

1809

The Trial of David Lynn, Prince Kein [sic], Jabez Meiggs [sic], Elijah Barton, Adam Pitts, Anson Meiggs [sic], and Nathaniel Lynn. Indicted for the Murder of Paul Chadwick, Containing a Compendious but Clear and Full Statement of all the Evidence, Together with a Correct Abridgement of the Pleadings of Council, and the Charge to the Jury, as Delivered by the Court

Peter Edes

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TRIAL

OF

DAVID LYNN, PRINCE KEIN, JABEZ MEIGGS,
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MEIGGS, AND NATHANIEL LYNN.

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PAUL CHADWICK.

CONTAINING

A COMPENDIOUS, BUT CLEAR AND FULL

STATEMENT OF

ALL THE EVIDENCE,

TOGETHER WITH A

CORRECT ABRIDGEMENT OF THE

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AND

THE CHARGE TO THE JURY,

AS DELIVERED BY THE COURT.

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1809

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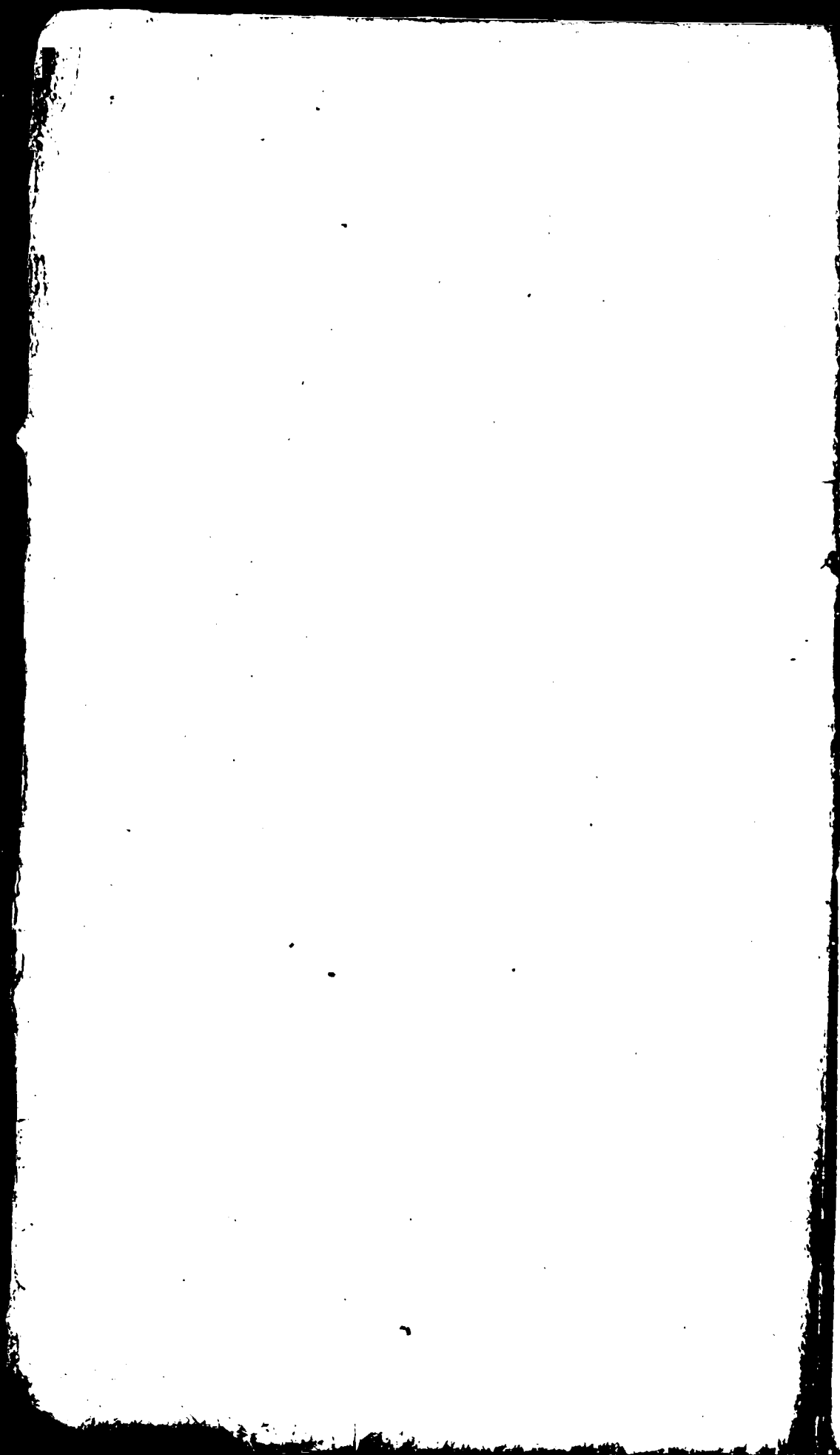
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PREFACE.

IN this publication the intention of the writer was to present to the public in a small, cheap pamphlet, a complete view of all the Evidence and Pleadings of Council, together with the Charge to the Jury as delivered by the Hon. Court ; comprising the material and substantial parts of the whole cause in a small compass. Nothing more than a faithful sketch of the most interesting and argumentative parts of the pleadings, in a manner to preserve their connection, has been attempted. The writer feels it out of his power to do justice to the learning, ingenuity and eloquence displayed by all the Council employed in the trial—Such a task he does not assume ; he will only ask their pardon for sacrificing their fame to public curiosity, in not giving their pleas intire, that he might afford to the poorer classes of inquisitive citizens, who have neither money nor time to bestow on a lengthy detailed account of the cause, a peep into the proceedings of Court, to learn how their lives and liberties are protected.



THE TRIAL.

DAVID Lynn, Prince Kein, Jabez Meiggs, Elijah Barton, Jonas Proctor, Adam Pitts, Anson Meiggs, and Nathaniel Lynn, on the 15th September, 1809, being apprehended on a warrant, wherein they were charged with the murder of Paul Chadwick, were brought before Justice Bracket, by him examined and committed to the public gaol in Augusta, in the county of Kennebec. On the first Tuesday of October, 1809, before the Supreme Judicial Court, then and there holden by Sedgwick, Judge—the Grand Jurors for the county, found a bill against all the prisoners for the wilful murder of Chadwick. On the evening of the first day of the court's sitting, at midnight a party of men, supposed to be as many as seventy; some in disguise, and all armed, made their appearance nearly 150 rods east of the Kennebec Bridge, on the Malta road, with an intention, as it is believed, to release the prisoners. Major Weeks and two other centinels, stationed there, seized upon an armed man in disguise, and carried him off by force, 60 or 70 rods, when about thirty of his party pressed upon them, and rescued the prisoner, and carried off Major Weeks into the woods, nearly two miles. The alarm guns were instantly fired at the gaol, and the court-house bell was rung as a signal of alarm, which called from their beds to the streets most of the inhabitants in the place. The conduct of the rioters on that night, together with previous threats by them given out, caused the proper organs of government to station near the gaol a detachment of militia, consisting of from 100 to 200 men, who guarded the gaol from that time until the prisoners were discharged. After the business was closed at October term, the court was adjourned, for the sole purpose of trying the prisoners, to be holden at the same place, on Thursday 16th of November, 1809—the prisoners not being arraigned at the first term, by reason that capital offences are not within the jurisdiction of a court composed of less than three judges. On the day to which the court stood adjourned, the judges being Sedgwick, Sewall, Thatcher and Parker, opened the

court, in the presence of an immense crowd of spectators, whom that solemn occasion had drawn together. The prisoners all being brought in, the indictment was read to them, and they all, holding up their right hand, pleaded "not guilty." Having made their election to be tried all together, the court proceeded to empanel the jury; thirty-six jurors were returned, sixteen of whom were challenged by the prisoners, and the following twelve, not being challenged, were empanelled to try the cause, viz.

SAMUEL ELKINS, *chosen foreman by the Court.*
 WILLIAM DOAN,
 MOSES DOW,
 JOSEPH GIFFORD,
 MOSES HASTINGS,
 JAMES LAWRENCE,
 DANIEL LOTHROP, jun.
 SAMUEL MASON,
 WILLIAM MOOR,
 SAMUEL SMITH,
 JEREMY WYMAN,
 ROBERT WILLEY.

The Solicitor-General, after reading several passages from Blackstone's Commentaries, on the different kinds of homicide, proceeded to define wilful murder, the crime charged against the prisoners at the bar. He then gave a particular detail of all the evidence he expected to offer in behalf of government, to prove the charges contained in the indictment—and having given a very precise and clear statement of the case, he proceeded to call

THE WITNESSES FOR GOVERNMENT.

Dr. Isaac Randall was called as a witness and sworn.—He stated, that after Paul Chadwick was wounded, he visited him, and told his friends he was a dying man—that he had his clotting taken from him and found wounds in his ancles, and that four shot appeared to have entered his left leg; he examined him through his loins, and observed that a shot had entered in the direction of the kidneys; that one shot pierced his shoulder a little below the shoulder-blade, within about two inches of the spine, in a direction towards the lungs; that he did not open Chadwick's body after his death—Chadwick complained of great pain in or near his bladder; and his urine, as it came from him, was stained with blood, the natural consequence of an injury in the kidneys.—He could not say whether the wound in the shoulder would alone have proved mortal; that he was not present when Chadwick died, although he attended his funeral and saw his dead body; that his first visit to him was on Friday between five and six afternoon, the day on which he was wounded; that he languished until Sunday, when

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he expired. The wounds he received must have been necessarily mortal ; he did not think he had any other disorder at that time.

Aaron Chote, (sworn).—Stated, that on the 8th September last, Mr. Davis, Pratt, Chadwick and himself, were running the lines of the lot he, Chote, was about to purchase ; that Pratt carried the hind end of the chain and Chadwick the fore end ; he went to the corner bounds and set down, waiting for the others ; heard a rustling among the bushes ; looked and saw nine men in disguise, one of whom came near and presented a pistol and said, " If you say a word, I will blow you through ;" he replied, he would say nothing. Another behind, where there were bushes, pointed his musket down the bank, towards Chadwick, and snapped several times, who then was hold of the chain in an open piece of ground. The man who snapped his gun, says, " Damn the buskahunda" (the Indian name for gun.)—He saw a person he supposed to be Joel Webber there ; he had a veil over his face, and the others also ; they were all in disguise—the man who pointed the pistol at him he took to be David Lynn ; he saw his mouth and eyes, observed his shape and walk, heard his voice, which was his natural speech, in plain English ; he, from all these circumstances, believed the man to be, tho' he could not positively swear he was, David Lynn, whom he had known intimately for four years. One man appeared with his veil up ; his name at first he did not recollect, although his person he knew, but found him to be Joel Webber.—One of the party said to him, " Put down your cap." He saw Elijah Barton there with his cap turned up ; his face he saw distinctly, he was not blacked ; that he had known him one and a half year, and for one year past had been considerably acquainted with him, and was confident he was there. He heard three guns discharged ; the man who came with the pistol told the others to " fire low," at the same time looked at Chadwick, the witness then being not more than ten feet from them. On the discharge of the first gun Chadwick cringed, although witness did not then think he was hit ; after the second, he looked round over his shoulder and immediately dropped ; after which instantly the third gun was fired—and then suddenly all the party ran down the bank to Chadwick, and the witness followed close to them and got as near as possible ; they took an ax the witness held in his hand and threw it into the bushes, gathered round Chadwick, turned him up and said " Damn him, it is good enough for him, he had no business here." Then one of the party said, " Me go and shoot the surveyor ;"—and they all suddenly after disappeared. He could not exactly say what time of the day the transaction happened, but supposed between two and three o'clock afternoon ; he was not more than ten feet from the men who fired ; they fired partly by him—Chadwick, when he fell, was about four rods from those who shot him. Barton's clothes he did not observe ; he was the last but one or two who came out of the bushes and pointed down the bank with the

others towards Chadwick. On being asked how many sons the father of David Lynn had, the witness answered five; that they were nearly of a size, and that he was acquainted with them all; and observed that David had been absent a part of the time at sea within the last four years. On being questioned whether he heard any of the party say "don't fire," answered no; but I heard one of them say "fire low."

George Mason, (sworn)—Stated, that he knew the two Lynns, the two Meiggs and Elijah Barton; he could not say he knew Pitts. About two miles from where Chadwick was wounded on the 8th September, as he went to work, saw nine men in disguise, and went up towards some of them, who asked him where Davis the surveyor, and Paul Chadwick were; replied to them he did not know. James Ladd was in company with him. The men were near together, and might have heard all these enquiries; some of them had on blankets and cloth caps and furtouts, with veils over their faces; one said, "You know Chadwick is a little cross-eyed and we mean to straighten them"—some of them had muskets, and one had a pistol; how many guns they had, he could not say exactly, he recollected three or four, besides a piece of a scythe fixed on a handle—He could not say positively that he knew any of the prisoners, as he thought no man could swear to another in disguise.—Being questioned whether he knew Elijah Barton, replied he had seen him at town-meeting. The person, who said Chadwick had crooked eyes and that he meant to straighten them, had a blue pair of pantaloons on.—He thought the man, who spoke resembled that of Elijah Barton, but of this he was not certain, as they counterfeited their voices.—He could not say on oath, that he knew any of the persons, although he might have his suspicions; two or three had woollen blankets on—the place where he talked with them was about 200 rods from Vining's; he saw them before they got there, about one and half mile from where Chadwick was wounded; the course they went was nearly in the direct way to that spot, as near as he could guess.

Jonathan Vining, (sworn)—States, that on the 8th of September last, about one o'clock, a number of disguised men came up to his door, while he was at dinner, and asked him if he knew where the surveyor Davis and Paul Chadwick were; he answered that he did not know. Among the persons at his house he knew Elijah Barton, David Lynn, Nath. Lynn, Anson Meiggs, Jabez Meiggs, and according to the best of his judgment, Jonas Proctor; the other three he did not know; they were all in disguise; their caps were of different colors, some were red and white and blue, and some all of one color; they were mostly green.—One was armed with a pistol, and one with a web part of a scythe fixed on a handle. David Lynn he took to be the man who had the pistol; they questioned him about the surveyor, and Elijah Barton said Chadwick had crooked eyes and they meant to straighten them.

George Mason was present at the discourse; he was some time with them after his hoe; he conversed with them to Pratt's, where they stopped about half an hour; their talk was about finding the surveyor; their guns were loaded; two or three of them put their ramrods to show him how large their charges were; they all went by Chote's house on the way to where Chadwick was shot; they were then about a mile from that place; he did not see them turn from the road.—Elijah Barton and Jabez Meiggs were the only persons he remembers to have drawn their ramrods. He believed that Mason was most of the time present while the disguised party were at Vining's house and when the ramrods were taken out; he saw their faces under their veils, when they were stirring about; he knew them as well by their voices and size as by their faces; they spoke mostly, but not wholly, by their natural voices—James Ladd was present. Most of them had on blankets; David Lynn had on a coat. He the witness went home, which was in a different direction from their course. At Chote's, they asked, if the surveyor was there. They called after the witness and said, "Hallo you Englishman," but he made them no answer.

David Leeman, (sworn)—States, that on the 8th September, about three o'clock, he was at Mr. Ward's barn in Harlem, about one and half mile from where Chadwick was killed, and Osha Hallet came in immediately after the guns were fired, and said he had come to bring bad news—that Chadwick was shot down. Witness set off and took with him Mr. McGlothlin, Mr. Ward, and Hallet and Priest, and went down to the road off against where Chadwick was shot, and found him on the ground helpless; a blanket was brought and he was carried home to witness's house, and Dr. Randall was sent after. Witness met Elijah Barton and Jabez Meiggs going to old Mr. Lynn's, they were then not in disguise; Barton had on a grey loose-coat, and when he passed by witness, asked him how his folks did? When witness was almost against John Lynn's house, David Lynn was by the back door with a man with a fur cap on; as soon as he saw the witness he pulled down his cap and went into the house; David Lynn came by witness with his shoes in his hand, this was about sunset. While witness was going to Chadwick, and when he went by all the Lynns, he saw Elijah Barton and Jabez Meiggs; afterwards he heard a noise in John Lynn, jun.'s house, about four rods from where he stood, a jumping on the floor, and noise like men in liquor; he heard one say, "*I meant to fetch him, I thought I should fetch him, and by God I did fetch him.*" This happened on Friday night, and witness staid with Chadwick until Sabbath evening, when he died.

William Holloway, (sworn)—States, on the 8th September he was at Jason Peirce's house, about a mile from David Leeman's, about ten o'clock forenoon, and saw through a window three men with guns; about five minutes after went into the road and saw

these men, whom he took to be the same, dressing themselves in a disguise, about thirty rods from Peirce's house, on the side of the road on the way to John Lynn, jun.'s house. About sunset, just before he was at Jonas Proctor's house, he saw David Lynn talking with witness' daughter, and Lynn threw his shoe at him, and seemed to be intoxicated; and the witness took up a stick, when Lynn cried out, "You old son of a bitch, are you going to strike me?" Barton and Meiggs whom he saw there, were about one and half rod from him; their faces were towards him, who knew them as well as he knew any body. When Lynn was seen at Proctor's, it seems to witness it was about sunset; it was cloudy. John Lynn, jun. lives about a mile from Proctor's.

James Bracket, Esq. (sworn)—States, that on the 9th September, twenty-four hours after Chadwick was wounded, he saw him at Leeman's house, Major Weeks called on him in haste to go and take the deposition of Chadwick, as he was a dying man; witness went and saw him, when Dr. Huntoon was there and had been taking Chadwick's declaration. Chadwick said he considered himself an undone man, and thought in a short time he should appear before God. The witness then considered him a dying man and told him so; he appeared to possess his reason and the faculties of his mind, which seemed full as strong as they usually were. He had known Chadwick about six years; said he had had a tolerable education and had kept a school; he took from his mouth his dying declaration, and he swore to it. Part of the declaration, the greatest half taken down was the copy of a paper written by Dr. Huntoon. On the question being put by the Solicitor-General—You have said this (holding the paper in his hands) was the paper Chadwick swore to—Did you read over the paper to him? The witness answered that he did read it over to him distinctly, and asked Chadwick if it was correct, and whether he was willing as a dying man bound into eternity to swear to it; he said it contained the truth, and he appeared to understand it fully. When the paper was read he seemed to be in great agony, and he was requested to suppress his groans while the paper was reading, which he did in a great measure; a short time after he appeared quiet and still. When witness first entered the room Chadwick shook his head and said he was an undone man. In about fifteen or twenty minutes after swearing to the paper he fell into a fog—during the whole time he said little else than yes or no to the questions put to him. Some talk was had with Chadwick about that part written by Huntoon, which he read so that Chadwick could hear; Huntoon was writing when the witness arrived, to whom Huntoon delivered what he had written, and witness copied it and added the remainder.

David Leeman, (called again)—States, that he went to the place where Chadwick was wounded; he desired witness to get him to witness' house; said he was an undone man, and seemed to be sen-

sible he was mortally wounded, and said that he did not think there were any hopes of his own life ; that one shot had come through him, and he put his hand where he said it lay in his belly ; he spoke also of another shot in his breast. Said he knew two of the men who shot him, Elijah Barton and Jabez Meiggs, but of the others in company he had no knowledge ; desired witness to send for a doctor. When Justice Bracket examined Chadwick, witness was present all the time, by the bed side. Esquire Bracket asked Chadwick how he did, who replied he was an undone man ; he also asked him if he considered himself near his end, and that he would soon appear before his Maker ; said he did—he appeared in full possession of his reason ; the Justice asked him if he knew any of the men who shot him ; said he knew two of them, Elijah Barton and Jabez Meiggs. When the Justice had finished the writing, he read it to him, and asked him as a dying man, if he could say it was true ; he said yes.

Justice Bracket, (called again)—When witness arrived at the house he found Doctor Huntoon there, taking down in writing, the declaration of Chadwick ; witness asked if he knew him, he answered that he did ; he said on being asked, that he thought himself a dying man. Huntoon wrote and read a paper to Chadwick, and asked him about it ; witness wrote down what Huntoon had written, and the remainder of the declaration—asked Chadwick where, and how he was shot ; he said he was in company with Mr. Davis and Chote, running a line, that a number of men in disguise came upon him, all in a huddle ; that he heard the report of a gun and found after the discharge, he had received some shot in his leg ; he soon heard the report of another gun, and found himself again wounded, and immediately a third gun was discharged, and he was wounded the third time, and had fallen on the ground ; a number of men came round him ; said two of the men who wounded him, he knew by their voices, although he did not see their faces. When the disguised party huddled round him, one of them said, “ Damn you, how came you here, this is good enough for you.”—Then they all suddenly disappeared and left him on the ground.

Thomas A. Hill, (sworn)—Stated, that Esquire Bracket directed him, after the prisoners were brought in, to read the complaint and warrant. After witness had read the warrant Esquire Bracket was beginning to ask whether they were present when Chadwick was killed ; witness stopped him and told the prisoners that they were under no obligation to confess any thing, and that if they did confess any thing it must be free and voluntary, for it would be given in evidence on their trial. Esquire Bracket then proceeded to ask them, if they were present when Chadwick was shot. (Here Justice Bracket was again called.) He said that two days before the prisoners were committed David Lynn was brought to his house, who seemed desirous to confess all he knew about the mat-

ter, and wished to have the privilege of being cleared by telling what he knew. Witness replied, it was not in his power to confer that favor ; that he was not disposed to injure him, but would do all he could consistent with his duty to help him. He seemed to think it would be better to confess what he knew, and wished witness to give an opinion about it ; he did not remember that he gave Lynn any encouragement to confess, although he supposed that even from his reserve, Lynn might be encouraged to expect some advantage by confession.

Reuben Fairfield, (affirmed)—Said, on the evening before the examination he had a talk with Elijah Barton, Jabez Meiggs, and Nathaniel Lynn, and informed them he had consulted with a number of the most respectable men in that quarter, and that it was their opinion with his, that the prisoners had better come forward and give themselves up.

James Huffy, (affirmed)—Said, that before the acquittal on the first warrant witness told Pitts and two others of the prisoners, that they had better own the murder and tell what they knew against the rest, and they probably would be cleared.

Mr. Hill, (called up)—Said, after he had stated what was before mentioned, Esquire Bracket put the question, Were you present and in disguise at the time Chadwick was shot ? Each one answered that he was, and this they did without the least hesitation ; whether David Lynn was present he could not say. Elijah Barton said he was present to his great shame and confusion ; and he tho't some of the other prisoners answered in like manner.

James Bracket, (called)—Said, he had no doubt David Lynn was present when the confession was made. Witness first put the question to Elijah Barton, whether he was present at the time Chadwick was shot ? he answered that he was, to his great shame and confusion. The same question was put to each separately, and they all confessed they were present.

Dr. Randall, (called)—Said, there was a circulating report that the men charged with killing Chadwick were gone to the British dominions ; witness wanted to know the certainty of the report, and was in the night time next after the day on which Chadwick was buried conducted into the woods, where he found Barton with some other men he did not know ; Barton answered to his name and said, " Doctor you did not expect to find me in this condition." Witness told them he thought they could not expect to exist in that condition long, and that he did not come to afflict the afflicted, nor to screen the guilty ; that the crime perpetrated was a shocking offence. His opinion was asked, what was best to be done ; he told them he would as lives throw himself on the mercy of the court as to drag out a miserable existence there ; he promised them he would not let any thing there said turn to their injury. On being asked if Chadwick was in the full possession of his reason when he called on him, witness replied yes.

Then Jonas Proctor, one of the prisoners charged in the indictment, was offered by the Solicitor as a witness for government, and objected to by the prisoners' council, because he was joined in the indictment, and had neither, 1st, plead guilty; 2d, been convicted; or 3d, any other way been discharged. The objection was overruled (Judge Sewall doubtful.) Sedgwick remarked, that he had been employed in defending a great number of persons indicted for capital offences; that in divers prosecutions of that kind he had known one of the accomplices used as a witness for government, who had been joined in the indictment; that in his mind no reason could exist why a man should confess or be convicted, to qualify him for a witness in the trial.—He was accordingly admitted.

Jonas Proctor, (sworn.)

Solicitor-General.—State what you know in relation to the murder of Chadwick.

Proctor.—I do not know any thing about it.

By the Court.—Did you see the prisoners on the 8th September last?

A. I did not.

Court.—Where were you on the 8th September last?

A. At home.

Court.—Did you see either of the prisoners on the 8th September last?

A. No.

Here the evidence was closed on the part of government.

EVIDENCE FOR THE PRISONERS.

Here Mr. Wilde in a brief and pertinent manner stated to the Court and Jury the evidence he expected would be offered in the defence on trial.—Witnesses called.

James Ladd, (sworn)—On the 8th September last he saw at Jonathing Vining's nine men in disguise; they had on long caps that came down low; were made with cloth with eye-holes, so as to show the eyes only, sewed up on the sides, he could not know who they were; he was with them all the time while they tarried there; part of them came into the house and asked where the surveyor was; Vining told them he did not know; he took his hat and went away with them; witness followed them to Pratt's; part went on with Vining and part stopped at Pratt's; was not so near as to hear the talk between them and Vining; did not see him swing his hat as a signal; he was not much acquainted with the prisoners, not having been in Malta more than one year; he knew the two Lynns and two Meiggs; he could not find out who the disguised men were by their voices or appearance; they asked him in an Indian way, where the surveyor was. One had a pistol, some had guns, and one had something that looked like a piece of a

hook with a handle to it. The place where Chadwick was killed he knew ; the way the men took he thought was not a direct course there ; he could not swear that he knew one of the men, or that he saw either of them draw their ramrods ; did not hear them enquire for Chadwick, nor say he had crooked eyes ; he stood a little one side ; he took more particular notice of their dress, it was so strange ; Vining talked with them in the house ; out of doors he heard no conversation. Their caps, he thought, were of different colours. Chadwick was killed about west from Chotes. Those who went into the house he thought carried their guns ; he went to where Chadwick was shot and helped carry him to Leeman's house ; he did not remember beside Mason, Vining and his delirious brother, that any person was there but the disguised persons.

Nehemiah Ward.—On the 8th Sept. he was called at his house to go to Chadwick in company with Priest, Leeman, Hallet and McGlothlin ; he said to him, Mr. Chadwick you are badly wounded ; he answered, yes, he was. He said both times on being asked twice, that he knew none of those who fired on him ; as they were carrying Chadwick home, he observed he did not know any of the men, Chote replied, he knew two ; Chadwick begged him to say nothing about it ; on being asked whether he was related to any of the prisoners, witness replied the two Lynn's were brothers in law to him.

Abraham McGlothlin.—Was present with Ward and Chadwick ; he was asked by Ward, in manner stated, if he knew who shot at him ; said he did not ; the question was put several times and the same answer given. Witness heard Chote say he knew two of the men ; Chadwick begged him to say nothing about it ; he heard no conversation between Leeman and Chadwick.

Isaac Marlb.—About two afternoon 8th September, he saw some disguised men at Proctor's, they came to Capt. Jewet's and shook hands, and one took hold of his hand ; asked where the surveyor was, and wished witness to show him, and talked in the Indian way, and asked witness if his land had been run ; who told him yes ; he asked why it was suffered to be done ; the reply was, it was useless to stand out against so many ; he said, put a blanket on and secure them ; they had caps over their faces with eye holes, reaching down to their breasts and shoulders ; their hands were coloured as black as Indians ; some had guns, one had a cane, one a pack, one a knife at his side that resembled the point of a scythe. When they left Pratt's they went towards Chote's.

William Proctor.—On the 8th September saw Elijah Barton, about two afternoon as nigh as he could guess, going by his brother Joel's house towards Jason Peirce's ; had on his common dress trowsers, shirt and jacket, with an ax in his hand ; Barton had land in that direction, where chopping was heard most of the afternoon. On the same day, between twelve and one, David Lynn appeared and tarried one and half or two hours ; same afternoon Jonas Proc-

tor was also there most of the afternoon ; next day afternoon, and not before, it was reported Chadwick was shot ; supposed where Chadwick received his wound was about two miles distant.

Rachel Palmer.—Saw Anson Meiggs at her house on the day Chadwick was shot, about two o'clock as near as she could guess ; they had been to dinner ; he tarried about half an hour and wanted to see her husband. Same day, a little before sunset, she heard of Chadwick's being hurt ; she saw no man in disguise that day.

Samuel Taylor.—On the day Chadwick was wounded, he saw Prince Kein at his house between ten and eleven forenoon, he lived with him, having married his daughter ; about that time witness left home and there left Kein, returned home a little before sunset, and found Kein at home.

Jonathan Tyler.—On his way from Belfast to Augusta, between eleven and twelve he saw Prince Kein at Mr. Taylor's house ; after Taylor went away saw Kein have a rake and pitchfork.

Edward Gordon.—Saw Nathaniel Lynn on 8th September last, in old Mr. Lynn's field about two o'clock afternoon after dinner ; he dined about twelve ; saw Nathaniel Lynn about one and a half mile from Vining's ; Lynn had on his common clothes ; how he came to notice Lynn's common clothes he could not say ; but he told the men with him, that was Lynn with his sleeves turned up.

James Lynn.—Saw his brother Nathaniel, the day Chadwick was shot, between twelve and one ; he was there hunting after his cattle until about four o'clock ; went with him after his cattle about two o'clock and was with him half an hour ; he had on a pair of white trowsers and was in his shirt sleeves ; after that they went to the barn and Nat. staid until about four o'clock ; he was about the barn all the time and said he was going to N. Ward's, who lived about three or four miles off ; about sunset same day heard Chadwick was shot ; he saw no people in disguise that day.

Noah Woodward.—Adam Pitts was at his house on the fore part of last summer season ; he found him in a tost situation, and he appeared to be in the first stage of derangement, much as his father used to be ; Adam's intellects are very small indeed, and his education very slim ; has been viewed as one who needs a guardian ; he was married at the age of eighteen, which witness thought evidence of want of capacity.

Benjamin Brown, jun.—Considered Adam Pitts as possessing a very small mind, and so people generally considered him.

George Reed.—Adam Pitts appears to be somewhat deranged, and has a very weak understanding.

Peter Heald.—On Saturday forenoon saw Paul Chadwick ; wanted to get his deposition ; thought he had not his senses ; put a number of questions to him ; some Chadwick answered, some he did not. When witness first came in, he asked if Chadwick knew him ; who replied, that he did, and called him by name ; af-

terwards the same question was put, and no reply was given; he then seemed to be in a *fog*. Because witness thought Chadwick was not in his right senses he did not proceed to take his deposition, as he thought it would be of no use.

John Arnold.—Saw Chadwick Saturday morning early in great agony; he seemed to have his senses pretty well; as witness lived near he was in and out often; sometimes he appeared to be out; sometimes he would sleep a little and then rouse up; witness supposed Chadwick knew him, as he would sometimes look at him. Witness was there when the justice took his declaration, and heard him read over a paper, and ask Chadwick if it was true; he answered in a low whisper it was. When he was brought out of the woods he seemed to have his senses.

James Hufsey.—Heard Jonathan Vining say at Bracket's, that he did not know any of the men in disguise when Chadwick was shot; not long before the examination, Vining said some of them were his neighbors and he might think what he pleased, but that he could not swear to any of them; he said their caps came over their faces in such a manner that he could not see them.

George Mason.—Jonathan Vining on the 8th September asked him if he knew any of the men in disguise, to which he answered he did not; Vining observed that if they were not disguised he might know them; but as they were he did not. Said he was well satisfied who they were, but would not for his right hand swear to them. Some of this talk was before Chadwick was wounded. Said it was difficult to know a man in disguise, that himself was once deceived in a man disguised, whom he thought to be D. Plummer, but after found it was not.

Joseph Linscot.—Had been acquainted with Vining for twelve years past; among his neighbors his reputation was not that of a man of truth; if he told a story witness would not believe him, nor think any of his neighbors would.

Benjamin Duren.—Vining's character for truth is bad; he had known him for three years and never heard he was a man of truth.

Samuel Wheeler.—Had known Vining three years; his character for truth, as it respects promises and contracts, was bad; but when he told a story about matters in which he was not concerned, would he thought, be believed.

Noah Woodward.—Had known William Holloway's person fifteen years, and his character twenty-eight; his character was very bad; all people agree in this opinion. Witness had lately heard he had reformed for eight or ten years, but he has totally returned to his bad practices.

George Reed.—Had known William Holloway about twenty-eight years; his character for truth is bad; he never heard a man say he was a person of truth; had heard that he professed religion, but his character was since the same as it was before; he lives the most of his time in Malta.

Afa Wilbur.—Had known William Holloway more than thirty years ; his general character for truth was not altogether bright.

Gerstom North.—Had some conversation with Vining about three weeks past, when he was attending court as a witness with regard to the prisoners ; he asked him what he knew about the prisoners ; he answered that he could not swear to any of them.

Isaac Hufsey.—Was present when the Justice put the questions to the prisoners ; lawyer Hill was asked to read the warrant and he read it ; and then turned to the prisoners and informed them, they were not obliged to say any thing ; did not hear Hill say their confession would be given in evidence against them. The Justice put the question to each prisoner, "was you *there* ?" One of them said he must acknowledge to his shame and confusion he was *there* ; witness thought he was Elijah Barton : witness took particular notice of all the Justice said, and remembered that the words *were you there* bore on his mind, and mentioned the circumstance to his neighbors, who made enquiry about it ; there were two Lynns in the room ; he thought they were both standing in the ring of the prisoners.

Aaron Chote.—Had known Vining from a boy and had heard some say that he was not a man of truth, and others that he was ; but this was about his dealings, but had never heard that he was not a man to be believed in point of truth and veracity ; when he went to Chadwick, he removed him from the place where he was shot down ; that he told him he knew two of the men ; but he told witness not to say too much, for he feared they would come and finish killing Chadwick and kill witness likewise ; said witness did not know them so well as he did ; witness mentioned the names Elijah Barton and Joel Webber ; after he was removed to Leeman's, he repeated what was before said, that witness should not say too much for he was afraid they would come and finish killing Chadwick and kill witness likewise. On being questioned to that point answered, that Linscot was not generally called a man of truth.

James Pratt.—Had heard said in regard to Jonathan Vining's dealings, that he was not to be believed, but that in regard to all other respects he had never heard any thing against him. Witness was employed with Chadwick in carrying the chain, and when the first gun was fired did not suspect what the object was ; on the discharge of the second gun, Chadwick screeched and witness run, but saw no man except his own party. Witness thought he heard five guns ; the two first separately, and the three last, as he supposed, nearly together, in the form of a platoon. It has been generally said (witness observed) on being asked, that Linscot was not a man of truth.

David Leeman.—Joseph Linscot was not called a man of truth generally. When Heald was with Chadwick he had his senses ; nor did he lose his senses till Saturday night. The sun about an

hour high, Elijah Barton came to witness's house, about two hours after Justice Bracket had left there ; Barton seemed to be in haste, and asked if Mr. Chadwick had his senses when Esquire Bracket was there ; witness replied he had ; and on this reply Barton went off immediately.

William Bowler.—Had never heard a bad character of Vining, till this affair happened.

Major Weeks.—Had been acquainted with Jonathan Vining about two years, and never heard any thing against his reputation for truth. Saturday after Chadwick was wounded, observed Elijah Barton's gun was loaded with a common charge, which he tried to draw, but could not, it was so wadded with green leaves ; it was afterwards fired off, but whether any lead was in it he did not know. David Lynn absconded and left his house empty, and was not discovered till Tuesday night.

Pitt Dillingham.—Had known Jonathan Vining for ten years ; had never heard his character impeached on account of veracity ; had not heard much said about him lately.

Benjamin Hilton.—Had known Vining ever since he was large enough to know any thing ; had never heard his character for truth questioned, except as it respected his promises ; had heard some say Joseph Linscot's character for truth was not good ; that he was treasurer for the town of Malta.

Sylvanus Chadwick.—David Lynn told him he was at home concealed under the floor the night they came to arrest him ; that he was concealed by his wife's taking up a board ; and that he heard and understood all that passed there.

Marcy Chadwick, (mother of the deceased)—Had heard Jabez Meiggs threaten her son, Paul, about three years ago ; and two days before he was shot, Meiggs told Paul's wife that he was going off soon. She said, she guessed he was not going so far, but that he would return soon ; on this said Meiggs shook his head and observed, *he is going a long journey.* She was with her son in his last sickness ; was with him two hours after he was wounded, and remained with him till he drew his last breath ; was present when Esquire Bracket examined him, and was confident he possessed all his senses till about three hours after that time, when he began to wander, and was in great agony, and by turns had lost his reason as long as he lived. About twelve hours before he died he lost his speech.

Dr. Huntoon.—Was with Chadwick before Esquire Bracket examined him, and he appeared to be in his clear senses. When witness went in, a little after 12 o'clock, he observed he looked pretty ghastly, and looked on witness withfully ; they had lived together, were intimate, and had a regard for each other ; examined his wounds ; he observed he should not live till to-morrow night ; witness requested him to relate the manner of his being wounded ; and he said he was running lines with Davis, Chote and Pratt ;

that he observed Davis stopped, and immediately he saw several persons in disguise dressed like Indians; they presented their guns at him, and he heard the report of a gun; two or three shot hit him in the leg; and that very soon another gun was discharged and hit him in the body, with this wound he fell to the ground; instantly a third gun was discharged, which hit him in the shoulder; two of the party then approached him, one said, "Damn you, what business have you here?" Witness asked, if he knew any of them; he said he knew two of them, Jabez Meiggs and Elijah Barton, one of whom, which he could not tell, made use of the expression before mentioned. Here, by the leave of the court, the written declaration of Paul Chadwick was read and given in evidence, which was as follows, viz.

I, PAUL CHADWICK, of Malta, in the County of Kennebec, of lawful age, sound in mind and memory, but in keen pain, do testify and say, that on the eighth day of September, one thousand eight hundred and nine, I was attending to run a line between Isaac Marsh and Aaron Chote, with Isaac Davis and James Pratt, in the afternoon—I took notice Isaac Davis stopped and a number of men that *was* dressed in disguise with him; at about three or four rods distance I saw one of them present his gun at me, at the same instant heard the report and found I was wounded in one of my legs; I then saw another gun presented at me, and found that I had received a wound in my shoulder, and found myself on the ground; in a short space I heard the report of another gun and found that I was further wounded in my body; that they came up to me and said, "Damn you, what business have you here." Two of them I knew, one was Elijah Barton, of Malta, and the other was Jabez Meiggs of Malta; then they went away in haste and left me on the ground.

Kennebec, ss. Sept. 9th, 1809—Then the above named Paul Chadwick made *solemn* oath to the above deposition before me,

JAMES BRACKETT, *Justice Peace.*

Justice Bracket—Being asked whether Chadwick made that declaration before him, replied that he did.

James Martin.—Said Joseph Linscot he had known five or six years, and that he was generally reputed a man of truth and veracity.

Pitt Dillingham.—Said he had never heard any thing injurious to the reputation of Linscot, although he had known him above eight years.

Jonas Pratt.—Heard Chadwick say the day he was shot, he should like to go to the Ohio if he could get money enough; that he had one more of the Leeman family than he wanted, and that he would give five hundred dollars to get rid of her.

Mrs. Chadwick.—That there had been a disagreement for three years between Jabez Meiggs and her son ; that she heard Meiggs say, “ I don’t mean to do it to night, I am too damn’d drunk ; but if God spares my life, I’ll put his soul where it cannot get back again.” Since Meiggs threatened to take down a barn frame of her son about three years ago, she had known several instances of disagreement between them. On being asked to specify, she said there had been a misunderstanding about a sled, which Meiggs took from him and never paid him for it.

George Mason.—Did not know of much disagreement between the deceased and Meiggs ; they lived as quietly together as neighbors generally do.

Nathaniel Wiggins.—Was in conversation at Mr. Brook’s tavern in Augusta since the court sit ; witness enquired about the prisoners at the bar, “ Damn them (said Huntoon) they all ought to be hung.”

John Ward, jun.—Heard the conversation referred to by Wiggins, and recollected that Dr. Huntoon said, “ they ought to be hung without reserve.”

Dr. Huntoon.—Recollected saying that Chadwick was a good scholar and learned to cypher very fast, and that he was once very crazy ; that witness supposed it was caused by hard study ; witness said, he observed that some of the prisoners had a good character as well as Chadwick ; that if the prisoners were guilty they ought to be hung ; but if innocent, to be cleared. If any other opinion was expressed, it was because he thought the evidence would be against them.

Justice Bracket.—Recollected that Jonathan Vining before him swore he knew David Lynn by his teeth, his eyes, and his round shoulders.

Thomas A. Hill.—Recollected Jonathan Vining testified that he knew David Lynn by his teeth shewn through his mask.

All the evidence, as well on behalf of the government as on the part of the prisoners, having been offered in the case, Messrs. Wilde and Mellen being engaged as their council, proceeded to address the jury in their defence.

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

So much time has already been necessarily spent in this trial, that before the prosecution is closed, I fear your patience will be exhausted. But although you may be wearied by confining your attention so long to this subject, the importance of the occasion and my duty to my clients require that I should employ some more of your time in submitting a few remarks to your consideration. The prisoners at the bar are charged with the wilful murder of Paul Chadwick ; they have put themselves on their God and their country, and it is your province to determine, gentlemen, whether the evidence produced by government has to your minds found

them guilty of the "highest crime against the law of nature, that man is capable of committing." Your verdict may be, that part or all of the prisoners are guilty or not guilty of manslaughter or murder. And here it will be proper, to give you a precise definition of each of these crimes. "Manslaughter is the unlawful killing another without malice either express or implied ; which may be either voluntary upon a sudden heat, or involuntary, but in the commission of some unlawful act." "Murder is when a person of sound memory and discretion unlawfully kill any reasonable creature being in the peace of the commonwealth, with malice aforethought either expressed or implied." It appears from the testimony of the witnesses, that Paul Chadwick, the man murdered, was in company with James Pratt, Aaron Chote and Isaac Davis, a surveyor, running lines in the town of Malta with a compass and chain, when nine armed men appeared in disguise, one of whom approached Chote with a pistol and pointed it at his breast, telling him that if he spoke a word he would blow him through ; Chote was silent ; at the same time another of the party pointed his musket down the bank towards Chadwick, who now made his appearance carrying the fore end of the chain, and snaped several times ; that the gun did not go off, and that the man who held it said, "Damn the buskahunda" (Indian word for gun.)—Chadwick was presently fired upon and wounded in the leg ; a second gun was immediately discharged, which wounded him in the loins ; with this wound he fell to the ground, and while he was falling, or soon after, a third gun was discharged, which wounded him in the shoulder. This melancholy transaction happened in the town of Malta, on Friday the 8th September last, between two and three o'clock afternoon.—Chadwick was carried to the house of David Leeman, whose daughter he married, and languished till the Sunday following and then expired. That this man was killed at the time and place as mentioned by the witnesses, and that he lost his life by the wicked and malicious purposes of evil-minded men in disguise, there can be no doubt ; but, gentlemen, before you pronounce the prisoners at the bar to be the same men who have been guilty of this barbarous crime, so shocking to our natures even to think of, you will require evidence against them "strong as sacred writ." Aaron Chote is the principal witness to substantiate these facts ; he adds, that after Chadwick fell to the ground, those concerned in wounding him came to him and turned him up, damn'd him, and suddenly disappeared, leaving him weltering in his blood ; that two of the men he knew, Joel Webber and Elijah Barton, and he is pretty certain he recognized David Lynn. We can all have but one opinion with regard to this transaction, that poor Chadwick came to his end by the most savage barbarity. That it was cruel and wicked in a high degree is agreed by all ; but the question returns, who were the perpetrators of this murder ? This scene wherein he was

an actor, must have filled Chote's mind with horror ; and altho' he undertakes to describe with so much particularity what passed, he must have been from the confusion, bustle and fright of this affair, in a state of mind that illy qualified him to retain in his recollection the precise state of facts. This scene of blood and murder must have been novel, and therefore awfully shocking to a man like Mr. Chote, who had spent his life free from alarms in the peaceful walks of agriculture ; his life was threatened if he kept not his peace. How did he know that he should not be the next victim ? With the apprehensions the objects then before him were calculated to excite, it is natural to suppose that Chote's remembrance of what happened must have been as wide from the truth as the wildest romance is from real history. Other witnesses have told you, gentlemen, that the caps or veils worn by the murderers sit so close and come down so low on the breasts and shoulders as to have made it very difficult, if not impossible, either to be turned back or to admit of the faces they covered to be seen under them ; he does not pretend he heard Barton speak, but thought he knew his face (his cap being turned up.) What was said of Joel Webber may be laid aside, as he is not on trial ; and David Lynn he thought he saw there, but said he could not positively swear to him ; any of the other prisoners he does not pretend he recognized on that fatal day. But, gentlemen, I put the question, can you on this evidence find a verdict against any one of the prisoners that must deprive him of life ?

In ancient times by the laws of England an attempt to commit any felony, if carried into effect, was punished with death ; and this, perhaps, may be the reason why, if from an attempt to commit any crime by law denominated felony the killing of a human being ensue, it is considered murder. Connecting the testimony of Vining and Mason with the acts of shooting Chadwick, it may be argued by the Solicitor-General, that this melancholy transaction was accompanied with malice aforethought. But, gentlemen, before this can be returned, the prisoners at the bar must be identified with the murderers of Chadwick.

Mrs. Chadwick's testimony will occupy our next attention, who states to you, that she heard Jabez Meiggs threaten her son Paul about three years ago, and that two days before he was shot he told her son's wife, that her husband was going off soon ; his wife thought he was not going so far, but that he would return soon ; Meiggs shook his head and said, " her husband was going a long journey." With regard to the threatening referred to three years ago, even the attorney for government will not insist that it has any weight ; it must be laid intirely out of the case ; what was said two days before Chadwick was shot, that he was going a long journey, will admit of two constructions ; the one a reference to his decease, and the other, that he would soon travel off a great distance ; the most favorable of these constructions to the prison-

ets, gentlemen, you are bound to give ; and this you will be induced to do the more readily from the circumstance of Chadwick's mentioning the Ohio as a good country he had thoughts of visiting. Mrs. Chadwick, it is true, testified there had been many instances of disagreement between her son Paul and Meiggs, but when called to specify she could recollect one instance only, that was a trifling misunderstanding about a sled ; it appears on the other hand there had been many dealings between them, as is usual among neighbors. From all these transactions, it is not possible to presume any thing like premeditated malice. In the nation from which we derived our origin and many of our wholesome laws, one of their respectable law authorities, judge Blackstone, enumerates about one hundred and sixty crimes, for which their laws inflict capital punishment ; but not so stained with blood are the laws of our humane government ; every citizen here is equally protected as well from the tyranny of sanguinary laws as from the outrage and violence of lawless individuals. The great question that must be the subject of your enquiry is, who were present directing, aiding and assisting at the time Chadwick received his mortal wound. It may be asked why Chote, whose character is unimpeached, should thus testify if the prisoners be innocent ; we do not believe that Mr. Chote would testify to a false statement of facts wilfully ; and we do also believe that very great allowance ought to be made on account of the distracting impressions his mind must have received from that horrible transaction. And although he gives the reason why he thinks he knew David Lynn, you ought not to attach more weight to them than he does himself, who tells you candidly, that he " could not positively swear to him." On the whole, gentlemen, whatever your suspicions may be, I am sure you will require more evidence before you decide against the prisoners on a question that involves life.

We now come to another species of evidence, the testimony of Jonathan Vining, who says, that on the day Chadwick was wounded, he saw nine persons in disguise at his house, at one of the clock afternoon, among whom the two Lynn's, the two Meiggs' and Elijah Barton he knew, and Jonas Proctor he thought he knew ; and that these men were enquiring for the surveyor and Paul Chadwick ; that he saw their faces under their veils as they were stirring about.

This testimony is attended with a great variety of objections, either of which is sufficient to render it of no effect.—It is not possible, that he could see their faces under their veils, because it has been proved they fit so tight, that no part of the face could be seen ; should any statement be in a manner to make it impossible to be true, it could not be believed though testified to by the most credible witness. Again, Vining has not been supported in what he offers on oath by two other credible witnesses, Mason and Ladd, who were both present and did not discern the faces of the prisoners,

so as to know them, nor did they see two of them measuring their charges in their guns by their ramrods, nor did they hear any thing said of the straightning Chadwick's eyes as related by Vining.—What should give him so much more discernment about these very material matters of evidence than the other witnesses, who had an equal opportunity to make discoveries? You cannot credit this man, gentlemen, because he has told stories widely different about this affair. He declared to Mason, James Hussey and Gershom North, at different times and places, that he could not *swear positively*, that any of the prisoners were among the disguised men he saw; but this very man now comes into court and swears unequivocally to five of the prisoners. It is for you, gentlemen, to say, whether testimony of this complexion, shall command your belief.

(Here Mr. Hill was called as a witness and stated, that Vining swore before the justice, that he knew David Lynn from his teeth, his shape and his eyes; that he knew Barton, but that as Lynn only was then on examination, Vining was directed to say nothing of the others.) Mr. Wilde proceeded—Mason, witness for government has stated, that he was once greatly deceived by the appearance of a man in disguise, whom he felt positive was one David Plummer, but on further examination found him another man. Just so uncertain, gentlemen, must the opinion of any man be about another in disguise. But beside the improbable nature of what this witness has said, there be objections equally weighty against him as it respects his general veracity; for four or five witnesses have declared on oath that this man's character for truth is notoriously bad. You can therefore with great propriety, gentlemen, and it is your duty to do it, lay entirely out of the case what he has testified, that has not been confirmed by other witnesses. In any case, and especially on a trial for life, a jury will not too readily listen to doubtful, nay contradictory and improbable testimony. In a cause of this moment, government ought to produce evidence that will carry conviction home to every juryman's mind before he pronounces a prisoner guilty. We will next consider the testimony of William Holloway. On the day Chadwick was wounded, he tells you, about ten in the forenoon he saw through a window, Elijah Barton and Jabez Meiggs at Jason Peirce's with their guns; about five minutes after he went into the road and by the side of the public way as much as thirty rods distant from Peirce's towards the house of Jonathan Lynn, jun. he saw three men dressing themselves in disguise, two of whom he supposed were the same he saw before through the window. It would be useless, gentlemen, for me to comment on this testimony; the man has been discredited by three respectable witnesses, Mr. Woodward, Wilbur and Reed, who all say his character has been known to them for many years, and that it was for truth very bad. It will be asked what cause could move this old grey headed man to tell

a falsehood? My reply is, who can know the secret springs of human actions, and what malicious motives on a thousand important occasions can lead astray the mind of frail man from the truth? It is enough for your purpose, gentlemen, that this man having been proved a notorious liar by those who knew him best, is not entitled to your credit, especially in so momentous a concern as that touching the life of man. You will not, you cannot permit this kind of evidence, to have any weight in forming your verdict.

We will now proceed to the statement of David Leeman—He tells you among other things, that he assisted in carrying Chadwick, after he was wounded, to his own house, and that on the evening of that day, he passed by the house of John Lynn, jun. where he heard a riotous noise, that seemed to proceed from men intoxicated; as he stood in the street about four rods from the house, some one was heard to say, "I meant to fetch him, I thought I should fetch him, and damn him, I did fetch him." But, gentlemen, what can possibly be inferred from all this? There is no evidence that one of the prisoners were in this drunken frolic; and if he was, the expression may as well refer to something, that had then just taken place in the room, such as wrestling, or some other sport; or it might refer to a transaction happening before they met entirely foreign from this trial, or at the distance Leeman stood, he might be mistaken in the words. Finally, gentlemen, this testimony is so indefinite and uncertain, both as it respects the person, and the thing referred to, that it might afford grounds for a thousand conjectures, from which materials no honest juryman can draw the means of forming a righteous verdict on an affair of life. I now come, gentlemen of the jury, to another species of evidence, which is the dying declaration of Chadwick—this under certain circumstances is no doubt admissible evidence; the law views the declaration of a man, on the near approach of death, who considers himself under the apprehension of immediate dissolution, though not under oath, as equal to the deposition of a person in full health; for a dying man can have no motive to tell a falsehood. But though Chadwick charged two of the prisoners, Barton and Jabez Meiggs, with being concerned in wounding him, he seems not to have made this declaration under an apprehension, that he was about to die suddenly, because he cautioned Chote not to say too much lest they should, to use his own expression, "come and finish killing him, and kill Chote also." Why should he give this caution, if he considered himself a dying man? Is it to be supposed, that a man in the full view of suddenly quitting this world, and passing to another, "from whose bourne no traveller returns," should permit the paltry concerns of this life to have any place in his recollections? No, gentlemen, in this awful hour, "one's hopes and fears would start up alarmed," should he have a lively sense of his situation, as Chadwick is stated to have had, his whole mind and soul would be absorbed in the sublime

prospect of that unknown world, into which he was just entering & the prudential cares of the present life with all its vices and follies, would be far removed from his thoughts. If your sentiments, gentlemen, should agree with mine on this point, you will say, that in the caution given by Chadwick to Chote, the incident was so unappropriate and unnatural that Chote must have been under a misapprehension. A serious objection against the dying declaration of Chadwick is, that he has to different persons on different occasions, given very different accounts of the same transaction. To the Justice, Chote and Leeman, he declared he knew Batton and Jabez Meiggs among those who shot him ; to Mr. McGothlin and to Ward he declared at several times, on being by them particularly questioned, that he did not know any of the men. Both Leeman and Chote in this tragical affair, must have been so agitated and confused as to be incapable of remembering distinctly what they saw or heard, of the facts stated in the declaration of Chadwick. I know great stress will be laid on poor Chadwick's dying speech. It is a situation that naturally moves our feelings to sorrowful sympathy ; but here we must lay those feelings aside, and try the effect of this evidence by our cool reason. Doctor Huntoon was with this dying man writing what he would say before the Justice arrived ; Chadwick had proceeded to state and Huntoon to take down in writing the manner of his being wounded. On the coming in of the Justice, Huntoon delivers to him what was written, to which he added some more, after copying what Huntoon wrote, when the whole was read by the Justice, in the hearing of Chadwick, who said it was true. You will bear in mind, gentlemen, that on this occasion Chadwick's mind and body was greatly enfeebled by the loss of blood ; and it has been testified by Huntoon, that little else than yes and no, was said by Chadwick during the whole of his examination. Now, gentlemen, figure to yourselves a man of the art and address of Dr. Huntoon, by the side of a dying man, for whom he acknowledged he felt a great regard. Here in Huntoon's bosom the spirit of revengeful justice would be excited against Chadwick's murderers, and to all this, add the evidence of Huntoon's ill will, and I may say inhumanity towards the prisoners, that has transpired in this town during the trial, as related by two witnesses. You will, perhaps, with great propriety suppose that Chadwick's condition produced a feebleness and pliancy of mind that could be easily practised on, and that Doctor Huntoon was a very fit man to carry such a project into effect ; connect with this idea, the testimony of Peter Heald, who says Chadwick's mind seemed so feeble and senseless, that he thought his deposition which he wanted to get, would be useless, and the supposition I have been making, must be strengthened into a fixed opinion.

We will now consider the confession of the prisoners. This by the Solicitor has been considered as conclusive evidence ; but, gen-

lemen, in deliberating on the subject, you will consider the nature of the human mind. You will consider a thousand cases where a man perfectly innocent, charged with a heinous crime, under circumstances of presumptive evidence, such as to make the inference of his guilt almost certain. Of this kind occur to my mind two cases in the books, where two men were executed for murdering two persons who were afterwards found alive. Why, gentlemen, what state of mind would a consciousness of innocence, and a certain expectation of capital punishment, produce in any honest man? What is dearer than life, and what will not a man do to save it? Under this fearful apprehension of being deprived of life, what man would be stout hearted enough to resist the formality of a confession, if he were strongly impressed that measure would save him? On this principle it is, gentlemen, that I account for the confession of the prisoners; that they did expect favor is proved beyond a doubt, by their giving themselves up; and their confession was only a continuance of the same procedure; and the law says, that a confession extorted by threats, or an expectation of favor, is not admissible evidence.

We now proceed to the last species of evidence against the prisoners; their absconding from justice after the fact. And here, gentlemen, all I have said on the subject of confession will apply with equal force to this point; considering of what materials the mind of man is framed, it will be enough for your purpose, gentlemen, to account for this part of the conduct of the prisoners, that *fear* is not always the companion, or the effect of guilt. A hardened sinner fears not while he feels secure from detection, but an honest man will fear, and will avoid the tribunals of justice, if he has a certain expectation that by perjury or any other false evidence, that he is certain would be offered on trial, he should pay the forfeiture of life. I seem to myself, to have proved that an attempt to avoid the formality of a trial, is not sure evidence of guilt; if then, some other evidence is not coupled with this, the prisoners cannot be found guilty. You have, gentlemen, seen the faces of the prisoners on trial; I will ask you, do they look guilty? Proctor who is indicted as an accomplice, and who is pressed into the service of government, as a witness, says, under the solemnity of an oath, that he has no knowledge of the manner in which Chadwick was shot; and that he saw no man in disguise on that day. Gentlemen, it is not the out door talk, that should furnish a measure for your verdict; you must decide by the law and the evidence.

And here, gentlemen of the jury, I will close my remarks on the evidence. I have endeavored to give it a construction that was reasonable, natural and consistent with the principles of law; Mr. Mellen will follow me, and close the defence; he will supply such pertinent observations as I have omitted; I must remind you, that the lives of these men are in your hands; it is an important and a

sacred trust, and I beseech you, gentlemen, to weigh and ponder well what has been offered, that your consciences may be acquitted of all partiality and prejudice ; that with clean hands, and pure hearts, appealing to the Author of life and light, for the wisdom and the rectitude of your intentions, you make a conscientious and scrupulous examination of all the evidence, and as you value your reputations and peace of mind, you form a correct and righteous verdict ; and if I am not greatly mistaken in the opinion I have formed of the whole case, I trust you will find a verdict that will cause the prisoner's hearts to sing for joy.

Mr. Mellen.—May it please your Honors and you Gentlemen of the Jury,

I rise impressed with the awful responsibility of defending seven of my fellow-citizens against one of the most heinous crimes that ever entered into the heart of man to perpetrate—I mean the killing a rational creature in cool blood with premeditated malice. On this solemn occasion, gentlemen, I beseech you to lay aside all other cares that naturally intrude themselves into the ordinary current of your thoughts, to summons to your aid with undivided attention the whole powers and faculties of your minds, and for once put off, so far as may be, the frailties of your natures, and consider the subject simply and abstractedly, void of all partiality and prejudice. To you, gentlemen, is now committed a most important trust, and I doubt not you will discharge it in a manner to leave no upbraidings of conscience to discomfit you hereafter in your reflecting moments. The guilt or innocence of the persons at the bar is to be deduced from a great variety of evidence that has passed in review before you on trial.—It is my duty to comment on this great mass of evidence, and by what I shall consider a natural, legal and fair construction, to prove that the prisoners ought to be acquitted. This is both an arduous and an anxious task ; but by the help of God I will discharge it with all the solemnity and deliberation that the subject may require and my best faculties afford.

It will be unnecessary to be so particular on every part of the evidence as I otherwise should, had not Mr. Wilde, who has done ample justice to the defence, anticipated many of my remarks.

The evidence disclosed on the trial may be divided into four distinct portions.

1st. What transpired on the day when Chadwick received his wounds.

2d. The avoidance of the prisoners.

3d. Dying declaration of Chadwick.

4th. Confession of the prisoners.

The testimony of Chote, gentlemen, you will remember ; he says, that at the time and place where Chadwick was wounded in the bushes, a pistol was presented to his breast. Amidst these intervening objects, how could he see and remember distinctly ? He

knew, he says, Barton and Joel Webber by their caps being up ; but here it seems to me he must have been mistaken, as from the form of the caps they could not be thrown up without covering the eyes. I see, gentlemen, you have taken memoranda of the evidence, and you will be able to determine for yourselves how the cap was formed. The transaction was in the woods ; there were many intervening objects ; connected with this circumstance the extreme agitation of Chote from the horror, the bustle and confusion of the scene, must render the testimony of Chote at least very doubtful. With regard to David Lynn, Chote tells you, his veil was down, so that he could not see his face ; but that he could see his lips and eyes. Gentlemen, have you not seen persons with masks on ? The face of a man disguised is so ghastly and terrific, that he could not be known even by his most intimate friend or nearest neighbor. Chote says, the man he took to be David Lynn, spoke, as he thought, in his natural voice, but says he could not know the man so as to swear to him positively. But will you, gentlemen, undertake to decide on the life of a man from such evidence ? Holloway says, that about ten o'clock on the same day, he saw three men in disguise, that he knew two of them, Jabez Meiggs and Elijah Barton ; that about five minutes after he saw three men putting on caps near by, two of whom he took to be Meiggs and Barton. But, gentlemen, it would be intruding on your patience to take up your time in attempting to refute this evidence, because he has been completely discredited by three respectable witnesses.

The testimony of Jonathan Vining we will now consider.—It is to be presumed that the men seen in the different parts of the town were the persons who were concerned in the transaction which put a period to Chadwick's life. Vining states that about one o'clock same day he saw nine men in disguise, among whom were Elijah Barton, Jabez Meiggs, Anson Meiggs, David Lynn, Nathaniel Lynn and Jonas Proctor, and three others he did not know ; that he saw the faces of these men when they were stirring round ; that they spoke some times in a disguised voice and some times in their own natural voice ; that by their built he suspected them. I will undertake, gentlemen, to say, that from the shape of a man and a small portion of his countenance, he cannot be known with certainty. He tells you he saw Barton and Jabez Meiggs measuring the charges in their guns with their ramrods ; but this man Vining is contradicted by five respectable witnesses. Mason, a witness for government, states, that there was an enquiry for the surveyor and Chadwick ; that he saw men in disguise ; that he could not know either of them. What, gentlemen, can you infer from this contradictory evidence ? Mason gives a reason why he could not know the men—because their veils were so put on that their faces could not be seen ; for, says he, I once saw a man in disguise and was very sure I knew him ; but afterwards found my-

self totally mistaken. Ladd says that he knew none of the men, and that he saw no attempts to measure their charges in their guns with ramrods. Isaac Marsh says the same, although one of them shook hands with him and enquired for the surveyor. But, gentlemen, these three men were present all the time with Vining and contradict him in the most material part of his testimony; add to this, gentlemen, that this witness told George Mason, James Hussey and Gershom North, at three different times and places, that he could not swear positively to any one man he saw in disguise; we then oppose to Vining the testimony of three witnesses who were present and might have seen all that Vining did, but saw nothing of the most material facts mentioned by him; and three other witnesses say on oath Vining told them that he could not identify by oath any one of the men. A further disqualification to Vining's evidence is his reputed want of veracity among those who know him; but on this part of the evidence I will not longer dwell, nor should I have said so much had not the refutation of it been of great importance to the prisoners.—I doubt not the jury will give it a scrupulous examination. Another kind of evidence is offered by David Leeman.—After Chadwick was wounded Leeman saw Barton and Jabez Meiggs, undisguised, going to old Mr. Lynn's; but what only seems worthy of notice is, that on his return by the house of John Lynn, jun. he heard a riotous noise there; as he stood in the highway about four rods from the house, he heard the following expression—"I meant to fetch him, I tho't I should fetch him, and by God I did fetch him;" but there is not a tittle of evidence that one of the prisoners was there. Gentlemen, you will be satisfied that some of the prisoners were there before you will impute any meaning to those words.

The guilt of the prisoners has been inferred from their absconding into the woods after the death of Chadwick—Barton seems to be the only man to which this evidence can apply, except David Lynn, who it was stated was hid under the floor of his own house, and were it necessary I think I could reconcile the conduct of the prisoners on this head with their perfect innocence; but on this subject I will refer you to the observations of Mr. Wilde, which were very pertinent and forcible.

By the testimony of Mrs. Chadwick, mother of the deceased, there has been an attempt to prove previous malice; that part of her evidence which referred to an old grudge of three years standing must be laid out of the case; and the observations of J. Meiggs to Chadwick's wife, "that her husband was going a long journey," may be explained by the evidence of his intention to go to the Ohio, and also of his having some misunderstanding with his wife.

I will now pass to the evidence of Chadwick's dying declaration. The law gives to the declaration of a dying man made under certain circumstances equal effect as to the deposition of a creditable witness taken in common form, but to give evidence of this kind

complete effect, it should appear that the deceased, when he made his declaration, was under the solemn apprehension of immediate death, and that he should be in full possession of all the faculties of his mind.—From the testimony of Justice Bracket, Dr. Huntoon, and the mother of Chadwick, it seems he was of sound and disposing mind, and that he thought he was a dying man.—But, gentlemen, there are other witnesses equally respectable, who think very differently about this man.—Mr. Arnold was constantly with him, and says he was void of his senses a great part of the time; Peter Heald testifies to the same fact.—He went to obtain Chadwick's deposition to be used where Heald was a party, and found his mind so feeble and deranged as to abandon his purpose, supposing it to be impracticable. The law authorities suppose that the declaration of the deceased to be competent evidence, must be from a man who continues to make the same statement even to his last moments, but Chadwick has contradicted himself, for he did say he did not know any of the men, who shot him. The declaration of Chadwick to Chote, Leeman, Huntoon and Bracket, you will recollect. But, gentlemen, what says Ward and McGlothlin? Chadwick told them he did not know any of the persons who fired at him; and on being asked, whether he knew any of the company that were there? replied that he did not.—Here then, gentlemen, are two witnesses on one side opposed by two witnesses on the other. I know it will be attempted to be explained by what Chote says Chadwick told him; when he said he wished too much should not be said on the subject, lest they should finish killing him and come and kill Chote also.—It would not be decent to suppose that Chadwick, who believed himself a dying man, should attempt to offer reasons why he did not wish to have it thought he knew who his murderers were.—This dying declaration of Chadwick being doubtful, you cannot, I am sure, convict the prisoners on that portion of the evidence.

I now pass to the confession of the prisoners.—You will remember the passages read by Mr. Widle from the authorities shewing how tender the law is towards the life of a citizen.—Why, gentlemen, if the prisoners should plead guilty in court, the court would advise them to take back their plea and have a fair trial—I then ask you, gentlemen, for what purpose is all this caution from the bench, if a confession is not the last resort of evidence?—But if after all the prisoner still persist in his plea of guilty, the court will take it down with tears in their eyes. But, gentlemen, what was the situation of the prisoners when the confession was made? Lynn had been arrested, the others prisoners were alarmed.—It is true Mr. Hill tells you, he thought he cautioned them, that their confession would be given in evidence against them, but none of the other witnesses there present nor the Justice remember that Mr. Hill's caution extended to inform them that their confession would be given in evidence against them. The question put by the Jus-

nice was of a doubtful nature—Was you *there* ?' was the question ; but that is indefinite—What is meant by the word *there* is doubtful, and nothing can be inferred from it. You will, gentlemen, recollect the testimony of Dr. Randall about meeting the prisoners in the woods ; there the tenor of what the Doctor said went to induce them to believe, that by a confession they would obtain some important advantage.—Again, gentlemen, there was a previous conversation with Justice Bracket, when, although the magistrate states he gave them not in words any assurance, that their confession would turn to their advantage ; perhaps even by his silence they entertained unwarrantable hopes.—But, gentlemen, what can you think of the manner of their confession, when you refer this testimony to other parts of the evidence, and find all the prisoners overwhelmed with grief around the Justice ; all as it were mechanically and in one breath confessed they were there ? If then, gentlemen, you should be of an opinion that through expectation of favor, they were induced to make this confession, you will not heed it.

I proceed, gentlemen, to make some remarks with regard to two of the prisoners against whom there is no evidence except their confession—I mean Prince Kein and Adam Pitts ; the latter has been proved to be a mere child, possessing a very small mind, and that like his father was a kind of a lunatic.—Not a tittle of evidence against either of these men, except their confession made under very doubtful circumstances.

Several of the prisoners, viz. Elijah Barton, Jabez Meiggs, Nathaniel Lynn and Prince Kein, it cannot be presumed were at the place when and where Chadwick was wounded, because they have proved they were on the same day at such distances from the scene of action, and at such times in the day, as to render it impossible they should either of them be present at the spot when Chadwick received the mortal wound.

We have now come, gentlemen, to the last point in the cause—That is, whether all the prisoners who were present at the time Chadwick was shot have committed murder (here a passage from Foster's Crown Law was read, the import of which was, if great bodily harm be intended, and killing ensue, it is murder. A passage also was read from Hawkins' Pleas, the import of which is if a slight bodily harm be maliciously intended and killing ensue it is murder.)

Mr. Mellen proceeded. This is the law of the land, gentlemen, and you are to be guided by it, in your verdict. You have observed, gentlemen, that the guns were loaded, not with balls, but with very small shot ; it therefore seems it was not the intention of those who discharged their guns at Chadwick, to take away his life. I have now, gentlemen, gone through with the evidence ; I have nothing more to observe, than to request you, if I have mistated or omitted any part of the evidence, or the law, I pray

you and the court to excuse me. I leave the cause with you, most earnestly beseeching you to render such a verdict as will acquit your consciences towards your God, your country, and the prisoners at the bar. Finally, gentlemen, it is your province to decide whether they, released from ignominious bonds and imprisonment, shall be restored to the endearing and social comforts of the society of their families, friends and connections, to the full enjoyment of life and light, or whether they shall be taken from the land of the living by the arm of offended justice.

Solicitor-General.—May it please your Honors and you Gentlemen of the Jury,

I have to close this cause on the part of the commonwealth.—I need not inform you that I feel my situation extremely important and distressing. If I know my own heart, and I appeal to Him who made it, if I did not think the prisoners guilty, I should not raise my voice against them. I represent a merciful government, but it is not to be forgotten, that justice is one of its principal attributes. One idea of the justice of the government is, that the guilty should be punished.—It is as necessary that the guilty should be punished, as that the innocent should be acquitted.—For three days past your consideration has been called to the principles of mercy; you must now turn your attention to the severe duties of justice.—There has been nothing left undone, that is in the power of man to do, for the prisoners: their counsel are learned in the law, and they have exerted every power of ingenuity to defend them.—Their judges have shown all the patience and attention that could be asked for.—In the defence of the prisoners means have been made use of to excite your compassion, that in any other case I should not have indulged. I have reference particularly to the reading of some severe laws from English authorities.—About one hundred and sixty distinct capital crimes have been mentioned as existing by the laws of England.—But to this proposition I have to reply, that in our land of freedom, where the rights and liberties of the citizens are hedged in and scrupulously protected by equal laws, six crimes only are punished with death. Our legislative code is a very honorable comment on the humanity and mild sense of justice for which our nation is distinguished.

The great body of the people are strongly averse to the shedding of human blood.—We have no royal prerogatives or privileged orders protected by sanguinary laws. But the crime charged upon the prisoners, not by our laws only, but by the laws of God, is punished with death.

1st. In this case government must prove the death of Paul Chadwick.

2d. That he was killed by the prisoners at the bar.

3d. That he was killed with a felonious intent.

I shall wave several observations I intended in reply to the ingenuity of the counsel for the prisoners, for the time would fail

me were I not to leave untouched many particulars. I shall recite the great body of the evidence.

First, I am to prove Chadwick's death.—That he was wounded on the eighth and expired on the tenth of September will not be denied, and it would be idle to attempt to prove it. I will now, gentlemen, to prove the second point, that the prisoners killed Chadwick, call your attention to the testimony of the witnesses.—Aaron Chote tells you, that on the 8th of September last, between two and three in the afternoon, he was running a line in the town of Malta with Isaac Davis a surveyor, James Pratt and Paul Chadwick; that he went before the others to the corner bounds and sat down; that hearing a rustling of bushes, he looked up and saw nine men in disguise, one of whom came up and presented a pistol and said, "if you say a word I will blow you through;" another of the party behind pointed his musket down the bank at Chadwick, who held the fore end of the chain, and snapped several times, but the gun would not go off—"Damn the Buskahunda," said the man, (an Indian name for gun.)—Joel Webber he saw there as he supposes; David Lynn he took to be the man who pointed the pistol at him; for though his veil was up, from his eyes, his mouth, his shape and walk, and *especially* his voice, for he used his natural speech, he knew him. Elijah Barton he was certain of; his cap was up and he saw his face distinctly; three guns were discharged; the first wounded Chadwick in the leg, the second in the loins, with which wound he fell to the ground, and the third in the shoulder. After the last gun all the party ran down the bank to Chadwick, (Chote followed close after them) gathered round him, turned him up and said, "Damn him, it is good enough for him, he had no business here." One then further observed, "Me go and shoot the surveyor," and immediately they all disappeared.—Doctor Randall's testimony has been very distinctly related, you all will remember it; he described the wounds Chadwick received, and tells you they were necessarily mortal, and that he saw his dead body on the day of his funeral. The tragical part of the story has been well told by Chote, he stands before you unimpeached.—"An honest man's the noblest work of God."—The prisoners' council think Chote to mistake, because he says the cap of Barton was up, and that the cap set so close to the head, that it would not turn up, and that no being but his Maker could see his face. It is a pity if he was so concealed, that he was not more conscious of being seen by that one Being.—The evidence produced, composes such a solid mass, and in my mind is so complete, that although I have no other wish than to perform my duty to the government, if I was malicious enough to wish the prisoners might be found guilty, I should not have an inclination to add one jot or tittle. William Holloway states, that on the 8th September he saw Barton and Jabez Meiggs, and pursued them; that they were not out of sight more than five min-

utes from the time of first seeing them, before they were disguised by the road side. (Here the court corrected the Solicitor-General.) I am happy to stand corrected in this or any other instance; he saw three persons, whom he took to be the same, in about five minutes, disguised in Indian dress. The manner in which Noah Woodward discredited this witness I will ask you to recollect; I do believe the old man meant no harm, but I could not help noticing the peculiar satisfaction he took in discrediting him; but his testimony is supported by Vining. Vining tells you, that nine persons came to his house about one o'clock same day; that they threatened to straighten Chadwick's eyes; that he saw their faces, as they were stirring round, and knew Elijah Barton, David Lynn, Nathaniel Lynn, Anson Meiggs, and Jabez Meiggs, and he thought he saw Proctor, they were all disguised. An attempt has been made to discredit the testimony of Vining. That a man should form a deliberate design without any apparent motive to take away the life of another, and add this nefarious crime to that of perjury, cannot be reconciled with any principle in the human mind. It is in vain to conceal what one of the prisoners' council, Mr. Wilde, calls the actual state of the country; and here it will be proper to submit to you one remark with regard to Vining. I do actually consider his situation perilous; thus circumstanced it is impossible to conceive any motive operating in the mind of Vining so strong as the desire of telling the truth in a case of this importance, when his own life and reputation were in jeopardy. Four witnesses have been produced to discredit the testimony of Vining; one impeaching his character himself has been impeached; and there are seven witnesses who have said his character was good. By the law where the balance is in favor of a witness he is entitled to credit. Whenever a man is indicted for any crime, he has nothing more to do than to hunt up the enemies of the several witnesses (and every man has enemies) that are to appear for government, and then hunt down their several characters and the point is gained. Again, Vining's testimony is confirmed by that of Ladd, a witness for the prisoners; in almost all the points testified to, Vining's testimony is corroborated by Aaron Chote; by the dying declaration of poor Chadwick; by the prisoners themselves in their confession before the Justice. With regard to his character, you have it with you, I cannot make one hair white or black, I only ask you to put such a value on it as will do him justice. I proceed to remark on another part of the evidence—the dying declaration of Chadwick. And here I will observe, that I regret the nature of the defence should have induced the council to say any thing against poor Chadwick. The declaration of a dying man, gentlemen, is a solemn thing. One dying is like one just risen from the dead, for the dying and the dead are very near to each other; Chadwick states, that he knew two of the persons, who had injured him,

Barton and Jabez Meiggs. Why is it, say the council for the prisoners, that he should make contradictory declarations? Shall not a man wounded in the woods be supposed to make a natural observation, when he directs a friend with him not to say too much, lest an enemy should return upon them and murder them both? It has been observed by the prisoners' council, that Chadwick, when he made the declaration, did not possess his rational faculties; on this point Peter Heald alone is opposed by the testimony of Huntoon, Justice Bracket, old Mrs. Chadwick, Leeman and several other witnesses, who all say that he had his mind and memory as perfectly as usual, and fully realized his situation. I now come to another part of the evidence, that is, the avoidance of the prisoners. No innocent man would feel an inclination to abscond from the justice of his government. Our free country affords impartial tribunals, and no innocent man can fear a fair trial. "I am a fugitive and a vagabond, whoever shall find me will slay me," is the language of guilt. I will request you to recollect Dr. Randall's testimony of what passed in the woods; I was not permitted by the court to put questions to him, that show the confession of the prisoners, but this much was mentioned, that they wanted a petition for a pardon—a pardon! gentlemen, for what? for what purpose does an innocent man ask for a pardon?

This tragical scene with Chadwick happened in the fore part of the month September, when in our climate the clear sky—the mild temperature of the air, and the green foliage of the forests invite man abroad to view and contemplate the works of nature—The effect of this natural scenery is to move the mild, the tender, and the benevolent affections. But this effect was not produced in the savage bosoms of those who sought the life of poor Chadwick; nothing would assuage the rancor of their hatred but his blood.—Barton and his party had, by a sense of their guilt and a fear of punishment, been driven from the haunts of men to assume a savage life among the beasts of the forests. In this situation, where nothing that gives the convenience of civilized life, you may presume it was that Barton's gun was wadded with the green foliage, as described by Major Weeks, who tells you the gun was loaded, and that he could not draw the charge.

Another part of the evidence is the confession of the prisoners.—The Justice states, that he had a knowledge that the prisoners were inclined to confess their guilt, and Mr. Hill was requested to assist the Justice. Mr. Hill acted like a man who had a knowledge of the laws of his country and the rights of the prisoners.—He and some of the witnesses think a little differently about what he said to the prisoners, that their confession would be given in evidence against them. The constitution of the government says, a free and voluntary confession of the party is the best evidence against him. It is not my wish, nor the wish of the government I represent, that more importance should be attached to the evi-

dence than is warranted by law and common sense. What is the nature of this evidence? Why they were brought before a magistrate and informed, not by a friend or their attorney, but by an agent for government, that they were under no obligation to confess. Another circumstance is worthy of notice—this confession was made with tears in their eyes; they were overwhelmed with grief; for what I ask in the name of justice? Will an innocent man weep? Weeping, gentlemen, is not the language of innocence; it is the language of guilt. With respect to Jonas Proctor, I leave him to his conscience and his God. With respect to Jabez Meiggs, I say with great regret, there is not one particle of evidence in his favor—I leave him to you. With respect to David Lynn, all the witnesses agree there is but one man that had a pistol, and Mr. Chote tells you he thinks it was David Lynn presented a pistol at him; that from his shape, being round shouldered, his teeth, his eyes and his voice, he thought the man David Lynn. It has appeared by David Lynn's own confession, that he hid himself under the floor of his own house, that his wife took a board and put it over him. How this reminds us of what we read, "that the wicked shall call upon the rocks and mountains to hide them." Nat. Lynn and Anson Meiggs were identified by Vining. With respect to Nat. Lynn, if he had not confessed before the Justice he was guilty, I should think that the testimony of his brother James Lynn would go to prove an *alibi*. Edward Gordon, another witness, so testified, that though, on this solemn occasion I could not for the life of me refrain from smiling; he seemed like a man direct from the woods just caught. With respect to Prince Kein, he has totally failed in proving an *alibi*. It appears from the testimony of their own witnesses, that as Kein lived in his wife's father's family, if he had been at home it might have been proved. With respect to young Pitts, it will not be pretended that his mind is so feeble or deranged as to render him an unfit subject of legal punishment. If he deserves mercy, our constitution has provided an ample fountain of it, and placed it where it ought to be; but it is not your province, gentlemen, to bestow it; you can only determine whether he has broken the law. I have only touched on each point; I have almost galloped over the cause—I will mention a few remarks on one point.—It is utterly impossible to consider the prisoners, if guilty at all, guilty only of manslaughter. It may perhaps be said, there was no design to commit wilful murder; that the intention was nothing more than to affright or slightly wound.—Why, if after a millstone were tied around one's neck, he were plunged in the depths of the ocean—Were a sharp razor so drawn across a man's throat as to sever the two jugulars—Were one to be pushed from a high precipice so as to be dashed in pieces by falling, as well might the wretch committing this outrage say, he only designed a little sport, he meant only to affright, not to wound or kill the

man. The previous threats of Jabez Mciggs, that "he would put Chadwick's soul where it would not come back again;" "that Chadwick was going off on a long journey;" (the latter expression only two days before he was shot;) the manner of seeking for and shooting Chadwick, shows their design to be deliberate, premeditated, and highly malicious; nine men, all armed and in disguise, all set upon him at once; they demanded no par lance; they held out no conditions of mercy or forbearance—the number of guns discharged at Chadwick at intervals, and one after he had fallen to the ground.—It was not enough to murder him, they stepped up to him, not like the good Samaritan, to examine his wounds and to pour oil and wine into them—no, instead of affording him relief by comforting words or humane acts, they damn'd him to his face, saying, it was good enough for him, he had no business there; and altho' knowing him to be dangerously if not mortally wounded, they left him in haste weltering in his blood; and remorseless as barbarians, on the same evening they resorted to a scene of merriment and intoxication, in which diversion it is believed they spent the night. Paul Chadwick, on the day "when he was sent to his account with all his imperfections on his head," was in the peaceable discharge of his duty in performing a friendly office to a neighbor, without any the remotest provocation, was murdered in cool blood. What shall I say, or what shall I do in this case, gentlemen, to rouse your indignant sense of justice? I have submitted to you all the observations I have to make—I have no malice against the prisoners—I have but done my duty, and it is an arduous one. With regard to your own duty, gentlemen, I will only say a word.—You have an arduous task to perform—you must not shrink from your duty. "Moreover ye shall take no satisfaction for the life of a murderer, who is guilty of death, but he shall surely be put to death, for the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it."

If a solemn tribunal like this court, should depart from the principles of justice, and the jury through false notions of mercy should acquit the guilty, they would by their ill timed lenity to an individual, commit an unpardonable act of cruelty towards the whole community. Such a verdict would have the effect to induce every man to revenge his own wrong; all confidence in the protection of government would be at an end, and each individual would erect his own tribunal, and measure out justice against the man who he supposed had injured him according to his own partial, selfish feelings. In such a state of things, all justice, law and order would be shaken to their centre, and the great depths of honor, honesty, and fair dealing, would be broken up from their foundation, and to command peace from outrage; to cause order to spring from confusion, and make the society we live in feel quiet and secure,

*"You might as well forbid the mountain pine
To wag their high tops and to make a noise
When they are fretted with the gusts of heaven."*

I have only to add, gentlemen, that you must do your duty, as it respects your God, your country, and the prisoners at the bar. There can be no doubt what your duty is, if you believe the prisoners guilty. "He that sheddeth man's blood, by man shall his blood be shed."

Here the Solicitor-General closed the pleadings in behalf of the government, and Judge Parker proceeded to sum up the evidence to the jury.

Parker Judge.—Gentlemen of the Jury, you are now after a patient attention of this important cause for seven days, arrived to nearly the conclusion. The evidence offered on the trial has been by all the council commented on ably; and there can be no doubt you will decide impartially. It may be thought out of doors, that the jury will be influenced by the prevailing opinion out of court; but we rely confidently on their integrity and discernment, that the law and the evidence will be the measure of their verdict. With respect to the opinion that may be entertained by some of the community with regard to the degree of punishment to be inflicted, I need not inform you, that that idea can have no relation to your verdict.

By the indictment it appears the prisoners are charged with the feloniously killing of Paul Chadwick. The law is, that if any persons are assembled together for the purpose of committing a homicide, that those who strike the fatal blow and those present aiding and assisting are equally guilty.—The prisoners to this indictment have severally pleaded that they are not guilty. This, gentlemen, is for you to try. You have it in your power to find part or all guilty, and to acquit part or all as the evidence may warrant. In order to find a satisfactory verdict, you will form to yourselves a course to pursue. You will find first whether Chadwick was killed, and second, whether he was killed by the prisoners.—(Here the Hon. Judge recited at length the particulars of Chote's testimony and observed that) the next question regards the intention or design with which Chadwick was killed. The evidence that shows the manner of shooting this man does not prove his death accidental.—The party who shot Chadwick were all disguised and armed; they demanded no parance or explanation before they fired upon him; they discharged three guns at him at intervals, and one after he was wounded and on the ground; and then went to him and damn'd him, saying it was good enough for him.—Here no one of them said comforting words; they expressed no sympathy nor compassion for this unfortunate man; they left him weltering in his blood on the ground without contriving any means of affording him relief. He seemed to be the object of their pursuit some hours before he

was shot ; and they said they meant to straighten his eyes ; for it was said he was cross-eyed.—There is no evidence of any provocation on the part of Chadwick. Nor did the sad catastrophe happen on any sudden affray, heat or passion. The law is, that wherever personal harm is intended and death ensue it is murder. The law is in these words, “ That whenever a person in cool blood, by way of revenge, unlawfully and deliberately beats another, that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far.” This is the principal question of law in the prosecution. The construction that has been given by the prisoners’ council on this point seems not to me to be correct.

With respect to all the other points of law that have come up in the trial you will probably have no doubt. You will now, gentlemen, determine whether the killing is murder, and whether the prisoners at the bar committed it. By one of the council for the prisoners, it has been observed, that each portion of the evidence must be considered distinctly by itself, in order to form a correct verdict ; but I am of a different opinion—to explain the intent in the acts by which Chadwick was wounded, I think the whole evidence should be considered collectively. (Here the Judge recited the testimony of Holloway and observed that) the character of Holloway was generally discredited.—The law considers that such a man could not regard the solemnities of an oath ; but facts may be proved independent of his testimony confirming it, in which case you are to pay some regard to it.—To the evidence offered by Vining the same remarks may apply ; (here the Hon. Judge recited the testimony of Vining and observed that) he saw them walk towards the place, where the catastrophe happened. The testimony of this witness is very important in the cause. By not performing contracts punctually, a man may get a bad character for truth ; this circumstance you will consider. It has been proved that Vining said he could not swear to any of the prisoners ; but you will consider whether he had not a right to withhold his knowledge from those he talked with, on the subject concerning which he was to testify in court. From their faces, their voice, their gaits, their shapes, he says he knew them ; their faces another witness, Mason, though present, says he did not see. If you believe Vining, you have it proved, that the two Meiggs, the two Lynns, and Barton were going to the place where Chadwick was wounded, enquiring for their victims. Next you will consider Aaron Chote’s testimony ; he counted nine men armed, and in disguise ; they commanded his silence and he obeyed ; Joel Webber’s cap was up, some one told him to put it down ; another man he knew, which he swears was Elijah Barton. If you believe the testimony of Holloway and Vining, you will say five of the prisoners are guilty ; but if you doubt their testimony, you will then say two of them are guilty, if you credit Chote. If, gen-

Nemen, the testimony of a dying man cannot be credited; the security of life against the murderer and assassin would be greatly diminished. When a man testifies under the solemnities of an oath, he calls God to witness; so does the dying man about to exchange worlds, who is sensible of his situation, and that he is coming into the immediate presence of his Maker. Chadwick being mortally wounded, expressed his opinion of his situation, and being examined by a Justice under oath, he stated that Elijah Barton and Jabez Meiggs were two of the number who wounded him. But, gentlemen, you will bear in mind what has been urged by the council for the prisoners, that Chadwick had not the full exercise of his rational faculties; Peter Heald states, he was with Chadwick, soon after the Justice was with him, and that he appeared most of the time not to possess his senses; Arnold thinks he was not in his senses all the time.—You will consider what weight may be allowed to the declaration of Chadwick.—It will be proper for you to view it in the light of a deposition.—And here, gentlemen, you will recollect the testimony of Chote, and what Chadwick said on Leeman's putting the question to him, Paul do you know any of the men who have done the mischief? he said he knew two of them, Barton and Jabez Meiggs.—You will remember what he said to Chote about not saying too much, lest the men who shot him, should return and kill him and Chote also.—It is for you, gentlemen, to determine how far this caution may go to explain the answers he gave to Ward and McGlothlin, that he did not know any of the men who shot him.—There is another species of evidence resorted to by government. It is a rule of law, that a confession made without any hopes of favor, or advantage therefrom, and when not obtained by threats, is the best evidence against a man.—The testimony of Justice Bracket and Mr. Hill, proves fully the confession of all the prisoners that they were present when Chadwick was wounded. It is true their recollection varies with regard to the mode of putting the question to them by the Justice; who thinks it was expressed, was you *there*? but as the warrant that contained the charge of murdering Chadwick, had just been read, it will leave perhaps no doubt in your minds that by the word *there*, was intended the place where Chadwick received his wounds.—The evidence of the confession with respect to two of the prisoners, Nat. Lynn and Prince Kein, is highly important, because it does not appear that any other evidence has been produced against them.—You will then, gentlemen, revert to the evidence offered by the prisoners, and see how far it does away the evidence produced by government. Now, gentlemen, if any one of the prisoners should prove to you, any evidence against him notwithstanding, that he was at the time Chadwick was wounded in another place, you ought to acquit him, because he could not be in two places at once; this would be proving what would be called an *alibi*, which is in common cases

difficult to be proved ; I take for instance the testimony of Mrs. Palmer. Without some transaction happening in the course of the day, time flows on so unmarked, that it is difficult without a correct time piece, to ascertain the precise time of day. (Here was mentioned by the Judge, the evidence offered in favor of several of the prisoners to prove an *alibi*, whereon he observed that Nat. Lynn only appeared, (if his brother James' testimony was believed) to have proved that point.) With regard to Pitts' capacity, it will be proper for you, gentlemen, to determine whether he lacks that discretion which enables him to discern the nature of crimes and punishments.

In the books a case is mentioned of a boy eight years old, who killed his brother, and because he dug a hole and buried him so that he might be concealed, it was adjudged evidence of such contrivance and design as to constitute the crime of murder. It is within your province to say, gentlemen, whether Pitts' want of understanding is such as to render him not capable of committing the crime of murder. Thus, gentlemen, I have summed up the evidence with as much impartiality as possible, and certainly I feel as much as any man. The man who sits upon the jury not with a disposition to find the prisoner innocent, if possible, is not worthy of his trust. But, gentlemen, we have our stations allotted us, and however painful the duty, it is important in the highest degree, and must be discharged. When you have weighed all the evidence, you will naturally ask yourselves, Are these men guilty ? If the jury should be warranted in a conclusion that the prisoners are not guilty, every man will rejoice ; but if guilty, we shall bow to the law, while we all regret the necessity of adding another example of punishing the wicked.

Gentlemen of the Jury,—I cannot avoid making a few remarks, that I do not consider applicable to the prisoners at the bar.—There have been attempts to keep the possession of lands from their legal proprietors, and by resisting the surveyors to hinder the means of a fair investigation of the claims or titles of lands.—Is a government that has been established, respected, and revered for more than thirty years in extending her protection to the rights of person and property, to be resisted by a few disaffected, unreasonable men ? Such is my opinion of the support that would be given by the friends of law and good order, that were there to be an insurrection to oppose public measures, five to one even in the County of Kennebec would be arrayed on the side of government. But suppose the rioters should be successful in effecting their purposes in this remote section of a great and flourishing commonwealth, would the whole state sit down quietly under the inroads made on their laws and venerable usages, which are guaranteed by all the sister states ?—But, gentlemen, such opposition to the laws is vain, it cannot prevail to any considerable extent. It would be treasons, the highest crime in our legal code. The offenders would

be apprehended and brought to public justice, or they would be forced to abandon the land of their nativity, where life, liberty and property were protected by equal laws, for some remote, inhospitable region, where, perhaps, the tyranny of the laws would oppose a more formidable barrier to their wicked and lawless inclinations.

Sedgwick Judge.—It was the intention of the whole court to give separate charges to the jury, but our brother Parker has so fully taken a view of the evidence, so intirely corresponding with our several opinions, that we shall forbear to make any further observations, except to implore the Father of Lights to aid you in your deliberations on this solemn occasion.

Friday morning, the jury informed the court that they were not agreed.

Sedgwick Judge.—Asked the jury whether they had any communications to make ; the jury replied, that they wished the court to inform them, whether, if they could agree to acquit or find guilty part of the prisoners, not being agreed with regard to the others, the court would permit them to return such a verdict ?—and the jury further observed that they had some doubts concerning the confession.

The court observed, that there were no authorities or precedents that would warrant the court in receiving such a verdict, and that with regard to the confession, if a prisoner pleads guilty in court, the court will apprise him of the consequence of his plea, and that he might take it back and put himself on trial—his confession so made in court will be considered as no evidence against him ;—but, if out of court the prisoners, uninfluenced with threats or promises, shall make a free and voluntary confession, and especially if done before a magistrate, shall be taken as the strongest evidence against them. And although there is the strongest probability the confession of the prisoners is of this description, they may, notwithstanding, contend with government, and after on the trial say they were not guilty. The jury were now informed that they could not be discharged until they were agreed. The jury were out from Thursday one o'clock till Saturday morning, when they informed the court they were all agreed, the prisoners were separately called and each holding up his right hand was directed to look upon the jury, and also the jury to look upon the prisoners. And in like manner a verdict of

“NOT GUILTY”

was pronounced on every one of the prisoners ; when, on motion of their council, they were all discharged to go without day.

Government, who are a party in this prosecution, have had their claims on the prisoners ably investigated—the law and evidence have been fully heard; and for the correctness of the verdict the jury are solely responsible. Their duty enjoined them to find one they could sanction by their consciences, and which always after in their reflecting moments, would be reviewed with approbation.—It is much to be desired, that the verdict, such as it is, should not have the effect to invite the restless and disaffected part of the community to fresh acts of outrage and violence on person and property. The invaluable right of trial by jury is the middle barrier between the tyranny of rulers and the impracticable, chimerical claims of the people. The constitution of government is the written contract; and the rulers and the people may be considered the two contracting parties to the instrument, in which one of the most important articles is the right of trial by jury. This right may, perhaps, be the arcana of government, the life preserving principle, that has imparted such longevity to English liberties; and long may it preserve our own! A republican constitution is but a dead body politic, properly organized and perfect in all its parts indeed, but inert and motionless—the virtue of the people is the resuscitating principle, that calls this political person into life, and imparts to it motion, vigor and health. The right of trial by jury may be considered as the powerful and efficient organ, like the nerves in the human body, that connect matter with spirit; it causes the dead letter of the law to act upon and regulate the conduct of the citizens. Contaminate public virtue, the body will languish; destroy it, and the body will die.—Old Rome gives us an instructive lesson on this head; after she lost her morals and patriotism, both the patricians and people expected and claimed too much.—And here let it be remembered, the people were most extravagant; their cabals prevailed, their claims were allowed, and their republican institutions that had survived for centuries, now crumbled into dust.—By our laws the jurors are drawn from a class of citizens respectable for their morals and habits; where honest motives are most likely to be combined and preserved with good common sense; they are a kind of partition wall between the government and the people; equally protecting the rights of the one from the assaults and inroads of the other.—Sap the morals of this class of men, the partition wall between right and wrong is broken down—and then freemen must prepare to bid a long farewell to the beloved goddess of liberty; she will flee to some distant shore, where public virtue and wisdom so prevail as to qualify those who judge between man and man, the government and the people, to decide with wisdom and honesty. The last prayer of a good man should be, that the discreet integrity of jurymen may be as well preserved from the contaminating influence of the threats or patronage of the great, as from the whimsical, misguided current of popular opinion.

FINIS.