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TRIAL OF

MRS. HANNAH KINNEY

FOR THE ALLEGED MURDER OF HER HUSBAND,

GEORGE T. KINNEY,

BY POISON.

BEFORE THE SUPREME COURT OF MASSACHUSETTS, JUDGES SHAW,
PUTNAM, AND WILDE, PRESENT; SITTING AT BOSTON, FROM
DEC. 21ST TO DEC. 26TH, WITH THE ARGUMENTS
OF COUNSEL, AND THE CHARGE OF THE
CHIEF JUSTICE FULLY REPORTED.

COUNSEL FOR THE PROSECUTION:

J. T. AUSTIN, ATTORNEY GENERAL, AND
S. D. PARKER, COMMONWEALTH'S ATTORNEY.

FOR THE PRISONER:

FRANKLIN DEXTER AND GEORGE T. CURTIS.

BY A MEMBER OF THE BAR.

BOSTON:
TIMES AND NOTION OFFICE,
NO. 5 STATE STREET.

.....
1840.

*See under
subject. Trials.
B. Flood
at Hall*

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TRIAL

OF

MRS. HANNAH KINNEY

FOR THE MURDER OF HER HUSBAND BY ADMINISTERING POISON.

SUPREME JUDICIAL COURT OF MASSACHUSETTS.

MONDAY MORNING, Dec. 21, 9 o'clock.

The Court came in at 20 minutes after 9, the prisoner having been placed in the dock, previous to the opening of the Court room, which was densely filled, as soon as admission was permitted. Chief Justice Shaw and Justices Putnam and Wilde were present. Judge Dewey was not on the Bench. The law requires a full Court in a capital trial, which consists of a majority of the Judges, of which there are four.

James T. Austin, (the Attorney General) and S. D. Parker, Commonwealth's Attorney for Suffolk, appeared for the prosecution, and Messrs Franklin Dexter and George T. Curtis for the prisoner.

The prisoner was informed that she had a right to challenge twenty jurors, without cause, and the Clerk proceeded to call the jurors alphabetically, saying to each juror as called, "prisoner look upon the juror, juror look upon the prisoner." Mr Curtis remained beside the prisoner while the jury were empannelled. She appeared to scrutinize each individual, with care, and evinced much composure, until the jury were full, when she seemed overcome with the effort, and shed tears. Her appearance is certainly very prepossessing, and her face beautiful. During the examination of the witnesses, her attention to every word they uttered (particularly Dr Storer) was intense.

EMPANELLING THE JURY.

Charles Arnold was next called and not objected to by the prisoner. The Attorney General required him to be sworn to make true answers.

The Chief Justice here stated the grounds upon which the jury would be empannelled, and referred to the Statute for testing the impartiality of the juror, as to his bias or prejudice, and his entire indifference, in the cause. He then asked Mr. Arnold if he had formed any opinion, or any bias?

Juror. I have not.

James M. Barnard. No objection. Being sworn as to his bias, says he has none, and is sworn.

Job F. Bailey. Mrs. Kinney—I challenge him. Set aside.

Sewall Barker. Sworn to answer by request of prisoner. Says he has no bias, and is sworn.

George W. Bazin, sworn to make true answers, and says he has no bias, and is sworn in chief.

James Blake, says he is sensible of no bias, and is sworn.

Constant F. Benson, not objected to, says he stands indifferent, is challenged and set aside.

Otis Brigham, says he has formed no opinion. Is challenged and set aside.

John E. Billings sworn to make true answers, and says he has formed an opinion.

Charles Brown has formed no opinion, and is sworn in chief.

Abraham W. Blanchard, stands indifferent and is sworn in chief.

Franklin F. Blood, questioned and sworn in chief.

Francis Bundy has formed an opinion, and is set aside.

George Callender says he has heretofore formed an opinion, but is conscious of no bias now. The court, on consultation, set him aside.

Caleb Coburn thinks he has expressed an opinion, but has no bias now. Set aside.

Francis Codman has no bias and is sworn in chief.

Joshua Crane cannot say that he has not expressed an opinion. He has read what has been published in print, but is sensible of no bias, except from that circumstance. On consultation by the Court, set aside.

Josiah N. Daniel, stands indifferent and is sworn.

Samuel C. Demerest cannot say that he has not formed an opinion. It is almost impossible not to have done so after reading the newspapers. On consultation is set aside by the Court.

Nathaniel G. Elliot has no opinion, and is sworn in chief.

Elisha Faxon has no bias, and is sworn. The jury were full. The empannelling occupied but

40 minutes. The Chief Justice said that it must not be understood that the Court had passed upon all the answers of the Jurors. Several of the answers were of a doubtful character, but as there was a sufficient number of Jurors without these, they were passed.

The Clerk read the indictment, charging the prisoner with poisoning her husband, George T Kinney, in August last with malice aforethought, by mixing arsenic in drink prepared for said George, with intent to murder him. The indictment set forth that the arsenic was mixed in herb tea prepared for the deceased, who was sick, which he drank on the 9th of August, and died on the 15th. [The death actually took place on the 9th. The indictment alleged the farthest day, from matter of form.]

The Jurors were then called, as empanelled, consisting of—

Abraham W. Blanchard, Foreman, (appointed by the Court) Charles Arnold, James M. Barnard, Sewell Barker, Geo. W. Bazin, James Blake, Charles Brown, Franklin F. Blood, Francis Codman, Josiah W. Daniel, Nathaniel G. Elliot, Elisha Faxon.

SAMUEL D. PARKER, Esq. Attorney of the Commonwealth, for Suffolk, then opened the case for the Government.

Gentlemen of the Jury:—

The Attorney General has requested me on this solemn occasion to give him such assistance as I may be able to do, in the discharge of those appropriate duties required by law in capital cases, particularly of its highest officer; duties, the most important and painful that can be assigned to any one in judicial tribunals. No man can be engaged in more affecting or appalling official acts, than in commencing, pursuing and pressing investigations, in which the ultimate safety of all men is involved, and which are especially designed to terminate, as in this case, in the deliverance or destruction of a human being, placed in jeopardy under the most distressing accusation. The utmost care and caution in such proceedings are enjoined by the rules of law; and every measure, suggested by the strictest regard for justice, and the most laudable love of mercy, is taken, to remove prejudice, to preserve impartiality, and to secure the attainment of truth. In this interesting and awful business we are now here engaged; and I hope that all who are to take part in this most serious trial,—counsel, witnesses, judges and jurors,—may conscientiously feel the weight of that great responsibility, which, without our seeking, has been cast upon all of us at this time, and in this place, by the laws of our country.

It is my very unpleasant, yet my official task, under the request I have mentioned, to open this important and interesting case before the honorable Court who here preside over our proceedings, and before you, gentlemen, who are now engaged by the solemn sanctions of your oaths and the obligations of conscience, in the sight of God and of your fellow citizens, to do justice and right between the Commonwealth and the unhappy prisoner you have in charge. It is not,

on my part, any affectation of sensibility to declare, that I feel oppressed, not only by the awful consequences to which this trial may lead, but by the numerous difficulties in it which are to be surmounted; difficulties now very common in all capital cases in the present agitated state of public opinion in relation to the punishment by death;—difficulties, much increased, when the atrocious crime imputed to the prisoner is alleged to have been committed by that subtle and generally invisible but most tremendous agent, the most detested of all means of homicide, secret poison: difficulties, which also become yet more formidable, when the horrible charge is made against a woman, usually the most amiable and innocent part of human nature. Whenever in any case, the life of a human being, the gift of God, and one of the most precious of his grants, is by the laws of the land demanded as the forfeit of an act alleged to have been done in violation of law, the minds of men, before they allow the highest punishment to be exacted, require what, in the acknowledged obscurity which usually covers personal motives and conceals criminal actions, cannot always be obtained, unequivocal proof, which *excludes* all reasonable doubt of that particular act having been done, by the party accused.

The terrible consequences of a possible mistake in making up a judgment from human testimony, and circumstantial evidence, have often inclined jurors in capital cases to acquit, when, as reasonable men out of court, acting upon the common presumption and faith which govern mankind in ordinary occurrences of life, they believed the accused to be guilty, and would have returned a corresponding verdict in the trial, if the punishment which was to follow such verdict were less fatal.

In the course of centuries, it is supposed a few such lamentable mistakes have been made by juries; and the records of them with all their appalling consequences are usually cited by prisoners' counsel in cases depending on circumstantial testimony: and yet the evidence of those fatal results being unjust has sometimes rested on no better foundation, than the wholly uncorroborated and often suspicious confession of some hardened and convicted felon at the gallows, who disregarded truth all his life time, and would not have been received as a competent witness concerning the most trifling matter in any court of judicature.

But the danger of such painful errors has long since passed away, for so tender in cases of homicide have modern tribunals grown, and especially in this country, that juries are now strongly impressed with lively sympathies for the living and interesting beings who stand trembling before them, for relief or for deeper woe; and are so much alarmed by the loud and solemn predictions of the awful and irreparable consequences of an unfavorable error of judgment, that they at the present day are apt to seek, not so eagerly for indications of guilt, as for reasons of acquittal, by which they may escape the upbraidings of their conscience, while they yield to the grateful feelings of compassion.

The invisible dead are soon forgotten; no warm sympathies arise out of the cold, neglected grave; the senseless, unseen, absent, defunct, mouldering body excites no commiseration: the living, breathing, palpitating flesh and blood, full of tremor and anxiety, which stand in danger before our eyes, engage and absorb all our sensibility. When too, that flesh and blood are arrayed in the form of a full grown woman, distinguished for personal beauty, extraordinary talents, uncommon accomplishments, and of respectable rank in society, there is danger on the other side, that those sympathies for the living may prevail over the love of truth, may obliterate justice to the dead, and sway men to the side of mercy which may be unmerited, and to a decision, which, under the same proof, might have been the reverse of favorable, were a man on trial. Recent experience has shown how difficult, if not impossible, it has been to obtain a verdict of condemnation, in cases of alleged murders by secret poison, when females have been the parties accused, and men were the persons murdered. I need not mention the cases of Lucretia Chapman, Eliza Norton, and Phebe Ann Floor. There are some who think it was the SEX, ONLY, of those defendants, which saved them from the punishment of the law.

Yet all must acknowledge that justice, like the great Author, should be no respecter of persons; it should regard neither sex nor age, but only law and truth. By our State Constitution, the fountain of mercy is located and opened *elsewhere than in the jury room*, and is not allowed to flow, even through the clemency of the Supreme Executive, in any case *until after conviction*.

It has been well said, that mercy is *mitigated punishment, not a denial of justice*: and it is clear, that the protection of human life upon a large scale, and therefore the most comprehensive compassion for human beings, requires that all murderers should be punished, for there can be no security for the lives of mankind, if there can be no punishment for murderers and assassins.

No one therefore has ever been engaged in a trial for homicide, more especially in one resembling the present, who has not seen and felt that there are difficulties, prejudices, sympathies, anxieties and embarrassments to be overcome: difficulties on both sides; embarrassments in the feelings, and difficulties in the proof. Mankind are naturally horror-struck by a cruel and atrocious act of domestic perfidy; indignation, execration, and an instinctive desire of vengeance combine to endanger and overwhelm the accused, and sometimes to paralyse even a well grounded defence. On the other side, when time has obliterated first impressions, when the grave conceals from sight the murdered victim, when nothing is beheld but a living, trembling, anxious, beautiful, talented and unfortunate woman standing before us, for life or for death, appealing to, and striking all the merciful chords of our hearts, then all our sympathies cluster around her, our desires rush to her relief; and law and justice, truth and duty are in danger of being disregarded. If moreover the homicide is alleged to have been perpetrated by secret poi-

son, the required proof also presents difficulties as great and numerous as those arising from the feelings. The offence is easily committed: but the guilt of the accused is rarely capable of being clearly or satisfactorily established. The instrument of death is not manifest like a sword, pistol or dagger; but generally invisible, prepared in secret, disguised and administered in an unsuspected form, in food or medicine, presented by hands beloved, making no open ghastly gash, or bleeding wound, traced by no gushing of out-poured blood, but operating out of sight of all men, and in the absence frequently of the very murderer, and sometimes receiving additional vigor and fatal power in the common means taken for relief against the pains of the first attack. There is seldom an accomplice, who might turn State's evidence. The felonious design is formed in secret, and the murderous secret is commonly confined to the guilty bosom in which it had its fatal birth; no suspicion of poison existing, its effects are often mistaken for symptoms of cholera and other natural diseases; and the horrid truth is seldom discovered but by a post mortem examination, and difficult and often doubtful chemical processes: and so many and perplexing are the embarrassments in these trials arising from the required certainty in the proof which Courts and juries demand, that the imputed guilt is seldom made clearly manifest, but by those apparently accidental means, those unguarded circumstances, those overstrained, officious, workings and efforts of a guilty, troubled, sin-stung mind to screen its crime, too great to be confined within the conscious breast, from the public eye, which generally betray the criminal to human view, and are, for wise purposes doubtless, the interventions of an overruling Providence.

With these difficulties fully foreseen, and others also which need not be mentioned, the greatest and most unaffected anxiety therefore, is naturally felt by all who are obliged by official station to engage adversely to the prisoner in such solemn and painful investigations as the present, lest on the one side an irreparable and most horrible mistake should occur in inflicting a cruel homicide upon an innocent person through the forms of law; or, on the other side, a judicial tribunal should permit a culprit, guilty of the most atrocious of all crimes, to be set at liberty for a repetition of the guilt of destroying human beings, and for the encouragement of other malicious persons in like murderous cases to offend. We are in danger in such cases of pressing the evidence too much, or too little; in one case, injuring, though unintentionally, a most unfortunate woman in the hour of her greatest distress and peril; or, in the other case, leaving undone what the Commonwealth and the necessary protection of human life require of us for the punishment of crime, and the safety of society. We sincerely wish in this emergency to discharge only our duty fairly, and maintain nothing but the truth of the case, that you may on your part do what justice, and your solemn oaths, and the laws of the Commonwealth require at your hands.

Your oath, gentlemen, contains the definition, and is the guide of your duty. In the sight of

God and man, you are to give a true verdict in this trial between the Commonwealth and the prisoner according to the evidence. The humane maxims of the law clothe this prisoner like all others in the very outset, with an entire presumption of innocence; they cover her with a legal panoply which is to protect and save her, until it be penetrated and destroyed by the evidence of her guilt. It may not therefore be improper for a moment to consider what, under such a charge, that evidence should be, what its nature, and what intelligent men should expect in a case like the present.

Evidence is direct and positive, or circumstantial and presumptive. It would certainly be unreasonable to expect crimes, especially those of deep atrocity, to be often proved by direct and positive proof. Innocent acts are done before witnesses; but crimes are disreputable, dark and dangerous. Culprits commonly practice so much secrecy, that much sagacity and great efforts are necessary to detect them. Mankind are obliged to rely much on circumstantial and presumptive evidence on many important occasions, and especially for the conviction of criminals. In capital trials mistakes are very rare on the side of punishment, but very common on the merciful side. If it is better that a hundred guilty escape than that one innocent person be punished, that consummation is attained. In point of fact, from the imperfection of human tribunals, uncertainty of human testimony, the humane presumptions of original innocence, and the compassionate feelings of juries, instead of a hundred, thousands, nay, TENS OF THOUSANDS, of guilty persons have been acquitted, for *one innocent* man man that has been punished. When, therefore, circumstantial evidence does convince a jury, there should be no unwillingness or refusal on their part to declare the truth, because positive and direct proof is absent. Most especially how very unreasonable it would be to expect direct, clear, full, positive evidence in any case of SECRET POISON! But even positive testimony, if required, may be less satisfactory in many cases than a train of concurrent circumstances progressing in a path of light to the full truth; for eye witnesses may be false, may be bribed, may be malicious, may be mistaken: their minds may be weak, their morals bad, their veracity questionable.

A learned American Judge, presiding in a case of poisoning, has estimated the comparative value of these two species of evidence, and I beg leave to ask your attention to his judicious remarks. (See Lucretia Chapman's trial, page 394.)

Also, Sir Francis Buller, one of the most able and learned English Judges, also in a trial for murder by poison, expresses similar opinions.— (See Capt. Donnellon's trial, page 159.)

There are defects and advantages in each of these kinds of evidence; and I have directed your attention to them because, in the present case, both kinds will be offered to you in support of this indictment. Of some of the allegations in it the evidence will be express and direct; of other parts the proof will be circumstantial and

presumptive; and we admit that the whole must be so satisfactory and convincing to your understanding as to remove all reasonable doubt of the guilt of the prisoner. Moral certainty only is required, not the certainty of mathematical demonstration; but if reasonable doubts remain, the law discharges her.

The Attorney General, who attended the Grand Jury and who alone has conversed with the witnesses, has drawn this indictment in so specific a manner, both in the form and substance of the accusation, that a general narrative of the facts we expect to prove seems almost unnecessary.

The death of Mr. Kinney took place on Sunday, the ninth day of August. Events the week before and week after will become material.

The record and issue in this case present the following questions for your decision, and when you have satisfactorily answered them, you will find your duty will have been finished.

1. Did George T. Kinney die in consequence of being poisoned?
2. Was it a case of suicide?
3. Did the prisoner administer that poison, or did some one else?
4. If the prisoner administered the poison, was it administered feloniously or by accident?

By presenting this accusation the Grand Jury have placed on us the very disagreeable and painful task of offering and urging before you all the evidence we could obtain, shewing and tending to prove that Mr Kinney was poisoned; that he did not commit suicide; that the poison was disguised and given to him by his wife, who is now on trial for that act; and that it was administered with aforethought malice, and not by accident. If after an honest discharge of our duty, the testimony is not strong and conclusive enough to satisfy this human tribunal of her guilt, the presumption of her innocence here must stand, and she must be acquitted, and discharged from the custody of the law; and if nevertheless she be actually guilty of the detestable crime imputed to her by the grand inquest, her punishment must be left to that Omniscient Being, who knoweth the secrets of all hearts, from whom nothing is hid, and who is a God of truth and justice as well as of mercy.

On the twenty-sixth day of November, in the year eighteen hundred and thirty-eight, the late George T. Kinney was married in this city, by the Rev. G. W. Blagden, to Mrs Hannah Freeman, the prisoner at the bar. He had never been married before, and if I am rightly informed, he was five years younger than she was.— The lady had been married twice before, and had children by her first husband, but none by either of the other two. In August last they lived in Ballard place, Bromfield street, in Boston. On the 9th day of that month, he died in much pain and distress, after a short illness.— He had a few days before consulted a person who called himself a physician, and took some medicine on two occasions in the form of a pill delivered to him by that person. His illness did not confine him to the house. The ingredients of that medicine will be proved to you, and it will be satisfactorily proved there was no arsenic

in it; and also that the pills and its ingredients would not produce the symptoms and effects which preceded his death, nor endanger his life. On Saturday, the 8th day of August, in the forenoon, he became so unwell as to retire to his chamber, and he grew worse in the afternoon and evening. A male friend and neighbor was called in to see and watch with him, and was sent out for a physician in the course of the night. Before he went and before the physician came, Mr Kinney wanted some drink, having a burning thirst, and the prisoner about midnight left the chamber and went below stairs while the rest of the family were in bed in the chambers; and after being absent some time, she brought up from the kitchen a pint bowl of sage tea, a beverage which was first recommended not by her, but his friend, and placed it on the bureau; and then she immediately threw herself down on the bed, complaining of being fatigued. Mr Kinney requested her before she went down to make the tea, not to sweeten it. Being impatient for it, after she came back, he wanted it to be given to him, while it was so hot it could not be drunk. His friend, Mr Goodwin, tasted it once or twice to ascertain if it was cool enough, taking about a teaspoonful each time, and he then very distinctly perceived that it was quite sweet. He held the bowl in one hand, and a lamp in the other, over Mr K., while Mr Kinney was drinking the tea with great eagerness, but by little at a time, it was so hot, and he saw a whitish sediment rolling at the bottom, which the witness will describe very accurately as he saw it. Very soon after drinking this tea, Mr Kinney grew much worse, and the physician came, and not suspecting arsenic had been taken thought the symptoms exhibited were those of Asiatic cholera. About ten of the clock next morning, Sunday, the 9th, Mr K. died sitting in a chair, with his feet upon the edge of the bed. The gentleman who tasted the sage tea, after watching all night, retired about day-light and went home to bed, but could not get to sleep, was affected with nausea, disposition to vomit, restlessness, uneasiness at the stomach, and believes all these consequences were produced by the small quantity of the tea he took.

The doctor who came to Mr. K. a little after midnight of Saturday was Dr. D. H. Storer, who was not the family physician, but was the first one the messenger could find. Mrs. Kinney made afterwards a strange apology to Dr. Snow on this subject.

I shall not attempt to sketch the medical testimony to you, as I have never heard it, and the eminent physicians will give it to you in person in an intelligent, very minute and very correct manner. But it may be useful to describe to you the now well known effects of white arsenic, after it is taken into the human body in quantities of ten grains or more. Nausea and faintness are experienced, which are soon succeeded by a burning pain in the stomach and obstinate vomiting. The matter discharged exhibits a yellowish green, and after some time is tinged with blood. A sensation of dryness, heat and tightness is experienced in the throat, with unextin-

guishable thirst. The voice is hoarse, and articulation of words difficult. Diarrhœa sets in, with irritation. The abdomen is tense and painful, and the irritation extends to the urinary passage, accompanied by a pain in the bladder and swelling and gangrene in the genital organs. The heart flutters, the pulse is small, the surface cold, the extremities livid, the countenance collapsed, and the tongue and mouth furred.

These are at the present day well ascertained to be the common consequences of arsenical poison in the human system. During the present century learned men have devoted much time to Toxicology, and their knowledge is extensive and accurate, and has often been relied upon with entire confidence in courts of justice. You will have such scientific witnesses before you, and this part of the case will be made very clear.

To the inquiries of Dr. Storer, when he first arrived, Mrs. Kinney gave the answers, and so far as proper or recollected by the witness, they will be detailed to you. She mentioned the fact of his taking the pills, exhibited some of the same kind, asked Dr. S. to examine them, and inquired if they would produce vomiting and the other symptoms then exhibited by her husband. Dr. S. broke one of the pills open, tasted it, ascertained its ingredients, and thought it would not produce the vomiting, collapse, and general symptoms of the patient. Dr. S. prescribed mustard poultices to the pit of the stomach and to the feet, forty drops of laudanum, and an opiate injection, and departed. He was called again four or five hours afterwards, being then about six o'clock Sunday morning. Mr. Kinney was much worse; such effects as I have described as the consequences of arsenic had all along been very manifest, but poison not being suspected, he was supposed to have the Asiatic Cholera.

He suffered excessive pain, and died between ten and eleven of the clock of that Sunday forenoon. Dr. Storer saw nothing extraordinary in the wife's conduct during all the time before her husband died, with the single exception that she said she could not give him the opiate injection. Dr. Bigelow was called in, about half an hour before Mr. Kinney died. On the same day, Dr. Storer told the prisoner it was desirable her husband's body should be examined; she made no objection to the *post-mortem* examination, and that examination took place on that same Sunday afternoon. The manner, progress, discoveries and results of the examination, will be very explicitly and minutely detailed in the evidence of the learned chemists and doctors who will be called as witnesses.—**ARSENIC WAS CLEARLY DEVELOPED.** They did not tell Mrs. Kinney so then; but on Monday or Tuesday after Mr. K's decease, she sent for Dr. Storer and said she wished to unbosom herself to him, and had an hour's conversation, I must say a most extraordinary one, giving a long history of her acquaintance with Mr. Kinney, and finally asked the doctor for a certificate that he died of Cholera. There are many very extraordinary passages in that conversation, and your critical attention will be called to it.—Though Dr. S. had not suggested the idea to her

that her husband had been poisoned, and does not know that any one else had suggested it to her, she told him AT THAT TIME that there were a great many stories about, and, among the rest, that she had poisoned Mr. Kinney. She then said the people at the funeral kept pointing her out, and saying, *'there she is,—there is the woman who poisoned her husband.'* She expressed NO GRIEF, SHED NO TEAR. She wished the certificate of the doctor, as she said, in consequence of the reports, and as she was going, as she said, to visit his friends. Not getting a certificate, she afterwards in a day or two sent Miss Collins to Dr. Storer for one, but he of course, gave none. On the next Sunday morning, the 16th of August, a week after Mr. K's death, Dr. Storer and Dr. J. B. S. Jackson called on her, and reported to her, for the first time, that arsenic UNDOUBTEDLY and CERTAINLY was the cause of his death. *She then shed no tears, expressed no surprise, shew no emotion: only said, INDEED!* Dr. Storer then asked her if she thought he had taken it himself? She said, *'No, GEORGE WOULD NEVER HAVE TAKEN IT HIMSELF.'* After a few minutes the doctors left her. Her subsequent conversations on that Sunday morning are very remarkable.

The contents of Mr Kinney's stomach were analysed by Dr Martin Gay; the post-mortem examination was made by Drs. Bigelow, Storer, and J. B. S. Jackson.

Further accounts of the last hours of Mr Kinney, and of his symptoms and sufferings will be given to you by William F. Goodwin, Mary T. Smith, Lucretia Bears, and Elmira W. Collins; and Miss Collins will also relate to you many particulars in the conversations and conduct of the prisoner BEFORE and AFTER the death of Mr Kinney, and during the two last days of his life; conduct and conversations, from which I think you will draw most important inferences in the close of this interesting trial, when they are considered in connexion with a great many other parts of the testimony. Much of the circumstantial evidence of her guilt will be derived from those sources. Mrs Kinney had living with her a daughter named Dorcas Freeman, about twelve years old. On Wednesday after Mr K's death, she was sent to Vermont. On Thursday morning, the next day, some unusual occurrences took place before and at breakfast in Mrs. Kinney's house. They will be related to you by Hannah Varney, and by Miss Collins. Mrs. Kinney, (a very unusual circumstance) herself, prepared some apple-sauce for that breakfast, and the persons who sat down to breakfast were Hannah Varney and her little son, Miss Collins and Mrs Kinney—Dorcas had been sent away. All of them were taken sick, and vomited not long after breakfast, except Mrs. Kinney, who also complained of being sick, *but I believe nobody saw her vomit, or saw her sick in any way.* Hannah Varney went after breakfast into the sink room, and lookinfor some papers to kindle the fire, found one piece of paper, among a parcel of waste papers there, on which was written the word *poison*. That paper and these Thursday morning events, will open much discussion

before you, and probably will be much commented upon by the learned counsel who address you upon the evidence in the case. There were also cucumbers and warm bread on the breakfast table, as well as the apple-sauce, but the apple-sauce was the uncommon and now very suspicious article on that table.

It was the Sunday morning, a week after Mr. Kinney's death, that Doctors Storer and Jackson called and informed the prisoner of the arsenic found in her husband's body. Her extraordinary conduct and conversations on that Sunday after the Doctors left her, will be related in Miss Collin's testimony, who was her friend, and slept with her after Mr K's death, and had many other conversations with the prisoner, which it is supposed will much influence your decision upon several of the important questions now to be decided. On Friday of that week, that is, about twelve days after the funeral of Mr Kinney, who was buried with military honors on Monday, the tenth day of August, the prisoner left Boston, and went to Thetford, in Vermont by the way of Lowell. This was a few days BEFORE the Coroner's inquest was taken. The public journals teemed with allusions to Mr K.'s death, and the Coroners seemed COMPELLED by public opinion to institute an inquest.

The conduct and conversations of the prisoner at Thetford, her inconsistency and contradictions, we think, were very extraordinary, and we shall ask your careful attention to them when Mrs Harriet Hosford and Mrs. Frances Kendrick are under examination. They will probably be relied upon by the Attorney General as indications of guilt, and the learned counsel for the prisoner will endeavor to explain them as not inconsistent with the hypothesis of her innocence. The absence of ordinary grief, the change in her conduct, conversations and representations of the character of Mr K.; her DENIAL and SUBSEQUENT CHARGE of his having committed suicide, and many other things are truly astonishing. Upon the subject of the procurement of the arsenic, some evidence will be offered to you, but not perhaps of a very satisfactory nature.

Upon the question whether Mr Kinney committed suicide, we shall offer you the testimony of Mr John Barnes, his most intimate friend and foreman, who will detail many facts and circumstances in Mr Kinney's conduct, conversation, arrangements, business, habits and character, which will have a tendency to disprove that supposition or charge. Evidence upon this point will also come from various other sources, as well as the prisoner's own declarations.

In the course of the trial many incidents and other circumstances will be proved, too numerous now to be recapitulated, but of sufficient importance to be put into the scale of evidence. Should you arrive at the conclusion that the arsenic was administered to Mr Kinney by his wife, I believe it will not be contended on the other side that it was given to him through any accident or mistake. I have never yet heard that suggestion made. If administered by premeditated design and it caused his death, the of-

fence is MURDER as charged in the indictment, and it cannot be reduced to Manslaughter or any lesser offence.

As to the existence of any motive that could prompt so horrible an act of domestic atrocity, it is not necessary that the Government should be able to prove one. Motives to crime are frequently inscrutable. The secrets of the heart, when wickedness is contemplated, are seldom divulged. We can conjecture motives, but generally are unable to prove them. The tongue of the victim is sealed in death, and cannot tell us of motives. Perhaps in the course of the evidence, a motive will appear. You only are to be the final judges on this point, and I shall leave it wholly to your sagacity and intelligence to discover it. If the evidence satisfies you a foul murder has been committed, you certainly will not acquit the culprit, merely because you cannot see an adequate motive for the commission of such a detestable crime. In the history of the parties and of their domestic feelings, a thousand extraneous circumstances, known only to them, the change of feelings, jealousies, resentments, hopes, fears, &c., produce results, the causes of which are incapable of judicial proof. I now, gentlemen, proceed to the evidence, and will call the witnesses before you.

WITNESSES FOR THE GOVERNMENT.

Dr. D. H. Storer. Resides in Winter street, and is a practising physician.

He was called to see a patient by William F. Goodwin on the 9th of August last, between 12 and 1 in the morning. Went to Ballard Place, near his residence, at the house of Mr George T. Kenney. Found him in bed very sick. Had never heard of him or his wife before. She was there. He appeared to be in great suffering, complaining of severe pain in the stomach and bowels. Pulse was small and feeble. The bowl at his bedside contained a pint and a half of liquid, thrown from his stomach, as witness was told. Asked Mrs Kinney how long he had been sick. She told me he had been unwell a week or ten days. Had lately had an attack of varioloid, but he had attended to his business until the noon of Saturday—the day before.—That he commenced vomiting on Saturday at 10 o'clk. in the forenoon, and he had been growing more sick since. She said she called at his store and walked home with him the day before. She said he had applied to Dr. Harrington, during his sickness, in Endicott street, and shewed me pills or powders, she said he had had of him. She asked me to examine them, and state if they could have caused his sickness.

I broke open the pills and said I supposed them to be cayenne pepper, very acid, but did not suppose they could have caused his sickness. I examined the powders, and told her I supposed them to be Dover powders, a preparation of opium, and I told her I did not suppose the pills or powder could have caused the sickness. Mr Kinney and Mr Gardiner were present, with myself and Mrs K. no others present. He (Mr K.) said nothing. I prescribed a poultice, 40 drops of laudanum to be taken, and also an injection with 60 drops of laudanum. I staid 15 or 20 minutes, and went home. Was called again between 5 and 6 in the morning.—Went immediately, found him a great deal worse; very thirsty, constantly asking for drink and vomiting as soon as he drank. The discharges thick, tinged slightly with bile; I found the laudanum given by the mouth but not the injection. Mrs K. said she could not give

it; I told her it was important, and I also prescribed a pill of calomel and opium. Remained about 15 or 20 minutes. Mr Goodwin was present. I went home and went to bed. Saw Mr Kinney again between 9 and 10 that morning. Found him in great agony, and in a constant disposition to evacuation—saying he could not last long and must die soon if not relieved.

The pill had been given, and he had ceased vomiting for an hour. The injection had not been given. While he was complaining, I took his wife aside and told her her husband's symptoms were very similar to those of the Asiatic Cholera in 1832, and I proposed to call in Dr Bigelow to see them with me. While I was conversing Mr Kinney looked up and asked me if I thought it was cholera, or is this cholera. I told him the symptoms were certainly very similar. I went out; I met Dr Bigelow, and in five minutes he returned with me. Dr Jacob Bigelow. We found the patient removed from the vessel and sitting in a chair. We found him in a dying state. Thrown back in the chair, and his feet on the bed. Three or four quarts of liquid had passed from him. We prescribed nothing as he was past remedy and dying. Dr Bigelow agreed with me that it was a case of malignant cholera. The pulse was almost imperceptible. Appeared in a state of collapse. We staid a few minutes and went out. I returned in about an hour. Found him in the position I left him.—He was dead; he died about a quarter of an hour after I left him, as I was told. The muscles of the legs were distinctly contracted. I called attention to it. I tho't it corroborated my opinion, that it was cholera.

Saw Mrs. Kinney then, and told her it was very desirable there should be a post mortem examination I met Mr. Goodwin in the chamber with Mrs. Kinney. Mrs. Kinney said she had no objection except the natural feeling of all persons on such occasions.

We examined the body at 4 P. M. in the room where he died; myself, Dr. Jackson, and Dr. Bigelow. Dr. Jackson performed the operation; It was done with care. In the stomach we found a large spot of blood diffused, ecchymosis. Dr. Jackson, the moment he observed it, suspected it was produced by some irritating poison. I have no doubt myself, of the agency of that cause in the death, poison. I do not say that I had no doubt at that time. I was governed by Dr. Jackson's opinion. I have no doubt now, it was poison. We found a great deal of irritation in the lower intestines. This is an incident to the effects of poisoning generally. There was no fetid odor. The stomach was taken by Dr. Jackson. Did not see its contents emptied. Did not know what was done with the other intestines. We all desired to have the stomach examined. While Dr. Jackson was doing it. I went below to see Mrs. Kinney. Dr. Bigelow had gone.

I went in and told her that many of the appearances were such as we had noticed in cases of cholera. I did not tell her he had died of poison. She said George had been unwell for several days, and he had suddenly died from some cause, as unknown probably to you, as it is to me. Don't remember anything further on that conversation. I then left the house.

Dr. Jackson and myself returned within an hour, and requested a further examination of the body. She asked what for, I told her that a portion of the aesophagus had not been examined, and we wished an opportunity for further inspection. She was willing, made no objections. Dr. Jackson was below when I made the request. We then removed all the canal from the aesophagus to the anus, I mean all the bowels, from the mouth through the body.

Dr. Jackson took them, and I saw them in his office, afterwards.

Mr. Kinney was buried on Monday. On Tuesday I had a line from Mrs. Kinney for me to call, I went to see her at her house, in the forenoon. No other person was present. She said she was desirous I should give

her a certificate that her husband died of cholera. She began by saying she wished to unbosom herself to me. She then gave a long history of her former loves. She said that for the most part she and Mr. Kenny had lived happily together, that he was irritable but always ready to acknowledge his faults. She said it was very unpleasant to him for her to receive visitors from clergymen.

He did not like clergymen, and did not wish her to visit them.

She said she had received a letter from a Mr Payson, which she had read to Mr Kinney, but could not satisfy him. She stated a great many things. Her conversation was very incoherent. It ended by her request that I should give the certificate.

Being asked the reason she gave—she said it was currently reported that she had poisoned her husband, and said I must be aware of the reports against her.—Up to that time I had not said a word about poisoning to her, nor had any one in my presence. She said there was a very large funeral and she was pointed out as a murderer. She was perfectly calm and composed. No tears. She said that she intended to visit his friends, where they were going before he was taken sick, and it was important to have the certificate to show them. I told her I was not satisfied as to the cause of his death, and could not give the certificate. On Thursday after, Miss Collins called for the certificate. I told her I was not satisfied as to the cause of his death and could not give it. Dr Jackson called on Mrs Kinney with me on the Sunday after his death at 8 o'clock.

I then told her we had ascertained by chemical analysis, that arsenic was found in Mr Kinney's stomach, and that was undoubtedly the cause of his death.—She merely said, *indeed!* No grief. We were there about five minutes. That noon Miss Collins called with a request I would visit Mrs Kinney.

I went in after church. She said she could not imagine how the arsenic was in the stomach. Her principal object seemed to be to know who knew we had found arsenic.

I told her Dr Martin Gay who had analysed it, and also Dr. Hildreth knew it.

She said she would rather have given the world than Dr Hildreth should have known it.

I said, 'Mrs Kinney, it is possible your husband might have taken it himself.'

She said, 'No, George would never have done it.' She said that Dr Hildreth was very inimical to her. He belonged to a religious society, and he and they were inimical to her and would glory in seeing her injured.

Being asked his opinion as a Physician, of the cause of the death, he says, 'I have no doubt he died from arsenic. The poison being found in the stomach settled the question.'

Cross-examined. He saw the organs when removed, and the large ecchymosis, which was an inch or more in diameter. There was one smaller. The large one was a large brown spot, looking as if some substance had been applied there, which had not affected other parts of the stomach.

The blood had passed out, was extravasated. This is the effect of poison, which we detect, but how caused we do not trace. This examination was entirely in the hands of Dr Jackson, and I relied on him. I think the stomach was not removed till I went below.

Mr Dexter. Judging from what you yourself observed *alone*, would you infer that the death was from arsenic?

Ans. I saw no arsenic, but inferred it from learning that arsenic was found there; the results corresponded with the books.

Mr Dexter. Would you have attributed the death to arsenic aside from what Dr Jackson told you?

Ans. I cannot separate the question, I can only say that I have no doubt the death was from that cause. I should be very unwilling to say that he died of arsenic, if arsenic had not been found in the stomach. Do not know whether there was any instrument for an injection when I ordered it. Nothing was said about the injection pipe. I think it likely that something was said about going to an apothecary's for a syringe, but it is so common a thing I have the slightest recollection of it.

After the first examination, Dr Charles T. Hildreth came into my office, with the Deacon of the Church.

He asked me if I had examined Mr Kinney. He said he was glad of it.

I returned in consequence of the conversation with him. This was at candlelight in the evening. Mrs. Kinney was called, she came to the door, and showed me upstairs where the lady was.

Did not see Mr. Goodwin taste the tea, that Mr. Kenney drank, the second time I called. Mr. G. said it was too hot, I think. I saw Mr K. drink the tea, and as he drank he vomited.—This did not strike me as extraordinary. I did not examine the vessel in which the tea was. Mr. Goodwin gave him the tea to drink. I was standing by the bed while he drank it. The chamber was in the third story. I think the tea was given immediately on its being brought up. There was nothing about it that attracted my attention—not the slightest.

Mrs. Kinney said there was something very mysterious in her husband's conduct, the evening before his death. This was after his death, at the first examination. She said a Dr. Batchelder had visited him that evening, and they were left alone and the door fastened. She intimated that Mr. K. might be diseased, have the venereal, and asked me if it was customary for physicians to be locked up with their patients, except in such cases. I never heard of Dr. Batchelder. No such one belongs to our Medical Association. There are no appearances of the disease (venereal) on the post mortem examination. We did not examine with that reference. Did not examine the throat. No swelling of the bones or syphilitic symptoms.

In reply to Mr. Austin, witness says that if arsenic were found in the stomach of the deceased, he had no doubt that he died from that cause. There is a great variety of opinions as to the taste of white arsenic. Some say it has no taste and some say it has a sweet taste. Impossible to say how much could be dissolved in a pint of water. Depends on circumstances.

Dr. J. B. S. Jackson, sworn. Is a physician and surgeon, resident in Boston. Was at the post mortem examination of deceased, with Drs. Storer, Bigelow, and a medical student and Mr Goodwin. I performed the dissection. Was told it was a case of cholera, by Dr. Storer, and examined the body with reference to that disease. On opening the stomach, I found a very remarkable appearance, which led me at once to suspect the presence of arsenic, and that the man died from its effects. The extravasation of

blood appeared in the inner coat of the stomach, giving a fine deep dark red, of uniform appearance, well defined. One large spot three inches square, and two small ones. The appearance is called ecchymosis. I made the remark that I thought he must have died of poison. I found two little grains, very minute in the stomach. Ecchymosis is common in cases of death by poison.

Do not know as to cholera. The contents of the stomach were poured into a bottle, and carried to my room, by Mr Tibbetts, the medical student, who was present. I examined the contents of the bottle in Dr Gay's room; Arsenic was detected. Is satisfied it was arsenic in the stomach. When we told Mrs Kinney that her husband had died of poison, she paused a moment and said, indeed. From the appearances, if I had not known that arsenic was found, I should have set it down that it might be the effect of poison. But should not be willing to say so without the detection of the arsenic.—With that fact I have no doubt the death was caused by arsenic.

Cross examined. Describes the effects of poison, as before. The absence of fetid odor, is an indication of a symptom of cholera. Without the fact of arsenic having been found I should not have attributed the death to arsenic. But if arsenic were found, and the morbid appearances as described, I should attribute it to arsenic.

Question—Will finding the arsenic by chemical process in the stomach of a dead man warrant you to say that it was the cause of his death? May it not be introduced by the process of making the test? *Ans.* Not by a skilful chemist. There was less redness in a portion of the intestines, the rectum, than is usual in fatal cases from arsenic. There was nothing but the ecchymosis independent of the arsenic, that indicated the death was by poison. Ecchymosis is common to both cholera and poison.

In answer to Mr. Dexter as to the quantity of arsenic, more or less affecting his opinion, witness says I do not know that there is any medical improbability of his having died of the cholera, although the arsenic was found in him.

The Court here adjourned at 2, P. M. till half past 3.

MONDAY AFTERNOON. The examination on the part of the government proceeded.

Dr. Martin Gay—Is a practising physician in this city. On Sunday evening, August 9th, he received a bottle from Dr. Jackson, containing the supposed contents of the stomach of the deceased. Made a chemical analysis, was careful to exclude all matter in the examination, in order to ascertain if it contained poison. He applied several tests, and separated a quantity of arsenic, which he reduced to a metallic state. The witness described the usual tests of such examinations. As to the certainty of this test, Dr Gay said that he knew that it was arsenic, as thoroughly as the blacksmith knew he was hammering iron, and with more certainty.

There is no other body, except arsenic, which when put through these processes will exhibit such results. In answer to the Attorney General, "I know there was arsenic contained in the contents of that stomach as it came to me, there is no possibility of a doubt." As to the quantity he cannot tell. Cannot say that arsenic has any taste. It is usually described as sweet.

Cross-examined. Arsenic is what is called a cumulative poison. If taken for a long time in small doses cannot say whether there would be an accumulation in the stomach. [This witness exhibited great accuracy and skill in chemistry; and the result of his testimony was a certainty that the substance he detected in the contents of the stomach was arsenic, but how much in quantity did not appear.]

Dr Calvin Buchelder—Was not much acquainted with Mr George T. Kinney. He first saw him on Tuesday, when he came to him. He again saw him Saturday night. He saw him at Dr Harrington's office. Witness was then attending Dr H.'s shop on Endicott street, while he was absent. A lady called Saturday night at the office and wished me to go and see a Mr Kinney to whom I had given some medicine previous. I told her I did not know any such man. The lady I did not know then; I now know it was the prisoner, Mrs Kinney. She described him to me, and I then recollected the man. She said he was not so well as when I saw him before, and he wished me to come and see him. I went to the house in Bromfield st., with her. She showed him to me, and said 'there is the man, and you have given him medicine, and know for what.' It was the same man I saw on Tuesday. He had then called at Dr Harrington's office. He told me he had been afflicted with the venereal disease—that it had troubled him more than usual and he wished to get rid of it—I examined him and prescribed for him. The secondary symptoms were apparent, the first having passed away.

I gave him five or six cathartic pills—I then gave him a box of blue pills to take—there was no arsenic in the cathartic pills.

Do not know who made them. The blue pills he knew the components of; mercury, &c. but no arsenic. At the house I asked him if he had taken the pills as I prescribed, and he said he had. He was on the bed undressed. Was alone. I was alone with him five minutes. The door was not locked by me nor any one to my knowledge. Did not request Mrs. Kinney to leave us alone, nor to prevent any one coming in. I asked Mrs. Kinney for the blue pills, and saw them those that were left. The cathartic pills were taken Tuesday night. He said he had taken some of the blue pills. After examining him, I prescribed for what I supposed to be a case of cholera morbus. The remedy was of vegetable substances, the Dover pills, &c. but nothing containing arsenic. No secrecy was observed or requested at this interview. Was there fifteen minutes. He appeared comfortable when I first went in, was worse soon after, vomited and then appeared more quiet. This was

all that happened at that interview. Mrs Kinney waited on me down stairs and I promised to call again. I called Sunday morning. Found him dying.

Should think his disease was such as he described to me at the time he called on me. I judged so from his throat and other symptoms. Could not tell whether the primary symptoms had existed within a year. Did not perceive any marks of varioloid upon him. That sometimes produces sore throat. Should think he had had the secondary symptoms of the disease upon him for a month or more, might have been for a year.

Cross-examined.—Coming down stairs Mrs Kinney asked my opinion. I told her it was a case of cholera morbus, and I thought he would be better in a few hours. As I was going she asked me if I thought he would get well; she feared he would not. I told her I thought he would. She replied she had lost a former husband and some other relatives in the same way. I told her if that was the case she had reason to fear. I meant that if she had seen friends die in that way, she had reason to fear in this case. The cathartic pills were made by Dr Harrington. Never called by any other name. Saturday evening I gave him a bowel pill. This is a pill of my own manufacture composed of mucilage and Cayenne peper. The component parts of this pill were well known. Physicians know the compound. I have never kept the pill particularly secret. I was never asked the composition of the pill and refused to tell since I have been in Boston. Never asked by Dr Harrington what it was composed of. Have no connexion with Dr Harrington, except the time I kept his shop. I gave the deceased no other medicine than I have described, except some drops of laudanum. Never used any arsenic in medicine in my life. I feel confident of this. Never stated to any person that I had been in the habit of using it. Mrs Kinney spoke to Mr Kinney when she came into the room. I do not recollect what she said. Mr Kinney was to have called on me again in a few days, when I first prescribed for him, but he did not. Dr Harrington was gone six or seven weeks from the 4th of July. The blue pill is made of part mercury in the crude state; common quicksilver. The mixing of the mercury in the blue pill, changes it chemically; produces an oxide or protoxide.

By Mr Parker. When I told Mrs K he had the cholera morbus, she said nothing. Expressed no doubt of my ability to cure him. Witness has the blue pill and Dover powder, and also the bowell pill, made since, but of the same ingredients. It warms the bowels, produces action and perspiration.

In answer to a Juror, I inquired for the box of pills, because she said he was not so well, and I wished to be sure what he had taken. Mr Kinney paid me for the advice when he left me the first time. He told me he had been vomiting when I called to see him.

William F. Goodwin. Was present at the death of Mr Kinney. Had known him three or four years. I first knew of his sickness on Saturday before his death. Was acquainted with

him and his wife before their marriage. Saw Mrs Kinney on Saturday noon in Bromfield st. She said George was very sick, and asked me if I would go and see him. I went. Found him on the bed partly dressed, pantaloons on. No coat or vest. No one was in the room. I did not see his wife. He appeared sick and in distress. It was after one o'clock, Saturday. He said he thought he should be better and get out by night. I was with him about 10 minutes.—Did not see him again till about 9 o'clock that evening. Mrs Kinney's little daughter came with a request from her mother that I would come over. She came the first part of the evening. I told her I had an engagement till 9 o'clock. I went to an inquiry meeting, walked home with a lady, and went to Mr Kinney's between nine and ten. I remained in the parlor below, at Mrs Kinney's request, until nearly eleven. She said she had sent for me in case he should be worse, as there was no man in the house. Miss Collins was in the parlor. About eleven I went up in the chamber; found him on the bed. Remained twenty minutes, and went out at the request of Mrs Kinney, on account of it being unpleasant while he was on the stool.

Mrs Kinney came down, and said Mr. Kinney wished me to go for a doctor, and wished to see me. I went up and Kinney said he wanted me to go for Dr. Ware. He said he was a great deal worse, and unless he got help he should not stand it much longer. I advised him to send for a doctor nearer. He replied he did not care who, if I got a good one. I then went to Dr. Lane; was told he was unwell and did not go out. I then went to Dr. Storer and he went over with me. We went into the room together—Mr. and Mrs Kinney were the only persons there—it was between 12 and 1. He was in bed—I remained ten minutes. Went out to the apothecary's and got laudanum, prescribed by Dr. Storer. When I returned the Dr. had gone. The laudanum was administered partly by me and partly by her. Mrs Kinney laid down on the bed [at her husband's request. Complained of headache—Mr. Kinney complained of being thirsty. I remained till five o'clock in the morning. Toward the morning I proposed some tea, to relieve his thirst. Asked Mrs K. and she said there was no cold tea. He asked her to make some—he thought it would do him good. I said any herb tea, would be good.—She said she had some sage in the house, and I asked her to make that. She was lying on the bed then—got up—as she was going out he said Hannah don't sweeten it. She said well.—Was absent about twenty-five minutes, and came back with a pint bowl of tea. She sat it on the bureau—complained of headache, and laid down again. I found it too hot to drink—I tasted it awhile, stirring it with a spoon, to see if it was cool. I tasted it but once, but dipped the spoon in several times. In five minutes Mr. Kinney drank it. She held the bowl. Then sat it on the bureau and laid down. In fifteen minutes he called for drink again. I gave it to him, and he drank the remainder. I had the bowl in one hand, and the light in the other. I

saw in the bottom of the bowl a sediment of a light color, as he was drinking. It was white, and rolled as the bowl was turned up, and appeared to adhere to the bowl. He drank all the tea. Did not notice the bowl afterwards. Mr. Kinney said he could not live long unless he got help. I supposed it was cholera morbus I was so informed by Dr. Storer. Mrs. Kinney staid in the room all night. I did not sleep during the night. Felt unwell before I went home, and said I should be obliged to go home on that account.

After I got home felt very sick; like vomiting. I grew worse and was very sick indeed. Did not vomit. After 9 o'clock I went over to Mr Kinney's, again toward ten o'clock. He was in the chair, did not speak. I remained till he died. There was a great change since I had left him. He looked death-like. When I saw him before, he expressed great anxiety to get relief. Said if he could relieve the sensation in his stomach he should be better. He was a hose and trunk manufacturer. A few days previous he told me his business was very good, he had got a good job. Was present at the examination of the body. Mrs. Kinney had no objection to the examination. I did not hear the conversation of the Doctors. (*Mr. Dexter.* It cannot be evidence.)

Did not notice any thing remarkable, in the examination of the body. Saw the stomach taken out and the contents put into a bottle. I got the bottle and rinsed it out before the contents were put in. The contents of the stomach were first poured into a pitcher and then into the bottle. It was carried away by the Doctors. When I first saw Mr. Kinney, his wife said he had had the varioloid. She said she intended to visit Mr. Kinney's friends. She had been talking about leaving the city for Vermont. She stated this to me about three days before his sickness. Said she expected to go alone. The family consisted of Mr. and Mrs. K. and her daughter, eleven or twelve years old. I do not recollect whether it was on Monday or Tuesday that I first heard the report that Mr. Kinney had been poisoned. Think it was Tuesday; am not certain. I got the bottle at my boarding house.

Cross examined. Did not go to church on Sunday. Did not sit up the night before I watched with Mr. K. I saw Mr. Johonnet, on Sunday. Told him I had been unwell. I had no reason in my mind to be particularly attentive to the bowl in which the tea was. Do not recollect looking at it after it was set down on the bureau. I did not think of looking in the bowl again. When first brought up it was too hot to be drank. Dr. Storer was not there when the tea was given. At the examination before the Coroner, I do not recollect that I stated any thing as to the sediment in the bowl. My testimony was written down, before the Coroner.—I knew of Mrs. Kinney's intention to go out of town after her husband's death. I spoke for her passage and paid the fare. She was going to Thetford to see her husband's friends. She had made previous arrangements to go, before her husband's death. She told me, after

his death she was going and went on Friday, twelve days after his death. Thetford is twenty five miles beyond Hanover, and the stage went there but twice a week; on other days must go by private conveyance.

When I went out to get the laudnum, I was not told to get an injection pipe by Dr. Storer, or any one. Have been applied to by a great many persons respecting this affair. Dr. Hildreth never spoke to me about it. Mr. Kinney was forty years of age. Did not break off my intimacy with Mrs. Kinney after her husband's death. Have treated her the same as before. I first learned he was poisoned, by calling on Dr. Storer, I had heard all the rumors previous but did not believe them.

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TUESDAY, Dec. 22.

The examination of JOHN BARNES was resumed, the foreman of the deceased. Mr. Kinney had been unwell for some time before his death. Had complained; was worse on the Saturday before his death. Witness saw him Sunday morning as he was getting off the bed into the arm-chair. I advised him not to. He said he wanted to get some ease while he lived. He could not last long. They were his last words before he died. He died in almost half an hour after he got up. Appeared very weak. Goodwin was present. Did not know of the deceased having the particular disease testified to by Dr. Bachelder. Had never discovered any melancholy temper in the deceased. He had been in pecuniary embarrassments, but took it very easy. He had a good job to do, previous to his death. Never heard him say he was tired of life.

Cross Examined. Mr Avery furnished the stock and Mr Kinney acted as Agent in making the hose.—There was also a contract between Kinney and French of Lowell to make hose. Kinney was to be paid cash. The contract with Avery was to furnish Kinney with leather whenever he got work. [Mr Dexter pressed this point of the examination with apparent interest.]

Hannah Varney. [The witness spoke very low and was understood with difficulty.] Was not acquainted with Mr Kinney before his death. Knew his wife about three months before. Saw her about three weeks before that event, at Mr Guild's boarding-house where I boarded. She requested me to call at her shop.—[She kept a milliners' shop in Bromfield street.] I went to the shop. She asked me if Mrs Guild was going to break up house; said she, (Mrs K.,) was going into the country and wished me to come and keep house for her. I said I did not know but I could come. Went home and called again on Saturday at her shop. She said she was going into the country the next Wednesday, and Mr Kinney was sick and she would like to have me come on Sunday, or early Monday, as she should have a great deal to do, to get ready. I went on Sunday to her house. When I arrived there, about 10 A. M., Mr Kinney was alive. He was in his chair. Did not speak before he died. Remained there till Thursday after his death. Went away then, returned on Friday and went away Saturday. Saw but little of Mrs Kinney and had but little conversation with her.—On Sunday I washed the dishes. Know nothing of the bowl that contained the sage tea. Washed the dishes that were brought out of the sick chamber. The family consisted of Mrs Kinney and daughter, Miss Collins, myself and my little boy, at the time of Mr K.'s death. On Thursday morning after his death, I came down stairs rather late.

On the breakfast table was set some flour and salaratus, to make bread. I made bread and got breakfast. When ready Mrs Kinney came home from mark-

et with some things; she spoke of some liver she had got and asked if I wanted some; I said no; she then asked me if I wanted some green apples cooked; I prepared the apples; do not recollect whether she or I put them on the fire; Mrs K. said she had no sugar, and wished me to go out and get some; I did so; when I came back with the sugar they were sitting at the table; the apple sauce was on a shelf in the kitchen, I put some sugar in it out of a paper, and put it on the table. I was well that morning, before breakfast. [The witness here complained of faintness, and the examination was suspended a few moments.]

Resumed. After eating the breakfast, I felt as well as usual, until between 9 and 10, I began to feel unwell, eat breakfast about 7 o'clock. After 10 Miss Collins came from the shop and said she felt dreadful; I told her I had felt so half an hour. She vomited; I soon did so myself twice; I then made some gruel a little after 12, and felt better; towards night I was again affected with vomiting; about 9 in the morning my son went out to a friend's; I remained till two or three that afternoon, then went to the friend's where my boy was. Found him sick; had been since he came there; I felt worse after I got there; I was very sick for an hour and a half, and thought I was going to die. Vomited twice, about 4 o'clock; felt distress and great dryness, thirst, and weakness of the whole system. While in the kitchen of Mrs Kinney, that morning collecting papers to kindle the fire, a blue paper wrapped up, marked poison, attracted her attention.

Witness produces a small piece of blue wrapping paper an inch and a half wide and two or three long, which she says is a part of the wrapper, the word "poison" written on it. She preserved it at the time.— Found it in the sink room behind the door. It lay on the floor at the end of the sink. The other papers I picked up behind the door, separate.

Witness did not recover for some days. Was sick on Saturday morning. Consulted Dr Buck. The child seemed well in two or three days.

The apple sauce was in the sink room, the place in which I found the blue paper. The sink is the common height from the floor. Never knew where the paper came from. Had not then heard any thing of the manner of Mr Kinney's death. I kept the paper till I went to Mrs Thompson's in the afternoon. I there told of it. Do not know that Mrs Kinney knew that I had found the paper. I kept the paper until I went before the Coroner.

On Thursday Mrs Kinney advised me to go to a physician.

Cross Examined. Mrs Kinney told me on Friday, (after the death) that she should give up keeping house and go into the country. Thursday forenoon, after I complained, Mrs Kinney gave me some medicine.— Told me what it was.

I described to Dr Buck what I had eat. Did not tell him I suspected any thing wrong or out of the way.— Did not show him the paper, or tell him any thing about it. No vegetables were used that morning at breakfast, but apples and cucumbers. Don't know what was done with the other vegetables. The milk I made the bread with was sour, and it required a good deal of pearlsh. It was perceptible in the bread.— Turned the color of it.

The blue paper has the same general appearance as when she found it. The creases showed more plainly. When they took the gruel Mr. Kinney took some also. Witness's little boy eat the same we did at breakfast. Mrs. Kinney partook also of the same we did at the table. Mrs. Kinney was also sick the same day.— After I had been sick and my child, and after I had found the paper, I went back to Mrs. Kinney's on Friday. Dr. Buck gave me no prescription, but advised me to be careful what I eat, particularly not to eat vegetables or apples. Saw nothing of the blue paper until I picked it up, after collecting the other

papers behind the door. I stopped and picked it up as I was passing to kindle the fire.

Before the Coroner I stated that I had heard rumors of Mr Freeman's death by poison; (Mrs Kinney's former husband).

Cannot tell the reason why I told no one at the time I found the paper. I expect I thought it important, or I should not have kept it. I did not suspect any thing wrong in the house then. I did not take the paper out of my bandbox till after I went to Mr Pemberton's in the country. I showed it there. After that kept it in my pocket book.

There were waste papers on the shelves in the sink for the purpose of kindling. Some had fallen down, or was thrown behind the door. Some remained on the shelf. There were other articles and things there. It was a place where rubbish was kept. There were boxes, jars and earthen pots. Did not take particular notice what there was.

Lucretia Beers, sworn. The Foreman suggested a request that the witness would take off her bonnet to favor hearing the testimony. The Court gave no direction upon it. Lived in Mrs Kinney's house. On Saturday morning saw Mr Kinney going up stairs. Saw him again Sunday morning, in the sick-chamber. When I went down I said to Mrs Kinney that her husband was very sick. She said yes, she did not think he would live half an hour. I asked if I could do any thing. She wished me to make some poultices. I did so.— Was gone twenty-five minutes. I went into his room with Miss Collins, to put the poultice on. He said I think they will not do much good, I think you are too late. Mrs Kinney asked if he would have them on, and he said yes. I think he called for some drink and Mrs K. gave him some out of a tumbler. I went out again; when I returned he was in the chair. He said he should like to have something to relieve that faint spot. If he did not he should not last long.

After his death I asked Mrs Kinney what he died of, cholera or cholera morbus. Mrs. Kinney said folks must be crazy, must be beside themselves. It was neither, it was the bowel complaint. She would have him opened and examined by the doctors. This was on Thursday after his death.

The day after the breakfast, I remarked a good deal of bread in the swill pail. I boarded in the other part of the house occupied by Mrs. Kinney. Was in there occasionally, assisted her.

The Counsel declined any cross-examination.

Chester Brigham. Saw Mr. Kinney on Saturday before his death, in his bed. Spoke of great pain, and that he could not stand it long if he did not get relief. I asked him what the matter was. He said he was confident that it was the cholera morbus. I asked him if he had not been eating something to produce it. Said he had not. He had been very particular what he ate, for a week. He had been dieting a week. Mrs Kinney asked me to go for a doctor. She named Dr. Storer. I went, and returned with him a part of the way. I then went home. I next saw Mr Kinney on Sunday morning. He was on the bed. Mrs Kinney sent for me. I was requested by her to go to the apothecary's and get some pills. I did, carried them to the house in a paper. Saw Mr. Kinney again

after this at 10 o'clock. He was on the bed. I assisted him to get up in the chair.

He was very weak. We lifted his feet up at his request. I left before he died, about 10 o'clock. Did not see him again. I was in the room once with Dr. Storer. Mrs. Kinney sent for me in the morning, and requested me to go for a nurse.

Cross-examined. Went for Deacon Bachelder at Mrs Kinney's request. It was Sunday morning. The nurse I went for I suppose to be Mrs Bachelder, but am not positive. That was my understanding. Mr. and Mrs Bachelder, I understand, were friends of Mrs Kinney.

Mrs. Harriet Bingham. Was not in the room when Mr. K. died. Saw Mrs. Kinney on Saturday before he died. She told me her husband was sick, and kept vomiting and was faint, and she did not know what to do for him, and asked me. I asked if she had a doctor, she said no.—This was 2 or 3 o'clock. I told her sage tea was very good. I had this conversation at the pump, near the sink room, I was in the adjoining part of the house. Saw her again in the afternoon, half past 5. She said George was worse. Again saw her at 8 o'clock at a grocery, in Bromfield street. She said George was worse, she feared he could not live. She appeared agitated. I understood the doctor had not been sent for. I offered to go for the doctor, and went for Dr. Bachelder. Saw her the day her husband died. She appeared much affected. Said she had all her life been afflicted with sudden deaths. That she knew George would not live, and that he had died for all the world like Mr. Freeman. Two or three ladies were present. Do not recollect any other particulars of that conversation. Saw her the day after the funeral, in the evening. She had attended the funeral. It was a military funeral. Her conversation was principally, how strange it was that one and another was so suddenly taken from her. She said George was a fine husband and treated her well. I again saw her on Thursday afternoon, at her house. Heard she was sick; that they were all sick. She said they were.

She said she did not know what it was, but the bread was very strong of saleratus so strong that it was red. She tried to vomit. She said they had eaten cucumbers, mentioned in particular the sour milk. Said that she had had a physician, Miss Collins one and she another. Saw her again Monday after. Conversed whether she should continue house keeping or not. She said nothing about any medicine Mr Kinney had taken. She said George had been a fine husband to her, and every thing reminded her of him.

Cross-examined. Don't recollect any reason Mrs K. gave why a doctor had not been called Saturday afternoon, when I offered to have Mr. Bingham go for one.

Thomas G. Bradford. In August last lived with Charles Mead, an apothecary, tended his shop. A lady called in the afternoon, and asked what the article was we sold to kill rats with.—Told her arsenic. Asked how much it would take. I told her not a great deal. She said she would have three cents worth, a quarter of an

ounce, 120 grains. I put it into two wrappers of papers, and wrote on the outside "poison."—Cannot remember the paper. Recollect both wrappers were of the same color. We never use white wrapping paper, used to use all colors. I told her we did not usually sell arsenic without a recipe from a physician. Mr Mead was out.—The lady was about five and thirty should think. Small size. Never saw her before. Had sold arsenic before, about that time. I went away the 11th of August, to Augusta. It was about a fortnight before this, that I sold the arsenic in the afternoon.

I sold arsenic at another time in the forenoon, to a lady—marked it in the same way—don't recollect the quantity—don't recollect selling arsenic to any other persons. I did not notice the lady who bought the three cent's worth—cannot say it was the prisoner, Mrs K. Think I should recognise my hand writing then—it has changed since. [The Attorney General here offered some slips of paper—not the blue paper—with the word poison written on it.] Mr Dexter objects to this trial of the witness, as an attempt of the Attorney General to show his own witness cannot recognise his hand writing.

Judge Shaw. The Court think it inadmissible, and the papers were withdrawn.

The blue paper is shown to the witness with the word poison. Witness—I did not write that—I am certain of it. There is no general resemblance to my hand writing.

Mr Dexter objected to a cross examination by the government of its own witness.

Attorney General proposed by comprison with other hand writing of witness, to show that he could not be certain as to his own hand writing. Had not the Government a right to show that the witness was not right in declaring this not to be his hand writing, and thus either convince the witness he was wrong, or to satisfy the jury of it.

Mr. Parker cited two cases at Nisi Prius trials for counterfeit bills, where the President of the Banks called by the government declared their signatures were called to shew they were forged signatures, and it was shown the Presidents of the banks were mistaken.

Mr. Dexter replied that this was nothing else than a cross-examination by the government, of its own witness, and therefore inadmissible.

Chief Justice. The object is to show the genuineness of the hand writing, and it is not competent to show it by cross-examination. The best evidence, the witness himself, denies it, and there his examination by the side producing him must stop. It is competent for the government to prove it by other witnesses, and then the principal witness may be re-examined, as in the case of proving hand writing of a deed. Ruled out.

The examination proceeded. Witness has changed his hand writing from fancy, since last August. Has not been to writing school.

Mr. Curtis objects to this form of examination.

Chief Justice. It is incompetent, in this form of examination.

Attorney General. Then we must take the answer as conclusive.

Chief Justice. We have not so decided. You may use other evidence, and after other positive evidence is produced, re-examine the principal witness.

Attorney General. Can the witness be called on to write now, at the table?

Chief Justice. Certainly not.

Mr. Parker. Can we ask the reasons for his opinion?

Chief Justice. Yes.

The witness here examined the blue paper; says he is *confident it is not his writing*, but very different, in the form of the letters and general appearance.

Elizabeth B. Linnell. Worked at Mrs. Kinney's house. A week before his death worked at the shop. On Saturday, between three and four o'clock, saw Mrs. Kinney at the shop. She said her husband was very sick, she feared he would not live. She said Mr. Freeman and Mr. Freeman's father had died in a similar way. She said he was vomiting. Next saw her on Monday, at her house. She was sitting at the table. I went of my own accord. The shop was not open. They were eating breakfast. I asked her the cause of her husband's death. She said cholera morbus. I said she was wonderfully supported. She replied yes, she had every thing to comfort her, as he had his reason to the last. She spoke of her deceased husband very highly. She had been to the funeral and returned. On Friday, I went to her house. I had then heard the report of the poisoning. I had told it to Miss Collins. It made her faint. I went to Mrs. Kinney's house, but did not see her. Mrs. Kinney came to the shop, in the afternoon of that day. I told her what I had heard about Mr. Kinney being poisoned.

I told her I thought she ought to know what was said. I was agitated. She was composed and wished me to tell her all. I told her it was reported that she had poisoned Mr Kinney. She wished to know who made the report. I could not tell her. She wished to know if the young ladies knew it in the shop, or if I had told it to Miss Collins. She wished me to go for Dr. Storer. She said "they accused me of poisoning Mr Freeman to get Mr Kinney; and now they accuse me of poisoning him! who am I to get now? This was in the course of the conversation, can't tell if before or after she asked me to go for Dr. Storer. I went for him.

I told her if she was innocent, she could look to God, who knew it. She said "yes, that was her only support, and *as God was her judge she was innocent!*" She wished me to say nothing of it. When she asked if I had told Miss Collins, I did not answer whether I had. She said nothing more about it. Wished me to keep it from the girls in the shop, as much as possible. She did not say whether she had heard these reports before I told her. She wished me to be particular and find out who raised the report. I told her that the gentleman who boarded in the house where I boarded had heard the report. She wished me to ask them to be particular and find out who made it.

On Saturday after the funeral, I was in the

parlor, making a dress, which she was to wear to Church on Sunday. She said she hoped it would be sanctified to her. She said she had many enemies, and that Mr Freeman's friends would like to see her hung, she had done so well. She spoke of her husband as a kind husband I saw her the next Monday. She told me she did not wish to say any thing about the reports. When she left the city she gave up her dress-making to me, for my benefit. The shop has been continued. She said she should be back in a fortnight. I saw her the evening before she left the city. She did not speak to me of mourning dress, till after the funeral.— Asked me what she had best have.

Cross-examined. I first heard the report on Wednesday, communicated it to her Friday afternoon, and then went for Dr Stover. Carried a verbal message to him that Mrs K. wished to see him. I went immediately from her house, the same afternoon I communicated the report. I saw Dr Storer, told him Mrs K. was not very well, and requested to see him. I had not seen him there before, during that week. Cannot recollect on what day after the funeral the shop was first open for customers. I think it must have been on Thursday, because on Wednesday her daughter left the town. I think it must have been on Wednesday that I first heard the report of the poisoning. It was Wednesday or Thursday that a lady came into the shop and told me. I cannot tell which day it was positively. I now think it was on Thursday afternoon, from some work we had in the shop.

Dr. Asa B. Snow. Have known Mrs. Kinney since last July, prescribed for her in my office in Broomfield street, near Ballard place; never but once in my office. Had seen her before in the street, and had had some conversation about prescription. Did not know her husband. A week after his death I received a message from Mrs. Kinney. Went there on Thursday afternoon. Found Mrs. K. and Miss Collins both sick, similar in their sickness, but Miss C. the sickest. They had been vomiting. I had seen Mrs. K. the Saturday previous in the street. She said her husband was sick, and if he did not get better she should send for me. I was not sent for. On Thursday she explained that she should have sent for me, but that her husband had previously spoken for Dr. Storer. I cannot give her language, only my impression that her husband wished to have Dr. Storer. Nothing more said of this, or about a family physician. She told me of her husband having called on Dr. Harrington and had grown worse every time he had taken his medicine. She spoke of cholera morbus, and of her former husband dying very suddenly.

Cross Examined. I cannot say whether Mrs Kinney told me that a friend who watched there had desired Dr Storer should be sent for. It might be so. I derived the impression that Dr. Storer was sent for at Mrs Kinney's wish.

Mrs Kinney and Miss Collins told me what they had eaten for breakfast. In my opinion the food they had taken, and irregularity of habit, from being in a house of mourning, were sufficient to account for all the symptoms I saw.

Had a conversation with Mr. Goodwin, after Mr. Kinney's death. He said nothing of having been made sick by the tea. I heard it from rumor. After the Coroner's inquest, I saw Mr. Goodwin, and he then mentioned his sickness. I had heard rumors of Mr. K's death at the first conversation with Mr. Goodwin.

In Chief. First conversation with Goodwin I had heard of the rumors. We conversed generally upon the subject. Saw him in the street. The second time I saw him, conversed again of this subject. We went over it pretty generally. He then mentioned his sickness. I did not ask him why he had not mentioned it before. I have no recollection of his mentioning his sickness the first time. An over-dose of salaratus would produce irritation of the stomach, and that would bring on vomiting.

At ten minutes past two, adjourned till half past three.

TUESDAY AFTERNOON.

MRS ADELIA BINGHAM has known Mrs. Kinney since June last. Knew her husband some. Was learning a trade of Mrs. Kinney. Do not recollect when I left her home, think it was in July. Continued to work in the shop. Left it the Monday after Mr. Kinney died. Heard of his illness on Saturday. Mrs. K. was in the shop that afternoon. It was usually closed at 7 o'clock. She was there when I left at 7 o'clock. I saw nothing peculiar in her conduct. Don't recollect if Mrs. K. worked in the shop that day.— Next saw her at her house, Monday morning at 8 o'clock. Went there on finding the shop shut. There appeared to be domestic happiness in the house while I resided there. On Monday when there, I was assisting getting ready for the funeral. Nothing said as to the cause of Mr. K's death, there, nor at the funeral. I was at the funeral. Saw her the next morning. Was at her house all that day, Tuesday. Heard Mrs K. say that the cause of his death was cholera. Heard nothing said of the examination by the Doctors. That was all the conversation I ever had with her about the death. She said he was always kind to her. Never heard her complain of him or his habits. I was not then married. My name was Adelia King, since married.

No cross examination.

Ebenezer Shute. Is a Coroner for the County of Suffolk. Held an inquest on the body of Geo. T. Kinney. Identifies the blue paper as having been shown to him at the inquest. He took the paper and went to twenty druggists to ascertain if any one knew the writing of the word "poison." Could find no one. The young man, Bradford, was before the Coroner's Jury.

Cross Examined. There had been a report that this man was poisoned. I forget who came to me to hold the inquest. Did not charge my mind with it. The testimony was taken down by the foreman, Abraham Moore, Esq, the lawyer; there were six jurors; cannot call them by name; Mr Wellington, another lawyer, was one; I signed the record and gave it to the Attorney General; not seen it since; went to the principal druggists in the city, all in the neighborhood; did not go to the extremes of the city; did not go to all the apothecary shops.

In answer to the Attorney General. I think it was by your request or Mr Parker's request I held the inquest.

Charles Mead was called, but was not in court.

Almira Adams, sworn. Am acquainted with Mrs K. was not with Mr K. when he died; returned to town the Monday after the Saturday preceding his death; was

employed in her shop till a week after Mr Kinney's death; saw Mrs K. when I first returned; went to her house at 9 Monday morning, the shop being shut; saw Mrs K. but do not recollect any conversation respecting Mr Kinney's death; she appeared calm; did not speak of going to Vermont; at another time she said just before Mr K. died, she had intended to go to Vermont to see his friends, she thought she should go in a few days; she said that Mr K. requested her to go and see his friends in Vermont, after his death, if she would like to go; this was in the course of his sickness; the day after the funeral she said that she should die if she stayed here, every thing reminded her so of her husband. I heard her say, after his death, that Mr K. was a good husband; know of no difficulty between them. Never heard her speak against him.

No cross examination.

Almira W. Collins, called and sworn. Went to assist Mrs Kinney the 6th of August, in her business in the shop. She wished me to come; went to her house in Ballard place; I saw Mr Kinney that evening at the house; I did not speak to him; Mrs Kinney was not in the house. On Friday I saw the family, Mr and Mrs Kinney, her daughter and myself composed the family; no one in the kitchen. Mrs K. was a perfect stranger to me when I went there; I was at dinner on Friday; I was then introduced to Mr K. They appeared very pleasant. Mr K. expressed some disappointment at the manner in which the vegetables were prepared. On Thursday evening, at tea, Mrs Kinney said he had been taking medicine and complaining; Friday afternoon I went to Charlestown and spent the night with some friends; returned on Saturday morning. About 10 o'clock Mrs Kinney said her husband was very sick at the store; I was in the parlor when he came in and went up stairs; she wished me to go up if I heard him vomit; at tea I asked if she was going to have a doctor; Mrs K. said she was going after one; she left the table, I presume for that purpose; I was obliged to go to Charlestown again that evening after tea, and went; I returned and slept in the house that night. Mr Goodwin came at 9 or 10 o'clock, and I was introduced to him by Mrs Kinney. Mr K. vomited and was distressed; he was evidently growing worse in the evening. Saw Mrs K. during the night; she appeared distressed as any one would be who had a friend very sick; she said she feared he would die in half an hour; I replied it was incredible. When I saw him he said he could not live unless relieved of his distress. When Doctors Bigelow and Storer came in, we understood that it was the Cholera, and were very much alarmed, but it did not prevent our doing our duty. We put on poultices; he said little, but was perfectly willing; in the morning I was told he was dying; I was surprised for I had no idea of it; we were called in to prayers; it was an agonizing scene; during the prayer he was panting for breath. After this I left the room; Mrs K. was standing beside him; slept with Mrs Kinney on Sunday night, I had learnt the cholera was not contagious, and the alarm had subsided. No particular conversation occurred that night.

Tuesday morning Mrs K. wished me to go to the grave yard, to visit the tomb. It appeared to be out of affection for him. Her daughter and myself went with her to the tomb before breakfast. It was at the Chapel burying ground on Tremont street, under a willow tree. We went to the yard and looked over.— She sighed deeply and seemed greatly affected, and she wept. She gave me a sketch of her past life, but did not finish it. We went from the grave yard to the store. She there wept. She then went to make some purchases for her daughter, who was going to Vermont, and returned to the house to breakfast.

Tuesday evening we went to the grave yard again. We did not get in. Wednesday morning her daughter Dorcas went to Vermont. Mrs Kinney was going in a few days. In all she said to me I understood she

had lived happily with Mr K. Up to Wednesday after his death, I had heard nothing of poison. Supposed he had died of cholera. Ate breakfast at Mrs Kinney's on Thursday morning. Ate a small cake, and apple sauce; am very fond of it. My health was as usual. Soon after breakfast I was taken sick, after I had gone from the house to the store. Felt very singular, as if taken sea-sick. Could not account for my feelings. I returned to the house and found Mrs Varney the same. Was taken with vomiting, and began to fear I had the same sickness Mr Kinney had died with. Mrs Varney went out after her little boy. I went up stairs and laid down, felt as if about to lose my senses, and sprang from the bed. Mrs K. came in and encouraged me. Sent for some porridge, said I was not going to be sick. The vomiting continued till evening. I went down in the parlor, and began to feel sick again. Told Mrs K. I wished I knew a doctor. She said she would go for her's. She did, and soon after Dr. Snow came in. He said it might be an irritation of the stomach. He prescribed some medicine, and advised me to lie down.— Mrs Kinney said she felt bad and sick herself; appeared pale. She was not so sick as I was, as I could not sit up. The next day I was very weak and feeble.

I first learned the suspicion that Mr. Kinney had died by poison, on Friday, from Miss Linnell, I told her to say nothing of it but leave it with me, and I would tell Mrs. K at a proper time. I went into the parlor, Mrs. Kinney was there, but I felt reluctant to tell her. As she was going out, I told her I had something to communicate, and I was then surprised to see Dr. Storer come in, and I left the room. I afterwards learned she was aware of the report, Miss Linnell having told her. Saturday night she requested me to walk out. I had got better. She then wished me to go to Dr Storer and ask him for a certificate that Mr K. died of cholera; she wished it in consequence of the reports; this was after I had told her. I went to Dr Storer and made the request; he declined on the ground that it was not advisable to give a certificate as the circumstances were known to but few.

At the examination by Doctors Bigelow and Jackson, I said to her, after they were gone, that she had had an early call. She replied, oh, yes, Dr Jackson was going to the hospital, and had stopped to make some examination about the cholera; she eat her breakfast and appeared composed; she never told me what the doctors said; she did not go to church the Sunday following Mr K's. death; that afternoon I carried a note from Mrs K to Dr Storer; he read it and said he presumed I knew that Mr K. had died of poison. This was the first I knew of the discovery made by the doctor; I cannot describe my sensations; when I returned I related it to her, she was greatly affected, and said, "Oh that God would make known the mystery why George had done it; why he would not disclose the secret cause;" I will not say that she was in an agony of grief, but she appeared agonized; I expressed surprise that he should have died so calmly and called on God for mercy, when he was his own murderer; she said it was one of his dark, deep designs; she said, "I never told you that George got high;" I asked her why they had not searched for arsenic; she said they had found pills; she said there were vials and medicines in his drawers, which he was in the habit of using; intimated for a particular purpose; she described him as noble and generous; I asked why she married him; she said at one time out of pity, and at another, to get rid of him; she expressed surprise that he should have taken poison, said she could not believe it, and the Doctors must be mistaken; she said she asked him, on the Saturday he was on the bed, what he had been taking; he replied only a glass of wine; she said you promised not to take any more, and he replied it would be his last; before she went to Vermont she said she should not be surprised if she was arrested, as she had so many church enemies, who would be glad to see her hung, she spoke of this several times.

I received a letter from her while she was in Vermont. [The Attorney General here produced a letter which witness identifies as the one she received from Mrs Kinney. It was not put in as evidence.]

Cross Examined. Witness asked Dr Storer at the request of Mrs Kinney, to put a piece in the paper.— He said he would give a certificate.

Harriet Hosford, a niece of the deceased, was at the house of deceased on the Sunday he died, in the afternoon. Conversed with Mrs K. She said considerable; conversed about having lost friends by sudden death; spoke kindly of her husband. I remained till tea time. Went with her to her room. She said "you saw your uncle as he was the other evening, and I don't know but he was taken in mercy; no one knows how much I have suffered the last summer."

The evening she meant, Mr Kinney had just returned from the whig meeting in Chelsea. He appeared much excited. She seemed to wish me to understand he was intoxicated. I never thought him dissipated. I attended the funeral and rode in the same carriage with her. Next saw her on Tuesday. On Wednesday I went to my home at Thetford, Vermont. Mrs K.'s daughter went with me.

Witness met the prisoner at Thetford, Vermont, soon after she arrived there, at the house of witness's father. She appeared much affected and shed many tears. There was a miniature of Mr Kinney in the room belonging to my mother. She appeared deeply affected at it. We asked her if there was sickness in Boston. She said yes, and people were leaving the city very fast.

She did not speak of Mr K.'s death or how it happened; she conversed with me afterwards, about her husband; said he had become very dissipated, and had acquired a habit of gambling; that his conduct was the cause of her children's leaving. I do not recollect any thing else she said; I told her I never thought so, and requested her to say nothing of it to my mother; at that time I had had no reports as to poison; she arrived on the Saturday before; this conversation was Tuesday, at Dr. Kendrick's; she said nothing of the reports of poisoning her husband, till the next evening; she then communicated them; we passed Tuesday and Wednesday night at Dr. Kendrick's; Thursday we went to my father's; she was at my father's when the officer arrived on Saturday; she was taken there and conveyed to the public house; she conversed freely about returning to Boston, and related to me a story about an interview she had with a lady in the stage, nearly as it appeared in the newspapers. She told me the manner in which she first heard the rumors, from Mr Lane. Cannot say how long it was before she left Boston.

Cross examined. I heard the officer communicate the object of his visit; she was calm and collected; I went to the public house and remained with her that night, at my own offer. Dorcas, the child, went up with me to Thetford; she was much attached to me. The child was much disturbed and excited at the death of Mr Kinney; she had seen the body after the dissection, and saw the blood and was much alarmed; that may have been a reason for her going out of the city with me, but was not mentioned as such at the time.

Dr. Charles Mead. Keeps an Apothecary's shop on 4th and Turnpike street; young Bradford is in his employ; have not ascertained to whom I sold poison in August; is shown a notice which he says he sent to several clergymen last Sunday, and requested them to read it from the pulpit. Dr. Hildreth called at my store, and wished me to state if I had sold arsenic to any woman; my lad, Bradford was then in Maine. When he came home I inquired of him, and he told me he had sold some poison to a lady; I have never been able to ascertain who it was.

Cross examined. I sent the notice to the clergymen in consequence of the Attorney General having requested me to take every means to ascertain to whom I sold

the poison. He suggested advertising but did not suggest this mode.

[The notice was printed, and requested that if any woman had purchased poison of Dr. Charles Mead, a few days previous to the 11th of August, she would come forward and let it be known, to serve the cause of Justice, as it was suspected that Mrs Hannah Kinney, charged with poisoning her husband had purchased arsenic about that time, and if any other woman had done so, and would let it be known, it would relieve her from this suspicion.]

Mrs Kendricks, who resides in Thetford, Vt. was now called but was not in court. The Attorney General stated she was a material witness and was expected to arrive that evening in the Cars from Lowell. He stated that her testimony, save further questions to Mr Goodwin, and the examination of another witness, not very material, would close the testimony on the part of the Government.

It being 7 o'clock the Court adjourned till 9 this morning.

Without any reference to the character of the testimony, we cannot refrain from an expression of approbation of the intelligence, self possession and uniform and lady-like deportment of the young ladies who were subjected to the painful test of a public examination as witnesses, in a crowded Court room. These young ladies whose appearance and manners were highly prepossessing, and who have enjoyed in their useful avocations of duty and industry, but few of the advantages of more favored but not more estimable circles, acquitted themselves, with a discretion, modesty and delicacy, that would do honor to the most accomplished females, and which few could surpass in similar trying circumstances.

WEDNESDAY MORNING, Dec. 23.

The Attorney General stated that Mrs Kenricks of Thetford, Vt., who had been expected, had not arrived, and they must dispense with her testimony.

Wm. F. Goodwin recalled. Remembers a conversation with Dr. Snow in Bromfield street. It was unexpected to me; he came out of his office; I do not seem to recollect the amount of the conversation; it related to the death of Mr Kinney. After the apprehension of Mrs Kinney, I saw her at the house of Mr Adams, the constable. Mr Adams was in the room; I shook hands with her and said I was sorry to see her so. She said if it had not been for my testimony and Miss Collins she should not have been in that situation. I replied it was unkind in her to think so, for I was summoned before the Coroner and obliged to tell what I knew. That I did it very reluctantly. I told her she had nothing to fear if she was innocent. I asked her to explain some circumstances. She then said Mr Kinney poisoned himself. I told her I could not believe it, and related the manner of his death, which to my mind rendered it impossible. She said I should have to believe it, that he had done it and she knew for what. I asked her what reason she could assign and she told me that he had stated to her that he would make way with himself if he ever got the disease which he then had; that he said rather than any body should know it he would make way with himself. I remarked that I did not think that he had that disease.

I saw nothing of the kind. She said he had, and there was a gentleman who would state that fact.

Before I left the room, she requested me to keep still. Did not wish I should say any thing. Nothing further was said, at that time.

Mr. Parker. You are sworn to tell the whole truth; have you any thing further to add. *Witness.* Nothing.

Cross-examined. I am a house painter. Use artists

colors in my business. Have king's yellow in the shop. Seldom use it. Have a partner—place of business is in Bromfield street. On reflection, we have no King's yellow in the shop.

Dr. Storer again called, as to the effect of saleratus; produces acidity and a disposition to vomit. In large quantity if taken into the stomach, produces irritation and acts as cathartic.

In answer to Chief Justice.

I was called by Mr. Goodwin to visit Mr Kinney, in the morning, and I supposed until yesterday, that the same man who called me first, called me the second time. When I was there tea was administered, I supposed while Mr Goodwin was present, but it now appears it was not he; I supposed so until he told me to the contrary. A man was present when I was there to see Mr. Kinney; and tea was administered by that person. Mrs Kinney was on the bed. She did not hand the tea to Mr Kinney while I was there. Afterwards, when the poisoning was suspected, I recollect Mr Goodwin wringing his hands and saying he was individually the cause of Mr Kinney's death, by giving him the tea. Being asked if it was Miss Collins who called on him both times for the certificate as to Mr Kinney's death, says he thought so when testifying before, I supposed it was the same individual, but now understand it was not,—that Miss C. called but once, with a note, which the witness identifies. It was written in pencil, without date, thus—

"Dr Storer favor me with a call this afternoon. It will gratify me very much,—if it is possible.

Respectfully, H. KINNEY."

Mr Parker offered the letter written by Mrs Kinney to Miss Collins, from Thetford. He said if it made for the prisoner she was entitled to the benefit of it, if against her the government were entitled to it.

No objection. The letter was then read as follows :

THETFORD, August 29, 1840.

Dear Miss Collins,—It seems a long time since I left home, one week to-morrow. I arrived here safe, Saturday—found my friends expecting me. Dorcas and all were well. I have been visiting from place to place, as people are accustomed to in the country. Every thing looks pleasant as I could expect it (it erased) in view of the late almost tragical scene. O how much I think of what is going on at your *place*. Miss Collins I pity you. But one thing let me desire you to do. Act in all things as you would for your own sister, whom you *knew* to be as innocent as (*the erased*) yourself. Now is the time for the enemy to *reign*. I know not how much I have got to suffer on this earth, but hope to take all things with as much composure as my feeble health will admit of.

I have said nothing here of the excitement at home. His sister I find was not ignorant of the eccentricities of his character, and feared what I had to tell her was true. This affords me relief to think that others know the same things that I do, *painful* as they are. I have nothing particular to say Miss C. only that if you are as careful of all that you say and do as possible, all will be well with you, and as for myself, I feel that this stroke will bring me to a premature *grave*. I feel that every tie is broken that bound me to earth. I shall start on Wednesday next to go to different parts of Vermont, to see brothers and sisters of the late George T. Kinney. I have met with the most *cordial reception* (as yet) that a person could meet with. But no more of this. I will say now that my busy imagination trav-

els back over mountains and valleys to you, and there I see you bursting about hardly knowing what to think of what you see and hear. Well, Dear Girl, let me say to you, suffer not ONE remark to make an *impression*. Read the Bible and pray over the subject with a desire to be directed aright in all *your* feelings, and I trust you will be directed aright. Give my love to all the girls. I shall write to Charles to-day. I want you to write me just as soon as you receive this, and not keep anything from me that you think I *ought to know*, or that you think *you* would be glad to know in the same situation.

A number of things I had forgotten to mention before I left, but I shall soon be at home. Can't tell the day until I hear from some of you. Shall not start till Wednesday next on account of the mail getting in on Tuesday night next. On Saturday last as I was passing on in the stage, I heard one of the most *distressing* relations of the person of myself you ever heard. We soon stopped at a public house for the night. I took her into my room, and asked her all the questions that I thought was necessary to ask her, (it was related to one woman by another, that sat on the back seat directly behind me—some very interesting conversation was going on by gentlemen on the front seat; they did not hear any remarks by those persons in the shape of women.) Well, after I had asked her all the questions I wanted to, I told her who I was. She said she could not believe me. I frankly told her that what she had told there was not the least shadow of truth in; that I could say with peace of mind, and a conscience clear of offence: that things could not be related more *unjust* or *cruel*. But also time, the unreturning tide of time, is bearing us on where every secret will be revealed—there every veil will be withdrawn, and all will be seen and known, as God designs, if we are his children. Good bye,

H. KINNEY.

Say to Mr Goodwin, that I visited his mother yesterday. His father and mother were not at home—saw Stone and Annette; they were all well; thought they were glad to see *me*. Shall go again as soon as his father and mother get home. If any letters come for me, please to put into the office, directed to the care of Dr Kindrick, Thetford, Vt.

[Direction on the back of the letter.]

Miss T. COLLINS,

No. 9, Ballard Place, Boston.

Will the P. M. forward this without delay.

Mrs Hannah Varney called again. The morning of the apple sauce breakfast, she put two table spoonfuls of a solution of salæratu into the cake.

Miss Harriett Hasford recalled at her own request, to correct a statement. At the time I expressed my surprise that Mr Kinney should have died so calm and composed if he had committed suicide, Mrs Kinney told me that he had exclaimed, "O God, I have killed myself."

The evidence for the prosecution being closed, Mr Curtis, the junior Counsel for the prisoner rose and said, that he had not heard any thing in the opening of the case on the part of the Government, which indicated to what point

the evidence concerning the sickness of the family on Thursday would be urged, or what inference would be drawn from it. He now wished to hear some statement from the counsel for the Government, of the points to which that evidence would be directed.

SHAW, C. J., (after consulting with the other Judges.) We cannot now pass any general order on the subject of the evidence. If the prisoner's counsel wished to exclude the evidence, the point could have been raised when the witnesses were called.

CURTIS. My object has not been to exclude the evidence, although we think that we might have embarrassed its introduction. I merely wish to know how it is to be urged as tending to prove the guilt of the prisoner. The Court having intimated that it cannot pass any order on the subject, I will ask the counsel for the Government to state to us the point to which they intend to use that evidence.

AUSTIN, Att'y General. I do not feel called upon to make any statement.

Mr Curtis then addressed the Jury as follows:—

MR. CURTIS'S OPENING ARGUMENT FOR THE DEFENCE.

May it please your Honors:

Gentlemen of Jury:—The drama of suspicion has reached one of its stages, and the victim of popular prejudice and delusion is, it may be hoped, one step nearer to a deliverance.

This most interesting and important case is now to be opened on behalf of the prisoner.

You will probably have anticipated that I should call your attention to some of the general features of the case, before I proceed to state the substance of the defence. First of all then, I feel that it is not improper for me to state to you how my learned friend and myself, instead of other gentlemen who have from time to time been reported as of counsel for Mrs Kinney, should appear in her defence. You have doubtless seen it stated in the newspapers, that different gentlemen of eminence at this bar have been applied to, to act as her senior counsel; and you are now aware that her defence is in other hands. My colleague and myself have felt that among the causes of prejudice which have seemed to be accumulating upon this unhappy person, one of the most serious was the impression that might be derived from the fact which I have just stated—that learned and eminent persons had, on learning something of the case, declined to embark in it. Gentlemen, I have a right, and it is my duty to say that this is not the fact. No person at this bar, who has been applied to by this defendant, has been so wanting in the true spirit of humanity, or in the true sentiment of professional duty. But the time, the exertions and efforts of counsel engaged in large practice, are not their own. They belong to others; and a violent departure from the routine of engagements that may have been contracted, leads not only to much private inconvenience, but likewise to public injury, in

deranging the business of the Courts. There was yet another reason. This unfortunate person did not possess the means of remunerating counsel: and the distinguished persons who were applied to, would not have been justified in deranging their previous engagements, without such remuneration as would enable them to command the services of others who could supply their places and perform their duties to their clients and the Court, which had been pre-engaged.

Under these circumstances Mrs Kinney could only place herself in the hands of the Court.—There is an old and merciful fiction of the Law, by which the Judges are represented as the counsel of the accused; and founded upon this, as I understand it, is the practice of appointing counsel to conduct the defence, the Court delegating to them the labor of the cause, but still preserving, as we trust, its watchful guardianship over the rights of the accused. It was found, on enquiry, that my learned friend could, at a sacrifice, undertake this defence; and along with him, I have been appointed to aid in presenting it to you.

The next topic to which I wish to advert is one anticipated by the opening counsel for the Government, but which will not be used *as* he anticipated. Allusions will certainly be made by both of us to the solemn and weighty responsibility which the consequences of your verdict throw upon you. But I beg you not to misunderstand those allusions. Neither of us are here to seek to fright you from the performance of a public duty. The awful result of a conviction under this indictment is the law of the land; and however you or I might wish to change that law, here there is but one duty, solemn, responsible, painful it may be, but yet a duty, to be performed manfully in the face of man, and relying on the mercy of God. I put away therefore all discussion of the right of human society thus to inflict the last dread evil, as a punishment. But I do not put away the final consequence itself. I keep it—I claim to keep it ever before you, as the great warning that shall rouse and sustain your minds to a religious care in the weighing of the evidence. I assert that in capital trials, the constant presence of the result of conviction is to the mind of the juror only that additional sanction, upon his oath, which the imperfection of human judgment needs. In the most common transactions in Courts of Justice, we appeal directly—as a motive and stimulus to the mind—to the Deity. God is invoked, that we may truly and impartially decide upon the evidence. But what a sanction, what a motive and stimulus ought to be here! *He* is not only invoked, in whose hands are the issues of life and death, but that Eternity into which we may be about to dismiss one of his immortal creatures, is present to the mind. Do you not feel that, in the great task before you, such a thought is needed? When you took those seats, to enter upon this trial, did you not feel that some support to the conscience, some motive to more than ordinary care, was needed to carry you through this im-

portant duty, and prevent the sad result of regrets which might be too late?

There is yet another topic to which I feel it my duty to advert. You know that for months, the very atmosphere has been rife with rumors respecting this case and the history of the defendant. You know that insinuations and stories have accumulated upon this occurrence, shedding upon it a false and fatal light, which the eye of credulity has gazed at, as if demonstration itself had been produced. You know that subjects have been alluded to here, which it is necessary to exclude from the mind, in weighing this evidence. You will not feel, gentlemen, that in addressing myself to this part of the case—in *appealing* to your care upon these points—I do it from any want of confidence in your strictly conscientious discharge of duty. But the effort to which the mind is called, completely and faithfully to perform that duty, is serious and severe.

I know how hard it is to shut out all foreknowledge, all sources of testimony, all facts and surmises and conjecture, which are not drawn from what is legitimately before us in evidence. When a peculiar view is pressed upon the mind, and it is casting about for corroboration and support, so insidious is the operation of prejudice that it will sometimes unconsciously, and with purest intentions, seize that corroboration from sources which the public justice has declared shall not jeopardise a hair of the head of one accused.

Pardon me, gentlemen, if, in alluding to this danger, I have spoken thus directly. I do indeed rejoice that the trial by Jury furnishes precisely that intelligent, *practical* state of the mind—conversant in affairs and thoroughly knowing human nature—which constitutes the very best tribunal for the weighing of evidence. I rejoice too, that in this community, juries are daily gathered for the administration of justice, whom no accused person can doubt or fear. But, gentlemen, I had a duty to perform, in clearing the ground for this defence, which would not suffer me to approach you with the language of ordinary compliment by which to manifest my confidence in you. I feared when I commenced the investigation of the case fourteen days ago, that it might be one of those dark webs of circumstance in which the innocent are sometimes involved, for want of light. I trembled for the public justice—that it might be abused by making one hypothesis alone the object of its reflections and enquiries. I thought therefore, gentlemen, to speak to you in the fullness of my own anxiety, directly to that interior conscience which resides in all men, and by so speaking to make you feel that we bring this case to your decision with confidence in you and in the result.

The defendant, gentlemen of the jury, stands indicted for the murder of her husband by poison. It was said, in the opening, that the evidence the government would offer, was both positive and circumstantial. It is true, evidence has been given tending to show that arsenic was found in the stomach of the deceased, and that

he died from that cause ; but that this fact, if it be so, has any tendency to show that Hannah Kinney administered it, I appeal to your judgment. There is not a particle of direct evidence to show that the wife administered the poison, if indeed he died of that cause. There is circumstantial evidence, and nothing but circumstantial evidence in the whole case, as made out by the prosecution.

Let us look, then, at the proper definition of circumstantial evidence, before we proceed farther. An issue of fact is sought to be proved by circumstantial evidence, when, in the absence of direct proof of the principal fact, certain other facts are offered in evidence, from which the Jury are asked to infer the principal fact, which is intended to be established. Now this is at best an inferior species of evidence. It is inferior, because it is only in the absence of direct proof, that it can ever be resorted to. The law does not permit circumstantial evidence to be used, when positive evidence can be produced. It is also inferior, because the common sentiment of mankind, upon questions of momentous interest, leans in favor of direct proof.

It is very common for those who rely on circumstantial evidence, to represent it as capable of producing as high a degree of certainty as direct proof. I am not disposed to deny that it may sometimes satisfy the mind. I am also disposed not to deny that there is sometimes a necessity for resorting to it, and that its entire rejection would impair the administration of the Law. But I never will, for one, upon this or any other occasion, fail to surround it, to restrict it and hedge it in, with all the energy of which I am capable, with those checks and safeguards, under which alone it can be any thing better than the merest tyranny of opinion, founded on conjecture. I have read those melancholy records of the pride of human judgment, referred to by the opening counsel, which disclose convictions of the innocent, proceeding from the neglect or oversight of some principle, simple, yet essential to the truth. I did not, as he anticipated, design to cite them here ; but they are familiar to every professional reader, and I have always drawn from them far different conclusions from those of the learned counsel. I have always risen from their perusal, with a conviction that it is a duty which every lawyer owes to his race, to maintain a rigid philosophy of circumstantial evidence. It is not because the theory of evidence is not now better understood, than it was in the times when those cases occurred ; nor is it because the understandings of jurors are not now better cultivated—that those remarkable and painful errors remain forever important warnings to every generation. It is because the human mind, with all its cultivation and all its pride of knowledge, remains ever the same in its constitution, ever liable to the same mistakes, abuses and impositions, that we should never lose sight of those dark examples of error. It is too, because those very errors have illustrated and negatively established the principles, the oversight of which constitutes the error, that they should be made to stand out

on the page of history, warnings to all coming time, of the immutable truth and soundness of the principles thus fatally neglected.

I ask your attention, then, to the principles which are to be applied to the examination of this evidence. And recurring to the definition which I have given of this kind of proof, I observe that the first great rule of circumstantial evidence is this.

1. That every one of the facts and circumstances from which you are asked to draw the main inference, must be proved to you beyond a reasonable doubt. If the basis is unsound, the superstructure cannot stand. If you are in doubt respecting the truth of any essential fact among those from which you are to draw the inference, you can never reach that inference. You cannot begin to take a step towards it.

Every one therefore of the facts and circumstances must be rigidly scrutinized. You must be satisfied of the truth of every one of them, before you can allow it to have the smallest place in the chain of evidence, upon which the main inference depends.

It follows too, as a necessary corollary from this position, that each circumstance must be established by its own independent proof, tending directly to it. The idea of drawing an inference by the aid of that which is itself established by inference, never yet entered into any theory of evidence, and cannot bear the test of reason. You must be satisfied by the direct, positive testimony of credible witnesses, that each fact is proved, and the proof must tend directly to the fact. Thus to take an illustration from the case on trial. Goodwin, it is asserted, was made sick by the sage tea ; the inference is that the tea contained arsenic. You must be satisfied beyond a reasonable doubt that he was made sick by that tea ; and on his testimony alone. You cannot go to the other circumstances in the case to argue *to* this. Thus, you cannot go to the apparently inconsistent or guilty conduct or appearance of the prisoner, and argue that *she* probably poisoned the deceased, and thence that the tea was the vehicle, and thence that it made Goodwin sick, and after this process of deduction, give the fact of Goodwin's sickness a place in the chain of circumstances. His sickness, *caused by the tea*, must first be proved to you, beyond a reasonable doubt, as if there were nothing else in the case ; and then you may place it among the other circumstances from which the main inference is to be drawn. In short, the Government must prove every single circumstance which they put forward, from which the conclusion is to be drawn, in the same manner and to the same extent as if the whole issue had rested upon the proof of each individual circumstance.

It follows also as another corollary, from the same position, that if any fact fails to be proved it weakens the force of all the rest, as a chain of proof. It is generally agreed by the best writers on evidence, that the force of a number of independent circumstances is increased by each addition, in something like a mathematical ratio. It is not convenient, in moral rea-

soning, to state such a ratio in numbers. But the numerical ratio of mathematical process is a convenient analogy, by which to illustrate the increase in the force of circumstantial proof.—Under this illustration, it is at once apparent, that if the addition of a single circumstance increases the force of all the rest, in a certain ratio, the subtraction of that circumstance weakens the force of all the rest in the same ratio.

The second rule to which I call your attention, is

2. That all the facts and circumstances must be consistent with the hypothesis. If any one of them is inconsistent, the whole falls to the ground. Thus Goodwin tells you that the sage tea had a sweet taste; and the hypothesis is that it contained arsenic. Now you must not only be satisfied that the tea had a sweet taste, but also that it is consistent with the presence of arsenic to cause a sweet taste in the tea.—The fact upon this point is quite otherwise.—We shall show you that arsenic is not of a perceptibly sweet taste, or of any taste at all.

The third rule is,

3. That the facts and circumstances must not only be of a conclusive tendency, but they must to a moral certainty actually exclude every other hypothesis. In other words, they must be shown to be not only consistent with the guilt of the prisoner, but inconsistent with her innocence. This is the grand, cardinal rule of circumstantial evidence, and under it, it must not only be proved to you that the deceased died of arsenic, and that it is consistent with all the facts to suppose that it was administered by his wife, but you must also be convinced that it could not have been given to him by accident or design, by some one else, or taken by his own act. You are to be satisfied that the manner of the death, and all the circumstances which the Government have put in evidence, are to a moral certainty inconsistent with any other supposition than that the deceased was murdered by his wife.

Here I have to state to you that the burthen of proof is not upon us. It is not for this wife, arraigned as I believe on the merest slanders of suspicion, to account for the death of that husband who went into Eternity at peace at least with her, however ill at ease he might have been with the world and himself. That death may be in the inscrutable knowledge of God, or locked in the bosoms of those who will not tell. It is not her duty to show you how it occurred. If it were, no human being could be safe under accusation, no administration of the law could be other than an engine of the purest and most unmitigated injustice and folly. The rule that I have stated, is the grand principle which prevents circumstantial evidence from working this monstrous wrong. It is the dictate of reason and the undeniable principle of law, that the circumstances should to a moral certainty exclude every hypothesis but that proposed. Here is the burthen upon the Government. They must bring you a train of circumstances which are rationally consistent with no other supposi-

tion, than that the poison was administered by the wife. Our duty, on the other hand, is not to prove—not to account—not to demonstrate the mode by which this death took place. We have only to suggest. We have only to show you that the fact of the death and the circumstances attending it, are consistent with *any one* of several other suppositions, and our task is ended, and neither you nor I will ever be visited with fears and misgivings that a horrible injustice has stained the annals of our law.

Hence, gentlemen, you will perceive the principle upon which this defence proceeds. It will consist in showing that the case made by the Government is utterly insufficient for a conviction; because it does not begin to exclude all other rational modes of accounting for this death. In other words, because it is not inconsistent with innocence. Here let me remark that it is not a balance of probabilities, between one and another mode that is to settle the question of guilt. That may or may not be the ground upon which public or private opinion proceeds to condemn or persecute. The victim may be pursued *into* the temple of justice, upon conjectures and probabilities, but it cannot be immolated *here*, without a struggle, and without a more rigid satisfaction of the rules of law than any mere probabilities will afford. Here are those who will hold over her the protection of those great maxims of the law, which are established alike for the protection of the innocent and the detection of the guilty. Beyond all question, it is one of those maxims, upon which all such evidence rests, that the mere probability in favor of one hypothesis, as compared with the probability in favor of another, is of no sort of consequence, unless the circumstances adduced in support of it exclude, beyond a reasonable doubt, all other suppositions.

But, gentlemen, although a comparison of probabilities will not alone warrant a conviction, or indeed weigh at all in turning the scale in favor of guilt, yet it will and must add greatly to the strength and weight of argument, in favor of innocence, if we show you that the probabilities are vastly greater in favor of one or all of the hypotheses which we suggest, than they are in favor of that set up by the Government. The reason for this position is obvious. Nothing but circumstances of a conclusive tendency, which exclude all other rational suppositions, can ever convict: because they still leave room for reasonable doubt, inasmuch as some other supposition may be true, admitting all the facts proved. The probability of the story, therefore, is of no consequence, because if there be anything that may yet be the truth, notwithstanding all the facts, the mind cannot be satisfied beyond a reasonable doubt. But on the other hand, when you show that several other suppositions may be true, under all the facts, and that the amount of probability is vastly in favor of any one of them, you increase the doubts which the mind is compelled to entertain of the hypothesis first proposed.

This is important to be borne in mind, in this case, because here is a wife indicted for the murder of her husband.

Here I pray your attention to another principle of this defence, which I state in advance of any objections which may be urged. I am about to lay before you several modes, in which this death *might have* occurred; only one of these can be the absolute truth; yet it does not lie with the Government to say that this is an inconsistency on the part of the defendant. I will show you that it is a perfectly consistent defence; consistent with the rules of law and with the actual position in which the defendant is placed. I pray your Honors, with special attention to this point, to sanction the principle upon which in part I now base this defence, when the Jury shall come to be instructed.

The defendant is indicted for the murder of her husband, and the evidence is purely circumstantial. Now, in *the first place*, the burthen of proof is not upon her. The Government must prove to the full satisfaction of every mind upon your panel, beyond a reasonable doubt, that the hypothesis which they set up is not only consistent with guilt, but that it is inconsistent with innocence. 2. In the second place, the innocence of the prisoner is to be presumed, until your minds are satisfied of the proposition I have just stated. That presumption began, when she was first charged with this offence, and it continues and is to be carried along with you, until your minds are satisfied of her guilt.

3. Being innocent of the crime, as you are bound to presume her throughout the evidence, and the weighing of the evidence, she cannot know how that death occurred. I say she cannot know it. It is certainly possible, that she might be innocent, and yet know how the death occurred; as, if it was a suicide, and her husband had disclosed it to her before he breathed his last breath; or, if it was an accident, and she had discovered how the accident occurred. But all such suppositions as these are extravagant and unreasonable. The mind rejects them, too, as unnatural and inconsistent with the posture of an innocent mind arraigned upon such an accusation. If she, being innocent, really knew how this death occurred, she would tell it; the contrary supposition is too monstrous to be entertained. It is therefore logically and rationally correct to say, that being innocent, she cannot be supposed to know how the death was occasioned.

I assert, therefore, that her position at this moment, in the eye of reason and of the law, is simply this—that being innocent of the crime, as you are bound to presume her, she cannot account for that death.

But because she cannot account for it by positive proof, is she therefore to be condemned? God forbid. Nay, he does forbid it. Such a condemnation is impossible. The case does not begin to be one of those, where the party is bound to account for any thing. There a class of cases, where the law requires the accused to account for the facts. As where stolen goods are found in his possession; that possession must be accounted for; or where the weapon with which it is certain one has been murdered, is found in the possession of the accused; that

possession must be accounted for. But here, no instrument or means of the death, is traced into her possession. The presumption is and must be, that she is innocent. She must therefore be silent. That silence is the silence of truth. She cannot show you how it occurred, even if the law required her to do so, and it never has required and never will require an impossibility.

If, then, she cannot show you how it actually did occur, what may she do? She may show you how *it might have* occurred. She may show this, in one or in several ways, and may then call upon you to decide, whether the supposition which the Government assert, excludes all other rational suppositions, and whether the facts are not only consistent with guilt, but are to a moral certainty inconsistent with innocence.

Suffer her not, then, Gentlemen, to be affected with the cruel imputation, that her defence is inconsistent. There might be cases, where the suggestion of several suppositions in which the fact might have occurred, would be felt to be a tampering with the jury. But such is not this case. It is the absolute necessity of her position, from which nothing but Omniscience can relieve her, that she should not be able to show you how this death was occasioned. But she can show how it might have been, and her right to do this can no more be restricted to one or another line of defence, than *you* can say, before you have looked through all rational suppositions, it must have been thus, or thus, and we will look at nothing else.

I propose now, Gentlemen, to examine the case made by the Government, by the circumstantial evidence on which they rely.

1. The first of these circumstances is a train of conduct and actions and declarations of the prisoner, which it is to be argued, are explicable only on the supposition of her guilt.

The first circumstance urged to prove this, will be her sending to Dr. Storer to procure a certificate that Mr. Kinney died of cholera.—You will recollect that Dr. Storer himself supposed the deceased died of cholera, and in all the testimony that goes to show the sending for that certificate, how little have you that is definite, as to time, inducement or object. Witnesses have come voluntarily to the stand this morning to correct mistakes which they now admit they fell into yesterday, even in a matter on which life and death depend. What reliance can be placed on circumstantial evidence, where the circumstances are themselves in doubt!

Dr. Storer says it was on Tuesday she spoke of the certificate, and he concludes that because he had not then told her of the death by poison, and the suspicions, no one else could have done so, and he not have known it. This is an inference from an inference, neither of which are proved. The evidence is that rumors of the poison were rife on Sunday, and that, on that account, upon suggestions made to Dr. Storer, a second examination was made of the body.—Why then might not Mrs. Kinney have known of these rumors on Monday? but even if she did not know of them, she might have applied

for a certificate as to the cause of his death, from various motives other than guilt—not to avoid suspicion as to herself, but for a negative purpose, to show what the actual cause of a death somewhat sudden and unusual, was. There seems to be a perfectly rational mode of accounting for her applying for the certificate, consistent with her entire innocence, even if she had not then heard of the rumors.

But when were these rumors set afloat? This Dr. Hildredth, of whom we know nothing in this case, but as we find him here and there promoting this prosecution; he had suggested the notion of poison, before this. Dr. Storer had heard of it. The rumors did exist and were all over the town on Sunday, Monday and Tuesday, and Mrs Kinney told Dr. Storer there were such rumors, when she saw him, (as he says) on Tuesday.

But there is another and more rational explanation of this application for the certificate. I believe that Dr. Storer is honestly mistaken, as to the time. Miss Linnell says it was Wednesday after the funeral, when the shop was first opened, and that she heard the rumors on that day, from a lady who came into the shop, and that she went directly to Mrs Kinney's and told her, and that Mrs K. immediately sent her to Dr. Storer for the certificate. It is now obvious that Miss Linnell went first to Dr. S. for him to call upon Mrs K. with reference to the certificate.—Yesterday Dr Storer testified that it was Miss Collins who first called. To day he corrects it and is satisfied it was not Miss Collins who made the first call, at the request of Mrs Kinney. It is highly probable therefore, that the Dr has been mistaken in this important fact, and that it was Miss Linnell who first requested him to see Mrs K. respecting the certificate. If so it was on Wednesday, and not on Monday, that the Dr had the first interview with Mrs K. when she requested the certificate. I am aware that Miss Linnell testified that she thinks it was on Friday when Mrs K. sent her to Dr Storer; but on cross examination she says distinctly that the shop was first opened on Wednesday, that it was that day she first heard the rumors, that she carried them directly to Mrs Kinney and from her went directly to Dr. Storer. These facts are much more satisfactory, in arriving at conclusions, than the probably mistaken recollections of Dr Storer, as to the day of the interview.

But whatever you shall finally fix upon as the day of this interview with Dr. Storer, we shall, I am confident be able to satisfy you that the rumors did exist, and that Mrs Kinney had heard of them, when she first asked for that certificate.

The second fact that may be relied on, under the head of strange and unaccountable conduct, will be that Mrs Kinney did not communicate to Miss Almira Collins, the fact that the Doctors had found poison in the stomach of the deceased; that after having had one confidential conversation with Miss Collins before, she did not communicate this fact to her, and from this you will be called upon to infer guilt. But why tell it to that lady? Who was Miss Collins? A stran-

ger to Mrs K. imported into her acquaintance within a week. If therefore, she had any grounds for apprehension when Dr Storer told her of the poison, Miss Collins was the last person to whom she would communicate it, at that time. But there was a still deeper reason why she did not communicate it, than the length of their acquaintance. There was lurking in her own heart a reluctant suspicion that her husband had committed suicide. Brooding over this painful and distressing thought, is it natural that this wife who had from first to last covered up his frailties from the world, with all the diligence of affection, should, when she learned a fact that brought a crushing confirmation of her doubts, have told it to a young woman whom she had known so short a time? To my mind, it is wholly unnatural; and when I look at this matter in connection with her desire to have the death certified as a case of cholera, I see nothing that is not rationally explicable with her entire innocence.

But it is said, she did afterwards admit to Miss Collins what the Doctors had told her. *How and when?* Miss Collins then knew of it from Dr Storer. She first spoke of it on this occasion to Mrs Kinney. The relations of things and of the parties were totally different. The fountains of feeling were not voluntarily opened. They were touched by the hand of another, and at the slightest touch the tremulous waters of grief gushed out. Then came that remarkable scene, which more than any thing else proves the mingled agony of grief and suspicion of suicide with which her heart was torn, until it burst into the ejaculation, "Oh, that God would show the mystery, why it is that George has done this!"

Such an exclamation was perfectly natural, if we suppose the deceased to have died by suicide, and not murder. So far from being extraordinary, on the supposition of suicide it was a natural exclamation of the wife, not volunteered in a confidential conversation, but brought forth by the communication from Miss Collins, that she had heard the fact of poison having been found. How much more natural and charitable to attribute this exclamation to supposed suicide, as the motive, than to murder, and that by a wife who is not proved by a single witness to have ever evince doubt but affection and devotion to her husband, to the last moment of his existence.

In further explanation of this and other circumstances drawn from the conduct of the prisoner, we shall prove that the deceased was a ruined man, and by his own acts. That the declarations of the wife as to his habits of gambling and dissipation, were sadly true, and that in all probability, by his own statements, it brought him to a violent death by his own hand.

We shall distinctly show that he was beset by a terrible habit of gambling; that it preyed upon his conscience and exerted a tyrannical control over his better feelings; and with the light thus thrown upon the case, you will be called on to explain for yourselves, the circumstances that have been distorted by suspicion, rumor and prejudice, into a charge of murder, against the

wife. I ask you, gentlemen, to hear and weigh this evidence, as it ought to be weighed, in a scale where is suspended the issue of life and death to the accused; to look at human nature as it ought to be viewed, with no extravagant theories, but with a *knowledge* of its workings and its sufferings; to look at the whole matter naturally, in connexion with the fact that no cause of quarrel, no dissension or difference existed between the two during the life of the husband, and that they never spoke of each other in life, but in terms of kindness and affection. I ask you to look at her conduct, in its most natural light; upon this wife, beyond all question attached to her husband, distressed by suspicions of his violent death, anxious to conceal his faults, doubting as to the cause of that death; surrounded by rumors and vague surmises; and then say whether all these circumstances are not consistent with the supposition of suicide, as the cause of the death.

2. The second material circumstance in the chain of evidence relied on to convict the accused, is the supposed sickness of Mr. Goodwin, from tasting of the sage tea. I say *supposed* sickness from that cause, because he does not himself directly swear to it, and no where assigns that as the cause. Whether he mentioned the sickness to Dr. Snow or not, in his first interview with him, which remains in doubt, it is certain that he did not allude to the *sediment* which he now swears he saw in the bowl. He was late, in naming the sage tea as connected with his sickness, and it was not until Mrs. Kinney had gone out of town, and he was pressed upon the subject.

But look at this remarkable fact, that this young man, who leaves it to be surmized by inference that the sage tea caused his sickness, remained on perfect terms of friendship with the prisoner, procured tickets for her journey to Vermont, put her into the cars, and bid her God speed on the way! when all the time he must have known that if it was true that she had put poison into that tea, she had deliberately perilled *his* life by poison, as well as murdered her husband.

Goodwin's supposed sediment is another link of this circumstantial evidence. Well, gentlemen, there might have been sediment in that tea, or there might not. It might have had one origin or it might have had another. Is there anything satisfactory in this evidence? But you are trying a human being on the issue of life, and you will apply all the facts that are to lead to the forfeiture of that life to the laws, with the extremest caution. This young man thinks he saw a white sediment in the tea, and yet he never said a word about it in his testimony, under oath, before the Coroner's inquest. He states this distinctly, and we have the fact that even after he supposed the man had died of poison administered in that tea by the wife, yet he had never said a word of the sediment, or breathed it to a human being, and he tells you now that he had no particular motive in looking at it; that he set the bowl down upon the bureau and never examined it at all, and all this happening in

the evening, by candle light; and so little impression did it make upon him, that when conversing with Dr. Snow upon Mr. Kinney's death, and the rumors of poisoning, he never alluded to this supposed sediment.

Can you reconcile this with any proof now, as to the existence or nature of that sediment? The whole town was rife with the rumors; Goodwin meets Dr. Snow; they converse of the death, freely and fully, and he never says a syllable to him of the sediment. How are you going to dispose of this testimony but by supposing that he saw what might be sugar as well as anything else, or that he saw anything else as well as sugar?

Can you say that this testimony is entitled to any consideration in a chain of evidence to convict of a capital offence?

Another fact the government will probably rely on is the purchase of arsenic at Dr. Mead's. It is worth while to see how this comes to be incorporated into the case. Some person, at some time purchased arsenic at an apothecary's shop in South Boston. How came it into this case? It seems that this Dr. Hildreth, of whom we know nothing except that he is inciting this prosecution here and there, and of whom the prisoner says, he is her most bitter enemy, went to Mr. Mead's store to inquire if any one had purchased arsenic.

It seems that the fact of one or rather *two* women purchasing arsenic, came up among the rumors of the day, and Dr. Hildreth started upon the scent. But what light does it throw upon the case? Beyond the mere act of purchasing arsenic, by some persons unknown, it has no connexion with this trial. By no efforts or experiments can they trace this purchase to the prisoner. It turns up, by the inquiry of Dr. Hildreth at Dr. Mead's.

The young man swears he cannot identify the defendant. He has sworn so, before another tribunal, the inquest that sat upon the body, and he repeats that denial here, in the most positive terms. I therefore have a right distinctly to assume that the defendant was neither of those women who purchased arsenic.

Matters being thus, the young man having sworn before three several tribunals* that he **COULD NOT** identify the prisoner as the person who purchased arsenic of him, an extraordinary step is taken. The Attorney General directs Dr. Mead to advertise for the women who purchased arsenic at his shop in August; and thereupon, two days before this trial comes on, the handbill produced to Dr. Mead, is issued by him. Now, why was this done? When the clerk had sworn over and over again, that he could not identify the prisoner, why was not that enough? But, as if for the purpose of eking out an argument, and to cut off the prisoner from the benefit of the ten thousand chances of its being somebody else, an attempt is made to exclude the probability of its having been any body but her. It is a proceeding analogous to the effort made here yes-

[* The Coroner's Jury, the Police Court and the Grand Jury.]

terday, to make the young man, their own witness, admit that he did not know his own handwriting, after he had, in answer to their own question, sworn that the word POISON on the blue paper was not written by him.

But, if this handbill is going to be urged upon your attention, I pray you to observe how utterly unsafe it would be to rely on it as excluding any thing. It calls upon the woman who purchased arsenic, to come forward, for the purpose of removing suspicion from Mrs Kinney; and now that no one has come forward, does it follow that all other women have of necessity seen the handbill? or that any woman who had purchased arsenic for a mischievous purpose, would make it known? or that, if purchased for an honest purpose, the common reluctance to be made a witness, would not keep the purchaser away? Is the suspicion any the less removed from Mrs Kinney, than it was before? There is no suspicion that can touch her, from all the facts that have occurred respecting the purchase of arsenic, after the clerk has virtually sworn that she is not the person.

Another link in the chain of circumstantial evidence, is the paper found in the house, marked 'poison.' On this evidence the fact is obvious that this paper contained no arsenic. It is not such paper as druggists use. But is it not to be supposed that if any one brought poison into the house, to commit murder, they would have destroyed the paper? Why should a part of it be left? And if any part was left, would it be likely to be the precise fragment that bore the fatal word? It is certain that paper was not the vehicle in which the poison was conveyed to the deceased, even if you are satisfied that he took poison. This is shown by their own witness, Coroner Shute, who went all round the city, and could find no apothecary to identify the paper. This excludes the idea that it came from any druggist's shop in the city, and negatives the supposition that the poison which is brought into this case was ever contained in that paper.

Perhaps too we may be able to suggest a probable account of this paper, but if we shall fail, from the want of that omniscience, which we cannot command, in tracing human events, still it fails to touch us, from its utter disconnection with the prisoner. The burden of proof to explain it, is not upon us, but upon the government to fasten it upon the prisoner beyond a reasonable doubt.

5. The fifth circumstance relied upon by the Government, will be the evidence respecting the sickness of the family on Thursday.

Gentlemen, the great Commonwealth of Massachusetts, by its official agents, is prosecuting for her life, under a capital accusation, one of its subjects, a feeble woman. Evidence is introduced of a subsequent transaction, and it is not very easy to see how it is to be urged in support of the indictment. Not a word is said in the opening, to notify us of the point to which the evidence will be urged; and now, when the Court has no power to compel a statement, and we ask one of the clemency of the Attorney General, he refuses to tell us how and to what

this evidence is to be urged. The Attorney General is to follow my colleague, after he has closed the prisoner's case, and then we are to learn, for the first time, to what this evidence is to be pressed. The course of the prosecution is most extraordinary. We are left to blunder on in conjecture, with no means of anticipating the argument, except such as our imaginations can devise. Whether it is to be urged as proof of a design in Mrs. Kinney to remove and destroy all these persons, who were at the breakfast that morning, in order to get rid of their testimony; or whether it is to be used as evidence of a disposition in the prisoner to poison for the mere pleasure of it, we are in the dark. But let it be remembered that there were some connected with that breakfast whom she could have no fear of as witnesses. To what end should she seek to destroy Mrs. Varney's son? To what is the government driven? At the same time she was destroying these persons, she was attempting to take the life of the innocent child of Mrs. Varney. This must be the supposition if any is to be drawn, from this part of the evidence, and this is a degree of extravagance and improbability amounting to positive absurdity. But whatever the object in introducing this testimony, we can show that the same effects were produced on her, as upon the rest who eat of that food.

Finally the government has utterly failed to show you a motive. I agree that in point of law they are not bound to prove a motive, provided you are satisfied upon this evidence, that the prisoner was the agent, and that no one else could have been. But where circumstances are doubtful in their application to the party; motive is an essential ingredient, and without it, the evidence must fail to convince.

[Mr. C. cited to this point, 2 Starkie on Evidence. 521.]

Here is not only a total absence of motive, but the testimony of the Government is uniform that the relations between Mrs. K. and her husband were kind and affectionate; thus repelling all reasonable supposition of motive on her part to attempt the life of her husband.

But gentlemen, I do not intend to leave the relations of this husband and wife upon the testimony of the Government. I shall bring before you the scene of that last hour, when they parted, he to go to his final account, and she to be left to struggle with the rude world and to encounter this accusation. When you shall hear the simple and touching description of that scene, at it has been described to me, if there is a man who can then believe that this woman went through a series of acts of affection, with an art and hypocrisy that surpass all human nature, he can believe more than I can. I believe that human nature is bad enough. But there are some things which it can not do.—The noble, the generous, the tender, the deeply pathetic, it can not counterfeit, in the midst of murder and malice. I shall show you that this dying scene was pathetic beyond all other description, than that of the simple narrative

of the facts; and I shall then confidently claim your belief that the union of such exhibitions of real feeling with deliberate murder, at one and the same time, was never known to Nature or to Fiction. Why even Macbeth, who is represented by the great master of all men's conditions, as a sort of tender and moralizing murderer, and who had wept over the virtues and graces of the meek Duncan, whom he was about to slay, as he approaches the fatal chamber, marshalled by the dagger which his imagination had painted on the air, lays aside all his tenderness; and bracing himself up for the occasion, he stands forth the murderer and nothing but the murderer, and exclaims—

Whiles I threat, he lives.
Words to the heat of deeds too cold breath gives.

I come now to the various suppositions which we shall suggest, as the modes in which this death might have been occasioned.

Our first hypothesis is,

1. *That the poison might have been administered by Bachelder, by design, from mal-practice.**

Whatever may have been this man's history or pretensions, here he was. He examined Mr. Kinney, and supposed he found secondary symptoms of venereal disease. Now I do not think that the deceased had that disease; but that Bachelder made a mistake, or designedly made him believe he had it. I shall show that there are many cutaneous diseases that may be mistaken for this. He had had the varioloid, and you will see when the regular physicians come to testify, that it requires a practiced eye to draw the line between the effects of the two.

Bachelder gave the deceased medicine with reference to this disease. He says he gave him a cathartic pill. I shall shew you he has not been uniform in his statement. That he has said the first thing he gave was what he is pleased to call his bowel pill. We shall prove that he refused to disclose the ingredients of that bowel pill, of which he claims to be the inventor, and that he has carefully kept the ingredients of that wonderful quack medicine a secret. We shall also prove that arsenic is administered internally for the venereal disease; that Bachelder has admitted he had used arsenic in his medicines, and that he has given a very different account to two gentlemen, as to the kind of medicine he prescribed for the deceased. We shall further prove that arsenic is a cumulative poison, and may be safely given to a certain point, but if carried beyond that, it passes off in a wrong direction, and destroys life.

This goes to account for Kinney's appearance, until Saturday, when the last dose was given, the cup run over, and the man was destroyed.

But it is not material whether Kinney had the disease or not. Whether Bachelder was mistaken or not, it leaves the inquiry whether arsenic was not in that bowel pill, or in some of his other medicines.

[* The learned counsel has requested us to state that, by this position, was meant, not that Bachelder designed to destroy life, but that he might have used arsenic, knowingly, in his medicines, to effect the cure which he undertook. Rep.]

2. *Our second hypothesis will be that the arsenic might have been administered by Bachelder, unconsciously, by accident.*

The poison might have been given in the medicine administered early in the week, or in some of the other medicines which he gave on Saturday evening. He tells you that he now has none of that cathartic pill. What did that contain? Is the supposition that it contained arsenic without the knowledge of Bachelder less rational than that a wife, without motive, should poison a husband she seemed devoted to, to the last?

Then as to the powders. They were supposed to be an imitation of Dovers powders, and yet by some accident, arsenic may have got into them, from the resemblance of that poison to other ingredients. Such a supposition is not only not impossible, but by no means improbable. We shall show by unexceptionable testimony, by a person of great experience, that the danger of using arsenic by mistake for some other white powder, is very great.

3. *The arsenic may never have been in the deceased at all, but may have been introduced into the contents of the stomach, by accident, since the contents were removed from the body.*

The symptoms were identical with those of cholera. The physicians treated the case as cholera down to the death, and the post mortem examination. Are you satisfied that it might not have been introduced there by accident.—The contents of the stomach are put into a bottle that comes out of Goodwin's paint shop?—You know not what its contents had been. You are told by the witness that as a painter he had a pigment in his shop, (King's yellow) which we shall show contains arsenic. [On referring to the Chief Justice's notes, it appeared that the bottle was got at Mr Goodwin's boarding-house, and not at the shop.]

Nevertheless, you have only to bear in mind that you are not to call upon us to satisfy you how all these circumstances might have happened. The Government must show that by none of these means could the deceased have come to his death.

4. *The arsenic, if it was the real cause of death, might have been taken by the deceased, to destroy his own life, obtaining it from Bachelder, or from some one else.*

We shall show that the deceased was a ruined man; ruined by that vice which of all others leads directly to self-destruction—*Gambling*. This will be proved to you as the cause or motive to commit the act. We shall further show that he was utterly insolvent in his business, and that the idea of his having a more profitable job, or being in better prospects than usual, is a mere delusion.

Gentlemen, it gives me unaffected pain, to be obliged to make these disclosures. I cannot but remember in whose behalf I am compelled to make them. I cannot but remember that I stand here to speak for a wife of the vices of a husband, and that she has ever locked those failings in her heart, until a cruel and bitter suspicion has driven her to reverse the very

course of human affection. I cannot but think too of those relatives of his, who are far away in the green home of his youth, and who have little suspected the truth of his more recent history. Alas! how should they know the dark temptations, the snares and dangers which beset men in a great city, while

Along the eool sequestered vale of life,
They keep the noiseless tenor of their way.

They cannot realize the belief that he was weary of his life. But it is true. This man, with a temperament subject to melancholy, had run through much of life's experience, and felt that it was of little worth. He had seen much of the world, for a person of his condition; he had been at times somewhat of a wanderer; and at the period of his death, he was a man who had nearly passed the climacteric of life, in years, and had quite passed it in that feeling and experience of its worthlessness, which seems so to be the fate of certain minds. Upon such a character, the habit of gaming had fastened itself with a perfect tyranny.

We shall also show you, that the deceased entertained and expressed the *intention* of self-destruction. By this I do not mean an intention to commit this particular act. I use the word in a legal sense, to indicate that the idea of suicide had long been familiar to his mind, and had been manifested by repeated declarations to the effect that he might at some time take his own life.

These, gentlemen, are the main grounds on which we shall rest the defence, and with these, nay without them at all, upon the testimony of the Government alone without a word of defence, we confidently look for an acquittal; an acquittal, not only from *crime*, but from unjust suspicion; and when that acquittal is reached *here*, it is to be hoped that the community will do something to repair the wrongs and injustice it has inflicted upon this unfortunate woman.

WITNESSES FOR THE DEFENCE.

Dr Jacob Bigelow. Was called to the post mortem examination of the deceased, and his only knowledge of the case arises from that circumstance and the visit.

When I arrived at the house, he was evidently in the last extremities. His extremities and also tongue cold, his hands livid and covered with a phlegmy perspiration. His pulse feeble. He complained of a burning pain at the stomach and universal distress. I was shown a large amount of fluid said to have been discharged from him. I was satisfied at once, that the case was hopeless, and I remarked to Dr Storer that the case resembled cholera, and a post mortem examination would be very desirable, to settle that question.

In the afternoon of the same day I attended the post mortem examination with Drs Storer and Jackson, and some others. On opening the stomach a redness was found and several large

ecchymosis, or dark spots. Dr Jackson suggested a suspicion of poison upon this, and the contents of the stomach were taken out for future chemical examination. The whole intestine was found to be clear, as if washed out, and destitute of odor. There were also marks of disease in the rectum.

After this, I lost sight of the case, and have had no personal knowledge of it since. I was informed at the house, that an irregular practitioner had been in attendance, in the first stages of the patient. Some medicines were produced by Dr. Storer, as being the medicines left by that practitioner. I think I saw them at the first visit during life. Of their composition I know nothing. They were powders, one of which might have weighed from 6 to 10 grains. On tasting them I thought they resembled Dover's powders. I could not definitely characterize those powders. Certainly not, at this moment. There might have been sufficient arsenic in one of these powders to destroy life, and yet probably not have been susceptible to the taste. Being asked if arsenic is used in a particular disease, as a remedy—

The Attorney General objected that the witness, Bachelidor, had testified there was no arsenic in those powders, and it was not competent to contradict that, by this indirect mode of shewing that arsenic might be used in such a disease.

Chief Justice. In the present stage, we think it competent, as tending to show that in selecting medicine for this particular case, there might have been medicine selected containing arsenic, if that be an ingredient of such medicines.

Witness. Arsenic is sometimes used as a remedy in such cases, and is mentioned as such, by authorities. The most common form of its use is solution. Sometimes it is administered in pills, by incorporating it with some comparative inert substance.

It has sometimes been combined with black pepper, and sometimes with other vegetable powder. Arsenic, I think is a cumulative poison, the effect of which accumulates the longer it is taken, so that in the end a different result is produced, than was intended on its first use.

The extravasations in the inner coat of the stomach, I think are more generally observed in cases of poison, but have been traced in cholera, yellow fever, typhoid and small pox. It is not exclusive to poison.

Mrs Kinney was present during my first visit. I remember but one observation, and that was upon a person entering the room who was supposed by Dr. Storer to be the empyrick. He advised her not to give to her husband medicines prescribed by him, and she replied it was not he, but another person of the same name. Her manner was agitated somewhat, voice slight and tremulous.

A common case of poisoning by arsenic, often has a resemblance to death by cholera, a coincidence that has been noticed by writers of high authority.

In both there occur distress and burning pain in the stomach—with nausea, faintness and

sinking, great prostration of strength. In both there occur coldness of the extremities, livid color, clammy sweats and feeble and hardly perceptible pulse. In both there is great thirst.—These are occurrences in a common case of either disease, but there are exceptional cases. In cholera there is profuse and exhausting diarrhoea, and so in some, but not all cases of death by poison. In the post mortem appearances there are often the same washed and clean appearance of the whole intestinal canal. A remarkable symptom of post mortuary spasms is common to both, and was observed in the case of Mr. Kinney.

The Court here adjourned till afternoon.

—
WEDNESDAY AFTERNOON.

Dr. Jacob Bigelow resumed. The blue pill is composed of mercury in a state of oxidation—arsenic has been used in a great variety of complaints, I think most used in intermittent fevers in England and France. It is used in periodical headaches; it is frequently used in chronic or obstinate cutaneous diseases, and it is detected in various quack medicines that have currency and have acquired a reputation in the cure of these complaints. And, among the rest, is Swaim's Panacea, according to the testimony of various chemists.

The secondary forms of syphilis are those which occur after primary symptoms in cases imperfectly cured. Am not prepared to state the longest time after which they may occur; it may be a month, and in some cases is supposed to be many months; secondary symptoms may reappear for years. I know of no experiments that would decide the question as to what time is required for arsenic to dissolve in the juices of the stomach. White arsenic being a substance difficult of solution, it might remain in the stomach undissolved for twenty-four hours. The more liquid taken into the stomach, the more arsenic would be dissolved; the weight of the arsenic would be an impediment to its being discharged from the system. I am a member of the Mass. Medical Society.

I have never had personal knowledge of Dr. Bachelder; never heard of him as a practitioner except in this case.

Mr. Parker objects to this form of evidence; must be proved by the record, whether Dr. Bachelder is a member or not.

Cross examined. Have known of no case of cholera for several years. Had heard of none at the time of this post mortem examination; my interest was excited in this case from the supposition that this might be a case of the re-appearance of that dormant disease. I believe the man died of arsenic. There were symptoms to indicate it, and from learning that arsenic was found in the stomach, the proof that he died of arsenic was satisfactory to me in the highest degree. I am not able to say whether the powder we saw was or was not Dover powder. I did not identify either of its component parts; I cannot say they were not Dover powders; I suggested a doubt, probably from the predominance

of opium. Opium is a component part of Dover powder. It did not excite my interest sufficiently to make a thorough examination; I have no direct evidence nor direct ground for believing that arsenic was in the powder; I have no reason to believe there was arsenic in the powder; it was possible there was.

In the diseases referred to, arsenic is given in small quantities not exceeding the 16th of a grain; same amount of the substance administered three times in 24 hours.

Arsenic is chemically dissolved in a liquid, and is kept in the shops, as an arsenic solution. I am very confident that such indications as appeared in the case of Mr Kinney, could not have been the result of arsenic taken in the manner above described. There is no arsenic in the blue pill. In a dose which would contain from a 20th to a 16th of a grain, arsenic would be given in the cases in which I have mentioned. Generally a dose of arsenic would begin to operate in half an hour, sometimes in a few minutes. Cases are known of its not appearing under four hours, particularly if sleep has intervened. A second dose would expedite the effect of the first. I have not been able to perceive any taste in arsenic. Some authors say it has no taste, and others that after it has remained long on the tongue, it is astringent and sweet. I think it an old opinion, not well sustained, that it is sweet. There is no danger in tasting small quantities, if not swallowed, and carefully removed from the mouth.

Henry Bachelder called. Resides at Beverly. Lived the last year in Boston. Previous to that, for thirteen years in Lowell. Have known Mrs Kinney six years. Was a member of Mr Freeman's church, her former husband.

I was present at the death of Mr Kinney.—My wife was sent for, with a horse and chaise, but could not go. Being acquainted with Mrs Kinney, I rather volunteered my services and went. I met Mrs Kenney up stairs, in her house, conversing with two gentlemen. Found Mr Kenney in a chair. He said he was very sick. I asked him how long he had been sick. He said he had been complaining something like a fortnight. Said he had been troubled with diarrhoea, and it had terminated in cholera morbus. I had some conversation as to his case, whether he felt he was a dying man. He said he felt so, unless he got relief. Asked him if he realized his situation and he said he did. Mrs Kenney came in. He called for some mixture of camphor, and drank it. She asked how he felt. He wished to know the opinion of the physicians, whether they thought he must die. She told him it was their opinion. He said he was aware of it unless relieved. Mrs. K. asked him if he wished to see his friends, naming them. He said yes, but they could not probably get there before he should be dead.

Mrs. K sent some person to call his friends. Soon after, Mr. K. took his wife by the hand and said, "Hannah, you have been a good woman to me." Mrs. K. wept. He then turned to the little girl, Dorcas, and said, will you be a good girl to your mother. She said yes. After

that he said, my dear where is it best for me to be buried. She said if he had any particular desire, she would attend to it. He dropped it then and said no matter where my bones are laid. In a minute he asked if he had better be buried under arms; the company, he said, he supposed would turn out; but, said he, you will act your pleasure.

Recollect no farther conversation till he was taken with extreme distress. I supposed mortification had taken place. I assisted in placing him on the bed, at his request, and his wife applied camphor to his bowels, by his wish. He got up and sat in his chair again and was some relieved. Not long after he was taken with another turn of distress, and got on the bed again. Wished to sit in his chair again, and was placed there. Mrs. Kinney spoke to him, and he was so indistinct in attempting to reply; I could not understand him. In two or three minutes his eyes were fixed.

She spoke to him and he did not answer.—She then placed her mouth to his and said 'good by George.' He breathed three quarters of an hour, but remained senseless and died. His wife was there all the time. Throughout the whole of this scene I discovered nothing in Mrs K. but that she attended on him as a wife would in such circumstances, with tenderness and affection. I remained about an hour, was requested to assist in laying him out. Half an hour after his death Dr. Storer came in—I asked him of what he died.

The doctor said it was no doubt he had died of Asiatic cholera, and noticed his knees which were affected with spasmodic motion, which he said was one of the strongest evidences of Asiatic cholera. He wished me to notice how long this continued. It continued three quarters of an hour. I was not at the funeral. The sabbath evening that he died I called and saw Mrs Kinney. Asked when he was to be buried—discovered nothing out of the way in her manner.—Before Mr. Kinney's death I attempted to pray, at his request. Dorcas, the little girl present, was not Mr. Kinney's child, was Mrs Kinney's by her first husband.

Cross-examined. I went there the morning he died, about 7 o'clock. Was there perhaps three hours. I think he died about the meeting hour. The prayer was made an hour or more before. His request was, will you pray with me. Mrs K. suggested it to him. I am not a deacon of a church but have been chosen, and have been called such. Do not recollect that Mrs K. alluded to the cause of his sickness or said any thing about meeting in heaven. I noticed no want of attention on her part.

In Chief. Have seen Mrs K. frequently at Lowell. Had not seen her, after I removed to Boston, till the death of her husband.

Willard C. Lane. Resides in town. Am a saddler Was acquainted with Mr and Mrs Kinney. Had known him fifteen years. He served his time at Windsor, Vt. where I first knew him. Have seen him very often, his wife occasionally. Never heard him speak of his wife but in the kindest terms. Never heard her speak of him till since his death. Never heard any complaint of him from her. I was at the house Monday morning after, his death. I saw the notice of his death in the paper, and went immediately to the house. Went in without

ringing the bell. Mrs K. was alone, in tears. She said, "Oh, dear, George is gone!" I remained a few moments. A lady came in and said some gentlemen wished to see her. She requested them to walk up stairs. And I went up. Found Mr Darling and another. As I was going away, she asked me if I wished to see the body. I went in and saw it. I then left.

At 3 o'clock Mr Barnes came with a request that I would call at Mrs Kinney's. I went with Mr Charles H. Johanet. Saw Mrs K. as to the arrangements for the funeral. She said Mr Barnes had attended to it, but she did not know what he had done. She gave me the names of the mourners. I took the direction in the arrangements for the funeral. Mr Johanet went in the carriage with Mrs K. by my request. Her manner was natural, and like others under such bereavement. She stopped, at my wish, while the salutes were fired over the grave. I went to the house, and there took leave of her. A number of persons were in the room. During the prayer at the funeral, I observed her with her handkerchief to her face, and I presume weeping. I next saw her a week after. Had but little conversation with her. Mr Riley was present. When I went out she came down stairs, wept bitterly, and told me what Dr Storer had told her of finding arsenic in her husband's stomach. Do not recollect when she said Dr S. told her. I had heard of the rumors before this, and said little then, intending in the evening to see her. I went to see her, and then told her all the reports I had heard about Mr Kinney and Mr Freeman. I advised her to say nothing and to go into the country. She thought it would not be right for her to go. I told her I did not know but she would be arrested; that I did not wish her to go to prevent this, or evade justice, but because she could not bear what she would hear. I told her she might be arrested before I advised her to go into the country. She wept much. I sat directly before her, and looked her in the face to see if I could discover any thing. I did not believe the reports, but wished to see if I could discover any thing. She did not appear alarmed. She sent for me the next day and asked me if I was of the same mind as to her going into the country. I was. She said she had been advised so by others, and would go. This was Wednesday, and she wenton Friday.

I saw Dr. Storer Tuesday night; he said he first thought he died of cholera, but that arsenic was found in his stomach. He said he had asked for an examination and she was as willing as any one would be under like circumstances. That same Tuesday evening Mr. Johanet and myself both advised her to go into the country; I saw her when she came back in the stage at the Post office; Mr Clapp asked me to come to his house. I went there and saw her; nothing of any consequence was said.

I last saw Mr Kinney on the Thursday before his death; he said he was unwell; I told him he would be so, if he staid out late of nights; I asked him if his wife complained; no, he said, he never saw a scowl on her face in his life. I met Mr Danforth a fortnight after Mr Kinney's death; we were talking on this matter, and I proposed to call at Dr Harrington's office and see if Kinney had called there; we went; inquired for Dr. Bachelder and saw him. He said he had administered medicine to Mr Kinney for the venereal disease.—He said he was sure it was that; he said he gave him a venereal pill and powder; Dr H. came to the door with a bottle, and asked if those were the pills; he said yes, and that was all he gave except the powders. Dr. Harrington asked if the pills were all he gave him; he said yes, except the powders, at least I understood it so; I am quite confident he said so. I thought Bachelder appeared some excited; he asked my motive; I told him only to ascertain if Mr K. was diseased or not.

Cross Examined. At the funeral I did not hear her spoken of or pointed out as a murderer, neither before or after the funeral. I never heard her say that she was

pointed out as such at the funeral. If it had taken place, I do not think I should have been likely to hear it. She never mentioned to me any want of respect at the funeral. I went to Dr Storer of my own motion. I told Mrs K. I was going. I went for my own satisfaction. I told her so, and that I would call when I came back. I do not remember that she told me Dr. Storer had said he died of poison. Had she done so I should have gone to see him. I wished to learn another fact, and that was if Kinney was diseased. I asked Dr Storer and he said he could not tell. I did not tell this to Mrs Kinney. She asked me if Dr S. had said any thing more and I said there was one other inquiry but it was of no consequence.

When I saw Dr Bachelder he did not say that he gave a blue pill, but a venereal pill. I so corrected myself in the preceding examination. He said nothing of blue pills or bowel pills, and nothing of Dover's powders, but a powder, simple powder.

Mrs K. never complained to me of her husband. I did not know his habits of late. I saw him intoxicated once last spring in the evening, in the street. I met him by accident. I have heard him say he played for money, within a year. I have heard him say that it took him a number of days to get over it when he had been on a hard train. Incline to think it was last spring he said this.

As to his temperament, a very little thing would elevate him, and a trifle press him down; I have seen him many times when gloomy; his age was from 40 to 45. [Mr Parker; it is agreed that his age was 39 at his death.] Should think him a man of courage, but never saw it tried; was not apt to talk about his private affairs; I knew Mrs K. a year before she married Mr K. [This witness was very clear and distinct in his testimony.]

Charles H. Johonnet. Have known Kinney since he was a small boy, and Mrs K. six or seven years. Was present at his death, and relates the circumstances as the preceding witness, Deacon Bachelder did.—Describes Mrs Kinney's manner at that and other times as the former witnesses have; was at the funeral and went in the carriage with her; heard the reports of the poisoning on Tuesday; told them to her on Wednesday or Thursday; I advised her to go into the country, and perhaps these rumors would die away; she thought of going on Thursday, but did not go till Friday week after the death; do not know any thing in particular as to his temperament; his moral character was pretty good; have heard him speak of gaming himself; knew him first at Windsor Vermont; the furniture of Mr Kinney's house was mortgaged.

Cross Examined. Was often in Kinney's shop; had the means of knowing his habits; his gaming that he spoke of I understood as being out of nights, playing; a month or six weeks before he died, he told me so; had also told me so some time before; have seen him when he had drunk too much, not very frequently; can't say when or how long before his death.

Samuel Dearborn, was partially acquainted with Mr Kinney; knew Mrs K. when she lived at Lowell; was at her house the next Monday after the funeral, with my wife; noticed nothing remarkable; conversed on the death of her husband

Not cross examined.

Henry Danforth. Resides now in Vermont; three weeks ago lived in this city; worked for Mr Kinney last July: was in town when he died, and was at his funeral; I went to see Dr Bachelder with Mr Lane, to learn if Mr Kinney was diseased; he said he was, with venereal; said he gave him pills and powders; and that was all; a man brought pills into the room and said they were the same kind; don't recollect any other conversation.

Mr Kinney gamed sometimes; I have seen it, and seen him lose money at play; have heard him say—

MR AUSTIN objected to any testimony as to what

the deceased man had said of his gambling or habits, to prove that fact, it being hearsay.

MR DEXTER thought the state of the case made this evidence a matter of necessity. It was designed to show probable grounds of his death, and his own admissions are the strongest evidence of the facts.

Chief Justice. It appears to the Court that it is admissible. It is not dying declarations and is not put upon that ground. But here is a case where a party is speaking of himself, and it comes in with reference to the motives of his actions.—Such as if he had declared his intention to take poison. In connexion with the act of his decease, it is admissible.

Mr Parker. Will the Court fix the limit how far back it shall go?

Chief Justice. That goes to its credibility:—No limit can be fixed.

Witness. Had heard him say he had lost ten dollars the night before; this was last summer. Have seen him play loo at a public house and lose money. This has happened more than once. Have no acquaintance with Mrs Kinney. Worked with Mr K. in his shop from March till July last.

Cross examined. Have been at convivial parties with him. Cannot say if five, ten or forty times, I have seen him play. It was before I worked with him. It was at a public house in Federal street—the game was limited I should think—to ninepence a corner. Have seen him play two or three hours.

He told me another night, I think last winter, that he had lost nine dollars. Never heard him speak of winning. Have known him play at ten pins for money. Never heard him say whether he lost or won, at ten pins. It was after supper at the Federal-st. House, that he played. He asked me to go and I went. Did not know that he belonged to an Independent Company. Five or seven supped there. Believe he was gay and cheerful in his disposition.

In Chief. He never complained to me of his losses.

Charles Remick. Had known Kinney three or four years. Resided with him and boarded at the same house, before he was married. Conversed with him the Thursday before his death. He called at my place, corner of Haverhill and Causeway streets, a victualing cellar. He said he was unwell, and could not relish his food. Knowing his disposition, I told him it was all imaginary. He said no; he should not live but a few days. He said after he got through with a job he had, he should give up business, and his wife give up business, and retire into the country; go to Vermont; that his wife was unwell too. I had worked with Kinney, in the same shop, in this city. Knew of his gambling then. It was last winter. Should think it a habit growing upon him. Have heard him speak of winning or losing ten or fifteen dollars at a time. Heard him speak of this more than once. Never heard him speak of his wife to say a word against her. Never heard her complain of him. Have been in the habit of going to his house since he was married. He was in embarrassed circumstances when I was with him, in his employment. He had old embarrassments from a former con-

cern. He has so told me. He was a benevolent, open-hearted man, fond of company and liked to go out to parties. He was quick in temper and quick over it. A man who was possessed of a good deal of pride. He drank his liquor every day, and more than did him good in my opinion. Should think losing would lead him to take an extra glass.

Cross-examined. Should think his lossing was greater than his winnings. Have heard him say he should have met his demands more promptly if he had kept in the shop more. Think gaming called him off. Have known him play in the day time.

In answer to Mr Parker. I am not a teetotaller. My standard as to how much drink is good for a man, is that *one glass* is more than is good for me.

His business was done as an agency. I supposed it to be so. Never knew any attachment of the stock in the store. He was absent from the shop more than he ought to have been. I have known him to go off with men, and when he came back, I was satisfied he had been gambling. He generally paid off the hands. No fault to find. Sometimes it went over to next week.

After calling several witnesses who did not answer, Mr Curtis said he had eight or ten more, but they were not present.

Edward L. Tucker was called and sworn. I reside in Lansingburg, N. Y. Formerly lived in Boston and was a short time partner with Geo. T. Kinney, in 1838, for about five months. I put in \$400 into the business. Kinney put in nothing. I do know the fact of his gambling. I last saw Mr K. the last day of last April. I conversed with him on the subject of his misfortunes caused by gambling. I had for a long time suspected him of gambling, and he acknowledged it to me. I discovered it by accident at first. Was at a public supper and saw him gamble. I told him he was very foolish if nothing more. It was while I was connected with him, from January to March of 1839.

The habit continued all the time I was connected with him. I knew it by his acknowledgements to me. Never a week passed that I was with him that I did not converse with him upon it. I could always tell when he had been gambling by his appearance—melancholy and uneasy. I separated from him in April or first of May, 1839. Began with him in December 1838. I cannot tell how much he lost—I once lent him ten dollars, which he acknowledged he lost gambling. I bought the stock and tools when I went in with him. (Produces the receipt.)

He used to tell me that his wife supported the family. I never took out one cent of the capital I put in, and never got one cent. Mr. Kinney told me last May that he had paid my bills and settled the company concerns. I found he had not paid my bills. I left the concern with him,—did not dissolve. I never directly asked him to pay me, but he said he would when he could. I never took a dollar out of the concern. Was not married then. In May last I saw Mr. Kinney, and introduced the subject some reports he had circulated of me. He said that

the reason he had done it was that he was involved, and unless he laid it to something else, they would break in upon him, and ruin him. He said he did gamble and could not help it and always should.

I asked him how he felt when he came out of these places. He said that he could not describe it; he had often felt in doubt whether to go home or to go and make way with himself. He repeated it. 'Yes, I have often been at a stand whether to go home to my wife, or to go and make way with myself.'

I told him I was very sorry he was so far gone. He said, Tucker, so it is, and don't you be surprised at any time to hear I have made way with myself. When I asked him how he could do such things himself, and then lay them to me, he denied having charged me with gambling, and begged my pardon for what he had said. He referred to a particular time when he did not come to the shop, and said he took laudanum enough that time to kill four men. He said if it had not been for his wife he did not know what he should have done. Never knew any difference between Mr and Mrs Kinney. [Witness stated that he is a brother of Mr Tucker of the Tremont House, and that Mr Curtis (the counsel) had sent a message for him to Lansingburg, to attend this trial. He gave his testimony with much clearness; the cross-examination did not vary it.]

Never was any difficulty between him and Kinney about the stock he left in the concern. There was no money to be left. That was expended in the concern. No one was present at the conversation I had with Mr. Kinney. After I learned that Mrs. Kinney was charged with the murder, I wrote to Mr. Riley of this city, that I thought I could be of service to Mrs. Kinney. I alluded to this conversation in my letter to Mr. Riley. I then thought that I could give my deposition, but was afterwards told I could not.

Mr. Parker. You were not correctly informed, there is an express Statute of this Commonwealth, allowing defendants to take depositions in criminal cases.

Witness was promised his expenses if he would come here. They were to be paid not by Mrs. Kinney but by the Commonwealth. Has the letter of Mr. Curtis. His testimony has not been taken down in writing, since he came to the city. Saw Mrs. Kinney at the prison, and conversed with her.

The Court adjourned 20 minutes past eight.

THURSDAY MORNING.

Mr Curtis said the letter from Mr Tucker to Mr Riley alluded to in Mr Tucker's evidence last night, had been called for and he was able to produce it. Letter produced and read. It is dated at Lansingburg, N. Y., Oct. 2, 1840, and alludes to a communication witness had with Mr Kinney.

Dr Enoch Hale sworn. Lives in Boston.—The well water of Boston contains lime and will leave a sediment in the bottom of the vessel when boiled and drained off. Thinks the well

water throughout the city generally will produce the sediment when boiled. Have this knowledge only of my own well in West street, and of my brother's in Franklin street. The sediment varies in some cases in quantity. The sediment would roll about when the vessel is turned.

Was not surprised that the family of Mrs. K. was sick after eating cucumbers &c. for breakfast as is stated.

Cross-Examined. Eating moderately would have made a difference. Cucumbers are unwholesome. The extent of the sickness would depend on a previous state of the stomach. In the case of vomiting, &c. as represented in this instance would have excited my suspicions.

Thinks in 99 cases out of a 100 there will be a sediment after boiling the water. Don't suppose a single pint of water would produce a perceptible quantity of sediment. The water produces incrustation—generally in the close parts of the vessel. The water being made into tea would make some difference. In drinking a pint of water after boiling, a person would not get the whole of this substance which the water previously contained.

Ebenezer Smith, Jr Is the administrator of the estate of Kinney. The estate would pay him after paying the charges on the estate. The property of his shop, and Mrs. K.'s on Bromfield street, was sold at auction. Her property was mortgaged. The mortgage was paid, and \$80 or 90 left. The stock of Mrs. K. went into the general account. Have rendered my account, and it has been settled. The furniture of Mr. Kinney's house was mortgaged for more than it was worth. It was mortgaged for money loaned to Mr. Kinney. Mrs. Kinney's stock was invoiced to me for \$700. It brought \$278.

Sally Rider. Boards at 76 Tremont-street. Is a dress-maker, and does business on Green-st. Have known Mrs. Kinney since April last. Was boarding in Washington street at the time of Mr. Kinney's death. Saw Mrs. Kinney the next Monday evening after his death. Mrs. K. then complained of being unwell. Was at her house the Thursday following. Mrs. Kinney and Miss Collins were sick. Miss C. quite sick. They both vomited. I made some penroyal tea, first for Miss C. and then for Mrs. Kinney. Mrs. K. vomited as soon as she drank the tea. Mrs. K. was on the bed. I went to let her know concerning a mourning dress.

John Henshaw. Is a druggist. Am aware that mistakes happen in dealing out medicine. Have known them to take place. Have known poisonous drugs to be given out when milder medicine was called for. I am particularly careful. Boys are sometimes trusted to deal out medicine.

Mrs. Sarah Goodsill. Have known Mrs. Kinney about 18 months—lived with her 3 weeks in Marion street. Afterwards boarded with her. Left there in May last. There were dry herbs in an earthen pot, done up in a paper. The papers were broken. Mr. and Mrs. K. lived in perfect harmony. Never heard either say any

thing against the other. Never heard either say any thing that indicated the estimate placed on the other.

Doct. Ethan Buck—Is a member of the Mass. Medical Society. Lives in Hanover street. On Friday, 14th August, Mrs. Varney called on me and told me she had been sick. She said it was owing to what she had eaten for breakfast. She had eaten cucumbers and apple sauce. Have known cucumbers to produce the kind of sickness she described. I asked her if she had any reason to suppose she had eaten any thing poisonous. She said not. She exhibited no appearance of having been poisoned. I have never seen a case of poison from arsenic.

I had always supposed arsenic had a sweet taste. Tried it last night. Put some on my tongue. It produced a metallic sensation, and burnt my tongue. It had no such taste. Saw a case of the cholera about a month after Mr. Kinney's death.

In the cross-examination, witness corrected himself by saying he had seen cases of poison by arsenic.

Earnest H. Cheatham—Is a designer, connected with the calico-printing. Was in Bromfield street on the day of the funeral of Mr. K. Heard rumors as to the cause of his death. The rumor was general. Being cross-examined, said he got the rumor from one person with whom he was talking.

Thomas Ridley. Was in Bromfield street the day Geo. T. Kinney was buried. Heard the rumor that he came to his death by poison.—Heard no particular one accused. Heard it from an individual I was talking with.

Cross-Examined. I stood by the Bromfield House. There was a great crowd. The military was out. Did not see the mourners come out. Heard the remark about Mr. K.'s having died by poison from one person.

Albert G. Leach. I live in Franklin county, Mass. Married a sister of Mrs. Kinney. Have known Mrs. K. four years. I was in town in February last, and saw Mr. Kinney several times while I was here. Had conversations with him. At one time Mr. Kinney remarked to me when I was at his house, that if there was not a turn of the tide, or something new did not turn up he should have to go to the poor house, as he had not work enough to support his family. He asked me when I should leave town. He went to the closet and took two canes, and presented one to me and said, 'you use a cane, I believe. Take this, I may not have another opportunity of seeing you. Take this and keep it.' His manner was rather uncommon, and attracted my attention. There was a great difference in his appearance and temperament at different times. He was eccentric. In my last visit to Mr. K., he said he did not think much of the world. I asked him the reason, He said he thought but few people could be confided in, and that honest people were few and far between. He spoke of his misfortunes as having been brought upon him by the base management of others. He lived with perfect harmony with his wife. Have heard them speak in high terms

of respect of each other. Never have heard either say any thing other wise.

Cross-Examined. Was going to Maine when I was here in February. I lived then in Somerset township, Me. Mr Kinney's family consisted of himself, his wife, and three children. The eldest 16 or 17 years old. Was acquainted with Mrs K at Lowell before she was married to Mr K.

Mrs Hitchcock. Lives in Granville, Washington county, N. Y. Have known Geo T. Kinney since 1820. Was engaged to be married to him. Saw him in 1835.

Mr Parker inquired whether it was proper to go into an inquiry of Mr Kinney's conduct, &c. at so remote a period.

Mr Dexter. The object was to show that suicide was habitual or familiar with his mind.

Witness. Have no letter containing a declaration of the kind I have spoken of. He had told me that he had been determined to put an end to his existence but had been prevented from so doing. This was in 1835. As a reason he said in a letter he had been unfortunate and had lost his property, and become poor.— Since that time (five years last June) he said his life was a burden to him, and had no charms which bound him to earth. My intimacy with him terminated in 1829 or '30. A mutual separation. Mr K's temperament was irregular—sometimes cheerful, sometimes gloomy.

He was excentric. Don't know Mrs K.— Never saw her till I came to this city. My testimony became known to her. I was sent for by a special messenger.

Cross-Examined. My maiden name is Gear. Married to Mr. Hitchcock in 1832. Mr. Kinney resided in Plainfield, Vt. when I became acquainted with him. The engagement was formed in 1820 broken off in '29 or '30. When the engagement was broken off he lived in Boston. The separation was mutual. I first proposed it on account of his becoming dissipated, &c. I lived in Pennsylvania in 1835. Received a letter from him then. Had not corresponded with him for some years. I do not know the cause of his writing to me. He stated in this letter that he was gloomy and wished to write to some friend. I burnt up the letter immediately, and did not answer it.

Four years ago I saw him in New York city. He called on me in Church street. I did not send for him. He heard I was there. My husband was with me.

I saw Mr. K. but twice from 1822 till the time the engagement was broken off. Under engagement about 9 years.

Coldridge Dewey. I married the sister of Mr. Hitchcock. Am cousin to the late Mr. Kinney. I reside in New York. Mrs. H. was at my house last fall. I heard the death of Mr K. spoken of, and asked Mrs. Hitchcock if she would go to Boston and testify in the case of Mrs. K. She thought she was not able to pay expenses. I wrote to Mrs. Kinney. My reason for writing to her was that I had known Mr. Kinney for a long time and thought he might have produced his own death. I received an answer to my letter.

Mr. Kinney returned in 1823 from a four years voyage to the south. I saw him on his return. He was very much changed. Was gloomy. He told me he had lost all his property in the voyage. Have seen him since his marriage with Mrs. Kinney. They lived in perfect harmony. Never heard him say any thing against his wife.

Dr. Reuben Harrington. Dr. Bachelder came to my office in Endicot street in June last. Wanted to enter into practice with me. He had good letters. I entered into a copartnership contract with him. He was to tend the store. I had nothing to do with his nostrums.

I had a conversation with him about the death of Mr Kinney.

He mentioned at one time, whether jestingly or not I cannot say, that he had killed one man. He said he had given him some of his *bowel pills*, and the man died the next day. I told the Dr. it was wrong to make such remarks. Never inquired of him as to the ingredients of his bowel pills. With regard to the conversation relating to Mr. Kinney's death, he said he had given him a syphilitic pill. This pill is given for the venereal disease. It is made by myself. Dr. B. does not make them. They are different from the bowel pill.

The Sunday following the death of Mr. Kinney, two gentlemen came into the office and inquired for Dr. B. He was in the other room. They went in there. I showed him the syphilitic pills, and he said they were the same as he gave Mr Kinney. I have had conversations with Doct. B. about his mode of practice. He has told me he used arsenic and pokeroot in his compositions and treatment. He said he used powerful medicines, which other doctors did not know how to use. I told him he must be aware it was dangerous, and was using edge-tools.

Cross-examined. Dr. Bachelder asked me if I would put in the advertisements, the title of M. D. to his name. I told him I would if it belonged there. It was put in. I have recommended him as a good physician.

Mr. Parker here read a certificate from Dr. Dana, signed 1823, certifying that Dr. B. had been regularly admitted as a student in the medical department of Dartmouth College. A catalogue of the same College was also shown of 1825, which was objected to being offered as testimony by Mr. Dexter. Ruled out.

Witness. Makes four kind of pills, viz— Syphilitic, Cathartic, Stomach and Armigog Pills. Now uses arsenic only in cutaneous diseases.

Nathan Pratt. Have seen Dr. Bachelder's bowel pills. Do not know the ingredients. I was unwell at one time and called on him. He gave me 6 pills, which he said were bowel pills. I took them home and took 3 of them at once, which came near killing me. It was in November last. Dr. Bachelder told me when he gave me the pills that I was very sick. After taking the pills I was very sick at the stomach, and my bowels swelled so much that I could not button my pants by four inches.

Cross-examined. Had not been very sick pre

vicious. Was a little unwell. Had taken some medicine. Thought my system was getting out of order when I applied to Dr. Bachelder. I took the pills after dinner hour. Had ate no dinner on that day. Ate no vegetables for breakfast. Cannot tell what I ate for breakfast. Dr. B. told me they were the bowel pills. He told me to take 2 at a dose and follow up. I took three, and no more after. I asked him for medicine to cleanse my stomach. He refused to tell me what was in the pills.

Addison Arcry. I am a leather dealer in Hanover street. Was acquainted with Geo T. Kinney. Had dealings with him in 1826 and 7: sold him leather on credit several times. Witness stated the several transactions he had with Mr. Kinney. The object of his testimony was to show that Mr. Kinney was a ruined man at the time of his death.

Witness stated that in 1839, Mr. Kinney sent for him to come up to the jail in Leverett st. I went there and found him in the prison for a debt, as I understood, of about \$60. He was then in debt to me, and I thought the best way was to bail him out. I did so. After this I had heard of out-standing debts against him, and advised him to take the benefit of the act.

Mr. Coolidge. The jailor was sworn. Mr. Kinney was committed to the jail on the 28th Sept. 1839, on an execution in favor of Julia Langley, for \$39 19.

THURSDAY AFTERNOON.

Frederick T. Brown—Is a druggist. Have weighed out 3 grains arsenic by desire of Mr. Dexter. Arsenic is shown to court and jury. It is pure arsenic.

Gross-examined. Am a retail druggist. Retail price 9 pence per ounce; that is the regular price. Three cents would purchase 120 grains. It is usually delivered without any enquiry. Generally marked 'arsenic poison.'

Doct. J. A. Tibbetts for the prosecution. Resided in Boston in August last. Attended the post mortem examinations of Mr George T. Kinney. I took the bottle containing the stomach to Dr Jackson's office and left it on the table; there was from 1-2 a pint to a pint. I made no examination of the contents of the bottle; I saw it poured into the bottle. It was at 1-2 past 4 o'clock in the afternoon on Sunday. No one in the office of Dr J. when I left the bottle there. Never saw the bottle again. I mentioned the examination after I went home to some one; to no physician.

Mrs. Abby Barchi for the defence. Have noticed a sediment from East Boston sugar, like lime. Have noticed it in the bottom of tea; the sugar had all been dissolved. Have noticed the sediment frequently; have not used the East Boston sugar for a year.

Cross examined. Never noticed the sediment from any other sugar; never have known any one made sick by it. Generally used the East Boston white sugar, before I gave it up on this account.

Mr Brown recalled by the prosecution. Never have noticed sediment from East Boston sugar

Have used it in compositions. East Boston sugar is not as strong as white Havana, and for this reason I have not used it as much. There is a sediment in all sugars more or less. Have supposed lime and allum were used in refining sugar.

Mr. Parker objected to this kind of testimony on the ground that it had not been proved that East Boston sugar was used in the case in question.

Mr. Dexter said it was in the train of circumstantial testimony which had been offered, and he offered it to meet the same kind of evidence which had been offered on the other side. Ruled proper by the Court.

Wm. Aspinnall have used East Boston sugar. Have noticed a sediment from it.

Charles D. Hildreth.—Have known Mrs K about 18 months. She wrote me a letter on the Monday after Dr. Sterer told her that her husband died with poison. The note was written in pencil marks, and is as follows:

Dr. Hildreth, Sir—I wish you would call on me this morning; I want to relate to you some things which have been long buried deep in my breast. The time has come when I must tell them. If Dr. Sharp and Dr. Bolles would come with you, I should be very glad. Yours, respectfully,
HANNAH KINNEY.

Sunday morning.

I went with Rev. Dr. Bolles to see him. We stated that we had come in consequence of the note she had sent. There was no particular secret related to us—were there thirty or forty minutes. I went again with Mr. Driver. She said she saw an expression on my countenance and that of Dr. Bolles at the time of the first meeting which led her to alter her mind about the conversation. I saw her at the jail again. No allusions was made to the post-mortem examination:

Cross-Examined. Did not know that the paper marked "poison" was found in the house, till after the Coroner's Inquest. He made the inquiry as to selling poison, at Dr Mead's in consequence of a suggestion of the Attorney General, that it would be important to find who had purchased poison. Dr. Storer told him of the suspicion of poison, on Sunday, and he suggested a second examination. Told him that he had not done right, but should have taken the whole alimentary canal, as well as the stomach.

Stephen Thayer is an Engine builder. Knew Mr. Kinney and employed him frequently to make hose. Have not employed him within two years. Do not know that he had a contract for work when he died. I saw him the Friday before his death at his shop, ten o'clock in the forenoon. I was there about 10 minutes. As I was going he said stop a minute. Put on his coat, and we went into a bar room. I asked him what he would take and he said milk. I asked if he did not drink. He said he had been unwell a fortnight and had left off, that he had drank brandy and then gin, but had found it did not agree with him. He said he had got a contract for hose for Lowell, and was doing pretty well.

Cross-Examined. I was surprised that he took milk at the time. Have known him occasionally to drink. Never saw him intoxicated. Have not known much of his habits for two years past.

*Elias Thayer, (son of the former witness.)—*Six weeks before Mr Kinney's death, went to Portsmouth with him on business, and returned. Saw no change in his disposition. Generally in good spirits. Saw no gloom or melancholy. Saw him after we returned a week before his death. Observed no alteration in him at all. He was temperate during the journey.

Cross-Examined. Was familiar with him in town. Apparently steady. Never knew him intoxicated. He took a little daily. Never saw him when he had too much. I was never in his company only in the way of business. Never went with him evenings. He never spoke to me of his private affairs or of having lost money. The last week I saw him he complained of having a pain in his stomach. I mentioned to him it might have been occasioned by his eating green apples on the journey.—He did not complain of illness on the journey.

John Barnes recalled by Mr Parker. Knew Mr Tucker as the partner of Mr Kinney. I was in their employ. I knew when Mr Tucker went away. He was heard of three days after he was missing. We did not know what had become of him for those three days. He told me when he went out of the shop, that he would go out and get some rivets. I expected him back in twenty minutes. He never came back.

Mr Dexter objected that this was not contradicting the witness, but attempting to impeach him in a particular transaction. Waived.

I saw him afterwards when he was in the city in April. He was in the shop, picked out a trunk and said he should like to have it. Mr K. was not in. Mr Tucker came into the shop again, and Mr Kinney was in. I heard him say to Mr K. that he was going to New York to be married. I saw Mr Tucker take the trunk, and take out some bills. I did not see him pay. He did not pay then. I only know what Mr Kinney told me, as to paying for the trunk.

[The Court ruled out the declarations of Mr Kinney to the witness, as to the purchase of the trunk.]

Did not hear Mr Tucker claim any money or balance of Kinney. I think the trunk is charged to him. I am positive I read a dissolution of the partnership of Kinney & Tucker in the newspaper. I saw Mr Kinney write one. It was soon after the letter was received from Mr. Tucker, when he went away.

Cross-Examined. They were in the front and I in the back shop, when the trunk was talked about. There is a thin partition and the door was open. I have heard Mr. Kinney speak of having been out of nights to suppers and playing cards. Never heard him speak of losses at gaming. Have been at Engine suppers where he played cards for money. I have not known so much of his going out for the past year. I think I have occasionally seen him with too much liquor. Not very bad. Can't say

how often. The last two or three months before he died he appeared more attentive to the shop.

Mr. Parker. This is as far as my instructions go, and I here close the case on the part of the Government,

Mr. Tucker called again for the defence. I picked out the trunk, did not pay for it nor promise to pay. Took out no money. Mr. Barnes, was in the back shop. Mr. Kinney was particular that our affairs should not be heard by Mr. Barnes. He often cautioned me on that subject. Mr. Kinney was indebted to me for all in the shop. I took the trunk in so much payment. I am positive that during the conversation in the shop the door to the back shop was closed. Mr. Kinney had repeatedly told me that the things in the shop were all mine.

Mr. Curtis, asked if witness had received a message from Mr. Kinney as his dying declaration. Objected to and ruled out by the Court as hearsay.

I took the trunk because I believed I was entitled to it. I did not intend to say that I took it as a present or on account. I asked him for it and took it.

Mr. Parker here called Dr. Bachelder to prove that he had received a Medical Degree at Hanover College.

[Objected to, and ruled out by the Court, on the ground that a degree is conferred by a corporate body, and that it must be proved by record or diploma.]

Mr Curtis said that a witness expected from Northampton, had not arrived. A piece of evidence had accidentally come to their knowledge, as much other of the testimony had, and they were desirous of having it put in. A messenger had been immediately sent and the witness was expected to-day. The name of the witness is Charles C. Moore.

The Chief Justice said that if any material evidence should come in, before the case was closed, it would be admitted. The Court held it in their discretion in a capital trial to admit evidence in any stage.

It being a quarter to 6, Mr Dexter requested till the morning to prepare to put the case to the Jury in the close for the prisoner. He should not occupy exceeding two hours to-morrow.—The Chief Justice said that considering the magnitude of this case, the Court were in no way disposed to press it, and would postpone the close for the defence till to-morrow. Mr Dexter will commence his argument soon after the opening of the Court this morning. The Court adjourned at 10 minutes of 6.

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FRIDAY MORNING, Dec. 25.

Charles C. C. Mower, appeared and was sworn for the defence. I reside at Northampton; am engaged in the stove trade. Formerly was a saddler. First knew George T. Kinney in 1822, when he was one and twenty, in Windsor, Vt. He was foreman in the shop. Our connexion continued till 1824, as partners in trade at Walpole, N. H. We were together as partners about 18 months. He was in the habit of playing cards, as most young men were at that time. I know this

habit continued till October last, when I saw him in this city.

There has been a change in his general habits, since he came to this city. He left me in 1824, and went to sea; I next saw him in 1836, in this city. Have seen him since his marriage to Mrs Kinney and heard him speak of her in the highest terms; never otherwise.—His character formerly was cheerful; when I saw him here he was changed, which I attributed to his embarrassments. He was different in many respects. When with me he seldom took ardent spirits, but when I saw him in this city he drank more. The effect upon him was to make him gloomy. I saw him at the Tremont Theatre one evening; he went in affected with liquor, and slept through the first act; soon after said he believed he would go away, and left me. This was between the 5th and 10th of October 1839; I did not see him again.

Cross Examined. When I saw him in 1839, he was much depressed. It was a general time of embarrassment in business. Do not know that he was more depressed than many persons in business were. In 1838 I was in the city four days; saw him one of those days; in 1836 saw him in January, April, and July; I was here on business; did not see him from 1838 till Oct. 1839; witness desires to correct the dates; first saw him in Dec. 1836, and then in 1838; I change it from '38 to January and October 1839; yes, sir; I am correct; in January, April, July and October of 1839, I saw him, and have not seen him since.

Ques. How came you a witness?

Ans. I was conversing with a gentleman in Northampton, of my connexion with Mr Kinney, and he wrote to the counsel here. I did not desire him to, and did not state it with the expectation of coming here.—He said my testimony would be important, but I told him my business did not require me to go there. The conversation was caused by what the gentleman who wrote the letter read in the Morning Post. When I saw him in this city, I saw him play cards for money, a small amount. I played, but did not stake anything. I played for Kinney, and won about eight shillings for him, I believe. His result was a gain. Cannot tell the name of the game I played. Never saw it before nor since.

In Chief. Mr Kinney had a peculiar determination to carry a point that he was bent upon. Generally quick in making up his mind; I saw Mr Kinney at Philadelphia, after I saw him in 1836; I think it must have been in 1837.

The testimony here closed on both sides, and Mr. Dexter began his argument at 10 minutes before 10, and closed at 25 minutes after 1, (three hours and a half):—The ability, clearness and convincing force of this argument, as well as the beauty and impressiveness of many of its passages, were acknowledged by the intent and untiring attention of the crowd who listened to it. We shall give it at full length, which will be the only elaborate report attempted.

ARGUMENT OF FRANKLIN DEXTER FOR THE DEFENCE.

FRIDAY Morning, Dec. 25.

[Mr. Dexter began his argument in the close of the defence, at 10 minutes to 10, and closed 25 minutes after one.]

Gentlemen of the Jury—

I am now to speak to you the last words of the prisoner at the bar, before you pass on her deliverance or death; and little as I may apprehend the result of your deliberation, it is impossible I should approach the task without great emotion. It is not any difficulty or doubt in the cause, but the mere possibility of a monstrous injustice being done, which lies with an oppressive weight upon me.

Confident as I am of her innocence, I cannot forget the accidents that attend all human deliberations, and I cannot divest myself of all apprehension of the awful consequences of a mistake of the Jury.

But slight as are my fears and little as she may seem to have been oppressed during the trial, you, gentlemen, can know nothing of the terrible effort required to wind up her mind to this calm endurance: you see her only as she appears here, surrounded by all the circumstances of a public trial; and bearing it with a dignity, propriety and perfect composure that ought to be an assurance of her innocence. But you have not seen her in her secret hours of anxiety to be delivered not from the punishment of the law—or that she cannot seriously fear; but from a dreadful weight of public suspicion and odium. But this is not all; no matter what her confidence may be in the result, there are lonely hours that must terribly oppress her. She has looked through this trial and seen the prospect not only of deliverance from the law by your acquittal, but of a vindication in public opinion. But, gentlemen, she is human and a woman; and there must have been moments of a darker hue, when the possibility of an adverse judgment has overshadowed her mind. That most horrible spectacle of the execution of a human being, must more than once, have flitted across her aching vision. In the silent darkness of her cell, she must, at times, have seen the most horrible phantom that can scare the sick man on his pillow, and even in dreams indiet upon us the last agony of the human heart.

But these are visions of the imagination. When we look deliberately at the cause, it is impossible that she or I should fear for the result.

One remark, by way of caution, I will make. It is this—It is difficult for you to resist the power of a preconceived suspicion; I do not mean in your own, but in the whole public mind. The prisoner comes before you loaded with suspicion, and you seem to sit here to try, not whether she is guilty, but whether she can clear herself of the cloud of suspicion thrown upon her. You and every one, look at her, unconsciously, as a person who is to prove her innocence, and every fact that does not prove her innocence, seems, by preconceived suspicion, to tend to confirm her guilt. It is the constitution of the human mind thus to be imperceptibly influenced, and when thus predisposed to receive impressions, trifles light as air, become confirmation strong. In fact, though not in law, the prisoner, by reason of these suspicions, is not on trial whether she be guilty, but is put to the bar to prove her innocence.

Resist these influences, I beseech you gentlemen.—Remember you are not to try the truth of public suspicion, but the truth of the fact as if she had never been charged before. You are to begin at the beginning, and try her, as if innocent and unsuspected; and if your judgments stop short of conviction of certain guilt, you are bound to acquit. Before you can touch the life of the prisoner, you must have a firm, unwavering conviction that here was a death by *design*, and that the person who committed it is the prisoner and no other.

This is a case of circumstantial evidence, and only of circumstantial evidence. You are therefore to be satisfied that the prisoner did the act, only by being satisfied that no other could have done it. You must also be satisfied beyond all reasonable doubt that it is impossible to explain the evidence without inferring her guilt—that the evidence not only shows her guilt but excludes that of all others.

The first enquiry is, *did the man die of poison?* I think you will have little doubt of that, but still there is great defect in the proof. I do not however, rely on that; there is strength enough behind it; but if there were not, there is such difficulty here, in the outset of the case, that you would pause long before you would say this proof satisfies you that the death was caused by poison. There should have been proof beyond all question, that the poison, said to have been found in the

stomach of the deceased, was there before he died. The proceedings were liable to many errors. The contents of the stomach were put into a bottle brought there by a painter, who uses the very same drug in his profession, that was detected in the examination. He says he washed it out, but how, if at all, is not certain, and it is certain that neither Dr Storer nor Dr Jackson, examined it.

The proof therefore, is not irrefragable that the poison was not in the bottle. Not long ago we heard of a whole family, in France, poisoned by the liquid from a bottle that had been washed with shot, which, as is well known, is made with the help of arsenic. This is not all. There was an extreme carelessness in keeping the bottle. In the late celebrated case of poisoning in France, the bottles and vessels were sealed with the utmost care, and in a judicial examination, evidence was required that no poison could, by possibility, have been introduced into them with the contents of the stomach of the deceased.

In the present case, the witnesses cannot state how the bottle was secured, or how it was kept. The student, Mr Tibbets, took it, at the house, carried it to Dr Jackson's office, and left it there alone and unguarded for five hours, and then it was conveyed in the evening to Dr Gay's.

Well, I may be asked how could arsenic have been introduced? That is not for me to suggest. It may have been accident; that is improbable. It may have been *designed*; that is horrible, atrocious, incredible! But is it less monstrous than that this wife, without a conceivable motive, should have murdered her husband? Even if you were to suppose that a secret enemy of hers went to that office, while the bottle was exposed, and put arsenic into it to ruin the prisoner, it is not a greater crime, or less improbable, more less without motive, than that this wife should have murdered her husband; a wife of whom he had said that he never saw a scowl upon her face.

Gentlemen, if the case were not so strong for the prisoner on other grounds, I should press this. There is a want of care in this mode of proof that should weigh much in favor of human life.

Again, Dr. Storer at first said that *the man died of cholera*. It is therefore within the bounds of probability that he actually did die of cholera, and that after death, arsenic was introduced into the contents of the stomach. If you ask me if I believe this, I tell you no, nor will you; but it is possible, nay, not more improbable than this very crime without motive; and therefore before you condemn, you are bound to be satisfied that it could not have happened.

Another suggestion I am bound to make: the great liability in mistaking for some other article, a poison like arsenic, dealt out by Apothecaries' boys. If you ask me how this mistake was made, I do not know, nor does it belong to me to answer.

Again it is possible and not improbable, that Kinney came to his end by the mal-practice of the witness who is called Doctor Bachelder. It is impossible to suppose that he did it designedly, and that impossibility also lies at the bottom of this case—for you cannot on circumstance, convict of crime without motive.—But it is highly probable that Kinney came to his death by the mal-practice of that man. You know that he had been sick ten days, and had applied to Bachelder for advice, on Tuesday before his death. You know that he took Bachelder's secret medicines and grew worse. You also know that he took the bowel pill. You do not know that he took it till Saturday; but if Dr. B. did give it before he is not the man to admit it here. You know that he has used arsenic, henbane, hemlock, and other deadly drugs, as remedies. You know that the pills he left for Kinney and which were found and examined at the house, were composed in part of *pepper*, and Dr. Bigelow tells you that arsenic is a cumulative poison, that it is used in certain diseases, and some-

times used for the very disease for which Bachelder was confessedly treating Kinney, and when so used, is not unusually compounded with pepper. He told Harrington that he used arsenic in his practice, which was a powerful remedy, and perfectly safe in skilful hands.

Mr. Pratt also tells you that he took Bachelder's bowel pill, and he describes the effects of it. Bachelder prescribed two; witness took *three* and it almost destroyed him. I call to your mind the description that witness gave of the effects of these three pills—the symptoms were precisely those with which Kinney died, and for him Bachelder had prescribed *six* of these pills!

In what estimation did Bachelder hold human life upon which he recklessly experimented. When Harrington came home and asked him how his business prospered, he said he had killed one man, Kinney, to whom he had given his bowel pill. True the witness says this was said in jest, but is to much like poisoning in jest. So conscious was he of something wrong in his practice with Kinney, that when Lane and Danforth called on him, he denied all but the syphilitic pill; yet you have it in evidence that he told Harrington he gave his bowel pill. When he was sent for by Mrs Kinney, and was told that his patient was worse, he immediately examined the pills that were left. Whether he found a mistake he does not tell, but you see what his misgivings were.

And what is the nature of this arsenic? You will recollect what I showed you of it. A fatal dose might be put upon the point of a penknife. Two grains are said to be deadly. You saw three grains, and how small an ingredient to put into a pill. And yet, take that little powder and "there is no medicine in the world can do you good"—your death is certain. I ask you then, are you satisfied beyond a reasonable doubt, that Mr Kinney did not die from arsenic conveyed in these drugs?

Sull, gentlemen, however great the weight of probability here, against that which attaches guilt to the prisoner, it is light compared to the probability of suicide. The evidence of that is so strong, that I am free to confess it entirely outweighs the evidence against Bachelder; but were I called upon to decide between him and the wife, as the agent in this death, standing as the case now does, I should believe the probabilities that Bachelder was that agent, sooner than I could believe it of a wife whose whole conduct towards that husband proves if she were the murderer, and thus acted and dissembled, there is not, I do not hesitate to say, her parallel to be found in human history.

You must not, however, lay aside the consideration that here is a mode by which the man might have died, without violation of the rules of probability, and consistently with the evidence in the case, and with the innocence of the prisoner. We are not bound to show you how it was done, but the government must show that it was done by the wife and not by another. We merely suggest; and one mode of the death is the mal-practice of Bachelder, and the other *suicide*. The two modes of accident and suicide should be considered together, and both rejected, before her participation in the death can be approached. Accident, though improbable when compared with suicide, is probable when compared with murder. When you come to consider the evidence, if indeed you consider it, you will weigh well all the circumstances, all the reasonable probabilities, connected with the death of Kinney and then say if you are satisfied of her guilt.

And now gentlemen, in that view, I propose to go with you over the evidence in this case, and lay before you the course of events as briefly as I can, and merely for the purpose of inquiring into the strength of the evidence against the prisoner, we will examine the two modes suggested as to the cause of the death, *murder* or *suicide*. The two run together in the evidence, but

whether murder or suicide—if he took the poison himself, or if it was administered by his wife, it is clear that the poison was taken on *Saturday morning*. There is evidence, I know, of a certain character, as to poison having been administered in the night, in the sage tea; but if any thing be clear it is that, if poison was taken at all, it must have been on Saturday morning. It is clear that on that morning his symptoms and sufferings were the same that marked the whole case, and they continued increasing from that time till he died.—There is no proof of any characteristic change, to designate any other point of time than this. There was no time when he began to be sick in any other way; he only grew worse in the same way. If he was poisoned by the mal practice of Batchelder, from ignorance or rashness, he might have begun taking the poison earlier than Saturday. You have heard from Dr. Bigelow that this is a cumulative poison, and when taken in small quantities, dose after dose, goes on increasing in effect, until the last particle is given, the system is overcharged, and life is destroyed. If then Batchelder was administering arsenic to him in the form of that infernal pill, the cause of his death might have begun to operate earlier than Saturday, but if it was administered by himself or his wife, it must have been on Saturday, and if for the purpose of murder or suicide, it would in all probability, have been administered at one time, and in a single dose, sufficient to produce death. It is not suggested, and will not be pretended, that the wife was *feeding him* from day to day with arsenic, to produce a lingering death. We are not apprized of the course the argument is to take in the close for the government, but I can hardly conceive that his death will be charged to have been produced by the gradual administering of poison. If such a process is to be suggested against the prisoner, we not only want motive for the *murder* but for the *mode*, more incredible than the murder itself! What evidence is there that she knew this property of arsenic, in its gradual effect?

If suicide was the mode, then it was probably taken in a single dose, on Saturday morning, at the shop. This supposition will account for all the symptoms and the post mortem examination, before and after death. Dr. Bigelow tells you that if arsenic is taken into the stomach in considerable quantity, it might lie there twenty-four hours before it would all be thrown out. It would rest, by its specific gravity, at the bottom of the stomach, and there remain till death. All the facts, therefore, correspond with the idea that the poison was taken as early as Saturday morning.

Now where Kinney was Friday night, we are not informed. Miss Collins says he dined at home on Friday, but he was not at tea, and not at breakfast on Saturday morning. Whether he was at home that night, breakfasted early in the morning, and went to the shop, or whether he was at home at all, we are left to conjecture. If he was at home, 'tis a fact known only to his wife. Where was he that night, and did he from the remorse the deeds of that night incited, resort to poison in the morning?

If he did not, how came the workings of the poison in his system on Saturday? Where is it to be traced to the wife? There is no proof, or suggestion of proof of any agency of hers in the whole case, until the giving of the sage tea on Saturday night. Yet the evidence is clear of the effects of the poison on Saturday morning, and there is not a shadow of testimony to touch the wife, until the preparation of the sage tea late in the night. The poison then, if given by her, on this evidence, was given long after the symptoms of poison had been manifest.

The argument, on the part of the prosecution must be, she poisoned him at night, and therefore she poisoned him in the morning. The inference is fair, if the premises are proved; but are they proved? If you believe that she did put poison in the tea on Saturday

night, and are satisfied that poison was also administered to him by another hand than his own, in the morning, you would have a right to infer that she was the poisoner in the morning; but you must first know she was the poisoner of the night. If he did it, he could have done it at his shop, on Saturday morning, but there can be no suggestion of proof that the poisoning of Saturday morning was by her, unless they show that she did it after he came home that morning, or unless it is shown that the tea, tasted by Goodwin, was drugged with arsenic. Otherwise to account for the symptoms of the morning, you are driven to the conjecture, that he attempted his own life at the shop, in the morning, and she in the night, at home, and that his death was the result of the joint design of which they were mutually unconscious. Such an absurdity cannot be entertained for a moment, and yet without proof that the tea contained poison such an absurdity must be supposed to have happened, or she cannot be guilty.

The question then, is narrowed down to this; was he poisoned by the sage tea? Are you satisfied that the tea did contain arsenic, and that it was put into the bowl by his wife with wilful intent to take life? If not satisfied of that, you must then be satisfied she poisoned him in the morning, or the prosecution falls to the ground.

If you fall back upon the poisoning at night, as the only point the charge can rest on, you will require of the government that this fact of poisoning in the tea, must be proved beyond a reasonable doubt. And here you will perceive the importance of caution in weighing the testimony! You must not take the poisoning in the morning to help out the poisoning at night, because it is not traced to her. If there is a doubt as to the latter, you cannot strengthen one doubtful fact by adding to it another doubtful fact. The two cannot help each other; it comes down to a single point, to this particular fact—did she poison that bowl of sage tea to destroy the husband. If the proof fails here, there is no proof in the case.

Now what is the evidence of poison in the tea? The only witness to it is Goodwin; he is the only one that saw it. The tea Dr Storer saw given, was at some other time, even if Dr S. is not entirely mistaken as to any tea, for Goodwin says, and Dr Storer assents to it, that the doctor was not present.

It rests then, on Goodwin alone, and he stands here in a condition not entitled to credit for accuracy. I do not say he is not entitled to credit for veracity, but the circumstances under which he comes here are not favorable to that accuracy of recollection that is indispensable in a matter of life. He feels that the whole weight of this prosecution rests on him; he is the principal witness, and I am sorry to say it, but so it is, he who in a public prosecution is relied on to prove the case, is apt to prove it by exaggeration. He has told the story over and over again in conversations with all sorts of curious inquirers, and he now comes here to give the result of the whole, strengthened as it may be imperceptibly to himself, by the suggestions of others. His situation at the time of the occurrence, was not favorable to accuracy. He was watching after midnight with a man dying as he supposed, of that dreadful disease the Asiatic cholera. He is not apparently a man of strong nerves; he had no sleep, and his stomach, from the atmosphere of the sick man's chamber, would probably be in precisely the situation he found it the next morning; and after hearing the incidents of that night, supposed and real, again and again talked over, he comes to give you the result of his recollection.

The most material fact of all is the sediment—least material, in fact, in itself, but having perhaps, the strongest appearance of materiality, because if that sediment was arsenic, all the rest might follow; and yet Goodwin never mentioned this fact till long after the man died. He did not speak of it at the time, he did not name it to those with whom he conversed on

all the incidents of that night, and he did not refer to it, though he did to the tea, before the Coroner's Inquest. After his had gone before the Coroner and the Jury of Inquest had returned a verdict of murder against the wife, and not till then, did he tell of the sediment.—How is it possible he should not have remembered that fact, had it occurred.

There is another fact—that sickness of his, which he now seems to connect with the bowl of tea, and which is to make a prominent circumstance against the prisoner; so little impression did it make on him at the time, that in two conversations with Dr. Snow upon the events of the night, he did not allude to it, nor did he name it till it became necessary to look round for evidence to support suspicion. Under these circumstances Goodwin, upon whose accuracy alone, you must rely to convict if at all, comes here to testify. And what does he tell you? Three things—that the tea was sweet, though Kinney requested his wife not to sweeten it; that he saw a sediment in the bowl, and that he was sick the next morning. The giving of sage tea to the deceased is nothing, and these three circumstances are all. What do they amount to? The tea was sweet. Did the after suspicion of poison suggest that as a coincidence? They had heard, doubtless, that arsenic was sweet, and the tea was sweet though Kinney requested it might not be. Did the suspicion of arsenic suggest the sweetness, or the sweetness suggest the suspicion of arsenic?

You are now told, gentlemen, by scientific men, that arsenic is not sweet. It may possibly have a taste for sweetness after remaining a long time on the tongue, but it has no sweetness from solution. Do you believe then, that the sweetness was from that drug in the tea?

Perhaps the argument may be pressed in another way,—that she had something to disguise, and she sweetened the tea to conceal the arsenic. Let us examine this. What reason have you to believe that she knew such would be the effect? Why would not the sage disguise it as well as the sugar. Her husband had requested it might not be sweet, and she endangered observation and detection or rejection of the poison by the sick man if she gave it sweet. What is there then in the sweetness to support the poisoning?

He wanted the tea not sweetened. Probably she regarded it as the whim of a sick man, and prepared it as usual. That he did not regard it, if it were sweet, is shown, for he did not complain of its sweetness. If this is a circumstance be it so, but what a feather in the scale when weighed against human life!

But the Sediment! Goodwin says that the deceased was thirsty; he recommended some herb tea, she went down to prepare it, was gone twenty-five minutes, came up with it hot, set it on the bureau and lay down upon the bed at the request of her husband. She lay there some time, then got up and gave him some of the tea, said it would not do for him to drink too much and set it down again upon the bureau, and again lay down on the bed. He called again for the tea, she did not get up to give it, and Goodwin

gave it, saw the sediment and after the liquid was drunk off set the bowl down, and there it remained. Goodwin went to the bureau for water and did not notice it. Mrs Varney washed out the crockery that night, she hears all about it now, has heard it before, and yet says nothing and knows nothing of the sediment.

I doubt if there was any sediment in that bowl; but suppose there was, what was it? Dr. Hale shows that you can't use Boston water boiled in a vessel frequently used for that purpose, without a sediment. It is like white sand, rolling about, just as this is described by the witness. I ask you if human life is to be put in danger by such a slight circumstance? If Mrs Varney saw it, she did not notice it at all, and if there at all, it must have been a common and ordinary occurrence.

But sugar was in the tea—Goodwin says it was sweet, and if it were East Boston sugar, the evidence is it would deposit a limey substance; and when it is thus apparent it might have been the water, or might have been the sugar, that produced the sediment, are you to suppose, without proof, that it was a deadly drug? Nothing then remains of the bowl of tea but the *sickness* of Goodwin, and is that any thing but the mere nausea of a sick chamber? The whole evidence on this point is very insignificant, and except the sickness, proves as much against Goodwin as against the poisoner. Not that I make the slightest suggestion it could have been Goodwin, but being as strong against one as against the other, it has no strength against either, because without previous suspicion or subsequent confirmation, it is nothing but an intrinsic improbability. They are in the chamber together, the bowl of tea is prepared by her, at Goodwin's recommendation. She has it alone and may put in arsenic; sets it down and Goodwin has it alone and he may drug it. He is a witness and she is the prisoner—he may tell his story and she cannot tell hers. Reverse the case, and is there a fact or motive in this circumstance that touches her, which might not reach him as well? Is there a conjectural motive, as to her? I could suggest a conjectural motive as to him. If you are to proceed upon facts and evidence alone, you might as well convict the witness as the prisoner. You have only to forget that she was the *wife*, the supposed motive, though proved a tender and kind wife—you have only to lay this out of the case, and Goodwin stands on the same footing with her, in weighing this circumstance.

Not that I say or would intimate Goodwin did it—it would be monstrous; but why say she did it and Goodwin could not? There are only two suggestions to weigh against her, one that she was the wife, and the other, that she is suspected by public rumor. Leave these out, and I say you may as well convict the witness as the prisoner.

But this is a circumstance, and may go with others to make up a conclusion, and if so, give it the weight it deserves. Suppose then, she had the design of poisoning, and had drugged that bowl, can you believe she would have brought

it into the sick room, too hot to be drank? lay it on the bureau, lie down upon the bed, and leave that poisoned bowl in the power of the witness, Mr Goodwin? Is that credible? You believe her, if you believe that she did this deed, as public suspicion has pronounced her, void of all human feeling; but you have never heard her charged with being void of intelligence and understanding. Yet she must have been so, if she meant to poison, and managed the matter as this testimony supposes. Why not keep the tea down stairs till cool enough. Why not hold it and stir it about till cool, as the man did, (Mr Bingham) as described by Dr Storer, and then take the bowl out of the way?

[Chief Justice Shaw here suggested that Mr Bingham was not present at the time Dr. Storer was: that he went with Dr Storer to the house, and then returned home.]

I am aware of a discrepancy there, in the testimony of Dr Storer, but why not administer the tea in a manner to insure security from detection; why so perfectly careless about it; why give him only a part, and leave Goodwin to give the rest, and not even get up when it was handed to him by Goodwin, and then leave the bowl on the bureau to be seen and taken away by Mrs Varney, without the slightest precaution?

Well, gentlemen, this is the evidence direct and presumptive on which all the other evidence in the case is to rest, because if you are not satisfied that arsenic was in that bowl, there is nothing in the whole case against the prisoner.

Let us then examine the other circumstances. For as to this single fact of the bowl of sage tea, I think I am warranted in saying, that the life of a human being was never put in peril, never lost, on such testimony.

It now becomes an important consideration, *where did she get the poison?*

Arsenic is bought and sold, but not as a common article, and its sale would be likely to be traced. Is there a particle of evidence that arsenic was ever in the possession of this woman?

The boy testifies that he sold some to some woman, but when or to whom is not known. He has utterly failed at all times to identify the prisoner. He has been tested and tried, and his denial to the identity is distinct and positive. The case stands as if that piece of evidence was not in it. The suggestion that a woman bought poison, is of itself nothing; you would not at all regard it in weighing an ordinary probability. And that handbill, inquiring who had bought poison, put out on Sunday, and the trial begins on Monday! and yet this mode is taken to satisfy you indirectly that she bought it because no one else did.

The word *poison*, the *hand writing on the paper*, found by Mrs Varney, is another circumstance. The boy says he wrote poison on the paper he sold. He looks at this and tells you distinctly that is *not* his handwriting. I submit to you that the paper is not apothecary's paper, but candle paper, and the boy declares the writing is not his; that he wrote the word *poison* on

the outside of the folded paper he sold. This is positive evidence against the paper. Examine it. Mrs Varney says it is folded now as when she found it. Fold it up in the creases, and the word *poison* cannot be read. Only the letters *s—o—n* appear, and whether the word *poison* was written before or after the paper was folded, we cannot tell. There is no attempt to identify it with the hand writing of the prisoner, and so far as this goes, it is clear the writing is not hers. It is large, hers is small. There is then no evidence of *poison* in her hands, and all that has been attempted with this piece of paper, is an entire failure.

I will next proceed to *her conduct up to and after the death of her husband*. She has been followed with great pertinacity; every interview she has had, every word she has uttered, every act she has done; and almost every thought, throughout the whole period of the sickness, the death and the subsequent suspicion, are gathered up and brought before you. We have been able to trace her, almost every hour, from the sickness to the trial, and not only has she come out of the scrutiny unharmed, but it is almost miraculous, that so little should have been found to feed the eager suspicion that followed her. Not one act or expression has been found that is not consistent with her innocence, but what is most remarkable, under the circumstances, nothing has appeared that is not creditable to her.

She went to her husband's shop, at 10 o'clock on Saturday morning, the day preceding his death. Why did she go there? The man was poisoned, if at all, by himself or his wife, that very morning. Did she go to his shop to see how it worked? Does not the very suggestion startle you? Is it not incredible, that having given him the fatal drug, she should follow him to the shop to watch its progress. Why gentlemen, she would have shunned him, as she would that which would harm her most. She wouldn't have dared to look on what she had done. But if he came home late that night, a disappointed gambler, or a melancholy drunkard; if stung with remorse, he lay tossing on his bed, and went out gloomy and desponding in the morning, what more natural, than that this kind and tender wife, as she is abundantly proved to have been, should have followed her poor, repentant, broken down husband to the place of his business, to look after him? If she was innocent it was natural—if guilty, it is incredible. She is a monster, such as the world never heard of. If guilty, her going to the shop was madness; if the deed was his, and she innocent, it was a natural solicitude.

[The first portion of this passage deeply affected the prisoner, and she obviously wept, though throughout the trial there was not the slightest indication of an attempt to show, but much real effort to suppress feeling.]

Well, gentlemen, from the shop she gets her husband home. He is deadly sick. Surely if she is guilty and has poisoned him, she will have the house to herself. No, that day she en-

gages Mrs Varney to come as soon as possible. Mrs V proposes Monday, but is sent for and comes, at 7 o'clock on Sunday morning. Then there was Collins; she was there on Thursday. (The ladies will excuse me, if I abbreviate their names, it is from no disrespect, only for convenience.)

Collins wanted to be absent on Saturday.— She proposed to go to Charlestown and pass the night; she a comparative stranger. Mrs Kinney would not allow her to be absent; she desired her to come back and she came back.

Now look at this. If she meant *murder* would she solicit witnesses? Goodwin was also desired to come at noon, another witness. She sent for Harriet Hosford in the evening, she told the neighbors of her husband's sickness, and more than all, she told it to Dr Snow in the street, and said if he did not get better she should send for him. Does all this look like guilt?

An argument is to be urged against her, that no doctor was sent for till Saturday evening, when Bachelder came in. The suggestion on this point is, either that she would not have a physician at all, or that she waited for the effect of the poison to work. But why *she* more than he? Who prevented the call of the doctor if any body did so? She told Dr Snow she should send for him if her husband grew worse, and yet no doctor was sent for till Bachelder was called in, in the evening, and *by Kinney's request*. It was *he* then who sent for Bachelder and not she. It was Kinney who wouldn't have a Physician called in until evening, and then the very one he had consulted in secret the week before. The delay in sending for a physician, attaches to the deceased and not to the prisoner.

Now, if Kinney intended to destroy himself, he would want no physician; if she had destroyed him she would want no physician, but then would she have told of the sickness to Dr Snow, and proclaimed it to the neighborhood?

It was then his act and not hers in not sending for a physician; he knew his disease was too deep for medicine. Goodwin was sent for at seven o'clock to go for a doctor; he did not come till half past nine, and the prisoner went for Bachelder between eight and nine. Why then was Dr Bachelder sent for? It is evident that Mrs Kinney had suspicions as to Bachelder, for when he came she showed him into the room of her husband, and said, "there is the man you have given medicine to, and you know for what." I infer from this that her husband had just previously confessed to her the odious disease for which he had applied to Bachelder, and therefore she did not desire to be in the room, or Kinney himself might have preferred to see him alone. When she afterwards told Dr Storer of this visit, she asked what the man would have been shut up in the room for, except for secret diseases, and she told him she thought there was something very *mysterious* in Bachelder's visit. She then either knew or suspected the nature of their interview. Had she stopped with the word *mysterious*, it might have been

urged against her here that she wanted to hint the death upon Bachelder, to conceal her own crime; but she added, "do they see their patients alone, except in secret diseases?"

This shows the importance of a single word in testifying to a conversation or the declarations of the accused. You all know how difficult it is to remember a conversation, and when you examine this testimony, so much of which depends upon the supposed declarations or remarks of the prisoner, be cautious in giving much weight to such testimony.

Dr Bachelder denies that the door was locked, in his interview with the deceased. That is immaterial. The consultation between him and Kinney, whatever it was, was secret, and all the circumstances tend to show that it was so by Kinney's desire, and that she knew it was intended to be secret.

After the visit, she follows Dr Bachelder down stairs and inquires if her husband will get well or not. When Dr. B. says he thinks he will, she observes, 'Dr I don't think he will get well.' Why not, asked the Doctor? Because *Mr Freeman* (her former husband) *died in the same way!* She told this to Mrs Bingham and so she said to Miss Collins. She said he is going on just as Mr Freeman did; he tried to put on his boots to go out, and fainted, and so did Mr Freeman.

You know, gentlemen, that she had been charged before this, of having destroyed Freeman by poison. She told this to Miss Linnell, for says Miss Linnell when she had the conversation at the shop with Mrs K. about the rumors, Mrs. Kinney said "they accused me of poisoning Mr Freeman to get Mr Kinney, and now they accuse me of poisoning him, who am I to get now."

How would she dare do this if indeed she had poisoned Kinney? How would she dare put the two deaths together, as if to invite suspicion! My former husband, said she, died just as Mr Kinney died. Would a guilty person thus suggest suspicion, before it was hinted from any other quarter? No gentlemen, nor do I believe she could have said and done so were she not as innocent of the death of Mr Freeman, as she is of the death of Mr Kinney. Was it possible that any woman could have brought the two cases together if she were guilty? It would be a degree of audacity, utterly incredible; as if she had said, "my former husband, whom I am suspected of having poisoned, died just as this one died." No guilty woman would thus have suggested the poison of the second husband by referring to suspicions of the murder of the first.

In the evening, when Goodwin came in to watch with the sick man, she was alone with her husband. Is there any thing in that? and yet Goodwin seems to attach some importance to it. A wife alone in the chamber with her sick husband! Such are the incidents that suspicion has wrought into mystery in this case — Is it pretended she wanted opportunity to administer the poison, and was alone in the chamber for that purpose! No, gentleman. But at the several interviews on Saturday evening, when

alone with the husband, probably the conversation took place in relation to Bachelder, and also the exclamation of Kinney, which Mrs Kinney afterwards related to Miss Hosford, "My God, or O! God! have I killed myself, Hannah, pray for me!" Now this may not have been said with reference to death by suicide, but by his bad courses. The expression was perfectly natural, if that conversation took place on Saturday evening, when, as we suppose, Kinney disclosed to her that he had taken advice of Bachelder, which induced her to go to him.

But why not send for the family physician? Here is another mystery put to you in the opening. What is the evidence? On Saturday night, Goodwin went up into the sick chamber, when desired by Mrs K.—and was requested to go for a physician. Kinney himself suggested Dr Ware, Goodwin objected to the distance, and proposed Dr Lane who was nearer, and went for him, but he could not come; Goodwin then suggested Dr Storer, which was assented to by Kinney, and Goodwin went for him. This explains why Dr Snow was not sent for. Instead of contrivance to procure a strange physician, it turns out that the physician Goodwin suggested, and not the one Mrs Kinney apparently preferred, was sent for. Besides, Mrs Kinney had called upon Dr Snow but once, and there was no family physician.

Dr. Storer came at twelve that night, and in Kinney's hearing she gave him a true relation of every thing that had occurred, Dr. Bachelder and all. She showed him the medicine, and asked if that could have done the mischief. Dr. Storer thought that it was harmless, he prescribes for the sick man, leaves the house, and she is left alone with Goodwin; and here comes the story of the sage tea which I have already gone over. Goodwin remained till five o'clock in the morning, and then left.—It is important to see who were there, and what trace there is of any attempt at concealment.—Upon Goodwin's going, Mr. Bingham was sent for and came in, and Mrs. Kinney then sent him for Dr. Storer, who had before been called by Goodwin, with Kinney's consent. There is not a circumstance in this whole transaction, except not giving the injection that Dr. Storer had ordered. Mrs Kinney said she could not give it, and is there anything extraordinary that a woman, under such circumstances should find it difficult to do it. I need not say much about it. If they mean to urge it against her, as neglect, it contradicts all the theory for they say she was most hypocritically attentive. Collins then says Mrs K. called up her little daughter to see her father in-law before he dies. Kinney tells her to be a good daughter to her mother, and from that time till ten o'clock on Sunday morning, nothing worthy of remark occurs till you come to the dying scene. I am not aware that in this detail I have omitted a single material circumstance.

At ten o'clock, when the deceased was about dying, she sent for Mr. and Mrs. Henry Bachelder, whom she had known as friends in Lowell

He came; his wife could not, and he remained there till Kinney died. That dying scene you have heard described by this intelligent and correct witness. I will not go over it, because I am aware that the simple manner in which he related it, must have made a deeper impression on you, than can any repetition of mine. One thing only, I will remind you of: Kinney, though conscious he was dying, expresses no religious hopes. After Mrs. Kinney had whispered to him, he asked the witness to pray, and he tells you, that while this prayer was made, this woman, the wicked author of his death, if you believe the charges against her, sat down by the side of her dying husband, and with murder in her heart, leaned her head upon his shoulder and wept. When he sank away exhausted, and his eyes become fixed in vacancy, she watched his last breath, and as it left him, stooped down, kissed his lips and bade him farewell forever. [The prisoner was obviously and deeply affected, here.]

Now, Gentlemen, if that woman is a murderer she is a moral monster, such as the world never saw! There is no sentence your verdict can impose, and no punishment the law can give, that is adequate to such a crime. No, gentleman; human nature could not compass it, and human intelligence cannot believe it.

Here ends the scene. Next comes in the Physician, and wishes to examine the body. If this woman were conscious of guilt, can you imagine the terror with which she would hear a proposal that scientific men should dive into the dark recesses of her crime, which she knew must contain the certain evidences of that guilt? Instead of this, how natural and proper her deportment. 'The Doctors say your husband died of cholera, and we wish to examine the body.' What is her reply? She says, I have no objection; it is unpleasant, but I am aware it is proper.

Now, one word of her's would have stopped it, and it was not for want of power to feign, that she did not stop it; for if she be guilty, she is capable of feigning beyond all women on earth. There was no suspicion of her then, and had she said but a single word of denial, the grave would have closed over her victim, and the proof of her crime, forever. A single remark may be pressed here. After the examination, she asked the Doctor of what he died. He replied he could not tell. 'Yes, said she, George has been sick some time, but he died of some complaint you know as little of as I do' Was this any thing more than a sort of soliloquy, a thinking aloud. The doctors don't know, nor do I know; was it disease, was it remorse, was it suicide. All this may have unconsciously passed through her mind.

She was scarcely got through this trial when the doctor came back again. They tell her we are not satisfied, we want to examine further. Surely then was the time for guilt to have prevented farther research into its crime, but not a word of objection is said—go and examine again.

Now, gentlemen, there is but one explanation of this—her innocence—unless her con-

is to be accounted for by no rules ever known to have governed the human heart.

That day Harriet Hosford saw her, at three o'clock, and she said she had lost her best friend, she had no tie on earth. Did she say this to blind Harriet? A moment after, she says, 'perhaps he was taken away in mercy after all, for he often was as you saw him that night.' Then she first disclosed his habits of dissipation, and added 'no one knows what I have suffered the last summer.' Is this anything but the natural incoherence of grief? First she speaks of her loss, and then of what she had suffered in secret. Is not her suffering consistent with tenderness to her husband?—for she had been kind to him, as all the evidence shows. Why then should she be inconsistent if it were not the sometimes apparent inconsistency of truth? If capable of feigning, to the extent this prosecution assumes, surely she could feign consistently.

This brings us to the time of the funeral.—She slept that night with Miss Collins, and went over some events of her life, but nothing material to this case. In the morning she went to the grave of her husband; you have heard Miss Collins relate that incident, and you must say it is all natural and affectionate; consistent with all you have heard of the harmony in life between them, and if you find it consistent with true grief for the dead, be cautious I beseech you, how you receive it from the other side, as an exhibition of monstrous hypocrisy! From the grave she went to the shop where her husband had been.

I will now remark upon the request she is said to have made to Dr Storer on Tuesday, for a certificate that her husband died of cholera. If the statement be true, the *time* is very material. Dr Storer states that it was on Tuesday, the day after the funeral. That Dr Storer is a correct medical observer I have not a doubt, nor do I in the slightest degree call in question his veracity. But medical men, who in a professional examination would observe medical matters minutely as of great importance, would regard with comparative indifference minuteness of time in the application of evidence. That Dr. Storer has unintentionally made a great mistake here, I hold to be certain. At first he was doubtful as to the time, and vacillated between Tuesday and Wednesday, or some other day, and he finally settles down upon Tuesday, the day after the funeral. But in a matter so material as this, the time is most material, I doubt his accuracy from his fixing it on two several days, Tuesday and Wednesday, and then settling down upon Tuesday; and also from the fact that he first testified it was Miss Collins who called on him at a given time, and then he comes on the stand and corrects it, not from his own recollection, but because she has since told him he was mistaken. He also stated that Miss Collins called on him on Thursday, but he is now satisfied that she was sick on that day, and could not go. So he swears that the sage tea was given by Goodwin, when he, Dr S. was present, and that Goodwin sat on the bed and

stirred it till it was cool. After he goes out of the Court room, Goodwin tells him, that he (Dr. S.) was not there when the tea was given, and then he comes back and desires to correct it, and says it must have been some other person whom he saw give the tea; so, if this be true, the tea was given twice. At first I supposed it was Bingham, who gave the tea at the time Dr. Storer was present, but I was reminded by the Chief Justice that Brigham did not go into the chamber with Dr Storer. It must, therefore, be entirely a mistake, that he saw any man administer the tea; and yet Dr Storer states it confidently at first, and then comes into Court and corrects it, not because he now recollects it differently, but because Goodwin tells him it is not so.

Now then, how is he entitled to tell you positively that the visit he made Mrs Kinney was on Tuesday when he mistakes in so palpable a fact as to a person being present when the tea was given. I charge no intentional misstatement here, but such is human recollection, and human testimony is most frail and unsatisfactory in the mere recollection of times and words. It is not certain that the interview of which Dr Storer speaks, was even that week of the death.

That it was not on Tuesday will appear from other facts in the case. Dr Storer tells you that Miss Collins brought to him a line from Mrs Kinney, requesting a call; that he went, saw Mrs Kinney and she then asked for a certificate that her husband died of cholera.

Now perhaps of all the facts testified to about this lady, this at the time it was first stated, was the most striking. The evidence does not show that she had heard of the reports of poisoning on Tuesday: and here was a woman who did not know of these reports, or that poison had been found in the stomach; disturbed by guilty fears and the terrors of remorse, sends for the Doctor to get a certificate of death by cholera, and gives as a reason, that she was pointed at, at the funeral, as the murderer of her husband!

How could she do this, if she were not conscious of guilt? That is the argument, and I am ready to meet it.

Suppose she had not heard of the poison, and that it was Tuesday. She knew she had been accused of the murder of a former husband.—She saw a crowd of people at the funeral, and you must be well aware how they looked, when you have the fact of the suspicions that were afloat in that crowd. She sent for Dr Storer who had told her that her husband died of cholera, and asked him for a certificate of that fact. She said she wanted to unbosom herself. Can you believe that this woman, firm as she has been throughout, whether innocent or guilty, sent for Dr Storer to make him the confidant of her guilt? No! She spoke of her former husband, and she says, "I have been accused of the murder of my former husband; Mr Kinney has died much in the same way, I am going to his friends, and I want a certificate of the cause of his death." Now if she were guilty, would she have been so fool-hardy as to ask a certificate of the Doctor which she knew was false, and knew

that he must know it? But was it not natural that she should ask for it, if innocent? Judge you if she was capable of the folly of disclosing her guilt, if she were capable of the concealments and contrivances that she practiced provided she committed the crime.

What had she to disclose. Here *words* are all important, and I have not that confidence in the accuracy of Dr. Storer's recollection of conversations, to suspend the life of the prisoner upon it. I have but a suggestion to make. She had some suspicion of the death of her husband either by suicide, or from disease or malpractice, but it seems to me she then began to suspect suicide. You have heard his expressions to Tucker and others, and is it strange that hints like these should have fallen from him to the wife? Feeling thus, she sent for Dr. Storer, perhaps to disclose her suspicions, and make inquiries of him, as to their probable foundation. If it were so, the course the conversation took in that interview was entirely natural. She began the conversation probably with that object, but wandered from it, talked incoherently and ended in making no disclosure of her fears. The fair inference is, she had something on her mind she could safely disclose to Dr. Storer, yet felt reluctant to do so, and that, in what she did say, she spoke of the former rumors of poison; and not the new ones.

But if there is a mistake here in Dr Storer's testimony as to time, it presents a distinct refutation of any inference against her.

Who went for Dr Storer on Tuesday, if that was the day? for he had this interview immediately upon a message sent to him from Mrs Kinney. It was not the little girl, for he admits he never saw her. It was not Miss Collins, for she has told him so, and he has corrected that. Who then was it?

Now if the messenger was Miss Linnell, the whole matter is explained, for Miss Linnell did not carry a message till Thursday.—She had told the reports to Mrs Kinney, and Mrs Kinney then sends for Dr Storer, to obtain a certificate.

Either way, you cannot turn that interview to her discredit, without supposing her bereft of understanding, which all the evidence repels.

Thursday morning there was another remarkable occurrence in this history—THE BREAKFAST; I call it remarkable because they do. I am not aware how it is to be used in the close, collectively, individually or circumstantially.—And here I feel bound to say, because I stand here for the life of a prisoner, that the Attorney General has been asked at the Bar, why this piece of evidence was brought into the case, and to what end, and the answer was, that when we hear him in the close, we shall know. I am sorry he puts it off till then, for then we cannot answer; nor do I think it fair, or just, or merciful, that an argument which may be reserved by a prosecuting officer—be sprung upon a prisoner after the mouth of his counsel is closed.

I have heard the request, to state the purport and intent of evidence, again and again made in civil causes where only money is at stake, and

I never knew respectable counsel to refuse it. In a case involving life and death, such a course, I must say, is unprecedented.

Are we struggling here for victory? Why, if not, are we left in the dark, as to the bearing this piece of evidence is to have, in the close of the cause? I can only guess at it, but I ought not to be left to conjecture a reply to what I may guess will be the argument. I ought not to be, nor do I mean to be unjust to the Attorney General.—Doubtless he discharges the high duty of his office as he understands it, but I have only to say that if it be one of the duties of that office, to withhold from the request of counsel the purport of evidence where a prisoner's life is at stake, *I thank God I am not obliged to hold it!*

[Here there was a very general burst of applause from the crowd, which was promptly checked by the High Sheriff, and silence restored.]

Austin—Upon such an accusation I claim the right to be heard. I will state to the Court what the learned counsel very well knows. I did offer last night to give him in writing the whole of the argument I should make on that point, if he would tell me himself, or would state in Court, this morning, that he did not understand the fair import and bearing of it, from the evidence itself.

Dexter. I am glad the Attorney General has made the explanation. It enables me to answer him. I did go to him last evening, and told him that his course was improper. I moreover told him that one of the oldest counsellors at the bar had said to me that his conduct was unprecedented. He then said he would give the information if I would ask it of the Court, but not if my colleague asked it. Gentlemen, I will not submit to any disparagement of my colleague in this cause, eminently able and honorable as his conduct of it has been. I will not consent to any thing that may imply a censure of my honorable colleague. I wish not to draw any thing personal into this case, but I will not ask any thing of the Attorney General that he will not give to my colleague. Here let it rest. I shall endeavor to meet the line of argument he may take as I best can, but if any course of argument is taken in the close, which I do not anticipate, I shall stand up here and ask to answer it, and I know that after such a request and such a refusal, I shall be permitted to do so.

[Mr Dexter then went into a condemnation of the supposed inference from the Thursday breakfast. This was that it would be urged the prisoner had put arsenic into the breakfast of Thursday, to cause a general sickness and raise the impression, from symptoms similar to those with which Kinney died, that the cholera was in the family: or that it was accidental, from the poison used on Saturday night having remained in some of the vessels, and thus have become

accidentally mingled with the breakfast of Thrs morning. Either supposition he showed, could not hold; that there was not sufficient evidence that the sickness was not caused by the materials of that very extraordinary breakfast, and that there was no proof that arsenic was used at all, or if used, that the prisoner had any more to do with it, than the witnesses.]

Then comes in the blue paper, marked 'poison' and that is to be connected with the apple sauce, which it is to be *supposed*, contained the poison. I have only to remark upon the extreme folly of leaving the apple-sauce in the sink and throwing the paper down beside it, marked poison;—together with another improbability, that Mrs Varney should pass by the sink and see no blue paper, when she went to gather waste paper, to kindle the fire—go behind the door, collect the papers, and return, and then when she went to kindle the fire, discover the paper. I am not bound to explain it, but I think it obvious that this blue paper was with the waste papers behind the door, and that Mrs Varney gathered it up among the rest of a handful, and dropped it in going to the fire.

But how came that paper in the house? The answer is simple. We all know it is common to keep poison in houses for killing bugs, and it may have been the label of a bottle. That is sufficient to explain it for all our purposes.—There was a startling thought crossed my mind. Was the paper placed there to supply a link that might be wanting in the chain of evidence against the prisoner. That indeed, would be a horrible suspicion, but no more horrible than that a wife should murder a husband without motive. Dr. Hildreth while on the stand, related that when they were hunting up the evidence, the Attorney General declined moving in it unless it was more conclusive, and I was startled to hear him say that the Attorney General told him that if it could be proved that the prisoner bought poison, or that a paper marked poison could be found in the house, he would move in the case, and at that time the witness had not heard of this blue paper.—Where did he get the suggestion? I am confident not from the Attorney General. He has contradicted the witness on that point, though the witness still persisted in it, but I do not believe that such a remark was made by the prosecuting officer. But mark, Gentlemen, the paper was found. I did not cross-examine that witness because I did not think that in the disposition he was in, that course could be of any benefit to the prisoner.

We have now traced the prisoner down to her trial. If guilty, is it possible that she should not by something have implicated herself—and yet I cannot perceive that there is a word we might wish had not been said.

How did Mrs Kinney take these reports when she heard them? This is the most dangerous part of the testimony, and is to be received with extreme caution.

On Sunday, Drs Storer and Jackson, for the

first time told her of the poison in the deceased. Her answer was, 'INDEED?' Dr Storer seems to distrust the answer; but how much depends upon the *tone*. But if you suppose as I do, that this fact came in confirmation of her secret suspicions of suicide, then 'indeed,' was all she could say. Afterwards, on the same day, she sent for Dr Storer, and wanted to know how the poison came there. Dr Storer asked 'could *he* have done it?' Then, were she guilty, was an opportunity for her to have thrown the blame on the deceased, and screen herself from suspicion. Instead of this, and as if to cover up his memory from the stigma of self-murder, she said 'No, I don't think George could have done it!' Had she been guilty, she would not have lost this opportunity to throw it on him.

But she did not tell this to Miss Collins, and she seems hurt that Mrs. Kinney did not make her a confidant. I am not surprised that she did not tell it to Collins. I should have been surprised if she had. I think, gentlemen, you must make some allowance for the phraseology of that young lady. Much is to be abstracted when she gives the conversation of others in her own language. Without the slightest disposition to misstate, there may be a strong propensity to embellish. I can make but little of all this detail by the witness of conversations and exclamations. They might be something, they may be nothing, and they cannot weigh a feather here against the prisoner. Let me again caution you not to receive this and other suggestions, such as the sending the little daughter out of town, and going herself, or the conversations at Thetford—as if to confirm your suspicions; but look at her as an innocent person and then say if you see in all this, any marks of guilt.

But if she did it, where is the *motive*? From the days of the Roman Orator until now, in all causes of guilt to be proved by circumstance, the question has been, as it is now, "*for what purpose did she do this?*" and if the answer be wanting in evidence, no jury can supply it. A Jury should never convict on circumstantial evidence without *motive*. All the evidence shows there could have been no motive. He had great failings, but she was eminently forgiving. I ask you then, why she has done this? Is it credible? I cannot conjecture where the Government will pitch for a motive, and I have looked through all the case. She discovered that night, that he had a disgraceful disease; one that involved infidelity to her, and from mere jealousy, revenge or fear of contagion, she determined at once to take his life! This must be the theory, but what is the evidence? There is not a particle to support such a conjecture. The symptoms of this disease were of a secondary kind, showing it was of remote origin, and implying no infidelity to her. And if recent—it must have been known to her before. He stated to Bachelor that it had long troubled him. Besides, she discovered this fact on Saturday evening, and the man was poisoned Saturday morning, before she knew it! Where then is the motive, or the possibility of even the *conjecture* of a motive?

Remember, again, we are not to show how he died. But how did he die? If not destroyed by Bachelder, he died by his own hand. It will be said, he died in silence; that he could not have done so, and kept his secret locked in his heart. But it was a secret crime. He was a man of resolution, quick, and determined. True, they say he expressed, in his extremity, anxiety for relief; yes, relief from pain; but not a wish was expressed to *live*. He desired no medical aid, till it was urged on him; he said nothing of religious hopes or fears; he died in sullen silence. All he said was, 'where shall I be buried; no matter where!' and that was all, except that he desired to be buried under arms; a very unusual request for a dying man. Was it that in the eclat of the funeral, might be concealed the secret cause of his death? He was poor and proud, he was a gambler, intemperate, ruined, and he suffered keenly from remorse. Gloomy thoughts gathered upon him. He was a changed man to his old companions; he had contemplated death by his own hand, and he told Tucker that he once attempted it by laudanum.

Such was his temperament. The idea of suicide had long been familiar to him, misfortunes had been accumulating and pressing him down, and at last came one drop that made his cup run over. He found the effects of former vices returning upon him in a disgraceful disease. Then it was that he carried into effect the purpose that he had in his mind, when he told Tucker not to be surprised, if he should hear at any time, that he laid violent hands on his own life.

This is the evidence, gentlemen, and there is more proof in the case of suicide than of murder. There is motive enough for suicide, there is none for murder. Gambling and drunkenness have had their thousands of victims by self-murder, and many men have fled to death as a refuge from the shame and misery of that odious disease which was upon him. Suppose, gentlemen, it were proved to you that Mrs Kinney had said she was tired of him and resolved to take his life, and had once attempted it and failed? What would you say then? And yet you have had that evidence of the suicide of the deceased. If she had said so, she could not have escaped your verdict.

I have now said all I proposed and more in detail than I intended. I now leave her to you. In the great hand of God she stands, and through him she looks to you for DELIVERANCE.

CLOSING ARGUMENT OF THE ATTORNEY GENERAL JAMES T. AUSTIN.

Gentlemen of the Jury. When the Grand Jury determined to present this case as a proper subject of judicial investigation, it was obvious they were about to devolve a most arduous task upon the prosecuting officers which none, not in love with labor, could desire to perform. It was easy to see that the tide of public feeling, if its current had ever borne against the accused, would as rapidly roll back again when it was found that in the imprisonment previous to trial, and the physical suffering in the progress of it,

the prisoner would endure more than enough for *suspicion*, and almost enough for *guilt*.

To those of us, gentlemen, who have some experience in these proceedings, and who know the extreme difficulty of arranging a case of circumstantial evidence to the satisfaction of a jury, the increased and inherent perplexities of a capital cause and the accumulated and almost insuperable obstacles which the humanity of the one sex presents when one of the other sex is the party accused;—nothing could be less desirable than the necessity of conducting such a prosecution.

But from the obligation thus placed upon us, there was no honorable way of escape.

In the full knowledge of this obligation and with a deep sense of my responsibility, I have endeavored to place before you all the legal evidence, and no more than the legal evidence, that has come to my possession. I shall endeavor to apply this evidence to the weighty charge that hangs over the prisoner at the bar, and to treat it in its connection with the evidence and arguments of the prisoner's counsel. The result of the investigation is with you. The Commonwealth cannot contend for victory, for there is no verdict carefully considered and honestly rendered by an intelligent jury, that can ever be defeat.

The interest of the whole public is concerned for each and every of its citizens—to punish the guilty not more than to protect the *innocent*. But it is in the very nature of trial that the suspected, whether guilty or not guilty, should be placed at the bar. It is for the vindication of the law and the justice of the country, that this trial should be freely, fully, fearlessly conducted—that it may never be said or imagined, that one person is acquitted by favor or feeling, and another convicted from indifference or passion—that it never may be said those impulses of the public mind which sometimes would arrest and arraign without proof, and again acquit against evidence and reason—prevail over the calm, deliberate, sober judgment of the community.

Providence in its mysterious dispensations sometimes involves the innocent in suspicion of guilt; as it afflicts them with poverty, bereavement, or disease; and allows the guilty to escape an accusation with all the pride of beauty and the blessings of existence. This vicissitude is not to be complained of, for it is the decree of Heaven. But it would be an insufferable addition to the seeming evil if all human means were not enforced to place the one and the other in that position, where, according to our notions of justice, both ought to stand.

The Counsel for the Prisoner have presented you one side of the case. It is my duty to offer you the other; and yours the important and responsible privilege to determine what decision ought to be pronounced. Of that decision whatever it may be, no one can have a right to complain, and least of all will the officers of the Government *desire* to complain.

The counsel for the prisoner have given you their opinion, as to her guilt or her innocence.

The counsel of the Government will do no such thing. They will only present to you this case so as to enable you best to judge of both sides of it and having done this in the discharge of my official duty, I shall have nothing to regret or complain of, whatever may be your determination.

It has been opened to you as a case of both positive and circumstantial evidence. It is denied for the defence, that there is any positive evidence in the case; but to my view, it is both positive and circumstantial. The humanity of the law requires that no party shall be put on trial for murder until the death is proved; and we offer positive evidence of the death of George T. Kinney.

I had also supposed that nothing more positive or direct in proof, could be given than the evidence that the deceased died by poison. The scientific physicians who examined the whole case, tell you that in their opinion he died of arsenic. But more than this is required, and the evidence goes farther. The drug shall be found in the body of the dead man, to bring the charge of poisoning; and, if found, the inference is then clear that poison has been taken, and has produced the death.

There are, also, symptoms of the disease before death, which the prosecution must show, and these pillars of positive testimony bear up the arch that sustains the circumstantial evidence, and the direct inference upon which the Government rely in this cause.

I need not detain you a moment, to shew that all the evidence proves that the symptoms were those of poison by arsenic; and the opinion of the medical men is, that though the symptoms are common to cholera and poison, this was a case of death by poison, and not by cholera.—I know the medical evidence has been attacked, but the witnesses who sustain it have armor of proof to defend themselves, that requires no aid of mine. You will not doubt, gentlemen, that the contents of the stomach were honestly dealt by, because there was no possible motive to tamper with them.

I then lay this down as the corner stone of the prosecution, that the deceased came to his death by the poison of arsenic, and if the ingenuity of the counsel for the defence could attack this stone wall, and with so much plausibility, you will judge what is the efficacy of his attacks on the other main positions of the case.

If you doubt this fact there is an end of the prosecution. If you believe it, we then come to another position. It is indispensable to show not only that the act was done, but that the prisoner wilfully did it, and if this is not shown, there is also an end of the case.

But if the Government are to prove that in no other possible way this death could have happened, then the case might have ended where it began, and all inquiry or trial in any cases depending on circumstantial evidence, become utterly useless. No man would stand here and say that by no possibility it was suicide. No one could say, that by possibility the deceased might not have that morning, taken a glass of

soda, and arsenic been in it. If, in short, you are to be limited to a question of possibility, the prisoner must be acquitted; and that is not all; no other man or woman should ever be put to that Bar for the charge of murder by poison; you may strike that crime from the Statute Book. The prisoners you arraign for such a charge, may sit through the trial with the calmness of a marble image, without stirring a pulse or shaking a fibre of their frame, for when the mockery of a trial is begun the certainty of acquittal has arrived.

I hold for the protection of all our fellow citizens, that this doctrine of possibility is to be scouted from the case. I do not say that you are to convict on mere probability; the proof you are to require must carry with it conviction beyond a reasonable doubt. But I do not propose to say a word upon the law of the case. It would come with little weight from me if contradicted by the court, and I have no intention to advance any doctrine of evidence that they might not approve.

I put the case to you, on the evidence, as men of common sense and not of extraordinary learning, for in the trial by jury, it is to men of good sense, drawn from the whole community, that all matters of fact in controversy, must be submitted.

If I rightly understand the argument of the opening Counsel for the prisoner, he gave you various modes and hypotheses by which the death might have been caused, you were not required to believe all or any of them, and yet if either of them was possible, then the Government's hypothesis of murder, is to be taken as not true. Then take all these hypotheses and that of the Government with them, and if you believe none of them, of course there is nothing to believe, and there is an end of the case. But examine all successively, and when you can find one you can rest upon, that is to be taken, whatever may be the consequence; but if none can be relied on, then the prisoner is entitled to her discharge.

We start with the fact that the deceased died of arsenic, and it is equally clearly proved, that not less than ten grains were found in the stomach. True, the test applied by Dr Gay did not produce this quantity, but if all the contents of the stomach had been analysed, as was that portion in which the poison was detected, a like product from the whole, would have amounted to at least ten grains. But this is not all. The deceased was subjected to severe vomiting and purging, after the arsenic was taken into the stomach, and much of the poison must have been carried off by that process, and you know it was the remaining quantity that actually killed him, by absorption into the system.

If then, ten grains were found, after this escape and absorption, how much was administered to him, by himself or by some one else? At least ten times that amount.

I put it then, not only that he died by arsenic, but that, by calculation from the ten grains found in him, he must have received at least one hundred grains into the stomach. Sit down then if you please to give the case any consideration

in the Jury room, and first ask what was the real quantity the deceased took and held in his system. I estimate it at one hundred grains. One hundred and twenty grains is three cents' worth, or a quarter of an ounce. Settle it as you shall judge; come to the minimum; take into the account the spasmodic appearances after death, making him, by a convulsive force, almost live when he was dead; and when you have fixed upon the quantity, let it be settled as a data, and then proceed to the next, and ask if that poison was administered by the man they have stigmatized as a quack, from the want of a medical degree, because their witness, Dr Bigelow, could swear he had a degree from Cambridge College, and Bachelder was not allowed to show his without the record.

Chief Justice. I do not so understand it. No such ruling has been made.

Parker. The Medical Society is an incorporated body, and it was given in evidence by several of the physicians who have testified that they were members.

Chief Justice. No objection was taken.

Austin. I do not put it as a different rule applied by the Court. We did not object, they did; but we could not get his diploma, which they required on their part, though it was not required of them.

I do not stand here, gentlemen to defend irregular practice in or out of Court, but if the witness Bachelder, is to be tried on any such charge, it is not here. I confess, that if I required a physician for my family or myself, I should greatly prefer Dr Bigelow to Dr Bachelder, but that is a different question from the one before you. The question is, did Bachelder poison the deceased? He is a witness, and he states to you certain positive facts. Is he to be believed or not? It is a question of veracity, not of medical degrees. It is not the practice of the Government to assume perjury in a witness, we leave that to honorable gentlemen of counsel for the defence. We do give credit to human testimony, when unimpeached and uncontradicted, and this is the instrument the Government has placed in our hands, for the purpose of managing its causes.

Bachelder testifies that on Monday Mr Kinney consulted him for a certain disease, and that he gave him a cathartic and a box of blue pills, and nothing else, and never saw him again, until after the time the counsel fixes, (and I agree with him) when the poison was taken by the dying man. The arsenic then was either in the blue pills or the cathartic, if Bachelder gave it. This was on Monday, and the deceased was not under the influence of poison till the following Saturday morning. Now when did it develop itself? He had one hundred grains in his stomach, and the symptoms did not show themselves till Saturday. If he had taken poison from Bachelder on Monday, it must have developed itself sooner. It is said to be cumulative, but no man can take with safety, more than the seventh part of a grain in a day, and in seven days he could have got but one grain in these pills, and how long would it take to get into the sys-

tem? It is a cumulative remedy, and, says Dr. Bigelow, we begin, when using it as such, with the sixteenth part of a grain. I beg you to look at it mathematically, as well as rationally, and see if the poison the deceased took, could have been contained in the medicine given by Bachelder. This is the clear conclusion against that hypothesis if you believe the testimony of Dr Bachelder. But they bring Dr. Harrington, *par nobile fratrum*, to confront him. They are now rivals and each has set up a hot shop of health, on his own account. But Dr Harrington says that the very pills Bachelder prescribed, were the syphilitic pills he shew to Mr Lane, and that there was no arsenic in them, and that Bachelder told him he never used arsenic in syphilitic pills. By all the proof in the case, therefore, whatever Bachelder may have done in other cases, he stands free in this case, from the imputation of having administered arsenic in the pills or the cathartic, from design or malpractice.

After this, but, as we all agree, after the deceased was poisoned, Mrs Kinney came for Bachelder, on Saturday evening, and he then gave his bowel pill, or as he more learnedly calls it, his mucilage pill, which he tells you contained no arsenic, but mercury and slippery elm.— But this was not the poison the sick man had taken, for the fatal dose was given on the morning of that day, except what was in the sage tea; and is it probable that Bachelder when sent for, would prescribe laudanum, when, if this theory be true, he knew he had already administered arsenic? Would he have done this, unless he had the vision of the gallows before him, and wanted to walk up to it?

Dr. Storer, when he learned an irregular practitioner had been to the patient, inquired for the medicine and examined it. Dr. Bigelow also examined it, but they found no arsenic. Dr. B thought it an imitation of Dover's powders, which never contains arsenic. The counsel asked Dr Bigelow, the curious question if arsenic might not have been in that powder. So if you see a tumbler of water poured from this pitcher, you might be asked if arsenic might not be in the pitcher, and you must answer as Dr Bigelow did, that it possibly might be; and here I say, what I have said all along, that if what might be, is to be considered evidence, then it is worse than useless for you and the learned Judges to sit here to try this cause, or any cause at all.

But another hypothesis for the defence is more likely to find favor, which is that not, intending to give poison, as a remedy, Dr. Bachelder mistook, and gave it for something else; and they tell you, that when Bachelder came there and was told that the patient was worse, he examined the pills, and from this they infer that he might have made a mistake, but when he did examine the pills, he said all was right; so that he did just as any one of the medical faculty would have done, from the President to the scribe, by recommending a sedative in the form of laudanum. Now were it possible to put Dr. Bachelder in the bar, and charge him with the death of this man, I am sure you would not leave

your seats, before you would say, there is not a shadow of evidence to implicate him in this homicide.

There is a vastly more important question, gentlemen, for you to consider, and that is, that if this arsenic, in the supposed mal-practice of Bachelder, does not exist, there is a small line between the prisoner and the death of the deceased; but it is necessary to get rid of that before we come to the defendant.

The great obstacle raised to the conviction is, that Mr. Kinney poisoned himself; and here let me ask you to observe how ready they are to accuse all whom the law does *not* accuse. To them all are guilty except those whom the Grand Jury indict, and failing in the attack upon the irregular practitioner, they put the dead man at the bar, when the grave has closed his lips, and there is no one to speak in his defence, and this they call the humanity that shames the Counsel for the prosecution.

But how is the alleged suicide shown? There is no *positive* proof; no one saw him do the deed, or heard him avow it; and the accusation is attempted to be sustained, by the *feeble* evidence called circumstantial, which is strong and irresistible when used on the side of the defence, but which, when applied to the prisoner, is like gossamer blown away by the breath of the counsel. Against the dead man who has no counsel, it is to be strong as cable; against the prisoner, defended by all the eloquence of her counsel, it is a whip of straw; I am willing to meet it.

You are called upon to infer that the deceased poisoned himself, 1st because of his habits—2d, because ruined in property—3d, because gloomy in his disposition, and 4th because he boasted, or bragged or threatened he would take his own life.

The counsel for the defence tell you, that in circumstantial evidence, the facts are to be proved, and the inference must be a fair, logical deduction from them. I shall not dispute the position. Whence do they derive, or how establish the facts? The secret thoughts and private acts of the deceased, his days of labor and his nights of ease, the difficulties, despondings and the failings of a whole life; and all that may be treasured in the memory of a wife, are disclosed to the counsel and laid open here; but taking all, I ask you is there any ground to believe, that if like some Eastern nations who hold a jury on the dead, this man were charged with suicide, it would be possible to find a verdict of guilty against his memory?

To call him a gambler, is speaking of him in hard terms. He occasionally played at games for small sums, but the use of cards and games, at a convivial party, however it might be disapproved by the learned clergymen who sat on your right, Mr. Foreman, this morning, is extremely different from that habit which gnaws like a moral cancer on the desperate man, and makes him raise his arm against this life; and the disposition that would magnify amusements like these, into the vice of gambling, belongs to the *future* Attorney General of the Common-

wealth, and not the present. The accusation is harsh, and cruel and unjust, come whence it may, or strike whom it will.

[Mr. Austin examined the evidence as to the gambling, all of which he said came from Remick, Lane, Tucker, Moore, Johonnet.]

The most important witness is Tucker. You would have supposed from his answers to the question how he came to be a witness, that he came here because he could not help it. How does it turn out? He had written a letter to Mr. Riley, offering himself as a witness, and was then promised his expenses for coming here. This is equivocation with a circumstance, and with this we begin our acquaintance with Mr. Edward L. Tucker.

[After some further comments upon this witness, and a review of the evidence as to the frequency and amount of the alleged gaming, which it was insisted were slight materials to prove a settled habit, the Attorney General arrived at the conclusion that if these are enough to lead man to commit suicide, we need not wonder at the numerous suicides we hear of, over the country.]

The question is, was it a cause of embarrassment in his affairs, did he leave a single gaming debt behind him? He told Leach expressly that his affairs were embarrassed by others, and we know who they were; he had two partners, and both left him in the lurch. Let me not be misunderstood. I have no wish to extenuate the conduct of a man who neglects his business for the pursuits of pleasure, or spends his time in amusements or games, when it might be better employed; but let not this fault be exaggerated into crime, and this little degree of departure from the conduct of an industrious man, stretched to the extreme of profligacy and gambling. Do not visit so unjust a judgment upon men who thus occasionally indulge in the pardonable hilarities of the time.

It is said, as another proof of suicide, that he was in bad habits in respect to drinking; and I supposed from the opening, you would have found him a common drunkard, escaping from the House of Correction only by the forbearance of his friends, or the mercy of the public officers; but there is nothing like it in the evidence. On this point, too, there is much of exaggeration, to transform slight failings into a fixed habit.

I do not know, gentlemen, but what it is best to drink nothing but water, and I have no doubt there are men among us, who, if they had the making and executing of the laws, would hang and quarter every man who should drink a glass of alcohol: being, in their zeal for temperance, the most intemperate men in the world; but, when we speak of intemperance, especially intemperance that would incite to suicide, we mean an habitual intoxication, amounting to the vice of confirmed drunkenness. Such was not the character of the deceased, and hence he was not the dissipated and broken down man the

counsel must prove him to have been, before they can draw from these premises, an inference of suicide:

But his property was torn from him, and this drove him to suicide! Stripped of all imagery, it amounts to this; that a man who had a good trade and worked at it, but had not the means to buy a shop full of stock, was a poor man, and therefore a reprobate, and must commit suicide! This is the argument from the kind and generous counsel for the prisoner!

The best answer to this is, that he never would take advantage of the insolvent law, which would have relieved him from all his embarrassment. Besides, his friends were ready to supply him with stock and lend him money. Barnes says he was getting on better just before his death, and he had got over the most humiliating trial to a poor and proud man; he had been to jail and taken the poor debtor's oath, and he did not resort to suicide then.

This is the evidence that the deceased sought his own life. Taken all together, was they any approach to an accumulation of evils that should have overwhelmed him?

But a great deal is made of the threats of suicide. What do they amount to? On a sealing voyage, twenty years ago, he looks at the water and threatens or thinks to jump in. Whether he took his coat off does not appear, but if he did he cleverly put it on again, and he came home from the voyage, safe and sound.

No man threatens suicide who means it.—You never knew a man boast of a deliberate purpose of self-murder; it is a purpose locked in a man's own heart, and you might as well expect the thief to tell the Sheriff he meant to break open a Bank, as for a man to say to another that he was about to break open the treasure of his heart, and let out his life.

What is there against this presumption of suicide, for you are trying the evidence now on that point, and you must not make it a guess that he committed self-murder. If you do, that is your affair and not mine. I say then, after having considered this flimsy pretence of suicide, I ask you next to examine the presumptions against it. What are they? The evidence from the prisoner herself. If he did contemplate or commit suicide, who knows it best, the counsel or the prisoner? and here I think she is to be bound by her own words.

The first you hear of this, is in her interview with Dr Storer, no matter for this purpose, where that was, and the Doctor asks her if the act was not done by himself?—and then, she who knew him best, in gloom and depression, in sickness and in health—she says—“No, George could not have done it.” If this exclamation, so uttered and so given, be true, it is worth all the other testimony on this whole suggestion of suicide.

Again, when Miss Linnell says to the prisoner, “you are wonderfully supported;”—“yes,” was the reply, “I have every thing to comfort me!” What, the wife of a husband dying by his own hand, every thing to comfort her!

Surely it meant, and she who uttered it must have felt, that he did *not* die by self violence.

As another proof of suicide it is urged, that he was affected by an odious disease. But was that its first visitation, to drive him to suicide from shame? No; it was confessedly secondary, so that it seems he did not kill himself when he first discovered it, and would he, on the breaking out of secondary symptoms. That he desired health and sought recovery, are certain, for he applied, not for arsenic, but for medical advice; and this he must also have done on its former appearance, for he had been partially cured, and when it appeared again, he again took means to get well. According to the opposite theory then, he was doctoring himself at the same time he was preparing to take his own life. Was he in his own opinion getting better or worse? Better surely, for he had asked Mr Barnes to come and take a walk with him round the Common, and would he have done this if he then *knew* he had taken poison enough to kill himself? Besides, he had arranged to go into the country, nor is there any sudden thing shown to have occurred, that should have caused him, in a moment of desperation, to commit the act.

Was there any thing in his domestic relations to lead to it? It is certain that whatever was her regard for him, of which you hear but little, *he* was devoted to her; there was nothing at the hearth or the bed, of domestic grief: to the last moment he regards her with affection, and as he takes her by the hand, says, “Hannah, you have been to me a good woman.”

Now would this man have died in silence, poisoned by his own hand, leaving this wife, whom he knew, (though he believed unjustly) had been charged with the murder of her former husband, in the same way—I ask could he have done so with all this affection for her, to the last, knowing, as he must have known, that if the cause of his death should be detected by medical men, it would arraign her at the bar, to answer for his life—would he, nay, *could* he have so died, and not disclose the cause?

Again, did he desire life, or did he walk willingly to the grave? He sent for a physicians, they applied remedies, and the dying man stretched out his limbs to receive the almost torturing applications, such was his love of life.—Were his last acts those of a suicide, when calling his child and blessing her, he admonished her as a dying christian man might, giving, as his last injunction, that she should be a good child to her mother. When Deacon Bachelder came there, (who is no more a minister by the way, though he officiated as such, than the other Bachelder is a doctor, though a worthy man) he says, “I am sick of cholera,” not I am dying of arsenic—and the next moment joins in a prayer to the Searcher of hearts, for mercy and eternal happiness, on his entrance into the world of spirits. Do you believe he falsified before God, at such a time, with the poison given by his own hand working death in his system? If you believe it, then acquit the prisoner, for she is to be

pitied for having had such a husband, even more than for being arraigned for his death.

Again, he had somewhere to die, if he contemplated self-murder. Their theory is that he had taken the poison Saturday morning, out of the house, and if so, he went home, with the poison in him, to die in her arms! Do you believe that. We have often had suicides to lament, and many have suffered through friends who have been left to self destruction in those mental maladies that crush the love of life; but when did you hear of a man giving himself the fatal blow, and going home to die in the presence of his family!

If then, upon the examination of these two hypotheses for the defence, mal-practice by Bachelder, or suicide by the deceased, you can believe neither, you will proceed to consider the circumstances of the case, bearing upon the prisoner. The government do not make the case, they present it as it is, and leave it in the hands of the people, which people, for the purpose of this trial, you are. The public officers did not readily move in this prosecution. You have heard that in the first interview with Dr. Hildreth, I told him that unless further evidence appeared, I should not move the matter. Other evidence was obtained and expected to be, and upon this it was thought proper to have the body disinterred, and a Coroner's Inquest held upon it; the Grand Jury have found a bill, and the case is before you.

Now upon what amount of testimony will you be willing to find a verdict of guilty? If you say you will not convict of a capital offence, on circumstantial evidence, however strong, then might all the trouble of this trial, and of all like it have been saved, and murder unless proved by confession or an eye witness, go unpunished.

This, gentlemen, is a case of secret poisoning, you have seen in what almost invisible quantity it may be administered and produce death. A few grains dropped into a tumbler, in handing water to one of the jury, might cause death before your eyes, in this crowded Court House, and yet no positive proof be found to charge the perpetrator of the murder. If you require positive proof, in vain will you look for it, in any case of secret poisoning. A single cent, in any country town, would buy arsenic enough to kill every man on your pannel. This is our condition, and where is the public to look for protection? Arsenic is used largely in the arts, it is common also for domestic purposes, and can be obtained in almost every shop, as readily as sugar or coffee.

Now let it be understood that the law or the judgment of a jury requires something that can never be done to prove it—and this has been the result of my experience as a prosecuting officer, in eight or ten trials upon this charge) and secret poisoning will be as common as assault and battery, swindling or theft; and the security of human life, about which we boast so much, and which is so hedged round by the highest sanctions of the law will be as little regarded, and often violated, as the life of a dog

in the street. And this exciting trial, which has occupied the attention of the highest tribunal of the State for a week and is reported by a dozen stenographers to go all over the world, is to be held as the law of the land here, in regard to all who may become the secret victims of indignity, jealousy, ambition or revenge.

Why as to death by the bullet or the dagger, the murderer has to attack his victim; it requires some physical courage, and there may be defence, the act must be done openly, directly, with some palpable instrument, surrounded by all the dangers of detection—and all these things secure us better than the law or public justice. But if the secret poisoner, who can carry the agent of death on his finger nail, and infuse it into drink or food, may escape unpunished, where is our security? Here, gentlemen, is our only protection—in a jury of twelve honest and intelligent men, who in a case of proper proof will come up boldly to the point, and execute the law of the land, painful, terrible though it be.

I ask you then, is it proved to your satisfaction that the prisoner administered the arsenic? If she did it, she would not do it without covering it up with some artifice.

It is in proof that she knew her husband had consulted Bachelder for a secret disease for which he was taking medicine. At what time she knew it, we cannot tell, but we know that she did know it, and you will judge how far that was a proper opportunity to begin, if she contemplated the deed; at least the opportunity favored the act. In this and in no part of the case do I give an opinion of my own. That I hold in reserve; but it is my duty to offer this as suggesting the *motive*—a secret disease and a woman's jealousy is motive enough for a bad act.

Motive for crime? Why, the burglar risks the State prison, to get the shreds in your parlor, which he could earn in a day's honest labor, and the murderer often deliberately destroys his victim, from brooding over a slight offence, an impulse of revenge that a moment's reflection would have calmed down. There is never found a motive in crime, which an honest man would think sufficient. You might as well ask a lunatic as a murderer, for his motives? If the maxim is to be established, that a jury will not convict without proof of *motive*, then you give a further latitude to crime, for motive is more subtle and difficult to be detected, even than the chemical agents we have had exhibited here.

I shall suggest no imaginary motive, for it is not for me to draw the curtain of the soul; but, surely, if half is true that the counsel have told you; if, ruined in fortune broken down in health, a drunkard and a gambler, the victim of a disease that loosened the marriage tie, that had no children to bind it; what is to restrain the jealousy of an infuriated woman, in its revenge, provided she have the heart to entertain it, and wants the moral principle to restrain its exercise?

When was the poison administered? We offer to you the evidence that a quantity of arsenic was administered on Saturday night, in

that sage tea, and that she who gave it then gave the earlier poison also. You know he took poison on that morning from his symptoms at noon; and if she administered it at night, the inference is irresistible that she did it in the morning. Was there poison in the tea? It is not the sediment alone, the sweetness, or that it made Goodwin sick, that are to be examined apart from each other, to prove it. Each of these *alone* I admit are nothing, like a single pillar that cannot stand of itself; but all together, are like the triangular pillars in mechanics, they will support the heaviest weight. It is their combination on which we rely.

There was a sediment which is sworn to by Mr. Goodwin. He too is attacked by the scythe of the counsel that mows down every thing; because he did not mention the sediment to the Coroner's inquest, which was only a mere preliminary inquiry to ascertain whether further proceedings ought to be taken. Mr. Goodwin answered what he was asked, and he was not asked to tell all. The testimony before the Coroner, covers but a few pages, while here, it is a volume. He now says there was a sediment, and the tea was sweet; was it from arsenic or sugar? She was requested not to sweeten it, and would she, as a kind wife, have done so against the sick man's wish, and when she knew its sweetness would incite vomiting?— True there is some contradiction as to the taste of arsenic, but who by experiment, can tell, how sweet it makes warm water, in solution, for nobody has tasted it in that form unless Goodwin did.

[Mr Austin here examined the collateral evidence as to the sediment from Boston water or East Boston sugar, which he treated as highly fanciful, and a mere inference from an inference; an improbability founded on an improbability.]

The effect of the tea upon Goodwin was the same as if arsenic had been in it, and its effect upon the dying man was the same as would have followed a repetition of the dose of arsenic. He drank it and threw it up, drank and threw it up again, and these are the operations of arsenic, applied in a second dose. Mr Goodwin could not have easily been disordered in the stomach from the atmosphere of the chamber, being a painter by profession, and accustomed to deleterious smells, and he was not likely to be broken down in a single night's watching. The slight quantity he took of the solution, would excite and irritate the stomach as his was, without producing further effects.

This forms the direct evidence in the case. But it is urged, that if the party charged, had caused the death, she would have resisted the *post mortem* examination. Why should she, or what should she know of the perceptible effects of arsenic after death. Until the recent experiment in the case of Mrs. Norton, the popular notion was that arsenic died with the dead, and left no trace that could be found, and why then should she object to an examination, when such objection itself, might invite suspicion? A con-

trivance was necessary to represent the cause of the death to be cholera, or some other disease, and the examination might confirm the Doctors in that impression.

Another proceeding must strike you as strongly indicative of contrivance. Here was a husband suddenly taken away, and the first mode of exhibiting her grief for the dead was her visits to his grave, twice repeated in two days. This was either true love, or the picture of true love strongly painted. If it were true affection, God forbid we should fix it on her as crime; but if it were the affectation of affection, it was only art carried beyond the art it was designed to conceal.

Then comes the extraordinary application to Dr Storer for the certificate that he died of cholera. Dr Storer swears that he had this interview with Mrs Kinney on Tuesday, but neither can he escape the severe remarks of the counsel. They, as do all who know him, admit his correctness, intelligence and high character, but, nevertheless suppose he is mistaken in the day. You have his oath against the argument of the counsel. If it was on the day testified, what but consciousness of guilt, could have feared suspicion before suspicion had been hinted to the prisoner. The counsel wish to make you understand that she had been pointed at [out] at the funeral, as the murderer of her former husband, and therefore wanted the certificate. The supposition is ingenious, but not correct. No such allusion was made at the funeral, nor is it in evidence that she had heard any thing of the poisoning then.

Chief Justice. You know Dr Storer says that he had not spoken to her of it, but Dr Hildreth had heard of it on Sunday and Monday, and on Sunday it led to the second examination.

Austin. The application for the certificate implies some cause for apprehension, and how can the transition be made to the death of her former husband, when not a word had been said about him.

Then follows this transaction on the next Sunday when she is first informed that poison was found in the deceased, and her simple answer to this awful disclosure, is "INDEED!" It is said much depends on the *tone* in which it was uttered. Try it through the gamut, and see if there is a tone for it that is not at discord with innocence. Why gentlemen, to have thus received the first intelligence that her husband had died by violence, she must, if innocent, been wound up to a stoicism unsurpassed in ancient schools. Miss Collins passes by, and says "you have had an early visit." "Yes," was the reply, but not a word of the terrible discovery just disclosed to her, and which she kept locked in her bosom, as if she were marble.

And the counsel asks, 'who is Miss Collins?' That he can answer as well as I. You, gentlemen, have seen these several young ladies, who with so much modest dignity, propriety and discretion, have passed through the extremely trying test of a public examination in a crowded Court; and when the learned gentleman asks, 'who is Miss Collins?' I can only answer that she, like

the rest, is a splendid example of the results of education in our public schools.

I have suggested to you, that, in the whole of this transaction, the prisoner if guilty, proceeded step by step by stratagem and contrivance. If so, the proceedings at the *breakfast of Thursday morning*, are a part of it, and as such they are submitted to your consideration.

I approach this topic with reluctance. The closing counsel has seen fit to make it the occasion of the cause of imputations, as gratuitous as they are uncourteous and untrue.

Dexter. Do you mean to state that the facts are untrue?

Austin. I mean to say the imputations are totally untrue, and I must beg your attention, gentlemen of the jury, while I explain. In the progress of this trial, each of the witnesses for the government were examined, cross examined, and their answers taken down. The time of introducing the witness was the time for the other side to have objected to any portion of the testimony, and require that the government should state the object and relevancy; and when all was in, and this of Thursday morning with the rest, it was not and is not now believed by me that the gentlemen were or could be ignorant of the legitimate inference to be drawn from it. But if they had asked me privately, as a gentlemen at the bar, they should have had my notes as freely as they have had every document and paper in this case. But instead of that, the junior counsel (Mr Curtis), rises, and, with great formality, demands of the court to pass an order upon *me*, to show why I had offered evidence which the court had permitted to go to the jury! It was might be pardonable in a young man, but he should have known better.

The Court replied, as I was well aware they would, that this was not the time or place, for such a requisition; and upon this the junior counsel indulged in a strain of remark that might require reply, but that I have no disposition to occupy your time or that of the Court, in answering holiday speeches. It is perhaps, well enough in a maiden speech, and I ought not to be surprized that the gentleman, feeling somewhat of the importance of a militia officer with a new uniform on for a holiday muster, should attempt to use the sword by his side, in an attack upon the Government Officer.

I have never refused it to the senior Counsel. He applied to me, not for himself, but with reference to his colleague. What then; was I to have submitted to the rebuke of this young man, by conceding it to him? No; and I told the senior Counsel, that if he would make the statement to the Court or would say to me, that he did not understand the use I intended to make of it, he should have it; and I wrote it out for that purpose in the midst of the trial. He has not said, and never will say, that he did not understand the legitimate inferences from that evidence. He now says he would not ask it for himself because I had denied it to his colleague, and by that he admits that he had all he wanted, and only wanted it to cover his colleague.

And yet he has told you that I have kept back an argument to spring it upon the prisoner! I confess I am restrained by the respect I feel for the Court, and for the solemnity of the occasion, from retaliating upon him, as such discourteous, ungenerous and unjust conduct deserves.

It is Christmas day, and rarely are our Courts open on this day; but I well remember, thirty-four years ago, when they were open on this anniversary for the investigation of a homicide committed at the hour of noon, upon the public exchange. It was a time of high excitement, of emotion, of feeling, of party. I remember the conduct of the defence on that occasion, by one of the most gifted and eloquent counsel or ever known at this Bar; and I remember the civility, the consideration and kindness with which he treated my predecessor. All the sensibilities I then may have had in relation to that trial, were long since buried in the grave, and I only regret that the learned counsel, who appears in this defence to-day, while he has somewhat of the ambition and much of the talent, has not inherited the courtesy of his father.

[Mr. Austin alluded to the trial of Selfridge for the murder of Charles Austin, a cousin of the Attorney General. Selfridge was defended by Samuel Dexter, father of Mr. Franklin Dexter. There was some applause which was checked.]

I will now, said Mr. Austin, read to you the paper I had prepared to give the Counsel, had he desired it for himself. He then read the proper inferences he proposed to draw from the facts at the breakfast, as follows:—

“That there was poison--arsenic in the house.

That Mrs. Kinney had possession of it.

That she used it.

That the probable object of using it was to produce the idea that the cholera prevailed in the family, and thus, by a general indisposition of its members, counterveil the belief that Mr. Kinney died by poison.

That if the jury believe the prisoner possessed arsenic on Thursday, and does not show whence or when she obtained it, they are warranted in the conclusion that it was in her possession on Saturday previous.”

It is too late for me now to illustrate all the positions on which we rely in this cause, but the first suggestion in the preliminary inquiry was, if the prisoner poisoned the deceased, where did she get the poison. Dr. Hildreth is entirely mistaken when he says I told him it was important to find a paper in the house containing, or that had contained poison. It was found before I saw him, though not known to either. The paper is here, and you have the evidence. It is a strange coincidence. The deceased died of poison, and while no traces of it is found in his private drawers, there is found a paper marked poison, dropped down at the spot whence was taken an article of food that poisoned the family.

Was it not a most remarkable circumstance that the sickness of all the family, the finding of the paper, and the wish of the prisoner to ob-

tain a certificate of cholera, should all turn up at once in the same house. If, indeed, the prisoner be the victim of circumstance in all this, it would almost seem she was the victim of a higher power, and that the finger of heaven points you to do your duty, be as serious as it may!

These are the circumstances in the case, and whether they are to be like chaff and of no effect, or like the arsenic fatal to human life, you are to judge. If we were permitted to consult only our feelings for the prisoner, I doubt not you would open the bar, relieve her from arrest, and say God speed to her, in her future journey of life. If guilty, she carries a wound within, no sympathy of earth can heal; but if innocent, God forbid that a hair of her head should be touched: all our feeling will be desire to relieve her from the imprisonment, the suffering, the anguish, she has endured, by this accusation and trial.

Justice may authorize you to say so, by your verdict. I trust it may; but however you may feel for her, Justice has not an eye for one being alone. It looks to the whole community, and however painful it may be to apply its sanctions to an individual, and she a helpless woman, the single infliction is more than relieved, whenever it is demanded by the shield it throws over the unprotected citizens of the Commonwealth.

CHARGE OF THE CHIEF JUSTICE.

After consulting the Jury, whether they preferred proceeding in the case, this evening, and understanding it to be the wish of the Jury to do so, the Chief Justice commenced his charge, by remarking upon the importance and interest of this trial.

Gentlemen of the Jury:—It is almost impossible to exaggerate the importance to the defendant, to the community at large of this prosecution, and the weight of responsibility which it casts upon all those who are concerned in the conduct of the trial. On the one hand we are called upon to vindicate the law, for the protection of human life, in the domestic sanctuary, where man has garnered up his dearest hopes, where he has a right to expect the highest security from fidelity and affection, and that too against a secret and most atrocious crime from which neither manhood, nor vigilance can guard him.

On the other hand we see before us, a female, in the maturity of life, apparently talented, educated, and well connected, a widow and mother, relations commanding the deepest sympathy, charged with the darkest crime perhaps, which a woman and a wife can commit. If guilty, none of these recommendations should shield her from that punishment, which a crime so destructive to every community demands.—But should a woman so situated, be convicted while under a false accusation, of so deep and atrocious a crime, it would not only be an irreparable, and most deplorable act of injustice and wrong to her, but would bring discredit upon

the law and upon the administration of criminal justice, which would destroy public confidence, and be productive of disastrous consequences to the community. Whatever tends to weaken the confidence of society in the power of the law to discover the guilty and protect the innocent from false accusations, tends in an equal degree to injure the efficacy of the law as a security for social rights.

Considerations of this kind, arising spontaneously in the minds of every one charged by the law with an active participation in the conduct of such a trial, necessarily lead to that feeling of deep responsibility which is thrown upon every member of the Court and Jury; an earnest wish and sincere desire to discover the truth, and to avoid error, mistake and false judgment, on the one hand or on the other. But from this responsibility there is no escape. When such an accusation is made, it may be true, or it may not, and trial must be had. No other means can be used than are offered to human judgment, imperfect as it is, by the aid of the best wisdom which can be had, and under the guidance of those rules of law and evidence, which long experience has shown to afford the best means of discovering truth in a course of judicial proceeding. The conclusion to be drawn from these considerations is not that the jury are to be deterred from acting, but that they will bring to the inquiry the best powers of their minds in weighing the evidence, and applying the law with intelligence and impartiality. But gentlemen, we have not only need of all the vigilance, intelligence, and impartiality, which the mind of man can exert, but of that wisdom which cometh from above. Let us then humbly and fervently implore the divine blessing on this day's duties, asking of the Author of all light, wisdom, and good, to enlighten our minds, to purify our hearts, and enable us to discover and to follow the path of truth.

The charge against the prisoner is that of murder; the murder of her husband. The general definition of murder, is the killing of any person under the protection of the law, with malice aforethought, either express or implied. Formerly, by the common law, the murder of a husband by a wife, was considered and called petit-treason. It was regarded as something more aggravated than common murder, inasmuch as it was in some measure a violation of that obligation of duty, somewhat in the nature of allegiance from a subject to a sovereign, which the wife owed the husband. It was also subject to what was regarded as a severe punishment, that of execution by burning. But this distinction is now done away, and the murder of a husband is put upon the same footing by the law, as the murder of any other person.

The mode by which death may be caused, may be infinitely various; and in point of law the mode is immaterial, whether by wounds, by suffocation, starvation, exposure to ferocious animals, by poison, or indeed, any possible way in which, by human means, life may be overcome.

In many cases, when it is clear that one person has directly or indirectly caused the death

of another, the first great question, perhaps the only question is, whether it was by malice.—But when the accusation is of murder by poison, the question of malice can hardly arise, because the very case supposes design, preparation and purpose which amount to the sure indications of express malice. The deliberation and contrivance, necessary to accomplish the purpose, prove the existence of malice propense. It is therefore unnecessary to point out the distinctions between expressed and implied malice, and homicide without malice, which are often amongst the most difficult inquiries, which can be presented to the minds of a Jury.

In order to establish the charge of murder by poison, it must appear that the accused with an intent to destroy the life of the deceased, or do him great bodily harm, wilfully prepared the poison, with an intent that the deceased or some other person should take it—and that either by her own hand or by some unintelligent, ignorant or unconscious agent, it was delivered to him to such intent; that the deceased took it, and that such poison in fact caused the death.

And these are the facts, which must be proved to the jury, in order to warrant a verdict of guilty in the present indictment against the prisoner. The main point is, that she wilfully prepared the poison, with an intent to destroy the life of her husband, and that through her means pursuant to that intent it was administered to him and did cause his death. It is immaterial by what means it reached the deceased; it is in such case the guilty contriver and not the unconscious agent, who is the sole author of the crime. An interesting case, illustrative of this point, is stated in some of the old books. A man having for some cause malice against his wife, with an intent to destroy her life, charged an apple with poison, and watched a favorable opportunity to present it to his wife in a manner apparently kind and affectionate. She, in the spirit of maternal kindness, gave it to a child to eat, whom the father dearly loved. Although he witnessed the act, he was afraid to interfere lest he should expose himself: the child ate the apple and died. In contemplation of law, the child was maliciously destroyed by poison, and this was murder; but it is manifest that it was the guilty father, and not the unconscious and agonized mother, who was the sole author of the atrocious crime.

If the facts thus stated, as constituting the legal description and definition of the offence, are all clearly and satisfactorily proved, either by positive or circumstantial evidence, it is not necessary to prove a motive to the crime. It is impossible so foul an act can be lawful, and therefore the inducement, the motive, whatever it may be, must be unlawful; and such unjustifiable act upon an unlawful motive, is the essence of the crime.

In another view indeed, and in this very case, as may appear afterwards, the question of motive or no motive, may become very material. When the evidence is wholly or mainly circumstantial, the absence of any motive is a very strong circumstance against the conclusive

character of a train of other circumstances, having a general tendency to establish the accusation. This is founded upon the obvious consideration from conviction and experience, that no man will commit a heinous crime, thereby violating his own strong natural sense of justice and the clear dictates of conscience, and expose himself to the severe punishments of the law, without a motive, and even without a strong and urgent motive. Such considerations would be greatly strengthened by proof, if it exist, that so far as the motives, dispositions and feelings of the accused are disclosed, either by conduct or language, they would lead to an entirely opposite course of conduct.

So on the contrary, in a case of circumstantial evidence, where there is evidence tending to establish guilt, the force of such evidence will be much heightened by proof that the accused had, by language or conduct, manifested a hostile disposition toward the deceased. The Jury are, therefore, to consider that if the fact of wilful killing is otherwise proved, it is not necessary to prove any motive to constitute the crime of murder—when the question is upon the fact itself, whether the accused did wilfully cause the death of the deceased, the presence or absence of any motive to the act, is a very important circumstance in estimating the force and weight of the other evidence.

This distinction is more important, and more fully presented to the jury in the present case, because the charge against the defendant rests wholly on circumstantial evidence. The fact which constitutes the crime which is charged in this indictment against the defendant, and which is denied by her plea of not guilty, and thus put in issue, is that the deceased died by poison, that it was wilfully and purposely prepared by the defendant, with the design of destroying his life,—that it was administered to him by her, with her own hand, or through some other agency, and that he died from that cause.

It is obvious, from a general view of the evidence, that there is no positive evidence of the fact that she wilfully prepared and administered the poison, which is essential to the proof of the crime:—that is, there is no witness who professes to have seen the act done. It is therefore to be proved, if proved at all, by circumstances, which taken altogether, are of so conclusive a character that they conclude to the proof of the fact, and leave no reasonable doubt upon the mind of its actual truth.

These circumstances may be stated, in general terms to be, that the post mortem examination and detection of arsenic in the stomach of the deceased, taken in connexion with the symptoms of his sickness, shew that he died by arsenic—that she was so situated that she could have prepared and administered it—that such was her language and conduct, preceding, at the time of and subsequent to his death, as to lead to a strong belief that she did wilfully prepare and administer the poisonous drug; and that any and all other supposable modes of accounting for the facts are too remote and improbable to be entertained; and that these cir-

cumstances, taken together, are of so conclusive a character, as to leave no reasonable doubt of the truth of the fact charged. If it fails of satisfying these conditions, and if it does leave a reasonable doubt, then the defendant will be entitled to an acquittal.

In considering the distinctions between positive and circumstantial evidence, each has its advantages and disadvantages. In case of positive evidence, where credit can be placed upon the witnesses, if they are persons of good character, free from all suspicion or participation in the alleged crime, and without interest or apparent prejudice, their testimony to the fact on their own knowledge, is more satisfactory than circumstantial evidence, because it points directly to the facts to be proved, and avoids the danger arising from any error or infirmity of judgment in drawing inferences from other facts.—But the witness, or even two or more witnesses, may be entitled to very little credit: they may have a deep interest in screening themselves, and may do it by concealment and perjury. They may be of infamous character for truth, or otherwise shown to be unworthy of credit. It is quite obvious therefore, that positive evidence may or may not be satisfactory.

Circumstantial evidence depends, in the first instance, like positive, upon the credit due to the witnesses who testify to the facts, and then upon the pertinency and correctness of the inferences the jury may draw from the facts proved; and thus circumstantial evidence is exposed to one additional source of error, that does not affect positive testimony. But it is considered as a set off to this, that as the different circumstances to be proved often come from different witnesses, there is much less room for combination and contrivance, and that a well connected train of circumstances can hardly be invented by art and contrivance which can lead to a false conclusion, and which must be detected by some of the various tests which experience has suggested the modes of applying.

In weighing circumstantial evidence, several considerations are to be kept steadily in view.

1st. The facts from which an inference is to be drawn, that is the circumstances must all be proved by competent and satisfactory evidence, and each by the separate and independent proof offered to sustain it.

2d. That they must be exclusive of any other reasonable or probable hypothesis, which does not include the fact sought to be proved. If all the facts and circumstances proved may be true and do not conclude to the guilt of the accused; or in other words if all the facts proved may be true and yet the defendant be innocent, they do not constitute that body of proof beyond reasonable doubt, which is necessary to establish the charge.

In considering various hypotheses suggested for the purpose of accounting for the facts, consistent with the innocence of the party, it is not enough, however, to suggest a remote, bare possibility that the death might have occurred, or the poisonous drug been received in some other way than that charged in the indictment, es-

pecially if a probable ground has been shown by the evidence offered to support the allegation; but if the facts, or all the proof taken together, can be accounted for, by any reasonable and natural supposition of facts which may be consistent alike with the innocence or the guilt of the accused, they are not sufficiently conclusive to amount to legal proof of the fact. Nor would a mere probability, where the evidence of guilt barely preponderates, be sufficient. It must be that which so far excludes all other suppositions as to place the guilt of the accused beyond reasonable doubt.

One other remark of a general character is to be submitted to the jury, in connexion with a statement of the legal principle respecting the burden of proof. The burden of proof is upon the conductors of the prosecution to establish the fact charged, to wit, that the defendant wilfully prepared, and purposely administered the poison, by herself or by some other means. Supposing it proved that the deceased died by arsenic, and supposing the government offered some evidence tending to prove it; then if the defendant offer proof in support of the probability that the finding of the poison in the stomach of the deceased, may have been caused by some other means, it is not necessary for her to prove the truth of such supposition;—that is, that it did happen in such other way.—It is sufficient if the proof leaves the jury in doubt whether it happened in one or the other of the two modes. By way of illustration; if all the evidence left it in doubt whether, if the poison was wilfully administered by any body, it was by the will and design of the accused, or by the deceased himself, and the evidence left it in doubt by which, it would not be conclusive of the guilt of the defendant.

The presumption of law is, in the outset, that the party accused is innocent, and unless the proof rebuts that presumption, and conclusively proves the guilt of the defendant, she will be entitled to a verdict. That proof is to be considered according to the rules which have been already suggested in regard to circumstantial evidence. These are all the principles of the law which I apprehend are applicable to this case; and it is for you, gentlemen, to consider and apply them.

I do not think it necessary to go over the evidence minutely, it having been thoroughly argued and I shall allude to it as facts understood by you. You have the testimony of Mr. Goodwin as to the sediment in the tea which the deceased drank on Saturday night. He says that he saw a sediment in the tea. If there was, was it arsenic? Was it put there by the defendant, and if so was it wilfully done with the design to destroy the life of the deceased. All this must be proved or it does not touch the defendant. One of the facts relied on is the sickness of the witness, Mr. Goodwin. Could the tea have been the only cause of that sickness? If the watching, the fetid odor and other causes might reasonably have produced it, it would lead to no conclusion against the defendant. If another had drank of the tea and been injured

by it, and it was shown to have been the effect of arsenic, that would have been a strong circumstance; but before you can come to that conclusion, it must be proved that the sickness was caused by arsenic in the tea. The white sediment is too slight a circumstance of itself, because any other white substance might have been there, without the presence of arsenic; and it is here necessary for me to caution you against heaping suspicion on suspicion, to arrive at a conclusion. It does not follow that because arsenic was found in the body of the deceased, it was conveyed there by the tea, because it might readily happen from other causes.

But, gentlemen, I must hasten over these circumstances. If the facts in the case, can be reasonably accounted for, consistent with the innocence of the defendant, she is entitled to an acquittal. The Government must not only prove that the death was by poison, but must also prove that the defendant wilfully administered it, before she can be placed on her defence; for the proof of poison as the cause of the death, would not alone, require any defence on her part.

The learned Attorney General, in his able argument stated that in charges of poisoning, in order to convict, you must have proof that the drug was found in the body of the deceased, and that he died of it. But you must go one step further, and prove that it was wilfully given, as it might have been done by accident or mistake. This is the *corpus delicti*, the body of the crime, which must be the foundation of the charge.

As to possibility, that the death may have been produced by another cause, it must not be bare possibility, but a reasonable possibility founded on rational causes, and not a remote contingent possibility. If the proof is that the deceased party has been exposed to two causes of death, and a doubt is left between the two, there can be no certain conclusion drawn as to either and the crime is not established.

It seems that the deceased went to Dr Bachelder, some days previous to his death, for medical advice, though, probably from shame of his disease, he did not give his name. One of the suppositions for the defence is, that the death may have been caused from that source. Now as it regards that practice, Dr Bachelder says he did not administer the bowel pill till Saturday evening. Gentlemen, it is for you to consider testimony, and when one witness is contradicted by another, you must weigh it. Dr Harrington says that Dr Bachelder told him he did before that administer that pill to the deceased.

It is stated to you by the physicians, that arsenic is administered in the particular disease for which the deceased was under treatment, yet if you are satisfied, that in this case it was skillfully used by Dr Bachelder, if at all, it cannot account for the quantity of arsenic alleged to have been found in the deceased. But the bowel pill is not shown in its component parts, and Dr Bachelder is contradicted in his statement that he never used arsenic as a remedy. You will consider the grounds upon which this

suggestion is made, that the poison was administered in these forms, by want of skill, mistake or accident.

But the more important suggestion is that the deceased came to his death by *suicide*. It is not, however, as if he were on trial, or his memory on trial, if such a thing could be, that you are to apply the evidence to this inquiry, because if the fact of suicide were then left in doubt, upon the evidence, he could not be convicted. The dead man is not on trial, and your verdict should not and cannot affect him. The question to be considered here is, that if the rational ground for believing that the death was by suicide, lead to doubt whether the defendant did it, you must acquit.

On this point the evidence is that the deceased had given indications of being tired of life; that he had been to a physician to prescribe for an odious disease; and that the burden of life being heavy, and this disease breaking out, led to the commission of suicide; and if so, it would put an end to the case, without further inquiry. It appears that he was insolvent at his death, and owed about \$2000, and that after the settlement of the estate, including his wife's property, which by law was his, although she kept a milliner's shop, the expenses and charges left but eighty-nine dollars which was allowed to the widow by the Judge of Probate. Well, that is not a very strong circumstance, for it is by no means uncommon for men who are in debt or insolvent, to get along without committing suicide. So of intemperance and gaming; but you are to take it all together, and judge of it, in connexion with his temperament, threats or other indications of such a tendency. In this relation it is your duty to consider the testimony of Mr Edward L. Tucker, to whom, if he is to be believed, the deceased had said that he had once attempted his life, and that, at times, he did not know whether to go home to his wife, or to make way with himself. His testimony is called in question, and this is for your determination.—He appears here with some zeal, but I see nothing in his testimony that does not entitle him to a reasonable belief. As to his volunteering, and writing a letter, offering to be a witness, it is to be supposed that when a matter like this goes abroad in the newspapers, it is likely to lead to suggestions of evidence, and produce calls for witnesses.

If then, upon the evidence, the suppositions of murder or suicide, as the cause of the death, are equally probable, you can infer neither, and suicide would be as rational as murder. Both these conclusions are unreasonable *a priori*.—He dies of poison, and in the absence of evidence, as to who administered it, it might as well have been the husband as the wife. It is not a mere preponderance of probabilities between the two, but to arrive at the conclusion of guilt, the evidence must exclude all other reasonable conclusions.

It has been said, in the argument for the prosecution, that a man will not avow a purpose of suicide, if he intends to commit it. But it may be intimated before the purpose is fully formed,

and this would have a tendency to show that his mind was brooding over it, as one of the modes of escaping the ills of life. In this connexion you will consider the bearing of the several intimations of such a purpose, as testified by the witnesses.

The supposed contradictory statements of the defendant, as to the cause of her husband's death, are relied on as proof of guilt. Of the bearing of these you will judge. One mode of accounting for her different statements at different times may be this. There is no evidence of her knowing that he was affected with a disgraceful disease, until Saturday evening preceeding his death. He had, as was then supposed, been laboring under cholera, and he had concealed from his wife that he had been taking medicine for another disease. At that time he was in extremis, and he found it necessary to disclose to her, or was prevailed on to do so, that he had been to Dr Bachelder. This led to sending for him, and when she showed him into her husband's room, she says "There is the man you have given medicine to, and you know for what." When, after the death, Dr Storer suggested to her that the deceased might have died by poison administered by himself, she said "No, I do not think George could have done it," as if attributing his death then, in her own mind, to cholera or to what had occurred between him and Dr. Bachelder. Subsequently, when Miss Collins had been to Dr Storer, and learned that poison had been found in the deceased, and returned and told it to the defendant, she then said, "Would to God that he would show the mystery why George had done it." The suggestion of the Counsel for the defence, in explanation of this apparent contradiction is, that when the reply to Dr Storer was made, she did not know that poison had been found and was in doubt as to the cause of the death, but on learning that fact, the suspicion of suicide was entertained.

It is also suggested, that to the world generally, she did not wish to admit the idea of death by his own hand, and therefore, she would not disclose it or repel it. At another time she said to Miss Hosford, the niece, in alluding to the condition she had seen him in, on a particular occasion, when excited by liquor, that perhaps he was taken away in mercy. Now, gentlemen, when placed in the situation the prisoner was, it is difficult to say how a person would act, especially when there were intimations that the party herself, might be called upon to answer for the death. The very apprehension of being brought to a public trial is what a woman, though innocent, would greatly dread, and the different remarks and views, and apparent contradictions in the defendant, may thus be accounted for.

You will recollect another conversation at Thetford. She then intimated that her husband had died by his own hand, and that he exclaimed, "Oh God! have I killed myself!" Now this may be taken, either as an intimation of direct agency, by suicide, or that he had brought upon himself a series of evils that had resulted in

death. This is in evidence. It comes from her, and in fact what she and the deceased have said, constitutes a large part of the testimony. We have at times apprehended that it was taking too wide a range, but it has been difficult to limit it, because open to the question whether he may have accelerated his death.

You have been asked what amount of circumstantial evidence you will require, in order to convict. The amount necessary, is first that the facts are all proved beyond reasonable doubt, and second, that the conclusions are correctly drawn, and exclude all other fair conclusions. That is the amount of evidence required, and if the facts cannot be proved, the prisoner must be acquitted; and although the party might be discharged from this bar, and universal suspicion still rest upon the public mind, the verdict is right, because the evidence is in doubt.

So far as there is proof of any attempt to conceal and pervert the truth, it is evidence tending to show guilt; and on the other hand, if the defendant has facilitated inquiry, and not objected to investigations that might expose guilt, if it existed, it is to be taken as proof of innocence; and in this light you will consider the readiness with which the defendant assented to the postmortem examination. It could not have been held, if she had objected to it, and indeed they had no right to do it, but by her consent, although it was an interesting case, in which, as a matter of science, such a course was desirable and proper. The attempt to obtain a certificate of death by cholera, is strongly urged against the accused. Now, if believing that her husband died of poison, she asked for a certificate of cholera, that would be a strong circumstance, and here the precise time of the request, is very material. If it were on Tuesday or after she had heard of suspicions against herself, and before she knew the doctors had changed their first impressions as to cholera, and detected poison, it would be natural, but if after she knew the death was by poison, she applied for a certificate, it would lead to an opposite conclusion.

The fact of finding the poison, was not made known to her, by Dr Storer, until the Sunday after the death, and she applied for the certificate on Tuesday or Wednesday. Another fact is in evidence that she told Dr Storer she had been pointed out as the poisoner, before she knew the poison was found, and this is supposed to have been an outbreak of conscious guilt before accusation. On the other hand, it is said that rumors and reports were then in circulation. Were there such surmises at that time? It appears that Dr Storer did not pronounce an opinion that the death was from poison, until the chemical analysis was made, and yet on Sunday, the day of the death, he had said to Dr Hildreth "if you will keep our secret we will tell you there were indications of poison." There were surmises then of poison, and when were the rumors afloat? Cheatham and Ridley say that they did hear such remarks, in connexion with the defendant, in the crowd at the funeral. It may be true that she did not hear what they did,

but if they heard it spoken of, probably it was spoken of by others, and if by others she may have heard it, and if she did, it repels the inference of preconceived apprehension before suspicion.

It becomes necessary here to allude to another circumstance, the alleged design to cover up the real cause of the death, and convey the impression that cholera was in the family, by the occurrences of Thursday morning; but the first, and most material point, is to show that the defendant must have put arsenic into some of the articles used at the breakfast. Now the fact is that she was sick herself, after the breakfast, and to repel this, it is suggested that she did not intend to take life, and only to produce sickness and not to kill; but before you reach this, you must be satisfied that she put arsenic into the food. The fact on which this theory is built is, that blue paper was found, marked 'poison.' Did it contain arsenic, and did she put it in the food? if so, the inference is established; but if these facts are in doubt, it fails.

There are a great many other circumstances in the case, but it is not necessary to go over them. With respect to the purchasing of arsenic at Dr Mead's shop, it is entirely out of the question; it is not proved that she was the woman who bought it, nor is the transaction in any way traced to her. Then, gentlemen, consider the conduct of the prisoner before and while her husband was sick. It appears that they had lived happily together, that no known differences or dissensions existed, and on the whole her conduct in this respect, appears to be free from blame. Now, conduct of this sort, in the relations between the parties, or in the last sickness, is not material of itself, but in a charge of administering poison, where one of two may have done it, the husband or the wife, that conduct favors the supposition that *she* did not do it.

One of the suggestions on the part of the prosecution is contrivance and preparation with reference to the act, and if there had been any such, it would be a strong circumstance. It is urged, in this connexion, that with reference to the events of the Thursday breakfast, she sent her little daughter out of the way to Vermont; but if there are other natural cause for the child's going, such as that she was rendered nervous by discovering the blood on the dead body, or that she was attached to Harriet Hosford, who was going to Thetford, and her mother intending to follow; that circumstance can have no bearing in the case. So in all other supposed indications of contrivance, the question is whether there is any thing in the proceedings and conduct of the defendant that shows there was preparation and design, which cannot be reasonably attributed to some other cause, consistent with her innocence. The learned counsel for the defence alluded to several circumstances that are entitled to weight. She sent for Mrs Varney, and desired her to come as soon possible, and when Miss Collins, who was residing in the house, was going away to pass Saturday at Charlestown, Mrs Kinney urged her to come

back, and she did. Was this consistent with the fact that she was meditating this crime? If so, would she send for persons to be present, who might be witnesses against her, or would she get all she could out of the way.

Another circumstance relied on, is her telling Dr. Bacheider that she feared her husband would not get well, and giving as a reason, that a former husband had died much in the same way. Now if it were proved, or were capable of proof in this trial, that a former husband died of poison, it would have weight; but if she then supposed the sickness to be cholera and her former husband had died of it, or a similar disease, it was natural she should express fears.— In all matters of conduct and expressions under circumstances like these, it is difficult to tell what a person may do: the facts are before you, judge you. If she were desirous of preserving her husband's memory from blame, and at the same time knew his failings and habits, she might express herself stronger or differently, to some than to others. Thus she told his niece, Harriet Hosford, of his dissipation, but desired she would not mention it to others, while to others she might decline speaking of it, or give a different impression.

With regard to MOTIVE you will judge of its weight in the case. The suggestion by the Government is, that incited by jealousy at the discovery of the secret condition of the husband, she was impelled to take his life. On the other hand it is urged that the harmony between them and the kindness of the wife, to the last, repel the suggestion of any such motive; and it is in evidence that the husband used the certainly strong expression in regard to the conduct of the wife, that he never saw a scowl on her face. It is also contended that the question of motive goes stronger to prove suicide by him than murder by her; and in this view it is therefore a comparison of motive.

I will not detain you longer upon a review of the evidence, as I should have done had I time to go over it, and you were not fatigued to-night by the great length of the trial. But gentlemen, the case is one of circumstantial evidence, and it is necessary for the Government to make out to your satisfaction, that the crime was committed, that the defendant knowingly and wilfully administered the poison, by herself or another, and that death ensued. If on a full consideration of the evidence all of these facts are not made out, then there is no sufficient ground for a conviction; or if a reasonable doubt rests upon the facts, then she is entitled to an acquittal. I have no doubt you will give to the case all the consideration it deserves, and render such a verdict as your duty to the community requires, and that will be satisfactory to yourselves and to the country.

[The Jury were absent from their seats THREE minutes, and returned with a verdict of NOT GUILTY. The announcement was received with an applause that could not be repressed, and af-

ter Mrs K. was discharged, the crowd went down into the street, and gave expression to their feelings in cheers. The trial which had begun at 9 o'clock Monday morning, was closed at half past 10 Friday night.

Having minutely taken all the testimony and arguments in this case, which the Reporter be-

gun with a strong prepossession from public rumor, he feels bound in justice to say, that in his opinion, and as far as he knows, that of the entire Bar, the Government not only failed to show the guilt of Mrs Kinney, but the evidence proved her innocence, and ought to relieve her from all unjust suspicion.

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