprive of life, so that the said Betsy Frances Tirrell then and there did die: and so the jurors aforesaid, upon their oath aforesaid, do say and present, that the said George C. Hersey, her, the said Betsy Frances Tirrell, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

SIMEON CLAPP, } *Foreman of the Grand Jury.*

A true bill.

B. W. HARRIS, *District Attorney.*

This indictment was duly transmitted to and entered in the Supreme Judicial Court, and on the 8th day of May the prisoner was arraigned in that Court, before Mr. Justice Metcalf, and pleaded *Not Guilty*. The Court thereupon informed the prisoner that counsel would be assigned him to assist in his defence, and at the prisoner's request George S. Sullivan, Esq., and Hon. Elihu C. Baker, were confirmed by the Court

and assigned as his counsel. The Court then stated that on the 28th of May the full bench would be in session, and that day was accordingly assigned for the trial of the case.

TUESDAY, May 28, 1861.

At half-past nine o'clock, the Court, consisting of Chief Justice Bigelow, and Associate Justices Merrick, Dewey, and Chapman, came in and took their places upon the Bench.

Attorney General Foster and District Attorney Harris appeared for the government; George S. Sullivan, Esq., and Hon. Elihu C. Baker, for the prisoner.

The prisoner having been placed at the bar, the Attorney General moved the Court to empanel a jury to try George C. Hersey for the murder of Betsy Frances Tirrell.

Mr. SULLIVAN, for the defence, said that he desired to make a motion before the empanelling of the jury, which was, that the government be required to elect upon which charge of the indictment they would proceed, — whether upon the counts charging the crime of murder, or that charging the prisoner as accessory before the fact to the crime of suicide, committed by the principal.

BIGELOW, C. J., said that the motion was premature, to say the least, for the question of election would depend very much upon the aspect of the evidence; therefore, without saying that such election should not be made at any time, the motion would be overruled at present, saving the right of the prisoner to renew it after the evidence for the government was in.

The empanelling of the jury was then proceeded with, the usual questions put, and the following persons duly sworn: —

Jeremiah Allen, Ralph Arnold, Oren R. Beal, Joseph C. Blake, Peter Billings, Frederick Clapp, Edward Clark, Ezekiel W. Cutter, Calvin Davenport, Rufus H. Draper, Levi P. Dudley, George Fiske.

Mr. Jeremiah Allen was appointed foreman of the jury.

The clerk then read the indictment, to which the prisoner had pleaded not guilty.

District Attorney Harris thereupon proceeded to open the case as follows:

OPENING ARGUMENT OF B. W. HARRIS, DISTRICT ATTORNEY.

May it please your Honors, Mr. Foreman and Gentlemen: —

The duty which has been imposed upon you by the law, and by the choice of the defendant, is one involving the gravest

consequences, and demanding the exercise of the highest and purest faculties of the mind and heart. You hold in your hands the issues of life and death. You are to determine and pronounce, by your verdict, the answer to the fearful question at issue. Did George C. Hersey, the defendant, murder Betsy Frances Tirrell? I doubt not, gentlemen, you bring to the discharge of this great duty minds and consciences quickened and purified by the sense of your great responsibility. To the defendant this trial involves all, — life, and that which to us mortals is next to life, honor and a fair name among his fellow-men. To the community it is scarcely less important. In the vindication of the law against the crime of murder, we seek to render the tenure of human life secure against open violence and secret destruction. In such a tribunal as this, engaged in the performance of so grave and important a duty, passion, prejudice and preconceived opinion have no place. Upon the law and the testimony alone must the defendant be tried. And you are most solemnly called upon to discard from your minds everything which you may have heard or known heretofore, concerning this case, which can possibly influence or control your verdict.

By the humane provisions of our law, you are to presume the defendant to be innocent, until he is proved to be guilty beyond every reasonable doubt; until the evidence shall have "*established the truth of the fact to a reasonable and moral certainty, — a certainty that convinces and directs the understanding, and satisfies the reason and judgment.*"

Upon the government rests the burden of proving the charge by competent legal evidence.

This presumption of innocence is with the defendant always, — through the trial, and in the secrecy of the jury-room, — and is to him a sure and perfect armor of defence against all, save only the invincible weapons of truth. It is not enough that he shall come out from this trial blackened with the suspicion of having perpetrated this shocking act, but you must be able to say, upon your consciences, that you are satisfied, beyond all reasonable doubt, that he committed the crime with which he stands here charged. This is the law; and, according to the judgment of men, it is just. The government, upon these terms, willingly accepts the burden of proving the crime; for, while it would use its great power to track the murderer to his hiding-place; to bring his secrets to the light of day, and visit upon his guilty head, with firm and unrelenting hand, its terrible penalties; it also employs that power as a shield for the protection of the innocent, the weak and the unfortunate, allowing no man to be punished because

he is so unfortunate as to rest under a cloud of suspicion, however dark. While, therefore, you are to administer the law in this case with a firm hand, and are to pronounce a verdict upon the law and the testimony, although that verdict shall be as a death-knell to the defendant, yet you will also guard his rights with sacred care, and allow nothing to harm him, save only the indisputable proof of his crime.

The government will undertake to satisfy you, —

First. That a homicide was committed, *i. e.*, that Betsy Frances Tirrell was deprived of life by unnatural means.

This is the first duty of the government. For, unless, here upon the very threshold of the case, it is clearly shown that the deceased was deprived of life by violent or unnatural means, you will make no further inquiry. Unless she was murdered you will not look for a murderer.

Second. That she was deprived of life by the administration of a quantity of deadly poison called *strychnine.*

Third. That the poison was administered to the deceased by George C. Hersey, the defendant at the bar, with deliberately premeditated malice aforethought.

I propose to show to you, gentlemen, in narrative form, the history of the case as it is confidently expected it will appear from the testimony which will be offered in evidence.

The life and fair fame of a young and beloved daughter and sister have both been cruelly destroyed, and a happy and cherished home made desolate by this double affliction.

Betsy Frances Tirrell, daughter of Mr. Wilson Tirrell, of Weymouth, of highly respectable social position, whose name up to the hour of her death had never been spoken except with respect, and who was the pride and hope of her family, and doubly dear to them on account of the death of the younger sister, Mary, whose untimely grave was yet bedewed with tears, perished on the evening of the third day of May, 1860. No admonition of approaching death was given; no time for the utterance of her wrongs or for the last loving farewell to her beloved and distracted friends was allowed her; and no calm hour for prayer for pardon and forgiveness at the Throne of Grace; — a pang, — a brief and speechless struggle with the grim destroyer, and all is silent, — she is dead! This is but the brief story of her passage from life on earth to life immortal; and, but for the perfection of science, this is all that could have been known. But by the aid of this great and rapidly increasing power, we are enabled to make the dead body reveal the great secrets which the living lips had no time or ability to utter, and, in terms devoid of all guile, to disclose the whole mystery of her death, and to point

its skeleton finger, as if in accusation, to the seducer, the deceiver and the murderer. Mr. Tirrell had, by his first marriage, two daughters, Mary, and Betsy Frances, who were unmarried and lived with him; also, a daughter Susan, who was married and lived in the neighborhood; also, a son, Wilson Tirrell, Jr. By his second marriage he had a daughter, Louisa, who will appear before you as a witness, and upon whose simple and childish but clear and convincing story this prosecution in some measure depends.

The defendant had for some time resided in the neighborhood, and, after many months of intimate acquaintance, had engaged the affections of Mary, and it was expected that they would soon be married; when, in the last days of December, 1859, Mary was taken violently ill, and on the second day of January, 1860, after an illness of scarcely one week, died. During her sickness the defendant, who from his relations with her was supposed to be more than any other person interested in her welfare, was invited to her father's house, and became, as was most proper, her bedside attendant, and watched beside her till her death.

In this afflicted and bereaved family he was looked upon as the most afflicted, and as the sincerest mourner of them all. Father, mother, brother and sisters felt sympathy with him and claimed him as one of their own household. Mr. Tirrell offered him a place in his home and family as long as it should be agreeable to him to occupy it. The kind offer was accepted, and even before Mary's funeral he took up his abode in the father's home, and continued to be a member of the family until the death of Betsy Frances, on the third of May following. During this period the defendant and Betsy Frances were much in each other's society. She mourned a beloved sister, younger than herself, who had been her companion and care from early childhood. He appeared to mourn the loss of the same being, who had become his affianced bride. They were in sympathy as brother and sister, and their conduct well comported with that relation. They were seldom in society. They attended together, both by day and evening, the ordinances of religion; walked and sometimes rode together, though not often unattended. She was during a portion of this period somewhat sad and dejected, and her friends thought they noticed a decline in health.

It was also noticed that time did not serve to alleviate her sorrow or improve her health. The defendant, as did her near relatives, attributed her sadness of heart and failing health to her great loss. He proposed, as a remedy, that she should visit with him his relatives, saying that a change of

scene would be of advantage to her. He manifested at times an interest in her dress, gave his opinion of purchases which she made for her own apparel, and did other acts of like nature, in themselves quite natural and brotherly.

She took care of his clothing to some extent, and manifested a not improper interest in him. The piece of needlework on which she was engaged at the time of her death was for him. During all this period he was her only male attendant in her walks and rides, and in the quiet seclusion of home. The family kept no watchful eye upon them. They were allowed the utmost freedom, and in all respects acted their own pleasure. So trustingly did the family confide in his honor and virtue that they put no restriction or limitation upon their intercourse, and when the great suspicion of seduction and murder burst in upon them with its crushing, withering power, their sorrow was made doubly great in that they were compelled to tear out from their bleeding hearts their deep affection for him whom they had so freely welcomed as a son and a brother. Thus matters stood on the third day of May, 1860. On the afternoon of that day the defendant took the horse and carriage of Mr. Tirrell to go into a remote part of the town of Weymouth, after Mrs. Tirrell, who had been passing the day with her relatives. With him, for the pleasure of the ride, went Betsy Frances, and the younger sister, Louisa. On the return home the defendant was quite silent and uncommunicative, scarcely speaking except in answer to some question. So marked was his conduct in this respect on that occasion, that it was distinctly remembered by Mrs. Tirrell and Louisa, after the tragic scenes of that night. You may have occasion to inquire, why this silence? Was he then revolving in his mind the dreadful deed which he was about to perpetrate? Did he then nerve himself to overmaster his better and resisting nature? These are questions which the testimony naturally suggests, but which you alone are called upon to answer.

On their arrival at the house, at about eight o'clock in the evening, the defendant, after disposing of the horse and carriage, came into the room in which the family were sitting, and immediately prepared to retire to his room for the night, which was so unusual a thing at that early hour, that Mr. Tirrell asked him if he was going to bed so soon. He replied, Yes, giving as a reason that he had a violent headache, and immediately went up to his room. The family then, for the first time, heard him speak of his headache. Did he then in truth seek his couch for rest, and as a cure for bodily ills? Or did there remain some needed preparation for the

work that night to be accomplished? Was there a fatal dose to be poured out and made ready for his unsuspecting victim, so that she might, as she passed his door, receive it without the delay of a footfall? I fear that his malady was one for which the couch had no cure, and which drives sleep from the pillow.

The conduct of Betsy Frances, after the departure of the defendant on that fatal night, — the last acts of her life, — will be carefully examined, inasmuch as they have an important bearing upon the question of her complicity in the act by which her life was taken.

It will conclusively appear in evidence that, at this time, Betsy Frances was advanced three or four months in a state of pregnancy. And we expect to satisfy you that the defendant was the father of the child.

It is the theory of the government, authorized and fully sustained, we think, by the facts in the case, that having surrendered her virtue and her honor to George C. Hersey, the defendant, and having found that the consequences of her indiscretion were about to bring ruin upon herself and shame and disgrace upon her family, she came readily to desire that she might be relieved from her situation by the use of some drug.

To the defendant, the author of her misery, she looked for this help; and to whom else could she turn for aid in such an hour? She knew that he was to prepare for her that night a potion, which she, in her confiding simplicity, believed would save her from shame, and restore her peace of mind, which her own folly had served more to distract than even that dispensation which had bereft her of her sister Mary. Confident in this belief, she was upon that night more cheerful and happier than she had been for weeks before. Her conduct upon that night is, we shall submit, consistent with this theory, and with no other.

But she dreamed not that he who had seduced and betrayed, waited restlessly, that when she should pass to her chamber, which was nearly contiguous to his own, he might hand the poisonous draught, which should in a few brief, agonized, and speechless moments bring her into the presence of the Eternal.

After the defendant had retired to his room, as I have before stated, the evening paper came in, and she perused it, selecting the items of interest and reading them aloud to the family. The young lads of the neighborhood, desiring to manifest their regard for the young sister Louisa, in the course of that hour in which the family remained up, after the defendant

had retired, hung several May-baskets at the door. Betsy Frances answered the door-bell, — brought in the May-baskets, — examined them with interested curiosity, — showed them to the father and mother, and when she retired took one of them in her hand, and remarked that she should show it to Louisa that night, — and it will appear that she even woke up the young sister, who had retired before her, to show her a doll which it contained.

It was a custom at that time for the mother and Betsy Frances to alternately rise early in the morning and superintend the preparation of the breakfast. It was Betsy Frances' turn to prepare the breakfast the next morning, and as she left the room that night, with the May-basket on her hand, she turned to the mother, and asked what she should get for the breakfast, and having received the mother's reply, bade the father and mother good-night, and retired, and in a few minutes the father and mother also retired.

Before Betsy Frances laid down upon her bed, upon which also slept the young sister Louisa, she left the room for a moment, but whither she went or upon what errand, the young drowsy sister took no note. You will have the simple fact before you.

After some delay in preparation, she finally got into bed beside Louisa, who instantly fell into the gentle slumber of childhood. We know no more, until, after a short space of time, — not exceeding half an hour, — the young sister awoke in alarm, and found Betsy Frances apparently speechless, and trembling and twitching in every limb. The little girl called, "Mother! Frances is in a fit." The mother heard the cry, and was listening to hear it repeated. In a moment Hersey, who was quick to detect the sound of distress from that room, rushed into the room of Mr. and Mrs. Tirrell, and summoned them, saying, "Frances is in a fit or something." You will also have before you in this connection the statement of the defendant himself, to the effect that, hearing some one call George, he went into Frances' room, and finding her in a fit, lying partly off the bed, took hold of her, and moved her on to the bed, and then went to call the father and mother, which, if true, we shall submit must have transpired before Louisa awoke.

After calling Mr. and Mrs. Tirrell, the defendant led the way into Frances' room, he entering first, the father next, the mother following. In answer to the earnest inquiry of the mother, "What is the matter?" Frances answered only, "I shall die — I shall die," and once said, "Give me some physic;" and this is all which the spasmodic action of her muscu-

lar system allowed her lips to utter. A few mute spasms, of a singular character, the peculiarities of which were carefully noticed and will be minutely described, ended her earthly existence.

The defendant, after the relatives residing near had been called in, was requested to go for the family physician. He drove with desperate and furious speed for Dr. Howe, and brought him to the bedside in time to make the announcement that Betsy Frances was dead. Here let us pause for a moment. Up to this point the defendant had given no ground for suspicion; no act or word had revealed to the closest observer that he had been playing a false part. Even now, by the bedside of Frances, he is looked upon as the afflicted family friend. But henceforth we shall find him staggering under the weight of his terrible secret, and at times unable wholly to conceal the operations of his mind.

Before her death, when speaking of her sadness and ill-health, he had been heard to say that he should not be surprised "if Frances made way with herself;" but after her decease we shall be unable to find that he intimated such a thought to any person.

Strange as it may seem, he who, before her death, found reason to anticipate a suicide, saw in that short and strange sickness, that sudden and mysterious death, no ground for believing that she had died by her own hand. But such is the fact, inexplicable except by the theory that he did not wish to point with his own hand to the secret he would conceal from the sight of men. Two daughters had been snatched from that family in full life and vigor within four short months. One yet remained. The family were alarmed. They feared poison in the very water which they drank and in the air they breathed. They felt that something must be done to explain the mystery of these strange and sudden deaths. They consulted as to the propriety of causing a post-mortem examination to be made. This the defendant opposed, denouncing it as "butchery," saying that he would "never allow a friend of his to be opened." He also said that nothing was ever found out by such examinations, and that no amount of money would induce him to witness such an operation. His opposition was fruitless, however, — father, mother, sister, and brother overcame their natural repugnance to an autopsy, while the defendant expressed his horror at such a shocking mutilation of the dead.

The examination was ordered, and the surgeons came to the house. But when the operation was about to commence, the defendant, notwithstanding his late pretensions, asked

of Dr. Howe, who was to conduct the examination, the privilege of being present in the room when the dissection was to take place. He alone had, after all, the desire and the nerve to witness the revolting spectacle. His strange and unnatural request was granted. But when the fact of pregnancy was revealed to the surgeons, he was requested to retire, which he did. The surgeons consulted, — determined to proceed no further at that time, — to make known to the father their discovery, and to call an inquest.

Dr. Howe, after having made the father acquainted with the discovery which had been made, left the house for the purpose of going for the coroner. As he was unhitching his horse in the yard, the defendant appeared suddenly by his side, and asked, "Have you found any cause of death?" The doctor, whose suspicions were now aroused, turned upon him, and, with a searching glance, replied, "No. What did you expect we should find?" A fearful question to put to the defendant at that moment, — how shall he answer it? After some hesitancy he said, prudently, "Nothing." But when the doctor said, "I suspect she has been poisoned," the defendant, with trembling limbs and hands upraised, ejaculated, "Heavens and earth!" and hastily withdrew, without further inquiry. He could hear no more, — the secret was out, — suspicion was upon him, and his firmness for a moment forsook him.

He is no longer a participant in the affairs of that household. He was soon carried from that house in mercy, that he might not come into the presence of the afflicted, broken-hearted, outraged, and almost maddened father and brother. We will, for a moment, also let him disappear from our view. The post-mortem examination was continued and completed under the direction of the coroner, who had, in the interim, called and empanelled a jury.

The remains were critically examined by the surgeons, but no adequate cause for the death was developed by the autopsy; indeed, the organs of the body were in a healthy state, and, so far as the eyes of the most skilful and experienced surgeons there present could discern, there was no cause for death.

The stomach, heart, liver and intestines, with their contents, were carefully removed from the body, placed in clean earthen vessels, securely sealed, and taken by Dr. Howe into his especial care and custody, and by him delivered on the following day to Prof. A. A. Hayes, of Boston, for chemical analysis. Prof. E. N. Horsford, of Cambridge, was afterwards associated with him, and they were directed by the government to

make separate and independent investigation for the detection of poison. For this purpose they each took portions of the matter to their separate laboratories, and pursued their researches without reference to each other. Thus you perceive the care which the government has taken to secure the utmost accuracy in this most important investigation, — not trusting to one man, however skilful and learned, this delicate and responsible duty.

These gentlemen, of the highest respectability and of distinguished eminence in their profession, — one of them a practical chemist, for many years engaged in conducting the most difficult and important researches in chemistry, and the other a teacher, during several years, of that most subtle and delicate science, in the leading university of this Commonwealth, — will be before you, and will give you the details of their several processes, and the results at which they arrived. You will learn from them that they extracted from the matter given them a large quantity of strychnine, — a poison of the most fatal character yet known to science, — a quantity not only sufficient to produce instant death, but also so great as to render it quite certain that life could not long exist while it was present in the stomach.

The specific effects of this poison will be described to you by eminent medical gentlemen, and, upon comparison, the symptoms manifested by Betsy Frances during her short illness will be found identical with those which always attend poisoning by strychnine.

We expect you will be able from this evidence, and, indeed, compelled to find, that Betsy Frances Tirrell came to her death by the administration of strychnine.

The history of the case, as we expect it will appear in evidence, I have now briefly laid before you.

We seek the detection of the murderer. The defendant is accused of the crime. Our attention is fastened upon him. We must examine fully into his acts, both before and after the murder, and by their aid, if possible, discover his thoughts and purposes, and lay bare his real character.

I think you will be satisfied that, while to the family and friends of Betsy Frances he appeared as the true family friend and deeply afflicted mourner, he was really acting a false character.

We shall invite your attention to acts of his, committed during this period, which will, we think, tell the story of his hypocrisy.

Within two months after the death of Mary, to whom he

was engaged, he secretly made protestations of affection to a young lady in the neighborhood named Loud, and became engaged to her, but requested that the engagement might be kept secret, lest the friends of Mary might think him guilty of immoderate haste, and their feelings be wounded. He had no feelings upon the subject, — his heart suffered no wound by Mary's death which was not even so quickly healed: he regarded only the external proprieties of life. His secret was kept; but Miss Loud dismissed him after one month's engagement, because he made an assault upon her virtue, — she could not receive his attentions without the sacrifice of her honor, and she bade him be gone.

Fortunate in her strength of mind and heart, she escaped the grasp of the vile libertine and the destroyer of female virtue, who appeared to all the world beside her in the sombre attire of a mourner.

During a few weeks prior to the death of Betsy Frances he occasionally conversed with his shop companions concerning the different poisons and their effects, — strychnine was mentioned as the surest and quickest in its operations. He said that he was engaged in the study of chemistry, — though none knew where or when, and his books upon that subject, if any he had, have not been found.

But a short time before Betsy Frances' death, he visited a person in Boston calling himself a medical practitioner, and who was, at the time, engaged in the treatment of a certain class of diseases, as well as in practice of an irregular and questionable character, and believing he had found a man in whom he might with safety confide, he boldly admitted himself to be a seducer and libertine; stated that he had a case on his hands which required treatment; inquired about surgical operations for procuring abortions, and medicines for the same object; and said he would rid himself of his then present difficulty, let the consequences be what they might. He also called for strychnine, under the pretence that he desired to kill a dog. He was refused in all his requests, — his reckless conversation, doubtless, serving as a caution to the shrewd man with whom he dealt.

We shall next find him at the drug store of Dr. Ellis F. Miller, at the corner of Hanover and Union Streets, in Boston, a few days only before Betsy Frances' death. Here he calls himself by a false and assumed name. Here he bought a vial containing sixty grains of strychnine, after representing to the young clerk that he desired it for the purpose of poisoning a dog.

Gentlemen, I need not more fully detail the evidence. By the relation thus far of what the government expect to prove, you perceive the nature of this case, and the mode of proof.

The testimony, as we think it will appear, will, doubtless, satisfy you beyond all peradventure, that a homicide was committed, and that the means used was strychnine; and, as bearing upon the question of the defendant's guilt, we suppose that you will be also satisfied, with the same certainty, that he, and he alone, had a motive for the commission of the crime, the means and the opportunity for its commission.

Motive, in that he had seduced her, and she was pregnant by him,— he must marry her, or he must be exposed, and his infamy proclaimed to the world. Marry her he could not, as by his confession to Miss Loud he could not reciprocate her affection, and her demand upon him for justice could not be satisfied by the mere destruction of the evidence of their guilt. He had presented to him for his choice, marriage, exposure, or murder. Here is motive sufficient for so great depravity of heart.

The means were at hand,— the poison was purchased and ready.

Opportunity was not wanting,— no other person controlled, as did the defendant, the time and the conduct of the deceased,— he had but to express his desire, and the frail woman obeyed.

I now invite your earnest attention to the testimony, and commend it to your closest scrutiny, that your verdict may be such that you may look back upon this trial with no misgivings, and with the satisfaction which always follows upon the faithful performance of the graver duties of life.

Dr. Appleton Howe *sworn — examined by Mr. Harris.* — I reside in Weymouth; have been in practice more than forty-one years. I was called to Wilson Tirrell's house in May, a year ago. I reside a little more than a mile from there. I was called the evening of the 3d of May, in great haste, by Mr. Hersey, who asked me to go to Mr. Tirrell's. In answer to a question, he said Frances was in a fit, or something. Being at a neighbor's, I found it necessary to go to my house, to get my trunk. He invited me to get into his wagon, in order to go quicker, and I rode over with him to my house in a hurry. When I got to Mr. Tirrell's house, I was urged to go at once to the chamber, by Mr. Tirrell, without stopping to divest myself of my hat or coat, which I did. When I got to the chamber, I saw a person lying on the bed, whom I after-

wards found was Betsy Frances Tirrell. She was lying upon her left side, with her face partially buried in the pillow, her right lower limb lying over the left, towards the front side of the bed, and I think the hand bent in this way — [holding his arm up to the breast, with the hand clenched]; but of that I cannot be positive. The first thing I did was to feel for the pulse at the wrist. No pulsation being found there, I next applied my thumb to the carotid artery, and found nothing there. I then examined the arm above the elbow, and found no beat there. Then I put my hand on to the left breast, to feel if there was any beating there, and found that perfectly still. I then turned to the family, and told them she was dead, which proved to be the fact. In turning her over, I placed my hand under the right breast and under the right limb, and she turned as if she was very stiff; she turned all together, as if she had been a wooden body, or a machine. In placing my hand under the breast, it occurred to me that that organ felt differently from what I should expect in the case of a virgin, and the thought crossed my mind that possibly she might be pregnant; but having known the character of the girl from her birth, and having never heard a suspicion in regard to her moral character, —

Mr. Harris [interrupting]. State whether you made any remark about it at that time.

A. I did not, sir.

Witness continued. Soon afterwards, I placed my hand on the lower part of the bowels, where I thought I felt some unusual indications different from what I should have expected. Still, it was not so considerable as to convince me that anything was wrong. I was requested to remain there some little time, which I did, perhaps for an hour, until preparations were made to lay out the body. An arrangement was made that night, that I should come to the house the next day, for the purpose of preparing for an examination of the body, subsequently. I left, and was carried home by Mr. Hersey.

Not long after I left the house, Mr. Hersey spoke about what had passed during the evening. He said that he went to bed earlier than common, in consequence of having a severe headache; that he thought he was in a drowse when he heard his name called. On arousing himself, he heard, as he thought, a number of boys in the street, in front of the house, and he supposed the expression came from them, and laid down again to rest. Presently, he heard his name called again, in the direction of Frances' chamber, and then he immediately left his bed and called the parents. Nothing more was said, that I recollect, during the passage home. He left me at my door, and returned.

The next morning, I went to Mr. Tirrell's, and, by his request, made arrangements to have the examination of the body take place on Saturday. This was on Friday morning. During the day, I called on Dr. Fifield, Sen. and Jr., I think, — certainly on Dr. Fifield Jr., — saying that the examination was to take place, and requesting their attendance. Dr. Tower, who was a partner of mine, would of course be there. Nothing else was done on that day (Friday) that I recollect.

On the afternoon of Saturday, about two o'clock, Dr. Tower and myself, and Dr. Fifield, Jr., met at Mr. Tirrell's for the purpose of the examination. [A plan of the house was here shown.] I recognize that as a description of the premises.

I was in the sitting-room, contiguous to the front room where the corpse lay upon a board, and that board lay upon a table, the head being about there, and the feet in the direction of the street. I was standing in that position (indicating it on the plan), or nearly that, just ready to go into the room to make the examination, when Mr. Hersey came up to me on my left hand, and says, "Doctor, will there be any objection to my being present at the examination?" I was somewhat startled at the question, and hesitated, perhaps two seconds, just enough to collect my thoughts, and then said, "No, not on my part; if nobody else makes any objection, I shall not;" and immediately, without waiting to inquire if anybody else made any objections, I passed into the room, and Mr. Hersey followed me — whether before or after the other physicians, I cannot say, but he followed immediately, and we arranged ourselves around the body. As the direction of the matter was put into my hands, I requested Dr. Tower to take the knife and use it. I placed myself there (indicating the position on plan); Mr. Hersey was directly behind me, a little to the right. I think Dr. Fifield was somewhere on this side (indicating the point on plan), and Dr. Tower was sometimes on one side and sometimes on the other, wherever it was most convenient for him to use the knife. I think Mr. Hersey did not move from that spot during the whole time he was in the room.

We first opened the chest, to look at the heart. The heart was about the usual size, and, externally, did not show any marks of disease. It was then opened, and the Doctor cut into the left ventricle, I think. Then the question came up, whether we could not examine the heart better if it was removed. We thought it best to remove it, and in cutting off the vessels, a large quantity of dark venous blood flowed from them. The heart appeared to be rather flat, but did not seem to have — as I did not take it into my hands I can't say par-

ticularly — anything unusual about it. If anything, it did not seem to have so much firmness and roundness as usual. It seemed as though the blood had been expelled, and it had relaxed. There was not much blood in the heart, though I think there was a little. I think Dr. Tower took the heart and held it up by the apex, and did so when he removed it. I know there was a large quantity of dark venous blood that flowed out when the vessels were cut; whether there was much in the heart, I am not certain, but my impression is that there was not a great deal.

With regard to the lungs, I have said on previous examinations that the lungs were congested. I want to explain that the lungs were crowded with blood, while, strictly speaking, congestion is an incipient stage of inflammation. I did not mean that. I meant simply that the upper and back part of the lungs were very much crowded with blood: otherwise, they were healthy, apparently.

The next step was to examine the abdomen; and on laying open the abdomen, the question came up whether we should commence the examination at the stomach, or at the pelvis, the lower part of the abdomen; and it being determined that it would be a little more convenient for the individual holding the knife to begin at the lower part of the abdomen, the small intestines were raised at the pelvis, or lower portion of the abdomen, and in doing so pregnancy was brought to notice at once. Dr. Tower says, "Look here!" — pointing to the womb. I saw enough to convince me that pregnancy existed. I then turned to Mr. Hersey, who still stood a little to my right, and to the back of me, and said we should be glad to have him leave the room, as we should like to be alone. I don't know but I might have varied the expression, but that was the meaning of it. He immediately left the room, and I did not see him again there. It was then decided to communicate this condition of things to the friends, and it was first communicated to Mr. Tirrell's sister.

I then determined to call a coroner and let him investigate the case. Mr. Tirrell directed me to take such measures as I thought best, and I immediately called coroner Birney. It was about three o'clock when this discovery was made. I left, and requested Dr. Tower to stay in the room and keep it from all intrusion. Dr. Fifield and Dr. Tower, I think, were in the room: Dr. Tower I know was; and I think they were both in the room while I was making the arrangement with Mr. Tirrell. I went to the coroner and stated the case to him. My horse stood hitched at the corner of the barn, which was perhaps fifteen or twenty feet from the house. [Plan shown.]

I recognize that plan. Here is the street; there is the door to the kitchen — there is the door to the carriage-house, or somewhere along there. The barn is here — the corner of the barn being a little angular to this door — I should think somewhere about twenty feet from this — it may be more than that. My horse was hitched here at the corner of the barn. While I was unhitching the horse and buckling the rein, — for he was tied by one of the long reins, — Hersey came up to me, on my left hand (from what place I do not know, for I did not see him), and asked me this question — "Have you found any cause of death?" I was unwilling to say anything particular to him, and replied, "No; we have not found any immediate cause of death." By this time I had buckled the rein; and then, turning round to him, and looking him full in the face, I said, "What did you expect we should find?" He hesitated a second or two, and replied, "Nothing." Said I, "I suspect she has been poisoned." "Heavens and earth!" he said, raising both hands, which trembled, apparently, and turned upon his heel, going in the direction of the door of the carriage-house. Whether he entered the door or not, I cannot say. At the same moment I jumped into my carriage and drove off.

A coroner was, with some delay, obtained. He did not arrive at the house until about sunset, or very nearly sunset. I don't know as he was there when I came; but he had either just driven up, or was driving up. I don't remember that I went into the room where the corpse lay — for the room had been left in the care of Dr. Tower, who, I supposed, was still taking care of the body. I don't remember that I went into the room until after the coroner had empanelled his jury. I might have gone in when the jury had finished their investigation. They directed me to superintend the further examination of the body, particularly the head, and if the physicians in attendance did not find any adequate cause for death in the brain, to remove the stomach, the liver and the intestines, and take them to a chemist for analytical examination. They likewise put me under oath to take charge of them, and see that they were safely delivered to some chemist.

We next proceeded to examine the brain, and that was very critically examined and dissected; and finding nothing there to account for the death, we began to remove the intestines and stomach, first putting a ligature around the stomach at its upper part, and around the lower part of the bowels, that none of the fluids contained in the stomach or liver or intestines should escape, and, removing the whole together, put them into a clean earthen pot, which had an earthen cover to

it; and then a piece of strong wrapping paper was put over the whole and tied down very securely, and the strings sealed in every part where they crossed each other, in the presence of the two medical gentlemen with me, so that there should be no deception about it. I took charge of it, carried it to my house that night, and put it under lock and key in a safe closet. In the morning, I removed it, because it was rather offensive to the family, though there was no odor about it that I could perceive. I removed it to another part of the house, under lock and key, and after breakfast took it with me to the city, and delivered it to Dr. Hayes, calling his attention to the fact that the seals were unbroken. I should think it was about one o'clock when I delivered it to Dr. Hayes. I told Dr. Hayes what were the contents of the vessel, and that there were some suspicions of poison, else we should not have brought it there to be examined. I gave him no directions what he should do, leaving it for him to find out what he might. It was Dr. Augustus A. Hayes, State Assayer.

I testified before the coroner's jury. Mr. Hersey was there, and was asked some questions. I don't recollect to have asked him any questions. It was not my business to ask any questions, and I don't recollect that I made any inquiries. I don't recollect what I said about his going into the room of Betsy Frances at that time. There was a good deal said; and I did not take it down. I recollect how he stated it to me. I don't recollect that he said anything more about the order of their going into the room. He said that when he heard the second call, he went directly to the parents' room, and then went into her [Frances'] room. Whether he went first, or after them, he did not tell me, that I recollect.

We did not discover any adequate cause for the death of Betsy Frances Tirrell, only from inference; there was nothing from positive appearance that would account for her death.

Cross-examined by Mr. Baker. — I think it was nearly ten o'clock when I was called upon to go to Mr. Tirrell's house. It might have been a little after. I had been out to spend the evening, and had just taken my hat to go home, when the messenger drove up furiously for me. I was at the house of Mr. Minot Tirrell. I should think his residence was somewhere from seventy to eighty rods from my house. I did not walk that distance. Mr. Hersey requested me to get into his wagon, to save time, as I supposed; I don't know that he said that. He drove to my house so fast that I was really frightened to ride with him. I there took my trunk, then got into his wagon, and we rode to Mr. Tirrell's. I should not think I

stopped at my house a moment. I did not go into the house, but merely went to my carriage for my trunk, and turned right about and went to his wagon. My house is a little more than a mile from Mr. Wilson Tirrell's, as I reckon, not much more, — not but a few rods more than a mile. I don't remember that there was any conversation passed between us. The conversation I have mentioned was when we were returning home. I don't recollect any conversation whatever in going. When Mr. Hersey drove up to the door he rapped upon the door. Mr. Tirrell opened it, and as I stood by his side, in full view of him, his remark was, "I want you to go down to ——." I don't think I heard the name, because I immediately asked him this question: "Who?" He said, "Mr. Tirrell's;" and then I asked him what the matter was, and he said, "Frances is in a fit or something." He drove me to Mr. Tirrell's house with a rapidity to which I am not accustomed, — very rapidly. He drove directly up to the position where my horse was subsequently hitched, in the neighborhood of the front door of the barn. He drove to the entrance of the yard of my house, and while I went with as much speed as I conveniently could to my carriage standing in the barn, which was perhaps five yards distant, he turned his carriage round so as to be ready to start when I came back. I was only gone long enough for me to go to my carriage, take my trunk, and get back to his carriage. I went directly to the house, and directly to the room of Betsy Frances, without taking off my hat and outside coat. She was lying partially upon her face, with her right limb thrown over the left, and her face buried as far as the nose in the pillow. The right side of the face was visible. I cannot state the position of her arms so positively as I can the lower limbs. I think the right arm was bent in this way. [In front, with the hand clenched.] As she lay upon her left side, the left arm would not be so easily approached as the right. The right arm was the one which I felt for the pulse. I examined the right arm, not the left. I did not discover the position of the left arm at all. I have no recollection of testifying at Weymouth that I found the left arm under the body, partially bent up, and removed it. As she lay upon the left side, the right arm was the one I should have first come to, and I might have said that in a subsequent examination I examined the left arm. I suppose it was the fact that the left arm was bent under the body, but it was an inference, because I did not see it at that time. It was not necessary to remove it.

Adjourned to 2 o'clock, P. M.

Afternoon. — The Court came in at two o'clock.

Cross-examination of Dr. Howe *resumed.* — The head, as I recollect, was thrown a little back, as if, lying on the side, the neck was twisted, so as to be a little out of the line of the spine. The right limb was straight, and did not bend in turning her over. My impression is that the left was straight and stiff as the other; but I cannot speak so positively of that as of the other. I suppose if two sticks of wood are attached at the extremities, one may lie over the other. This [witness illustrated by crossing his own legs] would be more apparent if I were lying upon a bed than when I am standing upon one foot. I have no recollection of examining the hands; I do not think that I moved the arm much until I had examined the pulse. I don't think I straightened it much; I might some. My impression now is, that I drew the arm away from the body, after I had examined the wrist. I don't think I bent the elbow, but moved the arm from the shoulder. I can't say that I bent it any more than was necessary to get at the arm. The object was to see if there was any pulse above the wrist. I did not find any difficulty in moving the body, except from its stiffness. The limbs were not any stiffer than I have seen them in many a dead body, because I have known them, some time after death, to be so rigid that you might lift the whole body by the heels. The rigidity is very much like what would take place if a man should lie down upon the floor for another man to shoulder him, and straighten himself out. I refer particularly to the lower limbs. That was stiff, so that when I put my hand under it, it did not bend at the knee, but the whole limb turned over as if it had been one straight body, without a joint in it; and, as I had my arm under the body, the whole body rolled over like a log of wood. I noticed, at the time, an unusual rigidity. I think I testified to that fact before. I distinctly remember testifying that it turned over like a stick of wood, or something to that effect, and that has always been the impression that I have had, — that there was rigidity. I did not testify that I had seen the same thing in dead bodies after they had been dead the same length of time. If I said that, it was in answer to the general question, whether I had ever seen bodies as stiff; and to that I can say, Yes; but I don't know that I ever saw a person that was so stiff immediately after death. I don't recollect what evidence I have given; I have never seen it; I have never read it over since I gave it before.

I think I recollect the circumstances of the case precisely as they were. I suppose I remembered them then. I don't

know what report was made; I never read it. I presume I should have recollected minute circumstances more distinctly at the previous examination, a month after the event, than now. I think I remember the general circumstances as well now as I did then; I cannot any better, that I know of. I was in the room with the body pretty nearly all the time during the hour I was there, until preparations were made to lay her out. About that time, I think, I left the room, stopping, perhaps, a little while below. I did not make any further examination of the body after I found that life was extinct. I did not examine the matter of rigidity at all. The only evidence I have of that was derived from turning her over, when her limbs stiffened, as a person might be supposed to do who was lying stiff upon the bed for the purpose of being turned over.

I commenced the examination of the body about two o'clock Saturday afternoon, the 5th. I think the arms were very rigid. As to the lower extremities, I don't think that any examination was made that would tend to show their condition. I think I did see the face, but I did not observe anything remarkable about it. It was a period of excitement to us all. The suddenness of the death was such as to confuse the mind, and as I never expected, at the time, to be called upon to testify in regard to it, I did not give that particular attention to it that I might have done. I don't think I noticed the countenance at all. There was a great deal of rigidity at the time of the examination; I cannot compare the degree with that at the time immediately after death. I have seen as much rigidity in cases after death as there was there. The elbow joints were crossed tight, with a string tied round the wrists, and when the string was untied, the arms remained in the same position; and when it was necessary, in order to get at the chest, to remove the arms, it required considerable force to bring the arms away from the body.

I don't know that I noticed anything particular about the countenance at that time. My attention was not given to the countenance at all very particularly; I don't know that it was at any time; therefore I would not express my opinion.

The examination was commenced at the chest. That was the first part we examined. We did not remove the heart before we made any examination. In the process of the examination, it would be necessary to take up the heart, in order to see its external appearance, and that was done, and I believe an incision was made in the left ventricle. I think that then Dr. Tower took it up in his fingers in order to show it. I think there was very little blood, if any, in the left side of

the heart; but when it was decided to remove the heart, in cutting off the vessels round the base of the heart, there was a great flow of dark, venous blood. There was nothing very peculiar about the heart when we first commenced the examination. I should think the heart was just about the usual size. I don't think it was particularly hard, if I recollect right, and I don't think it was particularly soft. There was no very great alteration from the natural appearance; if anything, perhaps a little relaxation. At any rate, we came to the conclusion that there was no organic disease about the heart. I don't think I examined it sufficiently to answer the question whether it was the same on both sides. My observation was directed to the general appearance of it — the freedom from organic disease. I think, as I said before, there was very little blood in the left ventricle. I am not able to state in regard to the other side, because I did not see that side when it was opened, but I did see when the vessels were cut at the base of the heart. I did see that there was a large quantity of dark venous blood thrown out. I think I stated at first that I did not think there was any blood in the heart; I think I corrected that afterwards by saying that there was very little blood in the heart, but a good deal round it. That I recollected distinctly, at Weymouth. I don't think I stated that there was a spoonful in the left ventricle. I don't remember using that expression. I will not swear that I did not use the expression, but I have no recollection of using such a term as that in relation to the heart. My impression now is, and always has been, that there was a little fibrous matter, like a clot of blood, in the left ventricle of the heart. How much that would amount to, I don't know. I did not see the other side. I will not swear that I did not testify before that the heart was entirely empty, except this little blood in the left side. I don't recollect the expression that "the muscles of the heart were very strongly contracted, — particularly so." I may have forgotten some things that I said. I will not swear to anything in that way, — that I did not say so and so; the gentlemen can prove it, if I did say so. I say now, to the best of my recollection, that it was so and so.

We next examined the abdomen, — nothing more than to discover the fact of pregnancy. We supposed we had found the remote cause for the death, and there we stopped, and communicated that fact to the family. That is all the examination we made of the body at that time, until under the direction of the coroner's jury. We proceeded with the examination the same night, commencing at nine o'clock or after.

I have no means of knowing the time, but it was somewhat late in the evening, and we did not get through until nearly eleven o'clock. When I spoke of discovering the "remote cause," I meant that pregnancy might be the cause of it. We made no further investigation of the body in the evening; we examined the brain. In regard to its general appearance, it was very much as I have seen in a great many cases, — a little apparent congestion of the brain, a little fulness of the vessels, not indicating exactly inflammation, but a crowding of the vessels of the head; not remarkably so; not so much as I have seen in other cases, but as much as in common cases, where persons die of disease. We removed the brain entirely from the skull, separating it from the spinal marrow. We sliced up the brain, to see if there was any internal organic disease there, and after a very thorough examination, we were unable to discover anything that could account for the destruction of life. I did not keep any minutes of that transaction; I don't know that anybody took any notes. Dr. Fifield might have done so, but as I was intently observing the body, I did not notice him. The vessel in which the liver and intestines were placed was provided by the family. I don't recollect whether one of the family brought it to me, or whether some one in attendance brought it.

I have been for a long while the family physician. I was as well acquainted with Betsy Frances as I am with the members of the families I attend out of my immediate connections. I cannot recollect of being called to her after childhood, and I don't know as I was called to her ever. As I looked over my books to see who had been sick in the family, I found "child" put over the minutes; I don't know which child it was. I have no recollection of being called to her until the year 1859; I think it was in the latter part of the summer, when she and her sister were both taken sick with vomiting. Generally, she has been in good health, as far as I have known.

I should think her temperament that of a very quiet person, rather retiring and intelligent. I never saw anything that could be described as "melancholy" during my intercourse in the family. Mrs. Tirrell was her mother-in-law. I knew her own mother. I think she died in November, 1845. I should say she died of a general breaking up of the system,—general debility at last. I recollect to have been called to see her, in July, I think, preceding her death, when I found her in feeble health. I don't know how to express it in any other way to give the whole in one word. The next day I was called upon to dress a wound in her throat, which had been

made with a sharp cutting instrument. I don't know by whom the wound was made; I did not see it made; she did not say anything about it herself; she was perfectly passive, as far as I can recollect. I understood that it was made by herself. Perhaps Frances resembled the temperament of her mother as much as children usually resemble their parents, being of different ages. I think that her complexion was more like her mother's than the other children, but her features were not. Her features were broader than her mother's, if I recollect them right. The complexion of the daughter was very much as I remember the complexion of the mother when I first saw her. I cannot say as to her size and form compared with her mother's, because the daughter was rather thin. She was of rather larger bone, I should think, than her mother, and if she had been as fleshy as her mother, I should think she would have been larger. I think she was not so quick as some, but a good deal quicker than her mother in her mental operations. In fact, when I first knew her, a girl say from fifteen to eighteen years old, I did not see but what her mental operations were as rapid as others generally. I should not think of noticing any difference.

I was only acquainted with George C. Hersey by speaking as we passed. I knew him in the town. I presume I had known him ever since he came there. For some time, I did not know his name. I don't think I ever saw him in the family of Mr. Tirrell until I was there when Mary was sick. He was there constantly the latter part of the time she was sick. I saw him at Mr. Shaw's, and saw him there particularly when his wife died, but had no particular intercourse with him.

Re-direct, by Mr. Harris. — When I first saw the fœtus, I set it down as two months and a half old. The other gentlemen differed from me in opinion, and upon mature consideration of the subject, I thought possibly I might have overstated it, and I came to the conclusion that it was somewhere about two months old. I cannot depart from that opinion, so far as its general appearance was concerned. I do not go into any minute consideration of the physiological question, what appearances should be indicated there, because I did not examine it; but as far as I could judge generally, I should say two months. I have no doubt of my ability to judge within a month.

I think I saw her mother the 7th of July, before her death, and as near as I can recollect, so long ago, she appeared a great deal debilitated — she seemed feeble. I don't think I recognized any organic disease. I cannot say by what she was debilitated, because I had not seen her before for a long

time. I might have seen her as I passed the house, but had no particular acquaintance with her condition of health for some months, I think. The next day after I saw her, I was summoned in post haste to dress her wound. I found her quiet, but still indisposed to talk at all. I dressed the wound, and it healed up as quick as it usually does in such cases. I continued to attend her from that time until she died, I think, because I have an entry on my books the 29th of November, and I think she died the 30th. I never heard of any previous attempt upon her life. I have noticed in other cases that she was weak and debilitated by certain processes — by child-bearing — not many times. I noticed nothing unusual in the state of her mind the 7th of July, when I saw her, — nothing that led me to suppose that any such catastrophe as that would happen. Her health continued to be feeble — running down generally; I cannot express it in any other way, only that it was a gradual declination of health and strength. I don't think the wound had anything to do with her death. She died of general exhaustion, as near as I can recollect.

Re-cross, by Mr. Baker. — When the question was first asked me how old I supposed that fœtus was, I said, off-hand, without stopping to calculate, two months and a half. I judged merely from the size of it. The other gentlemen thought I had set it too old, and after considering the subject, I came to the conclusion that I might have been mistaken, and I should set it at two months, as near as my knowledge would allow. The gentlemen I speak of were Dr. Fifield and Dr. Tower, who were with me. I don't know as they will agree with that estimation of the age, but that is my private opinion. It is not the fact that I changed my opinion the other way, and called it three months. I never stated it so, according to my knowledge, because that is a point upon which I am just as certain as of anything that I see before me. I am just as certain of that as I am of anything I have testified to. I might have answered a question without understanding it. I know that was my opinion at first, and afterwards, after consultation with others, I was induced to change my opinion, but yet I had no physiological facts to base it on. I did not discover the sex of the child. I merely judged by the size of the fœtus. I never testified that it was a male child, that I recollect. I am just as certain of that as I am of any part of my testimony.

Mrs. Almira B. Tirrell *sworn — examined by Mr. Harris.* I am the wife of Wilson Tirrell; stepmother of Betsy Frances. She was twenty-five the September before she died, I

think. I was married fifteen years ago last March. Betsy Frances has always resided in the family. [Plan exhibited, and room pointed out that Betsy Frances occupied.] George C. Hersey was also living in the family at the time of her death; he had been there four months. He came there the Saturday before Mary's death. She died on Monday, the 2d of January. I had known him for some three years before. I supposed he was engaged to Mary. He had visited there for a year prior to Mary's death. He commenced in the summer — in warm weather. It was understood that there was an engagement between them, by everybody. He came to the house as a friend during her sickness. He appeared to take her death very hard. He said he was not well, and we took him for company, as a friend.

The day of Betsy Frances' death, I went to my brother's, at South Weymouth, to spend the day, and left her alone, and she went to her sister's to get her little girl, two years old, to stay with her during the day. My daughter was at school. Towards night, Mr. Hersey, Frances, and Louisa, came to my brother's for me, and they all came in. Mr. Hersey went with Louisa to the barber's to get her hair cut, — a short distance, not a quarter of a mile, — and when they came back, he did not come in himself, but sent Louisa to tell us to get ready to go home, and we did so. We all went home in the carriage. I think my sister, Mrs. Jacobs, inquired of Frances how her health was, and she said she had been sick, but was better. She had a new breastpin, made of Mary's hair, and they spoke of that, and she took it out and showed it to them. I do not recollect that she said anything about that, but something was said about it while we were fixing to go, — I don't recollect what. My mother and sister were there, and they were coming to our house on a visit after they went from there; we were talking about that, and the next Sabbath evening they were coming to our house. I don't know whether Betsy Frances participated in that conversation about their visit or not. I don't recollect that Betsy Frances said anything about the breastpin, or much conversation in which she joined. We saw a great many people in the street on the way home, and I said I wondered what there were so many people out for, and she said she guessed there was going to be some kind of a lecture that night. I don't recollect anything more in particular that she said. I don't recollect Mr. Hersey's speaking at all. We didn't converse any of us much, going home. We arrived at our house somewhere about eight o'clock. When we got home, Mr. Tirrell stayed out in the yard, and we got out, and he and Mr. Hersey unharnessed the

horse and put him up, and Frances and I went into the house, into the same room, and took off our bonnets and shawls. We went into the bedroom that opens out into the sitting room and parlor. I went out to get some wood, and she kindled the fire; and during that time, the *Herald* came, and she took the *Herald* and sat down to the table and went to reading. When they got the horse put up, Mr. Hersey and Mr. Tirrell came in, and Mr. Hersey took off his coat and hung it up. Mr. Tirrell said, "Are you going to bed a'ready?" He said, "Yes; I have a violent headache, and am going to bed;" and he went up the back stairs. I should think this was just after eight o'clock — early candle-light. Frances sat and read the paper some time, and during that time there were several May-baskets hung for Louisa. She went to bed about half-past eight. One was hung before she went to bed, and I think Louisa and Frances went to the door and took it off; and then there were two hung after Louisa went to bed, and one had a little china doll; and when Frances went up, she said she would take it up and show it to Louisa. "I guess I will take that up and show it to Louisa," I should think were her very words, when she got up to go up stairs. While we were sitting there in the evening, Mr. Tirrell said, "There is going to be a circus in Fall River to-morrow — wouldn't you like to go down?" "Yes," I said, "I don't know but I should, as I have never been to one." "Well," said he, "if I don't go to Boston, I will carry you all down." He said, "We will go in the afternoon or evening," and I said, "No, I don't want to go in the evening; I should prefer to go in the afternoon if I went at all."

We were in the habit of retiring about nine o'clock, and about that time she got up and went to the stairs, and turned back, and asked, "What are you going to have for breakfast in the morning?" and I said, "Get what you please," and she went right up. We took turns in getting the breakfast, and that was her morning. Mr. Tirrell and myself went up stairs after I had wound the clock and fastened the doors. Frances went up the back stairs — we were all in the habit of going up that way. There had never been any other persons members of the family since Mary's death. The next thing I heard, after going to my chamber, was some one hollering, and I thought it was Louisa. She hollered twice, and then there was a dreadful screech, or something — I don't know how to describe it. I raised my head, and said to Mr. Tirrell, "What is that?" and at that moment Mr. Hersey came and opened the door, and said, "Frances is in a fit, or something," and we all ran to her room as soon as we could. Mr. Hersey went ahead, Mr. Tirrell next, and I followed. I should think it

was not more than twenty minutes after we went up stairs. Mr. Tirrell said, "Frances, what is the matter?" and she said, "I shall die! I shall die!" — she said it twice. Mr. Tirrell said, "Rub her, rub her," and I took the lower limbs and he took one of the arms. They were very rigid. I asked her father to go for an aunt of hers, Mrs. Vining, a near neighbor of ours, and he went as soon as he could. I kept on rubbing her arms. She seemed to groan two or three times, and then she seemed to come out of her fit somewhat, and said, "Give me some physic." Mrs. Vining, who is a sister of Mr. Tirrell, had got there then. I said, "The doctor will be here in a few moments." I think Mr. Hersey had left the room to go for him, and I don't know but he had gone. I asked her, "Are you in great distress, Frances?" and she said, "Yes." I asked her if she was sick at her stomach, and she made some answer, but I cannot tell what she said, and then she went into another fit. She was lying on her left side, and her head was hanging out of the bed some; she was very stiff, and appeared like a person in a fit. I don't know as I can describe it exactly. When she came out of the fit, she seemed to look up at me and move her eyes. Her arms twitched during the fits; I don't know about the other parts of her body. As soon as Mrs. Vining came, I asked Mr. Tirrell to make a fire and heat some water as soon as possible. We were going to put her feet into warm water. As soon as he got a fire, I went down to make a poultice for her stomach. Mrs. Vining had got there when I left to make the poultice. Mrs. Richards, another sister of Mr. Tirrell, was there when I returned, and I presume there were others there. I had made a mustard poultice. I don't know how long I was absent making that, but it was only a short time. When I was carrying it up stairs, I saw Dr. Howe behind me, and stepped back for him to go into the room, and he pronounced her dead then.

Mr. Hersey went for the doctor as soon as Mrs. Vining got there. I think Mr. Tirrell told him to go as quick as possible. I have no recollection of seeing Mr. Hersey in the room after he got back. I don't know where I next saw him, after the fact was announced that she was dead. He was round there all the time, in one room or another. I had no conversation with him that night, after Betsy Frances' death. I have had a conversation with him about her death, and he said something, I don't recollect what. I saw him in the kitchen, in the sitting-room, and the back room, that night. I did not again retire until after two o'clock. He had retired, when I left to go to my chamber again. He went to his chamber, I think, just about two o'clock. Mr. Hersey remained in the house, after Frances' death, until Saturday afternoon, towards night.

I made an examination of the rooms of Frances and Mr. Hersey. I did not make a thorough search on Saturday, but Sunday I did. Mrs. Minot Tirrell, Miss Ann Tirrell, and myself, examined the drawers in Frances' room and the closet. I don't think there was any other person in the room. An officer from Boston was there, but it was not until after she was buried. Miss Ann Tirrell, a cousin of Frances, found a spoon in the fire-place in Frances' room. There was a fire-board in that fire-place, which could be taken out. I don't know whether she moved the fire-board or not; I did not see her until she spoke and said there was a spoon. Frances usually took it out at nights, so as to leave an opening. I don't know whether it was so that morning or not. I took the spoon, and laid it in the closet in that room. It remained there until the fore part or the middle of the next week, when Dr. Howe came and took it. There was some preserve upon the bowl of the spoon ; I should think a little both upon the centre and edges of the spoon. There was very little, but you could perceive it. Nothing else was found in her room. Police officer Dunn was out and examined the room afterwards. We examined her dresses, and clothing, and everything, but we found nothing at all. We examined Mr. Hersey's room, at the time the police officer was there; I cannot tell the day; it was after Sunday. I had examined it before Sunday, but I did not make a very thorough search. That day, I sent his things away. He had nothing but a valise there; he never brought his trunk there. Some of his things were in that chamber, and some were hanging in the clothes-room over the front entry. I did not make any examination of those things. I did not put them into anything. I handed them to his brother, who had a carriage there, and he took and put them right in. I did not take any pains to put them up, and made no search of them. The room was examined all over, but nothing was found. I took up some papers that had been thrown in back of the fire-board; some pieces of newspaper, and some small pieces of red and blue papers, and I don't know but some of yellow and other colors; and on one piece there was the word "Lubin." I should think the color of that paper was blue. I put them in the stove, and burned them up. I think I did that before the officer came, because if I had not he would have seen them. I have made no change in the room. Everything has been searched in it since, even the bed, and we have found nothing. I had spoons in the house like that which was found. I don't know how many. It was a pewter spoon, that I don't use very often. They were kept ordinarily in the store-room. I have had preserved fruit in the house. I had quince, apple, and currant,

I think. The quince and apple were in the buttery that opens out of the kitchen and sitting-room. It was not the place in which these spoons were ordinarily kept. The other preserves I had in a closet that opened out of the bed-room below. They were where they could be reached by any member of the family. The spoon was just precisely like mine; there was no mark upon it.

After Mary's death, Frances went with no gentleman except Mr. Hersey. No gentleman ever came there after Mary's death except her cousins, Albert and Austin Tirrell, neighbors, who usually came in there. She was very seldom out. She visited her sister, Susan, and her brother, Wilson Tirrell, Jr. She only made two or three visits after Mary's death. She went to my mother's one afternoon, and to her cousin's, Mrs. Garrett's. Her brother, Wilson, and her sister, Susan, both live in one house; it is not a quarter of a mile from ours. Susan Hersey married a brother of George. These visits were made in the afternoon. She did not spend the afternoon and evening, but came home at dark. Louisa went with her, and came with her. I don't know that anybody else came with her. I don't know how long before her death the visits were. It was between Mary's death and hers. My mother's house is but a short distance from ours, not more than a quarter of a mile. Louisa went with her to my mother's. She came home before dark. No other person went with her. Then she went to Mrs. Gardener's, another neighbor. I think her sister, Susan, went with her then. It is between a quarter and half a mile from the house. I don't recollect whether she spent the evening. She was not accompanied at either of these visits by any other persons than Louisa or Susan. She went into her uncle Kingman Tirrell's, and her aunt's, Mrs. Vining's, and I presume into Mrs. Richards's. These places are just around the house. It is not a quarter of a mile to the farthest of them. She visited her sister, Susan, very often. After Mary died, for five or six weeks, six or seven perhaps, Hersey always came home with her in the evening from Susan's, and when she went there in the day time he often went up. He did not do anything for several weeks after Mary's death, and always came home with Frances. I can't tell you how many visits she made to her sister Susan. She went three or four times a week, sometimes every day. Sometimes she would go to spend a short time, and sometimes to spend the afternoon; almost every day she was in there. I don't know that he visited any other places with her, except to go to evening meetings. He went quite a number of times with her; I don't know as he did every week. He accompanied her there, and came home with her.

Sometimes the family went. These were religious meetings. He went up to South Weymouth with her, a number of times, to some kind of lectures, and once he went down with her to the dentist's, in the day time. I never knew her to be in company with any other person, except him, during that time.

She went out of town but once, after Mary's death. She went to Abington once with her father and mother, to the funeral of my sister. I think my sister was buried the 29th of March. That was the only time that she was away, out of town, to my knowledge, and I think I should have known it if she had been out of town. For the first two months after Mary's death, Mr. Hersey came to our house and sat around reading; he read considerable. He did not do any work after Mary died. He said his health was poor, and Mr. Tirrell asked him to stay there. He said he was welcome to come, and he would not ask him anything for his board; we were all lonely, and especially Frances. He and Frances were together in the house considerable. When she had work, she would sit in the room with him. For four, five, or six weeks, — I cannot tell exactly how long, — he stayed in the house almost all the time. I have known them to be in the room together, sometimes alone, and we retired some nights and left them sitting up together — two or three times. I think I saw acts of attention by Frances to him, and he was very attentive to her at first. I did not notice anything about the house very particular. I remember that when he came there his clothing was quite out of repair, and she used to repair his clothing considerable, and took great interest in it for some time. He got the cloth to make two pair of shirts, and the last work she did was to work on them. She left a shirt on the table that night. She took it upon herself to do his sewing for him; she did a great deal for him. I never requested her to do any sewing for him; it was done voluntarily, so far as I know. I saw a great many instances, on her part, of attention towards him. If he was going out anywhere, and was putting on his great coat, she would get up and help him put it on, and brush it. I saw a great many such things. These acts were kindly received by him, I thought. I noticed a very great change, after four, five, or six weeks. After that time he spent none of his evenings in the house, and did not have any conversation with Frances or me, and I made this remark to Frances, — "I wonder what he is put out with me about. He don't talk with me, and don't stay in the house when I am here." She said, "He talks as much with you as he does with me." This continued up to the time of her death. The day before she died, I think she went down to Weymouth Landing to get the mate-

rials for a dress, and that night, after tea, Mr. Hersey went into the sitting-room, and sat down, and took a book, and I saw her take the cloth to carry in and show him. I don't know what was said. That was the first time I had seen him sit down in the house for quite a length of time. I don't know how long he sat there. I went out to one of the neighbor's, and don't know how long he remained in the house. I don't remember where they were when I returned. I didn't notice any other change in his conduct. Her brother Wilson's wife went with her to Weymouth Landing to get her dress. I asked her who she was going to get to cut it, and says she, "I shall cut it myself." I had never heard of Mr. Hersey's paying attention to any other lady, after Mary's death, until Frances died. I did not know of his visiting Loretta Loud at that time, or any other person. I thought it was very strange where he could be evenings; he was out very often until after we went to bed. It was so soon after Mary's death, that I thought he would not go into company, and he pretended to take her death very hard indeed. There was no light in Frances' chamber the night she died, when we went in. I think her sister was in bed with her. Frances took a light with her when she went up stairs to bed. We called her Frances in the family, and Hersey called her Frances when he spoke to her.

Cross-examined by Mr. Baker. — It was the day before she died that Frances went to Weymouth Landing. She died on Thursday. She went in the afternoon, before night. Weymouth Landing is some two or two and a half miles from our house. Nobody was with her except Nancy Tirrell and her children. I think she took her little boys. She returned before tea. I think they went in our carriage. They went together from our house, and returned together there. I cannot tell the hour.

I went to Mr. Blanchard's on Thursday, between nine and ten in the morning. I left Frances at home, and her sister's little girl, two years old, with her. No one else was in the house. Her father was somewhere round. He was at home when we went away, and when we returned. Mr. Hersey was at home in the morning, and ate his breakfast. He worked at Mr. Nathaniel Shaw's at that time, and did not dine at our house, but took his dinners up there somewhere. I presume I saw him when he went away to his work. His habit was to go immediately after breakfast. I presume it was between six and seven when we had breakfast. The next time I saw him was when he came for me at my brother's, about sundown. I don't know what hour. I got breakfast Thursday morning;

the next morning it was Frances' turn. I presume I saw Mr. Hersey that morning when I went down. He usually got up and made the fire in the morning. Frances got up before breakfast. I don't know what time we breakfasted that morning — between six and seven. She usually got up about the time breakfast was ready, when I got breakfast. I presume she did not get up that morning until about breakfast-time. Mr. Hersey and Frances were both at the breakfast table. I don't recollect that I saw them together that morning before they came to the breakfast table. The carriage we rode in was a covered carriage, with two seats in it. Louisa was eleven years old then. Hersey and Frances were not together alone after they got to Mr. Blanchard's. They got out of the carriage and came into the house. They were not alone together at any time at Mr. Blanchard's. When we returned home, Frances and I were together only when I went out to get a burden of wood. She went to the stove and put in some shavings to get a fire made as soon as we could; it was rather a chilly evening.

I could tell where a person went who went up stairs, if I listened. It was not more than two minutes after I heard the first hollering that Mr. Hersey came to my door. I thought it was Louisa. She would sometimes be frightened, I suppose, dreaming, and I thought to myself, "I wonder why Frances don't speak to her and wake her up." The last time it was a screech, which sounded dreadful to me, and I raised my head and asked Mr. Tirrell, "What was that?" and at that very moment George came and opened our door, and said, "Frances is in a fit, or something!" It is about ten or twelve feet from the door of our room to Frances' room. It is a little further from the door of our room to his room — twelve or fifteen feet. He was not dressed when he came to our door. The door to Frances' room was open when I got there, because Mr. Hersey and Mr. Tirrell were ahead of me. I suppose we were all just as near together as we could be. I don't know whether they opened the door or found it open. I don't think I should have seen the door if it had been open. Of course, in my fright then, I should not have noticed anything about such a thing as that. She was in spasms when I got to her. I heard Mr. Tirrell speak to her, and she immediately replied, "I shall die! I shall die!" She was then in a spasm. When I got to her, she was very stiff and rigid. I went to rubbing her the first thing I did. I didn't throw any water in her face then. I did, as soon as I got some one to help me, and then she seemed to come out of her fit, and spoke to me, and asked me to give her some physic. While we were rubbing her Mr.

Hersey was between us; I don't know whether he rubbed her or not. I should think she had as much of a fit then as afterwards. I cannot tell whether she was conscious or not. I did not speak to her, nor she to me. I should think she knew me by her speaking. I did not attempt to get her any water to drink. She began to groan soon after I threw the water in her face, and looked up to me and spoke, and said, "Give me some physic." I think she would have answered me if I had asked her any questions. If I had known then what I do now, I think I should have asked her. I don't think it was more than a minute or two before she went into another fit. I should not think it was so much as five minutes, but I cannot be certain about it. I was very much frightened. She did not say, "It is coming on again," nor make any remark whatever. She never spoke again. She went into this fit or spasm, whatever it was, and she never came out of it. I cannot tell how long it was after she went into this second fit before I went down stairs. I should think it was not over five minutes, if it was as long as that. There was a peculiar look to her face; I cannot describe it. It was an agonized looking face. I never saw a person that looked so distressed as she did. I cannot tell how long I was gone down stairs. I made the poultice as soon as I could; it might have been ten minutes. She looked as though she was suffering very much from pain. I never saw a person who looked as though they were suffering so much. I do not know whether there was any twitching of the body or not. The face was twitching very much. I don't know that there was any flinging of the arms about. I don't know as I could describe it. It was just as I have heard it is with persons when they go into fits.

She did not complain, but seemed to be very sad and sober, and had pined very much. She was very sad indeed, and had been for some time. She looked sick. I asked her one day if she was sick, and she said no, but she didn't feel well. Every one of the neighbors was inquiring of me what the matter was with her. She looked sick. Every one that saw her remarked it, and inquired of me what the mater was with Frances, that made her look so. She was very sad indeed. She never was a very lively girl. She was cheerful always, but not so lively as some others. She did not make so much conversation with me as usual during this time, when she was sad. This continued some five or six weeks. After Mary's death she seemed sad, and in the last five or six weeks she had grown very much more so — the sadness was constantly increasing.

It was a week before her death when she was sick. She

was taken Tuesday morning. Her room was open from the time of her death until the Sunday when I made the examination, for any one to go into that wished to. There was very little preserve upon the spoon that we found, but enough to show that it was preserve of some kind. I did not know what kind it was, for I had several kinds in the house. The color was the same as that of some that I had in the house. I laid the spoon in a closet in her room, until Tuesday or Wednesday of the next week, when Dr. Howe took it. The closet was not locked. I can't tell how long after her death it was when I found the pieces of paper in Mr Hersey's room. I saw them in the corner several times before I picked them up. They were loose papers, that had been wrapped around something. It was after he left the house that I found these pieces. I did not examine the room before he left, because I had no suspicion of anything until that afternoon. I don't know how many of these pieces of paper there were — quite a number.

I don't know how long it was before her death that she visited the various places I have mentioned, but I should think it was five or six weeks. I was at home the day before this Thursday, all day. Frances was at home. I don't recollect whether Mr. Tirrell was at home or not. Mr. Hersey was there in the morning and at night; he took his dinners at another place. He left immediately after breakfast, and returned about tea-time. I suppose he returned Wednesday night at his usual time, after he had done his day's work, before tea. He took tea with us. We had tea somewhere along about sunset. I don't know what hour it was; it was half-past four or five, somewhere along there, that time of the year. It is about five or half-past five this time of year that we usually take tea. It was Mr. Hersey's habit to go out immediately after tea, but that night he went into the sitting-room after tea and sat down, and Frances carried in her cloth and showed it to him. She returned from Weymouth Landing about five or half-past. It was just before we had tea. I was gone to the neighbors until dusk. Louisa was at home, about the house, I think. They were not together when I got home. He was not there. I don't know what time he got back that night. I have no recollection of seeing him again, but I might.

Nine o'clock was our usual time for retiring, and I presume Frances retired that Wednesday night about that time.

I did not always go with Frances when she went out. I don't know where she was always when she was out, or who was with her, but I know she never was gone long enough to go out of town. She generally told me where she was going. I only know from what she told me. I cannot tell when was

the last time I knew them to be together alone before that Wednesday night. I have no recollection of their being together within a week or a month previous. Yes, they were together mornings, when it was her turn to get up; I could hear them talking together. The last morning she got up to get breakfast was Wednesday. I don't know as I could say I was sure I heard them that morning. I slept right over the room, and frequently heard them talking, but I cannot say that I am sure I heard them that morning.

After Mary's death, I never knew of a gentleman calling on her. Before Mary's death, gentlemen sometimes called there. I should probably have known it if they had called. I was away some time; my sister was sick, and I was gone a few days to her house, and don't know what happened then. This was the last of March. I didn't visit out but very little, after Mary died. The first time that I went visiting, to spend the day, I went to my sister's, Mrs. Jacobs's, in Scituate, and spent two or three days in February, I think; and then I went to my sister's in Abington, the last of March, and stayed two or three days. I think I stayed two days at Mrs. Jacobs's. I think I went to Abington on Friday afternoon, and stayed until next Wednesday forenoon; I was gone four or five days then.

Mr. Hersey appeared kind to Frances in my presence, and he was kind to the other members of the family; but the last part of the time he did not seem to say anything to Frances, and did not spend any time in the house. The first part of the time he was not at work; the latter part he was. The first part of the time he would go visiting considerable. He went to Kingman Tirrell's considerable. There was a marked difference in his appearance towards her, so that I noticed it. He appeared very differently towards her from what he did before. She was in the habit of visiting very frequently at Susan's, and Susan visited there. Susan did not come there as often as Frances went to Susan's. Susan came there as often after Mary's death as she did before.

The relations between Frances and me were perfectly pleasant, generally. We did not always think alike. There was no quarreling between us. Sometimes she did not do the work just as I wanted it done, and I found a little fault, as she called it. She took the fault-finding pleasantly sometimes, and sometimes not. I don't know as it made her sad or down-hearted. Sometimes she would seem to be a little disturbed. I don't know as there was anything like our ceasing to talk to each other. For the last five or six weeks, she did not talk much to me nor to any one else. Once I asked her the reason

why she didn't talk. I said, "Sometimes we sit here for an hour, and nothing would be said if I didn't speak." She said, "I don't know — I don't feel like talking." She didn't give any reason for it. I made this remark: I said, "I sometimes talk about things I don't care anything about, for the sake of talking."

Re-direct, by Mr. Harris. — [Spoon shown to witness.] That is like some spoons I have, that I use for gravies and the like. I think that is the spoon I gave to Dr. Howe. I notice the marks of some stain on it. That looks like the spoon; the handle was not bent then.

Betsy Frances was accustomed to keep her outside wearing apparel in different places. Her best bonnet and cloak she kept in the enclosure in the front entry. [Pointed out on plan.] The bonnet that she wore common, and her shawl, she kept in her own room. She had on that night her best bonnet. I don't know that I can recollect whether she wore a cloak or a shawl, but I think she wore a shawl. She left her bonnet and outside garments in the room where she took them off. I saw them there the next day. The dress she had on was in her room the next morning, hanging on a chair. She had no occasion to go to that closet that night, so far as I know. Her bonnet and shawl (I think she wore a shawl) were on the bedroom bed.

Mr. Hersey was with Frances in her chamber at the time of her sickness. It was on Tuesday afternoon. She was taken sick Tuesday morning. Tuesday forenoon I had news of my father's death, and I wanted to go to his house in the afternoon, and I sent for Susan to come down and stay with Frances, and I went. When I came back he was in Frances' room, and got up immediately and left the room.

Louisa Maria Tirrell *sworn — examined by Mr. Harris.* — I am twelve years old. Am half-sister to Betsy Frances. I have always lived at home. My sister, Betsy Frances, and myself occupied the same room, and we slept in the same bed. That had been since Mary's death. Before that I slept alone. I remember the day of Betsy Frances' death. It was Thursday, the third day of May. I was at school all day. School was dismissed at half-past four. Sister Susan and Frances were at home when I got there. I don't remember any one else. I went to ride that night. Mr. Hersey and Frances were with me. We went to Uncle Christopher Blanchard's. I don't remember what time it was; it was after tea. My mother was there, and we went for her. When we got there, we went in a few moments,

and Mr. Hersey and I went to the barber's to get my hair cut. Should not think we were gone more than twenty minutes. Mr. Hersey went back with me, and wanted me to go in and tell them to go home. I did not stay more than two or three minutes. I don't remember that there was any conversation. I think I sat on the seat with him. I don't remember anything particular that I did after I got home. We were intending to go to the circus. Mr. Hersey said he had a violent headache, and was going to bed, and went up stairs. After that, I had some May-baskets hung. I went once to the door to get them, and Frances went with me. The basket contained an orange; I don't remember anything else. I remained up till half-past eight, and then went to bed alone. There was another May-basket hung, and when Frances came up she brought it, and showed it to me, and said it was not good for much. It contained a doll. I was awake when she came into the room; I don't think I had been asleep. I remember looking at the May-basket. I thought she was longer than usual coming to bed, and asked what made her so long, and she said she was almost ready. I thought she went out of the room, but don't know where she went. I was very sleepy; but I heard some one go out, and supposed it was her. It seems now to me that she was longer than usual. She went out of the room before I asked her the question. I don't remember that I spoke to her when she came to bed. The next thing I remember, I woke up, and she was twitching, and told me to call father and mother, and I screamed, and she said, "Don't scream; get up." I called, "Mother, mother!" and said, "Frances is in a fit." I was not out of bed when father came into the room. I had heard it said how people acted in a fit, and so it occurred to me. I did not call but once, but called "mother" twice. I think Frances hit me; she seemed to go all round. I don't know whether the bed shook. I did not call the name of George. It was very soon after I awoke that father came in. Mr. Hersey came in right ahead of father. I had not seen him before that moment. I got up and went down stairs to the kitchen first. I was for some time down stairs. After a while, I laid down in George's room. He went to bed too. It was after eleven o'clock, I think. I remained there till morning. I did not see him there again. I went to sleep. I did not see him when I got up. I don't remember who dined there that day [Thursday]. Mr. Hersey, Susan, Frances, and myself were there to tea. If Mr. William Hersey was there, I don't remember it.

Cross-examined by Mr. Baker. — I have talked this matter over considerably with different persons; father and mother

some. I have told them what I knew about it. I don't think I remembered the May-baskets at Weymouth. I think it was a week ago last Tuesday or last Tuesday I first thought of it. My mother thought of it first, and told me of it. I don't know whether I came directly home that Wednesday night from school or not. Father was about home, and I think Mr. Hersey was, but I cannot tell. He was at home to tea. Don't remember what we had for supper. I remember one thing that we had for tea — pork-cake. Don't remember lobster salad, and cannot recal it. Before Mary died, I slept in another room, and Mary and Frances slept together in that room.

I thought Frances went out of the room not more than five minutes after she came in. She came back in a moment. She twitched so violently as to awake me. I don't know that she spoke to me until after I woke. She did not say anything more than I have said. I think I said that down at Weymouth. She did not say anything more to me till father and mother came in. No one came into the room until father and mother and Mr. Hersey came in, after I woke.

Mrs. Betsy Richards *sworn — examined by Mr. Harris.* — I am the wife of Mr. Randall Richards, and sister of Wilson Tirrell. I was called to Mr. Tirrell's house the 3d of May. Couldn't tell whether it was half-past nine or quarter of ten. My house is about forty rods from his. When I went to Betsy Frances' chamber she laid on her side, all kind of curled up; seemed to be stiff. I went to her and rubbed her. She laid over so far, that I raised her head to prevent her from stifling, and wiped the blood from her mouth. Then she went into a fit, and was convulsed all over. Dr. Howe came and took the light, and pronounced her dead. I should not think it was more than fifteen minutes after I went in. We did not make any effort to turn her, for we thought her fit would be stronger if we turned her over. She appeared convulsed all over. Her hands and limbs appeared to be affected the most. She did not move her head so much. I had hold of her hand, and it was convulsed. I cannot state the condition of her fingers, for I had my hand under her head all the time most. She did not speak to me.

I saw Mr. Hersey down below as I went out for some water. I spoke a few words to him, but there was not much conversation. He was in a sort of shed. I asked him what he was in there alone for; and he said he would rather stay in there; and I told him I should think he would rather be with the family. He then came out. My sister was with me when I went down. I saw him Saturday in the afternoon, in the

kitchen, when the physicians were there. I asked him how she seemed the night before, when he rode out with her. I asked him how she came to go with him, and he said that her sister Susan urged her to go, because it would do her good. When the doctor came down I asked him to go out and see if he could tell what the matter was, and he went, but did not come back to tell me what the doctor said.

I saw Betsy Frances the week before, when she was sick. I told her she had better have the doctor. She said she did not want any doctor. I told her she had better take something more, and if she did not get better to send for the doctor. She said her father was away, and she would wait till he got back. She said she was going to Hingham, to see Mr. Hersey's sister, Caroline. Mr. Hersey's parents reside in Hingham. She said she was going to see his parents, because she was not very well. I did not ask her at whose invitation she was going. She was speaking about her poor health, and thought she should feel better for going.

Cross-examined by Mr. Baker. — When I went in to see Frances, her limbs were drawn up; she was lying on her side, and her head seemed to turn down into the pillow. Her limbs seemed to be drawn up. That was in her last fit. She did not speak after I went in. The conversation about going to Hingham was the Saturday before her death. I was frequently at Mr. Tirrell's. I don't know anything but what the relations between Frances and her mother were pleasant. I don't know anything about the relations between Mr. Hersey and the family. I did not see him very often when I went there. There was no difficulty between Mr. and Mrs. Tirrell, that I know of; — what I don't know, I can't state; — I will state what I know. I don't know anything about any trouble. I don't know anything about anything of the kind in the family.

Dr. Wm. D. C. Fifield *sworn — examined by Mr. Harris.* — I reside in Weymouth. Have been in practice there between six and eight years. I studied medicine in Boston, Paris, and London. I was in the study of medicine three years before I graduated in Boston, practised one year, and was abroad two. I was present at the post-mortem examination of Betsy Frances Tirrell. I saw the body laid upon a table in the usual manner for a post-mortem examination. The knife was used by Dr. Tower; the usual incision was made, the breast-bone removed, and the heart case exposed and the lungs. The lungs were of a darkish purple color, but to appearance and touch quite healthy. The heart seemed in the usual situation, the ventricle and auricle distended by venous blood. The

heart being removed, a considerable quantity of dark blood escaped into the heart-case, sufficiently large in quantity to require to be sponged out. The heart appeared to be sufficiently healthy in all its parts. The first incision was continued along the breast-bone to the abdomen. This course revealed the intestines. Upon lifting up the intestines, the uterus was seen to be much larger than would be expected in an unmarried female. Upon cutting into the uterus, the membranes containing the fœtus were seen, and through these membranes the fœtus itself was seen. At this point, the examination was suspended, until after the arrival of the coroner. He arrived, as nearly as I can remember, about six o'clock. Dr. Tower and myself remained in the room after the examination was suspended, sitting near the body, until about five o'clock, when I went to supper, leaving Dr. Tower in charge of the body.

After the holding of the coroner's inquest, I was requested by the coroner to remain with Dr. Howe and Dr. Tower, and watch the post-mortem, in order that it might be conducted properly.

After receiving the directions from the coroner to proceed with the post-mortem, Dr. Tower, I think, first removed the fœtus from the uterus and the membranes. The intestines were taken out, and a ligament placed upon them to prevent the contents from flowing out, and the stomach and liver were taken out, the stomach being secured by a ligament. These were placed in a stone jar, covered tight, and the string secured with sealing-wax, and sealed with my signet ring. After removing the intestines, &c., the skull was opened, and the brain removed and placed upon a plate, and cut in slices to the base of the brain, the ventricle being broken. The brain appeared to be wholly healthy. The veins on the outer surface of the brain were rather full of blood, but not more than usual. The lungs were not removed from the body. I did not make any further examination than I have already spoken of. The lungs were lifted up in the hand and examined. They were dark-colored, and I should think the vessels of the lungs contained a good deal of blood and gall. I did not notice anything peculiar about the heart. It seemed to me to be healthy. I think it was about the normal size. The head was opened in my presence. I cannot say that it actually contained much blood, because the blood escaped at the time it was removed. Before it was removed, it looked to me as if there was a good deal of blood in the right ventricle and auricle.

I discovered nothing that could be said to be the cause of

death. I called the attention of the gentlemen to the drawing up of the angles of the mouth, exposing the teeth. As the body lay, the angle of the mouth was drawn up strongly towards the eyes, giving a grin to the countenance, and exposing the teeth. The fingers were strongly curved towards the palms of the hands. I don't remember calling their attention to anything else. The body was quite rigid when we examined it, at the beginning of the afternoon, so that when the arms were separated from the breasts, the elbow joints required to be forcibly broken down in order to straighten the arms.

I saw Mr. Hersey that afternoon. The first time I saw him was on entering the room where the body lay. He was sitting in a chair near the door. When the heart was removed, he came forward, and asked what it was. We told him. I think he asked if there was anything the matter with it, and we said no. He sat still until I asked Dr. Howe to tell him to go out. I made that request as soon as I saw the uterus. I saw him after that. Dr. Howe wished me to go and call Mrs. Vining to the house. As I left the room, I stepped into the little entry leading to the door, and he came to me from the kitchen and asked me where I was going. I told him I was going out doors. He asked what I was going for. I told him I heard my horse stamping in the stable, and I feared he had broken his halter. He asked me if we had found anything, and I said, "Nothing in particular." I saw him in the evening at the time of the inquest. I heard his testimony before the coroner.

I have read considerable upon the subject of poisons. I have seen an animal killed by strychnia. After a fatal dose of strychnia is taken, the period of death is said to vary from twenty minutes to two hours. A shuddering and quivering of the body commences; then violent convulsions take place, in which the limbs are stretched out, the fingers curved towards the palm of the hand, the toes bent towards the soles of the feet, the feet themselves rigid. The countenance is said to become of a dusky hue, from the suspension of respiration; the eyeballs to be projected forward, the jaws firmly set together. In a short period, varying from half a minute to two minutes, this convulsion or spasm passes off, the limbs are relaxed, and the person is found bathed or covered by perspiration. In another short period, the convulsions re-commence, and may again pass off. Death takes place in a period, generally speaking, within two hours.

Strychnia is termed a spinal poison. It seems to affect almost exclusively the spinal cord, bearing with greatest force

upon the nerves of motion, — the nerves supplying the voluntary muscles, — which it throws into a state of great excitement, and finally fixes in great rigidity. As I have said, it produces great excitement of the voluntary muscles, and kills by fixing the muscles of the chest, the respiratory muscles, so that the lungs have no play, and death results from suffocation. The authorities say that occasionally the body is relaxed directly after death, but soon assumes an uncommon rigidity, so that the whole body can be turned over, all the limbs moving together. I understand the rigidity to begin within a few moments after death, perhaps within five or ten minutes. More rapid rigidity takes place than in death by ordinary means. The greatest degree of rigidity I witnessed in this case was in the fingers. The fingers were bent in strongly towards the palms of the hands, and when bent backward with force resumed their place. The rigidity of the arms I do not think was greater than I have witnessed in the bodies of persons dying from other causes. I cannot state with certainty within what time strychnia has become known to us; my impression is within the last sixteen years. I cannot tell how long its operation has been understood. I cannot answer with any positive certainty how long symptoms of strychnia have been understood by physicians; I should think for not more than fourteen or sixteen years. I formed an opinion as to the cause of that death at the time of the examination. My opinion before the inquest, and at the time of the inquest, was that she died of strychnia. I expressed that opinion at the inquest, as a witness, I think.

Cross-examined by Mr. Baker. — There were no minutes of the post-mortem taken, to my knowledge; I took none myself. I was not appointed to conduct the examination, and took no active part in it — merely watching it. There was a point that Dr. Tower called our attention to — the discoloration around the nipple — before we commenced. That was the only thing that I have not mentioned. I think that Dr. Tower raised the heart with his hand in order to cut. I did not raise it for the purpose of examination. I called attention to the subject of the fulness of the ventricle and auricle. It seemed to me they were both full before the heart was opened. I have no recollection of taking up the heart myself. I looked at the heart as Dr. Tower held it in his hand and held it in view; but not having any immediate connection with the autopsy, I did not wish to bloody my hands. Dr. Tower opened the ventricle and auricle, exposing the valves and the machinery of the heart, and the result we arrived at was that the heart was healthy in all respects. We found it in the usual condition we

do in all post-mortem examinations of healthy persons. The examination of the lungs was first in point of time. I said that the lungs were dark-colored, as though containing considerable blood; but as they were not moved or cut into, I cannot state what the facts were. I made no further examination than of the organs I have stated.

MARY T. VINING *sworn — examined by Mr. Harris.* — I am a sister of Wilson Tirrell. I reside in South Weymouth. My husband's name was Jairus Vining. I reside very near Wilson Tirrell. I know Mr. Hersey; have known him for four or five years. He has boarded with me a year or more, at two different times. He boarded with me the summer previous to the death of Betsy Frances; he commenced in May, and went away the first of January. This was the last time. The time before, I cannot tell exactly when he came. He boarded with me four or five months before his marriage. He was married in February — I cannot tell the date. His wife died three years ago last February, I should think; I am not sure. My house is nearly in the same yard with Mr. Tirrell's. I cannot tell the number of rods from my door to Mr. Tirrell's. There are a couple of stables between, that is all. Mr. Hersey went away from our house after Mary died, to board with my brother. He was in our house frequently — every two or three days; sometimes once a week; he called in the evening. I don't recollect that I had any conversation with him about Frances, except the last week before she died. I had asked him two or three times what made Frances so sad and melancholy. At one time, he said, "It would not surprise me if Frances made way with herself." That is the only thing I recollect. I don't recollect any other conversation about her health. I heard him speak of her going away to Hingham to his mother's. He said that he would like to have her go; that she had better go; that she was sad and low-spirited, and his sister was of a lively turn, and she would cheer her up — something like that. I don't recollect any other conversation about Frances' state of health. I did hear him say something about a dress, I think. He said that Frances had bought a dress, and that she said that she didn't know as she should live to wear it. This was a few days before her death. I cannot tell exactly whether it was three or four days before.

I was present at Mr. Wilson Tirrell's the night of Frances' death. I was called there between nine and ten o'clock, and found her apparently in a fit. She was in spasms. Her face was very near the edge of the bed. I says, "Frances is in a fit." Her mother stood beside the bed, and I went to rubbing

her, and ordered some hot water to bathe her limbs. The water was got, but her limbs were so stiff that we could not put them into the water, and we rubbed them. We rubbed her hands and arms. Her hands were clenched very tight. Her mother and I rubbed them until others came. I said, "We must have some help." Her neck was stretched back so that I said some one must go and hold her neck so that it would not break off, and called Mr. Vining to come and hold the head back on the bed; but he could not stay there, and went away, and some one else came in, — I think Mrs. Richards. As we were rubbing her, her muscles seemed to relax a little, and she spoke and said, "Give me some physic!" Her mother asked where her distress was, and she spoke out in a kind of distressed tone, and said, yes, she was distressed; and her mother said the doctor would be there in a moment. Then she went into another spasm, — she went into convulsions. Her head was stretched back, and her neck was so swollen that it was with difficulty we could unfasten her night-dress. We kept at work upon her as long as she lived. We were not conscious of the moment of her death. I noticed that her hands began to relax again, and I said, "She is coming out of that spasm, and we will let her rest a moment;" and just as I said that, I stepped back, and the doctor came in and said that she was dead.

I cannot tell so much about how her eyes looked; I know her countenance looked very dead. I did not notice whether there was any blood upon her face. I did not have my glasses, and I could not tell in that room without them. I did not stay in the room after her death but a very few minutes. No one was in the room when I went in but her mother. My brother had stepped out to call me, and stopped below to make a fire and warm some water. Frances looked as though she was in great distress, but I could not describe her countenance so well as I could the motions of her hands, and her being so stiff. She did not speak but this once that I have mentioned. I should not suppose she lived more than twenty-five or thirty minutes after I got to the room, at the longest. I don't think I made any effort to turn her over myself. She changed her position when she came out of the first spasm — she turned herself. When I first entered the room she was lying over the front of the bed, her face down into the pillow considerable, and when she came out of this, she turned over on to her back, and so remained until the next spasm. Then she turned over again, towards the front of the bed, the same as she lay when I first went in.

I stopped in the house an hour or two. I saw Mr. Hersey

that evening, in the back room; I don't recollect whether I spoke to him or not; but I did not have any conversation with him. Saturday, he came in, in the forenoon, and sat down, and I asked him about how Frances was when he found her first, and he told me. He said he heard some one holler, and supposed it was a boy hollering in the street. Then he said he heard it a second time, and he thought some one hollered "George," and that it was Louisa; and he sprang and went in to see what the matter was; and he found her lying very stiff, and apparently moving towards the front of the bed, and put his hands under her, and put her back, and run to her father's and mother's room, and said, "Do, for the Lord's sake, come and see what ails Frances." That was the language he used. That was all he said about it. I said it was very strange what was the matter with her; "I cannot wait," I said, "until the doctors come for the examination this afternoon; I want to know what the trouble was." He said, "Perhaps you won't know then." I said, "I think I shall; I think they will know what the trouble was." He made no reply to my second remark. He said nothing about her taking hold of him, to me.

I saw him again at the house of Mr. Tirrell after the post-mortem examination. It was in the afternoon, after Dr. Howe had gone away, and before the coroner came. I passed through the kitchen into the back room, and he was walking the floor. As I passed through, I spoke to George, and he went out into the back room just behind me, and looked up to me as I came out, and said, "They know what is the matter; they think she is poisoned." Says I, "She was in the family way." He said, "It cannot be that Frances was such a girl as that! It cannot be! I should as soon think of my mother!" I did not make any reply to him.

I saw him after that up to Mrs. William Hersey's. This was Saturday — the same afternoon Mrs. Hersey sent for me to come up there, and I went up. He was lying on the lounge, and taking on, feeling very badly. Mrs. Hersey was charging him with a number of things. I cannot tell the very words that she said, but the sum and substance was, that he was the father of the child. He was denying it; said he knew nothing about it. I said to him, "You know, George, and your Maker knows, whether you are guilty or not." He said, "I know nothing about it; I am innocent." Said I, "Do you know of any one that has called to see Frances since Mary died — that she has ridden or walked with?" I don't recollect anything else that was said by either of us. These are all the conversations that I ever had with him upon the subject.

Cross-examined by Mr. Baker. — It was about ten o'clock that Frances died, I think. I don't recollect looking at the clock, particularly. It was half-past nine, I know, when I went out of the house at home, and I suppose I was there about twenty-five or thirty minutes.

I had a conversation with Hersey about Frances' being sad and melancholy, as I did with others, several times; and he said he should not be surprised if Frances made way with herself some time. I don't recollect of anything else that was said at that time. I don't recollect whether that was the first of the conversation. I did not make any reply. What I said was, that she appeared very sad and melancholy, and did not appear to be well. That is all I can remember that I said, and he made that answer. She had always been sad since Mary died. I don't recollect that I had spoken to him before about her being sad, and the relations that existed in the family. I don't recollect saying to him that she was not happily situated at home. I don't know why I should say so. I don't know but she was as happily situated as any one could be. Of course she did not love her mother-in-law as she would an own mother. I cannot tell whether or not there was any love between them, or whether they were unhappy together. I never witnessed any disagreement between them. I don't recollect saying anything to her, or her saying anything to me, of that kind. Frances was a person that never said but very little. She was kind of still and quiet, always.

She had an ill turn about a week before she died, when she was quite sick, and ever after that she seemed to be miserable. I cannot say how her health was before this sickness, a week before her death. I saw her frequently. My house is the next house, and I used to go in often. She did not come into our house but very little after Mary died. They used to come in quite often before Mary died; I don't recollect that the difference was so great as to cause any remarks in my own family.

At the time of the conversation I have stated, I don't recollect that Mr. Hersey said anything further than that he was innocent, and knew nothing about the matter. I have repeated his language as near as I can think — that he knew nothing about it.

Austin Tirrell *sworn — examined by Mr. Harris.* — I reside at South Weymouth; am cousin of Betsy Frances. My father's name is Kingman Tirrell. We live perhaps thirty rods from Wilson Tirrell's. I know the defendant; have been acquainted with him for perhaps four years.

I was called to Mr. Tirrell's house about ten o'clock the night Frances died. I supposed her to be dead when I went in. I saw Hersey in the kitchen, and entered into conversation with him in regard to her death. He said that in the evening he went with Frances and Louisa to Mr. Blanchard's, to accompany Frances' mother-in-law home; that he left Frances at the house of Mr. Blanchard, and went with Louisa to the barber's to have her hair cut, and then went back to the house of Mr. Blanchard, and took Frances and her mother-in-law and proceeded home. Immediately after reaching home, he said that, feeling unwell, he retired — I think he said about eight o'clock. He said that after he had retired about an hour, Frances came up, and as she was going by his room to the clothes-press, she stopped and asked if his head felt any better. He said it did not, but he thought it would if he could get some sleep. I think he said he got into a drowse; at least the next he mentioned was that he heard a noise that roused him, and that he thought at first it proceeded from some boys in the street, because some boys had hung a May-basket that evening at the door; but immediately he heard his name called, and the sound proceeded from Frances' room; and he got up immediately and went into the room, and found her partly off the bed, and placed her on the bed — that he found her in much distress, and went from there to call her father. I think I was called off then. I did not hear anything more at that time that I have any recollection of now. He did not say anything to me about having taken hold of her hand, that I have any recollection of. When I was first called to the house, I went after a person to assist in laying her out, and I think while I was having this conversation I was called to get another person, as one was not sufficient.

After that, when I got back, the same night, he was in the porch (the shed behind the kitchen). I went into the shed. I think there were some other persons present. I think Mrs. Vining, my aunt, and Mrs. Joseph Gardner, were there. I know that they were there during a part of the conversation; but whether they were there when I first went in I cannot say, positively. The conversation was about her decease. I don't recollect the whole conversation. I recollect his making use of these remarks in the course of the conversation, — that Frances had often mentioned to him that she had dizzy spells when she retired, and they had often been so that she would have to sit down on the bed before she could finish undressing herself. He also mentioned that a short time before her death, a few days before, she had called him out to see a dress she had just purchased; and he said it was singular that she

remarked that she did not know as she should ever live to wear it. I think those were the words he used. I have no further recollection of any part of the conversation until my brother, Albert Tirrell, 2d, entered. He commenced conversation immediately on the examination. He said it was a very singular case, and he thought there ought to be an examination. I don't know as I can repeat the exact words. He said that it did not appear like an ordinary stoppage; if it had been like that, she would have been in some distress, and would not have appeared so well in the evening. Mr. Hersey opposed the examination. He said he never would consent to have a friend of his opened. He said it was regular butchery. He said that they never found anything, and that Nathaniel Shaw's folks would never have another friend opened. He said he was speaking to a brother of Nathaniel Shaw,—Aaron Shaw,—who was present when his brother was opened, and he said the room looked just like a butcher's shop. I think my brother's remark that it could not be a stoppage was after that, for immediately after he said that, Hersey turned round sharply, and said, "What do you know? The doctors ought to know." That ended the conversation betwixt them. I have stated all the conversation I recollect. He used the expression that he should not be willing to witness such an examination. That I heard him say that, I am sure of; but whether it was there, that evening, or at my father's house, the next day, I don't know.

I had a conversation with him the next day at my father's house,—I think Friday. Who was present, I cannot say. My mother was present, I know, and my brother was, a part of the time; but about the rest of the family, I cannot say. I have three sisters in the family. When I came into the room the conversation was on the examination. I don't know as I can relate these facts as the conversation came along. Hersey said that he would never consent to have any friend of his cut up. He said he hoped, when he was dead, that no person would cut him up. I remarked that it could not hurt her. There is one point which I had forgotten:—he mentioned, in the conversation, that in riding up with Dr. Howe, the night before, the conversation turned on persons being examined, and he said the doctor told him he should not blame any one for feeling bad at a friend's being examined. (I don't know as I use the exact words.) He said that he should never forget the first examination he ever witnessed. He also said, I think at that time, that no money would hire him to be in a room where such an operation was performed. That is all he said about it, that I recollect. I don't recollect any-

thing else of this conversation on Friday. I have no recollection of any other conversation with him.

Adjourned to 8½ o'clock on Wednesday.

WEDNESDAY, May 29.

The Court came in at 8½ o'clock, and the direct examination of AUSTIN TIRRELL was resumed.

I had a conversation with Hersey the Friday after the death of Betsy Frances, and the day of the examination, Saturday. He stopped at my father's shop until two o'clock, the time the examination commenced. I don't recollect the conversation any further than what was said just the moment he was about leaving. He looked out of the window and said the doctors were coming, and he must go down to the house and see if he was needed. Nothing else was said that I have any recollection of. This was the last conversation I had with him.

I often saw Hersey and Betsy Frances during the three or four months he was at Mr. Tirrell's. I often saw her at our house, and I saw her twice at her father's. I saw her in his company during that time — I don't remember where. Twice, when I saw her at her uncle's, he was in her company in the "middle room," as they call it. He was with her and her sister. The rest of the family were in the kitchen. I think that I saw them out of the house together. I was in my uncle's house but twice during that time to stop, but I may have called in there on some errand several times — how many times I cannot say.

Cross-examined by Mr. Baker. — I reside at South Weymouth. I am not married. I board with my father. The house is about thirty rods from Wilson Tirrell's, more or less — a short distance. I cannot tell exactly how long I have known Hersey — four years I think. I cannot tell the exact time when he went to Wilson Tirrell's to reside. I think it was about the time of Mary's death. That was four months before Frances' death I think. I saw Hersey four or five times a week during that time — sometimes every day in the week. During nearly one year I worked in the same shop with him. I knew nothing about his character any further than I saw. I asked no questions concerning his character. His character, so far as I saw, before the death of Frances Tirrell, was good. I know nothing about his relations with the Tirrell family, as I did not live in the family. I knew he was boarding there. As far as I saw, there appeared to be good feeling among them. After the death of Frances, I cannot say how many times I saw him. I think it probable I saw him at other times than when I had this conversation with him, as, living in the same street, I should be likely to see him.

I went to the house about ten o'clock the night of Frances' death, and remained there the whole night. I think he was there when I first got there, but of that I am not positive. He called me that night, but as I had to obtain a person to lay the body out, I don't recollect whether he was in the room when I first entered or not. I think the doctor was in the room with the body when I went up. Part of the time Hersey seemed excited, part of the time not. He seemed to be in a study. He appeared to be willing and anxious to render assistance to the family, as far as I saw. I think he came and called me to the house, and, further than that, he said that he went for the doctor, and I think that he carried the doctor home. I saw him the next morning in the kitchen. I think he was making the fire, but of that I will not be positive. I cannot say how long I saw him then; I think only while I went through the room. The next time I have any recollection of seeing him was in my father's, in the afternoon, the time I had the conversation about which I have testified, and I was with him but a short time. It was afternoon. I can't tell the time, only that it was between noon and sunset. I am positive that I heard the conversation and the facts I have given in; I cannot remember the time. Two of my sisters were present, my brother, Albert Tirrell, and my mother. We were in the sitting-room.

The matter was a topic of conversation with our family, as a natural consequence. I have frequently repeated this conversation. I have given all the conversation I recollect. I don't recollect whether there was any other conversation. I remember these particular points.

The next time I saw Hersey I think was that evening, at Wilson Tirrell's. [Friday night.] I was there all night. I saw him only a short time. I remained there through the week. I did not see him do anything that night. The next time I saw him was Saturday, at my place of work. I have repeated all the conversation I recollect. As he was on the point of leaving, he cast a look out the window and said the doctors were coming, and he must go to the house and see if he was not wanted. He was there about an hour with me alone. He was reading a newspaper most of the time. We might have passed the time of day; but I have stated all the conversation I recollect.

Re-direct, by Mr. Harris. — Some time between Mary's and Frances' death, Hersey remarked to me that he was studying chemistry, and liked it very much. I had several conversations with him on going to California. I don't recollect the precise time; there were several conversations; I should judge

about a month before Frances' death. He said he should like to go; and once he said he had inquired the price of tickets in Boston. That day he said he saw a man from Kansas, and said if he could make a good trade he should go back with him. I have no recollection that he stated what he said to the man. He said he could not start before a certain time; that he told the man he could make no agreement with him until a certain time; I did know the day he fixed, but don't now. It was in May, and my impression is that it was the 14th. He remarked that the gentleman showed him an elegant revolver, and told him if he went with him he should make him a present of the revolver.

Re-cross, by Mr. Baker. — He gave no other reason for wanting to go to California except that he could do better there. I don't know how long Hersey remained in Weymouth after the death of Frances. I cannot say that I had seen him after the conversation in the shop. I never saw him so as to speak to him. That was the afternoon of the post-mortem examination, Saturday. I have no recollection now of having seen him after that. I don't know where he went to from my shop. I do not know when he went from Weymouth. I have no recollection of a large collection of people or excitement there that afternoon; think there was not; I was at work in the shop, and went to meeting Sunday in the forenoon. There might have been some collection in the street Saturday afternoon or evening, but I don't think there was any large collection.

Charlotte Tirrell *sworn — examined by Mr. Harris.* — I reside in Weymouth. I am the daughter of Kingman Tirrell, a cousin of Betsy Frances. The day following the death of Frances I saw Hersey at my father's house. He came in, and we asked him to relate the circumstances of the death. I said to him that it seemed to be very mysterious that there should be such sudden deaths in the family. I think he made the remark that Mary and Frances had met in heaven. "Can it be that Mary and Frances have met in heaven?" I think were his words. I don't know that I can give a connected account. He appeared to be affected. He sat in a chair. I think he had his hand to his face. I saw no tears. I did not hear any sobs. I can't tell how long he remained silent; I think a few moments. I think I expressed surprise about her sudden death and the cause. I said I was afraid something I had given her to eat was the cause. He said, "Don't worry about that; that didn't hurt her." He then stated the particulars of that night. He said that he was going up that night to Mr. Blanch-

ard's for Mrs. Tirrell, and had hard work to get Frances to go with him; and she did not speak going up, that he knew. He said he left Frances at Mr. Blanchard's, and then took Louisa to the barber's; he said he did not feel well that night, and at the barber's he felt worse, and that when he got back to Mr. Blanchard's he did not go in himself, but sent Louisa in to tell Mrs. Tirrell and Frances to get ready and go home right off, for he felt sick. He said when he got home he did not feel very well, and took off his boots or shoes, and my uncle asked him if he was going to bed, and he said, "Yes, he did not feel well." About an hour after that, Frances came past his door to the clothes-press. She stopped and asked him if he was better, and he said he was not, but thought he should be after he got to sleep. He said he felt worse, and wished that he had asked her to get him something, and had a good mind to call to her. I think he said he got into a drowse, and then he heard some one call him, and he went to Louisa's room. He said her tongue was out of her mouth, and he said, "Frances, Frances, what is the matter?" I can't recollect that he said she answered. He said he thought something was the matter with her stomach, and commenced rubbing it. He said she was in great distress, and that she appeared just like his wife, only she was not sick so long. I can't recollect the exact time when he said this. He went out for the doctor, and was not gone for more than fifteen minutes. I don't know that he said anything about her death. We wanted her examined. He opposed it strongly; he said they would not find anything if they did examine her. He called it mere butchery, and said when he died he hoped he should not be cut up. He said that Dr. Howe told him the night before that he could sympathize with any one who had such feelings, for he should never forget the first examination that he saw. He said that Mr. Shaw's brother, who died suddenly and was examined, was in the room when the examination took place, and said it looked like a butcher's shop. I am not certain that I heard him say he could not see such an examination. "Let them find what they will, I shall always believe she died of a broken heart:" I think that was the last remark he made.

I asked him, "Do you think she can have taken poison?" "No, I do not," said he. He said, "Your uncle has been talking with me, and asking if there could be such a thing; I told him no;" said he, "there was nothing in the house, and it could not be." He spoke of being at Minot's; that he went up to tell of the death, and they expressed surprise at it, and wanted to know if it could be the water, and talked of having it analyzed.

I think a week before, on the day Mrs. Tirrell's father was buried, I saw him at our house. Frances was sick, and I asked how she was. He said she was feeble, and he didn't believe she would live long. He said he wanted her to go to Hingham, for his sister Caroline was lively, and would cheer her up; but she wanted a new morning dress before she went. He said he shouldn't be surprised if she made way with herself. He said the night after Frances returned from the funeral of Mrs. James Whitmarsh, Frances' mother-in-law's sister, that died a few weeks before, she said that when she looked down into the coffin she wished in her heart it was her. As he had suggested that she might make way with herself, it startled me; I was surprised then at the answer he made: "No, it could not be." I think he said the day before she died she showed him a dress, and asked how he liked it, and said she did not know that she should live to have it made up. Mother was there at that time.

Saturday afternoon I was in at my uncle's. Mrs. Randall Richards was in the porch, and Mr. Hersey was describing Frances' death to her. In a few moments Dr. Howe came in and passed through and went out. My aunt asked George if he would go out and ask the doctor what they found. While he was gone, I think my aunt passed out of the room, and Mrs. Vining came in where I was, and I spoke and said, "What have they found?" She said, "Don't ask me; I can't tell." He came to the door and said, "Mrs. Vining has told you." I said, "No; as she don't wish to tell me, I don't wish to know." Then Mrs. Vining called him into the shed. When he came in, he asked if we knew, and said we should be surprised when we knew. He appeared excited, and we suggested that he should go out. He said that it was awful hot. He walked rapidly back and forth in the room. I don't know but we may have mentioned its being warm first. I don't know that he said anything else, except that he was going over to Mrs. Vining's, or "mother's," as he often called her.

Cross-examined by Mr. Baker. — Mrs. Randall Richards was the only person present in the porch-room that afternoon with Mr. Hersey, who was sitting beside my aunt at the window. My aunt, Mrs. Richards, asked him to go out and speak to the doctor. At that time, my sister had returned, I think; she was present when he went out. It was Ann S. Tirrell. I think she asked him to go out and ask the doctor what they had found. I don't know as those are the exact words. He went immediately. He was gone but a very short time; I cannot tell how long. I think there was no one there but my aunt Vining. I think my aunt Richards had gone out; I

have no recollection of seeing her. Mr. Hersey, it appeared to me, was going to tell me what the doctor said, but broke off, and says, — "Your aunt has told you?" I said, "No." Next, I said if she didn't wish to tell me, I didn't wish to know. Then she asked him to step into the shed, or to go in there. She was standing by the shed-door at the time. He went into the shed opening out of the porch-room with her. They were gone but a short time. I think Mrs. Vining only passed through the room, and went out the door. This was the time he was walking the room rapidly. It might be five or ten minutes that he remained. Then he passed out, and said he was going to mother's, or Mrs. Vining's, I don't know which. I saw him go across the yard. I believe I passed out the door about the time he did, and went home.

Charles Brigham *sworn — examined by Mr. Harris.* — I am an architect. I made these plans and measurements. [Plans of Wilson Tirrell's house.] The distance between the front chamber-door and this door (the door of Hersey's room), I cannot state. [Witness was instructed by the Court to measure the distances, and put them on the plans, and left the stand.]

Amos S. White *sworn — examined by Mr. Harris.* — I am an apothecary at Weymouth Landing, about two miles from Wilson Tirrell's. I never sold any strychnia or other poison to any member of that family. I did not know Betsy Frances. I have an account of all sales of poisons since the law obliging us to keep an account was passed, and find half a dozen cases of sale of strychnine. I put down the name of the person buying, the date, and what the poison is to be used for. I have a clerk who has made some sales, and he is instructed to keep account of everything sold in that line. I have no name of that family on my list. I have sold quite small quantities of strychnine, except to one person, a farmer, who has bought it to kill birds. I keep it in small crystals.

Cross-examined by Mr. Baker. — I have sold William Hersey cigars and fancy goods, such as portmonies. I think he had a hair-brush and comb. I don't remember any perfumery.

Re-direct by Mr. Harris. — The name of my clerk is Francis Amble.

Dr. Augustus A. Hayes *sworn — examined by Mr. Foster.* — I reside in Boston; I am a consulting and analytical chemist, a doctor of medicine, and hold the office of State Assayer. I have prepared myself, by studies, to make examinations for

poisons. I have been in practice for thirty-two years. I have studied the properties of strychnia for the last fifteen years, and for the last ten years quite minutely. I have made chemical examinations of a large number of stomachs for the purpose of discovering strychnia, if contained in them, and have studied the action of strychnia on organic structures. I now recollect but three cases where the strychnine was separated in quantities and declared afterwards. Both "strychnine" and strychnia are words in English use.

On the sixth of May, 1860, I received from Dr. Howe, who stated that he came from Weymouth, a large stone-ware jar, the contents of which were about four gallons; that is, that was the size of the jar. It was carefully wrapped in paper, taped and sealed, and the seals bore the impress of some device. He requested me to make a chemical examination of the contents of the jar, stating that there were present the liver, stomach and intestines of a person. He also stated that he was requested to place the organs in my possession by the coroner, and that they were those of Betsy Frances Tirrell, of Weymouth. I had some conversation with Dr. Howe at the time, and asked him if it was a case of suspected poison. His reply was that the person died in convulsions, and that he did suspect poison. The jar remained in my possession, placed in a closet adjoining my laboratory, until the morning of the eighth of May; it was then taken up for analysis. On opening the jar, I found the seals were unbroken, and the tape so secured that it could not have been opened after it was sealed. Within was a mass, in its inflated state, the bulk of more than a gallon. On top was the liver, and below the stomach, with the intestines attached. I found the upper part of the stomach carefully secured by ligatures, and the extremities of the intestines also carefully secured, so that they would retain within any fluid matter. The stomach was removed by cutting it from the intestines, leaving some five or six inches, and the opening, for the moment, secured until the mass could be deposited in a vessel used only for that purpose. It was sufficiently capacious to hold two or three times that mass. I found the outside of the stomach of a slightly reddish color, and the little fluid that appeared on the outside of the stomach was also of a reddish color, as was that which remained in the vessel.

The stomach itself was then divided longitudinally by means of a pair of sharp scissors, so as to empty it of its contents and allow me to spread it on the inclined sides of the vessel, so that any fluid matter would pass over it and be retained in the vessel. After the contents had slightly drained, the sur-

face of the stomach was examined for the purpose of discovering any adhering matter of a granular character. I now speak of the inner surface of the stomach, which presented an even surface, and would display everything of a granular character. I found some seeds of raisins, and some little pulpy masses of fruit, but no unusual foreign substances could be seen. There were some little marks of bran, derived from bread. The surface was then carefully washed by a small stream of water directed upon it, so as to expose the internal part fairly to view. I found the upper portion slightly discolored; the blood-vessels were filled with blood at the upper portion, but there was no corrosion of the parts, nor removal of the mucous lining, as marking any decisive action on that part. The lens or magnifying-glass was used in the subsequent examination, but no definite information was obtained in regard to the cause of death by the appearance of the surface. The stomach of a person whose death has not been caused by poison is generally of a grayish color, with a slight tint of rose-color pervading the whole of the internal part. That is covered by a very delicate coat, which is called the mucous lining, and serves to protect the vessels beneath. In cases of health, that lining is generally perfect; in cases of slight disease, it is somewhat torn or damaged, or partially removed, and in cases where very active or corrosive bodies have been introduced into the stomach, it is generally wholly removed. Often, it is not only wholly removed, but the parts below are corroded, presenting the appearance of having been scalded, — acted on violently, — the vessels having a bloody appearance; and the inspection in the way I have mentioned shows at once the action of a corrosive body, such as a strong acid, or an acid metallic salt. Corrosive sublimate would represent an active poison of the metallic class; oxalic acid, sulphuric acid, — any of those corrosive bodies, — would represent a poison of another kind. Arsenic acts upon the stomach when it is so situated that solution has taken place, not only so as to destroy the mucous lining, but below the mucous lining, and then this slightly-reddened surface is presented. The object of this examination, in part, was to discover whether any corrosive poison was there. Another object was to find, if possible, the substance that produced the effect. It often happens, in the case of arsenical poisons, that we find the substance in contact with the remains, and it is a kind of evidence we are very anxious to obtain. In this case there was no appearance of corrosive action, and the part which was reddened might be considered as only inflamed, — as only the effect of disease, and that not very considerable disease.

Having observed that the appearance did not denote a corrosive poison, the next step was that of cutting out parts from various portions of the stomach, so as to represent about one-third — a large third — of the whole mass of the stomach; and at that point the examination of the fluid which had passed out of the stomach was commenced. This had reposed so long, that any heavy matter contained in the fluid would have subsided to the bottom of the vessel, and been retained there, so that when the fluid portion was carefully poured off, any heavy powder would have been found at the bottom of the vessel. A few little granules of starch, some more partly broken up skins and interior of fruit, were all that could be found. We always find starch in stomachs where the recent food has been composed in part of vegetable food. Bread always leaves the granules of starch present, as do potatoes, rice, and articles of that kind. Indian meal leaves not only starch, but portions of the meal are found. We attach very little importance to these appearances, and in this case, the only impression left on my mind was, that the food which had been taken was nearly, if not quite, digested. There were some few flakes of animal matter, which might have been derived from the stomach itself, or the mucous membrane, or it might have been partly digested food. There was nothing in these appearances to enable me to fix upon any substance acting there to produce the effect which had been stated.

About one-third of the stomach having been detached from the parts adhering to it, and placed in a suitable vessel, a portion of the fluid which had passed out of the stomach was also added to it, and this portion represented the portion which I proposed to take for the analytical trials. A small part of this third of the stomach was then examined for metallic poisons. Two courses were adopted: — one of forming an alloy with copper, if arsenic or antimony should be present; and the other was the application of sulphhydric acid and sulphhydrate of ammonia for the detection of other metals. None were discovered, and the absence of these led to the analysis for organic poisons. The remaining portion of the third, with the whole of the remainder of the stomach, was placed in a suitable vessel, and mixed with a pasty hydrate of lime, the purity of which was known, and is such as has been used by myself for years in these analyses. I will here state, to avoid repetition, that the apparatus used is reserved for operations of this kind. The surfaces are washed with strong acids and alkalies before water is used to complete the cleaning. All the apparatus, even the table, is in a state of perfect cleanliness.

The vessel was heated by a water bath, and the temperature retained in the mass not allowed to exceed 150° F., and it was generally 120° or 130°. It was observed, as the hydrate of lime commenced its action on the cut portions of the stomach, that those parts which had presented a reddish tint retained that appearance as the tissues dissolved in the fluid produced. As the solution of the stomach took place, the fluid became of a red color, whenever it was not exposed to the air; and after the entire solution of every portion of the stomach, so as to form a homogeneous semifluid, the mass dried down and became almost solid. The object in using hydrate of lime in contact with the stomach is to break up entirely the mechanical structure of the stomach. We wish to reduce it to a fluid state, so that there shall be nothing of a spongy nature remaining, and that the blood-vessels, and everything of a fibrous character, shall be broken down, so that there shall be left, at one moment, a stomach perfectly in the form of a fluid.

The dried mass to which I have referred was powdered, and divided roughly into thirds again, two-thirds being retained, enclosed in a vial, closely corked. One-third was now taken, placed in a vessel with a small opening, and subjected to the action of about ten times its weight of pure alcohol. The mass was boiled for some minutes; afterwards allowed to become perfectly cool, and the clear part passed through a prepared paper filter. Successive portions of alcohol were added to the filter to wash away what adhered, and the remaining parts were retained. The clear portion that had passed through the filter presented a light tint of yellowish brown color, which was placed in a vessel heated by the water bath, and then evaporated until the passing off of the alcohol left a yellowish brown, thick mass, which was quite complex in its composition; containing some vegetable acids, some oily acids, some sugar of fruits, and a portion of glycerine, besides other bodies which were not specially examined. This thick syrupy fluid was now mixed with some diluted pure sulphuric acid. It was a simi-fluid mass resulting from the evaporation of the alcohol. The volume was thereby increased. The alkaline action was destroyed, or replaced by a decided acid action; and the fluid was now heated to dissipate volatile acids. After half an hour the addition of stearic acid and purified white wax was made. These bodies melted freely in the fluid, and united to some oily bodies which were present in the fluid. After cooling the mass to about sixty degrees, or lower, the oily bodies present had become solid, and a light, transparent rose-colored fluid was obtained. This is a step necessary in this process for the removal of fatty bodies; they become

solid and brittle, so that we can readily strain off the clean fluid, leaving them behind. The whole bulk of this fluid was about half a fluid ounce, — not far from what a large table-spoon would contain. A vial which would contain about four ounces, and could be closely stopped, was half filled with absolutely pure sulphuric ether; to this about sixty grains of a strong solution of caustic soda was added, and into this vial containing the ether the clear solution from the wax was passed, agitating the whole so as thoroughly to mix the parts together. The fluid was acid in its character. If there was a poisonous body present it would be dissolved in the acid. The object of this step with alkaline ether is two-fold: we wish to use an alkali to cause a decomposition of the acid salt in solution; the ether will dissolve certain bodies; and by proceeding in this way, we present to the ether, at the moment of its separation, any body that may be considered as the poisonous principle of vegetables. Mineral bodies, if present, would be excluded from solution in ether. The presence of mineral poisons was rendered impossible by previous steps, as well as by this test. There are only a few bodies that can dissolve in ether, under the conditions which I have stated. In proceeding with the analysis, the clear etherial fluid was decanted into a shallow glass vessel, and allowed to evaporate spontaneously in the air. There were brilliant granular crystals adhering to the vessel, after the ether was passed away. These brilliant clear crystals were not dissolved when a considerable quantity of water was added. This gives the substance in a tolerable pure state, and suitable for the physical examination, and, in fact, the first chemical examinations. The substance actually found is not in my possession in the condition here described.

It was after the demonstrations on this substance that I wrote the letter to Dr. Howe, the ninth of May, stating that I had discovered strychnia as the poison in the stomach.

These crystals were not dissolved in water, which excludes the presence of a number of substances which might possibly have been in the stomach. The water, however, acquired a bitter taste, and not only that, it left a sensation which is peculiar, — the impression of a metallic salt. The crystals were readily dissolved by alcohol, and the solution obtained, when allowed to dry away, left long, white, prismatic crystals upon the containing vessel.

In speaking of pure alcohol, I mean alcohol purified from all foreign substances except water. In this case the alcohol contained a small portion of water.

The crystals, after the process I have described, were deemed sufficiently pure for experiments of a chemical kind.

The first step was to dissolve them in the smallest quantity of sulphuric acid and obtaining a salt which was quite soluble in water. Another acid was used, — a portion of oxalic acid, — and that dissolved into a clean fluid the crystals; and when the water had passed away, it left clear prismatic crystals. Nitric acid dissolved the alkalies freely, and when the water had passed away, I then had brilliant points of crystals which appeared to be eight-sided. Either of these salts, when dissolved in water, was intensely bitter to the taste, — perhaps the extent of bitterness that the palate can endure. This is another characteristic which I will mention as one of some importance as an indication of what might probably be found. I now added to the solution of the sulphate a portion of the body called iodic acid, and no change was observed. The object of this is to exclude some other bodies that may be supposed to be present; to determine that the crystal or salt was not composed of these other substances. To a very minute portion of the crystals of the alkaloid which were obtained before the salts were formed, a few drops of oil of vitriol, a very corrosive agent, were added at the common temperature. The oil of vitriol had no effect upon these crystals; and that fact excludes a large number of substances that might be barely supposed to be present. A small portion was mixed with the salt called the sesquichloride of iron, and no change following, another body was excluded. Nitric acid was added, and a very slight change to yellow was observed.

The tests which had now been applied excluded so many of the bodies called alkaloids, that there were only two or three of the organic bodies which might be present. A minute quantity of morphine might have been present in the etherial solution, a minute quantity of the alkaloid called brucia, and another called cinchonia, might have been present; but the crystallization of the salts, in perfect crystals, excludes these bodies as mixtures, and the tests prove their absence.

The chemical experiments for ascertaining the characteristics of the substance found as a crystallized alkaloid were now commenced. A portion of the crystals was mixed with diluted sulphuric acid, so as to form a solution, and with this solution was mixed a little of the solution of the salt called the chromate of potash; and the effect was the production of a yellow precipitate, the whole liquor became turbid, and finally a beautiful yellow salt was formed and fell down in the fluid. The next step was the addition of a salt called bichromate of potash, and the same result followed the addition of the last-named salt. These yellow crystals adhered to the vessels, so that the liquors above them could be decanted off, and the

crystals dried in the air. The yellow crystals, having been dried in the air, were mixed with a few drops of sulphuric acid (oil of vitriol), and instantly a blue or deep violet color was produced. It passed through very rich hues of purple, red, and finally orange yellow. This change of color in this salt indicates one single known body only, and that is strychnia, or strychnine.

I did not stop at this point, but proceeded to apply the other tests for strychnia, and if it be not too much in detail, I will state them with their results. The substance obtained was an oxidized salt of strychnia. By the addition of chromate of potash, the strychnia had become combined with the highly oxidized body called chromic acid, and by the addition of oil of vitriol, the chromic acid was immediately liberated from contact with the substance which had been united to the chromic acid. As applied in this manner, this is a known and reliable test of strychnia, and has the same value as the sweetness of sugar, as we commonly speak of sugar. There is no other substance that will be so changed under the same conditions. I use the reference to sugar as a familiar illustration. The evidence which we obtain by tasting sugar is deemed conclusive in common cases of the presence of sugar. The evidence we have in this case goes beyond this. The chemist, ordinarily, in questions of a commercial character, stops here. But in cases where life rests upon the determination, it is deemed best to pursue the investigation further.

The next test applied to the solution of the sulphate was a solution of gall-nut, which caused some white curdy matter to fall from the fluid. This is a general test, not a discriminating one. The next was tannic acid, with nearly the same effect. Taken in connection with the other tests, this adds to the evidence. The bichloride of platina, a yellow precipitate in floss which afterwards become crystals. That is a very important test. I consider these all as adding to our knowledge of the subject before us. The next substance was the iodide of potassium, which produced a white precipitate, becoming a salt in minute prisms. This adds to our knowledge, and is connected with the next I name, which is iodine dissolved in the same, iodide of potassium, which produced a different precipitate, being of a brown color and not crystallized in form. This precipitate was changed by solution of potash into a dirty white substance. The next test was bromine, an elementary body, and it produced a bright yellow precipitate, not crystalline. The next was chlorine, producing a white precipitate. The next, sulphocyanide of potassium, — a white crystalline precipitate. Carbazotic acid was

next used, producing a precipitate in short threads. Chloride of palladium produced a dirty white precipitate. Bichloride of gold, producing flosks, which became granular, and which could not be dissolved by heat in the solution. Carbonate of potash precipitated white crystals. Potash produced a thick mass becoming crystallized, and both of these crystals last named could not be dissolved by heat. Carbonate of ammonia produced a white deposit, becoming crystalline. Other substances were used, which I have purposely omitted to name. These are tests which may be considered as characteristic in their indications, and conclusive evidence, when taken together, of the presence of strychnia or strychnine.

The concluding experiments, and which, taken in connection with those given, and of a more definite character, were these: Going back to the crystals obtained from the pure ether solution, I added a drop of oil of vitriol to a small portion of the substance, adding also a portion of the bichromate of potash, and obtained a beautiful deep blue, passing into violet, purple, and finally terminating in orange-yellow. The same process of using a drop of vitriol and the addition of the black oxide of manganese developed the same hues in the same order of succession. The same repeated, using brown oxide of lead instead of the black oxide of manganese, produced the same colors, in the same order. The same, using the powder of the red prussiate of potash with a little of the alkaloid, and the same colors were produced.

These are the tests for strychnia; and after having passed through these tests, no doubt can remain on the mind of the chemist with regard to the substance or its character. There is no other known crystallized solid body that will produce these colors.

By leave of the counsel, I will exhibit to the jury commercial strychnia in its two forms, in powder and in crystals, and strychnia as produced from the stomach. [Specimens exhibited to the Court and jury — were skins and seeds of fruit, brilliant crystal strychnia from the stomach, crystals of sulphate of strychnia grouped, and chromate of strychnia in yellow crystals.] I have made no experiments with this substance on animal life.

On the 12th of May, Dr. Appleton Howe brought me the spoon I hold in my hand. The coating which now appears upon this has been very much contracted in thickness in the lapse of twelve months. There were then existing some brilliant fractured crystals representing strychnia as sold. Some of these have been removed and tried by the tests, and proved to be strychnia. I am prepared to state most positively that

strychnia was found in the stomach in considerable quantity. I have weighed two grains and one-tenth from about two-thirds of the stomach. The other third of the dry mass from the stomach I placed in the hands of Professor Horsford, I think on the 24th of May. I gave him the lime preparation as representing one-third of the stomach and its fluids. I am prepared to swear that there was strychnine upon the spoon at the time it was received, and that the strychnine still exists there, and that the remaining substance is some jelly or preserved fruit; and I connect with the occurrence of the jelly on the spoon certain appearances of jelly and of color that I detected in the stomach. When this surface [of the spoon] is magnified, the crystals can be seen. That is a merely physical indication. When, for the purpose of chemical experiment, the jelly is washed away, the crystals of strychnia are left behind, and to them we can apply the tests that I have named, if necessary. In such a case, when we have the strychnia, the application of a few tests is sufficient to settle the question. I did not, however, stop at that point, but made the investigation very thorough, to convince myself that strychnia was present, and I have made experiments since, so that I can say positively it is on the spoon now. It is visible to my eye by the use of the lens.

It takes but a few moments to make the "color tests," and I have come prepared to do so, if not objected to. [The counsel for the defence objected, and were invited with their experts to witness them during the recess of Court.]

Strychnia is the poisonous principle of nux vomica and the St. Ignatius bean. The whole poisonous properties of these vegetables are seen in this and another alkaloid that accompanies it. The article used in commerce is freed as much as possible from the other alkaloid, and is used in very minute doses in medicine. The larger portion is used for poisoning animals — foxes in the country and dogs in cities. Its use as an agent for producing death has not been known to the toxicologist but for about fifteen years; and the process I have given to you here, and which is of the highest value in the separation, has been known only about eight years.

The concentrated poisonous properties, as you see them in strychnia, enable that substance to produce death when administered in very minute portions. I do not know how small a quantity can produce death. Taking the cases which are reported, and making due allowance for that portion which remains unabsorbed in the stomach, and which has no effect whatever in producing death, I have fixed upon half an English grain as sufficient, in a majority of cases, to prove a mortal

dose. I mean half an English grain administered. The subject is one that is not very clear to any one, from the fact that the action of this, like that of other poisons, is very much modified by the state of the system, and more remarkably so by the state of the stomach and its condition in regard to food, and furthermore by the state in which the poison is administered. I think half a grain will produce death if it be administered in solution, and no medical aid is at hand; and with one single grain introduced into the stomach, I think it would be impossible for human life to exist. The quantity operating is very minute, and its action in the system is that of what is termed a spinal poison, which acts through the great nervous centre of the upper portion of the spine. Its application to the nerves is not attended by the same action as when it is taken into the stomach, and there absorbed, or brought into a condition to enter into the blood. It is probably through the blood first that the spinal marrow is affected, and those muscles which are termed the voluntary muscles are those which are first called into action. Spasms, contortions and convulsions of a very peculiar character are produced, owing to the contraction of the muscles; and the best authorities now conclude that death is caused by suffocation. The breathing processes are all stopped mechanically, by the contraction of the muscles, which close the breathing organs; and where the effects of strychnia have been carefully observed (of course these cases must be very rare), those symptoms have been exhibited, and the highest authorities I believe now conclude that the spinal centre influences the after contraction of the muscles so as to produce characteristic motions of the back, limbs, fingers and toes, and the lungs and heart are prevented from the usual healthy action. In regard to the time when death takes place, nothing precise can be stated. I know that in a great number of cases, where the poisonous substance was in a condition to be made soluble, or was given in a soluble form, death has followed, in one case, from less than half a grain, in about sixteen minutes from the time it was taken, the individual — a physician — being a healthy person. In other cases, the action has been prolonged; but, so far as I have been able to learn the circumstances, this slow action has been due to the slowness with which the poison dissolved in the stomach, its protection, in a measure, by the food. The substance being scarcely soluble, — requiring seven thousand times its weight to dissolve it, — it dissolves very slowly unless an acid is present; in which case it becomes very soluble, acts much more quickly, and the symptoms of the poison occur much earlier. A sort of provisional limit

has been fixed by those who have watched the cases, as being between two and three hours for the duration of symptoms.

I have studied medicine, so as to prepare myself for researches of this nature, including the actions of all poisons upon the human system. I hold a medical degree from one of the most respectable medical institutions of the country, granted to me for the acquisition of that knowledge; and I have read every work on the subject, accessible to myself, and enjoyed very great advantages, in learning the facts connected with the action of poison upon the system.

The stomach of a dog was brought to me by Dr. Appleton Howe. He stated to me his suspicion that the stomach contained poison. I examined it for both mineral and organic poisons,—for all poisons, in fact,—and none were discovered. There was no strychnia in that stomach. I have no means of fixing the date exactly when it was brought to me. It must have been after the 12th of May; I should think about a week after the 12th of May.

Cross-examined by Mr. Sullivan. — I testified before the magistrate in the preliminary hearing at Weymouth Landing. I testified to the facts as I have testified to them here, as far as I went. I know of no difference. I make this qualification, however. I have repeated the experiments of the separation of all the strychnia and worked on larger quantities since than I then had in my possession. I did not testify as fully there as I have here. I was willing to give the full results of my experiments at that time, as far as obtained, but it was deemed unnecessary by the counsel for the government to go into a full explanation. I had not had the slightest consultation about the matter. There might have been some such question asked as whether I had found strychnia. I should not dare to trust my memory with regard to one, two, or three questions. I think, if you will refer to the testimony, you will see that it was opened for the purpose of going into it very minutely, and I was prepared to do so. You will see that it had been commenced nearly in the way it was commenced here, and I had proceeded to some extent when I was stopped. I cannot say by whom I was stopped. The questions were discontinued. I cannot state whether the magistrate ruled upon the subject. I had no conversation with the counsel for the government as to what part should be given and what part withheld. I stated at Weymouth that I had obtained the strychnia from the stomach and submitted it to both the color tests, and was convinced also by accordance of the physical tests. The physical appearance of strychnia are those which it presents to the unaided senses, such as the color, the taste, the smell, the form,

the lustre, the hardness, and its crystallization. I do not refer to the action of the bichromate of potash, or any of the sulphates, upon the substance itself. I stated there that I had obtained it in crystals, that I had obtained it in crystals of different forms, and that I had formed salts from it, and that I had arrived, by my tests, to a full and complete conviction of its being strychnia, and no other body. I think I gave the same general statement in regard to the matter there that I have here. I do not recollect the substance of that examination.

As nearly as I can now remember, after some references, I have examined sixty-four stomachs for strychnia, where poison was suspected. I have examined a much larger number of stomachs, including those that were purposely poisoned, for my own experiments. I am not able to say when I examined the first stomach, but about twelve years since, I examined for strychnia. I cannot tell how many I have examined within the last five years. I keep no record of the number, and I do not charge my mind with them; and even during the last year, I should find it difficult to say how many I have examined for strychnia. I have discovered strychnia in quantity, separated it, and absolutely ascertained its presence, in only three cases, I think. One of those cases I do not now remember the name of. A case occurring at Auburn, N. H., which has attracted public attention, was one of them, and the present case another. The first I named came to me from New Hampshire, but I cannot state either the county or town. It was within a year and a half. I do not know the condition of the case at present. I made a report in it. I do not remember to whom I made the report. I do not remember by whom the stomach was brought to me. I do not remember the quantity I found there. These cases are almost constantly in my hand, and I make notes, but do not charge my memory with them. I have examined a great many stomachs for the express purpose of finding strychnia. It is a subject to which I have devoted a great deal of attention, and settled most of the important points connected with the examinations. I have made only three examinations where the evidence was of a kind that would permit me to state positively that strychnia was found. I make minutes in my laboratory, upon sheets of paper, as I was taught to do, and I afterwards, where the cases are marked in their character, transfer to a book all those observations which are extraordinary, and not the common occurrences of the laboratory. In the particular cases, I testify from my memory, refreshed by references to those rough notes. They are very brief in words, and sometimes only in character, but

perfectly intelligible to myself, and render it unnecessary that I should have any other record. I made this examination a year ago. I have just made a slight, rough note of the order in which some of the experiments were performed, as a copy from the laboratory journal, and nearly as brief as the laboratory journal itself. I make the notes at the time I make the observations, and this paper contains a brief copy of the same. I have not written out any connected account of the examination.

I believe I have read every work of any consequence in the English language, and many of those in the French, on strychnia, or abstracts of the accounts which are given in those works. I am not able to say how many hours I have read upon that subject this year. I have devoted sufficient time to it to keep up with the progress of science, both in connection with strychnia and other modes of poisoning. Not a large amount of reading is required merely to keep up. The knowledge acquired was that previously derived from the standard works.

I cannot state the date when I examined the stomach of Mr. Healey, in the case of Richardson and Healey, in New Hampshire. I really cannot say whether the name was Healey or Richardson. I cannot say whether it was before the examination of the stomach of Miss Tirrell or subsequently. I cannot tell when the case was tried. It was some time in the neighborhood of October or November last, I think. I cannot state positively the date of the trial. The trial did not commence as early as was expected, in consequence of my illness, from an accident. I am not positive that it was tried in November. I testified in that case. All these points can be settled by reference to books at home. I did not come prepared to examine them.

The quantity of strychnia found in the case of Richardson and Healey was a little less than two and a half grains. I make charges for my services in these cases. I have no means of knowing the date of the charges, or even of the payment. I am quite sure the bill was paid at the usual time. The bills are given in, and pass through the examination of the authorities, and the amounts are returned to me. In regard to the payment in New Hampshire, I can state positively that I was paid at the close of the trial. I recollect perfectly going to the bank to obtain my money before I left the place. I do not recollect of going to the bank or getting the money in the other New Hampshire case. I received it from some of the town authorities — I don't know who. I can tell by referring to my books at home.

I can testify most positively with regard to every point there stated. I think I gave a portion of the stomach to Prof. Horsford the 24th of May. The then Attorney General [Mr. Phillips] requested me to furnish a portion of the stomach to Prof. Horsford for analysis, I believe; at any rate, I called upon Prof. Horsford and asked him if he could attend to the matter, and having obtained his consent, appointed a time when he should come to me and obtain the material to be operated upon. It was only a short time before my application to Prof. Horsford that the Attorney General requested me to see Prof. Horsford. I cannot testify directly to the question when Mr. Phillips applied to me. As soon as convenient, I went to see Prof. Horsford. This stomach had been reduced to a dry powder, which I described as having been enclosed in a vial. I believe there are but three alkaloids, of all the organic bodies forming solid regular crystals, that can be taken from the etherial solution, decomposed in the manner I have stated; but these are not the same with strychnia, and the colors of the crystals are not the same. The physical appearances of strychnia are those which can be observed by the unaided senses, and embrace color, form, and taste. The color, as it crystallizes, is a physical mark of the substance crystallized. The "color tests" of strychnia is a very loose expression, whenever used; but when chemists speak of the "color tests," they speak of those tests that produce color by changing the color of the body. I do not think this expression is used by chemists with strict accuracy, but, loosely, we use the term in that way. Morphine, which is hardly soluble in ether, in alcohol produces a crystal, as I have observed it, which appears somewhat like strychnia. Brucia is another substance which produces a crystal resembling it. Cinchonine, another alkaloid, made from Peruvian bark, is another. These are all that come closely to the crystalline form of strychnia. If the crystals of these different substances were so formed as to present the same size contained in the same vessels, and without reference to the solvents, I could not judge from the simple physical examination so far as to express an opinion, and I certainly could not arrive at a demonstration in that manner. If they were not of the same size, I should then distinguish them. If allowed to make an explanation, I can very soon present this point clearly. There are two specimens of the same substance on the table, both in white crystals, which are unlike.

In regard to the chemical authorities in relation to strychnia, I will take some of the English authorities first, as they are not any authorities from their own observations and ex-

periments, but they have been large compilers of the information derived from other sources, and in that view I should put Taylor at the head. He has published several works on poisons and their characteristics. I do not place him at the head of observers. There are several English chemists who have investigated the subject of poisons, and at the head of those who have specially opened up the subject of strychnia I should place Herripeth and Letherby, — they have very precise notions, gained from their own experiments, — and a writer by the name of Horsley; and in the same language, and standing very high in this department, is our countryman Dr. G. T. Wormley, a professor in Columbus College, Ohio. He has gone into the subject very thoroughly, and defined the limit of reaction by measure and by weight. I am ready to proceed to give French and German authors if necessary.

I have stated, that the limit which I had assigned in my own mind was half a grain to cause death, when the conditions were such that it could be absorbed, and much smaller quantities have produced death. On the other hand, Taylor, I believe, mentions one case where three grains were taken without producing death. There are a large number of authorities in other languages, to which I have not referred, but have read.

I did not publish the evidence in the New Hampshire case of the State *vs.* Healey & Richardson, in the Boston *Medical and Surgical Journal.* I supplied to the editors and publishers of that journal the notes of the medical testimony taken at the trial by the junior counsel for the government, and which has been submitted to the judge for his approval as a true report of that case. I have not read the report published in the *Boston Medical and Surgical Journal.* I have seen it. I received some duplicate copies, which I supplied to my friends. I merely counted the number, made up the packages, and sent them by mail. I wrote a note to the gentlemen of the *Medical and Surgical Journal*, stating that, if it was deemed of sufficient importance to them, I should be pleased to have it published, either in part or wholly, as suited the convenience of the publishers. I carried the package myself, and saw some person, who, I was told, was not the one referred to, and left the package and note with him. It was not my manuscript in any other sense than this — that it was the manuscript of the junior counsel for the government, furnished at my request. I had stated that it was testimony which should be preserved, as it was a case of considerable interest, and involved some questions of novelty. Dr. Oliver called on me subsequently, and asked me to allow him to make some corrections in Dr.

Jackson's testimony, of a grammatical character, and I said, "By all means; do so." I never wrote anything of that kind. I may have read one of the numbers partially, but I have never read the testimony consecutively.

The experiments in this case were made in the day-time. I never make an important experiment after the sun has declined and the lamps are lighted, whenever the color or appearance of a fluid comes into play; and I very seldom do any work in the laboratory after the sun has declined. I find a day of some twelve hours quite long enough for the exhausting duties of the laboratory. In cases of special importance, I should not trust to the reaction, where color is concerned, by lamp-light. It is a well-known fact that the color from gas-light or candle is of a different character from that of the sun. I have never seen the reaction produced in the colors of strychnine by lamp-light. I have not pursued any investigations leading to a definite conclusion as to why red is red and blue is blue. If you ask me in relation to the sun-light, and why philosophers suppose the blue color is produced, the blue color is produced by the absorption of the other rays emanating from the sun, in consequence of some peculiarity of the surface. That is the theory of philosophers, I believe, on the subject. I should adopt that theory. The peculiarities of the surface are so changed, that the absorption of all the other rays emanating from the sun takes place readily, and the reflection of the blue rays proceeds. It has no relation to the chemical composition of the body; it is a mechanical effect.

There is a fluid which, when treated in a particular way, will produce colors that approach somewhat, but are never like, those produced by strychnia. There is no body that, when crystallized, produces, in the reactions which have been stated here so carefully, the same colors. There are other bodies, and entirely different chemical compounds, that produce blue. The particles of blue on a dress and in glass are not alike, and the same substance that colors the blue cloth will not color the glass. The arrangement of the particles in the glass, in order to produce a blue color, must be in the same relation to the light received from the rays of the sun as they are in the cloth producing the same color. They are not the same, nor produced by the same substance, but by two different substances. They do not approach in shade to the same color. Art has never yet produced upon poisons or fibrous substances the blue that is produced upon glass. I do not know that I should get a different color by trying the experiments I have mentioned in the night. I do not know the fact. I said that the color of gas or candle-light differed so remark-

ably from the light of the sun, that some other colors would doubtless be produced. I did not state it as a fact known.

The Court here adjourned.

At 2 o'clock in the afternoon the Court came in, and

ANN S. TIRRELL *was sworn, and examined by Mr. Harris.*— Am sister of Charlotte Tirrell. I was living at home during the winter of 1860. I have known Mr. Hersey for a number of years. He was in to our house about a week before Frances' death. She was not well, and he said he should not be surprised if she made away with herself. He said that when she came back from Mary Whitmarsh's funeral, she said, "When I looked down into that coffin, I wished in my heart it was me." He came in the day after Frances died. It was very early after dinner. He stated to us the particulars of her death. I came in, as I supposed, in the midst of conversation. My sister and mother were there, and my brother and father might have been there. He said that he went after my aunt, with Frances and Louisa, to Mrs. Blanchard's, and went with Louisa to the barber's. He felt sick, he said, when he went to the barber's with Louisa, and when he came back to Mrs. Blanchard's he sent Louisa in to tell Mrs. Tirrell and Frances to get ready and go home, as he did not feel well. He said he got home about eight o'clock, and went to bed. About nine o'clock Frances passed his room to go to the clothes-press, and stopped and asked him if his head felt any better. He said it did not, but he thought it would, if he could get to sleep. He said he thought he got into a drowse, and was awakened by a noise from Frances' room. He thought it was Louisa talking in her sleep. Then he heard his name called, and got up and went in there, and found her in great distress. I don't remember the particulars of what he said. The substance was, that she clinched her fingers into his wrist so as to leave the marks. Then he called my uncle. Whether he said he went for him or hollered for him, I am not able to state. He said Frances appeared very much as his wife (Hannah, he called her) did when she died, only his wife suffered longer. We were speaking of the manner of her death as something very strange, and wondering whether she could have taken anything in the house by mistake. He said he had been talking with my uncle that morning about it, and he (Hersey) said he didn't think she had taken anything that caused her death. We were speaking of the examination that was to take place the next day, and he said that whatever was found, he should

think she died of a broken heart. I think it was a few minutes after that, as he was sitting there, he looked up at the clock (it was then two o'clock), and said, "To-morrow, at this time, it will be known." I don't know whether he addressed the remark to any one in particular, or to all. We were all conversing with him. I cannot tell how long an interval elapsed between his speaking and that remark. I don't recollect anything else that he said about the examination. I did not hear any conversation about the propriety of that examination. I suppose that was before I went in, but I might have heard it and forgotten it. These things were impressed upon my mind at the time. I was at my uncle Wilson's all day Saturday. I went quite early in the morning, and was there till about eight o'clock. I was there assisting my aunt. She wished some of us to come in and assist her. I never had much of any conversation with George. He said scarcely anything. He was at the table at noon, and in the forenoon I saw him once or twice. I was attending to the corpse, and he came in while I was there, and went out. In the afternoon, before the examination, he was there assisting in making the arrangements for the examination. He was getting sponges and wetting them, and I think there were other things. He went and got some linen thread, I think. That was after the doctors came. He had been out and came in, and said he was going into the room. I felt surprised, and spoke as though he hadn't ought to go in. I supposed it was necessary some one should go in. He said, "I shall go in and stay as long as I can." I heard him say so. My uncle and aunt were both in the room at the time, and I don't know but they both might have spoken. There was not more than a word or two passed that I can recollect. I don't know as I saw him go into the room. He appeared to be assisting — going out and in. He came out once for a wash dish and water; and came for a tub at one time, and might have been out at other times. He was back and forth. That is all I recollect. I suppose the doctors were in there. It was during the examination. My uncle came in and said, "There is trouble." He was very much excited, and said they had gone for my aunt, Mrs. Vining, and requested me to stay there. While we were conversing, George came out, and I asked him what was the trouble, and he said he did not know. He said, "I stayed in till her heart was examined." He said no trouble was found there.

About that time I went home for a few minutes. My aunt, Mrs. Richards, came in, and I said I felt nervous, and should like to go home a few minutes, and thought I should feel better. I went home, and was gone perhaps fifteen minutes. When I

went back, Dr. Howe was just going out of the door. I thought there was something unusual in his appearance. George Hersey was there talking with my aunt, Mrs. Richards, and she requested him to go out and speak to the doctor, and see what the trouble was. I saw him go out. The doctor was unhitching his horse at that time. I saw him go to the doctor, and apparently speak to him. The doctor turned, and placed his hand upon George's shoulder. George walked back and forth, apparently very much excited. He came in, and appeared to be just going to speak, when my aunt, Mrs. Vining, came out of the sitting-room, and said, "George, come into the shed." They went into the shed, or porch-room. My sister and I were together at that time. George came back and appeared very much excited, and wished to know if they had told us, and we told him they had not. He said, "You will be surprised." We spoke of it being warm there. He had a very strange look on. He looked up once with a very strange look — the strangest look I ever saw. I don't think I could describe it. He did not speak at that time. He was growing so excited, that we told him it was very warm there, and that he would feel better if he went out into the air. It was very warm, and I went to the door and opened it, and he said it was horrid hot there. He said he would go over to Mrs. Vining's, or "mother Vining's" (sometimes he spoke of her in that way), and he went over there. My sister went home, and he came in a few minutes afterwards and sat down, and I think he asked me again the same question, "if I knew." I know he asked me the same question twice. I told him I did not, and he said, "You will be surprised." He wished to know where the family was, and I told him they were in the sitting-room. He said I should think it was very strange. In a few moments he got up and went out. I don't recollect seeing him again that night, unless I saw him out of the door.

I was in the house the next day, in the forenoon. I examined Frances' room. My uncle requested me to go up and examine the room, to see if I could not find something that would satisfy us. I went up in company with Mrs. Minot Tirrell and the mother of Frances. I did not examine much. There was a chest of drawers there, and we were looking at them, and the thought struck me to go to the fire-place, and I think I moved the board. It was a wooden fire-board, and I think it was started a few inches from one side, but I cannot tell distinctly. I was excited at the time. I think I moved it from the top, and I found there a spoon. It was a common platina spoon. It was lying on the hearth, near to the fire-

board. There appeared to be something upon it, — some preserve or jelly; it might have been currant; it was of a reddish color. I handed it first, I think, to Mrs. Minot Tirrell, and then my aunt took it. I went down after the spoon was found, and spoke to Mrs. Vining, and she came up. My aunt had the spoon, and was going towards another chest of drawers, I supposed to lay it in. The chest of drawers was the other side of the room. [Spoon shown.] That spoon resembles the one very much. There was something of a yellowish substance on the back of it. It was very trifling. Generally, its appearance was the same as this, and covered as this is now.

Betsy Frances was in our house the forenoon of the day she died. I was in the habit of seeing her very often, — every few days. She appeared, that day, cheerful, and about the same as she had been, only I noticed that she was more cheerful that day than she had been before. We spoke of it amongst the family after she had gone. I conversed with her in a lively strain that day. The remarks that had been made rather startled me, and I conversed more freely with her and more cheerfully, and took more pains to interest her. The remarks I speak of were those made by Mr. Hersey, that I have stated.

Cross-examined by Mr. Baker. — She had been rather sad before that, but no more so than I should suppose a sister would be, having lost a sister a few months before. She had been rather sad. She appeared more cheerful that day. I conversed more, probably, with her than I should, and she appeared interested in all that was said. There was a trifling incident happened that day. Her sister's child was with her that day, and to amuse her I cut from the Lady's Book a picture, and Frances said she was rather apt to destroy things, and she was not going to have her destroy that, but when she got home she was going to paste some paper on the back of the picture, and she did. Frances had not appeared very well.

There was no excitement in the house after her death, more than would be usual in the case of so sudden a death. It appeared calm and very still, considering. I was very much surprised when I heard the result of the examination, and the family were very much surprised. Mr. Tirrell was very much surprised, and made the remark to his daughter, — "There is something there we never thought of."

Prof. Eben N. Horsford *sworn — examined by Mr. Foster.* — I am teacher of chemistry in the Lawrence Scientific

School of Harvard University. I am Rumford Professor in that university. I spent a little more than two years in the study of chemistry in Germany before entering upon the duties of the professorship, and have occupied my present situation fourteen years. I have been in the habit of instructing my students, more or less, in the art of detecting strychnia, and in experiments made upon inferior animals, and in the examination of their remains with a view to its detection. I have experimented upon insects, and upon frogs, cats and dogs, and once I poisoned a bear. I have made examinations for the discovery of strychnia in human beings. I have examined five,— including the examination made in this case,— one that was sent to me from Vermont, two that came from New Hampshire, and one of a person who died suddenly in Cambridge. I have examined the stomachs, and instructed my students in the examination of the stomachs, of cats and dogs occasionally. I have been familiar with and employed the different tests since their discovery. I have employed the perfectly trustworthy and infallible tests (so regarded) of strychnine. Where a crystalline solid, obtained from a solution in alcohol, is mixed with oil of vitriol without change of color, and then is stirred up with powdered bichromate of potash, and gives first a deep blue color, changing promptly to violet, then to lake red, and then to a dull orange, there is no doubt whatever that the body is strychnine. I have employed the test of Marchand, which was first of the color tests, brought out in 1843. It consists in the use of sulphuric acid (oil of vitriol), to which one per cent. of nitric acid has been added; the crystal is stirred up with the mixture, and then with brown peroxide of lead. That test is as sensitive as the one already mentioned. Instead of the peroxide of lead or bichromate of potash, I have employed, also, black oxide of manganese, chromate of lead, and ferricanade of potassium.

I heard the testimony of Dr. Hayes, and should confirm all he has said with regard to the color tests. I have examined and obtained decisive results with a quantity so small as the millionth part of a grain.

I received from Dr. Hayes, on the 24th of May, a year ago, as nearly as we could determine, one-half of a quantity of grayish-white powder, of which I have a small sample here, and took it with me to Cambridge. He delivered this to me as being a part of the remains of the stomach of Betsy Frances Tirrell, "cut down," as the expression is, with hydrate of lime. The fat acids were neutralized, and the fleshy matter disintegrated, by the action of the caustic lime. It was rep-

resented as containing one-third of the whole stomach. The quantity I received would be sufficient to fill this bottle [exhibiting a three-ounce vial] once and a half full. The powder was taken from a stoppered glass vessel. I received it on a piece of white paper, wrapped that up carefully, put the parcel in another piece of paper, tied it up carefully, and put it in my pocket. I made a number of preliminary experiments with small quantities, having previously divided the whole mass which I had received into three equal portions. One of these I consumed in the various preliminary experiments. Another of these portions I set apart, with a view to the determination, as nearly as might be, of the quantitative amount of strychnine it contained; and the other I still retain. I placed the portion assigned to quantitative determination in a clean glass flask, and boiled it repeatedly with alcohol of 80 per cent. strength, which I had proved to be entirely volatile — that is, containing only water and alcohol. I boiled this powder with the alcohol, and filtered it off hot, extracting the mass of powder which was in the flask some seven or eight times. The filtered liquid, on standing until it became cold, separated out a fat soap, which was a compound of the fatty acids of the stomach and the lime which had been employed, and which had been dissolved in the alcohol. The clear liquid was evaporated on a water-bottle, to small compass, and set aside to cool. When cold, a little ether was poured upon the top, over night; and in the morning, round the rim of this mass of liquid, I found numerous crystals. Some of those crystals I have here. They were placed on this glass plate, attached with a little gum-arabic, that I might be able to compare them with a known weight of pure strychnine. I have since removed a very considerable portion in experiments upon the inferior animals and before the Grand Jury; so that there is not now present more than a third, perhaps, of the quantity which I separated in crystalline form. On examination with a glass, these will be seen to be prisms, with irregular pyramidal summits.

On evaporating the residue from which these crystals were separated, I obtained a certain definite volume, which I made the subject of subsequent separate examination. I proceeded to treat that with oil of vitriol and bichromate of potash, according to the method known as Otto's method (more properly Lefort's), and obtained the succession of colors which is regarded as the unmistakable evidence of the presence of strychnine. I also used the oil of vitriol, with one per cent. of nitric acid, and the brown peroxide of lead, and with the black oxide of manganese instead of the peroxide of lead; and

I have not the slightest doubt that the substance found in the remains of the stomach is strychnine.

I made some experiments upon small frogs. I put a frog into a quantity of water, and dissolved a small quantity of commercial strychnine — the strychnine with which I had poisoned the bear — in acetic acid, having an excess of strychnine over the acid, and put that into the glass vessel in which the frog was immersed; and in another glass vessel, containing an equal quantity of water, I put the same quantity, as nearly as might be, of the substance supposed to be strychnine, taken from the stomach of Betsy Frances Tirrell, dissolved in acetic acid, and in it another frog. A third vessel contained another frog, with water only. The acetic acid made the strychnine soluble in both cases, and I was careful to introduce it in small quantity, absorbed upon bibulous paper, and to note that the reaction of the solution was not acid. The symptoms I observed were, increased activity of the animal, with intervening periods of repose, twitching, and, at the end, dying with the frame rigid. The frog in the vessel in which there was no strychnine lived a day and a half. I suppose that his death was occasioned by the narrow space and the relatively small quantity of water in which he was confined. The others died, both of them, at just about the same time — in about forty-five minutes from the introduction of the strychnine. There was no difference in the symptoms in the two animals. I repeated the experiment a number of times.

I have taken part to-day with several gentlemen, including the scientific witnesses in this case, in some experiments upon frogs. A quantity of strychnine (so considered), derived from the stomach of the deceased, in the form of sulphate, by Dr. Hayes, was dissolved in water, and injected under the skin of a frog, which skin was laid open by the kindness of Dr. Ainsworth. Another frog received a solution of commercial strychnine, dissolved in acetic acid, under the skin, in the same way. The two were placed side by side, perhaps with a minute or two intervening between the time of administering it to one and the time of administering it to the other. The twitching and rigidity of the muscles may not have been observable for a minute or two in the case in which commercial strychnine was used, and perhaps a little longer time elapsed with the one that received the strychnine from the stomach of the deceased; but in the course of not more than four minutes (as I was occupied with other experiments, I did not hold the watch), the one that had received the commercial strychnine turned over on its back, andthis was succeeded by

the extension of the limbs and rigidity of the muscles; and the other followed about the same course. I believe they were not quite dead when I left the apartment.

Some other experiments were made in the presence of those gentlemen, with commercial strychnine, with strychnine obtained from the stomach of the deceased, and also with strychnine from a small bottle placed in my hands by the Attorney General [sample from the package from which the prisoner had purchased]. The test to which they were subjected was with the oil of vitriol and bichromate of potash, and they all gave the same succession of colors.

Experiments were also made with some fragments taken from the margin of the spoon, and the characteristic succession of colors was observed. I had previously made experiments with particles taken from the spoon, where there were no crystals observed, and with a portion of substance in the form of crystals. Both specimens gave the same succession of colors.

In commerce, strychnine is sold in the form of coarse crystals and of very fine ones, and usually in small glass bottles. I have specimens that will illustrate it. [Specimens exhibited.] It is used in commerce as a medicine, as well as for destructive purposes.

After I had attached the crystals obtained from the stomach to the glass plate, I weighed out one-tenth of a grain of crystals of commercial strychnine and attached them to a similar plate that they might be compared with each other, and I have that plate here. The two quantities did not differ appreciably from each other. Beside these crystals I judged the quantity in a gummy state to be at least twice as great. This made three-tenths of a grain in one-third of my portion. I estimated that the total amount I had was, therefore, nine-tenths of a grain; which, as I had one-third of the stomach, would make the whole $2\frac{7}{10}$ grains.

In regard to the question of the quantity required for a fatal dose, I can only speak from what is the general opinion. I gave to the bear that I poisoned not more than two grains, I should say, at the outside. The bear was a full-grown animal. It is generally understood that half a grain is a dangerously large dose. It is frequently given in quantities less than the twentieth of a grain. Larger quantities than a half grain have been taken, it is reported, without death being produced. I should not think that two and a half grains could exist in the stomach of a human being without causing death. I cannot conceive of any circumstances in which it could continue in the stomach without producing death.

Cross-examined by Mr. Sullivan.—Strcyhnine consists of car-

bon, hydrogen, nitrogen and oxygen. The formula I cannot tell you. I have not charged my mind with it. I could perhaps recall it in a minute or two, but it might not be right. It is an alkaloid of considerable complexity of composition. I think the amount of carbon is ranked as twenty-one or forty-two atoms, according to its atomic equivalent; but my recollection of the other constituents is not distinct at the moment.

Re-direct. — Strychnine has never been compounded by man, and I have never heard of the attempt being made. Certain bodies of definite constitution have been produced from less complex bodies. I do not believe that anybody can say that the science of chemistry will not be raised to such a point that it can be made; but I do not know of any body so complicated having been made.

Dr. C. C. Tower *sworn — examined by Mr. Harris.* — I reside in Weymouth, and practise medicine. I was called to assist in the post-mortem examination of Betsy Frances Tirrell, last May. At the request of Dr. Howe, I met him at the house, at two o'clock in the afternoon, to assist at the post-mortem examination. On removing the clothes from the body, I noticed some peculiar appearances which led me to suspect pregnancy. I think I asked Dr. Howe if the subject was a married female. I had no acquaintance with her, and did not know. He said not. I then called his attention and that of the other physician to these appearances, which I considered indicative of pregnancy. Afterwards we commenced the examination. The body was opened in the usual way, and the heart and lungs exposed. The heart appeared firm and compact, and round, instead of flat and soft, as it sometimes is. An incision was made into the two cavities, in order to thrust in the two fingers of the left hand to raise it. Then, with the right hand and the knife, I separated the heart from its attachments to the great blood-vessels, and in doing so considerable dark fluid blood escaped. The heart was then examined very carefully. It was cut open and examined critically. The valves and cavities appeared to be perfectly natural, and that was the opinion expressed by all the physicians, — that it was natural; that was my opinion. Afterwards we examined the lungs. The lungs were considerably filled with blood and gorged, especially in the dependent portions, or lower parts, but perfectly crepitant. That is the term that indicates that they are in a state of health. We next proceeded to examine the intestines. On raising the intestines of the lower part of the abdomen, our attention was called to

the uterus, which was very much enlarged. It was then decided to cut into the uterus and ascertain its contents. I did so, and found it to contain a fœtus. We then stopped further proceedings and consulted, and it was decided to do no more at present.

After a coroner was called, and some delay, we were ordered to proceed in our examination. The stomach, intestines and liver were removed and placed in a jar, the jar sealed, and given in the care of Dr. Howe. The brain was also examined in the usual way. The scalp was first cut in the usual manner from ear to ear and brought over the forehead, and by means of the saw the top of the scull was removed. This exposed the membranes of the brain. These membranes appeared perfectly healthy, as far as I was able to decide. These were then cut through, and the brain substance exposed. The anterior portion of the brain — that portion which lies over the eyes — was then raised, and with a knife I reached down as low as I could reach, and separated the brain from the marrow of the spinal column. I made the incision at the second spinal vertebra, and removed the contents of the head. I discovered nothing that I conceived could be the cause of death in the brain, nor in any other organ that I examined. I found everything healthy and in a natural condition, as far as I examined.

I removed the fœtus, and took it home with me, and preserved it in spirit, for the purpose of making a subsequent examination. I made an examination for the purpose of determining what its age was. Several days afterwards — it might have been a week, possibly two weeks, but I think not so long — I took it with me to Dr. Fifield, and we compared it with a fœtus which he has in his possession, the age of which he knew. I also had in my possession, at home, a fœtus, the age of which I knew, and I compared it with that. I also noticed carefully the development of the fœtus with regard to the eyes, the mouth and the organs; and from the authorities that I consulted, I made up my mind with regard to its age. I was also influenced by the appearance of the uterus in the body, and also by the external appearnace of the woman, which I mentioned at first. The result of my examination was that the fœtus was about three months old. It might vary one or two weeks, but I think it would not exceed three months, and might fall short perhaps two weeks.

I divided the brain and sliced it up. It is usual, in making an examination of the brain, to cut it into small slices, in order to ascertain if there is any abscess or disease. I did so in this case.

I noticed that the body was very stiff and rigid. The wrists were tied by a string over the abdomen, and on attempting to straighten one of the arms, I found it very difficult. I found it necessary to place my right knee at the elbow, with my left hand at the wrist, and my right hand between the elbow and the shoulder, and make a forcible extension — so hard was it to be extended. I noticed also that the fingers were bent towards the palm of the hand, and the lower limbs were contracted. The lips were not closed. There appeared to be a slight puckering on one side of the face. My attention was called to that by one of the other physicians, and I stated at the time that I did not know whether it was a natural appearance of the body, or whether it was produced by the method of death, as I had never seen the subject in life.

Cross-examined by Mr. Baker. — The rigidity I speak of occurred to me at the time I made the post-mortem examination, and I don't know that it has ever been out of my mind since. It was a very distinct impression in my mind. I think I have seen as great rigidity as this in other cases, but it is unusual to find such extreme rigidity. I considered this a remarkable rigidity. I came to that conclusion when I made the examination. I had that impression at the time of the preliminary examination at Weymouth. I can't say what I stated there; I don't remember the precise language I used. My impression is, however, that I meant to convey that idea. I don't remember stating that I noticed no remarkable rigidity. I cannot swear that I did not say so. I might have said so. I say now that there was a remarkable rigidity. I don't know that I have any reason to remember the circumstances better now than I did then. I have not talked the matter over with other physicians frequently. I cannot say whether or not I testified at Weymouth that there was no remarkable rigidity in that body. I might have stated there, as I have stated here, that I had seen as great rigidity before. I cannot say any further than I have, that I might have said so, but I don't remember it now. I state these things from the best of my recollection at the time of making my statements. If I made that statement, when I made it, I intended to speak the truth. It was true, according to my knowledge, if I made it at that time. I have remembered the remarkable appearance of the face ever since I made the examination. I testified at Weymouth that Dr. Fifield called my attention to the appearance of the face, and I said that I could not tell whether it was owing to contortions or contractions of the face before death or after; that I did not know but it might be the natural expression of the countenance. But I noticed that there was a slight withdrawal

of one corner of the mouth from the teeth. Presume I did not use the expression, "the withdrawal of the lips," then; I meant to convey the same idea. I might have said at the former examination, that Dr. Fifield called my attention to the face, and I did not find anything unusual in the face. If I said so, it was true.

Re-direct by Mr. Harris. — I was called to make a post-mortem examination of a dog soon after this, by the coroner. A young man of the name of Moses Hawes went with me. He belonged in that neighborhood. The dog was in a pasture back of Mr. Tirrell's house, about an eighth of a mile. The remains of the dog hung upon some bushes in a ravine, a kind of swamp, and the young man pointed out the dog as Mr. Tirrell's dog. The young man has since died — I think within two or three weeks. The dog was what is usually called a black-and-tan terrier; it was quite a small and very slender animal. I would say that the remains were partially decomposed from exposure, and quite freely inhabited by maggots. In the frontal portion of the head, directly above the eyes, in the centre, was a perforation, perfectly round, which I ascertained, from subsequent examination, pierced the skull, which was broken, and there was quite a large opening at the angle of the jaw on the left side, with portions of bone projecting, and my opinion was that the ball entered in front, and came out there. I removed the stomach, which was whole. The intestines were so completely destroyed that I could not remove them. That stomach I gave to Dr. Howe.

Dr. Edward H. Clarke *sworn — examined by Mr. Foster.* — I reside in Boston, where I have been a practising physician for fifteen years, and I am also connected with the Medical School at Harvard College as one of its professors — being Professor of Materia Medica, in which professorship I have been about six years. I have sufficiently investigated the subject of poisons to be able to communicate to the students that come before me every year such information as I think they need in regard to the action of strychnine and other poisons. I have made no special study of the chemical properties of strychnine; we have a professor in the school who attends to that department. I take the subject up where he leaves it. When strychnine is used in sufficient quantities to produce death in the human being, the effect varies according to the dose. Suppose the dose to be half a grain and upwards, — two, three or four grains, — if the individual who has taken it is standing upright, there will ordinarily be in a period of time varying from about ten minutes to an hour and a half or two

hours — usually in less than an hour after it has been taken — a slight shuddering over the whole system; not to any marked degree, but enough for the individual who has taken the poison to be sensibly aware of it. This is ordinarily very soon followed by the patient falling upon the floor, and then going into convulsions, or, if he is not standing, being convulsed in whatever position he is. These convulsions affect all the muscles of the system, — at least, all the voluntary muscles — that class of muscles ordinarily used in moving the arms, hands and body. The convulsions are of a character to produce violent twitching of all these muscles — not constantly, there being intervals of intermission when there seems to be complete relaxation. These convulsions go on with increasing severity and very rapidly. Early in the course of the symptoms, they assume a peculiar character. The contraction of the muscles is such as to bend the head and feet back, so as to curve the body, bending the back up. They are of the same character as other convulsions, only more marked. Then will come an intermission; the convulsions pass off, and then come on again; then there is another interval of relaxation, then another convulsion. While this goes on, the respiration becomes affected; the convulsions affect the breathing so that the breath is held for a long time; sometimes so long as to change the face a little purple, which I have seen in one instance. Then comes the relaxation and a full respiration, and there is then another convulsion. This course proceeds very rapidly until death ensues, usually in the course of three hours. In speaking of the course being rapid, I referred to the rapid course of the case rather than the rapidity of the convulsions. This is a characteristic of poisoning by strychnine — the convulsive action of the whole muscular system, with alternate relaxations, terminating very early either in recovery or death. It is impossible to explain how death takes place, for it is a matter of theory, to a great extent. In some way the strychnine, being dissolved in the blood, is carried through the whole system, and into contact with the nervous centre, the brain and spinal cord, and, in some way, death is produced by the action on the brain. I mean the whole system becomes affected, but particularly that portion of the spine and the muscles which is supplied with nerves, in consequence of this action of the poison on the nerves; but precisely how death is produced, its exact mechanism, is not fully understood. I have stated that half a grain constitutes a dangerous dose. Under circumstances which favor its solution in the stomach, and its ready introduction into the blood, I should regard half a grain as ordinarily fatal.

Question by Mr. Foster. — Suppose a case like this: a young woman twenty-five years old, ordinarily in good health, having spent the evening with her family and friends, conversing upon common subjects, goes to bed, and in about half an hour after she retires the family are awakened and find her in convulsions, in which she exclaims that she shall die; her arms and legs are twitching, her head thrown back, and there is a twitching of the face; — these convulsions are intermittent, one following the other, with a rest between; and in the course of half an hour from the time they commence, death ensues. A post-mortem examination takes place, by competent medical gentlemen, in which the heart and lungs are examined and found in good health; the brain is removed down as far as the second vertebra, and upon cutting that up, it is found in good health. In the stomach is found a quantity of strychnine, to the amount of a couple of grains or more. Would there be *any* doubt as to the cause of death?

Answer. — I should have no doubt in such a case that the death was caused by strychnine. I should suspect poisoning by strychnine upon the circumstances stated before the examination of the stomach, but I should not regard it as proved. There is no peculiar pathological appearance found after death in cases of poisoning. Whether the body would be rigid or the reverse would depend upon the time. Usually, after death by strychnine, the body is flaccid for a short time, but that is not absolutely universal. There is nothing in regard to the condition of the heart that would be characteristic. There is usually some enlargement about the lungs, and some about the heart, but nothing that is characteristic. There would be nothing in the external appearance of the body that would indicate the cause of death.

Cross-examined by Mr. Baker. — The time when this rigidity returns varies in different cases; I cannot answer from my own experience, for in the cases of poison by strychnine that I have seen the patients have fortunately recovered; but the statement is, that in a few hours the rigidity returns, but it is not invariable. I do not remember of any case where the body was thrown forward and the knees drawn up.

Alfred W. Coburn *called and sworn.* — I reside in Boston; am twenty-three years old last January; am out of business just now. Have been in the apothecary business; was employed by Mr. Ellis F. Miller; left his employment Tuesday morning, this week. Mr. Miller's place of business is situated on the corner of Hanover and Union Streets, in Boston. Have been in that store. The last engagement with him has

been a little over two years the first of April last. I was there in the year 1856, another engagement.

Have seen and known the defendant, George C. Hersey. He came into the store where I was employed in the year 1860, the latter part of April. The first time that he came in he bought two or three articles of me, — a hairbrush, I think, and a bottle of perfumery, and one or two other articles — a comb, I think. The bottle of perfumery was an ounce bottle, Lubin's perfumery; I think it was patchouli; I think I stated so before. The wrapper was a kind of bluish-purple, with Lubin's name water-marked on it. Had no particular conversation with the defendant at that time, except in regard to the goods that I sold him. Saw him in the store about a week afterwards, very near the latter part of April, 1860. Don't think it was over a week after the first time he was in. It was between quarter of one and half-past two. Am enabled to fix the date as in the last part of April in no other way than that I was married the first part of May, — the third day of May, — and I know it was a very short time before that. Am enabled by my own knowledge to fix the date as before the first of May. My attention was not called to this visit until I was called upon by the officer.

His second visit was at the same time of day, between a quarter of one and half-past two, because Mr. Miller, my employer, always goes to dinner at that time; he lives out to Medford, and always has to take the cars at that time, and leaves me in the store at those hours. No one else was employed in the store at that time. He came in, and bowed to me, and I returned it. I do not remember the conversation, or how he commenced it; but said he, "I have been in here before," and "I was in here about a week ago;" and he told me that he had bought a number of articles there, and I told him I remembered it. He said he was in the habit of trading where he was treated pretty well, generally, and had come there again; and in the course of conversation we talked about weather, and one thing and another, — it was a very pleasant day, — and after some conversation with me, he introduced the subject of strychnine. He inquired if I had it. I told him that I had; and he, after some little conversation, asked me if I would sell him some. I told him that I was not in the habit of selling it; it was against the rules — against the law — altogether, and I should rather not sell it. I objected to it a number of times after that. I objected to it, and he did not seem to feel at all anxious for it, at least, he said that was perfectly right. But, in the conversation, he introduced the subject again. I asked him what he wanted to

do with the strychnine, and he said he wanted to use it to kill a dog, or dogs; don't know which he said, but that was the idea he gave me, that it was to kill dogs with; said he had had some trouble with them around the house. And after some parleying and talk, I concluded to let him have it; and, at the same time, he referred me to Mr. Whitten, across the way, a hatter, Frederic Whitten; said he was acquainted with him. Have been acquainted with Mr. Whitten a number of years; always bought my hats there; don't know as that had anything particular to do with my letting him have it. I let him have a bottle. He asked for a small quantity, I think, and I told him I should not sell it to him in that way; should sell it to him corked, sealed, and labelled plain; and sold him a bottle. Sold him an eighth of an ounce, one drachm. [A bottle was shown to the witness.] That is like the one that I sold him. That was bought at Reed & Cutler's, I am quite sure; I brought it here and gave it to you. Took that bottle of strychnine into my custody at the time of the examination a year ago. It was on the shelf with the rest, where I got the other one from; and I took and put it away in a drawer. This is like that which I sold him, out of the same lot, bought at the same time.

He asked me, further, how he should use it. I told him to take pieces of meat and make incisions in the meat and put the strychnine in so as to be covered up, or so that it would not be noticed by the dog. And I told him that we had been there a number of years, and never had any trouble from the sale of poisons, and I hoped we should not have any trouble from that; and the last thing he said before he went out of the store was, that I never should hear from that. I gave him directions as to keeping it; told him to be careful what he did with it; not to leave it about where children or any one would be likely to get hold of it; that was one reason why I gave it to him in that form, it was so distinctly marked, so secure. I think I told him the effect of the poison. I think there was something said about the character of that poison, but I cannot remember what.

He told me where he belonged; where he came from, — or, he lived in Weymouth; and that his father did business in Pearl Street, and his name was Tirrell; and said that he was in the habit of coming in — or his father was — once or twice a week, and riding in; sometimes he came by carriage to Quincy or Milton, Quincy or Neponset, and there took the cars in. And he spoke of losing a very valuable horse the night before, I think. He said that he had driven it out that evening, and came home and put him in the stable, and that it

died; I believe he told me he didn't know the cause of his death. He also spoke of losing a sister a short time before that. I do not remember anything more about the sister than that I think he said that she died rather suddenly; I think he did, — I don't remember.

My attention was first called to this sale of strychnia, after that, by the officer that came into the store one afternoon about three weeks, I should think, after this. Cannot name the day when the officer called. It was detective officer John Dunn. He brought the ambrotype, and showed it to me, and asked me if I had ever seen that man before, — an ambrotype of Mr. Hersey. I looked at it a moment, and said I thought that I had. He told me to be sure. I looked again, and told him that I had seen it. He asked me if he had ever been in the store. I told him he had. He asked me how long before. I think I told him three or four weeks — I was not sure. He asked me what I sold him; and I told him I didn't know as I could remember just then, but I thought, then, that I sold him some toilet articles and perfumery, or something of that kind. Then he asked me if I had sold him any poison. I told him I had. At that time it came across my mind that I had seen and noticed this case in the papers. It was the first intimation I had, in regard to the case, that I was in any way connected with it at all.

After I recognized the picture, the next day, I think it was, the next noon, I was summoned to come here to Dedham to identify him. I came out with one or two officers, and went into the jail. The keeper of the jail had arranged the prisoners and the keepers in the jail so as to deceive me as much as possible, I suppose; I told him they had better; I was quite confident that I could recognize him if he was there. I passed into the jail, and down by quite a number of cells, till I came to the last cell on the corridor; and I instantly recognized the man in that cell as being the man that came into my place. It was the defendant. Before I went in there I had never heard his name, except as he told me what his father's name was; I understood from him that his name must be Tirrell if his father's name was Tirrell. After I had recognized the prisoner in the jail, I passed back into the rotunda of the grand hall in the jail, among the officers, and he came out of the cell, and as he came out into the hall I stepped up and spoke to him, and offered him my hand, and he shook hands with me, and I said, "How are you?" and he seemed not to know me, and I said, "I see you don't recognize me," and that I had met him before, in Hanover Street; and he said, "What is your business?" I think that is the only question that he

asked me. I told him my business was an apothecary, and where I kept, on the corner of Hanover and Union Streets, and that I had seen him there, and described the store to him; and he said that he didn't remember the place or me. During this conversation he appeared to be quite confused. After asking me that question he dropped his eyes on the floor, and he had a toothpick, and he seemed to be quite excited and nervous; and I don't think he looked up again after my speaking to him. Mr. Tirrell, — Albert Tirrell, I think it was, — that was with me, spoke to him, and talked to him some little time; but I don't remember any answer that he made to him. He was the only one with me at the time.

Cross-examined by Mr. Baker. — It was the next day after the officer showed me the daguerreotype that I went to the jail, I think; it was very soon after — might have been two days. I had read an account of this affair at Weymouth, in the papers, previous to seeing the daguerreotype, but not knowing that I was connected with it.

The first time I ever saw Mr. Hersey was in the latter part of April, it might have been the third week. I have no way of setting the time definitely, only by knowing that it was some little time before I was married. I only state it as about the time. He might have been in the store half an hour, perhaps, the first time; I wouldn't swear it was over fifteen minutes, or ten minutes; would swear that he was there five minutes; couldn't say that he was there six minutes; shouldn't want to swear to ten minutes. There might have been something more of conversation than is usual between customers and a trader; don't remember anything now. I think he gave me no name at that time. He came in about one week after that, again. Didn't recognize him when he came in, at first. Set that time because he told me that he had been in there about a week before. Did know that he had been in there before, but could not have known how long before if he had not called my attention to it. First fixed the time at the examination out here. I think the examination at Weymouth was the last of May; I stated the time there, as being four weeks from the Tuesday before. Might have fixed it as five weeks before the 22d day of May, being the day I went to Dedham. Think I did state, at that time, that that was all the data, the only point of departure, by which I could set the time when he came into the store.

Question. — Then this matter of fixing it by the marriage is entirely an afterthought — since that time?

Answer. — I know, now, that it was at the time before I was married; I do not pretend to date from that time; I do

not pretend that has got anything to do with it. I knew at the time that it was before that, although I did not then fix any time from the date of my marriage. I was married the third day of May, Thursday night.

Q. In what particular way do you identify this defendant as being the man that was there in your store?

A. Well, in the first place he is a peculiar-looking man; you very seldom see a man that is exactly like him. I think my identification at the jail was sufficient; would have been willing to swear that it was the man. He has a peculiar eye. When he was in my place he had black side-whiskers; don't think he had any hair at all on his upper lip. At the jail his face was shaved clean. There is no other particular identification that I know of. In my testimony I described his dress, I think, as dark clothes; I did not identify him by his clothes, but by his face.

When officer Dunn came into my store, he showed me an ambrotype, in the first place, and asked me if I had ever seen that person. I told him I thought I had. I think he asked me to look at it again, and be sure, and I did, and told him I was pretty sure I had seen him before. He asked me, I think, then, where or when I had seen him, or if he had ever been in the store, — where I had seen him, I think, — and I told him I had seen him in the store. He asked me if he had ever bought any poisons there, I think, and I told him that he had; and I don't remember whether he asked me if he had ever bought anything else, but I told him that he had bought other things there, — toilet articles. I think he named two or three kinds of poison; asked me if I had ever sold him any strychnine, arsenic, or any other deadly poison; I think those were the words that he used. I told him that I had sold him some strychnine. I suspected, then, that there was some trouble, because I remembered reading in the paper, a short time before that, an account of this Weymouth case. That was the first that I knew that I was anyways connected with the case. I think he told me, then, of this case; or I might have got the idea from reading it before. I think he exchanged a few words with me after he got through, and then went out; he stopped but a few minutes. I think he came in again that evening, and told me he should want me. I think he told me whose daguerreotype that was. When he came in in the evening, he told me that he should want me to go out to Dedham to identify the person, I think the next day or the day after; he set a time for me to be at the chief of police's office, and I was there at the time. It was High Sheriff Thomas and Mr. Albert Tirrell who came to Dedham with

me. When I went to the cell in the jail, Mr. Tirrell was standing with Mr. Thomas and the keeper; there were two or three standing at the entrance of the jail, inside of the door across the hall. I went to the cell alone. I asked where I should go; and they told me to go anywhere where I wished; that was the only direction I had. I passed down one side of the jail, and came up and passed down the other, before I found him. I think I passed perhaps a dozen cells or more.

Kept no record of the sale of this strychnine. It seems I did not object to selling it to him without recording it because *that* was against the law. When I sold the package, it went in the same shape as it is in the bottle,—as it is now,—done up in that very form; the wrapper was similar to that,—a perfect one. The wrapper was sealed; did not break the seal; sold it just as it was. The price of a bottle like that is seventy-five cents. The wrapper upon that bottle which I sold was pink,—just exactly like that; that is one of the same lot.

Was acquainted with Mr. Frederic Whitten.

At the time Mr. Hersey was in my store, there was no one in the store. An officer came in through the store,—merely passed through,—asked me a question, and passed out. It was John C. Warren, police officer in Station One. Am not certain whether it was the first or second time. Mr. Warren had no particular business in my store; he is in the habit of coming in there every day, or to leave a package, or an umbrella, or something of the sort; our store is on his beat, and rather than go down to the station he makes that his headquarters.

John C. Warren *sworn*.—I reside in Boston. Am not in any business at all now. In the month of May, 1860, I was on the police of the city of Boston. Was in the store of Mr. Miller, at the corner of Hanover and Union Streets, almost every day,—some two or three times a day. Am well acquainted with Mr. Coburn, the clerk. I recollect seeing the defendant twice in that store. Saw him there, I should think, somewhere the last week in April, a year ago, or the first of May,—I won't be certain which. The first time I saw him he was sitting to the show-case that runs from the left-hand side of the door as you go in, very near the end, looking at some brushes. I spoke to Mr. Coburn, who was behind the show-case at that time; asked him if Mr. Miller was in, or if Mr. Rowell was in; Mr. Rowell was my partner on Hanover Street. Passed through the door, looked in at the window,

and went out on Hanover Street; on that occasion he was standing in front of the other corner, — in front of the door that goes out on Union Street; Mr. Coburn was behind the counter, I think. I did not hear any conversation between them at that time. Didn't stop, I suppose, more than a minute; went right through from one door out to the other street.

I am able to determine now that this Mr. Hersey is the man I saw there on those occasions; I took particular notice of him at that time by the appearance of the man in his face. I never have seen him since, until I saw him at the jail.

Don't remember ever seeing him before, except those two times that I saw him in the store.

Cross-examined by Mr. Baker. — I fix the time when I saw that person in the store by referring back from the time that the question was asked Mr. Ham by Mr. Dunn in relation to the miniature. Did not see the daguerreotype at that time; I did afterwards, at the office; did not go there on purpose to see it. I heard about the daguerreotype either from Mr. Coburn or Mr. Dunn, I think. When I was told that it was the daguerreotype, Mr. Ham, the chief of police, asked me if I could identify the person if I should see him. I told him I could. Don't know anything about his purchasing poison, except what I heard. Knew nothing more about the rest than what I saw myself in the store at the time he was there. First heard of the case, I think, when Mr. Coburn spoke to me about it, after Mr. Dunn had seen him. I couldn't say what time that was; I know it was some time after; it may have been a month, or two months, — I can't tell which. I never paid any particular attention to it, or had my attention called to it, any further than seeing the miniature. The reason that I cannot fix the time from that date forward just as well as back is because I never took any interest in it, and didn't think I should ever be used as a witness. I recollect seeing the party there, — that is all. Don't know that I have any particular interest in fixing the time when I saw him.

Mr. Coburn asked me if I recollected seeing that party there; I told him that I did. What made me take more notice of the man, he looked something like a young man by the name of Allen, that was in the police some time ago, and who drove a mail wagon on the Providence road. He is now dead. He has just such a cast in the eye as he had. When he first turned his head towards me, when I passed him at the door, I thought it was he. His whiskers were red; this man's were dark at that time. That is the reason I set out to speak to him, and looked at him, and passed right through, seeing that it was not who I thought.

Am not now on the police. Left the 22d of last month. Was not discharged. I resigned.

Loring C. Tirrell *called and sworn.*— Live in Boston. My native place is Weymouth. Am not a relative of the deceased, Betsy Frances Tirrell. Have lived in Boston about two years. Know Mr. George C. Hersey; have known him two or three years. Have never had any conversation with Mr. Hersey, at any time, about any matter connected with this case.

Know Alfred W. Coburn, the witness who has testified. Have known him about two years. Have had conversation with Mr. Hersey about him. Mr. Hersey came into my store in the month of April, I should judge, about nine o'clock, and staid there till about eleven, or half-past. I couldn't say as to the exact time, — a year ago this last April; I couldn't say what particular month. He left the store about half-past eleven, I should think; was gone about an hour or an hour and a half, and came back. I asked him where he had been. He said he had been out, "cruising around," purchasing things for a girl; told me he had been at the corner of Union and Hanover Streets, purchasing articles there. I couldn't say positively what he purchased; it seems to me he told me he bought a comb, a brush, and some perfumery. I think the conversation passed off to something else; I don't remember anything more. As to my knowing that store at that time, I told him that I knew Mr. Coburn. Am sure he mentioned the corner of Union and Hanover Streets. He remained there, I should judge, till about three or half-past three o'clock. No one was with me in the store at this time. I was at that time in the employ of S. W. Thayer. Mr. Thayer was then at the auction. I and Mr. Hersey were alone at that time.

Cross-examined by Mr. Baker. — Could not say whether this was in the early or latter part of April. I should judge it was about between eleven and twelve that he went out of my store. I should judge he was gone about an hour or an hour and a half.

Frederic Whiton *sworn — examined by Mr. Harris.* — I keep a hat store. My place of business is at 143 Hanover Street, Boston. I keep on the lower corner, on the opposite side from Mr. Ellis F. Miller's, — not directly opposite; his is on the upper corner, I am on the lower corner.

Know George C. Hersey, the defendant. Have known him a good many years. He has been a customer of mine for

several years. Saw him during the month of April, 1860. I think he was in my store on the 18th day of April. He came in with a gentleman to get a hat fixed. I think that he was in there on the 18th — from the 18th to the 24th, sure. If he came in on the 7th day of April, the hat was finished on the 22d day of April; if on the 17th day of April, which would have been Tuesday, the hat would have been finished on the 20th, on Friday; but, not coming in on the 18th, it had to lie over for one week. I have it from the date of my book that the hat was finished on the 27th. I consulted it last Saturday. The hat was taken away on the 2d of May. For other means of determining the time when Mr. Hersey was in the store, — he spoke of being unwell, being dull, and thought of going away. He spoke of going to Pike's Peak. I referred him to a gentleman by the name of George West, who at the time had an advertisement in the Boston Herald, advertising to take passengers out to Pike's Peak. That advertisement was published on the 17th day of April, Tuesday, for the first time. It read, three insertions, "3t." Had seen that advertisement before. I saw Mr. Hersey that day. When he spoke of going to Pike's Peak, I told him that a friend of mine was going, and that he had advertised, and I told him where he could be found.

The hat was fixed for the person who came in with Mr. Hersey; his name was Albert Tirrell, 2d. Saw him in the court-house this afternoon, in the ante-room.

Cross-examined by Mr. Baker. — Have known Mr. Hersey a good many years. He came from Hingham. I am a Hingham man myself. Have always known the family. His general character I always supposed was good. When Mr. Hersey was in my store he had a beard, and no moustache; the rest of his face was full whiskers. Never saw him afterwards — after that.

Francis Ambler *sworn — examined by Mr. Harris.* — I reside in Weymouth. Am a clerk for Mr. A. S. White, apothecary. Have been in his employ about fourteen years. Am acquainted with Mr. Hersey, the defendant. Am acquainted with the family of Mr. Wilson Tirrell; I used to know all of them. Have never, at any time, sold to Mr. Hersey, or any member of that family, strychnine. Since I have been at Weymouth I have sold strychnine perhaps a dozen times. Have a memorandum, showing all the sales that were made. Have sold it to no member of Mr. Hersey's family. Have sold to Mr. Hersey soda and cigars — nothing else that I recollect of.

ALBERT TIRRELL, 2D, *sworn — examined by Mr. Harris.* — I reside in South Weymouth. Am the son of Kingman Tirrell. Reside at my father's. Am a single man.

Know Mr. Hersey. Was with him at Boston, at Mr. Whiton's hat store. Couldn't state when it was, exactly. I went in with him and left a hat there to get fixed over. I know, positively, that when I took the hat it was on the 2d of May; and I think it must have been the Wednesday before that, or the Wednesday before that, that I carried the hat in. Went into Boston with Mr. Wilson Tirrell and Hersey, — in a light wagon, I believe, — from Quincy. Think I was with Mr. Hersey that day in several places, in and out. After leaving the hat store, I think we went into several places together, where they kept furniture, and, I think, into a daguerreotype saloon; and he got a daguerreotype taken. I think it was that day. Couldn't say what time of the day I parted with him. After having separated from him, there is nothing that I could tell about it. Whether or not I came home to Weymouth that night, I couldn't say; think I must have come home, but there is nothing directly that I could tell from. On the 2d day of May I called at Mr. Whiton's store and took the hat. Was then from New Hampshire; couldn't tell positively how long I was then absent in New Hampshire; it might have been four or six days from the time I left Boston till I got back.

Was acquainted with Mr. Tirrell's dog; it was a very small one; I think it was a kind of light grayish, something of a reddish cast. Last saw it some time not long before Frances died. Don't recollect hearing any conversation made by Mr. Hersey about that dog.

Saw Mr. Hersey on the night of Betsy Frances' death at Mr. Tirrell's house, not far from ten o'clock. I was called there about that hour from my father's house; went directly there. Had conversation with Mr. Hersey that evening, in the porch-room, or kitchen. When I first went into the room, he was in the porch, along with my brother, Austin Tirrell, and I turned to George, and said, "There is something strange here, it seems to me," said I; "here are two dropping away so suddenly." And I told him there ought to be an examination; and he spoke as though it wouldn't do any good, — I don't recollect the language he used, — and he referred to Mr. Nathaniel Shaw, who had recently died and been examined. He remarked that the doctors found nothing, and he gave me to understand they never find anything. And he also stated that it was "regular butchery," and no money would hire him to sit and see a friend of his opened. Then I remarked that it could not be stoppage. He seemed to think that it might be stop-

page. And said I, "It don't appear to me it can be stoppage, because," said I, "she was apparently, as far as I knew, as well as she had been, and when she went to her room she turned to the family and asked them what it was best to have for breakfast. She appeared well, and expressed enough to show that there was no stoppage;" and said I, "In about thirty minutes, or half an hour, she was a corpse." And George, to that, said, "What do you know about it?" Said he, "The doctors ought to know:" and at that I left. I felt somewhat astonished. I believe that was all that was said then; there might have been something more said. I saw him during the evening once or twice at the house; but I believe I had no conversation with him whatever. I saw him the next day, at my father's house. He was talking with several of the family on the subject of post-mortem examinations, and expressed an unwillingness to have her examined. He sat in a corner, and finally he got up; and said I, "George, you do wrong in not being willing to have her examined; it cannot do any hurt — cannot hurt her. If I were taken away suddenly, and it was thought necessary for the public to have me examined, I am perfectly willing." He replied that it was regular butchery, and other remarks concerning Nathaniel Shaw. My mother was present, and there were several others. I could not be positive who they were. My mother is now at home. When I left she was very feeble, — confined to the bed most of the time. She has been confined to the house ever since I can remember. She is now more than she has been.

Cross-examined by Mr. Baker. — Came into Boston with Mr. Tirrell and Mr. Hersey. It was somewhere not far, probably, from the 18th or 24th. I think it was about eight or nine o'clock; from Quincy. Cannot tell exactly how long I was with Mr. Hersey. Went into the places where they sold furniture, — for nothing in particular. He didn't seem to have much business; and I didn't, the first part of the day. Couldn't tell whether I was with him at twelve o'clock, or thereabouts. I think he went out with me. Think that I met him at Mr. Wilson Tirrell's store in Pearl Street, — am quite positive that I did; — have no recollection as to what time, only that it was the time that we usually went out. Went in with him several other times.

Knew Mr. Wilson Tirrell's family very well; was quite intimate with them; visited them frequently. Have not been in since Mary died; before that, quite often; I felt quite lonesome after she died; it seemed quite gloomy; I didn't go in, perhaps, so much as I ought to. Mr. Wilson Tirrell at that time was in the leather business. Couldn't say whether he is

a wealthy man; he is supposed to be worth something, — couldn't say how much; he may be worth ten, or he may be worth a hundred thousand dollars.

[Evidence as to the wealth of Mr. Tirrell objected to, on the ground of immateriality. Objection sustained. Inquiry permitted as to his general reputation for competence and social position.]

Do not know how much he was reputed to be worth. Have lived in the second house from his all my life.

JAIRUS VINING *sworn — examined by Mr. Harris.* — Reside in Weymouth. Am the husband of Mrs. Mary T. Vining, who has been a witness here to-day. Have always lived in Weymouth since I was born, — within speaking distance of Mr. Tirrell's house.

Have been acquainted with Mr. Hersey. Knew him, I should think, somewhere in the neighborhood of three years before Frances' death. Had no conversation, that I know of, at or about the time of her death, with George, about her death, except, perhaps, speaking several times about her being low-spirited, and didn't know but she would make away with herself, — or something like that. Couldn't say how many times I heard him make that remark. Was in the house the night of her death; was not in the room; was the second person that was called into the room; my wife was before me, and I was in two minutes after her. Mr. Hersey called me; he came into the back part of the house, and spoke to me, — halloed for me to get up and come to Mr. Tirrell's as fast as I could, — Frances was in a fit and dying. Went over, and found him harnessing a horse, he and Mr. Tirrell, at the door. They told me to go into her room, and I went there. When I went there, she lay, I believe, on her left side, and drawed up occasionally, and straightened out. I held her head by spells. My wife spoke to me to do it, for fear she would break her neck off. I stood by the bed, I should think, about ten minutes. I stood at the back part of the bed, and my wife was at the front of the bed. I took no other position while I was in there. The cords of her neck were very much risen, — all muscle, strong. Didn't notice her back. She moved her legs occasionally, and drawed them up and straightened them out with great force. She did not speak while I was in the room. Left the room before she died. Went down below, and as soon as she was in another spasm, they halloed to me to come back again; and I went back directly, and soon after I got back Miss Richards came in, and I went below then.

Mr. Hersey was not in the house till after her death, I

think. Saw him that evening; saw him standing in the sink-corner of the kitchen first. Heard him make no explanation, or conversation of the circumstances of her death. I asked him, next morning, what he thought ailed her; said he, "I don't know; I was the last one that saw her that evening, and the first one that found her, — found her sliding a little from the bed." He said that some one spoke to him, — he heard some one say "George;" he thought, first, it was the boys in the street; soon heard it again, and immediately got up and went in there, and found that she was in that situation. He described to me that he could not tell what ailed her, or anything about it. He said he found her sliding a little from the bed, and moved her on to the bed, and she spoke to him; and he said she was "stiff as a rail" — the words he made use of. He did not state to me what he then did. He said that she came to his room when she went to bed, and spoke to him, and asked him how his head was. I think I have stated now all that I can remember of his story. I do not remember that I heard him say anything about taking hold of her hand.

I saw Betsy Frances about two hours before supper that night; I think I was at work in the front yard, and she came up to the gate, and had her little sister, a child, with her, and stood there talking with me about half an hour; she seemed to be the same as usual. She spoke to the little girl as she came up, and asked if she didn't want to go into the house and see aunt Mary. All her conversation I could not recollect.

On the Saturday of the post-mortem examination I last conversed with Mr. Hersey in Mr. Wilson Tirrell's stable. I asked him what he thought they would find was the matter with Frances; he didn't know, and didn't seem to speak very favorably of their opening her. He said he should not like to have a friend opened. He said that he didn't think they would find out what ailed her. Don't remember any other remark that he made. Never saw him after that.

Cross-examined by Mr. Baker. — I should think it was in the neighborhood of three years that I have known Mr. Hersey. He boarded with me, I should think, more than a year. I didn't know anything about his character, any way, against him or for him. I know nothing against him while he boarded with me, in the house; as for being rather kind than otherwise, he was about the same as other people are in the house; I didn't know anything about him any way; didn't go in company with him, of course, being so much older than he was; didn't know anything against him.

Question. — Rather industrious, prudent?

Answer. — Yes, sir, he was a hard-laboring man.

Was very well acquainted with Frances; had known her about ever since she was born, I should think. The state of her health, as far as I know, the last few months before her death, was about the same as always; she was always very thin and spare. Had noticed a sadness about her a short time after her sister died; had heard it spoken of that she seemed rather melancholy at that time, — spoken of in my house. Whether the relations between her and her mother-in-law were pleasant, or otherwise, I don't know. I never heard them speak against each other, myself. Never had conversation with Frances in relation to it, in my house or her house.

The social standing of Mr. Wilson Tirrell was very good; I believe he was always considered a very respectable man; a man of competence — a man of reputed property; he had property.

Wilson Tirrell *sworn — examined by Mr. Harris.* — I reside at Weymouth. I am the father of Betsy Frances. She died the 3d of May last.

Mr. Hersey became a member of my family about four months — between three and four months — before her death, just about the time of the death of my other daughter, Mary. I gave him, I think, an invitation to come, to become a member of my family. He remained there, upon my invitation, until after Frances' death. During that period of time, no other gentleman, except myself, was living at my house. Frances was not in the company of any other gentleman except Mr. Hersey during that period of time, so far as I was in a condition to know. I was off and on, sometimes doing business in Boston, at that time; was not in town every day; had a small manufacturing establishment at home; was always at home nights — there were some times that I was not. When absent from home was in New York part of the time; I went there once in a while; used to be gone there sometimes two days, or something like that. Do not remember how many such trips to New York I made during that period. When not in New York was always at home nights. When at home evenings I always, or generally, saw my daughter Frances; she was pretty much always there. During that time, Hersey and my daughter sometimes went together away from my house, sometimes came together to it; sometimes she went off to the meetings — religious meetings — no other meetings that I know of. My small daughter sometimes accompanied Mr. Hersey and Frances to the meetings; I did not go; I don't know whether my wife went or not.

Mr. Hersey and my older daughter, who died first, were engaged to be married. It was so understood in my family. That was the reason of my invitation to him to visit my family, to stay with me.

Was at home on the night of her death. Was at home when they went to get my wife; saw them return. Remember of Mr. Hersey going to bed. As he went to bed I asked him if he was going to bed. He made the reply that he had a headache, and was going to bed early. After Mr. Hersey went to bed, the last thing that passed between me and my daughter that evening was her asking me what I was going to have for breakfast in the morning. I don't know who replied to that. I remember asking her to go to a circus; she replied that she wanted to go; I promised to carry her the next day, if I could. Do not remember of seeing her read a newspaper that evening. Was in the house all of the evening, after they came back from Mr. Blanchard's. Do not remember any other matter of which she talked after her return.

Owned a dog prior Frances' death. I think Mr. Hersey once spoke to me about having it killed; don't know what he said about it. It was a black-and-tan dog, a terrier, a small dog. I think I gave him permission to kill it. Didn't know when it was killed. Don't know how long it was before Frances died that that dog disappeared. Don't know exactly what Mr. Hersey said about killing the dog; he said something, but I don't recollect exactly what it was. Did not hear him say anything about shooting it.

I have three children now: Wilson, my son, Susan Hersey, and Louisa. Louisa is half-sister to the other children.

Cross-examination waived.

Wilson Tirrell, Jr. *sworn — examined by Mr. Harris.* — I am a son of the last witness, and a brother of Miss Betsy Frances. At the time of her death, I resided about a quarter of a mile from my father's — an eighth of a mile. Was in frequent communication with the family. Saw my sister quite often, generally every day. Saw Mr. Hersey quite frequently. Was present at my father's house during this period, from January to May, once or twice. Hersey was at my house perhaps once or twice a week. During this period, did not see my sister with any other gentleman than Mr. Hersey. Saw them when they went out together; remember of seeing them go with each other in the evening a great many times; saw them at evening meetings — religious meetings. My sister was not a member of the church. She was constant in her attendance upon such meetings; always has been a constant attendant of

religious meetings, — more so of late because they have held evening meetings more there. Don't think, just now, of her going to other places — places of amusement — during that period of time. I recollect Hersey's going up to my sister Susan's along with my sister, a number of times, usually about dusk; have met them there together. I lived at that time at the same house with my sister.

Was in my father's house on the night of my sister's death. Was present in the chamber during her last moments. Was there when she died. Saw Mr. Hersey in the sitting-room that evening, after I came down, and told my father that she was dead. Did not have any conversation with him. At no time after Frances' death did I have any conversation with him. Think I saw him on the Saturday after the post-mortem examination. I saw him from the kitchen, the middle room, before the calling of the jury — at the time of the calling of the jury. Had been informed at that time of the condition in which my sister was found. Did not then speak to him. Gave no order or direction with regard to him. I never gave any orders to him, directly. My uncle, I think, ordered him to leave the house; am not positive whether it was my uncle James or Alfred.

I remember about the dog which my father owned; know about its being put out of the way. Do not recollect of hearing Hersey say that he killed the dog; recollect of hearing the neighbors say so. I remember the time when the dog was killed; went up to see it. He was about an eighth of a mile back of the house, in the pasture, among the thick bushes. His color was mostly black, I think; there was some tan about him. Didn't know how the dog was killed. I couldn't say whether or not I heard Hersey say that he shot him; am not positive.

Cross-examined by Mr. Baker. — Have known Mr. Hersey I should think eight years. His relations with my father's family seemed to be kindly. His general character was good as far as I know. He remained in the family after Frances' death till the post-mortem examination. Think he left Weymouth Sunday morning. After the result of the examination became known, Saturday afternoon and evening, there seemed to be considerable excitement in the neighborhood. There were not a great many there I think.

Question. — Do you know whether or not Mr. Hersey was obliged to leave the town?

Answer. — He was obliged to leave the house. Don't know that he was obliged to leave the town. Don't know whether or not he was advised to run away; never heard anybody give him any such advice.

Martha C. Vining *sworn — examined by Mr. Harris.* — Reside now in South Weymouth. In May, 1860, I resided in Hingham. Mr. Jairus Vining is my father-in-law; I married his oldest son. Was living at that time in Hingham.

Was acquainted with Betsy Frances; have seen her after the death of Mary, before her death, at Mr. Jairus Vining's. I think I saw her about a week before her death. I thought she appeared very sad. She stayed but a few minutes. She told me that she had not been well the week before.

Saw Mr. Hersey immediately after the death of Frances. He called at my father's house in Hingham immediately after her death. He was living there then. He came, he said, to inform me of Frances Tirrell's death. I went to the door, and he informed me that she was dead. I was very much surprised. I exclaimed, "Why, George Hersey! is Frances Tirrell dead? What was the cause of it?" He told me that she died in a fit. I believe I asked him the particulars. Cannot remember any portion of what he said in reply, after that. He told me he was going to his mother's. I told him I should like to see his sister; I was very well acquainted with her, — that I should like to see her and see what she said about it. He told me he was going down there and was coming right back by the house, and asked me to ride down. I got ready in a few minutes, and went with him. On the way, I talked with him some. Do not remember that he gave me any particulars of her death. I was not talking with him after I arrived at his mother's. Cannot remember any conversation with him in which he related to me the circumstances under which she died. While I was riding with him he spoke of her fine new dress — she came in and asked him how he liked it, and he thought it was very pretty; — she said she didn't know as she should ever live to want it. He said he had been trying to have her come over to his mother's and sister's, — they were of a lively turn, and he thought it would make her feel better. He said they thought some of having Frances examined; he did not approve of such things; he didn't like to have any friends of his cut up in that way. Don't remember that I said anything to him about it myself. My mother made a reply to him; she said it was hard, she knew, but in some cases she thought it was better to know what was the cause of deaths. I don't remember that he made any reply to that.

Edward Lewis *sworn — examined by Mr. Harris.* — Weymouth has been my place of residence for years back. It is not my native town, but I have resided there perhaps twenty years. Was a shoe-cutter while there; labored during the year 1860 for Nathaniel Shaw & Co.

Knew Mr. Hersey there; worked in the room with him. When he first came there to work he ran a stitching machine.

Heard of the death of Frances and Mary Tirrell. Did not know them. Had conversation with Mr. Hersey with reference to poisoning, before the death of Frances; some, I should think, a few days before her death. Was in the shop, as usual, at the time; a part of the time at work, and a part of the time talking to him. Winslow M. Reickarts was with us at the time; none other, that I saw. Laudanum was spoken of. I think there was some talk, at this time, in regard to the general appearance of arsenic; but don't recollect whether I had anything to say in regard to it. Think Mr. Reickarts took part in the conversation. We were speaking of laudanum, I think, as a medicine. I recollect saying that it was not considered safe to take a full dose oftener than once in eight hours, or something to that effect. Both of them, I believe, spoke of newspaper accounts of people having taken large doses of laudanum without causing death. He asked me "how much it would take." I said, "What, to cause death?" I understood him that he meant so; told him that I didn't know. He asked about the effect that it would have; I told him I thought drowsiness, or numbness, or something like that. He asked if I knew how strychnine operated. I told him that I did not, any further than that it was quick in its operation. Recollect telling him of a painter I had seen who was taking it to counteract poison he had contracted in the use of paint. I referred to a gentleman I had met on board a steamboat, who had lost the use of his limbs. I can't tell how much I told him in regard to it. I recollect saying that Professor Webster took strychnine while on his way to jail, but, owing to the excitement that he was under at the time, it did not have its usual effect. I recollect nothing said about the quantity of this particular poison, strychnine, it would take to produce death. Nothing that I remember was said of any other poison. Remember his speaking of being in an apothecary shop or somewhere. He spoke of a man trying to buy some laudanum in some apothecary shop, or store. He said that the person in charge of the store, who had it for sale, asked this man what he was going to do with it, and that the man gave an unsatisfactory answer, — or rather that was the impression that I got from what he said, — and he wouldn't let him have it; afterwards, that this man said he wanted it for the ear-ache. He told me what happened after that in the apothecary shop — I think, that he had some conversation there. He said this fellow said that he had to be very careful about selling — I think it was — "such things," — some-

thing about a prescription from a physician. He spoke about somebody buying some arsenic for rat-poison, I understood in the apothecary shop in South Weymouth; the name impressed upon my mind was Derby. Think he said that after this person went out he said something to this Derby about people sometimes making a bad use of such things, and that he replied he usually let people have such things, for that if a man was bound to kill himself he generally would find a way to do it, — or words to that effect. He said some doctor had said that arsenic was the worst stuff a person could take — I think "to kill themselves." When he spoke about that man in Boston, I said I bought a tincture of opium, which was stronger than common laudanum, without any trouble. He said that I was known to the person I bought it of, and asked me if I didn't buy it of the doctor, saying that he knew me and knew that I would make a good use of it. I think I didn't introduce the matter of poisons myself, on the two days of those conversations. I have heard Mr. Hersey relate some circumstances attending Betsy Frances' death. Think he said that he ate some lobster for supper, and went to bed early; that he fancied he heard his name called; that he got up, I think looked out of the window; thinking that he was mistaken, laid down again; pretty soon he heard his name called again. He said the little girl, who slept with her sister, wanted he should come in there quick — her sister was in a fit; that he went in as quick as he could, rubbed her stomach, — I think, — went and called the old folks, then went for the doctor; that she was dead when they returned. I think I heard him say, in answer to a question, that he didn't know that this girl ate any of the lobster for supper.

Heard conversation about Mr. Tirrell's dog. It was before Frances' death. In substance, he said he shot it, saying that he stood somehow, and "let him have it."

Cross-examined by Mr. Baker. — Worked in the shop with Mr. Hersey about two years and a half, I think. His character, so far as I knew, was as good as any one's in the shop, certainly. He was generally liked among his shopmates; so far as I know, pleasant, agreeable.

Those conversations in the shop were common conversations between workmen; all who were present might hear if they were listening. I think, upon reflection, that I must have introduced the conversation about laudanum at some time previous to these conversations. In relation to the second time, I don't recollect any particular newspaper account which called attention to it; we were both speaking of having seen such accounts. It was a mere casual shop

conversation, the last conversation which we had after the death of Frances.

I have given his statement about being called the first time, and looking out of the window, as near as I can recollect it.

Spencer C. Gurney *sworn — examined by Mr. Harris.* — Live in South Weymouth. Work in the cutting-shop. In May, 1860, was employed at Nathaniel Shaw & Co.'s, at South Weymouth. Mr. Hersey worked in the same shop at that time. Heard him and Mr. Lewis talking of some kind of poison; it was opium or tincture of opium; don't recollect the particulars. I couldn't tell how long before the death of Betsy Frances this took place; should think it was a few weeks.

Think I heard Mr. Hersey say that we "shouldn't see the old man's dog," — or something like that, — he had put him away. Think he said he shot him. Am sure that I heard him use the expression, "old man," frequently; it was common with him in speaking of Mr. Tirrell.

He came into the shop the morning after Betsy Frances' death, and I remember asking him what the trouble was there. He said, — "That is what we should like to know." He gave an account of being called up and calling her mother. Think Mr. Lewis was present. He said he didn't feel very well that night, went to bed earlier than usual, and soon after he went to bed she (Frances) came along, spoke at the door, and asked him how he was, and he told her he thought he should get to sleep, and should feel better, and went to sleep; he woke up out of sleep, and thought some one called his name; he rose up in bed, and heard children playing in front of the house, and supposed it was the children, and lay down; had lain but a moment before he heard the call again. He got up and called the parents, and he went for the doctor. That is as I remember it.

Cross-examined by Mr. Baker. — Have known Mr. Hersey, I think, three years last January. I worked in the shop with him after he came till after this affair took place. It was two years, as near as I remember. I knew nothing against him as a man. I very seldom saw him out of the shop. In the shop he was a good shopmate, pleasant, agreeable, liked by his shopmates, as far as I know. I always thought he was very industrious. His general character for humanity and kind feeling I always supposed to be good.

Adjourned to 9 A. M. of Thursday, May 30th.

THURSDAY, May 30, 1861.

The Court was opened at 9 o'clock, and the trial proceeded.

FREDERICK S. TORREY *sworn — examined by Mr. Harris.* — I reside in South Weymouth. I am acquainted with Hersey. I was a shopmate of his at Nathaniel Shaw & Co.'s. I have known him since the last of December, 1857. I heard some conversation in the shop, in which he took part, about poisons. I cannot state the time exactly. It was some time before the death of Betsy Frances; not a great while. I heard him state that he was in an apothecary's shop in Boston, and a person came in and asked for some poison. The apothecary asked what he wanted it for, and the person said as much as to say, to use Mr. Hersey's language, "It is none of your business." The apothecary said he would not let him have any, and then the person stated what he wanted it for, — the ear-ache. He said he was up to the apothecary's (Mr. Derby's, I suppose), and a person came in and asked for poison; and after he had gone out, he asked the apothecary if he sold poisons to any and every one that asked for them, and he stated that he did. He said the apothecary said that if any one wished to make a bad use of it, to take life, he would find ways and means to do it. It was reported that there was a lady in Randolph Street, Weymouth, who had taken strychnine. At that time, Mr. Hersey, directing his inquiry to Mr. Lewis, asked what poison would take life quickest, and with the least pain. Mr. Lewis said he thought a large quantity of laudanum might be taken, and the person go to sleep and never wake. I heard him talk about poisons a number of times in the shop. I think the conversation was all after the first of January, 1860.

I heard Mr. Hersey speak about a dog, not a great while from the time of the talk about poisons. He said a dog troubled him a good deal by following him. I had seen a dog following him to church the day before, and I said, — "I saw you going to church yesterday with the dog following you." "Yes," he said; "he won't trouble me any more; I took him out this morning and shot him."

Cross-examined by Mr. Baker. — Four persons worked in the shop, making six, including Mr. Hersey. I don't remember who commenced the conversations. He was in the habit of talking about other matters with the workmen. He was rather more inquisitive than the others in the room, on this subject. He asked more questions than Mr. Lewis did. His general character was good. He was kind, humane and pleasant.

Re-direct. — The other shopmates were Edward Lewis, Spencer C. Gurney, Winslow Ricord and Cornelius Tirrell. Mr. Ricord is in the State of Maine, near Lewiston Falls. I suppose Mr. Tirrell is at home at Weymouth; he works in the shop at the present time.

Loring W. Derby *sworn — examined by Mr. Harris.* — I reside in South Weymouth. I am stationed now at Fort Warren. In the winter of 1860, I was in the apothecary shop of Brown & Derby; a partner. We had no clerk. I know the defendant. I was never much acquainted with him; I have known him by sight, I don't know how long. He was in my shop, the first part of April, three times, I think. Once I had a conversation with him, I think the second time. I cannot state the way the conversation was brought about, it has slipped my mind now; I remembered it when I was before the Grand Jury. We had a conversation as to the effects of poisons, — arsenic and strychnia. I think he asked me the effects of arsenic, and I told him a story Dr. Tower told me of a young man that poisoned himself with arsenic. I told him that arsenic was a very bad poison; that it gave any one great pains. Nothing was said with regard to the quantity required to produce death. I told him that strychnine produced death quicker than arsenic; that it went into the blood more than arsenic, which went into the stomach. Nothing was said about the quantity required to produce death. He asked me if apothecaries were allowed to sell poison without permission of the physician, or if there was any fine for selling it without a prescription. I told him I did not know that there was, if the apothecary kept an account. I have not sold any poison to Hersey, or any member of Mr. Tirrell's family. We kept a record of poisons sold. We did not keep strychnine in the shop.

Cross-examined by Mr. Baker. — I don't remember how this conversation commenced; I have the impression that Mr. Hersey commenced it. He might have been in the shop ten or twenty minutes before this conversation. I think we had conversation on other subjects. He was there perhaps thirty minutes. I cannot tell how long the conversation lasted, — perhaps ten minutes. No one else talked with me about poisons. I may have asked Dr. Tower some questions when he was in the shop.

Randall Richards *sworn — examined by Mr. Harris.* — I married a sister of Wilson Tirrell's. I live about forty rods from his house. I know Mr. Hersey. The night Frances

died we passed a few words about what she eat for dinner and supper. He said they had lobster for dinner, and I asked if Frances ate any, and he said she did not. He did not relate the transactions of the evening. I saw Betsy Frances that night. I visited there frequently. I was there quite often. Saw Hersey most every day. I know of no other person being at Wilson Tirrell's house.

Cross-examined by Mr. Baker. — I did not know everybody that called at Wilson Tirrell's house. I presume I don't know what the young folks did nights; I was not there. Have known Hersey four or five years. His general character was considered pretty good in the neighborhood.

Christopher Blanchard *sworn — examined by Mr. Harris.* — I reside at South Weymouth. I am a brother to Mrs. Wilson Tirrell. Betsy Frances and Mr. Hersey were at my house the evening of the 3d of May. He stopped but a few minutes. She stopped there half an hour. The conversation was mainly between Betsy Frances, my wife and sister. Betsy Frances appeared the same as common. I saw her but once or twice after the death of Mary. I did not notice anything different in her appearance. The conversation was free, and she joined in it like the rest. I don't remember the subject of conversation. The conversation was mostly with my sister, Mrs. Jacobs. I merely passed the time of evening with Mr. Hersey.

Dr. J. B. S. Jackson *sworn — examined by Mr. Harris.* — I reside in Boston; am a physician; hold the professorship of Morbid Anatomy in Harvard College. Dr. Tower brought me a fœtus, and I examined it with him. I don't know the name of the person it was taken from. It is impossible to state just its age exactly; but to the best of my ability, I should say that its fœtal age was from two and one-half to three months. I am accustomed to such investigations.

To Mr. Sullivan. — By fœtal age I mean the age from the time of conception.

Deborah Blanchard *sworn — examined by Mr. Harris.* — I reside at South Weymouth. I saw Betsy Frances the afternoon of May 3d. I had a little conversation with her. I asked about her health; she said she felt stronger, and soon she thought she would be well. Then I went out of the room. Afterwards, she took out her pin for us to look at; she said she was going to have some alteration in the braid of the hair, when she went to Boston. Mrs. Jacobs said she did not like

it, and Frances spoke of having it altered. I recollect no connected conversation; I saw her but a few moments. I don't think I saw her more than three times after Mary's death. She appeared as usual to me. My mother Blanchard (who is seventy-two years old and infirm,) my husband, Mrs. Jacobs, and Mrs. Wilson Tirrell, were at the house. Mrs. Jacobs is not able to attend this trial.

George W. White *sworn — examined by Mr. Harris.* — I am deputy sheriff of the county. I made the arrest of the defendant, with the Sheriff. I conducted the prisoner from the jail in Dedham to Weymouth and back, the 31st of May. I saw Mr. Coburn on the passage back. I overtook him on the road in North Braintree. He said he had been left by the train, and was walking home. I invited him to ride, and he did so. I had a top buggy. He rode about three miles. I don't recollect any conversation. After he got out, Mr. Hersey asked who he was; and I told him he was the man who said he sold him the strychnine. He made no reply.

Cross-examined by Mr. Baker. — This was on the evening of the day when the examination was to be, which was postponed one week. Mr. Coburn had not then been on the stand.

Sheriff J. W. Thomas *sworn — examined by Mr. Harris.* — I am jailer of this county. I remember Mr. Coburn's coming to the prison. I was in Boston, and saw Mr. Albert Tirrell, and he asked me what train I was going out in, and I said not till after dinner. I learned that a young man was going out to see if he could identify Mr. Hersey, and I changed my mind, and came out at half-past twelve. I think I told the keepers a young man was coming out to see if he could identify Hersey. There were some prisoners in the jail, but in order to make the identification as difficult as possible, I told them I wanted them, when he came in, to be in the cells, as if they were prisoners. I think the young man went down the west wing, came back, went down the east wing, came back, and said he was in such a cell, — and he was. He went alone in his search. I could not see him from where I was. I did not watch him. Then the keepers came out, and I think we let out Mr. Hersey. It is my impression Mr. Tirrell was not there when the young man came in; but afterwards, Mr. Tirrell came in, and spoke to him.

Cross-examined by Mr. Baker. — I don't remember Mr. Tirrell being there, before this time, or any one from Weymouth, except Mr. White. I can't say whether any officer had been there from Boston. Mr. Hersey was in citizen's dress. I

could not tell whether there were ten or twenty in the jail, in citizen's dress, at that time.

Mrs. Nancy Tirrell *sworn — examined by Mr. Harris.* — I live at Weymouth. I am the wife of Wilson Tirrell, Jr. I did not see Betsy Frances the day of her death. I spoke with Hersey, after her death. He was passing from Wilson Tirrell's up to his brother William's — the day after her death. I said it was very sad that she should die so suddenly. He said it was; she seemed as near like his wife as any one could. I said it was strange what could be the matter with her, and he said that he thought she died with a broken heart. I had no other conversation. I was with Betsy Frances, and rode down to Weymouth Landing with her two or three days before her death. Can't tell the day of the week. She made some purchases at the store, and bought a dress. She asked if I was not going to buy some candy. I bought some. I aided her in making the selection of the dress; we bought dresses of the same pattern. I bought some candy at the provision store, for my children, while she sat in the carriage. We then went to my mother's, two and one-half miles off. She seemed as cheerful as usual.

She said Mr. Hersey wanted her to go to Hingham, but she wanted to finish her dress before she went; the one she had was torn; and she said that Mr. Hersey said the women were getting very particular. We went by his shop as we came home, and she looked out of the carriage, and said she wondered if he had gone home, and said he might ride. We overtook him, as he was walking beside the road; I was driving myself, and Frances asked me to stop, and I did, and told him he might ride, if he would take out the horse when we got home; and he said he supposed he should be obliged to do that, any way, and so he got in. I don't remember any conversation on the way.

Susan E. Hersey *sworn — examined by Mr. Harris.* — I am sister of Betsy Frances, and wife of William Hersey, the brother of George. We live about forty rods from Wilson Tirrell's house. Wilson Tirrell, Jr., lived in the house with us at the time of these occurrences. I was at her father's house the afternoon of the day she died. I took tea there. One of my children had been there all day. Frances took the child because I was busy, and to help me. Her father came in several times; he was not in Boston that day. I think George Hersey came home to tea. My husband was not there to tea, I think. Betsy Frances was at work making a shirt for George,

and I helped her a little. I asked her, as she had been sick, if I should help her get supper, and she said, No, she was better than she had been, and didn't want me to help her. She seemed more cheerful than usual. I asked her if she thought George would go to California, and she said she thought not. She said that a week before, when she was unwell, George was with her, and he said William had better go with him to California. I said I should not be willing to have my husband go so far. She said I might go and stay a year or two, and then come back. She spoke as though she had had some conversation with George about it. I slept with her two nights. She had not been well, and we did not want to leave her alone. She was taken with vomiting. She vomited up everything she took.

I saw her next after her death, about ten o'clock. As I was standing at the door George came in, and spoke very quick, and asked, "How is she?" and, without waiting for an answer, went out. He seemed much excited. Afterwards he came into the sitting-room, and was crying. He held his handkerchief over his eyes and said, "Oh, I wish I was dead." That was soon after Frances died. I don't recollect any conversation the next time I saw him. I did not see him at all Friday. Saturday he walked up with me after the post-mortem examination to our house. He came into our house Friday night and sat down, but did not speak, and then he got directly up and went out. He did not say a word. As I was going out to go home Saturday, he came out from the stable, and walked up with me to father's.

I then knew the result of the examination. I remember no conversation. I had a conversation with him at the house. I was alone with him a great deal of the time. My husband was there some part of the time. He [Hersey] said, "It will be laid to me;" I think those were the very words; or, "It will be laid to me, of course." I think my husband was in the room then. Then my husband went out, and George sat down on the lounge; and I told him that it was not possible that any one else could have been guilty of the act, and that he could not blame us for thinking he was guilty; and I asked him if he could think of any other person that could be guilty of the act: and he said, "No, I cannot." He said, "I never shall go anywhere again." He was crying, and said, "I never shall go out anywhere; I shall not live but a little while. I cannot live and bear the disgrace of this." I don't recollect anything else that was said at the time. He spent that Saturday night at my house, and went away Sunday morning with Mr. Sherman. Just before he went out I went down stairs, and he wrung his hands and said, "This is hard, isn't

it, Susan?" I told him it was hard if he was innocent. About a week after my sister Mary died he was in at our house, and we were talking about Mary's death. He said, "One thing I hope, and that is, that I shall live to see Frances marry some one as good as she is." This was a few days, or a week, after Mary's death ; perhaps not a week.

Cross-examined by Mr. Baker. — I had a conversation with George at my house when Mrs. Vining was there. I sent for her to come up that afternoon, when I was alone with him. She asked him if he could swear that he was not the guilty one, and he said he could. I don't remember the exact words; but he denied it I know.

HENRY WHITE *sworn — examined by Mr. Harris.* — I was an officer of the prison at the time of Mr. Hersey's first imprisonment. I was in the prison when the young man came to identify him. The Sheriff wanted us to go into the cells, and I went into one and laid down on the bed. I should think there might have been a dozen prisoners in that range of cells. After the young man passed in, the Sheriff called us out, and I went and let Mr. Hersey out of the cell. Mr. Coburn, and I think Albert Tirrell, Sen., of South Weymouth, were there. Mr. Hersey came up, and Mr. Coburn went up and spoke to him. I did not hear the conversation. Hersey seemed more nervous than usual; he had a toothpick, and kept at work pretty busy. I remarked, at the time, that he was more nervous than usual. I should say he had more whiskers then. But he has changed the cut several times, and I don't remember how he wore them then.

To Mr. Baker. — Mr. Hersey is naturally rather a nervous man.

DR. TOWER *recalled.* — The fœtus I spoke of was shown by me to Dr. J. B. S. Jackson, of Boston. I think it was last Thursday.

DR. HOWE *recalled.* — I conveyed to the hands of Dr. Hayes the stomach of a dog. It was soon after — within two or three days of the time when I gave him the jar. I received it from Dr. Tower.

JOHN M. DUNN *sworn — examined by Mr. Harris.* — I am a detective officer of Boston. On the 14th of May, 1860, the chief of police, Mr. Coburn, handed me a picture of George C. Hersey, a daguerreotype or ambrotype, — I have a copy of it with me, — and I was detailed to ascertain if any apothecary

in the city had sold him arsenic, strychnine, or other deadly poison. I attended to that duty, and among other places I went to the store corner of Union and Hanover Streets, and there was a young man there, a clerk in the store, named Coburn. I showed him the picture, and asked him if he had sold any arsenic, strychnine, or other deadly poison, to a person who looked like that. He took the picture, looked at it, and said he had. I told him to look at it again, and be sure, and he looked at it again and said he was sure. I asked him if he knew the man, and he said it was a person who had been in the store two or three times previously, and had sat down on a stool, and talked a long time. I asked him if he knew his name, and he said he gave the name of Tirrell, and said his father was a shoe merchant on Pearl Street, and lived in South Weymouth. I asked him what he said he bought the poison for, and I think he told me he said he bought it to kill a dog. Among other things, he said he told him his father had recently lost a horse. That same evening I went to Weymouth and searched the shoe shop where Mr. Hersey used to work, and the next day I searched the house of Mr. Tirrell, the father of the young lady that died, looking for the remains of the bottle, or the paper that was supposed to be about the bottle of strychnine. The bottle was about the size of my thumb. One similar was shown me by Mr. Coburn. I went to the house in the evening, and commenced the search, and I think I stayed until about eleven o'clock. I went again the next morning, and we searched the room which Mr. Hersey occupied, the fire-place, the flues, and wandered about the house, the back-house, pig-pen, barn, etc.; made a thorough search, as I considered, but was unable to find anything.

Augustus Vining *sworn — examined by Mr. Harris.* — I live in South Weymouth. I am the son of Jarius Vining, and cousin of Betsy Frances. Have been acquainted with George C. Hersey three or four years. He lived at my father's house from the spring of 1859 until about January, 1860. He roomed with me at my father's house. One day he took a vial from his trunk, and said, "Gus, there is something to kill young ones." It was a two-ounce vial, as near as I can fudge. That was all that was said. I asked what it was, and he merely laughed, and put it back. I had a conversation with him after Mary's death, about Frances. I said I wondered what made Frances so melancholy. He said Frances would not live long; I asked why, and he said her mother troubled her. I was called by my father the night Frances died, to go to Wilson Tirrell's. I went, and met Mr. Tirrell and Hersey

harnessing the horse to go for the doctor. I was in the kitchen, and Wilson Tirrell, Jr., hollored to his father, and said Frances was dying. George asked me to go out doors with him, and I went. I asked him to go with me and call Austin and Albert Tirrell. Something was said about wine. He said he wished for some. I told him I would go into the house and give him some, after we had called Mr. Tirrell. We came back to the house, and I gave him some sherry wine. I did not take any with him. I don't know that I noticed anything particular about him. He pretended to be grieved. He did not say anything about Frances' death.

FREDERICK MORRILL *sworn — examined by Mr. Foster.*— I reside in Boston. I went there in '35 or '6. I have been there most all the time. I have been in business in Lowell and Boston for 22 years, as a physician. My office is at 9 Howard Street, my house at No. 49. I know George C. Hersey. I think the first time that I saw him was about the last of '57, or first of '58. I saw him then at my office. The second time was about the last of '59 or the first of '60. I saw him at two different times then. When he came in he asked if the doctor was in, and I said I was the doctor. He said he had been looking over the newspapers, and had seen my advertisements of medicines for females. I said yes, I had medicines for females, and asked him what particular medicines he wished. He said for suppressions. Before he went any further, he asked me if I charged for advice, and I told him that when I gave advice I charged for it, but he might ask me any questions, and I would answer them without charging him anything. He said he did not want advice, but wanted to ask me some questions about medicines for females in a family way. I told him that would be advice. He asked me if I had medicines for that purpose, and I told him there were medicines for that purpose, but I did not sell them for that purpose. Then he asked if an operation to procure abortion was safe. I told him it would be safe in the hands of those who understood it, but not in the hands of those who did not understand it. He remarked that people sometimes died from such an operation. I told him they did, in the hands of some. Then he spoke of the oil of tannin, spurred rye, and ergot. I told him I did not use them; that in cases where ergot was given, it would be very apt to produce serious effects, unless it was given by a physician who understood it; that it would produce gangrene, &c. I don't recollect any answer that he made. He spoke of having called on different physicians, and he believed they all told about the

same story. I told him I did not know what others said, but I spoke for myself. He said he thought they were all connected together. I told him that must be a mistake, for I was not connected with any one. There was considerable conversation. I have stated pretty much all I remember of it.

A few months after that, I don't remember just the number, but somewhere from two up to five, he came in again, and pretended not to know me, and went through pretty much the same conversation. He said that he came in then to get advice for a friend, in regard to a woman in the family way. I told him that I did not consult with a second person in a case of that kind; I had rather always see the parties themselves. He stopped a moment, and I told him that the party wanting the advice had better come and see me personally. Then I asked about the age of the person, and I think he said "Somewhere about 25," but I am not positive of that. I asked how far she was advanced in pregnancy, and I think he said about three months. I rather declined answering any more questions for him, and then he remarked that the case was his own. I told him then, if that was the case, I would endeavor to answer his questions. Then he asked me the price of the medicines. I told him that the medicines that were given for suppressions, &c., came from $2 upwards. Then he wanted to know what it would cost for an operation. I told him that the persons who did these things usually had from $25 to $500. He said, Pooh! he was only a mechanic, and shouldn't pay any such price as that; that he could get something for fifty cents that would get rid of it. I said if he could do that, he didn't want any advice from me. I then said, "I should think you had been getting into this scrape often," and that I had seen him before. He said he was rather unfortunate in getting into such scrapes; that women were pretty much all alike, and he could generally do anything he wanted to with them. That rather touched me, and I said I thought it wasn't so, so far as I knew them. I said there might be some men who could get round them, but if I was a woman he wouldn't have much to say to me. I was rather excited at the time, and a little mad. I told him I would rather not talk with such a man; that he appeared more like a rascal than anything to me, and I did not want to answer his questions. He said he didn't want to insult me by the way he spoke. I told him well, he might not — I didn't take insults from any one, especially from some people. I didn't say who. Then he went to talking on religion. I don't know what was said in that respect, but there was some little conversation, and he remarked, after he got through,

that he was in the scrape, and was bound to get out of it at all hazards. I told him he might if he chose to, but I should not help him. He told me if I would help him, he could help me, and I told him I did not want any help from him. He said he knew a great many such cases, and he could benefit me a good deal. Then he wanted me to let him have some medicines, and said if they did any good he would pay for them. I told him I did not sell medicines in that way — that I sold for cash, and I would not sell medicines to him at any rate. Then he put his fingers in his pocket, and asked me if I would sell him some strychnine. I looked at him, and said, "I don't keep it." He asked me if I would write him a recipe for it. I told him no, I would not. I asked him what he wanted it for, and he said there was a dog in his neighborhood that annoyed him, and he wanted to get rid of it. I told him that if there was a dog that annoyed him, he had better take some other course to get rid of him. He stayed a few minutes longer, and then got up and said he would see me again. That was the last time I saw him until I saw him in jail.

This interview was at about half-past twelve o'clock ; I go to my dinner at twelve, and had just got back. It was a bright, beautiful day, the same as to-day. I remember it very well; he and I sat on the sofa.

Dr. Choules was the first one that I spoke to about George C. Hersey. Dr. Choules is here. At the time Hersey was examined, I noticed the account in the newspaper. Dr. Choules came into my office, and the paper was lying on the table, and he called my attention to it. The next time my attention was called to it, was when I was summoned here before the Grand Jury. I went to the jail in Dedham, when I was before the Grand Jury, and was told to go round and look into the cells, and see if I saw any one I had seen before. I did so, and when I got to a certain cell, the man called George Hersey was sitting there, with a book in his hand, and appeared to be reading. His back was towards me, but I knew he was the man. An officer came along and spoke to him, and he turned round, and I saw his face; I was satisfied before that it was him. When I looked at him, he looked as if he recognized me; it was a look similar to one he had when he once came to my office. I noticed it before, and that is the reason why I noticed it then. My eyes were bent on him, to catch the look. I know that is the same man I saw in the jail, and at my office in Boston.

Cross-examined by Mr. Sullivan. — This was somewhere in 1859 or '60. I cannot tell within three or four months. I cannot tell whether I saw him the second time in January

or February. My impression is that it was within those two months. It might have been in December, January, or February. I cannot say which one. I recollect seeing him only three times. The second time I should think he was in the office fifteen minutes; the last time about twenty minutes or half an hour; from fifteen to thirty minutes. I directly refused then to sell him any medicine. He did not ask me to perform any operation; he simply asked if it could be done. I could not refuse to do a thing I was not asked to do. I did not refuse, because he did not ask me. I keep the general kind of medicines for all diseases. I decline to answer whether I keep medicines for sale to procure abortion. [Advertisements shown to witness.] The advertisements shown in the *Boston Herald* are mine; June 16, '60, March 13, '61; also those in the *Boston Times*, with my name.

I have not been to Europe the last year; never have been. I am not a regularly educated physician; never have been to college. I studied medicine in Boston and Lowell. I was with Dr. Stevens a number of years, at Lowell, and took advice from him. I did not exactly study in his office with him, but took his advice about two years. It was as many as fifteen years ago. I studied with no one else. My business was then the same as now, in Lowell. When I commenced studying, I read medical books. I was then about twenty. My business was nothing particular then. I came from home, and stopped awhile with my brother-in-law in Charlestown, and after that I had an office in Lowell and Boston. I treated all diseases then, and do now. I advertise for some special diseases, but attend to the general office practice. I think I understand private diseases as well as any one else. I don't say I have any special disease, because I treat all diseases. I studied the same books that other people do. I never studied surgery. I own and occupy the house where I live. My office is in a four-story brick building; some twelve or fourteen rooms in it. My office has three rooms, on the lower story, which are furnished. Patients never stop in my office, nor in the building. I don't have any rooms that I furnish for the use of patients. I only say in my advertisements that persons who wish can have rooms; I do not have rooms for that purpose, and do not say that I have. I simply recommend patients to persons who keep boarders. I have had patients who came into the city, and remained and were treated, and I suppose went out again. I might have had females that came into the city to be treated for lameness, &c. I decline to answer whether I have had females come to be treated for abortion. I am not in the habit of procuring abortion. I decline to state whether I have ever procured abortion.

[Mr. Sullivan then read several extracts from the advertisements referred to, to show that the statements there made and the testimony of the witness were contradictory.]

Miss Loretta Adeline Loud *sworn — examined by Mr. Foster.* — I live in South Weymouth; I am sixteen years old. I live with my mother. My father is not living. I became acquainted with Mr. Hersey the September previous to the death of Mary Tirrell. I knew him as well as I knew other young men in the place. He commenced to pay me particular attention the 25th of March, '60. I was engaged to him between the 25th of March and the 29th of April. The engagement commenced two or three weeks after the 25th of March. The engagement was secret, at his request. He gave as the reason for wishing it kept secret, that it was but a short time since Mary died, and might be considered strange by Wilson Tirrell's family. Nothing was said about the length of time it should be kept secret. I told my mother. He was there as often as once or twice a week. I had conversations with him about Frances Tirrell. At one time, I told him I should think he would pay attentions to her, as she was about his age, and in the same house. He said that Frances was a good girl, but he did not love her, never had been with her, and never intended to. He said at another time, that he had had a bad headache, and Frances was all attention, "you had better believe."

I had seen Frances at church one day, and she looked pale, and I asked him if she was sick, and he said that she had appeared blue for some time, and if she did not get better soon, he should not be surprised if she did not live long. Our engagement terminated on Sunday, the 29th of April. I terminated it, because he made improper propositions to me. It was by the advice of my mother that I terminated it.

Mr. Whiton *recalled.* — I believe I stated yesterday that Mr. Hersey did not shave under his chin. Now I say that I would not be sure that he did not.

Cross-examined by Mr. Baker. — I never was sure but what he had shaved. I did feel sure that his whiskers were full, but not positively. He has a very peculiar beard, and might shave it down, and then if he had a coat on, or a full handkerchief, a person might be mistaken.

[The government here rested.]

Mr. Sullivan, for the defence, renewed his motion that the government elect on which charge they would rely, but the

Court overruled the motion, for the reason that they considered that there was only one offence charged in the indictment, in different forms — that of being principal to a murder.

Mr. Sullivan then asked the Court to instruct the jury that they must acquit the prisoner, because there had been no evidence submitted by the government to sustain either of the last two counts in the indictment, and in neither of the two first counts was any offence set forth.

The last count charges that the prisoner killed the deceased in some manner to the Grand Jury unknown. Such a count can be sustained only when there is evidence tending to show that a prisoner did commit murder, and no evidence to show how it was done. This count was good in the Webster case, but is of no value here, because here, if the evidence shows a murder at all, it shows a murder by strychnia. Where it is doubtful in which of several different ways a person was killed each can be alleged in one indictment, but it is only when there is proof of a murder and an absence of evidence as to the manner in which it was committed, that this count can be sustained.

The jury cannot convict upon the third count, because no evidence has been submitted to them tending to show that the prisoner counseled, procured, hired, incited, or persuaded the deceased to commit suicide.

The jury cannot convict upon either of the first two counts, because in neither of them is it alleged that poison was given with intent to kill or with any other unlawful intent.

After argument by Mr. Sullivan and the Attorney General, the Court decided that the trial must proceed, and said that the position of the defence would be fully considered before the case was given to the jury.

At the request of the counsel for the defence, the Court then (quarter past twelve) adjourned till two o'clock.

The hearing was resumed at 2.10, P. M. Mr. Baker thereupon proceeded to open the case for the defence as follows:

OPENING ARGUMENT OF HON. ELIHU C. BAKER.

May it please your Honors, Mr. Foreman, and Gentlemen of the Jury: —

In the progress of this most important case, according to the rules adopted by this Supreme Judicial Court, and approved and sanctioned by the immemorial usages of our Commonwealth, it now becomes my duty to indicate to you the line of evidence and grounds of law upon which our client, the

prisoner at the bar, rests his defence to the charge now presented against him.

In approaching this duty, I need not say to you how heavily it weighs upon me; how solemn appears to my mind the responsibility of the position and the occasion.

It is a feeling which I am sure, gentlemen, you, the learned attorneys for the government, and even the Honorable Judges upon the bench, fully share with me. We, the prisoner's counsel, are charged with the sacred duty of presenting to you every point and circumstance of evidence which can reasonably operate upon your minds to procure from you a verdict in our favor. We are also required and expected to take all legal positions which we can to secure the same result, — the acquittal of our client.

To the Honorable Court we are grateful for the kindness and indulgence they have shown us; to the government, we are indebted for the courtesy which during the trial, so far, has been rendered so cheerfully; to you, gentlemen, for your patience and attention, we tender our hearty thanks.

You, gentlemen of the jury, are by your oath to well and truly try the prisoner at the bar and true deliverance make between the Commonwealth and him, according to your evidence.

Should we, as his counsel, fail to present his case in the best light of which it is capable, we feel that we should be guilty of a neglect or failure of duty which may fasten upon us the moral guilt of the loss of a human life.

It is this knowledge and feeling which weighs so heavily upon my mind; and if, in the attempt to discharge this great duty, I seem at any time to overstep the boundaries of strict duty, and to urge any point beyond reason, I trust the Court and the jury will attribute it to an earnest desire on my part to see that the rights of my client are fully protected and secured (as the rights of the government will be by the able Attorney General), according to the forms and principles of law, rather than to any effort to thwart or prevent the ends of public justice.

This case, gentlemen, is one of most peculiar interest, I may say perhaps of unprecedented interest and importance.

It is, as all capital cases are, of great interest to community, as involving the life of the prisoner; of great importance, as developing and demonstrating that the eye of public justice never slumbers or sleeps; — but is also peculiar in very many of its aspects, — more peculiar than the mass of cases which come before our courts for trial. Let us for a few brief minutes turn our attention to its prominent features.

In the first place, gentlemen, you have found already, or will find before the evidence is closed, that up to the third day of May, A. D. 1860, this prisoner occupied as good a position as any gentleman in the community in which he then resided. Industrious in business; steady in habit; moral in character; kind and humane in disposition; a welcomed visitor in any family in the town of his residence; — one against whom not even the breath of suspicion had ever been wafted; — one against whom, from the first day of his life to that of the occurrence of this unfortunate affair, no one of all those who have known him most intimately have one word of reproach to utter, — walking in the midst of his fellow-men, honored and respected by all.

Nor is this all: two years only had elapsed since he had felt the hand of God's afflictive providence laid heavily upon him; — a young and lovely wife, but little more than a year a bride, he had laid in the cold, silent tomb.

A second choice of his affections had passed from earth before the sacred vow which should have made her his wife had been registered, and again the heart bled, and the fountain of tears sent forth its bitter flood once more.

And now in the very family where he was so soon to have become a son and a brother, he comes to reside, an invited associate and friend.

For four months he goes in and out among them, — pleasant, loving and kind; doing by that sorrowing family all the duties of one who, by a common sorrow, a common grief, has come to be almost part and parcel with them, — bone of their bone, blood of their blood.

Again the Destroying Angel spreads his dark wings over that stricken family, and through the narrow portal of a few brief minutes of mortal agony another loved daughter and sister passes away forever.

The sudden stroke, like a bolt of Heaven's artillery from a clear sky, as startling as it is terrible, prompts inquiry, — inquiry grows into suspicion, — suspicion ripens into the awful charge of *murder!* Murder! committed by this prisoner! *Murder — foul, damnable,* POISON MURDER! by him committed in this family of his friends!

On the wings of the wind the awful news spread. Every ear is open, every tongue is loose, and rumors, insinuations, innuendoes, charges, pass from lip to ear, from ear to lip again, till the whole town is in a blaze of excitement.

The surgeons are called — a post-mortem is held. A coroner's jury are summoned, and proceed with their investigations. The result is known. The matter now is in the hands of the officers of the law.

Where is the prisoner? In Weymouth, at the scene of all this excitement, rendering every service in his power to the family and their friends in these trying hours, till the Sunday morning following.

A week then passes, and in his own house, but five miles away, under the paternal roof, — the gray-haired father, the mother who bore him, now well stricken in years, sitting with him at the old hearth, on a Saturday night, — he is called!

The terrible charge he is informed of! No hesitation, no flinching, no attempt to escape! With the simple words, "I am ready," he goes with the Sheriff. The magistrate is called (perhaps from his slumbers), the examination brief, for it is late, the order for commitment, then the long, lonesome, dark ride to the jail; where for one whole long year he has lain, submissive, *with what patience!* waiting hopefully, trustfully, longfully, for this day — for this hour: — for this day — for this hour, when, before a jury of his peers, before twelve men, *good and true*, he could stand and show his innocence of the terrible crime with which he is charged.

And here now he stands before that jury.

A jury of twelve men! Gentlemen, have you weighed well in your own hearts and consciences the vast responsibilities which, under our laws, rest upon you as that jury?

You have each and every one of you, upon your solemn oath, stated that you are entirely free from bias or prejudice, — that you have formed or expressed no opinion in this case, — in fact, that you have risen above all personal, narrow-minded feelings and ideas, into the clear light and air of impartial investigation; — so that, in the admirable language of our law, you can well and truly try and true deliverance make between the Commonwealth and the prisoner at the bar, whom you shall have in your charge, according to your evidence. And you have called upon your God to attest your fidelity to this oath.

Gentlemen, I need not tell you how important — how solemn, how fearfully solemn — is your position.

You have in your hands in charge the life of a fellow-man, — your equal — your peer. You are empanelled and sworn to try him upon the charge here presented against him, according to the forms and provisions of law, and your verdict is to be the result of the evidence placed before you. You are to say, you must say, whether George C. Hersey is to be restored to his liberty, — to the companionship of his friends — to the home of his father — to the warm, tender embraces of his aged mother; — or whether the sun of his life is to go down in mid-day in ignominy and shame, and his name is for

all time to come to stand as one more addition upon the long list of those who by crime have forfeited their lives at the demand of public justice. In your hands, *for him*, are the issues of life or of death. I doubt not, gentlemen, you honestly, conscientiously assumed the position you now occupy. I doubt not you most sincerely believed when you were empanelled that you were impartial, that you could, without bias or prejudice, try this case.

Are you now sure you were so? With the dread realities of this occasion before you, in full and immediate view of the sacredness of the duty you have to perform, search your hearts again, I pray you, and see if there are no enemies of truth hiding there; — see if there are no prejudices, no shadowy thoughts or half-perceived ideas, caught from the outside world with its rumors, thousand-tongued, which perhaps almost imperceptibly, but yet as with a siren's song, would woo you over to one side or the other even before the evidence is closed.

For you must remember that it is the evidence which has already come and which shall yet come from the witness-stand in this case, and from that alone, that you are to find your verdict.

For the time being, you are excluded from the world, — isolated and alone, you are to deliberate, — you are to decide upon the evidence. In the great name of public justice to which you and I are alike amenable, in behalf of my client, whose rights are my rights, are your rights, I pray you, Mr. Foreman and gentlemen, admit no feelings, no ideas, no prejudices, into your jury-room. Do not forget that

> "Trifles light as air are to jealous minds
> Confirmation strong as proofs of Holy Writ."

And so remembering ever the sanctity of your oaths, when this case is concluded, and your verdict is recorded, there shall be in none of your hearts an accuser calling for repentance.

Before proceeding to the points upon which we shall rely in this defence, I must call your attention to the case as it now stands, as presented by the government, very briefly and in general terms, and only for the purpose of enforcing my views of the law which is to govern you in coming to your verdict; and then to the nature and amount of *proof* which you must require at the hands of the government before you can render a fatal verdict.

And, in the first place, you will observe, gentlemen, that the government have set forth in their indictment four distinct allegations: —

First, That the prisoner murdered Betsy Frances Tirrell

on the third day of May, A. D. 1860, by secretly administering to her strychnia.

Second, That he murdered her by inducing her to take strychnia for the purpose of procuring a miscarriage, she then being pregnant with child.

Third, That she committed suicide, and that he counseled, procured, hired, incited and pursuaded her to do so; and,

Fourth, That he murdered her in some way and manner to the jury unknown.

But you will observe, also, that, notwithstanding the multiplicity of allegations, the government really set up but two theories upon which they press this case. Two theories of guilt, both of which they can't sustain, because they are incompatible each with the other; and yet they do not feel safe to assume and rely alone upon either; so that, hard as it may be, we are compelled to meet and to answer both.

To these two theories I propose to call your attention, for the purpose of applying the law and the rules of evidence.

The first theory is, that the prisoner at the bar, George C. Hersey, did murder Betsy Frances Tirrell, at Weymouth, on the third day of May, 1860, by administering to her a fatal dose of a certain deadly poison called strychnia.

Now, gentlemen, in order to sustain this charge, this theory, it is incumbent upon the government to prove to you, beyond a reasonable doubt, that the prisoner did administer to, or cause Betsy Frances Tirrell to take, a quantity of strychnia, he then and there knowing the same to be a deadly poison, and in such quantity that he then and there knew it was a fatal dose; and that he did this with the intent to take her life, or to do her some other bodily harm or injury.

All these points the government must prove to you beyond a reasonable doubt. I do not mean to say beyond a possible doubt. I do mean to say beyond any *reasonable* doubt; and by a reasonable doubt I mean any such doubt as in your own affairs of the utmost importance, even involving life, would lead you, as reasonable, considerate men, to hesitate and delay action till all was made clear and plain.

If, by the application of this rule, you have any doubt of the guilt of this prisoner, as charged in this indictment, it is your duty to acquit him.

So the Honorable Court will instruct you.

Now, gentlemen, there is another point to which I must call your attention. In the eye of the law, this prisoner is innocent until he is *proved* guilty. To-day, he stands here before you an innocent man; just as innocent as any one upon your panel; just as innocent as His Honor the Chief Justice now upon the bench.

And this presumption of innocence can only be overthrown by proof, — by proof of such strength and character as, in your individual minds and consciences, is sufficient to counteract all reasonable doubts of his guilt.

What degree, what amount of proof must you require at the hands of the government?

It is not enough that you have such preponderating evidence as shall lead you to think it more likely the prisoner is guilty than innocent. This is not the law in criminal cases; it *is* in civil cases, where only dollars and cents are at issue. There it is reasonable and proper that the preponderance of proof should prevail.

There, if one party lays before the jury evidence which, upon fair consideration, outweighs the antagonistic evidence, and on the whole, by numerical strength or by superior credibility, carries with it a preponderance of proof, that party is entitled to a verdict.

Not so when life or personal liberty is the issue. Then the law of evidence changes; and for the best of reasons, as a minute's reflection will convince you.

The law, which is but the embodiment and expression of the highest and best experience of civilized life, mind and judgment, whose only purpose is to secure the general safety, the public good, while with jealous care, and for the common weal, it holds the flaming sword of justice in stern, rigorous grasp, holds, also, in equal poise, the scales of truth; and no man is so humble as to be denied its full protection.

It starts with the grand central truths that all men are equal; that innocence is the normal condition of humanity, and criminality the perverted, exceptional phase of life. And so, that no man shall suffer unjustly; that the whole public shall not suffer, — for communities and nations are but aggregations of individuals, and if one member suffers, all the members suffer with him, — the law throws around every man, woman and child the great, broad mantle of presumptive innocence, and declares that no one shall be punished until he is *proved guilty*. And that proof must be full and complete, to the exclusion of every reasonable doubt.

Starkie, the great authority in the English and American law of evidence, says, Part Third, page 450, — "Evidence which satisfies the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt, constitutes *full proof*."

On the following page, he says, — "In many cases of a civil nature, where the right is dubious, and the claims of the contesting parties are supported by evidence nearly equipoised, a

mere preponderance of evidence on either side may be sufficient to turn the scale." . . .

"The distinction between *full proof* and mere preponderance of evidence is, in its application, very important in all criminal cases whatsoever. It is essential to a verdict of condemnation that the guilt of the accused should be *fully proved;* neither a preponderance of evidence, nor any weight of preponderant evidence, is sufficient for the purpose, unless it generate a full belief of the fact, to the entire exclusion of all reasonable doubts."

This rule of law has prevailed for ages among all the wisest and most enlightened nations. It was the corner-stone of the criminal code of the Mosaic system.

"One witness shall not rise up against a man for any iniquity or for any sin; at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established."

"At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; but at the mouth of one witness shall he not be put to death."

And only shall one suffer "when the matter hath been *told* thee, and thou hast *heard* it, and *inquired diligently*, and *behold it to be true*, and the thing *certain*."

The Greek and the Roman law held it to be always safe rather to err in acquitting than in punishing; for it is better to extend mercy than to insist on justice.

In England, as far back as the days of King Alfred, forty-four justices were hanged in one year for rendering false judgments, and with particularity it is recorded, in the history of the times, that the king hanged "one *Freburne* because he judged *Harpin* to die; whereas the jury were in doubt of their verdict; *for in doubtful cases one ought rather to save than to condemn*."

This is the law now. Phillips, on Evidence, asserts it. McNally says, — "Everything is a doubt in a civil case, where the jury weigh the evidence, and, having struck a fair balance, decide according to the weight of evidence. This, however, is not the rule in criminal cases; for it is an established maxim that the jury are not to weigh the evidence, but in cases of doubt to acquit the prisoner."

Greenleaf, the latest and perhaps best American writer on evidence, says, —

"In criminal trials, the party accused is entitled to the benefit of the legal presumption in favor of innocence, which in doubtful cases is always sufficient to turn the scale in his favor. It is, therefore, a rule of criminal law that *the guilt of the accused must be fully proved.*" And further, he says, — "It

is not enough that the evidence goes to show his guilt; it must be inconsistent with the reasonable supposition of his innocence."

Beside all this, we have the authority of this Honorable Court.

The late Chief Justice Shaw, in the Webster case, holds this language: —

"The burden of proof is on the prosecutor. All the presumptions of law, independent of evidence, are in favor of innocence; and every person is presumed to be innocent until he is proved to be guilty. If, upon such proof, there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal; for it is not sufficient to establish a probability, though a strong one, arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty, — a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those that are bound to act conscientiously upon it."

The next point, gentlemen, to which I call your attention, is the nature of the evidence which has been presented to you by the government.

I do not propose to review or to argue the evidence; that is not my province. My associate will do full and ample justice to that part of our duty at the proper time. But I now call your attention to it for the purpose of explaining to your minds what we believe to be the law in the premises, and we shall most respectfully, and at the same time most confidently, ask the Court to instruct you that in this we are right.

Evidence may be generally divided into *two classes: Direct or positive,* and *circumstantial.*

Direct or positive evidence is that by which the fact in dispute is made certain in the minds of the jury — whose province *alone* it is to judge of and to decide all questions of fact — by the testimony of those who have actual knowledge of it through their physical senses.

Circumstantial evidence is that by which the truth of the fact in issue is shown or proved by one or more facts which are known, and which, by common experience and observation, are found to be usually attendant upon facts of the kind and nature sought to be established.

It is perfectly apparent to you, gentlemen, that in this case, as against this prisoner, there is no direct positive evidence. None whatever! Not a single witness comes here and says

I have any knowledge, through my physical senses, of the fact in issue, viz., the murder, by this prisoner, of Betsy Frances Tirrell.

All is circumstantial, all is inferential: — a complete conglomeration of surmises, innuendoes, disjointed remarks, half-forgotten actions, and a thousand and one other things, cemented together by a large amount of prejudice, and some vindictiveness, and hurled with all the force of a legal prosecution upon the bared head of George C. Hersey.

That circumstantial evidence may be entitled to great consideration at your hands, I am not going to deny or question. That it may, under proper circumstances, lead you to a conclusion as firm, as full, as just, as the most direct evidence, I am not disposed to dispute. But, gentlemen, it is your duty to examine such evidence with the most scrupulous care. It is your duty to see that you draw no unwarranted inferences and conclusions from the circumstances which are placed before you.

Remember, I pray you, that when the evidence in a criminal case, involving the life of a fellow-man, is wholly circumstantial, each and every one of the material facts or circumstances from which your conclusion of guilt is to be drawn must be *fully proved, — proved beyond a reasonable doubt,* — and when proved, each and every one of them must be of such a nature, and point so directly to the guilt of the prisoner, that their existence cannot be explained or accounted for on any other hypothesis than that of guilt.

I will not weary you with authorities to sustain this point. One or two will be sufficient. Wills, on Circumstantial Evidence, says, page 149, — "In order to justify the inference of legal guilt from circumstantial evidence, the existence of the inculpatory facts must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. This is the fundamental rule by which the relevancy and effect of circumstantial evidence must be estimated. . . .

"It is not enough that a particular hypothesis will explain all the phenomena. Nothing must be inferred because if it were true it would account for the facts. And if the circumstances are equally capable of solution upon any other reasonable hypothesis, it is manifest that their true moral cause is not yet exclusively ascertained, but remains in uncertainty; and they must therefore be discarded as conclusive presumptions of guilt. Every other possible supposition by which the facts may be explained, consistently with the hypothesis of innocence, must be rigorously examined and successfully

eliminated, and only when no supposition will reasonably account for all the conditions of the case can the conclusion of guilt be legitimately adopted."

Now, gentlemen, taking this to be law, as it unquestionably is, I submit that you must find each and every one of these incidental facts *fully proved*, and then you must find all these facts so connected with the main fact in issue as to be absolutely inseparable from it.

In other words, you must find *all* these circumstances, making one continuous chain of evidence leading directly and inevitably to the conclusion of guilt. No link inferred or guessed at, no link wanting or broken by a single reasonable doubt, or it is your oath-bound duty to acquit the prisoner.

The government have attempted to prove, —

First, The death of Betsy Frances Tirrell.

Second, That she was murdered.

Third, That she was murdered with strychnia.

Fourth, That George C. Hersey murdered her.

That Betsy Frances Tirrell is dead; that she died as alleged, on the 3d day of May, A. D. 1860, is conceded; we do not deny or question it.

That she died from the effects of strychnia, is a fact which it is incumbent on the government to prove and for you to find, if you can, upon the evidence. That even if this fact were admitted, we submit that it does not follow that she was murdered by anybody, much less does it follow that she was murdered by Hersey.

One fact cannot be inferred from the other because if *it were true* it *might* account for the conditions of the case. This the government see, and their course in the trial admits it. So they *assume the fact of the murder;* then they ask you to say that Hersey committed it, for three reasons: —

First, Because he had a motive to do it.

Second, Because he had an opportunity to do it.

Third, Because he had the means to do it.

Now applying our rules of law, I submit, they must show you he had a motive, not merely a motive which might lead one to desire a certain thing, a certain end, but a motive strong enough to lead him to the accomplishment of his dreadful purpose.

Think of it, gentlemen! a motive strong enough to lead him to act the part of a worse than midnight assassin in the house of his best earthly friends, where he had long been treated as a son and a brother, upon the person of one who, if their theory is true, had loved him perhaps "not wisely but too well;" one who had yielded to him that which a woman prizes above

her life — her virtue! and that, too, when by one single act he might have retrieved all errors, and lived honored and respected by all, in the very lap of luxury and wealth! And this, gentlemen, is one of the material points, one of the important links of their chain of evidence which you are to consider in the light of reason, and you are to say whether or not you find this consonant with your experience and observation of the workings of the human mind.

Why, do you not know, gentlemen, that no man, by one single step, goes from the heights of virtue to the depths of crime? And what *lower deep* than this, I pray you, yawns beneath the feet of man or of fiend? In open day to strike down a foe; in the presence of others to kill a friend; in the darkness of night, from behind some shadowy tree or dark rock, to sally out and by one shot, or blow of murderous bludgeon, or stab of stiletto, for robbery or revenge, to send a soul all unbidden and unshriven before its God; — this were innocent and honorable! But by poison, under the guise of love, and that to a trusting, confiding woman, — no word of caution, no show of force, coolly, deliberately, with plans long laid, well matured, the fatal dose prepared and waiting, while deeds of kindness and words of tenderness were marking each day as it passed, — *this* needs the heart, not of man, but of a fiend incarnate! a heart the very fountains of whose life have been dried up by years of debauchery and crime, whose every fibre, muscle and sinew has been *tempered* and *steeled* in the very *fires of* HELL!

We shall show you, gentlemen, that this prisoner has no such heart, no such disposition. We shall show you he had no such motive, could have had no motive to commit such a crime; on the contrary, every motive of his life, every impelling hope and desire of his very existence, as a matter of necessity, must have been to preserve, not to destroy her life.

That he had the opportunity to commit the deed, we do not deny; so had many others.

That he had the means, the material with which to accomplish this crime, we do deny, most solemnly, most emphatically. And to this point I pray your especial attention. This is another most material, indispensable link in the government's chain, and if this fails them, the whole chain, in disjointed parcels, falls to the ground. Upon what evidence do they ask you to believe he had in his possession the necessary material to answer the averments in this indictment?

Simply the evidence of personal identity. Two men, and two men only, can the government find to sustain this vital part of their case. One man who swears that he has seen this

prisoner *three* times; once in his shop in Boston; an apothecary's shop on the corner of two of the most frequented streets in the city — a corner store, one door on Union Street, another on Hanover Street; parties constantly passing in and out, sometimes through; in the middle of the day, being alone, somebody comes in, buys two or three little articles, goes away, and, like every other transaction of the kind, is forgotten — the affair, the occasion, the man, all pass away from mind. Days or weeks after, somebody comes in and says, "Good-morning, sir." The salutations of the day are passed. Says the caller, "I have been here before." What more likely? Then the visitor stays and talks awhile; talks of various things, talks of poisons; objections to selling poisons are mentioned by the witness. The visitor assures him his object is lawful, is right; to satisfy his mind, gives him a reference to a neighbor just across the street (remember the visitor has given a name which the government say was a false one), to one well known by the visitor, as he said, well known to the witness, Mr. Frederick Whiton, who has been here upon the stand, who, upon the first inquiry, would, if Hersey were the visitor, have exposed him at once.

Now, gentlemen, a story so absurd as this attaches to the evidence of this witness suspicion, to say the least, and therefore you should scan the whole testimony most closely. Twice the witness says he has seen this prisoner, and this is his story. The third time is in the jail. It is for you to judge whether it was the prisoner, or anybody in fact, who was there identified, or whether it was not in truth the simple finding of the original of a daguerreotype shown the witness the day before.

The government are bound to prove to you beyond all reasonable doubt, that it was George C. Hersey who was in Coburn's store on the particular day which the witnesses state, else there is no particle of evidence in the case tending to show that he ever had a single particle of strychnia in his possession, and consequently this part of their case falls to the ground.

I should fail to discharge my duty did I not urge upon your attention the great danger of mistakes in the matter of personal identity.

The history of the administration of criminal law is full of instances of mistakes in this particular; mistakes by which scores of men as innocent of the crimes with which they were charged as you, Mr. Foreman, have been convicted and have suffered the ignominious punishment of death, and when too late the sad error has been discovered. I will not weary your patience by rehearsing them.

I venture to say, there isn't a gentleman upon your panel who cannot recall in his own experience instances of mistaken personal identity — they are of most common occurrence. Perhaps one of the most striking cases was the recent case in the trial of Prof. Webster, in which some two days after as it was finally proved that Dr. Parkman was murdered by Prof. Webster in the Medical College in Boston, some of the most respectable citizens of Boston were at the trial ready to swear, and did swear, that they saw him in usual health, so far as appearances indicated, and in the streets of Boston.

Dr. Parkman, a man who for many years, from his position in society, his profession, his business connections, and perhaps, more than all, from his peculiarities of person and habit, was known to almost everybody in Boston, and it would seem was less likely to be mistaken for another man than almost anybody you or I could select, yet seen, as several witnesses really believed and testified, walking the streets of Boston after all that was mortal of him had been for two days or more smouldering in the ashes of that laboratory furnace or decaying in the subterranean vaults of that dissecting-room in North Grove Street.

How easy it is, how very easy it is to be mistaken in matters of personal identity, let these cases, let your own experience and observation, tell you.

I pray you let this thought be with you in the retirement of your jury-room, when you shall come to scan the evidence of Coburn and Warren.

Even this very case, gentlemen, is not without its lesson, — most striking and most peculiar in this respect; for we have here one of the government's own witnesses, who tells you upon this stand that when he saw the man whom he now supposes to have been George C. Hersey, he thought him to be an old personal friend of his own, one Mr. Allen! and but for the extra motive on his part to speak to him when, as he says, he discovered it was not Allen, he would just as soon have sworn it was Allen as Hersey; and yet now, a year afterwards, not having seen Hersey since, not knowing him before, notwithstanding he then mistook a stranger for an old personal friend, he has the audacity to come here and with such certainty testify to the identity of this prisoner with the man whom he then saw.

Gentlemen, believe him if you can! but through the years, months or days, that are to make up the future of his life on this earth, whatever may be your verdict, in his ears the avenging angel will, with the awful thunders of Sinai, force upon his

shrinking, shuddering soul the command, — "Thou shalt not bear false witness against thy neighbor!"

The second theory of the government is, that Betsy Frances Tirrell committed suicide; and that this prisoner counseled, procured, hired, incited and persuaded her to commit felony upon herself.

By all the rules of law, by all the principles of natural justice, this is just as great a crime as that of the overt act of murder.

If upon this theory the prisoner is sought to be convicted, the same rules of evidence prevail, and he has the same rights as upon the theory of actual murder.

The evidence must be full and explicit, showing his active co-operation in the deed.

It must be apparent, even to the dullest comprehension, that if this theory of the government is sustained, the first is negatived.

I thank the government for setting up this theory; strange as upon first thought it may appear, yet I thank the government for it, for it shows how strong in their minds, even after the full and exhaustive examination of the evidence, which with all their array of talent, and all the means of the treasury of the Commonwealth at their disposal, they have made — is the conviction that Betsy Frances Tirrell did commit suicide.

For one whole year, with a coroner's inquest first; an attorney, able, industrious, indefatigable, in the pay of the prosecution perhaps (I say it cautiously), perhaps in the pay of private prosecutors (for that there are such in this case, on the evidence, I think you cannot doubt) to assist and direct that inquest; to hunt up evidence afterward; to refresh and drill the witnesses; with the learned and sagacious District Attorney, familiar and well acquainted with the people and the locality where the affair occurred; after three or four different examinations before the Grand Jury; after four separate drafts of indictments calling into exercise the whole legal knowledge and ability of two Attorney Generals, chosen by the whole people of the Commonwealth (and not unfitly, I most cheerfully say) for their eminent qualities as men and as lawyers; after all this, whichever way they turn, however they construe the evidence, there stands before them ever the fact that this poor girl, Betsy Frances Tirrell, committed suicide. There stands the fact in awful presence, and, like *Banquo's ghost, it will not down!*

On the troubled seas of this evidence, tempest-tossed, they mount up to the heavens; they go down again to the depths;

their soul is melted because of their trouble; they are at their wits' ends; then they think the prisoner incited, hired, or caused this suicide. Ah! lucky thought; this makes the storm a calm, and the waves thereof are still!

Is it so? Let us look at it in the light of reason and evidence.

They have given us evidence enough to lead our minds to a reasonable belief that she did commit suicide. They show us that she had a motive to do it; and that motive *the one* which of all others which the imagination of man can conceive the strongest, the most likely to lead her to self-destruction; that motive — *to hide her shame!*

In all the long catalogue of female self-murders which, alas! are becoming so fearfully common, you know, gentlemen, no motive is more potent than this.

To a young woman accustomed to good society from infancy through childhood up to womanhood, who in the midst of her privileges and blessings, in an unguarded moment of passion and desire, has fallen, has parted with her virtue, that bright, precious jewel of her queenly crown, what inducements are left for continued life?

Nursing in her inmost heart the fatal secret, it bites like a serpent, it stings like an adder!

Not long can it be concealed. A few weeks, or a few months at most, and it must be known. Then the anguish of the parents who have watched her tenderer years, who have followed with ever increasing pride the budding and opening of her womanly graces of mind and of body; the sorrow and keenly felt disgrace of the brothers and the sisters; the averted eye, the turned lip of scorn of former friends and associates; the rough, coarse jests and taunts of the outside world; *the only retreat*, a life of infamy and shame; — all, all, in one great panorama of living colors, of *living colors*, speaking from the canvas, constantly pass before her.

By day the horrid pageant unrolls itself before her distracted mind.

By night the curtains of her couch, which erst enshrouded innocence and wooed to pleasant, happy dreams, are now all aglow with torturing demons! What wonder that to such a mind, so harassed, so haunted, the fatal poison or the deep stream came as friendly helps, beckoning her to rest, where all her cares, her sorrows and her shame shall sleep together forever!

I would not willingly wound the already lacerated hearts of the living friends of this poor girl. Enough, how much more than enough, have they bled already.

But this prisoner has friends too, an aged father, a venerable mother, a brother and a sister. He has rights too, which must be respected and protected, and it is my bounden duty, sad though it may be, yet imperative, to set before you everything in the case which can tend to procure your verdict in his favor.

I say, therefore, the government have proved to you this fact, that Betsy Frances Tirrell had fallen, that she had parted with her virtue, that she, being an unmarried woman, was pregnant by somebody, that therefore she had the greatest possible inducement to commit suicide.

That they believed that she did commit suicide, they have shown you by the averments in their indictments, all four of them.

That she not only had a motive, so strong a motive, but that she was predisposed to such an act, the evidence has also shown. Herself of an exceedingly sensitive disposition, her own mother dead, she having had a retiring, despondent, melancholic mind, as testified to by her physician, Dr. Howe, especially during pregnancy, it was, I submit, the most natural thing in the world, that this daughter, who by the same testimony is shown to have most peculiarly inherited her mother's other characteristics, should have had the same turn of mind.

Add to this the other fact, that the mother once attempted her own life, a fact which from the very nature of things could not but be known to Frances; add to this the further fact that the relations of Frances with her mother-in-law, never too agreeable, had been much less so since the death of her sister Mary four months before, then the other fact that since that time of her sorrow her gentlemen visitors — *gentlemen* did I say? *male* visitors rather — had deserted her, and I think, gentlemen, you cannot fail to believe Betsy Frances Tirrell did commit suicide. Then comes the nature of the death, perfectly consistent, I submit, with the fact of suicide: sudden, and, as the government say and attempt to prove, by a most speedy and deadly poison; no half-way work; no dallying with the ebbing and flowing tides of life, but effectual, silent, no wavering, no preliminary arrangements which might attract attention and thus thwart the purpose, but sudden and sure.

I do not wonder the government thought she committed suicide. Do you, gentlemen? They couldn't help it.

But, then, as to the prisoner; what to do with him?

If it was suicide on her part, it was not murder on his.

Then comes the afterthought, that he was accessory before the fact. Was he so?

Gentlemen, you have not heard the first word of evidence

tending to show any such thing, and we shall most confidently ask the Court to instruct you that upon the evidence on the third count in the indictment you must acquit.

I have discussed this point of suicide more fully than I at first intended, because it seems to me so perfect and complete a key to this most mysterious case, and although it is not strictly or even ordinarily incumbent upon the defence to account for the circumstances of a case except so far as may be necessary for his own defence, yet we are willing, the prisoner is willing and anxious, to throw all the light upon the case possible.

His mouth is closed. Words which he uttered a year ago come to you from the mouths of other parties, but no word from his lips now can reach your ear. He can only say, he has said here, "Not guilty," as he said then to Mrs. Vining, to Mrs. William Hersey, and to others, and as through my lips, in most solemn accents, he now says again, "It is all an unfathomable mystery to me; I cannot understand it; I know nothing about it, only that I am innocent!"

Is not the unfathomable mystery solved? Have not the government given us the key, and is it not all open before us? Does not suicide explain every phenomena in the case?

We shall show you, gentlemen, that up to the fifth day of May, A. D. 1860, two days after the death of Betsy Frances Tirrell, George C. Hersey's character was as fair as that of any man in the town of Weymouth. He was moral, industrious, kind, and humane, and we shall ask you from this evidence to infer that he cannot be guilty of the crime with which he is charged. As I have before said, you know from your own personal experience and observation that no man descends at once to the depths of crime. From the commission of such a crime as this, the heart of every man, not scathed all over by the fires of vice and sin, recoils with instinctive horror.

In the heat and glow of a sudden and terrible passion, one of previous good character may strike the fatal blow which shall send friend or foe into eternity; but here is no passion, no excitement; all is done coolly, with premeditation, with time to reflect, to think upon the nature of the crime, the results to the victim, to himself.

We shall show to you also, that all the acts of the prisoner at the time of the death of Frances, at the time of his arrest, were perfectly consistent with innocence, and not consistent with the theory of guilt.

To this evidence, gentlemen, I pray your most careful attention. We are entitled to it. It is of the most vital consequence to the prisoner. From the very nature of the case he

can bring no direct evidence here in his defence. His character, his previously earned character, is all he has now to rely upon. To that he turns with perfect confidence, for he knows that the rule of law is that in all criminal cases the good character of the accused is admissible, and in cases of doubt is sufficient to establish a presumption of innocence.

Gentlemen, a few words more and I have done.

I pray you act not hastily, but weigh well the evidence before you.

Act not upon any opinions gathered elsewhere than from that stand, but remember the oath which is upon you!

I make no appeal to your passions, to your sympathies; I appeal to your reason, to your judgment. I ask you, I pray you in the words of your oath, to well and truly try, and true deliverance make between the Commonwealth and the prisoner at the bar, whom you shall have in charge, according to your evidence. And then, whatever may be your verdict, when these Judges, jurors, counsel, and prisoner shall all stand before Him in whose judgment there is no injustice, and from whose sentence there is no appeal, you shall each of you stand acquitted of all wrong!

TESTIMONY FOR DEFENDANT.

Benjamin F. White *sworn — examined by Mr. Baker.* — Reside in South Weymouth. Am a boot and shoe manufacturer. Know George C. Hersey, the prisoner; have known him for about three years and a half. He worked for us two years and three or four months. Nathaniel Shaw & Co. is the name of our firm. In all our intercourse with him he appeared to be a good-hearted man, a respectable man. Never heard anything against his character, in regard to his general reputation. While in our employ there were times when he was unwell, and would be sometimes absent for several days together. Only remember, now, of his being absent at such times, or on some matter of business of his own. He was generally very industrious. Don't know that he was absent at any time during the winter or spring of 1860, or during the last month or six weeks that he worked for us. There were times when he was unwell and didn't work. [Witness produced a memorandum showing the number of hours of defendant's work.] This memorandum only relates to his time from February, or January, to the time he closed work for us, which was about the third of May, I believe. It appears to show that he didn't work much for us during January, and but little during February. I have credited him on the 13th of Februa-

ry with fifty-four hours. That must cover the time from the first of January, because we settle with our workmen then. "Feb. 25th, 23 hours." Between these dates there is no credit. "March 10th, 60 hours; March 13th, 57 hours; March 17th, 60 hours; March 24th, 57 hours; April 7th, 53 hours; April 14th, 52 hours; April 20th, 50 hours; April 28, 38 hours; May 29th, 29 hours." His labor would average, perhaps, about 60 hours for the week. Our workmen would hardly average 60 hours; this was an exception.

M. W. Bailey *sworn — examined by Mr. Baker.* — My residence is South Weymouth; business, shoe-manufacturing. Am acquainted with the prisoner, George C. Hersey. Knew him for some years,—I should think, all the time that he lived in Weymouth. His general character was good, so far as I knew, for kindness and humanity. Knew nothing against it. Was acquainted with all the family. Used to see Mr. Hersey about every day, as he went to and from his work.

Cyrus Sherman *sworn — examined by Mr. Baker.* — Reside in South Weymouth. My business is box-manufacturing. Live about an eighth of a mile from Mr. Wilson Tirrell. Am acquainted with the prisoner, Mr. Hersey. His general character, by reputation, as to kindness and humanity, I know nothing against. Presume I saw him every day after the death of Betsy Frances Tirrell. I carried him home, at least to Hingham. His brother, Wm. Hersey, came to me and asked me to go and carry him home. I started Sunday forenoon, the Sunday following the death; started at a quarter past eleven; called to Mr. Tirrell's house, took his clothes, drove to Mr. Wm. Hersey's and took him, and carried him to Hingham, and left him at his father's. Arrived there about twelve o'clock.

William B. Hersey *sworn — examined by Mr. Baker.* — Reside in South Weymouth. The prisoner, George C. Hersey, came to my house on Saturday afternoon, and remained with me Sunday in the forenoon. Went to Mr. Sherman's to procure him, to take him to Hingham Sunday morning. George left my house, I should judge, somewhere near ten o'clock on Sunday morning.

George W. White *sworn — examined by Mr. Baker.* — Was present at the arrest of Mr. Hersey. The Sheriff and myself, and a Mr. Tirrell and a Mr. Bates, went to his father's house in Hingham, and found him there. Sheriff Thomas went to the door. I couldn't say who came to the door; the prisoner did

not come to the door first. Couldn't say how soon he did come, and what were the circumstances of his coming. I was on the backside of the house, and remained there for perhaps a minute or two; when I came round to the door, Mr. Hersey was with the Sheriff. He came willingly; found no resistance on his part. I carried him before Justice Humphrey, in Weymouth; no one was in the carriage with me; carried him over alone. He was not ironed. It was not far from sunset when we arrested him. In Weymouth, the justice ordered him to be committed. Carried him then to Dedham jail. It was not far from nine o'clock in the evening when we started; nobody was with me. He was ironed going over. He did not object at all.

J. W. Thomas *sworn — examined by Mr. Baker.* — Made the arrest of George C. Hersey, in Hingham. Deputy sheriff White, Mr. Albert Tirrell, and Captain James L. Bates, went with me. When we got within a mile or two of this side of where his father resides, Mr. White and myself stopped there, and Mr. Tirrell and Mr. Bates rode over into the neighborhood to ascertain whether he was about. They returned and reported that he was at his father's house. We rode up all together into the yard. Mr. Tirrell went round to the back door, and I went to the front door. I knocked; a lady came. I inquired if George Hersey was there, and they said he was. I told them I would like to see him. She started to go in, and he came to the door. I said I had a warrant for George C. Hersey; he said, "All right," and started to get his things. He soon came out and got into the carriage with Mr. White. Mr. White took charge of him. I did not go down before the justice.

Mrs. Caroline Cushing *sworn — examined by Mr. Baker.* — Soon after the death of Mary Tirrell, I went to visit Betsy Frances. We roomed together. It was right after Mary's funeral. Remained about four days. During the time I was there, Betsy Frances said, in relation to Mary's death, that she wished it had been her instead of Mary.

Was at home when George was brought home by Mr. Sherman. He was brought home Sunday noon. He remained there till the next Saturday. During the time he was there, he was away from the house every day; he was gone, the longest time, three hours, — fishing. He went to different places when he was away. When he was gone three hours, he left word that he should be at home at noon, — he was. He always left word when he went away, and came back within the time he said he would. I am his sister.

The minutes of the testimony of Dr. Appleton Howe before the coroner's inquest were introduced in evidence by defendant's counsel, and ELIJAH F. HALL called and *sworn* to identify the document.

Witness. — That document is the testimony taken before the coroner's jury, of which I was clerk, at different times in May, and I think to the 17 of June. I can only state that I reduced the testimony to writing; it was signed by the witness, and I gave it to the coroner. I presume that is the same document. I have no doubt that it is the same. Dr. Howe was sworn at that time, — that is his signature. He was sworn in my presence, and signed in my presence.

The testimony of Dr. Howe was read, as follows: —

"Coroner's inquest held by Silas Binney, Esq., at Wey-
"mouth, in the county of Norfolk, on the 5th day of May,
"A. D. 1860, on the body of B. Frances Tirrell.

"Testimony taken at said inquest, and reduced to writing
"by Elijah F. Hall, clerk of said inquest.

"DR. APPLETON HOWE. — I was called in a great hurry on
"the evening she died. I went to chamber of deceased, and
"found her lying almost on her face. Her hands were cold —
"chest warm — felt for pulse and found none. I turned her
"on to her back, — found no pulsation in the region of her
"heart. I made examination on various parts of her body,
"but could not find the least appearance of life. I did not
"form any opinion that I dared express. When I turned her
"over she looked pale and features were contracted — the
"pupils of her eyes were not dilated. I have made an exam-
"ination of the body this afternoon about two o'clock. Her
"lungs and heart were healthy. Examined the abdomen;
"found the uterus was enlarged. Found a fœtus, and found
"the afterbirth and the ovum — think it was two months ad-
"vanced. It is possible she might have died of congestion.
"There was some appearance of blood about the mouth. I
"feel satisfied, from further reflection and examination of the
"subject, that the fœtus found was three months, at least, ad-
"vanced. I could tell the sex — it was a male fœtus.

"APPLETON HOWE."

JAMES E. CARPENTER *sworn — examined by Mr. Baker.* — Am a counsellor-at-law. On the 31st day of May, or 1st day of June, I was present at the examination before a magistrate of Mr. Hersey, in Weymouth. I do not remember the exact day. I took minutes of the evidence which was given there.

I took correct minutes of the evidence, as it was given, to the best of my ability. I took minutes of the examination of one Dr. C. C. Tower. I have those minutes here [witness produced the documents]; those are the minutes. His testimony with relation to the rigidity of the body, — "*Rigor mortis*, or stiffness of the corpse, presented nothing remarkable, so far as I observed. The hands were tied together on the breast. The arms were straightened, and considerable force was necessary to straighten the arms." I find nothing with regard to the comparative stiffness of the body. He testified, in relation to the appearance of the countenance, that his attention was called by Dr. Fifield to the countenance — to a peculiar grin upon it; but he observed nothing peculiar himself; that he noticed nothing relative to the respiratory muscles of the face.

Took minutes of the testimony of Dr. Howe at that time. Dr. Howe testified in relation to the appearance of the heart upon the post-mortem examination, as follows: — [witness referred to the minutes]. He made no examination of the heart, to see whether it contained any fluid; but he recollected that it was empty — not more than a spoonful of blood in it. He testified in relation to the rigidity of the heart, — my recollection is independent of my minutes, that I think he testified that the heart was contracted. I do not recollect anything about the term *rigidity*.

Cross-examined by Mr. Harris. — Took those minutes at the request of the counsel for the defence; did not take them as counsel, — I attended the examination out of curiosity. I was acquainted with the counsel. Have been present during every examination of the defendant, except that at the coroner's jury, since this case was commenced, so far as I have known of any.

I remember particularly Dr. Howe's stating that there was no blood in the heart. I should rely more upon my minutes than I should upon my memory. Reading the minutes would not bring back to my memory every word that was used there, any further than I know that the minutes were correct at the time, and there has been no alteration in them. I think that Dr. Tower used such an expression as "respiratory muscles of the face." Did not understand at the time what muscles were referred to.

Direct examination resumed. — What I have done in this case has been from friendship for the counsel, without any pay of any kind.

Elijah F. Hall *recalled.* — *Question.* — Have you been em-

ployed in this case since it has commenced by the government, — since the examination of the coroner's jury? Objected to as immaterial; objection sustained.

Q. — Will you state, Mr. Hall, how many witnesses who have been examined here you have previously examined?

A. — I couldn't do it; it would be impossible. It has been some time since, and I could not, with any accuracy, repeat all the names. I think it was some time in August that I was first called, at the request of the District Attorney, for the purpose of ascertaining anything new with regard to the death of Frances Tirrell. The minutes of that evidence were taken in writing by me. I called upon Mr. Kingman Tirrell's family; think I took the testimony of two young ladies, and Albert Tirrell and Austin Tirrell; took the testimony of Miss Jacobs and one Miss Sprague; one Miss Vining; minutes of Mr. Jairus Vining's statement. That is all I call to mind now. I think likely there may have been others.

Cross-examined. — Mr. Harris lives at some distance from Weymouth. I live within two miles, I believe.

What I have done in this matter, I have done at Mr. Harris's request.

[Evidence for the defence closed.]

Adjourned to 8.30, A. M., of Friday, May 31.

On the evening of Thursday, the Judges being together, the counsel for the prisoner stated to them that in their view the indictment only charged the crime of murder in the second degree; that they should request the Court so to instruct the jury, and asked leave to hand the Court their views upon this point in writing, giving a copy of the same to the Attorney General. The Court said that this was proper, and it was accordingly done. The following is a copy of the paper handed to the Court: —

COMMONWEALTH *v.* HERSEY.

This indictment is only an indictment for murder in the second degree.

The Revised Statutes of Massachusetts, enacted Feb. 15th, 1836, provided that "Every person who shall commit the crime of murder shall suffer the punishment of death for the same." Rev. Stat., p. 716, sec. 1.

This statute merely announces the penalty for murder, and leaves the common law to declare what murder is. 5 Cush. 303.

Murder at common law is the killing of any person in the peace of the Commonwealth with malice aforethought, either express or implied. 5 Cush. 304.

This was the law of murder in Massachusetts up to the 27th of March, 1858; on which day an act was approved, and stood unrepealed until the 28th of December, 1859, when it was re-enacted with and became part of the Comp. Statutes, and has since been unchanged. The 1st and 2d sections of that statute, which are identical with the 1st and 2d sections of the 160th chapter of said Comp. Statutes, are as follows: —

Section 1. Murder committed with deliberately premeditated malice aforethought, or in the commission of or attempt to commit any crime punishable with death or imprisonment for life, or committed with extreme atrocity or cruelty, is murder in the first degree.

Section 2. Murder not appearing to be in the first degree is murder in the second degree.

The 4th section of said act and of said 160th chapter provides that "Whoever is guilty of murder in the first degree shall suffer the penalty of death."

The 8th section, that "Whoever is guilty of murder in the second degree shall be punished by imprisonment in the state prison for life."

By this statute that which was murder before its passage has been divided into two distinct crimes, each bearing, by virtue of the statute, a distinct name, each being by the statute clearly defined, and each having a different penalty. One of three facts or circumstances must now accompany the act of murder or it is not murder in the first degree. Either it must be committed, First, With deliberately premeditated malice aforethought. Secondly, While in the commission of or attempt to commit a crime punishable with death or imprisonment for life. Or, Thirdly, It must be committed with extreme atrocity or cruelty.

Under the 12th article of the 1st part of the Constitution of Massachusetts, no subject can be held to answer for any crime which is not fully and plainly, substantially and formally, described to him.

No indictment can be sustained for murder in the first degree unless it alleges that the murder was accompanied with one of the three facts or circumstances above named. They are necessary concomitants and constituent parts of the crime of murder in the first degree, and the crime cannot be fully and plainly, substantially and formally described without setting forth one of these three requisites.

Section sixth of the 154th chapter of the Laws of 1858 is identical with the 6th section of said 160th chapter of the Comp. Statutes, and is as follows: "Nothing herein shall be construed to require any modification of the existing forms of indictment."

The 6th section of said 154th chapter extends over said 154th chapter, which relates exclusively to the crime of murder. The 6th section of said 160th chapter of the Comp. Statues has not been confined to the existing forms of indictment *for murder*, but extends over said 160th chapter, which relates to all the statute offences against the person.

Said 6th section of the 160th chapter could only be constitutional provided there had been at the time of its enactment a well recognized form of indictment for each offence named in the chapter, which form described the crime or offence intended to be set forth, fully and plainly, substantially and formally. There is no existing form of indictment for any crime or offence named in said 160th chapter. No statute in Massachusetts ever prescribed a form for any indictment, as it has of writs, and at common law the forms of indictments are as various as the minds of those who draw them.

This particular indictment does not in any count describe the crime of murder in the first degree. There can be no pretence that it alleges in either count the facts or circumstances alluded to above as the second and third requisites to the crime. That is, it does not in any count allege that the murder was committed while in the commission of or attempt to commit any crime punishable by death or imprisonment in the state prison for life, nor does it in any count allege that the murder was committed with extreme atrocity or cruelty. Nor does it allege in either count that the murder was committed with deliberately premeditated malice aforethought, but in each count alleges that it was committed wilfully, feloniously and with malice aforethought.

The allegation that the crime was committed wilfully and feloniously is a charge of manslaughter. Manslaughter is committed wilfully and feloniously, and it must be and is so alleged in indictments for manslaughter. These words imply no higher degree of crime.

The words "malice aforethought," which previous to the statute of 1858 were a charge of murder without any qualification, are now only a charge of murder in the second degree.

There is an appreciable and clearly defined legal distinction between "deliberately premeditated malice aforethought" and "malice aforethought." Murder may be committed with "malice aforethought" without any premeditation and without any deliberation. Malice aforethought simply denotes purpose and design in contradistinction to accident and mischance. Before the passage of the statute of 1858 this distinction was clearly recognized by the court in the Webster case. C. J. Shaw then said: — "It is not the less 'malice aforethought'

within the meaning of the law because the act is done suddenly after the intention to commit the homicide is formed; it is sufficient that the malicious intention precedes and accompanies the act of homicide." It is manifest, therefore, that the words "malice aforethought" in the description of murder *do not imply deliberation or the lapse of considerable time between the malicious intent to take life and the actual execution of that intent*, but rather denote purpose and design in contradistinction to accident and mischance. (5 Cush. 306.)

"Malice aforethought" is not "deliberately premeditated malice aforethought." "Deliberately premeditated malice aforethought" is necessary now to constitute the crime of murder in the first degree. This indictment does not charge "deliberately premeditated malice aforethought" in any count, it therefore does not amount to a charge of murder in the first degree. This indictment charges no higher crime than murder in the second degree.

This defect is in no manner remedied by said sixth section, for if this indictment follows a form of indictment in existence at the time of the passage of said sixth section and of the statute of which it is a part, it *does not* fully and plainly, substantially and formally set out the crime of murder in the first degree, and any mere act of the legislature which says it shall be sufficient without so doing is unconstitutional.

If the respondent in this action had pleaded guilty the Court could only sentence him for murder in the second degree.

On Friday morning the Chief Justice stated to the counsel for the defence that this point was raised in the case of Desmarteau, not then reported; that the Court there decided that such an indictment did charge murder in the first degree, and that this decision would not be reversed. The request for such instruction to the jury was thereupon withdrawn by the prisoner's counsel.

FRIDAY, May 31.

The Court came in at 8.30, A. M., and Mr. Sullivan arose and proceeded to make the closing argument for the defence, as follows: —

CLOSING ARGUMENT OF GEO. S. SULLIVAN, ESQ.

May it please your Honors, Mr. Foreman and Gentlemen of the Jury: —

The hour is fast approaching, gentlemen, when you are to retire and deliberate upon the evidence to which you have listened, for the purpose of deciding the fate of a human being.

Before you retire, it is my duty to suggest to you, in behalf of the prisoner, some views of this evidence, which he confidently hopes will result in his acquittal at your hands. This strong hope of his, which I believe to be well founded, the public interest attaching to this trial, and its sad, strange story, the position of the deceased, and my own youth and comparative inexperience, have together operated to depress my spirits to a degree hitherto unknown to me. On three occasions, in other States, my professional duty has required me to present cases to juries of my countrymen, when, had their verdict been "guilty," those who had chosen me to speak in their behalf might have been confined to a life-long imprisonment, but I have never before been oppressed with the knowledge that a human life depended in any manner upon my exertions.

Another and a more practised tongue than mine might relate to you many circumstances which would awaken your pity and your sympathy for this respondent, but I ask of you no more sympathy for him than you have for the whole human family, — be that much or be it little. I place his defence upon a firmer foundation. I ask you simply to exercise reason, that faculty of the mind alone upon which justice leans with confidence, and homely common sense, the practical form of it, which the fact of your being placed upon the jury is evidence that you each possess.

Understand distinctly my desire, gentlemen, that you will test this case in the light of reason alone; to decide it according to the law and the evidence you are bound by the solemnity of an oath, the record of which is on high, — your witness is in heaven. Let me implore you to decide it as if the record of that oath were now open before you, and you were permitted to read it by the unclouded light of everlasting day. If, under the rules of criminal law, which will be laid down for your guidance by the Court, you find the evidence which the government has produced sufficient to satisfy you of the guilt of the accused, then, by your verdict, break the column of the young man's life, lock his coffin, and hand the key to the angel of resurrection, and do it solemnly and manfully, though the silver strings of the heart may vibrate with pity, and though tears may tremble in the eyes of mercy. But if the evidence fails to produce the degree of conviction which the rules of the criminal law demand, then we ask you as manfully to give us a verdict of acquittal, regardless of every influence, save only your duty under your oath. This we ask in the sacred name of *justice*, and we ask no more.

The indictment by which the prisoner is charged, and upon

which you are to pass between him and the government, contains four counts. Of the last of these counts, I have but this to say: We think it wholly inapplicable to the case, and expect the Honorable Court to instruct you that in no way, upon this evidence, can you be justified in rendering a verdict of guilty upon that count. The allegations in the first count, which we desire you to consider and pass upon, are, that the prisoner gave poison to Betsy Frances Tirrell, and that in consequence thereof she died. The second count varies from the first by stating the manner in which the poison was administered, which is, in substance, that the prisoner mixed it with preserved fruit, and gave it to the deceased, telling her that it was a medicinal preparation which would produce miscarriage, he knowing that it was a deadly poison. The Court will probably instruct you that the difference in the counts is not material, and that, so far as this point is concerned, if you find that he gave her poison in any manner, and that she died in consequence thereof, you can convict him upon the first count. The third count alleges that the deceased committed suicide by poison, and that the prisoner was accessory thereto before the fact. Thus the problems which we present upon the indictment, for your solution, are only two. First. Did the prisoner give the deceased poison, and did she die in consequence thereof? Second. Did the deceased commit the crime of suicide by poison, and was she aided in or counselled to do it by the prisoner?

While the law presumes a man to be innocent until he is proved to be guilty, it also requires him to prove his innocence, or establish a doubt of his guilt, before the evidence in a case has been summed up against him, and any distinct position taken by the officers for the prosecution. The application of this beautiful legal principle to the present case places us in this position. Without knowing what the argument of the counsel for the government is to be, with no power of answering its reasoning or pointing out its fallacies, I am called upon to prove the negative of the two questions presented for your consideration. The affirmative of these two questions is inconsistent, and the affirmative of both cannot be true. The prisoner could not have killed the deceased and she have killed herself. We have made three distinct attempts, at as many different stages in the proceedings, to obtain an order from the Court compelling the prosecution to abandon one of these charges, — we cared not which, — while they proceeded upon the other. But this order the Court has refused to make, and the officers of the prosecution have refused to abandon either charge unless compelled so to do. Conse-

quently, we are not only obliged to answer an argument which we have never heard, and which may be brought to sustain either of two positions which are entirely inconsistent with each other, but we are also required to make one defence upon a crime charged to have been committed by the prisoner, and another defence to a crime charged to have been committed by somebody else, and upon each of these charges the government asks for the prisoner's life.

My associate has kindly saved me the labor of stating to you the rules of criminal evidence, and the philosophy of them, and has given them to you so clearly and so accurately that I am confident you will receive the same from the Court, and feel that I have nothing to do now but to take up and use such of these rules as may become necessary in the course of my remarks. The first which I wish to apply now is, that if you entertain a reasonable doubt of the guilt of the prisoner, you are bound by your oath to acquit him. The only other which I wish to apply at this point is, that every circumstance which is material to establish the affirmative of the two questions presented to you must be established by proof which shall convince you of the truth of that circumstance to the entire exclusion of every reasonable doubt.

The theory of the government, in this case, we must take entirely from the opening address of the government's counsel. The first circumstance stated in that opening which becomes a material link in every view of the case, is, that Betsy Frances Tirrell is dead. That, gentlemen, you may take as admitted.

There was another allegation contained in the opening that is of the utmost importance to us in judging whether the prisoner had anything to do with depriving this young woman of her life; an allegation which becomes material in every point of view, and a question upon which must be ever present in our minds, had it never been suggested by the opening. That allegation is, that the prisoner had a *motive* to kill the deceased. If we are satisfied, in the outset, that this allegation is true, our minds will be better prepared to receive evidence of the actual commission of acts by the prisoner intended to destroy her life; but if we are satisfied that the allegation is false, or if there is no sufficient evidence to maintain it, then our minds repel the whole charge of the indictment, and our common humanity asks for an overwhelming amount of evidence before we can believe that a man without a motive committed a murder, and such a murder as is charged here. A sane man never does any act necessarily involving great

consequences without a motive. Though the motive may be deep, yet, in the sunlight of reason, it is seen, at the bottom of the mind, as plain as a white stone at the bottom of clear water. And what is a motive? Lexicographers say it is "that which incites to action; that which determines the choice and moves the will." And this is precisely the sense in which I now use it. When we are asked to say that a man had a motive to commit a murder, the first information we desire is of his character, as manifested in his previous acts and history; for that which would incite one man to such an act, which would determine his choice in favor of, and move his will to undertake the fearful deed, would have no effect upon another. The chance of obtaining gold is a sufficient motive for the brigand and the pirate, inured from boyhood to scenes of blood, while the certainty of untold stores of gold would ordinarily furnish no motive to one surrounded from youth by the hallowed associations, and instructed in the principles, of pious, hard-working, cloudy New England. This young man's life and character are before us, and must form the ground-work upon which we are to base our judgment of a motive. The evidence before you of the purity and uprightness of his character is full and complete; if you doubt that which we have offered, turn to that of the government. He stands before you, on the evidence, an honest, industrious, humane man, beloved and respected by all who know him, — most esteemed by those who know him best. A stranger to the criminal courts; a man of unblemished reputation; not a breath blurred the polished surface of his name, until this charge was brought against him, and not an attempt has he made to evade this.

Let us now refer to the government's opening to see what motive they say such a man could have to commit such an act. Their theory, distinctly stated, is, that he was engaged to marry Loretta Loud, that he had seduced the deceased, that she was pregnant by him, and, thus involved in difficulty, he had a motive to take the life of the deceased.

For the sake of the argument, let us suppose the government have proved that this state of facts existed just as they allege in the opening. Do they furnish a motive for the murder of Betsy Frances Tirrell? There were four ways in which he might have avoided this step: By doing just nothing at all about it. By taking up his residence in some other part of the country. By having an abortion produced. By marrying the girl. Let us consider the consequence of each of these steps.

First, he could have done just nothing at all about it. He

would then have left the house and gone somewhere else to board, pursued his ordinary business, and let worst come to worst. And what could the worst have been? If advised so to do, she could have made a complaint against him, which complaint would charge that she was pregnant by him and liable to have a child, which if born alive might be a bastard. Upon this complaint he would be required to give a bond to appear at the Superior Court, which he could easily have done. In proper time, if no child was born alive, the complaint would fail for want of any ground to sustain it, and he would be discharged. If a child was born alive, and if he were proved to be the father of it, the ultimate consequences to him would have been that the Court would have passed an order for him to pay a certain sum a month or a year for a specified time towards the support of the child; this he could easily have done, and this is all he would have been required to do, for no power on earth could have compelled him to marry the girl. You may add to this, if you choose, the fact that he might have been punished on a charge of fornication by imprisonment in jail for a time not exceeding three months, or by fine not exceeding thirty dollars. A very trivial punishment, gentlemen, and one which the defendant run no risk of incurring, for he must have been indicted, if at all, under the 8th section of the 165th chapter of the General Statutes, which is: "If a man commits fornication with a single woman, *each* of them shall be punished by imprisonment in the jail not exceeding three months, or by fine not exceeding thirty dollars." Those who were interested to have the defendant punished were also interested to save the girl, and where the statute provides an equal punishment for both, he was in no danger whatever.

Here, then, surely, was one plain, easy way of escape from what is alleged to have been a great difficulty, and you are asked to believe that the defendant is as bad as the brigand and the pirate — that he would murder a woman that he might save a little money, not *get* money, but *save* a little money, *if* she had a child and *if* he was proved to be its father.

The second way in which he might have avoided this step, was by taking up his residence in some other part of the country. This he had for some time contemplated doing, not because he was in any such difficulty as the government allege, but because, like many of our industrious young men, they think they can do more business and make more money elsewhere than in their homes in the country towns of New England, and every part of the continent offers abundant proof that this view is correct. The government have put in evi-

dence statements which the defendant made to several witnesses that he contemplated going to California or to the West, and that a short time before Frances died he had offers to go to Kansas, one of which he thought of accepting. We thank them for this evidence, for the Court would not permit us to introduce any statements of the defendant, and you are to take these statements as true, for if they were not so the government could have proved them false. By going to California as he had contemplated, by accepting the offer to go to Kansas, which you will remember was made about a month before Frances died, and at the time when we are now admitting, for the sake of the argument, that this difficulty existed under the state of facts the government contend for, or by going away to some other distant place, he could have avoided even the liability of the complaint, saved the little money the support of the child would have cost, and avoided the neighborhood where for a short time an affair of this kind would have been public talk. How easy this would have been, and would he not have done it rather than commit a murder?

In the third place he might have had an abortion produced. You will remember, gentlemen, that she was in the earlier stage of pregnancy, the age of the fœtus not exceeding three months, and that her situation was entirely unsuspected by her friends. Being in this situation, you can have no doubt that she would have relieved herself from it, and from the life-long consequences attending it, if any available means were at hand. If you do doubt it, gentlemen, call to mind the fact that her virtue was not proof against persuasion, and I think you will readily infer that the same persuasion would induce her to remove the consequences of her acts. More than this, gentlemen, the government cannot consistently ask you to believe that she would not produce a miscarriage, when they allege in the indictment that she took and swallowed a substance, believing that it would produce that result, and did so for that very purpose. That she would have removed this difficulty if it could be done, seems plain; and from your knowledge of the world, and the vices of mankind, I do not doubt that you are familiar with the fact that an abortion can be produced. How can I doubt that you know this fact, when the General Statutes of the State, with which all its inhabitants are presumed to be familiar, treat of it and make provisions concerning it? That necessity is the mother of invention, is as true in medical science as in any other department of knowledge, and the frequent calls for relief from this difficulty which have been made upon medical men always and everywhere, for the disorder, had its origin in the infancy of

the human race, and has developed through the ages, unrestrained by geographical boundaries and comparatively independent of climate, have directed the attention of the profession to this subject, until now no speciality is better understood or more scientifically treated. The world is deeply indebted to the gentlemen of the medical profession for the perfection to which they have brought this branch of their science, for by means of it they are constantly saving to the world the lives of estimable women, women whose characters are as pure and as bright as the mountain snow, who are bound to their families by the holiest ties which the great Father has implanted in the human breast, women whose good influences the world can ill afford to lose. It speaks highly, too, for the humanity of the profession that, while they have brought this department of their science to such perfection that they can give the proper medicine, or perform the necessary operation, with little risk to the life or health of the patient, they have also discovered a means of banishing the pain and suffering which formerly attended this situation. But while there are in the medical profession good men, who are entitled to the respect and esteem of mankind, we regret that there are bad men also, who have devoted their attention to this branch of the profession, have become as familiar with its principles, more skilful in its practice than better men, and who make use of their knowledge for the most base and corrupt purposes. Some of these physicians are talented, — *so is the devil,* — and they can be approached as freely as he can upon any business, no matter how corrupt it may be. In short, there are plenty of men just like one of the government doctors, out of state prison, who are ready to be consulted at any time. Medicines or services of this nature could easily have been procured by the defendant. If he had procured medicines, and they had been used at an early stage of pregnancy, they probably would have produced the desired effect, and this too without creating any suspicion. If these had failed, an operation could easily have been resorted to, and this is certain, and I believe much more safe than powerful medicine. This operation is very simple, not painful, can be performed in three minutes by the watch, and it is not until a week or ten days after the operation that the delivery occurs. Enjoying the confidence of the family as the defendant did, how easy it would have been for him to invite the deceased to spend a day in Boston and had this done while there, or to have gone to ride with her and met a physician at some place agreed upon, or to have walked in the woods and met him there, for these men are accommodating and ready to go wherever they

are requested. By this means the defendant would have avoided the consequences of a complaint, the necessity of leaving home, the talk of the public, the reputation of the girl; and where, I ask, in the name of common sense, is the necessity of a murder?

There is yet one other way in which this act could have been avoided, and that is by the defendant marrying the deceased. That she would have married him there can be no doubt. The evidence of the mother-in-law, which you will remember without repetition, places this point beyond question. Neither will you doubt that such a union would have been gratifying to the family. The father would have been pleased with it, for he would have felt that his daughter was united to an honest, upright, industrious young man, who had the respect of the community, and would make her happy. The mother-in-law would have been gratified, for she disliked Frances, would by that means have been rid of her and been sole mistress of the house, which she and her own daughter could then have enjoyed, as well as such a woman could enjoy anything. I am sure it needs no argument to convince you, gentlemen, that the defendant could have married Frances if he had desired, without opposition on her part or on the part of her friends. In the present view, then, the plain question presented is, should he marry or murder her? When you are considering his motive the question is, had he a motive to murder her *when she died.* Now, gentlemen, if he had determined to take her life, would he not have married her first? He could then have taken an excursion with her or gone elsewhere to live. By a temporary or permanent absence from her friends — which he would then have had full power to dictate — he would have acquired full control over her person, and could, first of all, have procured a miscarriage, — this could have been accomplished then without the least probability of detection. He could then have taken her life at his leisure, and by a deliberate plan, while absent from her relatives. How many relatives and friends she had in the immediate neighborhood I am unable to say, but this we do know, that eighteen of the witnesses who testified for the government in this case were relatives of the deceased, who live within a stone's throw of the house where she died, most of whom were in the house that night, and some of them — who do not live in the house — were there before she died. The government's theory is that this was a deliberately premeditated murder; but I submit that the idea of taking her life by strychnine, in her own father's house, with him and his wife at home, her sister in bed with her, himself in an adjoin-

ing room, and the house surrounded by so many relatives, when he could have married her and taken her away, involves such an amount of madness and folly that no sane man would have entertained it for a moment. By marrying her he would have avoided the greater part of this risk, and if the facts the government contend for furnish a motive to take her life at all, surely they furnish no motive to take it under such circumstances; and yet, gentlemen, it was under just those circumstances that she died.

Again I present to you the questions which the government contends were presented to his mind: "Shall I marry or murder her?"

The defendant was industrious, steady, earning and saving money, evidently aspiring to a quiet life and a happy home. Her father was an old gentleman, rich, very rich, for that place, and apparently loved him as well as his own son. He had but four children living. As the defendant knew Frances she was ladylike, well educated, quiet, amiable, and possessed of many qualities to ensure domestic happiness. "Shall I marry or murder her?" If this question ever passed before his mind it moved along in two panoramas. On one was the white robes of a wedding, on the other the dusky habiliments of a house of mourning; on one a bride, on the other a coffin; on one a quiet home beneath the spreading elms of New England, on the other a desolate road, and a wandering outlaw, with a curse upon him; sleep on one as sweet as Richmond's, on the other dreams like those which haunted Richard; on one a cheerful fire, with children, and a mother near them, on the other a prison cell; on one an old man in his chimney-corner, with a holy, trusting, reverent look, the sign of a well-spent life, and the omen of a happy hereafter, on the other a gibbet and the body of a murderer hanging from it in the presence of a gaping multitude. Judge you, gentlemen, between these two pictures. Had he a motive to commit this crime when she died? Had he a motive to commit it at all?

In order to meet the government upon its own ground, gentlemen, and to guard against an appearance of evading any point which its officers have considered worthy of your attention, I have thus far proceeded upon the supposition that the prisoner was involved in the difficulty alleged in the government's opening, while in fact it has been conclusively proved that no such difficulty existed. I will now show you, from the testimony of the government's own witnesses, that in this respect their opening has not the least foundation. The statements made in the opening, as you will remember, were, first, That the defendant was engaged to marry Loretta Loud; and, second,

That he had seduced the deceased, and that she was pregnant by him. We will take these assertions up and dispose of them one at a time. Miss Loud is a witness for the prosecution, and her testimony is that her engagement with the defendant was terminated on the 29th of April, 1860. You will remember that it was not until the third of the succeeding May that Betsy Frances Tirrell died. So instead of his being engaged to Miss Loud at the time of the decease of Miss Tirrell, you see that the engagement had been broken and was at an end five whole days before Miss Tirrell's death; and from the testimony and appearance of Miss Loud, gentlemen, you will not doubt if such an engagement ever existed that it was absolutely, hopelessly, irretrievably ended forever, at the time she told you. If it had appeared that the engagement was temporarily abandoned, to be again renewed upon any condition, the government might have resorted to the assertion that for this reason he had an object to conceal, at all hazards, the pregnancy of the deceased, if her pregnancy was known to him; but no, the engagement was *unconditionally ended.* If the evidence had been that Miss Loud was jealous of the deceased, or that the deceased had been in any manner connected with the breaking of the engagement, the government might still have persisted that the defendant had a motive to take her life. But *no,* not even *this* is left. The evidence is clear that the engagement was broken for a cause with which the deceased had not the most remote connection, — a cause which occurred when in all human probability she was absent from the minds of both parties.

This disposes of the first of these assertions without leaving a chance for a controversy. The second one, from its very nature, cannot be disposed of so absolutely. But two human beings ever knew whether the deceased was pregnant by the defendant; the voice of one is silent in the grave, the mouth of the other is closed by the law. You cannot have direct evidence upon this assertion, as you have upon the other, and so the government will ask you to infer it from circumstantial evidence.

Now, is the evidence placed before you, from which you are asked to believe this assertion true, such as will warrant reasonable men in that inference? Let us examine it. First, the defendant was never seen in criminal connection with the deceased; of this there is no pretence. Next, he was never seen in bed with her; he was never seen alone with her in her bed-room; she was never seen in his when he was there; they were never seen alone together in any room with a bed in it; they were never seen together in any improper place, or to-

gether in any place at an unusual or improper time. There is no evidence of this nature for which, from some source, we naturally look at this time. Next, he was never seen to embrace her, to kiss her, to caress her, to bestow a passionate look upon her, or to exhibit any of the numerous outward expressions of emotion which you can better imagine than I can describe, and which must have been observed had such endearing relations existed between them as are alleged. Lastly, he has never said or intimated that she was pregnant by him, or that he ever had any improper connection with her. In the conversation with William's wife, at her house, when the neighborhood and the family were excited, and when she was charging him with being the father of the child, and told him it was not possible for any one else to be guilty of the act, and asked who it was if it was not him, he said he could not think who it could be; but he deeply regretted that so disgraceful a suspicion had fallen upon him. Soon after, when Mrs. Vining came in, she asked him "if he could swear that it was not him," and he said that he could. His solemn denial is all there is of confession. His relations with her were those of a brother; her name was always mentioned by him with kindness and respect, and more than one expression in evidence shows that he believed her to be a pure and worthy woman.

Upon this statement, one who had not heard the testimony might well wonder what the nature of the evidence is from which you are asked to infer that the defendant ever had improper connection with the deceased. And, gentlemen, do you understand distinctly the request the government makes of you upon this point? If not, permit me to say it is this: That each of twelve men of common sense will say upon oath that he is convinced beyond all reasonable doubt that one particular man seduced a woman twenty-five years old and got her with child because for four months no other man had an *opportunity* to do it. This is the most remarkable request I ever heard made of a jury, and it would require the most remarkable evidence to sustain it — evidence like this: that the woman had passed her life on an island in mid-ocean, untrodden by the foot of man since her earliest childhood; that there the man was wrecked, and he alone of all the men from the vessel reached the island alive, where for four months he and the woman remained together. I cannot conceive that anything short of this can satisfy the oath you have taken.

When all that is relied upon to prove that the defendant had connection with the deceased is, that he had an opportunity, it is necessary to prove that he alone had the oppor-

tunity. This the government seeks to maintain by attempting to show where Miss Tirrell was during all this time. The only person who attempts to account for her time during these four months is her mother-in-law, and I shall confine my remarks to her testimony. From the manner in which this portion of her testimony was introduced, one would suppose that Mr. Tirrell's house was a convent; Mrs. Tirrell the lady abbess, and Frances a nun of the black veil; or that if she ever crossed the threshold it was only to attend "religious meetings." But a more careful examination of the minor portions of this testimony — which were given as if they were of not the slightest consequence — brings to light the fact that she was not at home as much as they would have us suppose, indeed, that she was away from home a large portion of the time. Mrs. Tirrell says, "She went to her sister Susan's almost every day; sometimes she would go to spend a short time, and sometimes to spend the afternoon." When we add to this Mrs. Tirrell's statements that "she visited her brother Wilson Tirrell, Jr." — "she went to my mother's," — "to her cousin, Mrs. Garrett's," — "to Mrs. Gardner's," — "to her uncle Kingman Tirrell's," — "to her aunt, Mrs. Vining's," and I presume "to Mrs. Richards's," — "she went to evening meetings," and "to South Weymouth to lectures;" — convent, lady abbess, nun, black veil and all vanish away and leave us in doubt whether she was at or away from home most of the time.

And here the question arises — when away where was she? Nobody knows. No one undertakes to tell but Mrs. Tirrell, and she says, "I did not always go with Frances when she went out. I don't know where she was when she went out, or who was with her. She generally told me when she was going. I only know from what she told me." So we do not have here Mrs. Tirrell's statement where Frances went, but we have the statement of Miss Frances as to where she was going, and young women going out for some purposes do not tell all the places they intend to visit. She may have gone where she said she was going, *and there only*, but *where is the proof?*

The government desire you to believe that Frances could have had no intercourse with any one but the defendant, for the further reason that she was seen with no one else, and that no one else paid her any attention during these four months. The principal evidence upon this point, too, is that of the mother-in-law. True, you have the testimony of her father and brother that they saw her with no one save the defendant; but that is of no importance, for her brother saw

her but seldom, and her father was only at home nights, — not always then, — and I take it for granted that when she desired to be with a man, for the purpose material to this point, she did not call the attention of either to the fact, or request them to be present. I think several of the other witnesses have testified that they saw her with no one but the defendant. I do not remember who they were. I dare say the evidence is true. I paid but little attention to it. It is of no consequence. *I* did not see *you* last fourth of July, Mr. Foreman. I was not thinking of you; looking for you; do not know where you were, and cannot see how that is proof that you were not closeted all day long with any gentleman upon your panel. But the testimony of Mrs. Tirrell upon this point is important; she tells us that before Mary's death gentlemen came there, but that after her death she had no gentlemen callers; and then she adds, — "except her cousins Albert and Austin Tirrell, neighbors, who usually came in there." As if Albert and Austin were eunuch saints, so pure as to be above the suspicion of lust, and so incompetent in body as to render passion harmless. You have seen them both, gentlemen; in looks do they compare favorably with the prisoner, though they were upon the witness stand, and he in the dock; they right from fresh air and sunshine, he from a prison cell? Do their characters stand fairer before you than his? What is there, I pray you, to raise these lusty *cousins* above suspicion, and to point the finger of seduction to him who was to the parents a *son*, to the daughters a *brother?* Albert Tirrell and Austin Tirrell, forsooth! Who *usually* came in there! Gentlemen callers before Mary's death! Out half the time nobody knows where!

Others had no opportunity, had they?

Gentlemen, I would not wantonly say a harsh word of the poor girl who has gone, for if a fault was recorded against her on high, I trust that when her sad life closed the tears of the recording angel fell upon the page, and washed it from the record; but one thing I must say: The condition in which she was found proves it beyond a doubt, — you have heard, we all know it, — her passion ruled her reason; her person was freely given to one man at least, his as freely sought by her; her maidenly modesty was of no value to her, her virtue but a name. Now, gentlemen, answer me this: Was she up to the standard of our New England girls? Are they all like her? Are your daughters, were your wives, are those who are dear to you? No, gentlemen; it is not so. We all know it is not; life hangs in the scale, and duty requires me to tell you what you know too well already, that

the morbid temperament and strong passion of this unfortunate girl led her to the commission of acts from which most New England girls, by nature, by education, and by religion, shrink with horror. What is there in this case to satisfy your consciences that this poor girl, her intellect clouded by her temperament, her person warmed with passion, erred for the first time when she was twenty-five years old? Is that when passion is most youthful and strong? No. Had she no opportunity to gratify it till then? Certainly she had. She had been with the other sex from childhood. The neighborhood is full of young men. She had gentlemen callers before her sister's death. She had been familiar with Albert and Austin from childhood, and I submit it is probable she erred before she ever saw the defendant, and had an opportunity to do the same thing with the same parties after he came there to reside.

Now, gentlemen, I desire to show you two important facts. The first is that this fœtus was probably conceived while Mrs. Tirrell was away on a visit.

Dr. Jackson, professor of Morbid Anatomy in Harvard College, — whose testimony is entitled to the highest respect both from his character as a gentleman and his scientific attainments, — has examined this fœtus, and he tells you that it is impossible to state its age exactly, but to the best of his ability he should say that its fœtal age was from two and a half to three months. Dr. Tower — who took the fœtus from the body, carried it home and examined it carefully — tells you that, from the appearance both of the fœtus and of the woman, he decided that the age of the fœtus was about three months, though it might fall short two weeks. In all calculations respecting pregnancy, physicians reckon not by calendar but by lunar months, which, in round hours, is twenty-eight days, or four weeks.

Thus you observe that one of the most distinguished professors in this branch of science and the physician who had the best chance of observation, agree precisely in their estimate of the age of the fœtus. Now, gentlemen, Frances died on the night of the third of May. From the seventh of February to the third of May is just three lunar months. From the twenty-first of February is just two weeks less, or two and a half lunar months. Therefore, according to Professor Jackson and Dr. Tower, the fœtus must have been conceived between the seventh and twenty-first of February. Mrs. Tirrell tells you that she was away from home in February. She cannot and does not tell you in what part of February, but says that she was at Mrs. Jacobs's, in Scituate, in February. From

the seventh to the twenty-first takes exactly half right out of the middle of the month of February, leaving a week next to January and a week next to March. Is it not more probable that Mrs. Tirrell was away in the middle of the month? If away in the first or last week in February, would she not be uncertain whether her absence were not in January or March? Be that as it may, if she was away *a day* in February, the chances are even that the conception was during her absence. She tells us that she was at Mrs. Jacobs's *two or three days*, and therefore it is two or three times more probable that the conception occurred while she was absent than when she was at home.

The only other testimony respecting the age of the fœtus is that of Dr. Appleton Howe, and though I cannot speak in flattering terms of the military knowledge, of the professional attainments, or of the honesty of this old rhubard-headed Major General, yet I will do him the justice to say that he is not as big a fool as he looks. He has manifested an improper interest for a conviction in this case from the start. I wonder if he knew that Mrs. Tirrell was away on a visit in February? I wonder if he saw the danger of having the time of the conception come in the same month? I wonder if the reason why he swore that the fœtus was only two months old was to bring the time of conception in March, when Mrs. Tirrell was at home? When we first get sight of this weathercock he is before the coroner's jury, and the wind is east. There he testified,—"I found a fœtus. . . . Think it was *two months advanced.*" Subsequently he says,—"I feel satisfied, from further reflection and examination of the subject, that the fœtus was *three months, at least, advanced.*" The wind has changed since then; it is due west now—you saw the cock swing round. He testified here upon his direct examination, "When I first saw the fœtus I set it down as *two months and a half old.* The other gentlemen differed from me in opinion, and *upon mature consideration* of the subject, I thought possibly I might have overstated it, and I came to the conclusion that it was *somewhere about two months old.*" In his cross-examination it blows from the westward a perfect gale. He says, "When the question was first asked me how old that fœtus was, I said, off-hand, without stopping to calculate, *two months and a half.* . . . The other gentlemen thought I had set it too old, and after considering the subject I came to the conclusion that I might have been mistaken, and *I should set it at two months*, as near as my knowledge would allow. *It is not the fact that I changed my opinion the other way, and called it three months. I never stated it so*, according to my knowledge; because that is a point upon which I am just as certain as of anything that I see before me. I am just as certain of that as of anything I have testified to."

Let us take one more observation of the weathercock while the wind is west. He said under oath here, "*I did not discover the sex of the child.* I merely judged by the size of the fœtus. *I never testified that it was a male child,* that I recollect. I am just as certain of that as I am of any part of my testimony." Now we will turn him round to the eastward, and leave him for the present where we found him. On his examination before the coroner's jury, the last words above his signature are these: — "*I could tell the sex; it was a male fœtus,*" and Mr. Hall, the clerk of the coroner's jury, tells us that this statement also was under oath.

The same voice which made those statements before the coroner's jury made these here; the same arm that raised its hand to Heaven there raised it again here; the same man who said then, I will tell the truth, and nothing but the truth, in this case, *so help me God,* said the same thing here;—and still, by infinite mercy, that voice is not hushed, that arm is not paralyzed, that man is not yet dead, though the life of a human being hangs on the evidence. How inscrutable are the ways of Providence! In a moral view such evidence is startling! With that view, however, we have no concern; the only question for us is, to how much weight is it entitled in a process of reasoning? To none whatever. It cannot stand alone. In opposition to the concurrent testimony of Professor Jackson and Dr. Tower, it cannot raise a finger from the mud in which the whole body lies. The process of reasoning is not disturbed by it, and the result of the reasoning is, that it is two or three times more probable that the fœtus was conceived while Mrs. Tirrell was away on a visit than when she was at home.

The other fact to which I have alluded as of importance, and to which I now desire to call your attention, is, that at the time when this fœtus was probably conceived the defendant was at the house but very little, and was devoting none of his time to the deceased. The prisoner went to the house on the last day in December; he was in poor health, suffering in common with all the family under the affliction of Mary's death, and for a while he was in the house all the time, except when he occasionally went out with some member of the family. Mrs. Tirrell says, "For four, five, or six weeks, I cannot tell exactly how long, he stayed in the house almost all the time." During this time Frances was lavishing every attention upon him, all of which he was receiving kindly. Even Mrs. Tirrell tells you no act of extraordinary attention on his part, but mentions many on hers. She assumed the care of his clothing, and took great interest in it; and Mrs. Tirrell says, "I saw a great many instances, on her part, of attention toward him. If he was going

out anywhere, and was pulling on his great coat, she would get up and help him put it on, and brush it. I saw a great many such things." If the defendant is a seducer, now is his time. But he does not improve it. Nowhere does the evidence express more than kindness on his part; and the time of conception was *subsequent* to this. The fairest way is to take the medium of Mrs. Tirrell's statement of four, five, or six weeks, which is five weeks, and see where it brings us. The defendant went to the house the last day in December, and five weeks from that falls on the fourth of February. The earliest day when Professor Jackson and Dr. Tower say that the conception could have taken place was the seventh of February, and old Weathercock put it a month later than that. We have seen what the relations of the parties were previous to the fifth of February; let us now see what they were subsequent to that time.

The evidence shows that the defendant was away from the house almost all the time after the fifth of February.

Benjamin F. White, of the firm of Nathaniel Shaw & Co., for whom the prisoner worked for more than two years, tells us that on the thirteenth of February he is credited with fifty-four hours' work. Mr. White cannot tell when this work was done, because the men make up and hand in an account of the time they have worked, and no time stands to the prisoner's credit, before this, back to the first of January. Mr. White knows that this fifty-four hours' work was done between the first of January and the thirteenth of February, because they had previously settled with their workmen up to the first of January. Now, if it was done after the first of January, it was also done after the fifth of February; for we have seen that up to that time the prisoner was at home day and evening. This view must be correct, for it makes just a week's work. The fifth of February comes on Sunday, the sixth on Monday, and on the thirteenth, which is the following Monday, Mr. White has credited the prisoner with fifty-four hours' work, which is just nine hours a day for the six days in the previous week. This also shows that we were correct in taking the medium of Mrs. Tirrell's statement; for if he was at home six weeks he could not have been credited with any work on the thirteenth of February. After this week we find from Mr. White's account that he is at work all the time down to the third of May, though his health interrupts in some measure the uniformly large returns of labor which it was his previous custom to make. This shows that the prisoner was not with the deceased in the day-time, after the fifth of February; and Mrs.

Tirrell says, "I noticed a very great change after four, five, or six weeks; after that time he spent none of his evenings in the house." She also tells us she thought it very strange where he could be; and that he was often out until they were all in bed. This shows that he was not with her evenings. So after the fifth of February he was not with her at all. Now what were his relations with her from and after that time? In answer to this question we have a statement that illuminates this point like a conflagration — a statement introduced by the prosecution in violation of the rules of evidence, and for an entirely different purpose, — *a statement of Frances Tirrell herself* — a voice from the tomb! Mrs. Tirrell says, "I noticed a very great change after four, five, or six weeks; after that time he spent none of his evenings in the house, and did not have any conversation with Frances or me, and I made this remark to Frances, — '*I wonder what he is put out with me about? He don't talk with me, and don't stay in the house when I am here!*' She said, '*He talks as much with you as he does with me.*' This continued up to the time of her death." Mrs. Tirrell told Frances he did not talk with her, and Frances said he talked with Mrs. Tirrell as much as he did with her, — therefore you have the direct statement of Frances that he did not talk with her at all: and the answer of Frances conveys also a full acquiescence in the statement of Mrs. Tirrell to which it is a reply. The meaning would have been no more apparent had she added, "He is put out with *me*, too, and he don't stay in the house when I am here." And Mrs. Tirrell tells us that these relations continued up to the time of her death.

I trust I have made it plain to you, gentlemen, when this conception occurred. It was when Frances was twenty-five years old, — when she was away from home much of the time, nobody knows where — probably when Mrs. Tirrell was away on a visit — when Albert and Austin were in the habit of coming there — when she could have gone to see the "gentlemen-callers," and when they could come to see her, — when the prisoner was at work in the day-time, and away in the evening, and at a time when the voice from the grave tells us the greatest indifference and coolness existed between them. Gentlemen, if this is proof of the government's proposition that the prisoner seduced her, and that she was pregnant by him, my mind is a stranger to the nature of evidence.

Pause with me here and glance backward a moment, gentlemen. In the outset the evidence presents the prisoner before you with a character of which any man might well be proud. For the purpose of the argument we in the first place admitted that the circumstances which the prosecution say were the basis

of the motive did exist just as they allege, and then we show four alternatives, by either of which the necessity for the commission of murder — if such a necessity could ever exist — could easily have been avoided here. First, by doing nothing at all about the matter. Second, by taking up his residence in some other part of the country. Third, by having an abortion produced. Fourth, by marrying the girl; and we followed each of these alternatives to its ultimate consequences. Then we pointed out how the evidence of the government proves the first assertion of the prosecution in reference to the motive to be utterly groundless, — proves that the prisoner and Miss Loud were not engaged when Frances died, — and in regard to the other we show that the evidence, instead of proving beyond a reasonable doubt that the deceased was seduced and made pregnant by the prisoner, renders it far more probable that she had been too familiar with men long before she ever saw him, and that she was made pregnant by some one else.

What more can you ask us to do than this? To prove that no motive existed is from the very nature of the subject impossible, nor is it any part of our business to bring such proof; the innocence of the prisoner is to be presumed, and it is for the prosecution to prove that a motive existed in his mind for the commission of a murder. Is it not enough for us to show that the circumstances which they say existed were not such as would raise a motive in any sane mind, and then to prove that the circumstances themselves never existed?

I trust I have succeeded in showing that the evidence falls far short of establishing a motive, and I now submit that the evidence which is to establish a murder without a motive must be overwhelming, for this good old Commonwealth does not demand a periodical human sacrifice in her temples of justice, and I feel sure you will not let your sympathy for the dead overcome your sense of justice to the living.

In every criminal case the whole body of the evidence on the part of the prosecution is introduced for the purpose of establishing a few leading facts. Each of these facts, if established, is a link in a chain of evidence which binds the charge in the indictment to a verdict of guilty so strongly that human reason cannot rend them asunder. By reason of the great importance of these leading facts the law requires two things: first, that the existence of each shall be separately established beyond all reasonable doubt; and, secondly, that when so established they shall bind the charge in the indictment to the verdict of guilty. In this case the government have attempted to establish three such facts. The first, *that*

the prisoner had strychnine. The second, *that he gave it to the deceased.* The third, *that it was strychnine which caused her death.* This chain of evidence is well conceived, but certainly two of the links are far from being established, and if either of the three is missing the chain is incomplete, and the prisoner must be acquitted.

Let us examine the first. *They allege that the prisoner had strychnine.* And this great fact they attempt to prove by the solitary assertion of Alfred W. Coburn. Search the evidence through and through and you will find no pretence anywhere that any human being save Coburn ever saw the prisoner have one particle of strychnine. Upon the lonely word of this solitary man rests all the proof of this link in the chain. Now I respectfully submit to you, gentlemen, that when a man testifies directly and positively to a leading fact in a case, the weight of his word depends upon so many contingencies, — as his truthfulness, his intelligence, his chance of observation, — that this, though at first it may appear the strongest, is, in fact, the weakest kind of evidence. It is only when a witness is ingenuous, intelligent, and corroborated by all the surrounding circumstances, that what he says is to be believed beyond all reasonable doubt, — and then more credibility is given to the surrounding circumstances than to the word of the witness; or, at any rate, it is by these circumstances that we judge of his word. A variety of circumstances testified to by different witnesses, and observed for no common purpose, are the strongest and most reliable kind of evidence. When the statement of the leading witness is supported by these circumstances it is worthy of credit, but when the circumstances contradict it I submit that the circumstances are to be believed, and not the isolated witness.

I desire now to show you how Coburn first got the impression that he sold strychnine to the prisoner, how that impression was strengthened, and how naturally he fell into an error, though he may have been in the outset perfectly honest. I shall then point out to you wherein he is contradicted by all the surrounding circumstances. You will remember, gentlemen, that on the fourteenth of May Mr. John M. Dunn, of the Boston detective police, was "detailed to ascertain if any apothecary in the city had sold the prisoner arsenic, strychnine or any other deadly poison," and that among other places he called at Miller's shop, and found Coburn in attendance. Thereupon a long conversation ensued between Dunn and Coburn, not one word of which was it proper for the government to put in evidence, but every syllable of which *was* introduced,

and without objection on our part. To the Honorable Court, and to those who are familiar with the rules of evidence, this may seem strange, but it is easily explained. From the time when I first heard the evidence of Coburn before the magistrate, — given there substantially as it was here, — up to the time of this trial, it was all a riddle to me, a complicated cipher, to which I could discover no key. I felt sure it was not true, and yet it did not bear the semblance of a wrought-up falsehood. That the prisoner bought strychnine of Coburn I did not believe, and therefore I did not fear to have the full blaze of all the light in existence thrown upon Coburn, but rather hoped that by means of it I might be enabled to see what lay at the bottom of his mind. With this view, on our part, the evidence was admitted, and we are not disappointed in our anticipations, for the riddle is solved, we have found in this conversation the key to the cipher, and I would respectfully submit to your consideration our view of what has floated in Coburn's mind since Dunn first saw him, as the only view consistent with all the evidence.

The statutes of the State provide that if an apothecary or other person sells strychnine or certain other enumerated poisons without the written prescription of a physician, he shall keep a record of the date of such sale, the article, the amount thereof sold, and the person or persons to whom delivered, and for each neglect to do so he shall be punished. This law was well known to Coburn, yet he was in the constant practice of violating it. He never had met with any trouble from its violation, he hoped he never should, and he had grown careless in the distribution of poison among the people, giving it even to those who were strangers to him. At this point in his commercial career, a gentleman of polite address, in ordinary citizen's apparel, called at his store, and, showing him a miniature, asked him if he "had ever seen that man before." He "looked at it a moment and said" he "thought he had." I dare say he thought so. If a like miniature had been presented to you, Mr. Foreman, would not your mind have reverted instinctively to the many similar faces of the same type that have passed you on the highway of life, and, settling upon some one of them, have traced so close an analogy between that and the miniature as to lead you to think that they were one and the same person? If by chance the miniature resembles some intimate friend or familiar acquaintance, the outlines of whose features and the various expressions of whose countenance are perfectly clear in your mind, you detect the error at once; but if, on the other hand, the picture bears a resemblance to a casual acquaintance, or to a

face that has momentarily arrested your attention, the living face you have seen is so indistinctly defined in your mind, and there is yet so much in the picture to recall it, that you feel sure that you have seen the original of the picture. Has it not been your experience in looking at the pictures in daguerrean saloons, or in the show-cases at their entrance, that some face has arrested your attention which you feel perfectly sure you have seen, yet cannot locate? So it is with Coburn. The miniature resmbled a person whom he had somewhere seen, yet whose face he could not recall, and when the gentleman asked him if he was sure, the miniature again recalled the face so forcibly that he told him he "had seen it." The gentleman then asked him "if he had ever been in the store." The very question, coming thus from the stranger, added to the fact that there was the place, of all others, where he would be most likely to see him, seemed to fix him there, and he said that he had. I am giving Coburn's own version of this conversation; — and he then says, "He asked me how long before. I think I told him three or four weeks; I was not sure. He asked me what I sold him, and I told him I did not know as I could remember just then, but I thought that I sold him some toilet articles or perfumery, or something of that kind." Now, gentlemen, I desire you to observe, for it is of the greatest importance, that up to this point, from a miniature and from the gentleman's interrogatories, Coburn had an impression that he had seen the original of the miniature in his shop at some time not far back, and that he had sold him something, what, he could not remember, but he thought some toilet articles, or perfumery, or something of that kind. Nothing is clear and definite in his mind, nothing is tangible and real to him. He does not recognize the man, does not know what business transaction he had with him, if he ever had any at all. Up to this period, too, his whole attention has been directed to the picture for the sole purpose of accommodating the gentleman, and he has strained his memory to the utmost to recall the face of which the miniature is a copy, and the business transaction he had with the man, if any; and up to this point he has done it honestly, unsuspectingly, and with perfect self-composure; but the next question is the point on which this man's evidence turns. The question — which I take from Dunn's evidence, for Coburn's is no longer clear and intelligible — was this: "*Have you sold any arsenic, strychnine, or other deadly poison, to a person who looked like that?*" DEADLY POISON! His startled brain saw those blazing words as plainly as Belshazzar saw the writing on the wall. There was trouble somewhere. His illegal distribution of poison

has caused it. Who had committed suicide? Who had been murdered? The last newspaper sensation murder was this. *Then for the first time* it came across his bewildered brain that he had seen an account of it. For all he knew he had sold the poison that killed that girl. It was probably that case which caused the man to come to him. He was detected, and could only escape punishment by assisting in the conviction of some one else. But of whom? Here was the trouble. The newspaper story he had no interest in, he could not remember, he read it only as a story, it was all a tangle in his mind. He remembered the statement that she died by strychnine; the name of Hersey had faded from his memory, but the name of Tirrell he was sure he had seen; somebody's father did business in Pearl Street; somebody's sister had recently died; this, mixed up with some story about a horse that died, and something about dogs, gave rise to the story which it was necessary to invent on the spur of the moment, and so, in his bewilderment, with no time to refer to the paper or to digest his story, he made the most improbable statement I ever heard in a court of justice. He made Hersey say, in substance, that he was Wilson Tirrell's son, and that the deceased was his sister. He got the impression that the paper said that the party under arrest was a son of Mr. Tirrell who did business in Pearl Street, when it said that the girl who died was his daughter; that it stated the party arrested had lost a sister, instead of the party who had died. Having once told that story, he was pledged to it; he must tell it again before the magistrate, he must then tell it to you.

I shall show you presently how improbable it is that the prisoner ever went into Coburn's store on such an errand with such a story; but I desire first to convince you that I have read his mind aright. In this point of view it is all-important to know when it first occurred to him that he had sold poison to the original of the picture. If he ever did sell poison to the prisoner, and if he ever had the long, strange conversation with him about it which he tells us of, it needs no argument to convince you or me that the man, the bottle with the deaths-head on it, the conversation, all came hurrying back to him the instant he saw the picture. But such was not the fact; if he had ever seen him, he was in doubt when, and only thought he had sold him some *toilet articles*, until the words *deadly poison* darted through his brain, and then, for the first time, it occurred to him — *what?* That he had seen *him?* No; but *that he had seen this case in the papers!* There can be no doubt about this, for he tells us so twice himself. In his direct examination he says, "*Then he asked me if I had sold him any poison.*

I told him I had. At that time it came across my mind that I had seen and noticed this case in the papers. It was the first intimation I had in regard to the case that I was in any way connected with it at all." On his cross-examination he says, "I think he named two or three kinds of poison; asked me if I had ever sold him any strychnine, arsenic, or any other deadly poison. I think those were the words that he used. I told him that I had sold him some strychnine. I suspected then that there was some trouble, because I remembered reading in the paper a short time before that an account of this Weymouth case. That was the first I knew that I was any ways connected with the case. I think he told me then of this case, or I might have got the idea from reading it before." If he sold the prisoner strychnine, as he says, is it not strange it did not occur to him — holding and looking at his picture — until Dunn asked that question? Yes, I submit it is too strange to be true; and it is equally strange, if he sold strychnine to the prisoner, and had that most remarkable conversation with him, that the whole tragedy, and the part he had acted in it, did not flash before him when he read that account in the paper. I respectfully submit to you, that if Coburn sold that strychnine and such a conversation occurred, it could not by any human possibility be that he could read that account without recalling the transaction which preceded it. The newspaper; the conversation; the name of the town where he lived, the same in each; the name of Wilson Tirrell, the same in each; Wilson Tirrell, as a father, in each; lost a daughter before, in each; sister died a short time previous, in each; strychnine in each! If a man had simply gone in and said, My name is George C. Hersey, and I want to buy some strychnine, there would not have been a tenth part as much to connect him with the transaction as Coburn says there was in that conversation.

In connection with this, mark well, I pray you, another aspect of circumstances. From Coburn's statement it could not by any possibility be more than a fortnight before the third of May when he sold the strychnine to the prisoner. Now what happened in the evening of this memorable third of May? *Coburn was married, and Betsy Frances Tirrell died!* On that night he placed a ring on the hand of his bride, within a fortnight he had placed a bottle in the hand of a murderer. As he held the hand of one at the altar, while the holy man pronounced them one through life, a physician held the hand of the other, and, finding no pulsation, announced her death. On that night he clothed two girls in white, one in a wedding dress, one in a shroud; one he placed on a bridal couch, one on a death-bed.

The next day, when he saw the announcements side by side, one among the marriages, one among the deaths, he could trace his connections with only one. The next, when the cloud of papers flying over the city cast a shadow of foul play in "Weymouth," he noticed not its passing. The next the "Weymouth Murder" passed him unnoticed, and the succeeding issues containing "Weymouth Tragedy" — "Horrible Murder" — "Wilson Tirrell" — "Strychnine" — "Lost a daughter before" — "Sister died," — each day growing more explicit and containing fuller details, though read by him, brought not that recent sale of poison to his mind! From the third to the fourteenth he read the sensation articles, — and, in those quiet times, you remember how they blazed out in the columns of the dailies, — for eleven days he read them, and not until John M. Dunn called upon him, no, not then, not while he stood holding a picture of the prisoner, not until Dunn asked him if he ever sold that man deadly poison, did he ever have the "first intimation in regard to the case that he was in any way connected with it at all." I submit to your judgment that there is, and can be, but one reason why Coburn did not recognize the miniature at once when Dunn handed it to him, and that is, that he had never seen the prisoner, or certainly had not seen him under such peculiar circumstances as the prosecution would have us believe, and that there is, and can be, but one reason why it did not cross his mind that he was in any way connected with the case, until Dunn called on him, and that is simply that he *was not*, for he never sold the prisoner strychnine, and never had that conversation with him within a fortnight of the third of May, nor at any other time since he came into the world a breathing little specimen of total depravity.

The inconsistency of the statements of Coburn is fully equalled by the cool impudence with which, by means of the farce of identification in the jail, he seeks to establish it as a fact that he really saw the prisoner and sold him strychnine. In this he is assisted by those who should know better. He says, "I think my identification at the jail was sufficient. I would have been willing to swear it was the man." I could hardly maintain a proper decorum of countenance, even on this solemn occasion, oppressed by the duty devolving upon me, and restrained by the august presence of these much-respected judges, while the witness told us of his passing along the corridors, looking into the cells, and examining the men arranged in the guard-room of the jail to see if he could identify the prisoner among them, and the stillness of the court-room too, all breathless to catch the words which announced his identifi-

cation or mistake, was such a theatrical success, that I forgot for a moment it would be my duty to expose it, and was really enjoying it as a piece of very artistic deception arranged by detective Dunn. So adroitly had the miniature been slipped out of sight that the audience forgot it was only the very day after Coburn had so carefully examined it that he went to the jail for the sole purpose of selecting from a limited number the man whose features the unerring sun had placed before him on the preceding day!

The miniature! the miniature! These are the magic words which lift all solemnity from the scene in jail, as the morning sun makes the mist curl upward, leaving the valleys all laughing with light. *One afternoon* Dunn went in and showed Coburn a miniature; called his attention to it in such a way that if he lives it will haunt him half a century. *In the evening*, he went in again and told Coburn that he should want him to go out to Dedham the next day and identify the person whose miniature he had seen. *The next noon*, he went to Dedham and identified him. Twenty-four hours will cover these transactions and leave a margin. *The miniature!* At the suggestion of these two words you see at once that there is nothing more remarkable in this identification than there is in one man's remembering how another looks over night.

When you return to your quiet homes, gentlemen, it may be an interesting subject to consider in some leisure hour how far our safety is secured by sending detective policemen, armed with our daguerreotypes, about among the poison-venders. It would be stepping out of my path to consider it here, for if I have made the operation of Coburn's mind plain before you; have shown you how he came to say he had sold the prisoner poison, and from what ingredients he compounded that strange conversation; and if I have shown to you that the identification upon which he relies for confirmation is an imprudent attempt to impose on us, I desire now to show you how improbable it is that the prisoner ever went into Coburn's store for such a purpose and told him such a story.

In considering this point, gentlemen, you will assume either that my client was a sane man or else that he was crazy or an idiot. If either of the latter conditions existed, if his mind was deranged or if he had no mind, he is not responsible for any act he may have committed, and you of course will acquit him. But his mind was, and is, in good healthy working condition, and though I know him to be far above the majority of the men of his station in mental activity and general intelligence, all I ask of you is to give him credit for having common sense.

You will not forget, I think, that the theory of the prosecution is, that this is a murder committed with deliberately premeditated malice aforethought. For the sake of meeting Coburn's story, it is now necessary to assume that the prisoner had determined to kill the deceased, and had decided that strychnia should act as his agent in taking away her life. Everything bearing upon these questions had been deliberated upon, the decision had been reached, the murder was to be committed with poison. Of course the next question which presented itself for his consideration was, where he should procure the poison; and I respectfully submit that a man about to commit a crime for which his life must pay the forfeit, if he is detected, would be most anxious to procure the agent of his guilt where it would be least likely to become known, and wherever he obtained it would make as little talk as possible, and that such as would mislead as to who he was, and where he came from. What does Coburn say the prisoner did? Just the reverse of this: That he went into a shop in a neighborhood where he was well known, the most dangerous shop in Boston for him to enter; referred to a gentleman opposite, whom Coburn had known for years; had a very long conversation, in which he said, not only that he lived in the town, but in the very house where the girl was to die that he was purchasing the poison to murder; gave the name of the girl's father, and said he was his son. In the name of common sense, I ask can this be true? Do you believe one word of it? Did the prisoner ever go into a shop in Boston, in a neighborhood where he was known, and purchase poison to murder Betsy Frances Tirrell, and tell the man he bought it of that he lived in Weymouth, and was a son of Wilson Tirrell, of Weymouth, who did business in Pearl Street, in Boston, when he knew that in a week the sudden death of a daughter of Wilson Tirrell, of Weymouth, would be in the papers? No; never! No man would be so reckless of his life. There is no such allurement about the scaffold, no such charm in the fatal noose, no such endearing fame in a public execution, as will induce a man to commit a murder, and carefully arrange all the antecedent circumstances so that they shall point to him as the murderer. If he had gone into Coburn's store on such an errand he would have lied of course; but he would not have told a lie that would have linked him with a murder he was going to commit, ten times more firmly than the truth. He would have said that his name was John Smith, that he lived in Salem Street, and wanted to kill rats, or anything — anything the human fancy could conceive, but just what Coburn tells us he did say. No; I submit

that story originated in Coburn's bewildered brain, not in that of a man deliberately premeditating a murder by poison; and it finds no confirmation whatever in the trick of identification.

There are two other pieces of evidence upon which the prosecution seem to rely to sustain Coburn, and to prove that the prisoner had strychnine. I do not consider them of the least importance, and do not think that they tend to strengthen the government's position in your minds, but shall not intentionally avoid any of the evidence, for fear that it may gain weight with you from that fact. I allude to the testimony of John C. Warren, and to the pieces of paper found at Mr. Tirrell's house.

I was not very much pleased with Mr. Warren, gentlemen, and do not think you were. I did not like his looks or his appearance on the stand. I did not like his never having been heard of in connection with this case until this trial. He was in Coburn's shop altogether too much, and if you are familiar with large cities, you know that those gentlemen who were formerly on the police and are now engaged in no business do not form the most respectable class of the population. Nevertheless, we can afford to accord to him a decent character, for the question we are now considering is, whether the prisoner ever had poison, and Mr. Warren says he "don't know anything about his purchasing poison, except what he heard." The most that can be claimed for Warren's testimony is, that it tends, if true, to confirm Coburn's story, so far as it can, by showing that at some time Hersey was in his store. Warren says he saw him there twice. This is a singular coincidence, for Coburn says Hersey was never in there but twice; the first time he will swear he was there but five minutes; and on that occasion Warren swears he was there himself but one. On the other occasion Coburn does not state how long Hersey was there, but it was while Mr. Miller was away at dinner, and he is gone but an hour and three-quarters; yet Warren happened in just the same as before. It is a little singular that the only two times it is said that the prisoner was ever in that store Warren should have happened in; but it is no more singular than that he should remember to have seen him there — a stranger upon whom he cast a momentary glance — a month or two afterwards, when Coburn first spoke to him about it. He cannot tell whether it was *a month or two months* after he saw him there when Coburn first spoke to him about it, and yet it is from this conversation with Coburn that he undertakes to fix, *within a week*, the time when he saw the prisoner. This is consistent!

There is another statement of this witness that is quite remarkable, and that is his testimony about the conversation he had with Coburn the first time he says he saw the prisoner in the store. You will remember that he said he "was in the store of Mr. Miller, at the corner of Hanover and Union Streets, almost every day, some two or three times a day;" that on this occasion, he says, "I didn't stop, I suppose, more than a minute; went right through from one door out to the other street." He fixes the position of Coburn and the position of Hersey in the store, and says: — "I spoke to Mr. Coburn, who was behind the show-case at that time; asked him if Mr. Miller was in, or if Mr. Rowell was in. Mr. Rowell was my partner on Hanover Street." It does not appear that there was any trouble with the eyes of the witness on this occasion, and if Mr. Miller or Mr. Rowell had been in I take it the witness could have seen them in that crystal store as well as he could Coburn and the prisoner; if so, why should he inquire for them? He did not want either of them for anything in particular, for he does not say he did, and if he had he would fix the time when he saw the prisoner by that, and not by conversation he had with Coburn a month or two after, — which latter conversation he says is all he has from which to fix the time. He did not want Miller or Rowell, and the conversation is evidently linked with nothing in his mind to give it importance. If he recalled on that stand such a brief, trivial, careless conversation that he had more than a year ago with a clerk in a store that he visited, according to his own account, between seven and eleven hundred times a year, he did so by the sheer force of his memory; for there was nothing whatever to distinguish it from a thousand just such conversations with the same clerk since, and for all we know five times that number before. Now, gentlemen, that witness did remember that ordinary conversation when he swore to it or he did not; if he did, I think he is the most remarkable man you ever met; if he did not he is a liar; and if he has lied to you about one thing you are to cast his testimony aside as worthless throughout, and entitled to no weight whatever.

If you desire to go further with this man, and to know how his testimony was procured, you can easily do so. It was by means of the witness Coburn, and through Dunn and other police officers armed with the miniature. Coburn talked with him, and Dunn talked with him, and then they got him into the City Hall, and Mr. Ham, the deputy chief of the police, showed him the miniature, and he talked with him, and the witness says: — "When I was told that it was the daguerreotype, Mr. Ham, the deputy chief of the police, asked me if I could identify

the person if I should see him. I told him I could." They did not think it worth while to go through the farce of identification in jail with this witness; but they could with perfect safety, for, though he never saw the prisoner before in his life, he had seen his miniature, and that would answer every purpose.

Again, though I do not believe one syllable of that man's testimony, yet I respectfully submit that, if it can in any view be considered as true, he made no such observation of the stranger he says he saw in Miller's shop as will justify him in swearing a year afterwards that a man he sees here is the same person, especially after he has been dwelling upon this man's likeness so long. There is nothing upon which the judgment is more likely to be deceived than the human countenance,— nothing is more common than to mistake one person for another. This very witness says the way he now identifies the prisoner is, that he mistook him at first for a man by the name of Allen, with whom he was well acquainted. Is it not, I ask you, quite as likely that he has mistaken some one else that he has seen in Miller's shop for the prisoner, with whom he is not acquainted, and for that reason has not detected his error? At the old Bailey Sessions in London, two men were convicted of the murder of Syder Fryer, Esq., and executed. The identity of the prisoners was positively sworn to by a lady who was in company with the deceased at the time of the robbery and murder. But several years afterwards two men, who suffered for other crimes, confessed at the scaffold the commission of the murder for which these persons were executed. I might relate to you many well-authenticated cases of mistaken identity, many where life has been sacrificed on the evidence, many where years of imprisonment have been endured, but I do not deem it necessary to occupy more of your time upon this witness, as his testimony is of no great importance — contains too many improbabilities within its narrow limits to entitle it to belief; and the simple statement that he mistook the prisoner for some one else is enough to render it probable that he has mistaken some one else for him.

I would now call your attention for a moment, gentlemen, to the pink-paper testimony, which the government deems of sufficient importance to occupy a portion of your time, keeping in mind, of course, that the question before us is, did the prisoner have poison? You will remember that Coburn says he sold the prisoner poison, put up in such a bottle as he exhibited here, and done up in just such a pink wrapper. Mrs. Tirrell tells us that she found some pieces of paper in the fireplace in Hersey's chamber, and speaks of one in particular;

but Coburn tells us that the paper on the bottle was labeled and distinctly marked "Strychnine" — "Poison," just like the one exhibited here; and Mrs. Tirrell says that the one she found was marked Lubin. No paper round the bottle of poison which Coburn says he sold had any such mark as Lubin upon it. He says he sold nothing but the bottle of strychnine to the prisoner on that day, and he does not tell us that the prisoner had in, or carried out of his shop, any piece of paper that day but the one round the bottle of strychnine. So it is certain that the piece of paper found in the fire-place by Mrs. Tirrell did not come round the poison, and did not come from Miller's shop at the time when Coburn says he sold the poison. But *where is* that pink paper, gentlemen, that Coburn says he gave the prisoner around that bottle? Where are the seals that were on that paper? Where is the cork that was in that bottle? Where is the bottle itself? and where is the remainder of the poison? Surely this man, who was so great an idiot or so reckless of his life as to tell such a tale where he bought them, has not grown suddenly wise or timid enough to destroy them. He who was arranging every antecedent circumstance to point to himself as a murderer has not removed all traces of these great proofs of his guilt! Mrs. Tirrell, where is the pink paper that was round Coburn's bottle of strychnine? We want it, and the bottle, and the cork, and the residue of the poison. You could not find them! No! and the detective police of Boston, with the treasury of the Commonwealth open on their left hand to pay them for their time and labor, and the treasures of the Tirrells open on their right to reward their success, could not find a trace of them! Mr. Dunn tells us he searched the shoe-shop where the prisoner used to work, Mr. Tirrell's house, the room Hersey occupied, the barn, pig-pin, and privy, "for the remains of the bottle, or the paper that was supposed to be about the bottle of strychnine." He says he made a thorough search: and when a professional detective of the Boston police department declares that he has made a *thorough search* for an article and cannot find it, you may assume with great confidence it is because the article is not in existence. And this is still another, and yet stronger confirmation of my assertion that the prisoner never took a bottle of strychnine from Miller's store, and is still another circumstance contradicting the story of the *identifier*.

There is one slight coincidence — strange there are not more — between the stories of Coburn and Mrs. Tirrell, that the government may press upon you as corroborative of Coburn's story that the prisoner was in his store on the first occasion when he says he was. Coburn says that on this occasion he sold the

prisoner, among other things, a bottle of Lubin's perfumery; and Mrs. Tirrell says that she found among some pieces of paper in the fire-place, in the prisoner's room, one marked Lubin. That the prisoner, or any other civilized being, should own a bottle of perfumery, is not very strange; and I run no risk in saying that Lubin's are the most popular perfumes in this country, and that they and their counterfeits have a very large sale. They are not imported and sold by Mr. Miller, at the corner of Hanover and Union Streets, alone, but are to be found in every apothecary and toilet-article shop in New England, in colored papers, and all water-marked just the same. How far this coincidence may strike you as being corroborative of Coburn's story, I can easily conjecture. If I entertained any fears upon this point, they would be set entirely at rest by the next step in this evidence; for there the coincidence ceases, and the story of Mrs. Tirrell proves conclusively that if the prisoner had a bottle of Lubin he did not get it of Coburn; for Coburn says the wrapper of the one he sold him was "a kind of a blueish purple," and Mrs. Tirrell says the one she found was "blue" — two entirely different colors in paper, as you very well know. Now I ask what became of the "blue" paper round Coburn's bottle of Lubin — where is that? Where is the hair-brush and the comb he says the prisoner bought at the same time? I think the detective or Mrs. Tirrell has all his brushes and combs. If any of them came from Miller's shop why not produce them? Show others like them from the same lot — show his shop-mark upon them? Why not find in the town of Weymouth one single article that the prisoner ever carried out of Miller's shop? — because he never was in that shop; and here again Coburn stands contradicted by circumstances.

Coburn makes one more attempt, gentlemen, to sustain his evidence, and with a few comments upon that I shall finish my argument upon this question. He brings in Mr. Loring C. Tirrell, another friend of his, just as he brought in Mr. Warren. You will remember that the first question asked of this witness was, if he was related to the deceased, — thereby implying that none of her relatives were worthy of belief, and that he, not being related to her, was. I thought this question rather severe upon the relatives, considering that so many of them had testified here; and I will take this occasion to say, that after a critical examination of the evidence, I am convinced that you will find more conscientiousness, more humanity, more truth in the testimony of the relatives of the deceased than you can in all the rest of the government's evidence; and as an illustration of this remark, I will call your attention to the story of this witness, who says he *is not*

a relative. He says he has known Coburn two years, and I think, from his appearance and testimony, he knows him pretty well; *so* well that Coburn thought it possible he might have seen the prisoner on one of the days he says he was in the shop, and might have told him what he purchased. The witness, of course, did see him on one of those days, and he told the witness he had been down to the corner of Hanover and Union Streets; and mark well, I pray you, what the witness says the prisoner told him he purchased there — a comb, a brush, and some perfumery. This fixes the day when he called upon the witness as the same when he called on Coburn *first*, for that is what Coburn says he sold him on that day; and on the day of his second visit, he says he sold him nothing of the kind: so we will consider it settled that if the prisoner ever called on Coburn and on Loring C. Tirrell the same day, it was on the day when he called on Coburn *first*.

It nowhere appears from any of the evidence that the prisoner was in Boston but twice during the month of April. Strange to say, no one but Coburn and his crony, Warren, testifies to his having been in but once. *From the first day of April*, 1860, *up to this moment the prisoner has been in Boston but once*, and I desire to show you, from the evidence, as nearly as I can when that was. You will remember that the only time any living being, except Coburn and Warren, pretends to have seen him in Boston since the first of April, was when he went in with Albert Tirrell, 2d, and they went into Frederic Whiton's shop to get a hat fixed. This was on Wednesday, the eighteenth of April. Mr. Whiton says, "I think he was in my store on the eighteenth of April. He came in with a gentleman to get a hat fixed. I think that he was in there on the eighteenth, — from the eighteenth to the twenty-fourth, *sure*." And then he explains, from the nature and course of his business, why he thinks he was in on the eighteenth, and why he is sure he was there between the eighteenth and the twenty-fourth. He is sure the hat was *delivered on the second of May;* and Albert is *sure he took it on the second of May*, when he was returning from New Hampshire, where he had been for five or six days. Now, the second of May was Wednesday, and Albert says he left the hat the Wednesday before, or the Wednesday before that. He could not have left it the Wednesday before, for that would have been the twenty-fifth of April, and Mr. Whiton is sure it was left as early as the twenty-fourth, and thinks it was left on the eighteenth. The Wednesday before the twenty-fifth of April, and the second Wednesday before the second of May, *is* the eighteenth of April — the very day Mr. Whiton thinks it was received. So Mr. Whiton and

Albert Tirrell agree precisely as to the time the hat was left, and that was the day the prisoner and Albert Tirrell went into Boston together. I consider this time fixed to a certainty on the eighteenth. Now, I desire you to observe when Coburn fixes *the last time* that the prisoner was in his shop. Alluding to his first visit he says, "He came into the store where I was employed in the year 1860, the latter part of April." Then he says he "saw him in the store about a week afterwards, very near the latter part of April, 1860." He then tells us that the way he fixes the time is, that he was married on the third of May, and he knows it was *a very short time before that.* On his cross-examination he says that the first visit was as late as the third week in April; so the second must have been in the fourth week. Throughout his testimony, he asserts that the first visit was in the latter part of April, and that the second was the very last of the month; therefore he could not have made his *second* visit to Coburn's shop on the eighteenth, when he came in with Albert, because his first, being a week before, would then come on the eleventh, and this, according to Coburn's story, could not be; and Coburn puts the second visit much later than the eighteenth, — later even than the twenty-fifth, which is a week from the eighteenth. So if the prisoner called at Coburn's on the eighteenth, and made him two visits, I think there can be no dispute that this was the *first* one, and that the other was later in the month. We have seen that if the prisoner called on Loring C. Tirrell, it must have been the day when he called on Coburn first, and that the day he called on Coburn first (if he did call), was the eighteenth; therefore, if he called on Loring C. Tirrell, it was on the eighteenth; and on the eighteenth he came into Boston with Austin.

I desire now to remind you that Loring C. Tirrell says he came into his shop "about nine o'clock, and stayed until eleven, or half-past;" and this, I submit, cannot be true, for Austin says they came into the city together at eight or nine o'clock, and went to Mr. Whiton's hat store. And then, neither of them having any business, the first part of the day they wandered about together, going into several places where they kept furniture and into a daguerreotype saloon, where the prisoner had his picture taken, and into various other places; but among them all no mention is made of Thayer's shoe store, where Loring C. Tirrell worked; and finally they separated for a while, to meet again at Wilson Tirrell's shop in season to take the afternoon train home. Such is the true history of that forenoon of the eighteenth of April. And during part of those two hours and a half, when Loring C. Tirrell says the

prisoner was sitting in his shop, he was in fact sitting for the very picture which drew Coburn and his two friends into the whirlpool of this case.

It does not appear from the testimony that the prisoner and Loring C. Tirrell were very intimate and warm friends; and even if they were, does it seem probable that the prisoner would go to Boston and lounge about his place of business from nine in the morning until half-past three in the afternoon, with only an hour's intermission? Was there no place in the city more attractive to that shoemaker than that shomaker's shop? no one of his city acquaintance whose conversation could charm the moments when Loring C. Tirrell, with his cultivated mind and musical voice, would condescend to enchant the hours? Really, those are fortunate who enjoy the acquaintance of this young gentleman! It would be a matter of regret that his brilliant talents are not more widely known, if we did not feel sure that sooner or later he will come before the public, and that then he will get his just deserts. This part of his story is just about as probable as it is that the prisoner would go to Coburn to get strychnine to commit murder, a week after telling Loring C. Tirrell that he had bought things of Coburn, when Tirrell said in reply that he knew Coburn very well, and had for a long time.

I do not think you will place much confidence in this story of Loring C. Tirrell; but if you do I am just as well contented as if you do not; for if Tirrell's story is true it is still further evidence that Coburn's is false. They did not arrange them well before they came into court. Tirrell says the prisoner left his place at eleven or half-past, and was gone an hour or an hour and a half. Coburn says he was in his place between a quarter of one and half-past two, and fixes the time precisely by Miller's going to dinner. We will give these gentlemen the benefit of every minute in their favor, and see how near we can bring their stories together. Say that the prisoner left Tirrell's place at the latest minute he sets, which is half-past eleven, and was gone the longest time he names, which is one hour and a half, and he must be back at one o'clock. Suppose now he goes into Coburn's store at one door just as Miller goes out at the other, and he does not enter it until a quarter of one, he has but fifteen minutes to do his trading, to have the conversation, five minutes long at least, which Coburn speaks of, and to saunter back from Union Street to Court Street;— putting this in the very best aspect that it can be put for the government, the time is much too short for these transactions. If we may be allowed to put the evidence in the most favorable light for the prisoner (and I think I have read that where

there is a doubt the prisoner is entitled to the benefit of it), we should claim that he left Tirrell's at eleven, and was gone an hour, and so was back by twelve, and then the evidence would prove, if there was a word of truth in it, that he was at Tirrell's shop just when Coburn says he was at his, and had been there three-quarters of an hour at the least calculation. But this Loring C. Tirrell is so intimately linked with Alfred W. Coburn, and his story is so improbable in itself, that I think you will not give credit to it, and I respectfully submit the statement of the government's witness, Austin Tirrell, as the true account of what took place on the eighteenth of April, so far as he had the means of knowing, which is far enough to prove the story of Loring C. Tirrell untrue.

Gentlemen, the government have shown that the prisoner was in Boston once after the first of April, and we have seen that if he was in Coburn's store then it must have been the first time; there can be no doubt about this, whatever. But he did not purchase the strychnine the *first* time he was in Coburn's store. Now, *why do not the government show that he went to Boston again?* What stronger confirmation could there be of Coburn's story than proof that the prisoner was in Boston the last of April, say the twenty-fifth, or a little later? What could be easier than to prove it if it were so? How could he have gone without its being known to the Tirrells, to his shopmates, to the people on the train? Do you suppose this all-important piece of evidence has been overlooked by the counsell for the State? Why, gentlemen, if I should give a case to a student to prepare, and he should overlook such a piece of evidence as that, I would turn him out of my office first, and oppose his admission to the bar afterwards, on the ground that he had not sufficient natural ability to protect the rights of a client, however strong and apparent those rights might be. He could not defend a suit between Drs. Morrill and Howe for defamation of character. Gentlemen, you know that one attorney, Mr. Hall, has been actively engaged in the preparation of this case from the start, so has my able brother, the District Attorney; the mind of Mr. Phillips, our former accomplished Attorney General, has been employed upon this evidence, and he drew the first three, four, or half a dozen indictments against the prisoner; now, our present Attorney General brings his power to sustain the prosecution, and a more thorough and methodical introduction of evidence than has been displayed by the prosecution in this case it was never my fortune to witness.

Gentlemen, do you believe that the Tirrells, the Attorney, the District Attorney, the two Attorney Generals, have all over-

looked this all-important piece of evidence? No, gentlemen; you know, and I know, and the counsel for the government know better than any of us, that the reason it is not proved that the prisoner went into Boston twice in April, is because it is not a fact — it cannot be proved; and I submit that the absence of this evidence is alone sufficient to convince us that the story of Coburn is a fabrication.

The only evidence that the prisoner ever had poison is that of Alfred W. Coburn. Coburn had been selling poison, contrary to law; this fact, and the conversation he had with Dunn, created in his mind a motive to tell this story; the story was made up from what he could remember of the newspaper accounts of the case. He was obliged to adhere to his first story. He did not recognize the prisoner when he saw his picture. It did not occur to him that he was connected with the case when he read it in the paper. The pretended identification is a trick and a farce; the story of the conversation with the prisoner bears falsehood upon its surface, — he never went into that store on such an errand, and had such a conversation. Thorough search has been made, and no trace of the strychnine, or the bottle, cork, seal, or paper which Coburn says was connected with it, could be found in Weymouth. No trace of the perfumery or paper round it, or of the brush and comb Coburn says he sold the prisoner the first time he was in, has been found. If there was any truth in the story of Loring C. Tirrell, it would prove that the prisoner was not in Miller's store the first time Coburn says he was; and there is no evidence from any source that the prisoner was in Boston when Coburn says he bought the strychnine, and nothing can explain the absence of that evidence but the fact that he was at home about his business. Coburn's story is all there is from which to form this link in the government's evidence; if his story is not true the link is wanting, and you are each asked to say, upon your oath before Heaven, that this evidence convinces you, beyond all reasonable doubt, that Coburn's story is true. I respectfully submit that this link is not established, even by the rule which governs the proof of civil cases where *property* only is at stake; for upon the evidence it is far *more probable* that the prisoner did not have poison than that he did. How much further is it then from being established *beyond all reasonable doubt*, as it must be by the rule applicable to cases where human life hangs upon the verdict!

Every one is presumed to be innocent until he is proved to be guilty, and the burden of proof is upon the government. The government has failed to prove that the prisoner had a

motive to commit the crime they charge; they also have failed to prove that he ever had poison, of any kind, and therefore it is your duty, as I know it will be your pleasure, to presume, and it is my right and duty to assert, that he had no such motive, and that he never in his life had a particle of poison of any kind in his possession. In this position we arrive at the next link in the chain of the government's evidence, and the question which now presents itself for your consideration is, how have the government proved that the prisoner *gave poison to the deceased,* when he had no motive to do it and had no poison to give?

When did he give it to her? Can any one of you gentlemen name the time when he gave it to her? If you have each formed a theory as to when he gave it, please compare those theories and see if you all agree. If you have not formed one, from what evidence are you to form it? The government does not set, does not dare to set the time; no witness saw him give it to her, he never said he gave it to her, and she did not say so before she died. That there were times enough when he could have handed her a paper or a bottle without being been seen, of course we know; but this will not do. I could have handed you a paper, Mr. Foreman, without being seen since this trial commenced. But I could not give you a paper of strychnine and make you swallow it. So he had a chance to hand her strychnine and to tell her to take it and it would produce miscarriage, but you are not to presume that he did, for three reasons: first, because he never had any strychnine; second, because, as we have before seen, he did not know that she was pregnant; and, third, because there is no evidence whatever that he ever handed her strychnine, or told her anything of the kind. For us to prove that he did not give her strychnine, is from the nature of the case impossible. His mouth and hers are both closed, and we are without evidence. It is not for us to prove that he did not give her poison, but for the government to prove that he did, and this they fail to do.

I think, gentlemen, you are satisfied there is no adequate proof that the prisoner ever had any strychnine in his life, but if he did, where was it and when? Not within seventeen miles of Betsy Frances Tirrell, and not within from three days to a fortnight of her death. There is no pretence of any evidence that he had strychnine a rod from Coburn's store; on the contrary, the thorough search of the detectives and their failure to find strychnine or anything Coburn says was connected with that which he says he sold, is the strongest evidence that if it ever was carried from Coburn's shop by the prisoner, he

contemplated its dangerous character, and threw it from the window of the car, or somewhere else, before he reached Weymouth. The fact that he *shot* a dog too is evidence that he had no strychnine to kill him with, for I submit that if he had bought strychnine so plainly and openly under pretence that he wanted to kill a dog he would as openly have used it for that purpose, using something else to commit the murder, or saying that Frances took a portion of it from his room unknown to him and killed herself, or that she took it by mistake.

If he gave her this poison, as you are asked to believe he did, there was a time when he did it. The act occupied some minute in some hour, in some day, in some month, in some year of Betsy Frances Tirrell's life. Now, gentlemen, in behalf of the prisoner and in the name of justice, I ask you when you retire to draw your chairs to the walls of your room and think this part of the case over, without exchanging a word, until each of you are individually convinced beyond all reasonable doubt that you have selected the moment when the prisoner handed strychnine to the deceased, and then to go to the table, write down the time that is proved, and when all have done so compare the results of your reasoning. No, gentlemen, pardon me, I do not mean that, for you would remain around that room until your manly forms and these proud walls mingled in the common dust of ages, but remain apart rather until you are convinced either that you have found the fabulous moment or that there is no evidence to guide you in your search. There is not one iota of evidence, even of the most worthless kind, that he ever had strychnine within seventeen miles of her. *When did he give it to her?* If this question remains unanswered it is not proved that he gave it to her at all, and thus vanishes the second link in this chain of drifting clouds.

In approaching the next question which presents itself, and forms the third and last link in the conceived chain of evidence, I am happy to come to it as ignorant of the truth of the question in dispute as you can possibly be. Whether it was strychnine or disease that caused this death, we know not, and have nothing from which to judge save the evidence given here, and that is common to us all. The determination of this question depends entirely, absolutely, upon two kinds of scientific testimony; one kind is sufficiently designated by calling it the medical, the other is the chemical testimony. And after the great length to which this evidence has been extended, what is there about it now that we really understand? Nothing — I am safe in saying absolutely nothing but the opin-

ions which these scientific men have themselves formed from their own observations and those of people that they never saw and most of whom live on another continent. Unfortunately, we cannot all study the sciences ourselves which are involved in the trial of any one case, but as men of common sense we all know that the value of every scientific opinion, like that of every other opinion, depends upon the accuracy and care with which the facts that are the foundation of the opinion are observed, and upon the extent to which the researches have been carried. When so important an issue as the one under consideration is to be decided it is worth while to scrutinize the observations which have been made by those who have given us their opinions so decidedly, and to do this requires no scientific knowledge whatever, but only the homely common sense which is possessed by us plain people, who make no pretension to scientific knowledge. In the first branch we will take their leaders, Drs. Howe, Fifield, and Tower, and see what kind of observers *they* are.

We have all believed from our childhood, and the same belief exists the world over, in savage as well as in civilized life, that the heart is the great fountain of life; that whatever affects that affects life, and that when it ceases to play life is at an end. Not only do we believe it to be the seat of life, but of the feelings and affections. If the announcement of a sudden bereavement makes a strong man pale and faint, it is because the blood rushes to his heart, and, in the surprise and agony of the moment, its duty is forgotten, and it ceases to send it forth again. When words of love are spoken, words long hoped for, half dreaded, a heart leaps for joy, and we say a maiden blushes. So intimately is this vital organ connected with all that goes to make a man, that by the universal language of mankind the shortest way to express all that a man is, is by telling of his heart. The expressions, kind-hearted, black-hearted, faint-hearted and stout-hearted, can convey but the same meaning, be they spoken in what tongue they may. These three scientific men made an examination of the body of this very girl whose death is the cause of this prosecution; the object of that examination was of the highest importance; no post-mortem examination ever involved greater consequences; the most accurate observations they ever made these men should have made then; the slightest carelessness can find no excuse, and these observations mark the men who made them. In the comparatively brief space to which your patience and my strength must confine my remarks, I cannot go into all the details of the omissions and the inaccuracy of these men in this examination, but I will treat them with the utmost fairness,

and select for their test not any of those numerous minor organs of the human structure upon which life depends, — many of which were not observed at all, and the rest of which were passed over with gross negligence, — but will call your attention to their observations of *the heart*, — the great vital organ, — the fountain of life.

Dr. Howe says there was no blood in the heart, or but very little. Dr. Fifield says it was full of blood, and Dr. Tower says nothing about it. These are fine observations for *scientific* men to make. Dr. Howe says that the heart was flat, and did not have as much firmness and roundness as is usual. Dr. Tower says the heart appeared firm, and compact, and round, instead of flat and soft as it sometimes is, and Dr. Fifield says nothing upon this point. These observations must challenge the admiration of the scientific world! If the reputation of these *scientific men* is not established by the one fact that *they made no minutes of this examination*, I think it will be by the other, that no two of them agree about anything they *did* observe in reference to the heart, but all agree that they *did not* observe anything unusual about it. How do they know whether there was anything unusual about it? How do such men know what is usual? What is the opinion of such observers worth as to whether there was anything unusual in the appearance of any part of a body? The simple truth is, they know nothing about the appearance of this heart, and the way they come to testify as they did is this: — after the post-mortem examination, and previous to the examination before the magistrate at Weymouth, they had been talking over together the appearances and symptoms of death by strychnia, and had come to the conclusion that the proximate cause of such a death is either a contraction and fixation of the respiratory muscles, so that the air is excluded from the lungs and the subject dies from suffocation, — in which case the heart would be distended, round, firm, and full of dark blood, — or that the cause is a contraction and fixation of the muscles of the heart so that the blood is expelled and excluded from it, and the subject dies from want of circulation, — in which case the heart would be found after relaxation empty, flat and soft. Thus far they had proceeded in their scientific speculations when they were called upon to testify before the magistrate, and if they had not been called upon for a year longer, it might have occurred to them to consult upon the application of the facts of this case to what they had decided to be scientific principles. But the evidence was called for too soon to suit their convenience. Dr. Howe was put upon the stand first, and, very unexpectedly to them, we had the other two ex-

cluded from the room while he testified. His application of the conceived principles in this case was, that the contraction of the heart was the cause of death, and so he testified that there was no blood in the heart, and that it was found empty, flat and soft. Then Dr. Fifield went upon the stand, ignorant of what Dr. Howe's testimony had been, and his application of the conceived principle to the case was exactly the reverse of Dr. Howe's, for he pretended to suppose it was the contraction and fixation of the respiratory muscles that caused death, and so he testified that the heart was full of blood, distended, round and firm. We then adjourned for dinner; and as Drs. Howe and Fifield had flatly contradicted each other, it made but little difference which side Dr. Tower took, so we permitted him to go at large; but when he was called to the stand, after finding how the other two had contradicted each other, the bewildered man did not know which to sustain, and so he contradicted both. Without sustaining Fifield in reference to the blood which the heart contained, he flatly contradicted Howe in regard to its firmness and rotundity; and then, feeling that he had not been quite fair, and served them both just alike, — that he had seemed to favor Fifield a little more than Howe on the heart, — he made it up by flatly contradicting Fifield about the appearance of the countenance. Fifield says he noticed a marked and horrible grin on the countenance, and that he called Tower's attention to it. Tower says he took particular notice of the countenance and saw nothing of the kind.

I submit that there were no reliable observations of any kind made by these three doctors, but that they started with the assumption that this death was caused by strychnine, and then adapted the appearances of the body to the theory assumed, as well as they knew how, and each to suit his own fancy. At any rate, we have seen what the observations were which these men made, in this important case, upon the most important vital organ, and to how much weight the opinions of such observers are entitled, it is for you to judge. And you will not need to be reminded that the opinions of all the other medical gentlemen who have been called by the government have been founded upon the observations which these three men have made.

Passing from this branch of the scientific testimony, I shall occupy a very little of your time upon the chemical evidence; and in the outset permit me to say that the course which the government has pursued with this evidence from the start has been such as to convince me that they have no confidence in it, that they know there is something wrong about it. In the

celebrated London trial of Palmer for the murder of Cook, in which the question of poisoning by strychnia was investigated with the most minute care, — both by the able counsel engaged and by the most prominent physicians and chemists in the Old World, and which to-day is the leading case upon poisoning by strychnia, — all the evidence which it was intended on the partof the crown to press against the prisoner was communicated to the prisoner's counsel by the attorney general as soon as he received it, and in alluding to this fair and just course, Mr. Serjeant Shee, the prisoner's counsel, said it would forever redound to the honor of the attorney general, and to this I say Amen. How strong a contrast the fair and open course taken in that case presents to the conduct of the prosecution in this! This chemical evidence, which is so important to the case, has not only not been revealed to us, but has been kept from us in a most unfair manner, and by a gross violation of the well-known rules of evidence. After Dr. Hayes had made the analysis of this stomach, he testified at Weymouth, before a magistrate by the name of Humphrey, that he had made the analysis, and found in the stomach a large quantity of strychnia. By the well-defined rules of evidence, we then had a right to know by what process he found it; from what experiments he arrived at the conclusion that the stomach contained strychnia; what he did with the stomach before he got what he supposed to be strychnia. And we proceeded to do this upon cross-examination of Dr. Hayes, as it was our right and duty to do, but we were stopped by an objection from my learned brother the District Attorney, and after a long discussion the magistrate, a poor simple man, who has not mind enough to grasp the most apparent legal principle, and who felt that his only duty and safety lay in obeying my learned brother's will, ruled that the line of our cross-examination was immaterial, and from that moment to the time of this trial we have not been able to find out a single material thing that was done with this stomach after it went into the secret, silent laboratory of Dr. Hayes. If, as Professor Horsford testified, chemistry is so exact a science that a millionth part of a grain of strychnia can be detected, it is hard to conceive what induced my learned brother to withhold evidence from us unlawfully when so large a quantity had been found, unless it was that he knew some great error had been made by his chemist which would be exposed if his process was revealed long enough before this trial; and if this is the reason, I ask if such a suppression of evidence is consistent with the spirit of fairness that the officers of the government have professed in this case.

The surprise which I felt at the withholding of that evidence on the preliminary examination, where the trifling question at issue was whether my client should be imprisoned for a year, was completely overshadowed by my astonishment at the course taken in this trial when his life is at stake. If my brothers had come into this sacred room, before this august tribunal, with a case of pistols and a target, proposing to shoot at a mark for the prisoner's life, I should have been no more astonished than I was when they brought in their bottles and glasses and proposed by experiments here to sustain the statements of Dr. Hayes. Of two acts absolutely wrong, one is just as bad as the other. My learned brothers did not need to be told by the Court that they must not try their experiments here; they knew that before they brought in their bottles and crystals, and it was highly improper for them to make the attempt. If the secret proceedings of these chemists with this stomach and its contents had been revealed to us; if they had not been unfairly and unlawfully withheld; if my brothers had notified us that they proposed to experiment before you; had informed us what experiments they wished to try; had allowed us to examine and test the materials they brought, and had signified their willingness that we also should come prepared and experiment, they would have accompanied a barbarous act with a show of civilization, have softened its savage features and made it more dangerous; but standing as it does in the museum of the government's evidence a lifeless statue of aboriginal grandeur in moccasins and war paint, its character is so well defined it would be childish to fear it. It bears too much resemblance to the trick of identification to be very terrific.

But turning from the suspicious manner in which this branch of evidence has been managed by the prosecution, let us look at the evidence itself. From the physical appearance of strychnia it cannot be told from a number of other substances which crystallize similarly, but the chemists say it can be told with certainty by the colors it produces when mixed with other substances. The great test that is relied upon for the discovery of strychnia is the color test. If a substance produces certain colors when mixed with bichromate of potash and sulphuric acid, these chemists pronounce it strychnia. Now I submit that but one course of reasoning can sustain that assertion, the first step in which is to determine the nature of light, and demonstrate the manner in which color is produced; the next, to show from the nature of strychnia that no other substance mingling with bichromate of potash and sulphuric acid can produce the changing mixture that gives

rise to these colors. This only is beginning at the right end of the subject; first find how color is produced, and you may then find what produces it. To begin at the other end, such an assertion can only be sustained after having experimented upon every other substance in the same connection, and that no chemist has done or could do in a lifetime.

How is color produced? This is an all-important question now, and one to which science cannot yet return an answer. Philosophers tell us that it is by the decomposition of light, and by the reflection of part of its rays, while others are absorbed. This is probably correct; but what I ask is, why are part absorbed and part reflected by a substance? Dr. Hayes says different colors present different surfaces, but we do not believe it, gentlemen; and another thing we do not believe is, that this question ever occupied the mind of Dr. Hayes for a moment until he testified in this case. The surprise and astonishment he manifested at this point were not caused by a familiar question. He has, without exception, the most self-possession of any witness I ever examined, and up to this point manœuvred upon ground with which he was perfectly familiar. Here he manifested great ignorance even of what little is known about light, and the manner in which he attempted to sustain himself shows how anxious he is to convince you that he found strychnia, and how important he considers this question as bearing upon the matter. Different colors present different surfaces! Does a bowl of water present a different surface after a spoonful of ink is put in it? Does red flannel present a different surface from white woven in the same loom? Does glass present a different surface because it is blue? Does the atmosphere present different surfaces to the rainbow? The man who would answer these questions in the affirmative is he who tells us that the same color cannot be produced in glass and in a dress! If we should say we had seen white glass and white dresses, and black glass and black dresses, perhaps he would say these are not colors; but what if we think we have seen yellow, blue and red dresses, and yellow, blue and red glass? Why, we must be mistaken. When you go home, gentlemen, take the glass from your worsted work, paintings and engravings,—no matter for the effect which years and dust will have upon them,—the glass presents a different surface to the light from the colors beneath, and you cannot see the pictures through it; you may think you can, but Dr. Hayes says you cannot, and he is a scientific man, while you have no guide but your erring vision. Oh, gentlemen, is there such a spell in the word science, such a charm about this man who comes from the laboratory, that he can steal away our reason

and destroy our faith in the universal testimony of the senses of mankind? Or is this man himself blind to colors, as some men are, — this man, who would hang another's life upon tints as delicate and changing as ever delighted human eyes when in summer air the drapery of sunset moved?

Gentlemen, it is hard to conceive that anything exists which is not material, and when we speak of light we do not allude to an abstract idea, but to something as material as a stone post; to something composed of more subtile elements than those which form the granite, yet just as real; and though science is not yet able to analyze light and give us the formula of its composition, it is proved that it has a chemical existence, and it is constantly used as a chemical agent. It is a subtile material composed of elements which act chemically. If it acts chemically, why should it not be acted upon chemically? I submit that it is so acted upon, and that it is some subtile element existing in a body which acts upon light and gives color to the body; not the arrangement of the particles on the surface of the body, but some subtile element, the existence of which is known only by its effects, and of which chemists can no more give the formula than they can of light. When strychnia, bichromate of potash and sulphuric acid are mingled together, these subtile elements in them pass through a series of chemical changes, and, acting upon light, produce the varying colors that have been observed. Light itself is of various origin, composed of different elements, and the same substance will not produce the same effect upon different kinds of light, any more than different substances will produce the same effect upon solar light. Dr. Hayes himself says that the colors he spoke of as produced by the mixture of strychnia with other substances will appear only when he is experimenting upon solar light, cannot be produced by artificial light, and that he always experiments in the day-time. The reason is obvious; when he is experimenting upon solar light he is at work upon one substance, when he is experimenting upon artificial light he is at work upon another substance composed of different elements. Many other substances, entirely unlike what is now known of strychnia, may yet contain the element which will produce the same change of colors when mixed with bichromate of potash and sulphuric acid, but how can they be found until that element is known? Surely, chemistry has attained no such perfection yet that it can analyze the more subtile substances which are well known to exist, as luminous ether and electricity, but that there are in the universe substances whose density is as much less than luminous ether as that of luminous ether is less than that of platinum,

I have no doubt. We detect their presence by their effects, and a future generation may invent instruments delicate enough to analyze them.

I submit this theory of color as the only one which commends itself to my reason, and if it bears upon yours with only the force of probability, you will pause before you say that any substance found in this stomach was strychnia because when mingled with other substances it produced the same colors which are produced by strychnia.

From the careless observations of these blundering doctors, from this chemical evidence, so suspiciously concealed until the ultimate moment, and so unsatisfactory now it has appeared, you are called upon to decide the question of this girl's death. The evidence is to satisfy each of you beyond all reasonable doubt that strychnia killed her, or this last link in the chain is also wanting. I trust you will never allow the opinions of others to remove your doubts upon subjects with which you are not familiar, if the method of forming those opinions was such as would render them valueless if upon any other subject. You are answerable to the prisoner, to yourselves, and to Heaven, for the honesty and care with which you decide this point, to be proved or not proved, and I leave it to you, trustingly and hopefully, for whatever may be your decision upon this; yet, bearing ever in mind that the prisoner had no motive to give poison to the girl, that he had no poison to give her, that there is no evidence he did give her any, still your verdict must be that of acquittal.

Gentlemen, I have now reviewed the evidence which has been brought to sustain this indictment, and if the case of the prisoner was not yet stronger I should rest here with confidence in our position that no charge has been proved even by the rule which governs in civil cases, much less by the rule applicable in criminal cases, which you are so solemnly bound to act upon, and which I feel sure your humanity will construe most strictly in a case like this. I feel that we might rest safely upon the presumption of the prisoner's innocence in this absence of proof of his guilt; yet there is independent evidence in the case which so strengthens the presumption, that my duty would be but half discharged if I did not present that also to your consideration.

Upon contemplation of the various parts of this case, so many facts and circumstances are found pointing always in one direction, that the mind cannot proceed far in the examination without having the conviction forced upon it that if this girl died by poison, she took it knowing what it was, and for the

purpose of destroying her life. This fact meets us on the threshold of the case; even before reaching the evidence we find it set forth in the indictment — not in this indictment alone, but in every indictment against the prisoner on the files of this court, is it set forth that Betsy Frances Tirrell feloniously, wilfully, and with malice aforethought, killed and murdered herself. This allegation is the firm belief of the family of the deceased and of the prosecuting officers, set forth in legal form. And who should know the temperament of this girl and her tendency to self-destruction better than they? You, gentlemen, have noticed the strong hold which this conviction has upon the officers of the prosecution. Time and again during this trial have I attempted to have this charge abandoned. Time and again have I tried to induce the Court to compel the prosecution to elect either to try the prisoner for a murder committed by himself, or to try him as accessory to a murder committed by this girl, and as often have I failed. I made the attempt as soon as you were empanelled and before the case was opened to you. I made it again when the government's opening was finished. I made it again when my learned brothers commenced introducing evidence which might bear upon either charge without telling us for which it was intended, and I made it again when their evidence was closed. I have exhausted the patience of the Court in the discharge of my duty, and though I failed in accomplishing the purpose I had in view at first, I have succeeded in showing you how firmly the officers of the prosecution themselves believe that the deceased committed suicide, by showing the tenacity with which they cling to this charge in the indictment, which they might have abandoned at any moment. In the outset we wanted this charge abandoned, for, though we firmly believed that there was nothing in truth to prove that the prisoner counseled, procured, hired, incited or persuaded this suicide, if such it was, yet, knowing the character of some of the government's witnesses, we feared their evidence; but when the testimony of the government was all in, and there was no word of evidence anywhere that the prisoner ever counseled, procured, hired, incited or persuaded this girl to take her life, or to do anything else, — not even from the most worthless of the government's witnesses, — we had no further reason for desiring the prosecution to abandon the charge, though we attempted still again to make them, partly to show you, after their evidence was in, how firmly they believed she took her own life, and partly to show you that *chances* against the prisoner's life are taken by the prosecution rather than distinct positions supported by evidence.

Why did not my learned brothers offer evidence to sustain this charge? Because this count in the indictment has been retained for no other purpose than to secure a chance of convicting the prisoner upon a charge which there was no evidence to sustain. There is evidence to show that the deceased committed suicide, but without evidence to prove also that the prisoner procured, hired, incited or persuaded her to do it; this is evidence to acquit, not to convict him. This is the reason why the officers and witnesses on the part of the prosecution have withheld all the evidence they could that Betsy Frances Tirrell took her own life, and why all the evidence of this fact that is now before you was brought out by our cross-examinations. If we should succeed on cross-examination in obtaining from unwilling witnesses enough evidence to establish the fact of suicide, my learned brothers trusted that their assumed fairness and genuine eloquence could impose upon you the belief that they had also proved the prisoner to be accessory to the crime. They pay but a poor compliment to the intelligence of a New England jury when they ask for a verdict upon a count charging a prisoner as accessory to the crime of suicide without offering evidence that he counseled, hired, incited or persuaded the commission of the crime.

From the earliest stage of this case down to the present moment, the prosecution has constantly maintained the assertion that this unfortunate girl took her own life. Nothing could induce them to abandon the assertion, and I submit that those who have the best means of knowing believe this to be the truth of the case. And why do they believe it? Because if they keep in the path of reason they are led to that conclusion. The first step in this direction is the fact that people do commit suicide. It is by no means an uncommon occurrence; it is more frequent than murder, and therefore more probable. I presume there is no one of us who cannot recall a number of suicides that have occurred among his own acquaintances, and in almost every daily paper we read of one or more; so usual are they that they excite no surprise, and attract no notice if they occur outside of our own circle of acquaintances. This manner of death, like every other, is attributable to a cause, and the cause is to be found in the temperament of the individual, and in the surrounding circumstances at the time of the death. Those who are most prone to self-destruction are delicate and sensitive in their feelings, easily wounded in spirit, and so morbid that they silently brood over an inferior trouble, linking others which have preceded with it, and imagining that more are stored in the future, until life, past, present, and to come, is desolate and

dreary. A trifling circumstance, that would produce but a momentary effect upon a buoyant and elastic nature, is sufficient to set in motion a train of thought that would make life a burden to a person of a contrary temperament. This train of thought if indulged, and nourished by unfavorable circumstances, will sooner or later gain control of the mind, and life will become such an unceasing burden that the broken spirit will fall under its load, fearing nothing worse in the hereafter than it lies under here, and hoping for relief by death. Such are the general features of the disorder, mental and physical, which terminates in death by suicide. The development of the symptoms vary with individuals and circumstances, and while one may destroy life impulsively, or with little contemplation, another may linger irresolutely for years until some adverse circumstance magnifies all his troubles, and he shall choose to lie down to his last sleep rather than awake again in this dreary world. Many a one has lingered thus through life and been saved from self-destruction at last by the single fact that disease preceded adversity. How many more have paused, like Hamlet, to consider —

> " Whether 'tis nobler in the mind to suffer
> The slings and arrows of outrageous fortune,
> Or to take up arms against a siege of troubles,
> And, by opposing, end them," —

is known only to Him who reads the secrets of the soul. One such pause marks a dangerous advance, for it needs but adversity to determine the choice. A person of morbid temperament and delicate sensibility, reasoning with and confiding in no one, but habitually brooding over trouble in mental solitude, is in the direct road to self-destruction, and such a person was Betsy Frances Tirrell.

She is described by her relatives as a retiring, sensitive girl, never seeking society, and not gay and communicative as most girls are, but contemplative and subdued; as her aunt, Mary Vining, who had known her from her birth, expressed it, in her homely but forcible way, "Frances was a girl that never said but very little. She was kind of still and quiet always." This temperament she inherited from her mother. She was more like her mother than either of the other children, and her mother had those peculiar characteristics which lead to self-destruction. The importance of this fact has led to a studied attempt to conceal it from us by those who were knowing to it, particularly by Dr. Howe. It needs no argument to convince you, gentlemen, that both mental and physical characteristics are hereditary; and I am sure you would be surprised if the peculiarities of the mother

were not reproduced in the daughter. Education and circumstances would develop or restrain a particular characteristic, but it would exist in the child by nature, and under similar development would produce similar results. That this mother possessed the tendency to self-destruction to the last degree, — developed to the act, — you cannot doubt, for the man has testified who dressed the self-inflicted wound in her throat. That there was anything in the education of the daughter to restrain the same propensity, will not be pretended, and the circumstances which called this propensity into action were such as would drive a much less sensitive being to the verge of distraction.

From her childhood everything had operated to develop her melancholy disposition. When she was seven or eight years of age the death of her mother brought to her little heart its first sorrow. From that bereavement and the effect of the funeral solemnities, which removed her forever from a mother's caresses, she never recovered. Soon after her step-mother came, and did not love this child of a former wife, did not understand or sympathize with the delicate being she had in charge, was always doing or saying some hateful thing to wound her sensitive nature. Mrs. Tirrell says, "The relations between Frances and me were perfectly pleasant *generally. We did not always think alike.* There was no quarrelling between us. *Sometimes she did not do the work just as I wanted it done, and I found a little fault, as she called it. She took the fault-finding pleasantly sometimes, and sometimes not.* I don't know as it made her sad or down-hearted. *Sometimes she would seem to be a little disturbed.*" If this is thin, sharp-featured Mrs. Tirrell's story, in a public court-room, now the poor girl is gone, what would Frances say if she could speak? We should have a history of heart-ache and tears in solitude, extending through these fifteen years, that would make each one of us a child again, with all the feelings of a child. There was no escape for this poor girl; she was in a dull little town, in the only home she had, in a home where she had knelt beside her mother's knee in childhood, passing through the room where that mother breathed her last farewell, in the house now haunted by a step-mother, and by all the ghosts of the hopes that had died. She had a sister who had been a girl with her, passed through the same trials, and had been her constant companion. They retired together at night, rose together in the morning, and were much together during the day; though they were different in temperament and disposition, yet the only person to whom Frances seemed closely attached, the only one who sympa-

thized with and understood her, was her sister Mary. If Frances did not spread all her secret, melancholy thoughts before her more elastic sister, she knew that Mary loved and felt for her, and the more bouyant disposition of Mary helped to sustain her sister's spirits and to supply her melancholy mind with lively thoughts, which had a salutary though not a permanent effect. On the second day of January Mary died, and Frances was left alone. Though she was about where others were, she lingered there in mental solitude; the air to her was ever tremulous with the vibrations of a tolling bell, the earth to her vision was clothed in the habiliments of mourning, the spirits of her sister and her mother lingered about the old, familiar house, separated from her only by the thin partition of life, and in the room with her would sit her step-mother wondering why she did not talk. She was a changed being after the death of Mary. Every one who knew her remarked it. Caroline Cushing, who was with her a few days after Mary's death, tells you how melancholy she was then, and that she expressed a wish that it had been herself, and not Mary, who had died. Her aunt, Mary Vining, tells us that she came into her house but very little after Mary died, though before they came in very frequently together. She tells us that after Mary's death Frances had been very sad, that the appearance of Frances had attracted her attention so much that she had a number of conversations with various persons about her, in which she said that Frances appeared very sad and melancholy, and did not appear to be well.

Such was the condition into which this unfortunate girl was thrown by her sister's death, and if anything more was needed to remove her last lingering hold upon earth, if any circumstance was wanting to determine her choice against her life, she added it when in a moment of wild, heedless, reckless passion she brought herself to the condition in which she was found after death. Before her sister's death, in all probability, she was tortured with the knowledge that her virtue had been sacrificed, and her self-respect was lost. After her sister's death came the knowledge that she must also lose the respect of the world, that she must soon be regarded by others just as she had long regarded herself. First her situation would be discovered by her step-mother, and was not death preferable to that? Then it would be known to her friends, and what pleasure could there be in living among them after that? Then it would be known to Mr. Hersey, and if she had one spark of love for him, as the government pretends she had, and if he was ignorant of her situation, as we have seen it is most probable he was, would she not have suffered death and anni-

hilation rather than have the knowledge of it come to him? If the knowledge of any fact would drive a decent girl to distraction, if any thought would madden her, if she could have an idea black, lowering and destitute of every ray of hope, it is the knowledge, the thought, the idea that she bears within her an illegitimate child which she must nurse and rear in the presence of her relatives, surrounded by her acquaintances, in her father's house, in her native town. In this situation was Betsy Frances Tirrell, and you cannot doubt the effect it produced upon her mind. Listen to what Mrs. Tirrell says: — "She did not complain, but seemed to be very sad and sober, and had pined very much. She was very sad indeed, and had been for some time. She looked sick. I asked her one day if she was sick, and she said no, but she didn't feel well. Every one of the neighbors was inquiring of me what the matter was with her. She looked sick. Every one that saw her remarked it, and inquired of me what the matter was with Frances that made her look so. She was very sad indeed. She never was a very lively girl. She was cheerful always, but not so lively as some others. She did not make so much conversation with me as usual during this time when she was sad. This continued some five or six weeks. After Mary's death she seemed sad, and in the last five or six weeks she had grown very much more so. The sadness was constantly increasing." It was not the effect that pregnancy had upon her body which made her grow more and more silent and melancholy during the five or six weeks preceding her death; it was the mental torture it produced. The first legitimate pregnancy of a young married woman has no such effect as this. In one case a young wife looks forward with hope and fond anticipation to the birth of her first child; in the other, a girl shrinks shudderingly from the time when an illegitimate child will be placed in her arms to be an ever-present witness of her shame and degradation to herself and to the world. Such was the pitiful situation of this poor girl on the third of May. The cause of her melancholy condition was unknown to others, but all noticed the change she had undergone since her sister's death. Expressions she dropped showed that she was weary of life, and when they were repeated among her friends they awakened no surprise. Life had no charm left for her, unless she could find it in scorn, and shame, and pity; while death held out a promise of rest, a hope of happiness, a probability that her secret would be buried with her, and that the reputation she left would be all that is fair and womanly.

In the name of justice, gentlemen, answer me this, — Had

not this girl, by inheritance and development, such a mind and temperament as adversity leads to suicide? And what adverse circumstance could be added to make her weary of life, what greater inducement could death present? Are we to be asked where *she* procured strychnine? Anybody *can* procure it anywhere. Tell us when she first contemplated self-destruction, where she has been since, and we can answer you. She had been brooding upon it for years, and may have carried poison in her bosom, cherishing and petting, doting and exulting in the knowledge that she could leave her persecutors and go from this unhappy world at any time. If she had poison would she reveal it? Why, for what? To confine her? To take from her the darling power she cherished? To give those she wished to escape from the irons with which to shackle her? As soon would the maniac, the far-sighted madman, announce that he had the grates sawed, a razor in his bosom, and that when night came the keeper's throat would be cut, keys taken, and that the next day his wild laugh would frighten the echoes from their caves in the forest. No, gentlemen, to let it be known that she had the means of destroying herself would be to deprive her of them. This she knew; and her mother was gone, and her sister was gone, and she was pregnant; and with all this knowledge, and with all these memories fresh from the grave and so very death-like, was not the motive there? had not the time come? and did not the sensitive being grasp the relief she had cherished so long for the very purpose of releasing her spirit when she should be thoroughly weary of life?

Gentlemen, turn with me to the circumstances in the last day and night of this girl's life, and tell me if you do not read in them a tale of self-destruction. Down to the third of May her melancholy had been constantly increasing, but the government has attempted to prove that on that day she was more cheerful; in this they have failed. It is not surprising that she should at times be more cheerful during the day when she thought that on the morrow she should be at rest; it is probable, too, that at times she assumed a cheerfulness she was far from feeling, for the purpose of concealing more effectually from others the dark secret now pervading and shaping all her thoughts. But she was not more cheerful, and as night drew near she became silent as the grave to which she was hastening. That was a strange silent ride of hers to Christopher Blanchard's and home again that evening; and though the prosecution have put in much conversation that occurred among others while she was there, yet, beyond the usual salutations, not a single subject can be brought forward in which

Frances took the least interest, except in the conversation about the pin she wore, made of poor dead Mary's hair, and into that conversation she was drawn by others. When she reached home, she made no conversation with any one, but sat pretending to read a newspaper. Once it appears she was spoken to — her father and mother-in-law having decided to go to a circus, she was asked to accompany them, and she gave them to understand that she would do so; what else could she do?—tell them that the next morning she should be a corpse? That declaration would defeat the object she had in view; she must keep her secret a little longer; and so when the hour for retiring came, she took a may-basket up to show to Louisa (if she should be awake). When she got to the stairs, it came across her mind that she had forgotten to ask what she should get for breakfast, so she turned round and asked that, and then, having awakened no suspicion, leaving everything and everybody as usual, she went to her room, and finding Louisa awake, showed her the may-basket (telling her it wasn't good for much), and then pretending to be lazily undressing herself, she waited for Louisa to go to sleep, and for her father and step-mother to come up and go to bed. When they had gone to bed, and after she supposed her sister to be asleep, she went out of the room, and is there any question in your minds, gentlemen, where she went? She went down stairs to get that spoon and preserve. There can be no doubt about it; the spoon and preserve came from the closets below, and she went down stairs that night after everybody else had gone to bed and got them; and when she came up, as she passed Mr. Hersey's door, she stopped and asked him how his head was. Why she did that, no one can tell, but it is probable that she wished to know if he was still awake, if he heard her go down stairs, and if he would be likely to notice any slight noise in her room, which was adjoining his. Finding him sufficiently stupid and almost asleep, she passed directly to her own room, undressed herself, swallowed the poison, *put the spoon behind the fire-board*, and laid down to die.

There is one circumstance, gentlemen, that can be explained only upon the hypothesis of suicide, and that is the fact that this spoon was found behind the fire-board on Sunday. Who put that spoon there? Mr. Tirrell did not, nor Mrs. Tirrell, nor Louisa. No spoon was seen in the room that night by anybody, but it was found behind the fire-board, and some one must have put it there. If no one else put it there it must have been done by Frances or by the prisoner. Gentlemen, the body was removed from that room by the middle of Thursday night, and the room was left open as usual. Thursday night, after the

house was still again, all day Friday, all Friday night and most of Saturday, there was nothing to prevent the prisoner from going into that room and taking a spoon from behind the fire-board if he knew that one was there. In the name of common sense what should he leave a spoon covered with preserve and poison in that girl's room for? When it was found, as it must be, sooner or later, it would awaken suspicion at once that hers was an unnatural death, if no such suspicion existed before; and if it did exist, such a discovery would only confirm it. How absurd it would be to contend that the prisoner, if guilty, left behind that fire-board a spoon to put people upon the scent of his life. No, gentlemen; if Frances had taken anything from a spoon that night with his knowledge, he would — with the opportunity he had after her death — have searched that room till he found the spoon, and then washed it carefully and put it with the others, or thrown it into the river. *He* did not know that spoon was there, or that there had been a spoon in the room, and there can be no doubt that Frances put it there herself. Now, gentlemen, why did she put it there? Was it not because she knew she had taken a mortal dose of poison and did not want the fact discovered until she was dead? If she had simply taken a medicine for another purpose, why not leave the spoon upon the mantel-piece or dressing-table? It was her turn to get breakfast, and she could wash a spoon before any one else was up. When she laid down upon that bed did she ever intend to rise from it? Did she not put that spoon away so that if her dying disturbed the house the cause of her illness should not be suspected till it was too late to arrest the progress of the poison? When her convulsions had brought her friends around her, she said, "I shall die; I shall die." How did she know she should die, but because she had taken poison? She was in great distress (at least she said she was, though perhaps she did not know, for the experts say people do not suffer when they are dying by strychnia), and once only in her agony did she seem to desire relief; then she asked for some physic. From this she desired only a temporary relief — she knew that what she had swallowed a few minutes before caused her illness, — she knew she should die, — she knew the spoon was where it would not be found, — and though she could and did speak, she did not say she had taken poison, medicine, or anything else. If she was not firmly resolved to die, how can all this be accounted for? Gentlemen, I submit that the strongest evidence in this case that Betsy Frances Tirrell died by poison is that which goes to show that she took her own life.

But, gentlemen, if you do not entertain a reasonable doubt of the prisoner's guilt now that we have seen that he had no motive to commit such a crime, now we have seen that two of the three links in the chain of the government's evidence are not proved, and if the other is, that it goes to establish the fact of suicide, — that all the circumstances proved can be explained only upon the hypothesis of a suicide to which the prisoner was not an accessory, — then turn to the behavior of the prisoner, and see if you can read in that anything but confirmation of his innocence. We refer you to his conduct from his infancy to the present time.

Every prisoner who is put upon trial is presumed to have a good character and to be an honest and upright man. Legal presumptions are all in a prisoner's favor, and the prosecution has no right to offer evidence against this presumption; they must prove the act they charge, and not ask a jury to infer that a man committed a particular crime because he is a bad man. But the prisoner is not compelled to rest upon the bare presumption that he has a good character, he may offer evidence to prove it, and when once he has done this, the whole question is open to the prosecution, and they may prove him to be a villain if they can. No, gentlemen, if a man by his upright conduct has established a high, manly character, the law is too humane to deprive him of its benefit in an hour like this, and put him upon the level of a legal presumption, though that, too, may be all in his favor. We improved the first opportunity the case presented to throw this question wide open to the prosecution; we commenced it early in the cross-examination of the government's witnesses, and we followed the evidence to the close of the case. Every witness who had known the prisoner that we thought to ask about his character we did ask, even though they were witnesses for the prosecution, and persons with whom we had never before exchanged a word, for we were sure that the prisoner was respected by all who knew him, and that no man in that, or any other town, could come before you with a better character. Not one word could the government bring against his character, and when they found the strength of the evidence coming to its support, even from their own witnesses, they sought to stop it by admitting that his character was good, but we still preferred to go on and show *how* good it is. And now the prisoner lays his character and reputation before you as the strongest evidence you could have that his conduct through life has been decent, honest and upright, that he has committed no such acts, received no such education, and been associated with no such people as would lead him to the commission of any crime; and

now, in this hour of agony and suspense, he asks that he may derive some benefit from his good character, as circumstances over which you have no control may yet compel some one of you to claim that a jury of your countrymen shall give weight to your own fair name. Of what earthly use is a good character and a fair reputation if it can avail a man nothing in an hour like this?

Against all our evidence of the purity and uprightness of this young man's character from his birth to the time of this poor girl's death, the prosecution has brought no evidence of any wrong act he has committed, but they attempt to create a prejudice against his character by introducing evidence of conversations he had about poisons, I think on two occasions; but you will remember that they were the most ordinary conversations among the hands in the shop, introduced, on one occasion at least, by Mr. Lewis, and originating in something they had seen in a newspaper; this, together with the disgusting evidence of Morrill, is all there is against the prisoner down to the memorable third of May.

I did intend to occupy a little of your time with some remarks upon the testimony of this Morrill, but upon reflection I shall not hesitate to submit him and his story to your good judgment. One part of his evidence is true, and that is where he swore that he is a liar, — stated to the world in the daily papers that he had just returned from Europe, — swore he never was there in his life. I did not and would not read the whole of that disgusting advertisement before you, gentlemen, and this honorable Court, — it is not fit to read before any court but Judge Humphrey's, — though I read enough to show you the character of the man who wrote it. Man, did I say? Yes, he is entitled to the word, for he is distinguished from brutes by articulate speech, a perfect hand, and by being worse than any brute can be. He would not tell us whether he is in the habit of procuring abortions, but skulked behind a pillar of the law, and stayed there while he was lashed with questions. Would a respectable practitioner refuse to answer such questions? If a suspicion of that sort rested upon a decent physician would he not rejoice in a chance of adding to a denial of the aspersion the solemnity of an oath? You cannot doubt this fellow's business, and knowing what that is the falsehood of his story is apparent. He refuse to sell a man medicine to procure abortion? It is as improbable as that the prisoner would ask him for strychnine after a conversation like that of which he testified. The prisoner never was in his office in the world. That my learned brothers had much rather be prosecuting such a witness than such a prisoner I have no

doubt. I have said more about him than I intended, and will leave him with a defiance to the learned Attorney General to tell us in his argument one thing that is good or noble or manly in this fellow's whole life and history.

I say that down to the death of Frances Tirrell nothing of a feather's weight is brought against the prisoner's character, and all his life is creditable. Let us now look at his conduct through the trying time preceding his arrest, and see if it is not marked by conscious innocence, actuated by a desire to render every assistance in his power to this afflicted family that had treated him so kindly. On the third of May he was at work all day as usual, and returning to tea in the evening, he found that Mrs. Tirrell had gone to Christopher Blanchard's, that it was arranged that he should take Frances and Louisa and go for her, and at the same time go with Louisa to the barber's. He had been suffering somewhat during the afternoon with a headache, but said nothing about that, and cheerfully acquiescing, harnessed the horse and went with the ladies. He returned with a dull, heavy headache, such as nothing but sleep will remove, and as it was then after eight o'clock he went to bed. He was nearly asleep, when the voice of some boys in front of the house, probably those who hung the may-basket for little Louisa, half roused him; then he was almost asleep again, when Frances came to his door and asked him how his head was; he thinks she asked him twice, but is not sure; and he thinks he must have been asleep when she came, for he did not hear Frances or her father or mother go up or down stairs. The next thing he heard was Louisa when she called. She thinks she called to her mother twice, and then said "Frances is in a fit." These calls awoke Mr. Hersey, who was in the next room, and he went at once and called Mr. and Mrs. Tirrell, and then went with them to her room. This was the first time he was in her room that night; witnesses have said that he has stated in his accounts of the transactions of that night that he went into her room after he was awakened by Louisa, and before he called Mr. and Mrs. Tirrell, and it is not strange that different people in giving an account of another person's statement of a transaction, which they heard more than a year ago, should differ in some point. Edward Lewis and Spencer Gurney, who had a conversation with the prisoner the next morning, differ upon this very point, and yet they both heard what the prisoner said, and heard it at the same time and under the same circumstances. Why the prisoner should say he went into the room before he called Mr. and Mrs. Tirrell, it is impossible to imagine, for he certainly did not go in; Louisa says distinctly he did not, and she knows

of course, she cannot help knowing. No, gentlemen, the first time he was in her room that night was when he went in after calling Mr. and Mrs. Tirrell.

Now, gentlemen, we have reached a most remarkable point in this prisoner's life. The most surprising change takes place, instantly, that a human character ever passed through; the most inconsistent novel presents no analogy to it; there is no record or tradition of a new birth so sudden, a repentance so complete. My learned brothers say that the prisoner went to bed a little after eight o'clock the deepest dyed villain of which you or I ever heard, — a most ungrateful, treacherous, calm, calculating, barbarous murderer. Ungrateful, because he had violated the chastity of a daughter and sister, and thus betrayed the most sacred trust that a family could place within his reach; treacherous, because he had resolved to kill rather than to marry a girl he had seduced; calm and calculating, because for weeks at least, if not for months, he had been deliberating upon and procuring the means to commit this crime; barbarous, because he moved so stealthily his confiding victim would be sent into an unknown and questionable future without preparation or warning. But an hour afterwards this monster awoke a grateful, humane, kind man, calling the parents, calling the neighbors, going for the physician, and using every effort to save the poor girl's life. If he gave her strychnine, why should he save her life? That she might regain the power of speech and send him to the state prison for an attempt to murder? Would such a cool, deliberate villain as the prisoner is represented to be relent at the moment he saw his plan in successful operation, when by relenting he would furnish evidence to convict himself of such a crime as that? No, gentlemen; a man who is capable of going into a family as the prisoner went into that of Mr. Tirrell, of seducing a daughter in her father's house, of deciding not to marry her when he finds her pregnant, but choosing rather to murder her, of deliberating for weeks or months upon the means he shall use, then of coolly administering poison, is too hardened a villain to change when the poison begins to operate, and to call the parents and the neighbors, and to rush for the family physician. Such a change is as inconsistent with the nature of man as it is that an honest, industrious, respectable mechanic, in a New England village, should all at once change to a villain who could coolly commit an act at the thought of which a man reared in the most depraved portions of the world's worst cities would shudder.

Gentlemen, you will seek in this case for no violent presumption against all that your experience and observation have

taught you of the human character for the purpose of sustaining a startling theory advanced by the prosecution, but will we trust accept that which is reasonable, and in accordance with the human character as we constantly see it. In this light there is nothing strange, nothing unusual about the behavior of the prisoner. He behaved at this mournful time just as any innocent man would, and just as no one but an innocent man could. He and Mr. and Mrs. Tirrell found this girl in what all supposed to be a fit, in convulsions which alarmed all who saw her; everybody around her was excited, and the prisoner, who, instead of being a cool, deliberate scoundrel, is a very nervous, sensitive, humane man, was probably excited quite as much as any one else. When Mr. Tirrell asked him to call the neighbors, instead of going deliberately and slowly about it, so that death might reach the chamber before them, he went with alacrity, and with that haste which the situation of Frances seemed to require. In going for the doctor, the prisoner obeyed not only the humane impulse of his heart, but also the request of Mr. Tirrell to "go as quick as possible." The situation in which he had just left Frances was enough to show that the immediate presence of a physician was necessary to her welfare, if not to save her life; to him the duty of bringing a physician was assigned, and he executed it with a promptness which must meet your approval, and cannot be converted into an evidence of guilt. If he had consumed half an hour more than he did in calling the neighbors and bringing the doctor, it might be urged against him with some show of reason. What would my learned brothers have a man do on such an occasion? Shall one pass over the earth as slowly when sickness calls for aid as when digging potatoes? What will satisfy my brothers? If he had been slow, they would now urge that against him; he used that haste which the occasion seemed to demand, and that does not strike them as proper. Perhaps he was not sufficiently polite to Mrs. Richards and Mrs. Vining. He should have apologized for calling them up, and asked about the health of the respective members of their families before mentioning that any member of Mr. Tirrell's family was unwell, and asking if it would be too much trouble to step over and render a little assistance. Perhaps a fit of indigestion made rapid riding uncomfortable for the retired old Major General, and the horse should have proceeded at a walk, while the prisoner entertained his companion with amusing anecdotes to make a late supper rest more lightly upon his respectable stomach. Perhaps he could have taken some course that would be more satisfactory to the prosecution, though I do not believe he could.

The course he *did* take was just such as I believe either of you would adopt if a person was in such a condition as Frances Tirrell, and it was in your power to render assistance.

When it was found that the doctor had arrived too late, the prisoner carried him home again, and there was no fast driving then, no hurry, no agitation; all was quiet and sad. The prisoner talked freely, yet there was nothing unusual in his appearance or conversation. Nothing occurred in this lonely ride, immediately after the poor girl's death, out of which even Dr. Howe can manufacture a marvellous story, for at that time the doctor supposed him innocent — and he was. After leaving the doctor he returned to the house, unharnessed the horse, and mingled unreservedly with those who were about the house. When a post-mortem examination was spoken of, he did not hesitate to express the aversion he felt for it, as he would have done had he been guilty; and when a post-mortem examination was decided upon he did not flee as a guilty man would. After the neighbors had gone home, and the stillness of that solemn night had again settled upon the house, the prisoner lay down on his bed, in his chamber, next to that where Frances had just died, as innocent of her death as the child that slumbered by his side. You see him lying there, with little Louisa in his arms, and what more beautiful and affecting evidence of his innocence could you have than this? If anything in the whole course of his conduct, any look, or word, or action, had awakened a suspicion that the prisoner caused the death of the poor girl whose body lay in the room below, do you suppose these parents would have confided another daughter to his care, or have closed their own eyes while he was under the roof? How could a man appear as innocent as this, if he was really guilty? The next day he went about, at the request of the family, notifying the relatives of the death that had occurred. He went about among the people unsuspectingly and confidingly, though he knew that a post-mortem examination had been decided upon, and a coroner's inquest had been called. That night, he went to bed just as usual, making no attempt to leave the place, and no preparation for going. The next morning, which was Saturday, found him assisting the family, as usual, and when the coroner's jury came together he went before them, and told what he knew about the affair just as frankly and unsuspectingly as any other witness.

He was present during a portion of the post-mortem examination, partly, perhaps, from curiosity, but principally from a desire to render to the physicians what assistance they might require, so that the feelings of the family might not be lacer-

ated by any contact with the examination. He was sitting in the shop with Austin Tirrell when he saw the physicians go by, on their way to the house, and he started out, saying that the doctors were coming, and he must go down to the house and see if he was needed. During part of this examination the prisoner was present. It is not unusual for those who are not physicians to be present at examinations of this kind, though Dr. Howe would have you suppose that such a thing was never heard of before. His account of the manner in which the prisoner came into the room is colored, like everything else he says, with the most disgusting self-conceit, and a desire to make a theatrical impression. He begins by describing where he himself stood as minutely as one would tell where the statue of Apollo stood, in the Belvidere in the Vatican, and then he says, "Mr. Hersey came up to me on my left hand, and said, 'Doctor, will there be any objection to my being present at the examination?' I was somewhat startled at the question" (thought it would be followed by an earthquake, possibly), "and hesitating perhaps two seconds, just long enough to collect my thoughts" (forty tax-gatherers could not do that in ten years), "I then said, 'No, not on my part; if nobody else makes any objection, I shall not;' and immediately, without waiting to inquire if anybody else made any objection, I passed into the room, and Mr. Hersey followed me." If the family physician who had charge of the examination had no objection to his being present, who should he ask next — the surveyors of highways? The simple truth is, that the prisoner was in and out of the room waiting upon the physicians. It is all explained by Ann S. Tirrell, one of the government's witnesses. She says, "In the afternoon before the examination he was there assisting in making the arrangements for the examination. He was getting sponges, and wetting them, and I think there were other things. He went and got some linen thread; I think that was after the doctors came." She says she supposed it was necessary some one should go into the room to assist. "He appeared to be assisting, going out and in. He came out once for a wash-dish and water, and came out for a tub at one time, and might have been out at other times. He was back and forth." Thus he continued assisting the physicians until they requested him to go out, when he went without objection, and not asking a question.

He went into the room where Mrs. Betsy Richards and Charlotte Tirrell, 2d, and Ann S. Tirrell, were, and remained until Dr. Howe went out. As the doctor went to his horse, Mrs. Richards asked the prisoner to "go out and see if he could tell what the matter was." Skipping his egotistical parade, Howe's

statement of that interview is as follows: — "My horse was hitched at the corner of the barn. While I was unhitching the horse and buckling the rein, Hersey came up to me, and asked me this question: — 'Have you found any cause of death?' By this time I had buckled the rein, and then, turning round to him, and looking him full in the face, I said, 'What did you expect we should find?' He hesitated a second or two, and replied, 'Nothing.' Said I, 'I suspect she has been poisoned.' 'Heavens and earth!' he said, raising both hands, which trembled apparently, and turned upon his heel, going in the direction of the door of the carriage-house. Whether he entered the door or not, I cannot say. At the same moment I jumped into my carriage and drove off."

Now, gentlemen, when Howe had buckled his rein, he not only turned round, as he says, and looked the prisoner full in the face, but he also put his hand upon his shoulder, — I say this on the authority of Ann S. Tirrell, who was looking out at the window, and saw him do it. And he not only told the prisoner that he suspected the deceased had been poisoned, but he also told him, as plainly as looks, and manner, and action could speak, that he had no doubt that the prisoner poisoned her. This was the first intimation the prisoner had that he was suspected of such a crime. That look and manner of Dr. Howe, together with his awful announcement, astounded the prisoner, and for a moment he walked back and forth, as Ann S. Tirrell says, and then he went in to tell Mrs. Richards, who sent him out to the doctor, what he had said. Mrs. Richards says he did not come back; — the truth is, she is a nervous, fussy woman, who always has a dozen things on hand at once, and never finishes anything, except by chance, and after sending him out, she went out herself, and did not stop for an answer, — so the others say who were there. Charlotte Tirrell says, He went out immediately when asked. He was gone but a very short time, and that her aunt, Mrs. Richards, had gone out when he returned. They all say that he came back immediately, and was just going to speak, when Mrs. Vining came in, and asked him to go into the shed with her. He went at once, and she told him the physicians had found Frances in a "family way." These two announcements of Dr. Howe and Mrs. Vining coming upon the prisoner almost at the same instant, and each accompanied with a manner that told all else they thought, as plainly as words, brought the prisoner to a knowledge of the terrible suspicions which rested upon him. Soon after, he walked out to think upon what he had heard and seen, and wandered up to his brother William's. If he had any doubt whether he had read the manner and looks

of Dr. Howe and Mrs. Vining aright, all doubts were removed there, for the most direct charges were made by William's wife and Mrs. Vining, who was also there.

If the prisoner was guilty, there was now no hope but in escape; they were on his track, and he was liable to be arrested at any moment. But he did not go; he remained at his brother's all night, and the next day was carried over to his father's, in Hingham, by Mr. Sherman, a well-known citizen of Weymouth, in broad daylight, and everybody knew just where he started for, just where he went, and that is just where the Sheriff found him a week afterward. There was no longer any doubt that suspicion pointed to him as a murderer. The town was all excitement when he left it. He had been accused, and knew just the position in which he stood. He went to his father's house on Sunday forenoon, and remained there until he was arrested on the following Saturday. There was plenty of money at his disposal, and he could have been half way to Europe in this time: but only guilty men shun an examination of their conduct, and he was innocent. So far from making any attempt to escape, he never left the house without leaving word where he was going, when he should return; and he was always back within the time he set. When the Sheriff came to arrest him, he knew very well what he came for, and went with him at once. Thus has he ever courted an examination of his conduct, as no one but an innocent man would; and now I ask that the circumstances of this case may be illuminated by his fair character and good behavior, so that you may read in them nothing but innocence.

In the outset, gentlemen, I spoke of the good character of the prisoner for the purpose of showing that he was not a man who would be easily moved to the commission of crime — that no ordinary circumstances would furnish a motive to such a man. You are never to presume a motive; it is always to be proved. The prosecution has attempted to prove a motive; if they have failed, it is your duty to say that the prisoner had no motive to commit this crime. The motive they allege is, that the prisoner was engaged to marry Loretta Loud, that he had seduced the deceased, that she was pregnant by him, and thus involved in difficulty, he had a motive to take her life. For the sake of the argument, we at first admitted that this state of facts existed, and then pointed out four ways in which the commission of this last great crime could have been avoided, following each to its ultimate consequences, and showing that either was preferable to murder. Then we proved to a demonstration that the prisoner was not engaged to Miss

Loud when Frances died, and that it is highly improbable that he seduced the deceased, or that she was pregnant by him. Thus the proof of the alleged motive fails, and that is equivalent to proving that no motive existed. It does not seem to me that you will say you are convinced beyond a reasonable doubt that the prisoner committed murder when he had no motive to do it.

But if the absence of a motive to commit a murder is not enough to create a doubt in your minds, gentlemen, add to it the absence of proof that the prisoner had poison. The only evidence that he had poison is that of Coburn. Coburn had been selling poison contrary to law; this fact, and the conversation he had with Dunn, gave rise to his story. The story was made up from what he could remember of the newspaper accounts of the case. He was obliged to adhere to his first story. He did not recognize the prisoner when he saw his picture — it did not occur to him that he was connected with the case when he read an account of it in the paper. The pretended identification is a trick and a farce. His story of the conversation with the prisoner bears falsehood upon its surface. Thorough search has been made, and no trace of the strychnine, or the bottle, cork, seal or paper which Coburn says was connected with it, could be found in Weymouth. No trace of the perfumery, or paper around it, or of the brush and comb Coburn says he sold the prisoner the first time he was in, has been found. If there was any truth in the story of Loring C. Tirrell, it would prove that the prisoner was not in Miller's store the first time Coburn says he was, and there is no evidence from any source that the prisoner was in Boston when Coburn says he bought the strychnine, and nothing can explain the absence of that evidence but the fact that the prisoner was at home.

But, gentlemen, if the absence of a motive and of proof that the prisoner had strychnine is not sufficient, add to that the entire absence of any evidence that the prisoner gave strychnine to the girl, and how can you then say you do not entertain a doubt that he is guilty?

If you still wish for more reason to doubt, you find it in the nature of the evidence offered to prove that she died by strychnine;—in the observations made by the physicians, upon which their opinions are founded — in the manner in which their chemical evidence has been withheld — in the ignorance the chemists exhibited of the nature of light.

If all this absence of proof does not raise a reasonable doubt of the prisoner's guilt, then link with it that evidence of his innocence which you find in the proof of suicide. The be-

lief of this entertained by the family and prosecuting officers is set forth in the indictment. There was no evidence to make the prisoner an accessory, yet the prosecution, believing that she committed suicide, has retained the charge as a chance against the prisoner's life. People do commit suicide; suicide is more frequent than murder, and therefore more probable. This mode of death has a cause; the cause is to be found in the temperament of the individual and in the surrounding circumstances. This girl had just the temperament to be led to suicide by adversity. This temperament she inherited. Her mother cut her own throat. Circumstances operated to develop this temperament in Frances, and to lead her to self-destruction. Her mother died when she was seven or eight years old; a step-mother came who had no sympathy with her, and tormented her. Her favorite sister died. She had sacrificed her virtue and lost her self-respect. She was two months and a half pregnant and never had a husband. Her melancholy had been constantly increasing down to her death. She made no conversation with anybody that night. She went down stairs and got a spoon and some preserve. She put the spoon behind the fire-board. She said she should die. She wanted some physic, but did not tell what she had taken.

Gentlemen, do you not entertain many and strong doubts of the prisoner's guilt? Is it not far more probable that he is innocent than that he is guilty? Is anything more needed to insure him an acquittal? If so, you find full confirmation of his innocence in his previous good character, and in his behavior during the trying scenes preceding his arrest.

Gentlemen, in this case I have only to fear the persuasive eloquence of my learned brother who is so soon to follow me. It will trickle down your souls like tears — we cannot help being moved by it, gentlemen; but when he has finished, the calm voice of the Court will say to our troubled thoughts, "peace, be still;" and I trust that when you retire you will proceed to a calm consideration of the evidence in the light in which I have presented it before you. The consequences of an error against the prisoner cannot be magnified. His life and the happiness of his aged parents, of his sisters and brother, await your verdict. And, gentlemen, though you can never recall that verdict, it is not in the nature of the human mind to decide a question so complicated and important, once and for all, and that immediately after hearing the evidence upon it. If you send the prisoner into eternity crying *innocent! innocent!!* as he tells you now *he is innocent*, should you never revolve the circumstances of this case again, think you? Would they not sooner or later

force upon you the conviction that his assertion was true? Gentlemen, you could not remove the stain of this man's blood from your hands by washing them in this evidence forever, and I conjure you, by all that is dear to him and to you, to give him the benefit of every doubt in the case, and to keep steadily in view the evidence of his innocence. You are the artists who are to paint the scenery for the closing act of this tragedy. Shall it be the rotunda of the jail, and this poor man, who has already suffered so much, just dropping through the floor of the scaffold, while the people are all breathless and pale with his last cry of "*innocent?*" Or shall it be a scene in his old father's house, where the prisoner waited so long for the Sheriff, never doubting that he should return there at last with your verdict as a prize worth all it has cost him, — a scene in the old house, with the old parents and the sisters and the brother around the prisoner, — then a prisoner no longer, — and all tears of joy, and all gratitude to Heaven and to you? God grant it may be the latter, and may He guide your judgments to a verdict of Not Guilty.

Mr. Sullivan closed his argument at half-past twelve o'clock, M., and the Attorney General commenced his reply at that time. There was an adjournment for dinner from one o'clock to two o'clock, P. M., after which he spoke until four o'clock. The following is an abridged report of his remarks, which have not been fully written out in consequence of pressing engagements, and because the testimony is published at large.

CLOSING ARGUMENT OF HON. DWIGHT FOSTER, ATTORNEY GENERAL.

May it please your Honors, Mr. Foreman, and Gentlemen of the Jury: —

The calamity of a great crime is always doubled when it remains undetected and unpunished; and the importance of bringing the offender to justice is enhanced as well by the secrecy in which his deed is enveloped as by the heinousness of his moral guilt. Wretched would be our condition should it become understood that the common murderer, taken with the blood of his victim on his hands, was sure to fall by the hands of justice, but the secret poisoner might escape. Against violence the strong may hope to defend themselves, and the weak may be sheltered by the protection of the strong. But against the secret arts of the poisoner no such resource or safeguard is afforded. No age or sex, no day or

hour, is safe from his machinations. Society would be reduced to a state of hopeless uncertainty were it ascertained that the machinery of courts of justice, the skill and investigations of the officers of the law, the resources of science, the rules of evidence, and the intelligence of jurors, were inadequate to detect and bring to punishment the most secret crimes of the most skilful criminals. Were such the case, the general increase of education, the diffusion of intelligence, the progress of the arts, almost every new discovery in the sciences, would multiply the dangers of society. The path of secret poisoning would be left to be trodden with impunity by any wretch possessing a moderate amount of cunning and scientific skill. But the Author of our being, in whose sight the darkness is as the light, and midnight as the noonday, has not left men created in his image in any such unhappy situation. The faculties which he has implanted within us are adequate by their just and prudent exercise to detect and bring to punishment, before human tribunals, the most skilful perpetrators of secret crime. No circuitous arts can baffle the investigations of justice.

Of course, the character of proof necessarily depends upon the nature of the thing to be proved. A secret crime hardly ever has human eye-witnesses capable of testifying to the very commission of the act. But the circumstances which surround it and its perpetrator, when collected and examined, all conspire to fasten upon the criminal the proof of his guilt. Circumstantial evidence requires greater care and scrutiny, and more intelligence and discrimination on the part of jurors; but when these are supplied, the deductions which the mind must draw from a chain of circumstances are often more conclusive and irresistible than any ordinary amount of positive and direct testimony is capable of furnishing.

For the purpose of a case like the present, it seems sufficient to observe that it were as well to proclaim impunity for the crime of murder by poison, as to expect and require the government to furnish the direct testimony of witnesses who saw the deadly drug mingled and administered by the accused to his victim. Such evidence, from the nature of the crime, is unattainable, and if offered you would ordinarily reject it because of its gross improbability. It is enough, as the basis of the verdict which the government asks you to render, if all the evidence of the trial points towards the guilt of the prisoner; if all the facts found are indicative of his guilt, and taken together admit of no reasonable explanation consistent with his innocence; so that the whole case leaves your minds fully satisfied of his guilt beyond a reasonable doubt; in other

words, to such a moral certainty as prudent men are accustomed to act upon in the most important affairs of life. Human experience has shown such a degree of proof to be safe, and the very preservation of society requires it should be accepted and acted upon as sufficient. Gentlemen, I believe that the evidence of the present trial constitutes one of the most remarkable, complete, and incontrovertible chains of circumstantial evidence to be found in the annals of criminal jurisprudence.

The crime of murder consists in the unlawful taking of the life of a human being with malice aforethought, either express or implied. Murder is, by the statutes of Massachusetts, divided into two degrees; and murder committed with deliberately premeditated malice aforethought, or in the commission of or an attempt to commit a crime punishable by death or imprisonment for life, is defined to be murder in the first degree.

I shall leave to the Court the explanation and illustration of these definitions so far as they are applicable to the present trial. For it is perfectly apparent that this defendant, if guilty at all, is guilty in the first degree. Deliberation and premeditation are the most obvious and characteristic features of the crime charged in this indictment, and established, if anything is established by the evidence that has been submitted to your consideration. Indeed, it is almost impossible to conceive of a homicide caused by the administration of poison, with an intent to take life, which would not amount to murder in the first degree; and certainly there is nothing in the present case — the counsel for the defendant do not claim that there is anything — to extenuate the atrocity of the defendant's guilt, if he is guilty at all. You have never heard, I have never heard or read of a more aggravated, deliberate and inhuman murder, one more destitute of any mitigating features, than the government charges, and must prove, before it is entitled to any conviction. It would be a gross weakness and dereliction of duty on your part, if satisfied that the defendant has committed this crime, to hesitate to declare him guilty in the first degree. If the crime charged is not fully fastened upon him by the evidence, in God's name, let the defendant be acquitted. But if he is clearly and conclusively found to be guilty, you will have the firmness to say so by your verdict. To declare him guilty of a less crime than he is found to have committed, would be as much a violation of your oath as to acquit him altogether.

There is nothing in the form of the indictment which re-

quires from me any special explanation. The different counts charge in various modes the same crime. The simple question for your consideration is, did the defendant, George C. Hersey, take the life of Betsy Frances Tirrell by the administration of poison? Strychnine is the drug by which he is alleged to have destroyed her; and there is no evidence tending to show that she died from the effects of any other poison. Still it would be enough for us to prove that he caused her death by the administration of any poison, even a different one from that named in the indictment.

The government need not show — in cases of this nature it is ordinarily impossible to show — the precise circumstances, the way and manner in which the prisoner administered the fatal drug to his victim. No one may know — in the present case perhaps no one does know — exactly how it was done. It is sufficient if you are fully satisfied that a fatal dose of poison, of which she died, was taken by the deceased, through the instrumentality of the prisoner, he intending it should cause her death. Whether he forced her to swallow it, or she received it voluntarily from his hands; whether she knew what she was about to take, and was willing and intended to die, or he persuaded and induced her to take it in ignorance of its nature, is wholly immaterial. How the act was accomplished you may be unable to conjecture. But if the prisoner caused the death of Betsy Frances Tirrell by poison, that is enough to constitute his legal as well as moral guilt, and require you to render a verdict against him. Such is the clear rule of law, as well as the plain rule of common sense and justice. It is not controverted on behalf of the prisoner, and will be authoritatively stated to you by the Court.

Before undertaking to argue upon the evidence of this terrible case, it may be useful to refresh your recollection by a brief outline of its principal facts.

George C. Hersey, the accused, has for several years resided in the town of Weymouth, in this county of Norfolk. He became acquainted with the family of Wilson Tirrell, a respectable citizen of the town, one of whose daughters his brother had previously married, and engaged to marry another daughter, Mary, who died after a short illness, on the second day of January, 1860, aged nineteen years. Hersey appeared greatly distressed by her death; and immediately afterwards became, by invitation, an inmate in Mr. Tirrell's family, where he was received as a son and a brother, who was bearing with them the burden of a great sorrow. The family consisted of Mr. Tirrell and his wife, Betsy Frances, for whose murder the defendant is now upon trial, an adult

son, both children of a former wife, and a young daughter of the present marriage, named Louisa. Almost immediately after he took up his residence in this family, the relations between the defendant and the deceased began to be very intimate, so much so as to attract the attention of her parents and other near relations. For a number of weeks he was much in the house and constantly in her society; when they went abroad it was together; his evenings were spent with her; he was her only companion, and although no formal engagement between them was known to exist, and none would have been likely to be announced so soon after Mary's death, yet from all the evidence it is impossible to doubt that there was in the family a tacit recognition of the existence of an intimacy out of which an engagement must sooner or later result. But some weeks before the fatal event now under investigation, a perceptible change took place in the conduct of the prisoner and his manners towards the deceased; he ceased to court her society, was not much at the house, and when there paid her little attention. She was noticed to be sad and troubled by his coldness towards her.

On the third of May, 1860, she was in her ordinary health, having recovered from a trifling illness which had occurred a few days before. She spent the day in her customary household avocations, and was noticed to be more cheerful than usual. Towards evening Hersey drove her, with her sister Louisa, to the house of their uncle, Christopher Blanchard, to bring back their mother, who had passed the day there on a visit. You have heard described, with great particularity, all the events of that day and evening, by every one who then saw and conversed with this unfortunate girl. I shall refer to these more minutely in another connection. She returned home and passed the evening with the family, conversing cheerfully and naturally. At nine o'clock, her usual hour, she retired, taking with her a may-basket to show to her little sister who shared her chamber; as she left the room she paused to ask what she should prepare for the family breakfast the next morning. She spoke to the child and gave her the toy; undressed herself deliberately, extinguished the light, and lay down by her sister's side as if to quiet sleep. Twenty minutes later her father and mother were startled from rest by her shrieks, and hurried to her bedside to find her in the mortal agony of spasms from which speedy death was a merciful release. An hour from the time when in health and cheerfulness she bade her parents good-night, they were weeping over her lifeless body. At nine o'clock in the even-

ing she was speaking of the duties and pleasures of the morrow; at ten o'clock, her spirit had returned to its Maker, and her afflicted parents knew that for her there could be no to-morrow until the morning of the resurrection.

A death of such appalling suddenness necessarily challenged investigation, and that very night arrangements were made with Dr. Howe, the family physician, who arrived just as life became extinct, to have a post-mortem examination of her remains the following afternoon. The autopsy took place, and revealed the fact that she could not have died from any natural cause, and also the fact of her pregnancy.

Up to this time no suspicion had fallen upon any one. But the discovery of her pregnancy was enough to convince every member of the family that the author of her shame was also, in all probability, the author of her death. Who her seducer was it was impossible to doubt; it could have been no one but the defendant. He felt this, as well as others; he admitted that he could think of no one else, to his brother's wife, the sister of the deceased.

He left the house and the town, where he had brought so much crime and misery, the object of universal suspicion and horror. Still, proof was wanting, but not long. Multitudes of circumstances in his conduct, both before and after her death, were remembered, strongly indicative of his guilt. I will not stop to detail them now; by and by it will be my duty to gather them up and present them to your attention.

The aid of an accomplished police detective was obtained to ascertain whether the defendant had purchased poison anywhere; and after a time it was discovered, and established by overwhelming evidence, that under a false name, and for a falsely assigned purpose, he had bought a bottle of strychnine at a drug shop in Boston.

Science was invoked in the persons of two of her most accomplished disciples to disclose the secrets contained in the dead body; and chemistry, by its beautiful and wonderful processes, reproduced to sight, and touch, and taste, the very drug by which the unfortunate woman had been destroyed, thus demonstrating that his victim died of the same poison which he had purchased, and a portion of which was found in a spoon behind the fire-board in her room.

These things would have been ample proofs of guilt; but yet more were in reserve. By one of those remarkable incidents, which unthinking men attribute to chance, but in which the more reverential can clearly discern the very finger of Providence pointing out the guilty, the officers of the law were led to search for, and finally able to discover, an un-

willing witness, a man engaged in an illegal and disgraceful occupation, to whom, a few weeks before the death of Betsy Frances Tirrell, this defendant had applied for medicine with which to effect an abortion upon some one whom he had seduced; to whom he had said that if he could get rid of the child he was willing to destroy the mother also; and of whom, before leaving his office, he had asked for a prescription of strychnine to use in killing a dog.

Gentlemen, this hasty and imperfect outline of portions of the evidence is sufficient to force upon every mind on your panel an irresistible conviction of the defendant's guilt. But your duty and mine cannot be performed without subjecting the whole proof of it to an orderly and critical examination; scrutinizing every step on the way, that the prisoner may have the benefit of any weakness or defect that can be detected in the proof; and, on the other hand, that your verdict may declare him guilty, that justice may be done, and all men say, Amen! — if it, indeed, amounts to an unanswerable and irrefragable demonstration of truth.

The first question to be examined is, Did Betsy Frances Tirrell die of the poison named strychnine or strychnia on the third day of May, 1860?

She retired to bed at nine of that evening in good health and spirits, with no symptoms of disease. Twenty minutes later she was found in convulsions, of a marked and peculiar character, which succeeded each other with increasing intensity, until, in half an hour, they ended in death. These spasms were distinct, and in the intervals her muscles relaxed. During their continuance her limbs were drawn up and her feet turned inward, her nails turned into the palms of her hands, her teeth clenched, and her face distorted by an unnatural grin. She uttered a few exclamations of pain, but was scarcely able to articulate a word.

Now there is no natural disease, and but one poison, from which this aggregate of symptoms can proceed. But they are the ordinary effects of the most violent of the vegetable poisons, strychnine, a drug popularly supposed to be so subtle as to be incapable of detection, one certainly and speedily fatal in small doses, and for all these reasons usually selected by murderers, within the past few years, as the poison best adapted to their criminal purposes.

Recall the symptoms as detailed by the different witnesses who were present at the bedside when this poor creature suffered, in a few brief moments, a concentration of agony perhaps exceeding the ordinary pain of a mortal sickness continuing for weeks. Compare these statements with the account of the

effect of strychnine upon the human system as described to you by medical and scientific witnesses of the highest authority, and, from such a comparison alone, you could have little doubt as to the cause of her death.

Dr. Fifield, a highly educated and accomplished young physician, from his knowledge of the properties of strychnia, and the statements he heard of this case, taken in connection with the circumstance that no visible cause of death was discovered at the autopsy, was induced to form and express before the coroner's jury the opinion that she had been poisoned by strychnine, before the result of the chemical analysis was ascertained, and before it was known that this poison had been procured by the defendant. Professor Clarke and the other witnesses say, that from these data alone they should have arrived at the same conclusion. The circumstances were all consistent with the supposition that her life was destroyed by strychnine, and such as could be explained on no other hypothesis. Even without the detection of the poison in the stomach after death, on similar and no stronger evidence, an English jury returned a conviction in a recent celebrated case, and after much discussion the judgment of the scientific world approved their verdict.

But the spoon found behind the fire-board in the chamber of death contained little pulverized crystals which your own eyes have seen, and which, under a magnifying glass, present the exact appearance of strychnine; and just at this point the intervention of chemistry commences, and those eminent gentlemen, to whom the cause of science and of justice owes so much, — Dr. Hayes and Professor Horsford, — begin their investigations. The minute particles mingled with dried preserve are scraped from the spoon, and by their skill indubitably proved to be strychnine, and no other substance.

Is not this enough to satisfy every mind? But we have thus far only touched upon minor points of the evidence. The most conclusive proof remains. The physicians who conducted the autopsy, Dr. Howe, Dr. Tower, and Dr. Fifield, are all gentlemen who would do honor to the medical profession in any community, and it is rare indeed to find in a country circuit like the village of Weymouth three medical men of so much skill, experience, and good sense.

When they had satisfied themselves that no visible cause of death could be detected in the body, they caused the stomach and intestines with their contents to be carefully secured and transmitted to Professor Hayes for examination. There is no man in New England more competent, experienced, or conscientious in the department of analytical chemis-

try, which he has made the business of his life. With what extreme care and caution all those processes of his investigation were conducted; how he verified each experiment, and by how many separate paths he reached the same conclusion, you have fully heard. The result was that he extracted from the stomach a sufficient quantity of strychnine to show that two and seven-tenths grains remained present, after the portions which actually caused death had been absorbed into the system, of a poison of which half a grain is a fatal dose.

The officers of the government considered this case to be one of transcendent interest and importance, and were resolved to make the chemical demonstrations as complete and perfect as possible, not only for the purposes of the present trial, but also that it might stand as a leading and unquestionable authority in this branch of criminal jurisprudence; for they felt it to be desirable to have the community understand that strychnine can be detected, as surely as arsenic or any of the commonest poisons, in the human body after death. To this end they also invoked the aid of Professor Horsford, who holds the chair of Analytical Chemistry in Harvard University; who received from the hands of Professor Hayes a portion of the stomach after it had been reduced and prepared for chemical treatment, which he subjected to a series of independent experiments that have been detailed before the jury, all of which fully confirm the experiments and testimony of Professor Hayes. That the substance extracted by the chemists and produced before you is veritably strychnine, has been proved by every possible test: by its appearance when compared with the strychnine of commerce, placed by the side of a bottle of strychnine from the same shop where the defendant purchased the article only a few days before Miss Tirrell's death; by its extremely pungent and bitter taste; by experiments on animals; by the successive changes of colors which strychnine and no other known substance undergoes when mingled with certain other chemical substances; in short, by every test known to chemists for ascertaining whether a particular article is strychnine or not. And when these learned men, feeling the grave responsibility of their position, swear to you that they did find in the body of Betsy Frances Tirrell a quantity of strychnine, from the effects of which she died, you must be satisfied that their conclusion is well founded and unmistakably correct.

But there is yet another confirmation, almost the only one which could be added. The benignity of the criminal law of Massachusetts grants to the person accused of a capital crime, at the public expense, every facility for preparing his defence.

In this case the privilege has been freely used, and Professor Jackson and Professor Ainsworth, summoned on behalf of the defendant, have been present during the trial, listening to the scientific witnesses for the government, observing the experiments made by them, with every opportunity to detect anything incorrect, inaccurate, superficial, or in any wise imperfect or susceptible of improvement in their processes or deductions. Could they suggest even the slightest doubt as to the cause of death, it would have been their duty to do so; they were here for that purpose. But they are dumb and open not their mouths. The demonstration is perfect. If they are convinced, all men must be. It is henceforth as certain that Betsy Frances Tirrell died from the effect of strychnine as that she is dead.

The question then arises,

Was it a case of accidental poisoning?

This is plainly impossible. How could a dose of such magnitude have come into her hands and been swallowed by accident? It must have been designedly mingled in this spoon, to which portions still adhere. The spoon itself must have been purposely secreted behind the fire-board where it was found. The quantity of strychnine extracted from the stomach of this unfortunate girl does not by accident find its way into a peaceful family in a country village. No such supposition has been suggested by the ingenious counsel for the defendant, or would be admissible for an instant. No, gentlemen, there is no room to hope that this was an accidental poisoning.

Did Miss Tirrell voluntarily take the strychnine for the sake of destroying herself, and is this a case of suicide?

The defendant, through his counsel, asks you to believe that this may have been so. He says that an unmarried female who finds herself pregnant, has, in that fact, a strong temptation to self-destruction; and that all the evidence shows Frances Tirrell to have been for some time in a state of depression not unlikely to induce the commission of such an act. The supposed motive on her part is to escape the exposure of her pregnancy. But this was not more than three months advanced, as all the medical evidence establishes. And you cannot, from the whole case, doubt that her seduction and pregnancy took place after the death of her sister Mary, which occurred January 2d, 1860. Now we have traced from that event till her own death every day of this young woman's life: we know where she went, and in whose company; and it is demonstrated that she had no opportunity whatever to procure strychnine during that interval. She did not obtain it at either apothecary shop in the town, — that

has been affirmatively proved; and she was absent from Weymouth only once, when she went to Abington with her father and mother to attend the funeral of a relative.

But a careful scrutiny of her conduct before and upon the fatal day, a close observation of all she said and did, down to the very hour of her death, wholly justifies her memory from the suspicion of suicide. She was sad because she was neglected by the man to whom she had sacrificed her virtue. But during the last week of her life, he seemed more attentive, and she grew more cheerful. It had been proposed that she should go to Hingham, to visit at his father's house, and this prospect pleased her, and she had purchased a dress for the occasion. She was passing her time in the usual domestic avocations. No mental aberration, no despondency, no distress of mind had been noticed in her, or could have existed without observation. The day of her death she had spent partly in duties of housekeeping, and partly in taking care of the young child of her sister, whom she had brought to the house as a companion during her mother's absence. There was nothing in her conduct that day distinguishable from any other day of her quiet life. Toward evening she went with Hersey and Louisa to bring their mother home, and at the house of Christopher Blanchard spoke of her health as never better; invited her friends to come and visit at her father's house; showed the locket containing Mary's hair; said she should have the braiding of the hair altered the next time she went to Boston, and referred to her intended visit at Hingham with evident anticipations of pleasure. She returned home, and helped build the fire, and read the daily newspaper, and then resumed her needle-work, upon a shirt she was making for Hersey. She answered the door-bell, and brought in the may-basket that was hung for Louisa, after she had retired, examined and commented upon it. When her father asked her if she wished to go to the circus, she answered promptly and naturally. At nine o'clock she put up her work, took a light, bade her parents good-night, turned at the door to ask what she should prepare for the family breakfast, and retired, carrying with her the basket, as she said, to show to Louisa.

Do you perceive in all this any indication of unnatural melancholy or a morbid spirit brooding over and bent upon the idea of immediate self-destruction?

Go with her to the chamber, where she speaks to the drowsy child and wakes her up to look at the doll, then deliberately undresses herself, extinguishes the lamp, and lies down by her innocent sister's side. Do you believe that she consciously took a fatal dose of poison, and then placed her head on the

pillow in the dark, to await the agony of dissolution? No, gentlemen, the suggestion is monstrous, impossible. You understand human nature too well to believe anything of the kind. Had she meditated suicide, there would have been evidence of preparation — some last messages to parents, brothers, and sisters; some last reproaches to the author of her ruin. No young woman ever committed such a suicide as this. No human being ever determines to take the final leap in the dark without a mental conflict, traces of which are readily discernible. But in this instance, I defy any one to point out a single indication of such proclivity on her part, or a single circumstance which gives any plausibility to the idea. When she was able to articulate a few words in the momentary interval between her convulsions, she cried out, "I shall die; give me some physic;" but this was the expression of one who feared death and sought relief, not of one who knew that by her own voluntary act she was about to die. The hypothesis of suicide would be conclusively refuted by every feature and circumstance of this case, even if there was no affirmative proof to show who was guilty of her death.

If, then, Betsy Frances Tirrell was poisoned by strychnine, and it was not a case either of accident or suicide, there remains but one conclusion — she must have been murdered: and I am brought in the natural order of my argument *to consider the affirmative evidence by which this crime is fastened upon the prisoner at the bar.*

He had a strong motive to take her life. In one sense there can be no adequate motive to commit any crime, because no temptation to sin seems to the good and pure able to overcome the innumerable countervailing inducements.

But the defendant had seduced this girl; she was pregnant by him, and his affections, or rather his lust, had been transferred from her to another. It is indisputable that she had become pregnant during the period when he alone was much in her society, when they were together at home and abroad, in the family and at lectures and the religious meetings of the village. She had no other male companion. With him her relations were of the closest intimacy. She manifested her interest in him by little personal attentions of various kinds, such as taking care of his clothing. You will recollect that the very last work of her hands was upon a shirt for Hersey. Their sleeping chambers were close together. When she was sick a few days before her death he sat by her bedside. And there was no one else who could have been the father of the child of which she was found to be pregnant, as he himself admitted. I do not, of course, mean that there were not

others whom she sometimes saw; but there is no one else upon whom any suspicion can possibly fall. The facts made this a moral certainty in the minds of every member of the family, and all the near relatives.

Furthermore, the testimony of Frederic Morrill, the Boston abortionist, to whom Hersey resorted in the hope of obtaining some medicine with which to make her miscarry, is conclusive. He told Morrill that a woman was in trouble by him, and he wanted means to relieve her. What other person than the deceased could he have referred to? This application was about two weeks before her death, and at that time he could have had no other victim still unheard of. It is clear that he was her seducer; not only so, but his appetite was sated; he had grown weary, and was neglecting her. He had found another whom he preferred, and had become secretly engaged to Loretta Loud, to whom he said that Frances was a good girl, but he should never marry her. His passions were inflamed towards this new object, and he had made improper advances, which were rebuffed, and he had been dismissed.

Gentlemen, when I looked in the fresh, honest face of that fair young girl, hardly beyond the years of childhood, and beheld her modest and artless demeanor under the trying circumstances in which she testified, it almost stopped my breath to think of the abyss of misery from which she has escaped. Had she yielded in a moment of weakness to the seductions of the defendant, she might have been where Frances Tirrell is now. On the other hand, had it not been for his practices Frances might be to-day the light and ornament of her father's house, with the prospect of a happy life as wife and mother in some New England home.

In order to measure the motive by which this defendant was impelled to such an atrocious crime, you must not only consider his position,— having seduced one girl and decided to abandon her; having secretly engaged himself to another, and, having been foiled in an attempt upon her virtue, in imminent danger of exposure should Loretta Loud divulge his advances toward her, or should Frances Tirrell so much as suspect him of making love to any one else,—but you must also take into account *the character of the man himself.* He was an habitual and hardened libertine, a practised seducer of female innocence, and nothing so steels the heart against every tender emotion as to be habitually abandoned to the vice of licentiousness, until it absorbs a man's whole life and nature, as was the case with this defendant. In Milton's disposition of the fiends about the council-board of Satan, he placed "lust hard by hate;" and

it was the confession of the gifted and erring Burns, founded on his own sad experience, —

> "But oh, it hardens all within,
> And petrifies the feeling."

From seduction to murder is a short step — one that has been frequently taken.

And this man was a hypocrite as well as a seducer. Although immersed in vice, and when resorting to an irregular practitioner, like Morrill, shocking even him by his hardened wickedness, yet he sustained a good general reputation, as his counsel have taken much pains to prove, and wore a fair exterior before the world. Not only so, but he made professions of piety, and was an apparently devoted observer of the ordinances of religion. Doubtless he valued highly this false reputation. It was unendurable to contemplate the idea of being unmasked and exposed everywhere in his naked deformity. How could he bear to have the whited sepulchre, and the dead man's bones, and all uncleanness, thrown open to the light? To such a character, real and assumed, in such a position, it is not easy to conceive of a more overwhelming temptation than to extricate himself from his embarrassments by the death of his victim.

To the motive was added the opportunity. He had constant access to her, and possessed her fullest confidence. Any day, and almost every hour, he could offer the poison, and persuade her to receive it from his hands. In what precise way he did so, it is of course impossible to ascertain. That secret only two human beings have ever known. The lips of one are sealed in death; the mouth of the other will not open to confess, at least, until after your verdict. It is not difficult to understand, that in her situation, dreading intensely the exposure of her loss of virtue, he might have suggested the notion of ensuring concealment by the use of medicine to effect an abortion. She would have caught readily at such a proposal, because her condition was so far advanced that even an immediate marriage could not wholly save her reputation. In all probability this was the way in which he accomplished his deadly design. He told Morrill if he could get rid of the child — his own unborn offspring — he did not care what became of the mother. It is only necessary for you to be satisfied that he did the act; the exact manner of its commission is the secret upon which he mainly relies to escape conviction.

He had studiously sought to impress upon the minds of others the anticipation of her death. He told Charlotte Tirrell, a week before Frances died, when she was slightly sick, that she was

feeble, and he did not believe she would live long, and he shouldn't be surprised if she made way with herself. He told Augustus Vinal that she would not live long, and several other witnesses that she had showed him her new dress, and said she did not know that she should live to wear it. Yet the evidence is that she was having this dress made to wear on a visit to his sister at Hingham. And aside from the defendant's declarations, there is nothing which, either before or after her death, leaves the faintest suspicion of suicide in the mind of any one.

Who else entertained any such anticipations? They existed only in the guilty breast that was brooding over the hellish purpose. He prophesied what he intended to bring to pass. And the history of crimes shows this to be one of the commonest, although most transparent artifices, by which murderers endeavor to prepare the minds of others for the event they themselves are contemplating. The books are full of such instances.

He had the subject of poisons constantly in his thoughts. He talked about it with his shopmates, and at the drug shop in Weymouth, made inquiries as to the properties of different drugs, the mode and rapidity of their operations, and their comparative deadliness. He also inquired whether they could easily be procured.

He made, finally, an attempt to obtain of Morrill a prescription for strychnine. This remarkable evidence deserves your closest attention; but I shall not pause to repeat the testimony, for it must be fresh in your recollection. After a conversation in which the prisoner exhibited a disgusting depravity and hardened wickedness, which shocked even a man whose daily business is vile and illegal, he intimated that if he could get rid of the unborn child, he did not care what became of the woman, and then asked for a prescription on which to procure some strychnine to kill a dog.

The counsel for the defendant make upon Morrill a severe and not unjustifiable attack, and urge you to disregard his testimony because of the infamous business in which he is engaged. Certainly it is to be considered as affecting his credibility; but if the man's general reputation for veracity stood badly where he is known, that could have been proved. He had no possible inducement to testify falsely at this trial, — the process of the government drags him here a most reluctant witness. Every motive appeals to him to conceal rather than state what he knows. By persisting in denying all knowledge he would be able to pass off quietly. If his evidence weighed against the prisoner, he knew that he would be subjected to the

ordeal of a cross-examination, exposing everything most injurious and degrading in his character and history. It is impossible that he should have any personal desire for the conviction of the prisoner; and his only inducement to testify is that instinctive horror of the crime of murder which God, for the protection of our race, has implanted in every breast; so that the most hardened and degraded are willing, even at some personal cost and sacrifice, to assist in bringing its perpetrator to justice. A person bound on such an errand as that for which Hersey sought the office of Morrill, does not resort to an educated and respectable physician, by whom he knows that he would be spurned, but to one whose character and business will make him lend a willing ear to his wants, and become readily subservient to his criminal purposes.

A strong confirmation of Morrill's testimony springs from their marked recognition of each other in the jail, which Hersey ineffectually sought to disguise.

There is reason to believe that *the very day on which the prisoner tried to obtain of Morrill a prescription for strychnine, was the one on which he actually purchased it at the drug shop of Ellis F. Miller.* The day of the purchase is ascertained to have been in the latter part of April or at the beginning of May, by the memory of Alfred A. Coburn, the witness, and by several circumstances. Hersey was twice at this drug shop. The first time, was the day when he was at Whitten's hat store; the second, when he made the purchase of strychnine.

That some one made such a purchase is undeniable, unless this young man, Mr. Coburn, is perjuring himself to destroy the life of a stranger. The identification of Hersey is complete. The recognition of each other in the jail, and the prisoner's agitation, would alone be sufficient; but the very account of what the person who bought strychnine said at the time connects him with the family in which this murder was committed. He gave the place of his residence as Weymouth, and, although he falsely said he was a son of Mr. Tirrell, and his sister had recently died suddenly, which was, perhaps, with an indefinite idea of directing suspicion towards the brother, in the event (which at that moment seemed to his mind so improbable) of the purchase of the strychnine ever being traced, yet even this falsehood connects indissolubly the purchase of poison with the family of the deceased. There were two long interviews. The personal appearance of the prisoner is peculiar, — the very first sight of the ambrotype which Mr. Dunn, the detective, showed to Coburn was enough to recall the whole transaction to his mind. "Yes," he said, "I did sell a bottle of strychnine to the man

whose picture you showed me." And this was before he knew anything concerning the homicide except the mere newspaper notice of the sudden death of a young lady named Tirrell, in Weymouth.

But we are not left to Coburn alone on this vital question of identification. John C. Warren, the policeman, remembers to have seen Hersey in that shop, and is certain the prisoner is the man he met there, from his appearance and his resemblance to a friend of his own, which caused him to observe his countenance with more than ordinary closeness.

Furthermore, Hersey himself told another witness, Loring C. Tirrell, that he had been in the shop at the corner of Union and Hanover Streets, purchasing perfumery, a comb and brush, — the very articles he did buy; and Mr. Tirrell said to him that he was acquainted with Mr. Coburn. It is idle to attempt to parry this evidence by talking about mistakes as to personal identity, which we all know are frequent; for, in the present case, Hersey identified himself by his conversation and admissions too completely for any lingering doubt.

He knew Coburn, and his denial of the acquaintance in the jail, coupled with his visible and extreme agitation, show that, conscious of guilt, when the man of whom he bought the strychnine was presented before him, he felt that detection and punishment had become inevitable.

Not only is Hersey proved to have purchased strychnine of the very same description as that found on the spoon, *but he made the purchase under a false name* — he said his name was Tirrell, — *and for a falsely assigned purpose* — he said he wanted it to poison a dog — yet it is proved that he shot the dog, and its stomach has been analyzed and contained no strychnine.

What explanation has the defendant offered of this evidence? Not a word. If he made the purchase for any honest purpose, or even any criminal purpose less heinous than murder, would he not be eager to offer explanation? The only suggestion made is, that the government cannot trace the poison into his hands in Weymouth, — as if a murderer were to escape justice unless some one saw him carry the poison to his victim, and he actually administered it to her in the presence of a witness.

Furthermore, *the subsequent conduct of the defendant after the death of Betsy Frances Tirrell is crowded with indications of guilt.*

He was the first in the chamber of Miss Tirrell after she cried for aid, and she called him there. Under ordinary circumstances her mother's would have been the first name on her lips; and she called George Hersey only because she knew he was connected with the cause of her distress.

His restless, agitated conduct that night after her death, his going to Augustus Vinal for wine to brace his nerves to act out the part which he began to find beyond even his hardened nature, are certainly worthy of observation.

The next morning he made the utmost efforts to dissuade the family from permitting an autopsy; speaking to every one against it repeatedly, earnestly, and at times fiercely; declaring that the cause of death was never discovered, yet manifestly dreading lest it should be, and once groaning out in the presence of Mrs. Susan Hersey, "To-morrow, at this time, all will be known" — almost a confession. He spoke in the strongest terms of his horror of a post-mortem examination; yet, when the hour arrived, unasked, and contrary to the rules of delicacy, he placed himself at the head of this young woman whom he had seduced and destroyed, an undisturbed spectator while the dissecting-knives of the surgeons were mutilating her body, — manifesting only a desire to know whether they found anything, and at last was sent out of the room when the fact of pregnancy was disclosed.

A few minutes later he met Dr. Howe, and asked, "Have you found any cause of death?" The Doctor replied, "No immediate cause; what did you expect we should find?" He said, with hesitation, "Nothing." Dr. Howe rejoined, "I suspect she has been poisoned." And then Hersey uttered the exclamation, "Good heavens and earth!" and turned and fled from the penetrating eyes of the sagacious old physician. Do you not, gentlemen, discern in this conduct a guilty conscience, which the sufferings of the dying girl could not stimulate to repentance, but which was smitten into almost a phrensy of terror and remorse by the imminent danger of detection and punishment? The learned counsel for the defendant would pass by this interview with Dr. Howe with a sneer, and an attempt to hold him up to ridicule. In the community where he has passed a long, useful and honored life, he needs no vindication; before this jury who have listened to his impressive testimony, he needs it as little.

After this, Hersey broke down, not perhaps so much because he apprehended his greatest crime of murder could be fastened upon him by legal proof, but because he knew he already stood convicted in the eyes of all of having been the seducer of the young woman who had died so suddenly and strangely.

To his brother's wife, Mrs. Susan Hersey, he says, "It will be laid to me, of course." She told him, "It was not possible any one else could have been guilty of the act," and asked if he "could think of any one else?" He replied, "No, I can-

not. I never shall go anywhere again; I cannot live and bear the disgrace of this."

And now, gentlemen of the jury, what defence has been interposed against this overwhelming case? Nothing, absolutely nothing, except that Hersey was a good shopmate, and a man of fair exterior character. The very fairness of his reputation before the world, when coupled with the corruptness of his secret life and real character, was an additional incentive to this crime.

In my review and analysis of this evidence, I have unquestionably omitted many things which you will remember; time and strength would fail me if I undertook to dwell on all the minute circumstances detailed by so many witnesses.

The government has proved, beyond all reasonable doubt, that Betsy Frances Tirrell died of strychnine, under circumstances which exclude the hypothesis of accident or suicide, so that some one must have murdered her; that there is no one else who had any conceivable motive, or on whom the least shadow of suspicion rests; that the defendant was her seducer; that he had made ineffectual efforts to procure the means of abortion; that he had made numerous inquiries as to the nature and effect of poisons, and the facilities for obtaining them; that he had, a few days before her death, bought, under a false name and upon a fictitious pretence, a large quantity of strychnine, of which he gives no explanation or account; that he had the opportunity to administer it; that he was the last person who spoke with the deceased in health, the first called by her in her agony; that he had previously sought to prepare the minds of her friends for her speedy death by suicide; that he earnestly dissuaded them from permitting an autopsy, and said it was a sight he could not bear to see, yet unnecessarily and improperly stood by, an unconcerned spectator, while the knives of the surgeons were mutilating her body; that there were in his conversation admissions, and in his conduct symptoms of conscious guilt at the interview with Dr. Howe; with Morrill, to whom he applied to procure abortion; with Coburn, of whom he bought the poison, — each of whom he must have recognized, yet pretended not to know, — and, also, with Susan Hersey, and other members and relatives of the family.

It remains, gentlemen of the jury, for you, fearlessly, faithfully and conscientiously to discharge your duty. I know it will be a painful one; but I have confidence enough in your firmness to believe you will prove equal to its resolute performance. The consequences of your verdict it is not for you or me to consider. In the distribution of the powers of

government the prerogative of clemency is lodged with the executive. Your part is only to declare the truth according to the evidence.

If ever there was a case in which all the instincts of human nature cried out for retribution against the author of a crime, surely this is the one. The verdict you will render to-day may save many lives, may make bad men pause and see to what the unrestrained indulgence of the passions leads; may preserve other households from the desolation and misery which this man's wickedness have inflicted upon the home and hearts of a once happy family.

Carry with you, gentlemen, into the deliberations of the jury-room, the single purpose to discern the truth; and you need not doubt that the conclusion to which you must arrive will meet the approbation of the community, and, what is far better, will satisfy your own consciences in the retrospect; so that you can through life look back on this day's proceedings, and remember that a solemn and most important duty was performed with firmness, and fidelity to the laws under which we live, and upon the maintenance and execution of which the happiness and security of all depend.

The Attorney General closed his argument at four o'clock, and the Chief Justice proceeded to charge the jury. His remarks occupied an hour and a half in the delivery, and the following is an abstract of them prepared from his minutes by the counsel for the prisoner.

CHARGE OF CHIEF JUSTICE BIGELOW.

Mr. Foreman, and Gentlemen of the Jury: The time has now arrived when it becomes the duty of the Court to state to you the principles of law by which you are to be guided in the performance of your duty, together with such summary of the evidence in the case as may enable you to understand how those principles are to be applied to the facts in proof.

Before asking your attention directly to the case, some preliminary remarks may be proper.

It is not necessary to exhort you to perform your duty. Though that duty is a painful one, it is still a duty; and because a duty, it is to be faithfully and firmly performed. This is the highest duty that can devolve upon a citizen. It is a double duty, — guaranteeing to the prisoner that if, after a fair and impartial trial, he is not found guilty, he shall not be convicted; to society, that justice shall be administered, and the guilty brought to punishment. It is a mistake to say that the verdict of the jury takes away life; and such a con-

sideration should not deter a jury from a proper performance of its duty. A jury is only one of a series of instruments under our Constitution and laws, and is responsible only for the manner in which it discharges the single duty assigned to it.

The charge against this prisoner is murder; and that charge is set forth in an indictment containing four counts. In all these counts the same offence is described, though in different forms. The reason for thus describing the offence in various forms is, that the indictment may meet the various aspects of the evidence. The first of these counts charges that the prisoner gave poison, which he knew to be deadly, to the deceased, with intent that she should swallow it, and so killed her. The second count charges that the prisoner mixed poison, which he knew to be deadly, with preserved fruit, pretending that it would procure abortion, and intending the deceased should swallow it, and so killed her. Upon these two counts, the counsel for the prisoner say that no conviction can be had, because they do not allege that the prisoner gave the poison with intent to kill the deceased, or with any other unlawful intention: but such an allegation is not necessary; the indictment alleges acts which constitute murder. Knowingly giving a deadly poison, intending it should be swallowed, if a person dies therefrom, is murder; for the law presumes that every man intends the necessary consequence of his own acts; and if you find sufficient proof that the defendant did give the poison to the deceased, knowing it to be deadly, intending she should swallow it, in order to cause miscarriage, or for any other purpose, then you can convict on the two first counts. The third count alleges that the deceased took poison, intending to commit suicide, knowing it to be poison, and that the prisoner advised her to do so, and so he murdered her. This is a charge of murder; but you will not return a verdict of guilty upon it, unless you find on the evidence, not only that she committed suicide, but also that the prisoner advised and procured her to do it. Upon the fourth count, you cannot, in any event, convict the prisoner, for there is no evidence offered to sustain it.

Have the government proved any one of these charges? To ascertain this, certain rules and principles must be laid down, and understood; and, first, What is murder? It is the killing of a person in the peace of the Commonwealth, with malice aforethought, either express or implied by law. Nice distinctions between express and implied malice are not necessary here, as no question can arise upon them. In this description of murder, the word malice is not used in its popular sense. In law, any unlawful motive prompting to the taking

of life by violence, or poison, constitutes malice. The doing of any act, without justification or excuse, the necessary and inevitable consequence of which is the destruction of human life, constitutes malice. Therefore, giving to a person a deadly poison, knowingly, by which life is taken, is murder. By the statutes of this State, murder is of two kinds, called murder in the first and murder in the second degree. It is unnecessary to state to you the distinction created by the statutes, for it is sufficient for the purposes of this case to say that murder by poison is committed with wilfully premeditated malice aforethought; because it necessarily implies and presupposes plan, design, preparation and premeditation. Murder by poison is not committed suddenly, or in excitement, but with deliberate purpose. If, therefore, you are satisfied that this prisoner administered to the deceased a deadly poison, knowing it to be such, by which she died, or persuaded her to kill herself with it, he is guilty of murder in the first degree. If you convict the prisoner at all, you must convict him of murder in the first degree.

How, then, is the charge to be proved? The prisoner is presumed to be innocent. Legal presumptions are all in his favor, and he is entitled to the full benefit of these presumptions.

It is the business of the government to prove the charge in the indictment beyond all reasonable doubt: but what is a reasonable doubt? This charge is not to be proved beyond the possibility of error, — not to a perfect certainty; such proof is not attainable in any case: human imperfection and fallibility will not admit of so strict a construction of the rule. The doubt must be a reasonable doubt, — a doubt to cause a reasonable man to pause and hesitate in making up his mind — not a frivolous doubt, a guess, or a surmise. Evidence must be such as to create an abiding conviction of the fact to be proved, — a moral certainty of guilt — such certainty as men act upon in the highest concerns of life. Evidence which convinces the understanding and satisfies the reason, is proof beyond all reasonable doubt.

The evidence in this case is not direct, but is wholly circumstantial. The difference between direct and circumstantial evidence is, that in one case the fact in dispute is proved by the evidence of eye-witnesses; in the other, it is inferred from various other facts connected with it, which are established by evidence. If a witness testifies that he saw a horse and sleigh pass, that is direct evidence of the fact that a horse and sleigh did pass; if he testifies that new snow had fallen, and that he saw upon it the hoof-prints of a horse, and the marks of run-

ners, that is circumstantial evidence, from which to infer that a horse and sleigh had passed.

Each of these modes of proof has its advantages and disadvantages. Direct proof is entitled to great weight, where the witnesses are intelligent, honest, and had a good opportunity to know the facts of which they testify; while, on the other hand, this proof may be rendered worthless by the mistake, interest, or perjury of the witnesses.

Circumstantial proof has this great advantage — that various circumstances from various sources, all tending to the same conclusion, are not likely to be fabricated. The principal disadvantage of it is, that the inferences drawn from the circumstances may be erroneous.

The proper administration of justice renders a reliance upon circumstantial evidence necessary; for crime seeks concealment, and juries must resort to such evidence, or criminals will go unpunished. It is, therefore, resorted to, and relied upon; all that is necessary is, that it should satisfy the mind beyond reasonable doubt.

The rules which must govern you in your examination of this evidence are: — *First.* Each and all of the facts from which you are to infer the guilt of the prisoner must be proved beyond all reasonable doubt; for you cannot be satisfied beyond all reasonable doubt of your conclusion while a reasonable doubt remains as to any of the steps by which you arrived at it.

Secondly. The facts must be consistent with each other, to make the chain of evidence complete, and must all tend to the same conclusion.

Thirdly. They must all be consistent with the fact to be established, and inconsistent with any other reasonable hypothesis.

Each essential fact must be proved; they must be consistent with the conclusion, and not inconsistent with each other; they must establish the guilt of the accused beyond reasonable doubt, and exclude any other reasonable theory.

That Betsy Frances Tirrell is dead, is clearly proved; but how did she die? This is the first question for your consideration. The government asserts that she died by strychnine, and the evidence which they bring to sustain the assertion may be considered generally as follows: —

First. They say that the symptoms attending poisoning by strychnine are peculiar, — that they are such as are never observed in any case of natural disease. You will remember that they were described to you by the physicians called by the government, and who are uncontradicted, as tetanic con-

vulsions, accompanied with contraction of the muscles, bending back of the body, and great rigidity; that these convulsions occur in spasms, with occasional intermissions, and, after short continuance, are followed by death; that the body assumes great rigidity soon after death, which continues until decomposition commences. You will remember the testimony of those who were present during this girl's brief illness, — their description of the symptoms and death; you will also remember the testimony of the physicians about the appearance of the body after death, and will judge how nearly these symptoms and appearances agree with the known symptoms and appearances of death by strychnine, as described by the physicians.

Secondly. You will remember the testimony of the physicians who made the post-mortem examination — that they found no physical signs of ill health or disease to cause death.

Thirdly. The chemical evidence is of the highest importance. You will remember the testimony of the chemists, — which, like that of the physicians, is uncontradicted, — describing the manner in which known strychnine crystallizes with different fluids; you will remember the testimony of Professor Horsford, and of Dr. Hayes — that they obtained from the stomach of this girl a certain substance, which they showed you in a bottle. They detailed the manner in which they obtained it; and it is for you to say whether you doubt their word, or detect an error in their various processes, as well as to judge from their testimony whether this substance shown you does not crystallize just the same as known strychnine.

Fourthly. They tell you that known strychnine, when mixed with various substances, produces certain colors, — that the substance shown you, as extracted from the stomach of the deceased, produces, when similarly mixed, the same colors. You could not witness the experiments; but it is for you to say if you doubt their statement.

They tell you that when crystals obtained from a solution with alcohol are mixed with oil of vitriol, and indicate no change of color, and when the mixture is stirred with bichromate of potash, it gives, first, a deep blue, then a violet, then red, and fades to a dull orange, there can be no doubt that the substance is strychnine, and that this is an infallible proof. They tell you that the substance they took from the stomach of the deceased, when so treated, produced these colors in this succession; they tell you the substance on the spoon produced the same effect, under similar treatment; they tell you, also, that they have experimented upon animal life with this substance, and that its effects are the same as those of known strychnine.

Upon this proof it is for you to say if there is any doubt of the cause of death.

The defence say that the observations of the physicians were careless and unreliable; and that the chemists cannot say that strychnine alone will produce certain colors, because they do not understand the nature of light, and cannot tell how any color is produced; of this you are to judge.

If you should be of the opinion that it was strychnine which caused her death, the next question is, whether it was administered to her by the prisoner at the bar. One important and leading inquiry is, had he a motive to destroy her life?

That the deceased was pregnant, is not disputed; and the government contend that she was pregnant by the prisoner, and that this furnishes an adequate motive for her murder; that he had betrayed the confidence of a family, and seduced a daughter, and then killed her to hide his guilt. Whether this would furnish a motive, is for you to judge. To prove that she was pregnant by him, the government introduce evidence of his intimacy with her for some months preceding her death, — evidence to show that circumstances threw them together so constantly that no one else had an opportunity to be with her. They show the age of the fœtus, to prove that it was conceived after the prisoner went to reside with the family. They introduce certain conversation he had with his brother's wife and Mrs. Vining, as a full or partial confession of improper intimacy with the deceased. For the same purpose they introduce evidence of conversations with Morrill. They introduce evidence to show that she appeared to entertain an affection for him, — that she made and mended his clothes; that he was for a time very attentive to her; that they were together at home, walked together, and went together to lectures.

The prisoner contends that she was not pregnant by him; that the evidence shows no act of his from which you can infer that she was; that the fœtus was not more than two and one-half months old, and consequently must have been conceived when he was at home least, — when he was at work all day, away in the evening, and probably when Mrs. Tirrell was away on a visit: that other men had an opportunity to be with her, and that probably she was seduced long ago. If she had been pregnant by him, he contends that this furnished no motive for a murder. He contends that the evidence shows conclusively that he was not engaged to Miss Loud, and that if the deceased had been pregnant by him, there were many ways by which he could avoid a murder, — among them, that he might have married the deceased.

After considering the question of motive, you will next consider whether the prisoner had an opportunity to give the poison to the deceased. All the testimony concerning his intimacy with, and relations to her, bears upon this question, which you will remember and pass upon.

Next, you will consider the question, whether the prisoner had any strychnine. The first testimony upon this point is that of the man who says he sold it to him, Alfred W. Coburn. If this witness testified truly, then the prisoner had strychnine, but a few days previous to the death of Miss Tirrell. You will judge from the appearance and story of this witness, now that you have heard the remarks of counsel, to just how much credit he is entitled; how far his story is confirmed by the meeting in jail, and the testimony of Warren. The counsel for the prisoner say his story is a fabrication, and state their theory of its formation. They say the witness knew the prisoner in jail from a daguerrotype; they say that the story of Coburn is contradicted by circumstances, and that Warren was mistaken.

The government say the story of Coburn is also confirmed by the conversations of the prisoner about poisons, particularly about strychnine; while the prisoner says that these were merely common shop conversations.

The testimony of Morrill, as to the conversation about strychnine, is also introduced by the government to corroborate Coburn. The counsel for the defence say that Morrill is not to be believed. There is much testimony bearing upon the story of Coburn. The counsel on both sides have commented very fully upon his evidence, and it is of great importance; for if his statements are correct the prisoner had strychnine but a short time previous to the third of May.

The government have also introduced evidence to show that it was not possible for her to procure strychnine, and ask you to infer that she took that which was purchased by him. They ask you to find also that she called his name at first, and to infer from this that he was the cause of her suffering.

In his conduct on that night and during the remainder of the time he staid in the house, the government contend that there is evidence of guilt, while the counsel for the prisoner contend there is in this conduct nothing but evidence of innocence. The government also introduce evidence of expressions the prisoner used, in anticipation of the death of Frances. Whether these expressions were used, and if used how far they were justified by anything Frances had said or done, it is your province to determine.

But the counsel for the prisoner say that if this girl died from strychnine at all, she committed suicide. To sustain this position they direct your attention to her appearance from the time of her sister's death, — that she was melancholy, growing continually more so, and was pregnant, which situation must soon be discovered. They introduce expressions she made to others, besides the prisoner, indicating weariness of life. They allude to her temperament, and allege that she inherited from her mother a tendency to suicide, and introduced evidence to show that her mother attempted to commit suicide. They allude to the spoon behind the fireboard as having been put there by the deceased, and argue that no one but her could have put it there. On the other hand, the government contends that there was nothing in her behavior which will warrant a belief that she committed suicide, either on the night when she died, or at any time after the death of her sister. The government also assert that there was no way in which she could procure strychnine, with which to commit suicide, except from the prisoner.

If you find that the deceased committed suicide, you must acquit the prisoner, unless you also find that he procured or advised her to do it, and of this there is no evidence.

If you are satisfied that the prisoner had a motive to kill the deceased; that he had an opportunity to give her poison; that he purchased poison; that her death was caused by the same kind of poison that he purchased; that it was difficult for her to obtain poison and is improbable that she did; that he has failed to account for any he may have had, then it is for you to say whether the government have not made out a case beyond any reasonable doubts; whether the evidence does not produce an abiding conviction of the prisoner's guilt.

The prisoner has offered evidence that he has heretofore had a good reputation. If the evidence proves the charge, the fact that the prisoner has heretofore borne a good reputation will not of course change the proof, or the result of it; but if the evidence leaves you in doubt, then the prisoner's character, if good, is entitled to much weight.

You will now retire to the discharge of your great duty, and will, we trust, discharge it faithfully and conscientiously, being assured that duty well performed is its own sure and best reward.

The Chief Justice finished his charge at 5½ o'clock, P. M., and the jury thereupon retired. After being out five hours, they returned a verdict, at 10½ o'clock, P. M., upon the first two

counts in the indictment of GUILTY OF MURDER IN THE FIRST DEGREE.

The Attorney General thereupon entered a *nol. pros.* upon the two last counts in the indictment.

Mr. Sullivan then gave notice of his intention to file a *motion in arrest of judgment*, and, owing to the lateness of the hour, requested leave to do so in the morning. The Chief Justice replied, that it was the intention of the Court to save the points of the defence for argument before the full bench, and granted the request.

The Court then adjourned.

JUNE 1, 1861.

The Court came in at 9 o'clock, and the counsel for the prisoner filed the following —

MOTION IN ARREST OF JUDGMENT.

Commonwealth of Massachusetts.

NORFOLK, ss.

SUPREME JUDICIAL COURT.

FEBRUARY TERM, A. D. 1861.

At an adjournment of said term, holden at Dedham, in said county of Norfolk, May 28, 1861.

COMMONWEALTH vs. GEORGE C. HERSEY.

INDICTMENT FOR MURDER BY ADMINISTERING POISON.

And now comes the said defendant, after verdict and before judgment, and moves this Honorable Court that judgment upon said verdict be arrested, —

Because the first and second counts in the indictment, upon which counts alone said verdict was rendered, are defective in that the said defendant is not in either of said counts charged with administering poison with intent to kill and murder.

(Signed) GEORGE C. HERSEY,
By his attorneys,
BAKER & SULLIVAN.

At the October sittings of the SUPREME JUDICIAL COURT FOR THE COMMONWEALTH, at Boston, A. D. 1861, the case was argued by GEORGE S. SULLIVAN, Esq., for the prisoner, and by Attorney General FOSTER for the Commonwealth.

The following are copies of the Briefs used in the case.

Commonwealth of Massachusetts.

SUPREME JUDICIAL COURT.

NORFOLK, SS. **February Term, A. D. 1861.**

AT AN ADJOURNMENT OF SAID TERM, HOLDEN AT DEDHAM, IN SAID COUNTY OF NORFOLK, MAY 28TH, 1861.

COMMONWEALTH vs. GEORGE C. HERSEY.

INDICTMENT FOR MURDER. MOTION IN ARREST OF JUDGMENT.

DEFENDANT'S BRIEF.

This indictment contained four counts. A verdict of guilty was rendered upon the first two, and after verdict a *nolle prosequi* was entered upon the two last, so that the first two alone now stand.

The motion is, that judgment be arrested because the defendant is not, in either of said first two counts, charged with administering poison with intent to kill and murder.

The first count charges no other intent than this: that B. F. TIRRELL should take and swallow down a poisonous substance into her body. The second, that she should take and swallow down a poisonous substance, in the belief that it was a medicinal preparation adapted to procure miscarriage. There is certainly no intention of killing charged in either of these allegations.

Intent is the essence of the crime of murder by poisoning. If death is caused by the administration of poison, the person administering it is not guilty of murder, unless he gave it intending to kill or do some bodily harm. Poison is often administered, by physicians and others, with the intention of saving and not destroying life, and if death ensue the party administering is not a murderer. It does not appear from this indictment that the defendant was not a physician, or that he did not administer poison to save life.

The intent being the main ingredient in this offence, it must be stated in the indictment.

Archbold's Cr. Pl. p. 49.

This indictment, by stating any intent, recognizes the necessity of stating an intent, and in the third count, charging B. F. TIRRELL as *felo de se*, the intent to kill and murder is properly stated.

In the absence of decisions upon this point, the law must be found in precedents. Precedents, of indictments, are the foundation of the law of criminal pleading. The precedents

for murder by poisoning, in every work of authority, charge that poison was given with intent to kill and murder.

Wharton's Prec. of Ind. pp. 53, 57, 58, 60, 61, 62, 63, 64.
Archbold's Crim. Pl. and Ev. p. 432.
2 Cox, C. C. Apppendix p. iv. (The form referred to by TRAIN & HEARD.)
Davis's Precedents, pp. 182, 183, 185, 186.

The intent to kill being a matter which it is necessary to allege, it must be done with precision and certainty, and cannot be inferred from other allegations.

Waterman's Archbold, p. 282. Note on p. 283, and authorities there cited.

The position, that this indictment charges the defendant with administering a mortal dose of poison, knowing it to be such, and that this being an unlawful act, and death ensuing in consequence thereof, he is thereby guilty of murder, is untenable for the following reasons: —

1st — The indictment does not in either count allege that the defendant gave a mortal dose. Quantity is necessary to destroy life as well as quality, and the quantity varies in proportion to the poisonous quality of the substance used.

The first count alleges that he "gave and administered a certain large quantity, to wit, ten grains in weight of a certain deadly poison called strychnine," but it does not allege that ten grains is a mortal dose.

In the second it is alleged that he gave "a certain quantity, to wit, ten grains of strychnine, the same being then and there a deadly poison." The words "the same being a deadly poison," refer to the quality of the substance, and not to the quantity given, and this count does not state that the quantity given was a mortal dose.

The nature of the quantity given cannot be inferred from subsequent statements in the indictment of the effect which it produced. In the absence of any allegation of an intent to kill, if a mortal dose was given, the indictment should so allege.

2d — It is not alleged in either count that he knew that the quantity given was a mortal dose.

The first count alleges that he gave "a certain large quantity, to wit, ten grains in weight of a certain deadly poison called strychnine, he, the said George C. Hersey, then and there well knowing the same to be a deadly poison." Clearly the meaning of this is that he knew the substance to be a deadly poison; and it also is clear that it does not allege that he knew the quantity given to be mortal.

In the second count, his knowledge is alleged in two places; in the first instance, bringing his acts and his knowledge together, the simple charge is, that he mixed with preserve "a certain quantity, to wit, ten grains of strychnine, the same being then and there a deadly poison," . . . . . "well knowing the same to be a deadly poison."

In the second instance, after alleging, in substance, that the strychnine and preserve had been mixed, it alleges, in substance, that the defendant knew that the mixture was a deadly poison.

The same reasoning applies in each instance. The allegation in the first is, that he knew the strychnine to be a deadly poison; in the second, that he knew the mixture, of which the strychnine formed part, to be a deadly poison. This knowledge was of the quality of the strychnine in the one case, and of the quality of the mixture in the other; but nowhere is it alleged that he knew either the quantity of the strychnine or the quantity of the mixture to be sufficient to destroy life.

3d — Such act is not unlawful, unless the poison be given with intent to kill or do bodily harm.

GEORGE C. HERSEY,

By his attorneys,

BAKER & SULLIVAN.

Supreme Judicial Court for the Commonwealth.

OCTOBER SITTINGS, 1861.

SUFFOLK, SS.

COMMONWEALTH *v.* GEORGE C. HERSEY.

POINTS FOR THE COMMONWEALTH.

The alleged defect in this indictment is that the defendant is not charged with administering poison with intent to kill and murder.

I. There is no such averment in the following precedents.

Train & Heard's Prec. of Indict. 325.
2 Stark Crim Pl. Prec. 18 (Rex *v.* Donahue.)
Wharton's Prec. Indict.
1 East P. C. 346.
Rex *v.* Waters, 3 Cox C. C. 300.
Regina *v.* Alison, 8 C. & P. 418.
Commonwealth *v.* Heath et al. S. J. C. Middlesex, 1858.

II. The administration of poison with intent to take life is not necessary to constitute the crime of murder by poisoning. It is enough if poison was designedly administered with any

unlawful intent, as, for example, for the purpose of producing abortion.

1 Hale P. C. 430.
1 East. P. C. c. 5, § 17.
3 Co. Just. 50.
C. *v.* Parker, 9 Met. 264.

III. Wherever the specific guilty intent with which a crime is committed is an essential constituent, it must be laid with time and place in the part of the indictment descriptive of the offence:

Archbold Cr. Pl. 49, 104, 438–9.

— which was never done in indictments for poisoning; and then the proof must correspond with the allegation, — as in indictments for attempts, and for assaults with intent to commit crimes.

People *v.* White, 22 Wend. 167 and 24 Wend. 520.
R. *v.* Ryan, 2 Wend. & Rob. 213.

But in all other cases it is enough to allege the facts constituting the crime from which the criminal intent may be and is inferred as a matter of law by the court.

C. *v.* Webster, 5 Cush. 306.
1 Waterman's Archbold, 850.
R. *v.* Dixon, 3 Maule & Sel. 14.
1 Hale P. C. 455.

The words "wilfully, feloniously and with malice aforethought," are the appropriate and only necessary legal phraseology to express the corrupt and wicked purpose with which the crime of murder is committed.

1 Starkie C. P. 171.

And there is no more occasion for charging, in an indictment for murder by poisoning, that the poison was administered with intent to destroy life, than there would be for alleging in an indictment for murder by stabbing that the mortal wound was inflicted with intent to kill, which has never been done.

The whole prefatory clause, in which alone this statement has ever been found, is superfluous, and may be safely omitted.

And in a case like the present, where it might possibly have been contended that the poison was given to produce abortion (though such was not either the fact or the claim at the trial), it was the duty of a prudent pleader to omit a statement the effect of which, if not treated as superfluous, might have been

to restrict the evidence, and embarrass the government in obtaining a conviction.

During the term the case was considered, and the following

DECISION DELIVERED BY CHIEF JUSTICE BIGELOW.

The motion in arrest of judgment in the present case is founded on the omission to aver that the defendant, in administering poison to the deceased, did it with an intent to kill and murder. No direct authority or adjudication has been cited by the counsel for the prisoner in support of the position that such an averment is necessary or essential to the validity of the indictment. They do, however, rely on forms or precedents, which are found in text-books of approved authority and in reported cases, in which the allegation that the poison was administered with intent to kill is distinctly set forth. Wharton's Precedents (2d ed.) 125–138. Archb. Crim. Pl. (5th Amer. ed.) 432. 2 Cox, C. C. Appendix, III. Davis's Precedents, 182–186. But, on the other hand, it is certainly true that there are precedents, entitled to equal respect with those cited by the prisoner's counsel, in which no such averment is made, as a separate and substantive allegation essential to the description of the crime, and distinct from the general prefatory clause, in which a general intent to kill is stated without any averment of time and place. 2 Stark. Crim. Pl. 12, 15, 18. 1 East P. C. *c.* 5, § 116. 3 Chit. Crim. Law, 773, 779. *The King* v. *Clark*, 1 Brod. & Bing. 473. *Regina* v. *Alison*, 8 C. & P. 418. So far therefore as the question now raised depends on authority, it may fairly be said to be an open one. It would be giving too much force to mere precedents of forms, which often contain unnecessary and superfluous averments, to hold that a particular allegation is essential to the validity of an indictment, because it has sometimes, or even generally, been adopted by text writers or by cautious pleaders.

We are then to determine the question as one depending on the general rules of criminal pleading applicable to the description of similar offences. There can be no doubt that, in every case, to render a party responsible for a felony, a vicious will or wicked intent must concur with a wrongful act; but it does not follow that, because a man cannot commit a felony unless he has an evil or malicious mind or will, it is necessary to aver the guilty intent as a substantive part of the crime in giving a technical description of it in the indictment. On the contrary, as the law presumes that every man intends the nat-

ural and necessary consequences of his acts, it is sufficient to aver in apt and technical words that a defendant committed a criminal act, without alleging the specific intent with which it was done. In such case, the act necessarily includes the intent. Thus, in charging the crime of burglary, it is not necessary to aver that the breaking and entering a house was done with an intent to steal. It is sufficient to charge the breaking and entering and an actual theft by the defendant. The reason is, that the fact of stealing is the strongest possible evidence of the intent, and the allegation of the theft is equivalent to an averment of that intent. *Commonwealth* v. *Hope*, 22 Pick. 1, 5. 2 East P. C. *c.* 15, § 24. So, in an indictment for murder by blows or stabs with a deadly weapon, it is never necessary to allege that they were inflicted with an intent to kill or murder. The law infers the intent from proof that the acts were committed, and that death ensued. The averment, therefore, of the criminal act comprehends the evil or wicked intention with which it was committed. The true distinction seems to be this: when, by the common law, or by the provision of a statute, a particular intention is essential to an offence, or a criminal act is attempted but not accomplished, and the evil intent only can be punished, it is necessary to allege the intent with distinctness and precision, and to support the allegation by proof. On the other hand, if the offence does not rest merely in tendency, or in an attempt to do a certain act with a wicked purpose, but consists in doing an unlawful or criminal act, the evil intention will be presumed and need not be alleged, or, if alleged, it is a mere formal averment, which need not be proved. In such case, the intent is nothing more than the result which the law draws from the act, and requires no proof beyond that which the act itself supplies. 1 Stark. Crim. Pl. 165. 1 Chit. Crim. Law, 233. *The King* v. *Philipps*, 6 East, 474. 1 Hale P. C. 455. *Commonwealth* v. *Merrill*, 14 Gray, 415. To illustrate the application of the rule, take the case of an indictment for an assault with an intent to commit a rape. The act not being consummated, the gist of the offence consists in the intent with which the assault was committed. It must therefore be distinctly alleged and proved. But in an indictment for the crime of rape, no such averment is necessary. It is sufficient to allege the assault, and that the defendant had carnal knowledge of a woman, by force and against her will. The averment of the act includes the intent, and proof of the commission of the offence draws with it the necessary inference of the criminal intent. The same is true of indictments for assault with intent to kill, and murder. In the former, the intent must be alleged and proved; in the

latter, it is only necessary to allege and prove the act. The application of this principle to the case at bar is decisive of the question raised by the present motion. There is nothing in the nature of the crime of murder by poison to distinguish it from homicide by other unlawful means or instruments so as to render it necessary that it should be set out with fuller averments concerning the intention with which the criminal act was committed. If a person administers to another that which he knows to be a deadly poison, and death ensues therefrom, the averment of these facts in technical form necessarily involves and includes the intent to take life. It is the natural and necessary consequence of the act done, from which the law infers that the party knew and contemplated the result which followed, and that it was committed with the guilty intention to take life.

It was urged by the counsel for the prisoner, as an argument in support of the insufficiency of the indictment, that every fact stated in the indictment might have been done by the defendant, and yet he might have committed no offence; that is, that a person might administer to another that which he knew to be a deadly poison, from which death ensued, innocently, and without any intent to do bodily harm. In a certain sense this is true. A physician, for example, might, in the exercise of due care and skill, give to his patient a medicine of a poisonous nature, in the honest belief that it would cure or mitigate disease, but which from unforeseen and unexpected causes actually causes death. And the same is true of many other cases of homicide produced by other means than poison. Take the case of a murder alleged to have been committed by stabs or cuts with a knife. Such wounds may be inflicted innocently and for a lawful purpose. A surgeon, in performing a delicate and difficult operation, by a slight deflection of the knife, which the most cautious skill could not prevent, might inflict a wound which destroys life. But it has never been deemed necessary, because certain acts which cause death may be done without any wicked or criminal intent, to aver in indictments for homicide that the person charged acted with an intent to take life. The corrupt and wicked purpose with which a homicidal act is done is sufficiently expressed by the averment that it was committed wilfully and with malice aforethought; and this allegation may be always disproved by showing that the act happened *per infortunium*, or was otherwise excusable or justifiable.

Motion in arrest of judgment overruled.

At the next succeeding term of the Supreme Judicial Court for the county of Norfolk, holden at Dedham on the 18th day

of February, A. D. 1862, Chief Justice Bigelow and Judge Merrick present, the first case which came up was that of George C. Hersey.

The prisoner was brought in at 9¼ o'clock, A. M., and placed in the dock. After prayer by Rev. Mr. Babcock, Attorney General Foster addressed the Court as follows: —

MOTION FOR SENTENCE.

May it please your Honors: George C. Hersey, the prisoner at the bar, at a former term of this Court, was arraigned, upon an indictment found against him by the Grand Jury of this county, for the wilful murder of Betsy Frances Tirrell, to which he pleaded Not Guilty. Counsel of his own selection were assigned to him by the Court. After a thorough and patient trial, in which his defence was conducted with fidelity and zeal, an impartial jury returned a verdict of guilty in the first degree. His exceptions, and a motion filed in arrest of judgment, have been overruled, after solemn argument, before the Supreme Court of the Commonwealth. It remains my painful duty to move the Court to impose upon him the sentence of the law for the crime of which he stands convicted. This motion I now make.

The clerk then asked the prisoner if he had anything to say as a reason why the sentence of the law should not be passed upon him. The prisoner replied in a clear, calm voice, "I have nothing to say, sir."

The Court then rose, and all present following their example, Chief Justice Bigelow pronounced the following

SENTENCE.

George C. Hersey: It now becomes the painful duty of the Court to award against you the judgment which the law affixes to the crime of which you stand convicted. Under the humane provisions of our law, there is but one offence the commission of which subjects the guilty party to a forfeiture of life. In the brief and simple but expressive and solemn language of the statute it is enacted that "whoever is guilty of murder in the first degree shall suffer the punishment of death." Of this high and heinous offence — the taking of human life "with deliberately premeditated malice aforethought" — you have been found guilty by a jury carefully selected by yourself, and after a patient and impartial trial, in which the counsel assigned by the Court to conduct your defence have with great zeal and earnestness exerted their professional skill and ability in your behalf.

To this verdict and to the sufficiency of the indictment we have been able to find no valid objection by reason of any error in law; nor, upon a deliberate and careful review of the evidence adduced at the trial, can we see any aspect of the case by which a fair, conscientious and honest jury could have arrived at a different result. In the justice of your conviction, the Court are constrained to express their full and entire concurrence. The verdict was the necessary and inevitable conclusion resulting from the evidence of your guilt, as disclosed at the trial.

There are no circumstances to mitigate the atrocity of your crime. It stands without palliation. A man of mature years, after an experience in life which ought to have had the effect of moderating your passions and chastening your spirit, you permitted yourself to entertain an illicit passion for a young and inexperienced female, upon whom you practised the vile arts of the seducer. Having accomplished the gratification of your lust, you next sought to remove all evidence of your guilt, and at the same time to avoid making that reparationto the injured woman which you had promised, and which could alone atone for the great wrong you had done her. In the execution of this purpose you resolved to take her life. With a resolute and premeditated atrocity you resorted to means which left to your victim no power of self-defence, and which ensured the speedy and certain accomplishment of your wicked design. Under such circumstances you cannot expect or ask for sympathy or clemency. The stern demands of the law can alone be regarded.

What a lesson is taught by your example! How clearly does the history of your offence show that lust and evil passion, when once indulged, lead their victim by straight and certain paths to swift destruction, and that artifice and cunning and deceit are of no avail to screen the guilty, or to enable them to elude the keen eye of justice. To others the lesson thus taught may be profitable. To you the contemplation of the enormity of your guilt, although it cannot save you from the penalty of your crime, may nevertheless serve as a means to arouse your conscience, and to enable you to seek for repentance and forgiveness in that divine source which is now your only refuge. We earnestly exhort you to lose no time in humbling yourself before God, and, by sincere contrition and heartfelt prayer for pardon, to prepare yourself to meet the great and final change which awaits you in the execution of the solemn sentence which, as ministers of the law, it is now our duty to pronounce upon you. That sentence is,—

That you be taken from this place to the common jail of the county of Norfolk, there to remain, until, on such day as shall be fixed by the executive government of the Commonwealth, you be thence removed to the place of execution, there to be HUNG BY THE NECK UNTIL YOU ARE DEAD. And may God have mercy on your soul.

The prisoner received the sentence with little apparent emotion, and was again committed to jail.

PETITION FOR COMMUTATION OF SENTENCE.

On the thirteenth day of March, A. D. 1862, the following petition was presented to his Excellency the Governor by Hon. Elihu C. Baker, of the prisoner's counsel: —

To his Excellency JOHN A. ANDREW, *Governor, and the Honorable Council of the Commonwealth of Massachusetts:* —

The undersigned, George C. Hersey, humbly represents that at a term of the Superior Court begun and holden at Dedham, within and for the county of Norfolk, on the fourth Monday of April, in the year of our Lord one thousand eight hundred and sixty-one, he was, by the Grand Inquest for said county of Norfolk, indicted for the murder of one Betsy Frances Tirrell, of Weymouth, in said county of Norfolk: That at a term of the Supreme Judicial Court begun and holden at said Dedham on the twenty-eighth day of May, A. D. 1861, he was tried upon said indictment, and the jury empanelled to try the same returned a verdict of "*Guilty of murder in the first degree;*" — that upon said verdict, and in pursuance thereof, the said Supreme Judicial Court did, upon the eighteenth day of February last past, pass upon and decree unto your petitioner the extreme penalty of the law in such case made and provided, to wit, the *sentence of death.*

And your petitioner now, in most solemn form, as he hath ever hitherto said, says, after trial, verdict rendered, and sentence pronounced, that he is not guilty of the crime of which he now stands convicted; and he believes that in time he will be able to prove the same.

And, therefore, your petitioner most humbly prays your Excellency, with the consent of the Honorable Council, to commute the said *sentence of death to that of imprisonment in the State Prison for and during the term of his natural life.*

And your petitioner further prays that he may be heard by his counsel before your honorable board in support of his said prayer.

And, as in duty bound, will ever pray

(Signed) GEORGE C. HERSEY.

The twenty-fifth day of March, 1862, having been assigned for that purpose, and his Excellency the Governor, his Honor the Lieut. Governor, and the full Council, present —

Hon. Dwight Foster, Attorney General, and Mr. Baker, came in. Mr. Baker then formally presented the above petition for commutation, also petitions from a large number of citizens of Weymouth and vicinity, in aid thereof; and then proceeded to lay before the Council arguments and reasons in support of the petition, to which the Attorney General replied, and counsel then withdrew.

The record of the Governor and Council stands as follows: —

"MARCH 28, 1862.

"In the case of George C. Hersey, under sentence of death, the question being upon granting the petition of the convict for commutation of sentence, the yeas and nays were ordered," and it appeared that the vote was unanimous in the negative.

APRIL 8, 1862.

The record is, "The Governor, with the advice of Council, fixes Friday, the eighth day of August next, between the hours of eight and eleven o'clock, A. M., for the execution of George C. Hersey, under sentence of death at Dedham."

The following is a copy of

THE DEATH WARRANT.

The Commonwealth of Massachusetts.

JOHN A. ANDREW.

To John W. Thomas, Sheriff of our County of Norfolk, Greeting: —

Whereas at a term of our Supreme Judicial Court, holden at Dedham, within and for the county of Norfolk, on the twenty-eighth day of May, in the year one thousand eight hundred and sixty-one, by adjournment of the February term then next preceding, to wit, of the term begun and holden at said Dedham on the third Tuesday of February, in the same year, George C. Hersey, late of Weymouth in said county, was convicted of the crime of murder in the first degree; —

And whereas at a term of our said Court, begun and holden at Dedham in said county, on the third Tuesday of February (being the eighteenth day of said month), in the year one thousand eight hundred and sixty-two, the said George C. Hersey was by our said Court then and there sentenced for said crime to suffer the pains of death by being hanged by the neck until he shall be dead; all which, by an exemplification of the record of said Court, which we have caused to be hereunto annexed, doth to us fully appear: —

We, therefore, command you, that upon Friday, the eighth day of August, in the year one thousand eight hundred and sixty-two, between the hours of eight and eleven o'clock before noon, of the same day, within the walls of the prison in said county, or within the enclosed yard of the prison of said county of Norfolk, agreeably to the provisions of the one hundred and seventy-fourth chapter of the General Statutes, you cause execution of the said sentence of our said Court in all respects to be done and performed upon him the said George C. Hersey, for which this shall be your sufficient warrant.

Whereof fail not at your peril, and make return of this warrant, with your doings thereon, into our Secretary's office, within twenty days after you shall have executed the same.

Witness his Excellency John A. Andrew, our Governor, with the advice and consent of our Council, and our seal hereunto affixed, at Boston, the eighth day of April, in the year one thousand eight hundred and sixty-two, and in the eighty-sixth year of the Independence of the United States of America.

By his Excellency the Governor,

With the advice and consent of the Council,

OLIVER WARNER,
Secretary of the Commonwealth.

The following is a copy of the officer's

RETURN UPON THE DEATH WARRANT.

NORFOLK, ss.
DEDHAM, Aug. 8, 1862.

In obedience to the commands in the within warrant, and by virtue thereof, I this day, between the hours of eight and eleven o'clock in the forenoon, to wit, at nine o'clock and fifty-five minutes A. M. of the said eighth day of August, 1862, within the walls of the said prison of the said county of Norfolk, and in the presence of the following named persons, being twelve reputable citizens and more, including a physician and surgeon, who were severally requested by me to be

present, to wit, H. F. Aten, M. D., Ira Allen, M. D., Appleton Howe, M. D., D. S. Fogg, M. D., Geo. I. Arnold, M. D., H. E. Clapp, M. D., Charles E. Abbott, Erastus Worthington, Asa French, Geo. W. Deans, Edward Avery, Edward Potter, Silas Binney, Calvin F. Ellis, Phineas B. Smith, Jr., J. H. D. Blake, John Cox, Jr., George W. Fisher, Chas. Endicott, Charles H. French, Samuel B. Noyes, Mirich P. Sumner, Fred. B. Ely, A. W. Stetson, George Fuller and Charles H. Farrington, did cause the sentence of death, named in said warrant, to be executed upon George C. Hersey, the person named in said warrant, convicted of the crime of murder, by hanging him, the said George C. Hersey, by the neck until he was dead, and the said sentence was then executed upon the said Geo. C. Hersey, in accordance with the provisions of the one hundred and seventy-fourth chapter of the General Statutes, in all respects.

I did also request the presence of Hon. B. W. Harris, District Attorney, and Ezra W. Sampson, Esq., clerk of the courts in said county, to be present at the execution herein named, informing them severally of the time and place, of when and where the execution of said sentence would take place; and there were present at the execution of said sentence of death, Rev. Nehemiah Adams, D. D., minister of the gospel, and Hon. Elihu C. Baker and George S. Sullivan, Esq., counsel of said convict. I also informed said George C. Hersey that his relations might be present at the execution, according to the provision of the aforesaid General Statutes of this Commonwealth.

The following-named persons, holding commissions under me as deputy sheriffs, were severally present, and assisted me in the execution of the said warrant: Rufus C. Wood, Augustus B. Endicott, John Robie, Valentine R. Coombs, John D. Bradlee, John T. Jordan, Bradford S. Farrington, George W. White, Jr., John B. Ingalls; and there were present, by my order, at the said execution, such officers and other assistants as, in my judgment, were necessary to ensure preservation of order and decorum in and about said prison.

And, at the request of a brother of the within-named Geo. C. Hersey, his body, after death, was put into a coffin and delivered into the care and custody of Samuel Curtis, of Weymouth, to be delivered to his relations in Hingham for burial.

JOHN W. THOMAS, *Sheriff.*

For several months previous to the execution, the prisoner had been visited by Rev. Dr. Nehemiah Adams, of Boston,

who, at the earnest request of the prisoner, was present at the execution, and upon the scaffold made the following

PRAYER.

God of the spirits of all flesh! we have come to this dread hour and place in obedience to thy decree, — "Whoso sheddeth man's blood, by man shall his blood be shed."

While no atonement can save from the execution of this penalty, glory be to God in the highest that there is an atonement which saves from death and sin beyond the grave.

Lamb of God! who takest away the sin of the world! thou hast tasted death for every man. Thou hast thyself been in this furnace. Thou art here to pity and save this our fellow-man and fellow-sinner, who now turns his dying eye on thee.

Remember the thief who died at thy side with faith in thee, and bestow the same grace on this departing soul, who here publicly confesses thee to be his accepted Redeemer.

He has confessed and forsaken his sin; he acknowledges that it is God who has brought him to this hour for his transgression; he accepts his punishment, but he pleads thy promise, — "Whoso confesseth and forsaketh his sin shall find mercy." No merit has he to plead; he casts himself on him "who himself bore our sins in his own body on the tree."

Save him, for thy name's sake. Make him a monument to the praise of thy grace. Holy Spirit, complete the work of redemption in him, and so make him meet for the holiness and happiness of heaven.

May his parents, brother and sisters be remembered by thee, be sustained under their load of distress, and by this sharp discipline be led to such preparation for heaven that the whole family may spend eternity together there.

Let all his young friends and acquaintances lay his death to heart, "flee youthful lusts which war against the soul," and be prepared to meet him at the judgment-seat of Christ.

We beseech thee, God of all grace and consolation, now to succor him; the Man of Calvary to remember him, the Holy Ghost, the Comforter, to calm his mind and fill him with the peace of God, which passeth all understanding.

We leave him alone with thee. Hide him under the shadow of thy wings until these calamities be overpast. Open to him the everlasting doors of mercy; take him, Jesus, Saviour of sinners. Bring forth the best robe and put it on him, — the robe of thy righteousness. Say of him, This my son was dead, and is alive again; he was lost and is found. In thy name we bid him farewell. Through abounding grace may he

and we meet at last before thee, to claim each of us that he himself owes most to the grace of God.

Sustain those on whom is laid the unwelcome but necessary duty of executing the law. With compassion in their hearts and with firmness may they use the sword of justice in the name of God, remembering that they are in this the ministers of God.

Come and meet him, blessed Jesus, as he now comes to thee with this ascription upon his lips: "Unto him that loved us and washed us from our sins in his own blood, and hath made us kings and priests unto God and his Father, to him be glory forever and ever. Amen."

Before going to the scaffold on the morning of the execution, the prisoner made the following

CONFESSION.

DEDHAM, Aug. 8, 1862.

I, George Canning Hersey, being now about to appear in the immediate presence of the All-seeing God and Judge, hereby declare in what respect I am guilty, and in what respect not guilty, in the matters which have been charged against me.

As to any act or even thought of procuring the death either of my wife or of Mary Tirrell, of both of which I have been suspected, I am wholly innocent, so help me God; nor did I ever use means with either of them for any purpose resulting in their death, so help me God.

I hereby acknowledge that in the sight of God I am guilty of the death of Betsy Frances Tirrell, for which I was indicted, and for which I am now to suffer.

I hereby warn all young people, by my experience and fate, against the indulgence of lustful passions. These have brought me to my untimely end.

(Signed) GEORGE C. HERSEY.

DEDHAM, Aug. 8, 1862.

The foregoing was signed by Mr. Hersey in our presence, and declared by him to be his free act and deed, we witnessing his signature in the presence of each other.

(Signed) JOHN W. THOMAS,
SILAS BINNEY,
JAMES BALL.

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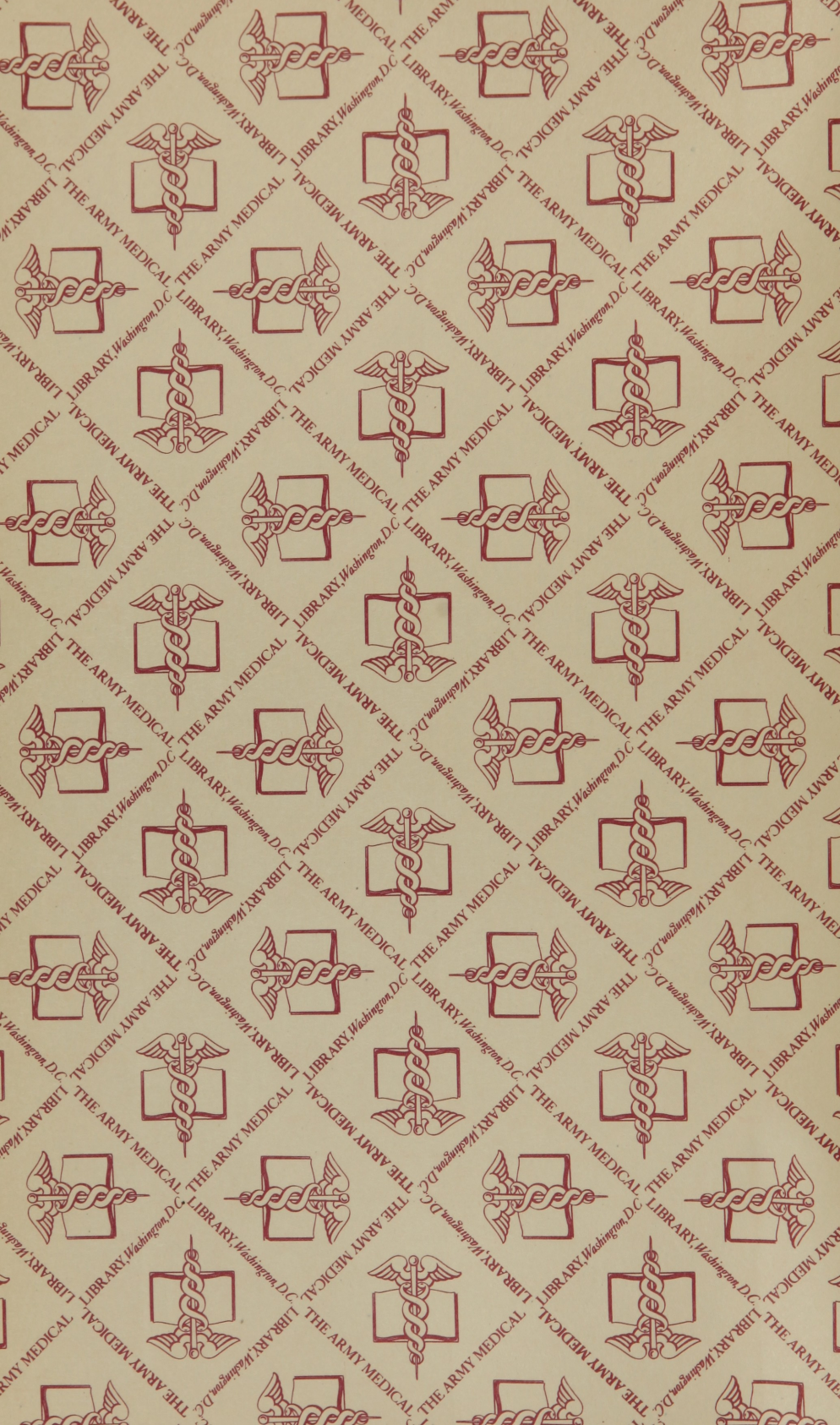
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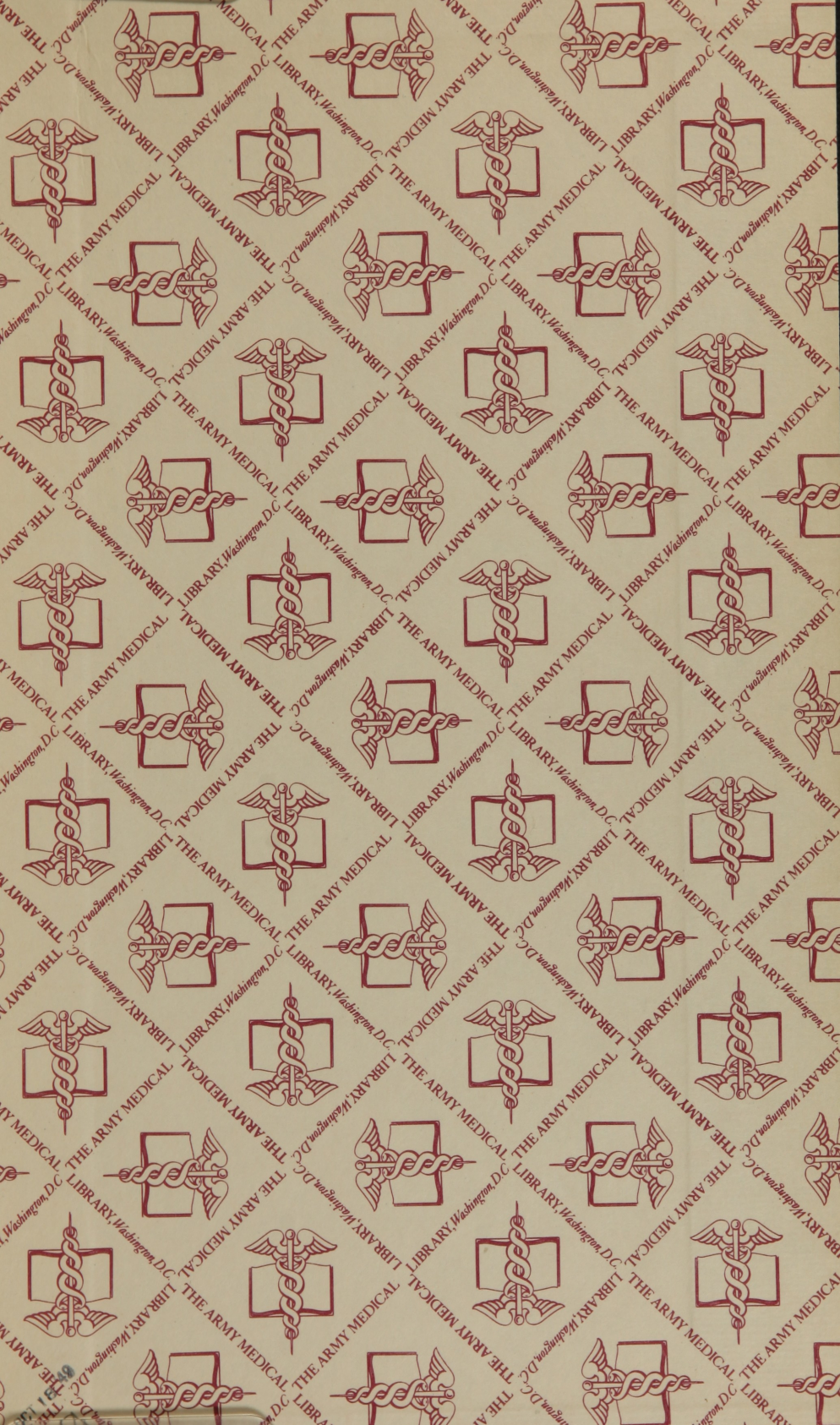
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