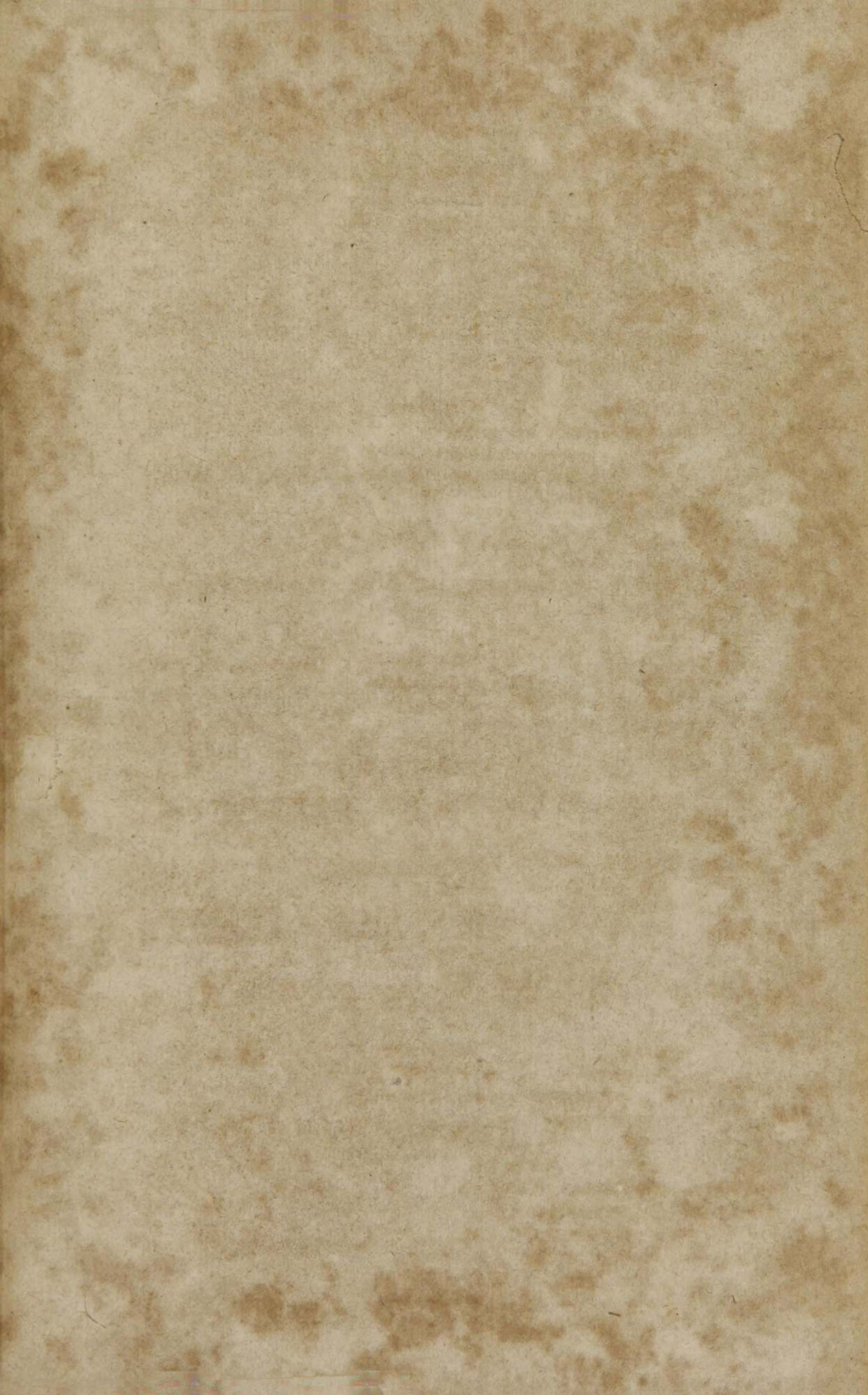
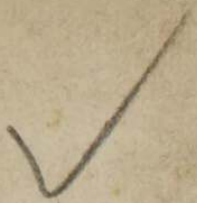




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REPORT

OF THE

TRIAL AND CONVICTION

OF

J O H N E A R L S ,

FOR THE

MURDER OF HIS WIFE,

CATHARINE EARLS,

LATE OF MUNCY CREEK TOWNSHIP, LYCOMING COUNTY, PENNSYLVANIA;

In the Court of Oyer and Terminer held at Williamsport, for Lycoming county, February Term, 1836.

INCLUDING THE

ARGUMENTS OF COUNSEL, AT LENGTH;

TOGETHER WITH

THE CONFESSION

OF THE PRISONER.



REPORTED AND PREPARED FOR PUBLICATION

BY WM. F. PACKER & A. CUMMINGS, JR.

WILLIAMSPORT:

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1836.

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1836

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TRIAL OF JOHN EARLS.

At a Court of Oyer and Terminer, holden at Williamsport, in and for the County of Lycoming, in the Commonwealth of Pennsylvania, November Term, A. D. 1835:

Before the HON. ELLIS LEWIS, *President.*

HON. JOHN CUMMINGS, }
HON. ASHER DAVIDSON, } *Associates.*

The court was opened on Monday the 30th of November, 1835, and the following persons were called and sworn as Grand Jurors:—

George Bennett, *foreman.*
William Bennett,
William Chandler,
Charles Eck,
James Elliot,
George Edkin jr.
George Fulmer,
Joseph Hall, jr.
John Heisley,
Matthew Jamison,

Thomas D. Stewart,
Peter Swartz,
John F. Sloan,
Henry Ulsh,
Oliver Watson,
John Weisel,
John D. Wilcox,
William Wilson, (saddler.)
Christian Brown.

The Hon. ELLIS LEWIS, *President*, thereupon gave in substance the following instructions to the Grand Jury:

Gentlemen of the Grand Jury:

The Court have understood that a bill of Indictment will be laid before you, containing a charge of murder in the first degree. In such cases it is not unusual for the Presiding Magistrate to give some instructions in relation to the nature of the duties of the Grand Jury. As most of you are already familiar with these duties, the remarks of the Court, will be very brief. By the common law, MURDER is defined to be the *unlawful killing of a person, of malice aforethought.* By our act of Assembly of the 22d April, 1794, *all murder perpetrated by means of poison, is declared to be murder in the first degree, and is punishable with death.* As the bill about to be laid before you charges the accused with having committed murder *by means of poison*, the offence charged is that of *murder in the first degree* and nothing else. It is therefore unnecessary to trouble you with a definition of the various kinds of homicide punishable by law.

It is not your duty to *try the merits* of each case, but you are merely to inquire whether there is sufficient ground to put the accused upon his trial. As a general rule, therefore, you are only to hear the witnesses for the commonwealth. It is necessary that at least 12 of you should agree in finding a bill, and when that number, or more, agree to it, the foreman will endorse it "true bill," and sign such endorsement as foreman. Should any bill be rejected, it is to be endorsed "no bill" or "Ignoramus," and signed in like manner. In cases under the degree of felony, where a bill is returned "Ignoramus," it is your duty to determine whether the county or the prosecution is to pay the costs; and in case you decide that the prosecutor must pay the costs, you are to name him in writing, signed as already mentioned.

The oath which has just been administered requires you to "keep secret the commonwealth's counsel, your fellows' and your own." This includes the testimony of the witnesses who may be examined before you. This testimony is not to be disclosed unless for the purposes of public justice. Where a Grand Juror discovers that a witness is materially varying from the evidence which he gave before the Grand Inquest, it is proper for him to disclose the fact, in order that justice may be done. Unless for the purposes of public justice the disclosure is not to be made. On the one hand it might expose the witnesses to the tamperings or menaces of the party accused, and the truth might, by those means, be perverted or suppressed. On the other hand such disclosures necessarily tend to create excitements in the community, which interfere with that fair and impartial trial to which all are entitled under the laws of the country.

DECEMBER 2d, 1835.

The Grand Jury returned into Court, the following *Bill of Indictment*, endorsed "A TRUE BILL.—GEORGE BENNETT, Foreman."

INDICTMENT.

At a Court of Oyer and Terminer, and General Jail delivery, held at Williamsport, in and for the county of Lycoming, in the Commonwealth of Pennsylvania, on the fifth Monday of November, being the thirtieth day thereof, in the year of our Lord, one thousand eight hundred and thirty-five.

LYCOMING COUNTY, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the body of the County of Lycoming aforesaid, upon their oaths and solemn affirmations, respectively do present: that John Earls, late of Lycoming county aforesaid, labourer, not having the fear of God before his eyes, but being moved and seduced by the instigations of the devil, and of his malice aforethought, wickedly contriving and intending a certain Catharine Earls with poison, wilfully, feloniously, and of his malice aforethought, to kill and murder, on the fourteenth day of October, in the year of our Lord, one thousand eight hundred and thirty-five, and on divers other days and times between the said fourteenth day of October in the year last aforesaid, and the sixteenth day of October, in the year last aforesaid, with force and arms at Lycoming county aforesaid, did knowingly, wilfully and feloniously, and of his malice aforethought, put, mix and mingle certain deadly poison, to wit, white arsenic, in certain chocolate, which had been, at divers days and times, during the time aforesaid, prepared for the use of the said Catharine

Earls, to be drunk by her the said Catharine Earls, he the said John Earls then and there well knowing that the said chocolate, with which he the said John Earls did so mix and mingle the deadly poison as aforesaid, was then and there prepared for the use of the said Catharine Earls, with intent to be then and there administered to her for her drinking the same, and the said Chocolate with which the said poison was so mixed as aforesaid, afterwards, to wit, on the said fourteenth day of October, in the year last aforesaid, and on the said other days and times at Lycoming county aforesaid, was delivered to the said Catharine Earls to be then and there drunk by her; and the said Catharine Earls not knowing the said poison to have been mixed with the said chocolate, did afterwards, to wit, on the said fourteenth day of October, in the year last aforesaid, and on the said divers other days and times, there drink and swallow down into her body several quantities of the said poison so mixed as aforesaid, with the said chocolate; and the said Catharine Earls, of the poison aforesaid, and by the operation thereof, on the said fourteenth day of October, in the year last aforesaid, at Lycoming county aforesaid, became sick and greatly distempered in her body, of which said sickness and distemper of body, occasioned by the said drinking, taking and swallowing down into the body of the said Catharine Earls, of the poison aforesaid, so mixed and mingled in the said chocolate as aforesaid, she the said Catharine Earls, from the said several days and times on which she had so drunk and swallowed down the same as aforesaid, until the said sixteenth day of October, in the year last aforesaid, at Lycoming county aforesaid, did languish, and languishing did live, on which said sixteenth day of October, in the year last aforesaid, at Lycoming county aforesaid, she the said Catharine Earls of the poison aforesaid, so taken, drunk, and swallowed down as aforesaid, and of the said sickness and distemper thereby occasioned did die. And so the Inquest aforesaid, upon their oaths and affirmations, respectively, as aforesaid, do say, that the said John Earls her the said Catharine Earls in the manner and by the means aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder; contrary to the form of the act of General Assembly, of this Commonwealth, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the jurors aforesaid, upon their oaths and affirmations, respectively, as aforesaid, do further present, that the said John Earls on the said fourteenth day of October, in the year of our Lord one thousand eight hundred and thirty-five as aforesaid, and on divers other days and times between the said 14th day of October, in the year last aforesaid, and the sixteenth day of October, in the year last aforesaid, at Lycoming county aforesaid, with force and arms did knowingly, wilfully, feloniously, and of his malice aforethought, place, mix, and mingle certain deadly poison, to wit, white arsenic, in certain tea which had been at divers days and times during the time aforesaid, prepared for the use of the said Catharine Earls, to be drunk by her the said Cath'ne Earls, he the said John Earls then and there well knowing that the said tea with which the said poison was mixed as aforesaid, was then and there prepared for the use of the said Catharine Earls, with intent to be then and there administered to her for her drinking the same, and the said tea with which the said poison was so mixed as aforesaid, afterwards, to wit, on the said 14th day of October, in the year last aforesaid, and on the said other days and times at Lycoming county aforesaid, was delivered to the said Catharine Earls, to be then and there drunk by her; and the said Catharine Earls not knowing the said poison to have been mixed with the said tea, did afterwards, to wit,

On the said fourteenth day of October, in the year last aforesaid, and on the said divers other days and times, there drink and swallow down into her body, several quantities of the said poison, so mixed as aforesaid, with the said tea, and the said Catharine Earls of the poison aforesaid, and by the operation thereof, on the said fourteenth day of October, in the year last aforesaid, at Lycoming county aforesaid, became sick, and greatly distempered in her body, of which said sickness and distemper of body occasioned by the drinking, taking, and swallowing down into the body of the said Catharine Earls of the poison aforesaid, so mixed and mingled in the said tea as aforesaid, she the said Catharine Earls from the said several days and times on which she had so drunk and swallowed down the same as aforesaid, until the said sixteenth day of October, in the year last aforesaid, at Lycoming county aforesaid, did languish, and languishing did live, on which said sixteenth day of October, in the year last aforesaid, at Lycoming county aforesaid, she the said Catharine Earls, of the poison aforesaid, so taken, drunk and swallowed down as aforesaid, and of the sickness and distemper thereby occasioned, did die. And so the inquest aforesaid, upon their oaths and affirmations, respectively, as aforesaid, do say that the said John Earls, her the said Catharine Earls in the manner and by the means last aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder; contrary to the form of the act of General Assembly, of this Commonwealth in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

GEORGE M. DALLAS, *Attorney General*,

Per HENRY D. ELLIS.

HENRY D. ELLIS, Esq. Deputy Attorney General, and F. C. CAMPBELL, Esq. appeared as Counsel for the Commonwealth—and

ANSON V. PARSONS and ROBERT FLEMING, Esquires, for the prisoner.

JOHN EARLS, the prisoner, being brought into Court and personally arraigned, pleads "*not guilty*," to each count in the indictment and puts himself upon the country for trial. Attorney General *similiter*.

On motion of Mr. PARSONS, the Court grant an attachment against the following witnesses for non-attendance according to subpcena, to wit:—Hester Griffin, Charles F. Sheffly, John George Sheffly, and Polly Swartz, wife of Jacob Swartz.

Mr. MILLER, a gentleman of the bar, residing in Lewisburg, where the Messrs. Shefflys reside, arose and stated that these gentlemen had met with a serious injury occasioned by a fire which had taken place in their Drug Store. The Court thereupon, directed the officer not to execute the attachment upon the Messrs. Shefflys, if upon examination he found them unable to be brought with safety to their health, and that if he had any doubts upon that subject, to take the opinion of Dr. VANVALZAH, of that place.

DECEMBER 3d, 1835.

The officer returned without executing the attachment upon Messrs. Shefflys, and presented the certificate of Dr. VANVALZAH, that he had examined one of the gentlemen named, who was too much injured by the fire to be able to travel with safety. The officer was also sworn to the same fact. The prisoner's counsel, Messrs. PARSONS and FLEMING, moved for a continuance of the cause, on the ground of the absence of these and other witnesses, alleged to be material. Mr. CAMPBELL, and Mr. H. D. ELLIS, for the common-

wealth, resisted the application, and offered to receive the depositions of the absent witnesses. The Prisoner's Counsel produced an affidavit of the prisoner, that the witnesses were material—and that their personal attendance was also necessary, in order to identify him. The Court thereupon ordered the cause to be continued, and the witnesses were severally recognised to appear at the next Oyer and Terminer.

FEBRUARY TERM, 1836.

TUESDAY, FEBRUARY 2.

The Court of Oyer and Terminer, was again opened—all the Judges present—and the prisoner, JOHN EARLS, placed at the bar for trial.

Counsel for Commonwealth—JAMES ARMSTRONG, Esq. (recently appointed Deputy Attorney General,) and F. C. CAMPBELL, Esq.

Counsel for Prisoner—ANSON V. PARSONS, ROBERT FLEMING, and WM. COX ELLIS, Esquires.

The pannel of traverse jurors summoned for the present term was then called over, and severally answered to their names, with a single exception; whereupon the President Judge addressed the prisoner and informed him “that these good men whom you shall now hear called, are those which are to pass between the Commonwealth and you, upon your life and death. You are entitled to twenty peremptory challenges, without assigning any cause, and as many more as you can show cause for. If therefore, you will challenge them, or any of them, you must challenge them as they severally come to be sworn or affirmed, and before they are sworn or affirmed.” The Clerk then proceeded to call the jurors, as they were respectively drawn from the box, as follows:—

1. ROBERT CUTTER, *sworn*.

Robert Taylor, jr. challenged peremptorily.

James Hunter—When called, Mr. H. stated he had *formed* and *expressed* an opinion in relation to the guilt of the prisoner, and was therefore challenged by the prisoner, *for cause*. Challenge sustained by the Court.

2. MOSES MAHAFFEY, *sworn*.

James Long, challenged peremptorily.

3. JACOB BEEBER—The prisoner having waived his right of challenge, the counsel for the Commonwealth proposed to ask Mr. B. whether he had conscientious scruples against finding a verdict of guilty in a capital case, the punishment being death, if the evidence warranted it? Mr. ELLIS, for prisoner, objected, and gave his reasons at length. The COURT, without hearing the Commonwealth's counsel, allowed the question to be asked—to which the juror answered “not any,” and was *sworn*.

4. CHARLES THOMAS, *sworn*.

Cutler Solomon, challenged peremptorily. Aaron Blair, challenged peremptorily. Isaac Bodine, challenged peremptorily.

William Wilson, (saddler) stated he had been on the Grand Jury at last Oyer and Terminer, that found the bill of indictment, and was challenged by prisoner *for cause*. Challenge sustained.

5. SAMUEL CRAFT, *sworn*.

Jacob L. Mussina, challenged peremptorily.

6. SAMUEL MORRISON, *sworn*.

John Little—Having *formed* and *expressed* an opinion, was challenged for cause by prisoner. Challenge sustained.

Samuel Paulhamus, challenged peremptorily. Charles Knox, challenged peremptorily.

William Starr—When called stated he served as one of the Coroner's inquest over the dead body of Catharine Earls, the wife of the prisoner, which inquest had, in their finding, charged the prisoner with the crime. Challenged for cause by prisoner. Challenge sustained.

7. JAMES COWHICK, *sworn*.

John G. Ephlin—Having *formed* and *expressed* an opinion, was challenged for cause by prisoner. Challenge sustained.

Joseph Welsh, challenged peremptorily.

Richard Singer—Having *formed* and *expressed* an opinion was challenged for cause by prisoner. Challenge sustained.

John Gibson, challenged peremptorily.

Edward Lyon—Having *formed* and *expressed* an opinion, was challenged for cause by prisoner. Challenge sustained.

John M'Cabe, challenged peremptorily.

8. JOHN SHEADLE, *sworn*.

William Thompson—stated he gave information to Justice under oath, upon which the warrant issued for the apprehension of Earls, and was challenged for cause, by prisoner. Challenge sustained.

9. JOHN PURSEL, *sworn*.

John Shoemaker—Having *formed* and *expressed* an opinion, was challenged for cause by prisoner. Challenge sustained.

John Wier, challenged peremptorily.

10. SAMUEL THOMPSON, *sworn*.

Robert Colburn, challenged peremptorily. James Thomas, challenged peremptorily. Chatham Devling, challenged peremptorily.

George Fulmer, Jonathan Barker, and J. W. Heylman—Each having *formed* and *expressed* an opinion, were challenged for cause by prisoner. Challenges sustained.

Matthew Marshall—challenged peremptorily.

11. WILLIAM QUIGLEY, *sworn*.

William Johnston, jr. challenged peremptorily.

George Derr—Having *formed* and *expressed* an opinion was challenged for cause by prisoner. Challenge sustained.

Richard Hays, challenged peremptorily. John Huckel, challenged peremptorily.

Ferdinand F. Schale—It appeared that this juror was a German, and did not sufficiently understand the English language to comprehend the evidence and arguments of counsel, and was challenged for this cause by the prisoner. Challenge sustained.

12. HENRY HARMAN, *sworn*.

The Jury therefore, as sworn by the President Judge, consisted of

Robert Cutter,
Moses Mahaffey,
Jacob Beeber,
Charles Thomas,
Samuel Craft,
Samuel Morrison,

James Cowhick,
John Sheadle,
John Pursel,
Samuel Thompson,
William Quigley,
Henry Harman.

Before the opening of the cause by the counsel for the Commonwealth, Mr. ELLIS, for prisoner, requested the Court in view of the excitement prevailing in the public mind to order the Jury to be kept together during the trial, that there might be no intercourse between them and the rest of the community. The COURT promptly granted the request, taking occasion to remark on the necessity on the part of the Jury, to keep their minds free from any influence, except that produced by the evidence.

John Ulmer and Samuel Longan, two of the constables in attendance upon the Court, were thereupon appointed to attend the jury, and severally sworn "*well and truly to keep the jury, and neither to speak to them themselves, nor suffer any other person to speak to them touching any matter relative to this trial.*" Lodgings and entertainment were ordered by the Court to be provided for them at the public house of Mr. JOSEPH HALL.

The cause was opened on behalf of the Commonwealth by Mr. ARMSTRONG, (Deputy Attorney General,) who preceded the reading of the Indictment with a clear and eloquent introduction. He dwelt, principally, on the importance of the case before the Jury, the magnitude of the offence charged against the prisoner, and the necessity of deciding upon the evidence without reference to feelings of pity.

After reading the indictment, Mr. A. gave a full statement, and went at length into the nature of the proof which he said the commonwealth would rely on, to sustain the indictment—the following is a brief outline. He said that for a considerable time past, the defendant, John Earls, and his wife Catharine Earls, the deceased, lived unhappily together. That on the day of the last general election, the prisoner went to the apothecary store of Messrs. Bruner and Dawson, in the borough of Muncy, at a time when he found the store crowded with people, and purchased a quantity of white arsenic. That on the next day, which was Wednesday, the 14th of October last, Mrs. Earls was confined in childbed, and gave birth to an infant. She was, however, more than usually well, and better than she had previously been on similar occasions. On Thursday she was well, and ate her dinner with a good appetite; on the evening of that day, she said she felt well, and whilst eating her supper, conversed cheerfully with Livy Sechler. That supper contained the elements of death! In less than an hour Mrs. Earls was attacked with vomiting and became very sick. Earls prepared mint tea for her—she complained that it tasted bitter; more was made for her, and that was bitter too. She said it bit her in the throat. She told them to get her some laudanum, and she took 50 drops, but it did her no good—the vomiting continued. She was anxious for relief but no relief could be afforded—called for drink, but could not drink when it was offered. She could not tell what was the cause of her distress—complained of pain all over, and particularly in the stomach—rolled on the bed, vomited till she could vomit no more—her strength and her faculties became prostrate; and about half after 3 o'clock on Friday morning she died. Such was her short and painful transition from life to death.

Mr. A. said he would further show, that on Thursday, about noon, just as the table was set for dinner, John Earls left home without eating, and said he was going up to the dam with his two little boys. His mother expressed her surprise, as she had made chocolate for dinner. John, however, went away, and did not return till night, and as soon as he came home, he asked his mother if supper was 'most ready. "Yes" said she, "but I'll take Katy's supper up first, and then we will eat." "O," says John, "Katy don't want to eat yet till after a little—till after we eat." The old

woman then poured out a pint bowl full of chocolate for Katy, and set it on the stove. The family then sat down to supper in the room, and when the old woman was done, she went to the kitchen and placed the big waiter on the kitchen table; after which she got the articles from different parts of the house, intended for Mrs. Earls' supper, consisting of a *pint bowl of chocolate, some bread and butter, peach sauce and elder jelly*. John held the light while the old woman carried the waiter up stairs and set it at the bed side, Mrs. Earls drank all the chocolate—John was anxious to keep the children down stairs while his wife was eating—he was observed to kick over a cup on the hearth, which contained some of the tea he had assisted in preparing for her—he did not offer to go for a doctor, or any other person, until one of his little girls urged him to do so, a short time before her death. He then went to Mrs. Callahan's, half a mile off, but did not make his business known for some time after he went there, nor till after he got his bottle filled with whiskey. He then stated that his wife had taken cold, and talked of going to Milton, ten miles off, for a doctor, when there were others much nearer. On his return he found his wife dead, and he stamped on the floor and began to swear.

Mr. A. said he would also prove, that Earls was in the habit of treating his wife in the most cruel and brutal manner. That he, on one occasion, dragged her through the house, by the hair of the head—at another whipped her severely with the plough lines—and twice threw her into the cellar—and once held her under a fountain pump in the winter season, at the same time tearing her dress nearly off, and that he threatened several times to lay her asleep. Mr. A. said he would also show, as a motive for the commission of the crime charged, that Earls had conceived an unhappy affection for a girl of the name of Maria Moritz, and had kept up an illicit intercourse with her, in consequence of which all affection for his wife had become entirely estranged. That he was in the practice of meeting Maria at places of assignation—that he frequently used the most tantalizing language to his wife, saying to her if she could kiss as sweet as Maria Moritz he would like her a great deal better—and repeating in her presence, and before his children, that he loved Maria. That he swore he would get rid of his wife some way or other, and if he could do no better, he would make a vendue, and sell off every thing and go to the west. That he did make a vendue, and sold nearly all his things, even his wife's last feather bed. That when he was first arrested, he said he expected nothing else—that he *had* bought ratsbane, and he did not deny it—that he allowed they would hang him, and he did not care a damn, and he would as lief go to hell a not. That he used finesse and management to elude the vigilance of the officers who had him in charge and tried to escape by running, and once laid down, swearing he would go no further, and wanted whiskey at every tavern.

Mr. A. said they would further prove by the evidence of medical gentlemen that the symptoms attending Mrs. Earls' case, were such as characterize a death by poison; and that the intense inflammation exhibited by the *post mortem* examination, were such as to confirm them in the belief that Mrs. Earls' death was produced by arsenic. He said they would also show, that the stomach which contained about a pint of bloody mucus, was taken to Muncy, and a portion of it there analyzed by Drs. DOUGAL, LUDWIG, PEAL, and KITTOE, who were fully satisfied of the existence of arsenic in the fluid. A small portion was also taken to Milton by Dr. DOUGAL, who, with Mr. MORRISON, a chemist, experimented upon it with equal satisfaction,

producing the metallic ring. That the remainder of the contents of the stomach was taken to Philadelphia by Dr. KITTOE, and submitted to Dr. MITCHELL. It was then found that a large quantity of sediment, resembling white powder, and believed to be arsenic, had subsided in the bottle in which it had been placed. To this, Dr. MITCHELL applied the most approved tests known to chemical science; and the result was the absolute detection of the pure metallic arsenic.

This, gentlemen, said Mr. A., is the nature of the case to be submitted to you by the Commonwealth, and which, for atrocity of character, and deep and devilish malignity, has rarely been surpassed. If we are successful in proving this state of facts, I will not allow myself for a moment to believe, that the Jury will hesitate fearlessly to discharge their duty, by finding a verdict of guilty.

After Mr. A. concluded, and before a witness was called to be sworn, Mr. PARSONS, for the prisoner, asked of the Court to exclude all the witnesses (except professional gentlemen) from the Court house, during the progress of the trial, that they might be examined separately, and not in the hearing of each other. He cited in support of his motion, 3 *Starkie*, 1733, 1 *Chitty Crim. Law*, 504. *Mrs. Chapman's trial before Judge Fox*, 67 and 68—and referred also to the regrets of this Court, at having refused a similar order in a former case. Mr. P. concluded by asking the order, not only as matter of indulgence, but of right.

Mr. ARMSTRONG opposed the motion, as not being called for under the circumstances. He could see no reason why the *whole of the witnesses* (fifty or sixty persons) should be uncourteously ordered out of the Court house. He thought it would be productive of inconvenience to the Court, and altogether unnecessary.

Mr. FLEMING, for the prisoner, also cited 1 *Starkie*, 133.

THE COURT refused to grant the order, on the ground that it was inconvenient and unnecessary; and it was besides widely different from the case referred to by Mr. PARSONS. In that case, developments were made on the trial, that satisfied the Court there was a conspiracy against the life of the prisoner, on the part of some of the witnesses. The Court added that if any good cause existed for the exclusion of *any of the witnesses*, affidavit might be made to that effect, and an order would be granted, so far as concerned the witnesses referred to. The order is always at the hazard of losing the testimony of witnesses who infringe it, and ought not to be made without cause.

Court adjourned till half past 2 o'clock.

AFTERNOON SESSION.

The counsel for the prisoner renew the motion of Mr. PARSONS, in relation to excluding the witnesses from the Court house, and offer affidavits specifying *such* witnesses as they desire to exclude, together with the *reasons*.

Mr. CAMPBELL, for the Commonwealth, objected to the order being granted by the Court. He stated that the only case in which such order could be made, was that of a conspiracy; nothing like conspiracy being developed in the affidavits, he could see no propriety in excluding the persons alluded to. He went at some length into an examination of the nature of the affidavits, to show there was nothing in them to call for this exclusion.

Mr. ARMSTRONG followed on the same side, showing the violation of personal rights and liberty, that would be committed against the witnesses by their exclusion. He also stated in conclusion, that according to the rule laid down in 3 *Starkie*, 1733, "if any witness infringe the order by remaining

in Court, he cannot afterwards be examined, although he be the Attorney in the cause." This by a combination, or even inadvertance of witnesses, might be very detrimental to the interests of either party.

Mr. ELLIS, for the prisoner, contended for the exclusion of the witnesses, on the ground that the genius of our free institutions guaranteed it to the prisoner: English law, said Mr. ELLIS, gives to the Crown the right of exclusion; and what in England is accorded to the Crown, is here as matter of equal justice allowed also to the prisoner. Mr. E. continued his remarks to show how easily a chain of circumstances may be formed, by witnesses listening to, and immediately following each other, and that, too, without any impure motives on the part of the witnesses.

Mr. PARSONS followed in support of the motion. All he wanted was to adopt the course most likely to produce justice to his client. That was most likely to be obtained by the witnesses narrating their own knowledge of facts, uninfluenced by the testimony of each other.

JUDGE CUMMINGS—It would be a reflection upon the character of the witnesses, to exclude them from the Court house. I should be unwilling to do so, without better ground than any I have yet seen.

JUDGE DAVIDSON—It would be an infringement of the rights of the people, to exclude any portion of them from being present at a public trial, without strong grounds. I think the cause shown, is not sufficient.

JUDGE LEWIS—I concur with my brethren, that the cause disclosed in the affidavits, is not sufficient to exclude the witnesses from the Court house. The witnesses who are relatives of the deceased, are also near relatives of the Prisoner, and there is as much reason to presume a bias in his favor, as against him. The great difficulty of enforcing an order of exclusion, owing to the immense crowd constantly in attendance, might present a temptation to some of the witnesses, to obtrude themselves, unperceived, into the Court house, for the purpose of depriving the Commonwealth of their testimony; for it is well settled, that a witness who remains in the Court house contrary to an order of exclusion, cannot be examined in the cause. It is discretionary with the Court to exclude the witnesses, on the application of the Prisoner's counsel, when it may be necessary to promote public justice. But it is a power which ought never to be exercised, without sufficient cause. There is no reason to suspect the witnesses of bias against or unfair conduct towards the Prisoner. No sufficient cause for exclusion has been shown, and the application must therefore be denied.

The Counsel for the Commonwealth then called

Rebecca Sechler, affirmed—The morning that Mrs. Earls died, Earls called between three and four o'clock, and said his wife was very sick. I went immediately over to his house; when I entered the house, the room door was standing partly open, I saw Earls and some of the children in the room. I passed on and went up stairs—when I got to the head of the stairs, I heard Mrs. Earls say O Lord! as I approached the bed she said Good God! I turned round to granny Earls, and says what's the matter? Earls came up stairs and said, she's had a vomiting—stepped to the foot of the bed. I asked granny Earls whether Mrs. Earls had taken cold? Little Mary Earls said there's a mustard plaster to go to Mamma. I said I did not know how it would do to put a mustard plaster on her. Mary said Mamma wanted it. The woman appeared bad when I first went up. The bed clothes were thrown off of her, I covered them over her. She had been

vomiting, but made no motion to vomit after I went up. She seemed anxious to have the mustard plaster laid on her. Earls said, she has had a vomiting. I asked Earls whether Mrs. E. was accustomed to have mustard plasters on at such a time. Earls said he had seen Rosy Welshanse—I told E. to send for a doctor. I said I did not understand what ailed Mrs. E. and did not know what to do for her. I said you had better go for Mrs. Callahan, any how, she may know more than I do. Earls went down stairs and Mary with him. I laid the mustard plaster to Mrs. E. After the plaster was on she turned round toward the wall with her back toward us. I watched her, and I thought she would not live. She turned rather on her back, so that I could see both her eyes—she just spoke out and said “*drink.*” A bowl of tea stood on the chair by the bed side. I found it cold. I went to the fire with the bowl to warm the tea, and saw a tin cup standing in the corner with herb tea. I emptied the bowl of tea into that tin cup, and poured out warm tea into the bowl from the tea pot. I went to the bed and asked Mrs. E. if she would drink. She took no notice of the drink at all. I slipped my hand under her head to try to get her to the drink, but could not. She died in a very short time. To the best of my judgment, it did not exceed fifteen minutes from the time I first went in, till the woman was dead. It was some time after she was dead before Earls and Mrs. Callahan came. When they came, Mrs. Callahan came up stairs foremost. Mary Earls and Mrs. Callahan went to the bed side where the corpse lay, and stood talking there. When Earls came within three or four steps of the head of the stairs, he bawled out. When he came in the room where the corpse lay, he gave some terrifying stamps—and blasphemed. He said “Lord God”—“Jesus Christ”—I can’t recollect any more. I was much terrified. He went on to another room—then came out without my observing it, till I saw tea running towards me, I looked up and saw Earls standing facing the tin cup at the fire, which was upset; Earls was paying attention to what Mrs. Callahan was saying to Mary at the bed side where the corpse lay. He was standing upright, not leaning. When he left the fire I got up to lift up the tea pot and tin cup, and carry them down stairs. I met granny Earls and she took them out of my hands and carried them down stairs. I then took the brush and swept the tea in the fire, and sat down again. Mrs. Callahan came and sat down beside me, and says Mrs. Sechler ain’t this terrible? I said I thought when I came in, she would not live. Earls said, “why Mrs. Sechler, I never thought of such a thing—if I had gone for a doctor.” I went home and my daughter came shortly after. Mrs. Earls was confined on Wednesday afternoon, about 3 o’clock; may be three or four. I was with her. I left her quite bravely on Wednesday evening. I saw her on Thursday morning after breakfast, she said she was well: better than she had formerly been on such occasions. She appeared as well as any woman could be, for the time, I thought. I saw Earls shed no tears—he bawled out now and then. He made no reply, when I told him he had better go for a doctor. When I said he had better go for Mrs. Callahan, he walked down stairs. He went no nearer to the bed than the fire place, after he returned. He did not at any time go to the bed to see the corpse, after he returned, no nearer than the fire place, while I was there. Last new years a year ago, I saw Earls haul his wife into the cellar. Prior to hauling her into the cellar, little Susan came over. I saw him come out of the house shaking his fists. Mrs. E. was more than an hour in the cellar. It was bitter cold weather. This summer I saw him drag her into the cellar again, and locked the door; about two months before her confinement. I frequently heard Mrs. E. cry-

ing out, but when I heard a noise, I generally kept out of the way. We live above Earls' about four rods.

Cross-examined by Counsel for Prisoner—I did not hear Earls ask Mrs. E. if he must go for a doctor. He said nothing about going for Dr. Dougal. He did not enquire if he should go to Somerset for a doctor. He asked me no such questions, and there were none there but the children and me. When he dragged her into the cellar last new year's a year, I was in my own house, and in my own yard when he did it last summer. Mary Earls was in the room when I first came in the night Mrs. E. died. Mary is the oldest child. The other children were down stairs—all up. Susan the second daughter came up stairs with the child, after Earls went for Mrs. Callahan. Two little boys, likewise, came up stairs. Susan stood upon a bed, on the opposite side of the room from where the corpse lay.

Catharine Callahan, sworn—I saw her the evening before she died. She was well and hearty as I thought, for a woman in her state. I went away a little before sun down. The old lady took up her supper at night before sun down. She took up a bowl of chocolate, a piece of chicken, and a small cut of bread, and some preserves. Mrs. E. ate all she got, except the preserves. She drank the chocolate. Joan went up towards the dam to fish. When I was going home, I met him coming down the river back to the house in a canoe. I went home thinking the woman was well, and got some supper. Some time in the night, perhaps between 3 and 4 o'clock, Mr. Earls came and rapped at the door, and my husband got up and let him in. My husband passed a joke upon him, and they both walked towards the bar, and then went into the cellar. They drew a bottle of whiskey, and as they were coming in at the door, my husband says "what ails her." She has caught cold, says he. He came in and asked where the old woman was lying, and I says, what's amiss now? Oh! says he, Katy is taken very bad; I believe she has catched cold—Cold the plague, says I, she could not catch cold since I left there, for the room was warm. So I threw my frock over my head and started with him, and asked him if she was very bad? Yes, says he, she's very bad. I asked if she was vomiting? Yes, says he, very bad; then, says I, I believe she's done for. Then he made some kind of answer back like "how's that." I says that a woman in her state, it does not suit to vomit. That's true, says he. We both went on together. He asked me if I was acquainted with Dr. Ludwig. Yes, says I, I am—my daughter was sick last week, and he waited on her, and he's a very nice man. Then, says he, I believe I will go for him, when I get home. When we got near the house we met Earls' oldest daughter, and she says, is that pap? Yes, says he. Why, says she, mother is dead! Hoot, no! says he. Oh! yes, indeed Pap, says she, mother is dead? So I run ahead of them and went up stairs, and the woman was dead! There was no person there but Mrs. Sechler, Earls' mother, and the children. I went to the bed side and got Mary Earls by the arm, and asked what was wrong, what was amiss, what ailed your mother? I heard Earls saying good God! He was behind me. I was so alarmed at seeing the woman dead I did not heed any thing. I held the candle while they laid her out. Mrs. Page, Mrs. Mowrey, Mr. Mangus, Mrs. Mangus, and John Hood, were there, when she was washed and laid out. I saw no marks about the corpse—I am curious about touching a dead body, when they are dead and gone I never touch them. I did not take notice what Earls was doing. He seemed to be crying. I did not see him go to the bed side to see his wife. Earls was at our house drawing the whiskey, &c. about twenty or twenty-five minutes. She was sitting up

in the bed, in the evening, when I left her, suckling her baby. I never saw Earls abuse his wife. I have heard the man jawing her.

[Here Mr. ARMSTRONG, proposed to ask the witness what she knew in relation to the prisoner's *attachment* to a certain woman previous to the death of his wife. Mr. PARSONS objected to the evidence, and cited the decision of Judge MALLARY, in the case of *Getter*. Messrs. ELLIS and FLEMING followed in support of the objection. In the course of the argument, Mr. PARSONS stated that if the evidence was confined to the *declarations* of the prisoner, he had no objection to make to it—but if the offer was to shew specific criminal acts, he objected. Mr. ARMSTRONG replied that he would confine himself *at present* to evidence of the *declarations* of the prisoner. The question was so modified, and the witness proceeded.]

Mrs. Callahan, continued—Before the death of the wife a couple of weeks, Earls caught up with me as I was going up to town. He said he was going up to Mr. Cook's about a bad note Mrs. Earls had given to Cook. She got it from the watermen. She is so contrary, says he, she will do nothing for my bidding, only as she chooses. Then says I, you can't expect countenance from your wife, while you keep going backwards and forwards to that other house. I'll have an end to it after a while, says he; then I told him he had better leave the country, than be running night and day to that house—Earls knew the house I meant. There was no other house he had the name of going to but that.

Cross-examined by Counsel for Prisoner—I was much alarmed when I came where the corpse was, and I did not see what Earls did. I thought the children were not much grieved. The old woman was not much uneasy.—They drew the whiskey as soon as it is usually drawn, and Earls took the bottle home with him. The child was a few minutes born before I got there. There was no doctor there. Dr. Ludwig practices in our neighborhood. He attends the sick there. Earls did not sit down when he came for the whiskey. He wanted me to go with him. Mrs. Earls' things were clean and nice when she was confined. Earls seemed rejoiced. He went up from dinner and talked to Mrs. E., and I was glad to see it, for I thought it was but seldom. On the next day Mrs. E. said, "John stayed in with me last night, and kept fire in the room, and seemingly was good to me. He always used me well on such times, and would on other times, only for ugly Maria Moritz." This was on Thursday evening, and on Friday morning she died. Mrs. Earls sat up on the bed, and suckled her baby.

Re-examined by Counsel for Commonwealth—I asked her why in the name of the Lord, she let John sell the bed. The Lord knows, says she. I know no more than you. Then says she, I would agree to any thing—I could bear with any thing John does, if he would but quit drawing after Maria Moritz. He might sell every thing. It was a feather bed he sold. She was lying on a chaff bed.

Adjourned till 9 o'clock to-morrow morning.

WEDNESDAY MORNING, FEBRUARY 3.

Olivia Sechler, Sworn—The evening before Mrs. Earls died, I went in to see her. When I went up stairs, Mr. Earls was in the same room with her—when I walked up to the bed to her, and asked her how she was, she said she felt quite well. She was just eating her supper. He appeared to be very kind to her, and talked to her all the time she was eating. After Mrs. Earls was done eating her supper, Mr. E. carried the waiter down stairs, from her bed side, and remained down stairs, and did not come up du-

ring the time I was there. There was bread and butter, and I heard the old woman say there was chocolate on the waiter for Mrs. Earls' supper. I was in the house but a few minutes after Mrs. E. was done eating. It was after dark when I came; I think it must have been seven or eight o'clock when I went away. I suppose I was there an hour, may be better. I rather think she drank all the chocolate, but am not certain. One of the little girls went up stairs with me and she was there a short time, and I think her mother told her to go down and put the child next to the youngest asleep. The children were all down stairs. There were none of them up when I went there. The old woman came up just as Mrs. Earls finished her supper. There was no other person in the room but Mrs. E. when I went up. Some of the smaller children wanted to come up stairs, but he ordered them back. She drank the chocolate out of a bowl that would hold about a pint. He was sitting a little piece off the foot of Mrs. Earls' bed, and the waiter was on a chair at the side of the bed. Him, her, and I, talked all through other while she was eating. She had a good appetite. I heard nothing said by Earls about eating hearty. I never heard Mr. Earls threaten Mrs. E., but have seen him abuse her. On last new year's a year, I saw him hauling her to the cellar, and she was there some time; then one of the little girls came over to our house, and wanted me to go over; I went over, and went into the cellar; she was sitting there crying very severely. Her clothes appeared to be very much torn. I did not observe any marks of violence. I was there but about half a minute. At another time since that, not more than a month before her confinement, I saw him drag her into the cellar, and lock her up. He had her about the shoulders and dragged her head foremost down the steps with her feet trailing. I have often heard him scold her. I thought he was sober, the last time he hauled her into the cellar. I was not sure. On new year's I thought he was a little worse of liquor. She tried to pull from him when he was dragging her, but he swore she must go. I heard him tell her once if she did not quit talking about the subject of going from home so much, she would have to take the tow-path.

Cross-examined by Counsel for Prisoner—I rather think it was the oldest girl that went up stairs with me. She went from our house with me. She continued in the room with me but a short time. The supper was up when I went there. Old Mrs. E. was down stairs when I went there. Candles were lighted when I went in. I did not pass where the family were eating. I saw one of the children at the table down stairs, the room door being open. It had the appearance as if the family had been eating their supper. Just after Mrs. E. finished her supper, the old lady came in. Eliza was one of the children I heard Earls order down stairs. I heard his voice. I think she is the fourth child. Either Sam or John was with her. The infant was in the bed with Mrs. Earls. The old woman took the infant while I was there. I think Mr. Griffin had come up before Earls had hauled his wife to the cellar on new year's day. He followed Earls out. Earls and Griffin were not quarrelling that I know of. She was in the cellar ten minutes, if not longer, before I went over. She always tried to take her own part as well as she could, but she come but poor speed at it sometimes. Earls took the waiter down stairs after old Mrs. E. came up. He went down directly after the old lady came up. There was a candle in the room. He went up stairs directly after I went in; he was up when I got up stairs. He was in the kitchen when I went in. I did not stay down stairs more than a minute before I went up. I saw John go up stairs directly after I went in. The old lady was about the fire, I don't know what she was doing.

Mother was by when I saw Earls drag his wife into the cellar, about a month before she was confined. I don't remember of any female living at Earls' on new year's when he dragged her. Mrs. Marinus lived near, but whether she was there or not, I cannot say. She was often from home.— I think I was not at Earls' before on new year's day. Mrs. E. was eating her supper when I went into her room. Mrs. E. was leaning on her elbow in bed. There was one bed in the room beside that Mrs. E. was sitting on. There was no bureau in the room. There was a chest standing by the other bed, not the one she lay in. It was more than a yard from the hearth to the bed. The foot of the bed was closest to the fire. One corner of the bed was nearest. I was in the room after Mrs. E. died. There was no stranger there, but mother. Mr. Earls and Mrs. Callahan had not come yet.— I went to Mr. Mangus' for the women. I went into the house with the women. (Mrs. Mangus, Mrs. Mowrey and Mrs. Page.) I found mother and Mrs. Callahan and the children up stairs in the room. John was down and didn't come up. I saw him walking from one room to another down stairs. They were doing nothing with the corpse when I went in with the women. They commenced preparing the corpse shortly after. There was no man in the room, when the women arrived.

Re-examined by Counsel for Commonwealth—Mr. Earls requested me to go to the store for the corpse's dress. This was after daylight.

Catharine Mangus, sworn—[*This witness not understanding the English language, Mr. Daniel Grafius, and the Prothonotary, Mr. Frederick, were appointed interpreters and sworn.*] In the morning that Mrs. Earls died, at four o'clock, I was taken up to Earls'. Mrs. Mowrey said she would go along with me. Livy Sechler came for me, and when we got up to the bridge, Livy went over for Mrs. Page. We then all went up to Earls'. I went foremost, and when I came there, there was a light. I looked in and saw a man—it was Earls—he was crying. We went into the kitchen and all went up stairs. I went foremost. When we came in, Mrs. E. was dead, and Mrs. Sechler, Mrs. Callahan, and old granny Earls were in the room. John Hood and old Mrs. Sechler carried her down when she was laid out. I got breakfast for them and went home. Earls abused his wife once. I was sitting in the bar room, Mrs. Marinus was in the house, and her child began to cry at her own house, and I looked out of the window, and saw the noise was at the water trough, at the pump. I went over into the next room quick where Mrs. Marinus and my daughter were; a woman came running in I took for Mrs. E. There was no candle in the room. After that John Earls fell into the house at another door.— He stood near to me when I heard the cry: some one halloed out "he put her in the pump trough"—when I heard that I went out to hunt Mrs. E. and she was in the bar room. Her head was all over wet, and one side was all wet. One sleeve of her dress was nearly torn off. I gave her one of my gowns to put on—Earls came to the fire and asked Mrs. E. what is it? (*was isht?*) She told him he need not ask for he knew. Then E. went off. There was snow on the ground, it was very cold. Don't know whether before or after Christmas. There was ice round the trough but none in it. The trough is a little longer than that stick, [*pointing to the Constable's staff.*] About so wide, [*measuring on the counsel table about two feet*] and about so deep, [*from 15 to 18 inches.*] I was at Earls' house but did not go with the funeral. The children and E. were all there at the corpse. The people that were by took the children up to the corpse—not E. He was with the children looking at the corpse at the same time. After the

coffin was brought, when they were putting her in, E. and the children went up stairs. After she was in, William Pott came and asked if she was put in the coffin, E. wanted to see her once more. Then E. and the children came down stairs together and went to the coffin and all looked at the corpse.—They all cried very much, E. and the children.

Cross-examined by Counsel for Prisoner—I saw nobody in the room when I first came, but Earls. I did not go in where he was, but went up stairs; he did not come up. He had his handkerchief up to his face, walking backwards and forwards, and appeared to be in a good deal of distress. After the crowd separated at the pump, Mrs. Marinus and my daughter came in. I think Mr. Marinus was there, he was in the house and run out. Earls offered no violence to his wife in the house. There were not very many people at the funeral. The funeral left the house about 12 o'clock, M. The people assembled at different hours. She died on Friday and was buried on Saturday. The neighbours were not generally at the funeral. The nearest neighbours were. She was put in the coffin on Saturday a short time before the corpse was taken away. She was buried on the opposite side of the river, at the Baptist meeting house, near Mackey's. Earls' house is a half mile from our house. Earls had crape on, and the largest of the children, at the funeral.

Elizabeth Mowrey, sworn—I was at Mangus' when Mrs. Earls died, and Livy Sechler came there about 4 o'clock, and said Mrs. E. was dead, and wanted us to come up. When we came to Earls' door we heard some noise—when we came in, Earls was in the room with his handkerchief before his eyes, crying. Then we went up stairs, and Mrs. Sechler, Mrs. Callahan and old Mrs. Earls were in the room. I went up to the bed and Mrs. E. was warm yet. I said she ought to be washed and dressed while she was warm. Mrs. Mangus held the candle and Mrs. Page helped me. When I opened her bosom she had a mark right between her breasts; it was as big as the palm of my hand, and red and bluish like. Her breasts were full of milk. In the morning she was all blue spotted round her neck, on her leg, her nails, her lips, and below her eyes. We went up as soon as Mrs. Mangus was dressed. I was at Earls' from Friday morning until Monday evening. I was away a part of Sunday. The blue spot on the breast was not below the breast bone, but right on the middle. I live a mile and a half from Earls'.

Cross-examined by Counsel for Prisoner—There was nobody in the room with E. when we got there. The corpse was dressed well. Earls and the children went across the river to the funeral. The youngest children stayed. They went to the funeral by flats or boats. The spot on the leg was on the right side, about the middle from the knee down, on the outside. The corpse was carried down stairs as soon as it was washed and dressed. I looked at the corpse in the morning as soon as it was light enough to see. We took a rag off just below the breasts, that smelled very strong of vinegar—that was below the spot that was blue. The nails looked blue. Mrs. Mangus held the candle almost all the time we were dressing the corpse. The women made the shroud next day—Mrs. Stratton, Ellen Stratton, Livy Sechler and Mrs. Thomas. It is two miles from where Mrs. Stratton lives to John Earls'. Mrs. Thomas lives a mile and a half from John Earls'.

Sophia Page, sworn—[Witness not understanding English, Mr. Daniel Grafus interpreted.] When Mrs. Earls died, Livy Sechler came and called me up. I went up with the other women, and when I came up, John Earls was in a room down stairs, walking backward and forward and crying.

We went up stairs, and Mrs. Callahan, Mrs. Sechler, and old Mrs. Earls were in the room. Mrs. Earls was lying in bed a corpse. They dressed Mrs. E., and when they were dressing her they discovered a red blue spot on her breast. After she was dressed, she was taken down stairs. I went home, and when I came back I saw blue streaks on her neck, on her finger nails, and there was a rag on her face. Mr. E. could not eat his breakfast for crying.

Cross-examined by Counsel for Prisoner—I live about half a mile from Earls'. I was at the funeral—I was over the river and several others. Earls was there and some of the children, but I don't know how many. Old Mrs. E. was at the funeral—I think E. and the children went to look at the corpse before the coffin was shut. William Pott was there. Can't tell whether E. cried on that day. Mrs. Mangus held the candle while we washed the corpse. Mrs. Callahan may have been there part of the time; but was not there when they carried the corpse down stairs—did not see her if she was.

Adjourned till half past 2 o'clock, P. M.

AFTERNOON SESSION.

Mary Ann Earls, sworn—[*The daughter of the Prisoner at the bar.*]—I am fifteen years of age. I was down at Mr. Oyster's and my sister came down there for butter, and I came along up. It was on Thursday evening I went home and they were about getting supper. It was about 8 o'clock when I went home—I went over to Sechler's first, and then I came home and went up stairs. When I went up stairs mamma took the baby up and showed it to me. When she showed me the baby I went down stairs, and granny began to get the supper. Papa came up from the river, and granny was making the chocolate. Then they sat down and eat, and granny was getting mamma's supper ready. They all set down and papa among the rest, to eat. When papa was done eating, granny said he should light her up. Then, granny took up the waiter in her hands and papa went after her and lighted her up. Then, Livy Sechler was in when mamma was eating her supper; and pap stayed up stairs and layed on one bed and mamma on the other. Then the children wanted to come up stairs, and pap would not leave them come up. Then after she had done eating, papa took up the waiter and carried it down stairs. Livy Sechler went home. Then about nine o'clock, mamma she began to vomit so. Then granny ran up and asked her whether it was that potato that made her vomit so, or the chocolate. Mamma said she did not know what made it. Then papa asked mamma what would stop vomiting, and she said mint tea. Pap said he would get mint tea, and I got a candle and lit him. I got a tea cup out of the dresser and he poured water over it and let it boil. Then pap got the saucer and poured some out. Then I was standing by the trundle bed when he poured it out and he gave it to her. Then mamma said that tasted bitter. Then granny said that is pepper mint, I have some spear mint. Then granny went and got her spear mint and put it upon the coals and let it boil. Then mamma said that tasted just in the same way. Granny gave her the spear mint. Then she would still vomit on till she could vomit no more. Then we asked her, papa asked her, if any thing else, and she said laudanum. Papa got the laudanum; mother said it was down stairs in the drawer. Papa asked how much, and she said fifty drops. Then she would still gag. I asked her if we should go for any body; she said no, wait awhile, may be I shall get better. I asked her twice, she said I should not. Then I went down stairs and told pap he should go for somebody. Then he went over for Mrs. Sechler. I asked

her if a mustard plaster put upon her side would do any good, she said it would. Then we got the mustard plaster ready, and when Mrs. Sechler came over, me and my sister did not want to put it on, and Mrs. Sechler put it on. We waited a little while and Mrs. Sechler said mamma was dying. She went up to the fire and told granny she was dying. Then she went up to the bed again, and came back and told granny she was dying. Then she went to the bed again, and came back and told granny she was dead! Then Mrs. Sechler went over and told her daughter to come over. Then Livy Sechler came over and her and my brother Samuel went down to Mangus'. Then they came up, and they washed her and carried her down stairs. That's all. My mother asked for drink—she only asked it a couple of times. Young hyson tea was given her. Grandmother got the young hyson tea ready for her—it was given her before the mint tea I believe. I saw the chocolate that was poured out for mother. Granny she poured it out in a bowl and set it on the stove. It stood on the stove till papa was done eating. Papa was not done eating before the rest of us. It was after candle light; we eat our supper down stairs. Granny said she would pour it out and set it on the stove to keep warm. After I had done eating, granny had it ready on the waiter to take up stairs. Father set at the table till I had done eating. Papa got up from the table, and granny set the bowl on the waiter, and said John now you light me up. She took no tea of any kind before she vomited. Father is not generally done eating before us. The mint tea was made in a tin cup. The chocolate was taken up in a bowl. The bowl was got out of the dresser. Mother had some chocolate, potato, preserves, bread and some butter. There was fire in the stove on which the bowl of chocolate was set. I am sure of it. There was fire on the hearth also. When papa lighted granny up he stayed up. He stayed up till mother was done eating her supper. I was in the room all the while. Granny went down. Miss Sechler did not come there while mother was eating her supper. Miss Sechler did not come there while my father was in the room. Mother eat her supper with a good appetite. She drank all the chocolate. While mother was eating, pap was on one bed while she was on the other. One bed is in one corner, and the other in the other. They were in opposite corners. I remained in the room until my mother had done eating supper. The waiter was setting on a chair while my mother was eating. One new year's night papa went out to shoot the old year off. In the morning he come home, and Dan Griffin was along with him. Then when he came home mamma she began to scold him. She asked him where he was; he said he was out shooting new years. She said he was out at Moritz's. He said he was not. He said if she would not shut up he would give her a thrashing. She told him to thrash her. She would still be scolding on and then he took hold of her and took her down cellar. He took her under his arm and took her down. I believe he hurt her on the arm. I have not seen any other bad treatment. I did not live at home for a good while and I did not see him strike her. Nobody was there when she was put in the cellar, but my sister and myself. Dan Griffin went down home before she was put in the cellar. She was kept in a couple of hours. I was at home a good deal.

[The counsel for the Commonwealth here proposed to ask the witness "what she knew of an *attachment* existing between her father and any other woman beside her mother?" Mr. PARSONS, for the prisoner, objected, and enquired of the opposing counsel *what fact* they desired to prove? Mr.

ARMSTRONG replied, they would show that the prisoner's affections had been entirely estranged from his wife, and centred upon another woman, named Maria Moritz—that he and his paramour had been guilty of the grossest acts of lewdness, and that the partner of his bosom had lost her power to charm. We will show, said Mr. A. that he has frequently been seen with his mistress in a shantee, in a stable, in his own bed room in the absence of his wife, and other acts of incontinence which go to prove a *motive*, or inducement for the commission of the crime with which he stands charged. It is for the purpose of showing a *motive* we offer the testimony; and in that light we think it is clearly admissible. He cited 1 *Starkie*, 492.

Mr. PARSONS opposed the motion upon the ground that the facts proposed to be proved go to convict the prisoner of another and a different crime, from the one with which he stands charged in the indictment; and of which he has had no notice. They make out the charge of adultery—and for that crime the prisoner has not been put upon his trial. He does not come into court prepared to meet and repel the allegation; because he could not possibly foretel that he would be called upon to answer such a charge upon an indictment for *murder*. It is not competent to prove one crime as a *motive* for the commission of another. Mr. P. continued his remarks at some length, and cited in support of the objection, the decision of Judge MALLARY in the trial of *Getter*, p. 14.

Mr. FLEMING also opposed the admission of the testimony, and in addition to the arguments of his colleague, in relation to the manifest injustice which would be done to the prisoner by suffering testimony to be introduced tending to convict him of a crime for which he was not indicted, dwelt with much emphasis upon the effect which such decision must also inevitably have upon the character, the reputation, and all that is dear in life, of another individual who is not a party in this cause, and who has no one to represent her on this floor. If John Earls has been guilty of adultery, by having illicit intercourse with Maria Moritz, she, in consequence, must necessarily be guilty of fornication. Will this court, then, said Mr. F. suffer third persons to be convicted of crime without a hearing and without a trial? Is Maria Moritz to be stigmatized and degraded, without an opportunity of defending? Surely the law does not require, public justice does not demand, such an unrighteous procedure.

Mr. ELLIS remarked, that even if the testimony were admissible, it could not be received at this stage of the cause. A homicide has not been proved—there is no evidence that a murder has been committed, and this Court will not inquire into the *motive* for the commission of the *act* until the *corpus delicti* is proved. Mr. PARSONS, In support of this position, cited 1 *Starkie*, 509—"so long as the least doubt exists as to the *act*, there can be no certainty as to the criminal agent."

JUDGE LEWIS—[*To Prisoner's Counsel*.:]—Do you insist upon the objection that the evidence is offered out of its proper time?

Mr. PARSONS—Most certainly we do.

JUDGE LEWIS—The evidence is of such a character that we cannot consent to receive it until some proof has been given of the alleged homicide.

Mr. ARMSTRONG said: the Counsel for the prisoner, after having argued the main question at length, have changed their ground—as the objection now is to the *point of time* at which the evidence is offered, we concur with the court in the opinion just expressed.]

Mary Ann Earls, continued—Papa lived peaceably enough with mother for four or five months before she took sick. I lived at home for the last four or five months before my mother's death. I was at home during all that time. I was not at home when my father dragged my mother and put her into the cellar about a month before her confinement. I was down at Oyster's I believe. I was hired there by the week. I've told all I know about the abuse.

Cross-examined by Counsel for Prisoner—I was in the room when granny took the chocolate out of the pot. That was the chocolate that was made for the supper for all the family. Granny said the chocolate poured out was for mamma. I saw the chocolate put into the bowl. I saw the bowl before the chocolate was put in. Granny got the bowl herself. The bowl was clean. Nothing was put in the bowl but the chocolate. Father was not by when the chocolate was put in. I did not see my father go to look at the chocolate. The chocolate stood on the stove while we eat our supper. I was by when granny put the chocolate on the waiter. I saw granny leave the room with the chocolate on the waiter. Granny told papa to take the candle and light her up. Granny went foremost. Father was not out of the room after granny dipped it up before granny took the chocolate up stairs. Nobody went up besides granny and papa. I went up right after them. I can't tell whether mamma began to eat the chocolate before granny left the room. I got the cup for my father to make the mint tea in. The cup was a clean cup. I saw the water that was taken up to make the tea. Pap dipped the water up. The water was taken out of the bucket. I was by when the mint was got. I saw the mint put in the tin cup. There was nothing put in besides the mint. I went up with pap to mamma with that tea. The tea was thrown out when mamma said it was bitter. It was thrown out of the window. Granny made the spear mint tea in another cup. I can't tell why mamma and papa lived on friendly terms for three or four months. Pap said they would make a vendue and in the spring they would move off. I was by when mamma died. I did not see granny make the spear mint tea. Mamma just tasted it and said it tasted in the same way. She just took a little bit of that pap made, and said it tasted bitter. I can't tell whether mother was easier after she took the laudanum. She did not vomit so much after she took the laudanum. I was by when the laudanum was dropped out. I counted the drops. Fifty drops were given her. Granny set the cup to the fire, containing the spear mint tea. I can't tell whether pap was by or not when granny made that tea. Mrs. Marinus was not at our house when pap put mother in the cellar on new year's day. We all drank chocolate out of the same pot that it was taken out of for mother. After Mrs. Sechler came pap went for Mrs. Callahan. I met pap as he came down with Mrs. Callahan. Mother had been dead fifteen minutes when I met them.

Re-examined by Counsel for Commonwealth—Mother complained of pains all over; she drank a tea cup full of the hyson tea. Grandmother or papa threw the mint tea out of the window.

Susannah Earls, called—[*the daughter of the Prisoner at the bar.*] In answer to questions in relation to her competency, the witness replied: I am in the 14th year of my age, If I don't speak the truth I won't go to the good place. The meaning of an oath is, that we must speak the truth. If a person don't swear the truth they go to hell. *Witness sworn.*

I was at home when my mother was taken bad, I was not at home when they were getting supper; when I came home they ate. They took mam-

ma's supper up. I can't tell who poured the chocolate out, but granny told me she did. I did not see the chocolate taken up stairs. I saw granny have hold of the waiter. While mamma was eating her supper, Livy Sechler came in. Livy stayed awhile. The baby, Sarah, was up. Mamma said that Sarah wanted up in the bed with her, and then she said, Susan take her down stairs. I took her down stairs. I do not know who fetched the waiter down. In about an hour and a half or two hours, mamma took sick; I don't know rightly how long it was. She rolled on the bed, appeared to be in great pain, and vomited a good deal. Papa said he had some mint down stairs, that was very good for pains, and I'll make you some. Very well says she. He made her some tea, she said "it burns my heart." I think he gave it to her, or else granny gave it to her, I can't say which. Granny said to pap, that's pepper mint you've got, I've got spear mint. Granny went into the room and fetched the mint out and she made it. She gave it to mamma to drink, and mamma said it is the same kind, it is bitter. Mamma said John there is a laudanum bottle in the bureau down stairs, go and get it and give me some of it. He went and got the bottle. He dropped out fifty drops; my sister sat by and said she counted them while he dropped them out. He gave them to her. She said that did her no good. In the morning about four o'clock, mamma she died. Before mamma died, papa went over for Mrs. Sechler. Mrs. S. came over; granny was sitting by the fire place, and had the child in her arms. Mrs. S. felt of mother's feet in the first place. Mother asked for drink when Mrs. S. came in, and she went and got her a drink. She could not drink. Mrs. S. tried to lift up her head, but she could not drink. All mother vomited, pap told us to throw out, and we throwed it out. She vomited in a pot; she vomited at different times; she vomited a good deal; she said the pains were all over her. I know nothing of my mother's vomiting at any other time. I have heard my father threaten my mother. I have heard him say "he would lay her asleep;" can't tell how long before mother's death, not very long I think. She was scolding him about Maria Moritz, when he said he would lay her asleep. I have seen him whipping her, and put her in the cellar. It was a couple of months or three before her confinement, I saw him whip her. He had a horse line two or three double, and he whipped her with that; it was leather. He whipped her very hard. She was baking, and was going to the oven with some bread. Granny was in the bar room, and had been talking to papa about Maria Moritz; and as mamma was coming out with two loaves of bread between the two houses, he met her and began to whip her. As I saw him whip her I ran out, and he left her, and took after me to whip me. I had Sarah, the youngest child in my arms. I ran to Griffin's. In the evening he started from home; I saw papa go down the tow-path. Granny had been in the bar room, and was saying something to him about Moritz's, when he came out and whipped mamma; mamma had said nothing to him. He whipped her on her back. That was not the time he put her in the cellar; he put her in the cellar on new year's morning, and then swore if she would budge out of the cellar, he'd kill her. I guess she was in the cellar an hour or two hours. It is a year since he began to use her bad, it may be less. I never heard him threaten her at any other time. I did not live at home all the time. I lived a while at Oyster's. I think I lived at Oyster's two or three months. This was a good while before mother died. When I came home, I saw them scolding together. I've heard my father say he loved Maria Moritz already; I heard him say he would go to see her when he pleased, and come home when he pleased, it was none of mamma's business. Maria lived at

our house three or four weeks. One time Maria was coaxing mamma to go to Milton to see her neighbours. Mother went away [to Milton] on Saturday; and came back on Monday. Father remained at home. I was at home; and my sister Mary Ann, Maria Moritz and the little children.

Adjourned till 9 o'clock to-morrow morning.

THURSDAY MORNING, FEBRUARY 4.

Susanna Earls, continued—Before the first court a couple of weeks, papa sent for us to come up and see him in the jail. I went up with my sister Mary and Grandmother. I asked papa if he thought mamma poisoned herself, and he said no. I then asked him who he thought did it, he said "it was his mother that old bitch that done it—if it was not for her I would not be in the condition I am." He did not say any thing more about it. He said "if he should be hung, he would see two more hung along side of him." When we came up to the first court, he said "girls do not be too hard on me; try and save me if you can." Grandmother was not by at the first conversation; he told her afterwards, in my presence, that it was her that done it. Grandmother did not say any thing to him but just walked off. I don't know that grandmother is hard of hearing. Father spoke with a middling loud voice. I don't know whether she heard him or not, but he said it.

Cross-examined by Counsel for Prisoner—I can't tell when it was father said he would lay mother asleep. Mrs. Marinus stayed at our house. Can't tell how long she stayed. Can't tell whether she stayed two or three months. I heard father threaten mother while Mrs. Marinus was there. I can't tell whether Mrs. Marinus heard it or not. I think granny was not by then. They were scolding at the time of the threat. I think father said *once* she had better been asleep than doing what he was scolding her about. I can't tell how soon father went away after this scolding. Father did not catch me when he ran after me with the lines. I do not know why he was going to whip me, I think it was because I stoned Maria Moritz one time when she came up there. Can't tell what papa was doing, but think he was in the shantee wrapping up the lines. [*The SHANTEE is sometimes called the bar room.*] I think he was using them on the horses, but don't know. Granny was by at the time father struck mother with the lines. Livy Sechler was down in the cellar while mother was down there on new year's day. Me and Mary was there. I think Dan Griffin was there, but don't know. Before he had put her in the cellar he had whipped her and tore all the clothes off of her. I can't tell, but I think Dan was there at the time he whipped her. He had nothing in his hands—he struck her. Mother went to Milton with Mr. Swenk's boat. I don't think she went more than once while Maria Moritz lived at our house. Father did not go along with her to Milton on Saturday. Father did not go to Milton on Saturday with his boat—he went on Monday morning. I don't think Father went up the river with his boat on Monday morning. He brought mother home on Monday, I went along with him, and Sabina Moritz went with him. I don't know when Maria Moritz lived with us, I think it was the same year mother died. I don't think Sabina Moritz came back on the boat with us. I lived at Oyster's after Maria Moritz lived at our house, I think. I heard father say he loved Maria Moritz, a good many times—whenever him and mother scolded about it, he would always tell her that. I never heard him tell her so before Mrs. Marinus. I did not see grandmother dip chocolate out for mother. Indeed I don't know when the chocolate was dip't out for mamma. I was at home when they were eating supper, and eat supper with the rest of the

family. I think father eat supper, I ain't sure. I drank chocolate. Father drank chocolate. Dan Griffin's is a little piece from our house, can't tell how far—on the same side of the canal, below our house. There are twelve months in the year, I think, sir. I think there are twenty-four hours in a day. Can't tell how many days are in a month. Indeed, I don't know how long ago it was I lived at Mr. Oyster's. Oyster's christian name is Benjamin. Mary Ann was at home at that time. When I went to the jail the first time, my grandmother, sister Mary, and Sam went along. We were in the room with father most all the time. Sam knew where the jail was and he took us there. There was another man in the jail, I don't know who he was—sometimes there were two men there. The man that keeps the prison was in once in a while. Can't tell if he was in when father said granny did it. We come up in a packet boat—don't know whose it was. I don't know who I told father's conversation to—I told it to Mrs. Callahan. I don't know what was the reason I told it to her. I believe I told it to Margaret O'Neal. When I came home they asked if he was well and what he said to us, and I told them. I live still with Mrs. Callahan. I lived there pretty near all the time since mamma died. I lived with her before I came up here. I came up with her. The conversation spoken of in the jail was before the last court. Can't tell how long it was before, but I believe it was a week or two. Mr. MILLER, from Pennsborough, I believe, brought us up to last court—don't know what his name was rightly. [*Muncy is sometimes called Pennsborough.*] Mrs. Callahan, Mary and Mrs. Mowrey, came with us. I think Mr. Schuyler, the Squire, was along. I went to see my father then. My sister Mary was most always with me. Mrs. Callahan was with us once to the jail, and Mrs. Mowrey once. Mrs. Mowrey was not by when father told me granny did it. Sister Mary was. Father told us once we should tell the truth. There was no man by when he told us we should not be too hard upon him. There was not always men by when I saw father, at the last court. I went to see him every day last court. Me and our Mary went the first time. I do not think we went into the room the first time. We was not in the room when Mrs. Callahan was with us, we just stood at the gate. Nobody told me to remember all the conversation had in the jail. I did not go up to the jail before last night, [*Wednesday*] to see my father this court. I did not see him last night. I saw him this morning in the jail. Mrs. Barker was in the jail with the baby that mother left. I came to court on Monday morning this time. I came up in a sleigh with Mr. Oyster. I have heard mamma say to father that he loved Maria Moritz—he replied I love her and its none of your business. He laughed and appeared to be pleased when she told him.

Christiana Earls, sworn—[The mother of the Prisoner at the bar.] Mrs. Earls had her baby in the afternoon; she was well and hearty as could be, and I was really glad of it. There was nobody there to take care of her but me. They had no nurse. Oh! the little gal was there. I done all—I made the victuals for her. At noon the day before she died, we had some clothes to hang up. After they were hung up, I came in and throwed the basket down and told the little gal I would go up and see how mother was. So I went up, and now, says I, the clothes is out, what will you have for dinner? Katy said any thing you have for yourselves. I said will you have coffee, chocolate or tea? Oh, mother, she says, it is too much trouble to make chocolate. Oh, no, says I. After that I thought she did not like chocolate so well as coffee. She says, oh well, mother, if you do make chocolate, I'll take chocolate. I am fond of it. So I went and put on

the little pot and made chocolate for us all. So as I was up stairs, it was a little past noon, John came in and gave the children bread and butter. I allowed so, because they had it. By that I had set the table, I said John where are you going? He said I am going up to the dam with the two little boys, the one that is here in court and a less one; they have only two boys. Why la! says I, John, where are you going? why la me, the poor children are hungry, and we are making chocolate for dinner, and they all like it so. Then the children walked from the shantee to the house with their bread and butter; John said look'ee there, and I saw they had bread and butter. Then I bustied about and had the chocolate made, and had the potatoes warmed up, after he had gone. Then I went and set the table, and Mrs. Callahan was there—a neighbour that lives up above. I asked Mrs. Callahan to take a cup of chocolate with us—I give her so good as we had—we could get no meat for the money. So Mrs. Callahan came and drank. [*In speaking of this Mrs. C. called it supper.*] So I took the victuals up to Katy, and I had a little chicken left from the day before, which I fried in butter. I took it up for my son's wife. Chocolate, preserves, bread, butter, &c. She ate that dinner with a good appetite. I guess she drank all the chocolate. She said she was so very fond of it. Oh, la! I guess she did appear well. So I went up stairs and swept a little, and gathered some good oak wood and chips to make a fire, so that she could get up to have the bed made. I took a carpet and doubled it four times and laid it before the fire, and set a chair on it. As she was getting up, I was going to say she ought to have a pair of stockings on, but by that I saw she had a pair of stockings on. I went and got the cloak and put it round her and gave her the child, then I made the bed. When I made the bed she went to bed again. There was a tea cup by the fire in which was tea for the baby, and I said I would take it down stairs, but she said oh, no, the baby has more milk than it can take. I took the cup up and set it on the chest and went back to look at the baby. Towards night I said now we have all had chocolate but the men folks, for dinner, and there is some left. So, I said Katy shall I draw a little tea for you, as you had chocolate for dinner. Says she any thing you have yourself. As the men had none at noon, and there was some left, I allowed I would make a little more to it. I said to Katy may be you'll get tired of chocolate. She said oh, no, mother, any thing you have I'll take. So John come home and said is supper most ready? Yes, says I, I only go and take Katy's up, then we can eat. I do not know whether John was up stairs or not. I was busy in the kitchen; I said I would take it up; oh, says he, Katy don't want to eat yet, till after a little, not till we eat. Can't tell whether the girls came down or John, and said mother did not want to eat till after we eat. John said Katy don't want to eat till after we eat. I took a tin cup and dipped up the chocolate for the family. I took up the first for Katy in a bowl, and put it on the stove—about a tin full. Then I poured out for us and we eat, but I was soon done. I was not long about eating, myself, for I wanted to take it up while it was warm. I got the big server and put it on the table in the kitchen just by the door. I put the bowl on the server, and went and got preserves, butter, may be apple butter, peach preserves, &c. When I had all ready, now, says I, John light me—may be he said I'll take it—I am not sure—no, says I, only light me—light me good, so I won't spill it, and he did. So I took it up, and Livy Sechler she was there. Some of the family said John took the waiter down, but I allow I took it down, but I am old and forgetful. When I took the waiter up I put it on a chair by the bed. She eat a hear-

ty supper. Oh, mother, says she, that chocolate was good—that was very good. I think she drank it all. It was just a bowl full. I was not there all the time she was eating—as they had no nurse I went down stairs again. Livy Sechler was there. When I set the waiter down, I went down stairs right away. I do not believe, really, that John was up all the time she was eating. I went down stairs to wash the dishes, and by that, I heard Katy hollowing for the pot. After a little I heard her vomit, and I let all fly and run up and when I come near the head of the stairs, “*Lord a massy,*” says I, “how comes that?” She says I don’t know, mother. I went up and walked to her; then said I, spear mint is so dreadful good for a sick stomach. John said he had some, and went and got some, and put it into a cup. Some one poured the water on, may be John, or one of the girls. I can’t say who gave her the tea, I know I did not. She said it bit her so in the throat, it was so sharp like. Says I, may be it’s peppermint. So I said I had some spear mint, and ran and got a little, and put it in another tin. I don’t know who put the water in. We gave it to her and she complained it was just like the other, so sharp. So I said it was all spear mint, for mine I know’d was spear mint. So, says she, oh John fast run down stairs and get the vial of laudanum in the bureau. He fast run down; he comes up and says how many drops. I think she said fifty. The oldest daughter counted them and John dropped them, and gave it to her. So she vomited on, and at last she could vomit no more, and she gagged, and she died. She complained of pain all over and in the stomach. Mrs. Sechler was by her. It seems to me that Katy said, she was in pain in the stomach, it was all over, that was the most. I heard Katy say “Oh, Lord, it’s gone so far that I can’t get help any more.” I won’t say whether she asked for drink. I can’t say whether we eat supper by candle light or not, it was late. John was always done eating before the rest, the most of his time. She was buried on Saturday. I never knew a breath about poison till Monday. I never saw any poison about the house never. John never told me any thing about that poison. It was a little mumbling about taking up Katy. I thought people kept it hid from me, because I was his mother. So I goes out once to John, and said something to him about raising, and so he says, I suppose you think I should run off, I’ll do no such thing. I can’t see good at night without my specks, and then I can’t see good no more. I saw John strike his wife. I spoke to him about staying at home, and he did not like it, and he licked Katy. He took the hint that she had asked me.

Cross-examined by Counsel for Prisoner—The children sat down to the table with the rest of us, the night before Katy died. Mary was there; she came from Oyster’s; ’tis very like she eat with the rest. The table was not set in the kitchen. They were not setting round the table when I dip’t Katy’s chocolate up. There was no fire in the stove. I carried the chocolate out and put it on the waiter in the kitchen. John had his supper, I did not call him from supper. He did light me up. Says he, to-morrow morning we must kill a chicken for Katy. I can’t tell whether any other tea was made; the tea pot stood by the fire up stairs. It may be we made it, and drank of it, and took it up there. Katy drank may be a spoonful or two of the mint tea—that did not hurt her. When I came up stairs and said *Lord a massy* do you think may be the chocolate made you sick, she said may be it is too strong. Oh, no, says I, I never make any thing too strong. I do not know where the water was poured on the spear mint, up stairs or down, or who poured it on, whether I or John. John and the little boys went up to the dam when they went away at noon. I wont say whether we had a

candle when he came home or not. Mrs. Callahan was there in the day time at dinner. The chocolate stood on the stove not more than ten or twelve minutes before it was taken up. There was no one about then, they were all eating.

Re-examined by Counsel for Commonwealth—The stairs went up out of the kitchen. I got the preserves in the room in a corner cupboard. I put the chocolate on the waiter the first thing. I got the bread from the table, the butter from the table or from the crock. The crock was sometimes in the cellar and sometimes in the cupboard. The cupboard and dresser are not the same. I could not be by the waiter when I went for the things. I did not go upstairs until I got all on.

Adjourned till three o'clock, P. M.

AFTERNOON SESSION.

Francis Weiser, sworn—On the day of the last general election, Mr. Earls came in to Bruner & Dawson's apothecary shop in Pennsborough. He asked me for an article and I was very busy and did not get it right away, but waited on him immediately afterwards. He got something on the medicine side of the shop, but I dont know what it was. The store was full. David Starrick was in for one. Charles M'Carty was in. There was a crowd in and I was busy. I was a clerk in the store.

Cross-examined by Counsel for Prisoner—I dont know what I gave Earls. I have not had a medical or chemical education. I know the drugs in the store by the marks. I give medicine from a knowledge derived from the label. Earls paid for it.

Re-examined by Counsel for Commonwealth—I know some articles. I dont know that I would know arsenic any other way than by the letters.

David Starrick, sworn—I was in Bruner & Dawson's apothecary shop on the general election day. Mr. Earls came in and asked if they had some ratsbane. The clerk answered yes. I went out of the shop immediately after he asked for the ratsbane, and did not see what he got. He asked for no other article while I was present—he mentioned no quantity.

Cross-examined by Counsel for Prisoner—He asked if they had ratsbane. The clerk answered yes. I went out immediately. I never had any acquaintance with Earls, but have seen him many a time. I dont know that I ever talked to him. Francis Weiser was clerk. The store was full. I stood one side of the door and he the other. There was a great many in the store. Perhaps there was a good many as near as myself. Others might have heard as well as myself. He came in and asked for it so that the clerk could hear. I expect he asked in the common tone. I heard no whispering between him and the clerk about it.

Jacob Hogendobler, sworn—I was one that helped take Mr. Earls. After we had taken him and come on about a mile from the house where we took him, between Mangus' and where we took him, I told Mr. E. that there was a strong suspicion that he had bought arsenic at Muncy.

[Counsel for Prisoner here interrupted the witness, alleging that the *declarations* or *confessions* of the prisoner, could not be given in evidence, if at the time such *declarations* were made, he was under *duress*, or if they had been extorted by *threats* or induced by *promises*. The witness was thereupon examined by prisoner's counsel, touching this matter, and to their interrogatories replied:—"We had him in custody at the time. William Turner was by. Don't recollect whether any others were or not. We were the biggest

end of six miles from the Justice's office in Muncy. We made no threats or promises." *Witness then proceeded:—*]

*Jacob Hogendobler, continued—*I told Earls that David Starrick had heard him ask for arsenic. Says he "By G—d, I know what I bought—I bought ratsbane." Them were the very words that he said. He then said "They might hang him and be d——d, they might kill him by the Lord, as old Johnny Morton used to say." He repeated this last two or three times. He said he had bought the ratsbane in Pennsboro'. He told me that he had bought it several times. I think he told me that he had bought it years before in Milton. I told him young Starrick had heard him ask for arsenic on Tuesday, the day of the election—then he replied as I have stated. Turner then came up and clapped me on the shoulder and told me that I should not be talking with him any thing about it. He told me after we came further that when he was out fishing late he was afraid of finding her hanging up some time when he came home, and then they would have blamed him for it. I don't know that there was any thing more. He behaved very well; he wanted a drink at every tavern. We gave him a drink at Mangus'—and at his own house he took a drink. They stopped at Patrick Callahan's. When we got up to Doubt's house where Thomas lived, he wanted a drink there again. There they would not let him go in to have a drink. It is a quarter of a mile from Callahan's to Doubt's. Pete Wendel took hold of him and told him he should not have any liquor; he must go along. Earls stepped back and says "Petee you think you are a stout man, don't you;" as if he would make battle. He said he would lay down if we did not give him a drink. I told Earls he should not be cross, for he could not do any thing, there were too many of us. So he consented and said he would go with me, and he went peaceable all the way from that to Squire Crouse's office. After we left Callahan's, Earls started and said if we did not take care he would run up that mountain. He started to run and run about one hundred and fifty yards. I kept close to him, and Jake Swisher was next to me. I don't know what occasioned him to run. I was not afraid of his running away. He talked of jumping into the river. When he came to his own house he asked me to go up stairs with him and his mother. I went up with him. He told his mother that they had made a fuss about Katy. By that Wm. Turner came up and would have him down. Earls went down with him, and I stayed with the old woman. He behaved very well in his own house.

*Cross-examined by Counsel for Prisoner—*He said he had a right to buy ratsbane—he would buy as much as he pleased, and he would tell it to their teeth. It appears to me he said he had used it for fishing. Fishing or trapping I am not certain which. He has followed fishing a great deal ever since I have known him. I have known him for fifteen or sixteen years. He told me that there was one of the party if he came any ways near him he'd let him have it—I think it was Dykens he meant. It seems now to strike me that he told me it was Dykens. He said he would mind him. He offered no resistance when he was arrested that I saw. I did not see a dispute between him and Dykens. It was between Callahan's and Pennsborough that he told me about Dykens. He would sooner go with me than any of them. The rocks are nearly perpendicular on one side of the tow path. The pool of the dam was on the other side. The water in some places is fifteen or twenty feet deep. The river is 1300 feet wide, I think. I cant say whether his running was a matter of jest. Callahans live above the dam about one hundred yards. We kept the towing path to the out-let lock, then took along the river to where Hugh Donley lived. Earls made no attempt to

escape in the open country. He can run a good hickory; and so can I. I could not keep up very easy. For my part I thought he felt liquor a little. We took him to Huffman's tavern. We arrested him on Monday or Tuesday—it was in October. It was in the afternoon; I know it was dark when we got to Callahan's—about four and a half miles from Muncy. We arrested him about one mile and a quarter from his own house. It is a half mile from his house to Mangus' and three quarters of a mile from there to where we took him. We had Earls neither ironed, nor chained, nor roped. Turner offered to get a wagon from Mangus and take Earls over the hills—but he wanted to go the other way, by his own house—and wanted me to go with him, and the rest to go the other way—he said two might go if they were afraid. The Constable would not agree to that. He said he did not want his mother to know, she would fret, and that was the reason he wanted Turner to go over the hills. The road over the hills is the common wagon road.

Re-examined by Counsel for Commonwealth—I was up in the jail to see Earls and he asked me whether they had brought Maria Moritz up to be examined. This was a week or two after he had been in prison. He said he was afraid they would scare her and she would tell something that was not true. I told him not to be telling me any thing, for I was to be an evidence against him, and he stopped.

Charles Low, (Coroner) sworn—I went down on Monday the 19th of October, and summoned a jury of eighteen men. I went as Coroner. I also summoned two physicians from this county, Dr. JOHN PEAL, and Dr. WM. H. LUDWIG, and sent a request to Dr. JAMES DOUGAL, of Milton. After summoning, I was taken sick and returned home—I had summoned on the jury three Justices of the Peace, and left word that if I was not able to attend the next day, I wished them to act in my stead. I promised to be at the burying ground, provided I was able to go over; but I did not feel able to go over next morning, and did not go. I took the stage next night about one o'clock, and went to Muncy—the jury of inquest was there. I went with the physicians over to Mr. KIRTOE's shop—they emptied two jars. There was something in those jars that looked like part of the human system. * *

[The witness was proceeding to describe the chemical tests which were applied to the contents of the stomach, after the *post mortem* examination, at Muncy, when Mr. PARSONS objected to hearing any testimony in relation to the stomach, or its contents, until it had been identified. His Honor Judge LEWIS thereupon suggested the propriety of calling the professional gentlemen, who made the scientific examination and analysis, to prove the facts with which they were undoubtedly most familiar. The counsel for the Commonwealth, concurring with the Court, then called:—]

Dr. James Dougal, sworn—On the 19th of October last, I received a letter from the gentleman who has just been giving in his testimony—the Coroner of Lycoming county. He requested me to go the next day, which was the 20th, up to Clinton township, to see the subject. I left home for that purpose and did not arrive there until about noon—there was a great number of people there—the inquest and two Justices of the Peace from Muncy. Dr. LUDWIG and Dr. PEAL, were also there. They were going on to open the grave and raise the subject, and had got down as far as the coffin, when I arrived. They soon took up the coffin, and carried it into the Baptist Church. After the inquisition was properly fixed, the coffin was opened, and the woman taken out and placed so that we could examine her. After the

clothes were removed, we examined the face, and found the mouth, nose and eyes all looked very well. After looking along the fore part of the neck, we found it was natural also—clean looking. Immediately over the bone that passes down the breast, and between the breasts, we found the skin a good deal discoloured. The skin over the abdomen was dark coloured, such as you generally see in persons dead as long as she had been—about the fourth day. The fore part of the lower extremities was clean and natural. The lower part of the head and back of the neck, and all along the back was discoloured, reddish in appearance. The hips were dark coloured, and back of the arms also. The nails, and ends of the fingers were a very black colour. On the right side, about midway on the chest, the skin looked a good deal injured, black coloured. The back part of the lower extremities was also coloured a good deal. Red and a little black. We then commenced to make the dissection—to examine the internal structures—and made a section of the skin from the neck down as far as the middle of the stomach. We then divided the skin so that we could see the soft part of the bony structure, and easily open it to the thorax. After we had done that, we raised up the bone and it made a pretty wide opening, so that we could see the lungs, the heart, the arteries that go up, the veins that go down, and the vessels that are distributed in different manners. We also made a division of the skin so that we could open the whole of the abdomen, down to the pelvis. We then saw the whole contents of the abdomen, the stomach, the bowels, the liver, the kidneys, the spleen, the contents of the pelvis: the womb, the bladder, and the ovaria. We then took a very close examination of the upper part. The lungs appeared in their natural situation, except that the veins were filled with a dark looking fluid. We then removed the covering matter of the heart, and found the veins carrying the blood to it a good deal filled up, more so than common. The heart itself was lessened, and the muscular part of it a good deal softened, and looked darker coloured than generally does or ought to be. We found also a quantity of blood sent to the covering of the heart and the other serous membranes. The veins throughout the whole were more filled with blood than is general, giving it a red appearance under the thin membranes. After we saw those appearances, we opened the heart so that we could examine the internal parts of it. In the right auricle and ventricle of the heart we found a quantity of dark coloured blood, which is usual. We found the same in the left ventricle and auricle; a thing that scarcely ever occurs with a person that has died a natural death. A thing very unusual, and scarcely ever to be seen. We then commenced examining the stomach. We found a good deal of disease in the coats of the stomach, and they had like to have separated from each other when we made the dissection. The lining membrane of the stomach was a good deal red in appearance with the quantity of blood that had been located there. In the stomach we found none of the articles that had been taken in for food. There was a dark red coloured fluid in the stomach, between a half pint and a pint in quantity. The upper part of the small intestine we did not open at all; but tied each end of it to be sent to Philadelphia. After tying the upper part of the small intestine, in such way that no fluid could pass out, we then opened the remainder down to the large intestine. We made no examination of the upper part of the small intestine, for fear of losing the fluid contained in it; but opened the remainder all the way down, which is of considerable length, until it joins the large intestine. The coats of this intestine were so much affected that they were as near separating as those of the stomach. The small intestines were a good deal affected with the quan-

tity of blood that had been thrown around them, and had here and there a dark red coloured appearance. There was no fluid, nor any thing of that kind, in them; they were perfectly free. The external appearance of the large intestines was not so much affected as that of the small ones. We made no opening into them at all. We also observed that the liver had increased in size, and extended more over to the left side than it usually does; and pushed over the stomach more than is usual to the left side. The remainder of the viscera of the abdomen were not much altered in appearance—they were a little dark. We then looked at the contents of the pelvis. We found some coloured appearance immediately over the covering membrane of the bladder—the bladder was not filled with any fluid. We took some time to look at the uterus; but made no incision into it. It was somewhat enlarged—about the size we generally find it in the fourth month of pregnancy. The ovaria were both a little diseased. We then removed the skull, and examined the appearance of the brain. The brain, itself, looked very well, but the veins were a good deal distended; a good deal more enlarged than they commonly are, and were very dark coloured. We were not prepared there to examine the fluids in the stomach and intestine which we had removed. We closed up the incisions and prepared the body decently for the grave; and took the stomach and intestine over to Muncy for examination, as we were suspicious they contained a good deal of arsenic, for they had that appearance. There were some gentlemen called in to see the examination; and the most of us were certain that it was a poisonous substance that produced the colour of the fluid we had there. The shop that we were in was much deranged, and in such confusion we could not from our examination produce the metallic arsenic, but we were satisfied from the slight examinations we did make, that there was a large quantity of it in—enough to produce death. The Coroner, Mr. Low, was in while we were making the examinations. Dr. T. WOOD was there part of the time. Dr. LUDWIG, Dr. PEAL, Mr. KITTOE and myself made the examination. Finding that we did not produce the metallic arsenic, so as to satisfy every body, we sealed up the stomach, the fluid, and some of the upper intestines and advised the Coroner to send them to Philadelphia. They were sealed up in bottles and put into a box after they were sealed. Previous to sealing up the stomach and fluid, Dr. LUDWIG and myself, each procured a three ounce vial and had them filled with the fluid—and took them home with us. We then wrote a history of the whole examination and all we had done, for the purpose of sending it with the substances to Philadelphia. After preparing this paper, we three physicians signed it. This was all I did in Clinton township, and at Muncy. We gave the box containing the sealed bottles to the Coroner, and read the statement to the whole company that they might hear its contents. The next day after I went home, I took the three ounces of fluid I had taken home with me and went to Mr. MORISON'S shop, and took Dr. M'CLEERY with me. Mr. MORISON was there—he is a good chemist and apothecary. We went on and made the necessary examinations. I made a memorandum at the very time—this is it. It was before my late illness. It was prepared under my immediate inspection.

[Here Dr. D. produced a written statement giving a detailed account of the chemical experiments performed upon the fluid at Mr. MORISON'S laboratory, in Milton, which he asked leave to read. The Court informed him that he was at liberty to refresh his memory with any written memorandum, which he made at the time the tests were applied; but that he

could not read the paper to the jury. The counsel for prisoner, thereupon consented to receiving the paper in evidence, which was marked A, and read, as follows:—]

“*The following experiments upon some of the fluid taken from the stomach and bowels of the late Catharine Earls were instituted merely to satisfy curiosity:*

“About three ounces of the fluid was mixed with eight or ten times its bulk of distilled water, and boiled in a glass vessel, and then filtered through clean white paper. The object of the above process, was to dissolve the *oxyde of arsenic*, suspected to be present in the fluid, and also to separate from the solution the principal part of the animal matter. To some of this solution, a small quantity of *ammoniacal sulphate of copper* was added, which caused a green precipitate, supposed to be *arsenite of copper*, or *Scheele's green*—but, from the circumstance of the solution still containing some animal matter, this experiment was not considered as indicating, certainly, the presence of arsenic. The balance of the solution was now slightly acidulated with *muriatic acid* to destroy any alkaline substance which might be present, and submitted to the action of *sulphuretted hydrogen*, when immediately the yellow *sulphuret of arsenic* began to be manifest. This yellow fluid was then boiled for the purpose of expelling the free *sulphuretted hydrogen*, and filtered. The yellow powder retained by the filter was then dried slowly, put into a slender glass tube with some freshly ignited charcoal, and submitted to the action of a strong heat, when metallic arsenic deposited itself in the form of a thin crust upon the cooler part of the tube.”

[Dr. D. then presented to the court the glass tube in which the metallic crust had been formed, as described in the statement he had just read; and also a similar crust formed from the *white oxyde of arsenic*, obtained in Mr. MORISON'S shop.]

Dr. James Dougal, continued—This is a part of the tube containing the metallic arsenic obtained from the fluid. Here is some of the arsenic obtained from the shop subjected to the same experiment. It was the *white oxyde* from the shop. I have kept them separate. The arsenic taken out of the shop was subjected precisely to the same process mentioned in the latter part of the statement. My opinion is, from the whole examination, that Catharine Earls was poisoned with the substance we found in the fluid. I call that substance arsenic. I think there was a small quantity of sulphur in it, that made it look so much coloured.

Question by the Court.—From the whole examination as described, what is your opinion, as a professional man, of the cause of the death of Catharine Earls?

Answer by witness.—From the examination of all the circumstances already mentioned, I believe that her death was occasioned by poison from arsenic, which was found in the stomach, and the lining membrane of it.

Witness proceeded.—All persons selling arsenic are generally ready to give it, when asked for ratsbane. I knew Mrs. Earls for some years. The body taken up at the church-yard, and which we examined, was that of Mrs. E. She had resided in Milton for some years, and I was acquainted with her and the family. Arsenic is used in some diseases in very small quantities; the sixteenth part of a grain is generally given as a dose. Ar-

senic taken in a large quantity has produced very sudden death. The symptoms are a good deal of pain about the stomach and arms; pains generally; very violent vomiting, and thirst.

[Dr. DOUGAL, having gone through with his examination in chief, remarked to the counsel for the prisoner:—"I have now stated all the material facts that occurred under my notice. I have not long since suffered a severe indisposition; my health is much injured; and my mind is of course affected. I do not, therefore, feel myself able to go more minutely into details of the particulars. There are other medical and scientific gentlemen, who are to be examined in relation to the subjects investigated by me, in connection with them; they will be able to give the counsel for the prisoner entire satisfaction, upon the matters they might wish to address to me."

Mr. ELLIS replied, that he was aware of the delicate situation of the health of his friend, Dr. D. and that the counsel for the prisoner were not disposed to harass him with a vexatious cross-examination. They would trouble him with but a very few questions.]

Cross-examined, by Counsel for prisoner—Arsenic has been taken sometimes several days before it produced death—with vomiting and uncomfortable feeling about the stomach. It has been taken sometimes three, four or five days before it occasioned actual death.

Re-examined by Counsel for Commonwealth—Generally speaking the quantity of arsenic has been large where sudden death has been produced.

Adjourned till nine o'clock to-morrow morning.

FRIDAY MORNING, FEBRUARY 5.

Dr. William H. Ludwig, affirmed—I was present at the examination of the body of Mrs. Earls. When I arrived the body had been conveyed into the Baptist meeting house. The lid of the coffin had been unscrewed, but the body had not been disturbed. I then requested the bystanders to identify the body. We then laid the body on a table for dissection. Having removed the clothing so as to give us a view of the external appearance of the body, we found the countenance natural, such as we see in dead bodies. There was a slight abrasion of the skin over the sternum or breast bone; and a discoloration or redness of the skin. About the place of the seventh or eighth rib on the right side, midway on the rib, between the anterior and posterior part, there was a livid spot. This spot and the one before mentioned, I considered the result of external injury. The abdomen was depressed and flaccid. On the inferior part of the abdomen, immediately above the pubis and hench bone, the skin was discoloured, as we see in incipient decomposition or putrefaction. The posterior part of the head, neck and back was discolored by the settling of the blood, as is natural in bodies that have been three or four days dead. The posterior part of the back, that is, the loins or small of the back, and the thighs also, were discoloured, as the parts before mentioned, and from the same cause, the natural settling of the fluids. The colour was a deep red, not a livid. We also examined the head, externally, to ascertain whether there was any injury upon it from violence. We found none. We then proceeded and laid open the abdomen, by an incision from the breast bone, the whole length of the abdomen, downward to the pubis. We then made a transverse incision immediately beneath the ribs. By turning aside the flaps we had a complete inspection of the contents of the bowels. The viscera, or contents of the

abdomen, were all in their natural situation. The stomach a little more to the left side than usual, occasioned by a slight enlargement of the liver on the right side. The external appearance of the stomach indicated the existence of intense inflammation, approaching a dark mahogany colour—of the most intensity at the lower end of the stomach. The colour was deeper in some spots than in others. After the stomach we found the small intestines also in a state of inflammation throughout their whole extent—deeper in some spots than others. The large intestines had a natural appearance; they were distended with wind and entirely empty. We did not open them—they were transparent. We then dissected the œsophagus, or gullet, above the stomach, and I passed a ligature round it, several inches above the stomach—tied it firmly, and then separated the stomach from the gullet. We also passed a ligature round the intestine, fifteen inches below the last ligature mentioned. We then removed the duodenum and stomach from the body, and put them in a basin or tin bucket, I don't recollect which. We then laid open the small intestines throughout their whole extent; they were empty. The internal coat of them was softened considerably, and appeared in parts to be torn off from the muscular coat about them. The softness corresponded in appearance, with the degree of intensity of inflammation in the intestine—that is, where it was more inflamed, it was more soft, and where less inflamed, less soft. We then examined the kidneys, which had a natural appearance and situation. The uterus was about the size we generally see it in women, after that time of delivery. The size of the uterus is not uniform—we compared it with the size it generally is, about the fourth month in pregnancy. We cut it open, and found the coats about an inch thick at its fundus or superior part; the thickness of it gradually diminishing as we cut downwards towards the neck of the uterus. The internal surface of it was covered with a thick, glary mucus, approaching a greenish cast at the inferior extremity. The bladder appeared to be empty. We did not open it—it presented externally a slight reddish appearance. I did not consider it much more than natural. We then removed the skin and muscles from off the chest—the anterior part of it; and separated the sternum, or breast bone, from the ribs, by cutting the cartilage, by which they are connected; and we removed it entirely from the body. We then had a complete inspection of the contents of the chest. They were all in their natural situation; though much engorged with blood. The lungs were crepitous, as they should be, after death. We found the large veins leading to the heart much distended with a very dark, thick blood. We opened the pericardium, or covering membrane of the heart; it contained about an ounce and a half of bloody serum. We cut open the cavities of the heart, and found the right auricle filled with blood, which is not unnatural or unusual. The right ventricle beneath it was also filled with thick, dark blood, which was an unnatural appearance. The ventricles are empty after death usually. The left auricle and ventricle were also filled with blood. The appearance of the auricle was natural, the ventricle unnatural. The contents of the left ventricle was thick dark blood. We then proceeded to the head, and separated the scull cap from the scull bone, and removed the scull bone from off the brain. The *dura mater*, or covering of the brain, beneath the bone was much engorged with blood. We separated or divided it, which exposed the brain to view. The vessels covering the brain were also much distended with blood. We cut into the substance of the brain and found it also much engorged with blood. We opened the ventricles or cavities in the brain and found them containing no more fluid than

is natural. We opened the windpipe and found it natural. This closed our examination at the meeting house. As the stomach had presented disease and apparent cause of death, we took it with us to Muncy, to examine it further. We examined the chest, head and other parts, to ascertain whether there was any cause of death beyond what appeared in the stomach. The spleen was natural in appearance, a little enlarged and somewhat engorged with blood, and a little shrivelled on its external parts. A very slight change in the spleen and pancreas. The Fallopian tubes, (connecting with the uterus) at their fimbriated or fringed-like extremities, were much engorged with blood. The ovaria were white on the outside, and of a dark red appearance in the inside; they were unnatural in their appearance. The veins of the body wherever they occurred, were engorged with blood, and a general softening of the muscular parts of the body. We then proceeded to Muncy, and opened the stomach, and found it to contain about a pint of bloody serum, mucus, and portions of the internal coats of the stomach. I took several ounces of this substance home with me.

[Dr. L. here produced a vial which he alleged contained the fluid taken from Mrs. E's. stomach. He did not bring it to court with him, but sent home for it after he came here. He said "I consider it the same, with the exception of a little rain water. I tied it up the way it is, and it has not been since opened. Peter Sheddy brought it, and Mr. Kittoe gave it to me." Vial withdrawn until further identified.]

Dr. Ludwig, continued—We found the coats of the stomach much inflamed; the inflammation internally was more intense in some parts than others, corresponding with the external appearance of the stomach, which was also deeper in some parts than others. The different coats separated easily from each other. We then proceeded to make some chemical examinations of the contents of the stomach. In the evening we made some cursory examinations, but did not come to a conclusion decisively. We were detained at Muncy all night. In the morning of the twenty-first, we distilled some rain water * * * Dr. DOUGAL, Dr. PEAL and myself staid at Mr. Hoffman's. Mr. Hoffman is a tavern keeper in Muncy. The stomach and intestines were put into a bottle and left in Mr. KITTOE's shop over night. I think it was a bottle. We made experiments the evening before on the contents of the stomach. Mr. KITTOE was also present.

[Counsel for Prisoner objected to hearing any evidence in relation to the examination of the contents of the stomach on the twenty-first, as it was not in the possession of the witness over night, and must therefore be identified. The COURT sustained the objection; and the counsel for the commonwealth, to prove the identity, then called:—]

Dr. Edward D. Kittoe, sworn—I was at the Baptist meeting house, during the examination of the corpse of Mrs. Earls. After the physicians had finished their examinations of the body, the stomach and duodenum were wrapped up in a cloth and placed in a tin bucket, and covered with a wash basin. They were given into my charge, and I took them to Muncy, and kept them in my possession from that time until they were examined in Philadelphia. The contents of the stomach which we analyzed at Muncy, were taken from the body of Mrs. Earls. I was present at all the examinations in Muncy—they were made in my shop. I went out several times for water, &c. I keep a drug store. The physicians who experimented in the evening and in the morning, were Drs. DOUGAL, LUDWIG, and PEAL.

Cross-examined by Counsel for Prisoner—The contents were left in that shop over night; they were put in a bottle with a ground glass stopper. I did not sleep in the shop. The shop was a good substantial room. I did not sleep in the house where the drugs were. I locked my shop at night, and found it locked in the morning. The family of Cowden Hepburn lived in the house where I had my shop; the shop was one of the rooms of the house. There are three doors to the room; they were all well fastened. I found the articles in the morning, in the same situation that I left them in the evening.

Dr. Wm. H. Ludwig called again—In the morning we distilled some rain water and took a portion of the fluid taken from the stomach and mixed it with a small portion of the water distilled and added to the mixture a portion of *sub carbonate of potash*, and dip't into it a stick of *nitrate of silver*, which threw down a flaky precipitate of a pale yellow or straw colour. We took another portion of the contents of the stomach, added to it a portion of distilled water, and added a portion of *sub carbonate of potash*, as before, and then made a solution of the *sulphate of copper*, and poured the solution into the glass which contained the mixture; it threw down a copious precipitate of grass green, generally called *Scheele's green*. In the precipitates of both experiments, there was combined much animal matter. The appearances presented, led us to believe there was arsenic in the precipitate. We took some white arsenic of the shop, dissolved it in distilled water, and touched it with *nitrate of silver* in one glass—in another we poured the solution of the *sulphate of copper*; the one case threw down the *arsenite of silver*, and the other the *arsenite of copper*. The colour of the precipitates procured from the contents of the stomach were the same as those produced from the arsenic of the shop. We repeated the experiments several times over, and the conclusions obtained warranted us in the belief that there was arsenic in the stomach. That is all we did in the examination of the stomach. We put the stomach and its contents into two bottles, and sealed them both—the stomach and part of the contents were put in one bottle, and the major part of the contents in the other—and left them in the hands of Mr. KITTOE. We recommended the Coroner to have the stomach and contents sent to Philadelphia for further examination. I made no further analysis of the fluid I took home, but repeated the same experiments—I had no blow-pipe to produce metallic arsenic. The nails of the hands were of a dark livid appearance. The nails of the feet I did not observe. I think the gullet presented a natural appearance. I believe the death of the woman was occasioned by inflammation of the stomach, produced by arsenic. We did not discover any other cause of death, after a minute and careful examination.

Cross-examined by Counsel for Prisoner—There are other inflammations of the stomach which produce death. I found my belief that the death of Mrs. E. was produced by arsenic upon its supposed presence as shown by our tests. Inflammation of the stomach will produce redness. Redness of the intestines may be occasioned by ordinary inflammation, without the presence of poison. I cannot distinguish the redness which arises in ordinary cases of inflammation, from that occasioned by poison. The softness of the inner coats of the stomach, as spoken of may arise from other causes than poison. Also the softness of the coats of the intestines *might* have been occasioned by other causes than poison. From the anatomical examination I cannot distinguish whether the subject died from poison or other causes. The livid colour of the nails is sometimes the case in persons who have died from

other diseases; it is often the case where patients die from cholera morbus. The same result as to the blood in the covering of the heart may arise from other diseases than by poison. Inflammation in the internal parts of the stomach may arise from other causes than poison. Cannot always tell from the exterior of the stomach the difference between common inflammation, and that produced by arsenic. There are diseases which will produce the same mahogany colour in the external appearances of the stomach spoken of. The smaller intestines may in *post mortem* examinations present the same appearance of inflammation from other causes than poison. It is stated that the kidneys are generally affected when death is occasioned by arsenic. There was nothing unnatural in the appearance of the uterus. It is mentioned by some writers that the bladder is affected by poison—it may easily arise in a deranged state of the system.

[Here Mr. ELLIS, for the prisoner, inquired of Dr. L. whether the *Books* did not assign other causes, than the presence of arsenic, for all the unnatural appearances he had discovered in the *post mortem* examination.

Mr. ARMSTRONG, for Commonwealth, objected to the question, on the ground that it was too general and indefinite; he said the witness ought to be confined to his own professional knowledge; or if books were cited, they should be named that they might be referred to, and their authority tested. He thought, moreover, that the proper time to introduce the opinion of writers would be in the argument of counsel, after having the authority of the books properly authenticated by evidence.

PER CURIAM.—Proof of the medical science, by its professors, may be regarded as analogous to proof of foreign laws. This Court takes judicial notice of the laws of this Commonwealth, but the laws of other communities, (for instance Louisiana, which is governed, in part by the Roman civil law,) must be proved by persons acquainted with them. 15 *Sergeant & Rawle* 84. In doing so, practitioners are admitted to give their own knowledge and the knowledge of writers of authority, and to quote from them. *Haggard's C. R.* 216. The same may be done here, and the witness may also give his opinion of the relative standing of different writers on *Toxicology*. In giving the opinions of others he will, of course, be confined to such as are esteemed by himself to be writers of authority in the science which the witness professes. Subject to this qualification, the evidence is admissible.]

Dr. Ludwig, continued.—The veins of the body may be gorged with blood from other causes than death by arsenic. Any intense inflammation of the body might produce the same appearance. If there had been no suspicious circumstances connected with this case, I would not have suspected the presence of arsenic without the chemical process. The intensity of the inflammation might have led us on to make the examination. The general effect of arsenic, after it is taken is to create nausea, vomiting, a sense of burning heat in the stomach, and in the œsophagus or gullet, pains or spasms of the stomach, retching or an effort to vomit, and pain about the stomach and throughout the system. These I consider the more general symptoms of arsenic in the stomach. Intense thirst is also generally an attendant. Gripping of the intestines, diarrhœa, and frequent purgings, sometimes attend it—not so frequent as the others. Blood might issue from the ears, nose, stomach and eyes—and there may also be a discharge of blood and mucus by the diarrhœa. Spasms of the extremities in the latter stages—they may occur in any stage of it. I would not think that the mouth would look burnt in general. It might in a protracted case, as a natural consequence of disease.

The brain may or may not be affected. There was nothing about the brain of this subject indicating arsenic. I am not prepared to say that delirium attends the latter stages of it. It may or may not.

Adjourned till three o'clock, P. M.

AFTERNOON SESSION.

Dr. Wm. H. Ludwig, continued—The experiment with the *nitrate of silver* was not aided by heat—nor was the experiment with the *sulphate of copper*. We distilled the water and then took it as we needed it. I know a substance in chemistry named *white arsenic*—it is not a full chemical name. Arsenic is a metal—in its metallic state it has the appearance of burnished steel. It is sold by druggists as *white oxyde of arsenic*—or *arsenious acid*—or *ratsbane*—or simply *arsenic*. As a chemist, I would call it *arsenious acid*. It is called an acid in consequence of its having some of the properties of an acid. It is not sour. It is from its ready combination with the fixed alkalies, and its changing of colours, that it is called an acid. I am not prepared to say whether in its metallic state it is poisonous. *Arsenite of lime* is a muddy white—may be considered as white—it would depend upon the purity of the lime. The fixed alkalies, soda and potash, will decompose the *nitrate of silver*. I do not recollect what would be the colour of the precipitate thrown down. It is supposed by chemists that *arsenious acid*, alone, will not decompose the *nitrate of silver*. The test of the *nitrate of silver*, used by us, cannot be relied on as an infallible proof of the presence of arsenic. I think we added no *ammonia* to the *sulphate of copper* test; I do not recollect. We followed some of the formulas, but what one I dont know, in making the experiments. I weighed the articles and made the solution. I have heard that a decoction of onions will produce the same result as the test of the *sulphate of copper*. The *Scheele's green* test has been questioned, and is not considered conclusive evidence of itself. Dr. PARIS considers the two tests (*sulphate of copper* and the *nitrate of silver*) if properly conducted, conclusive. We burnt some of the precipitate, but it was not a fair test—I was not sensible of an alliaceous odour, from the experiments we made. We did not attempt the reduction of the metal. Among the opponents of the doctrine of crusts, or rings, it is contended that there are other substances that will produce rings similar to the arsenical rings. There is no one test that I would rely on alone as positively indicating the presence of arsenic in suspected matter. I would not rely upon the single test of the metallic ring of itself. Arsenic is never found isolated from other metal; but is generally found with tin, lead, iron, silver, cobalt, &c. It is kept in the shops for sale in the shape of *arsenious acid*—*Scheele's green*, as a grass green paint—also, as a yellow paint called *orpiment*. It is also used in the arts, on watch seals, colouring glass, &c. It is sold in connection with cobalt, as flystone. There are various opinions as to the quantity of arsenic a pint of boiling water will take up. Some chemists say one part of arsenic will be dissolved by eighty parts of water. I dont recollect the proportion. Dr. Coxe's American Dispensatory, is good authority. The works of Henry are considered good authority. All authorities we consider liable to be tested. Dr. Beck is one of the standard writers on Medical Jurisprudence. Ryon's work I do not know. Wood & Bache's Dispensatory is good authority. I know nothing of Chitty's Medical Jurisprudence. Nicholson's Chemistry I do not know. Turner's Chemistry is good authority. I would consider the test of *nitrate of silver*, *sulphate of copper*, *sulphuretted hydrogen*, the production of the metallic ring from the precipitates thrown

down with the other experiments, breaking the glass and taking out the ring, putting it between plates of copper and heating it, and producing the alliaceous smell, a decisive test of the presence of arsenic. The plates of copper would not be necessary to the production of the alliaceous odour. It could be done on coals. It is generally heated on plates of copper for the white ring it makes. I do not enumerate the white ring as necessary. The others without that white stain or ring I consider a decisive evidence of the existence of arsenic. The alliaceous odour of itself is a very uncertain test. It has been found that heated charcoal with potash, between plates of copper, will produce the metallic lustre or white ring. I think there is a preparation of mercury, that will produce the metallic crust on glass—it is called *cinnabar*, or *sulphuret of mercury*. It may be made so as to resemble, very accurately, the arsenical ring. The results of tests made by re-agents would depend wholly for their accuracy upon the purity of the re-agents themselves. I did not examine the *nitrate of silver*, chemically, at Mr. KITTOE'S shop. Potash is produced as a metal in every degree of impurity. We used the *sub carbonate of potash*—but did not use a chemical test to ascertain its quality. It had the usual characteristic appearances. We did not try the purity of the *sulphate of copper* or the *nitrate of silver*—they had the usual appearances of those articles. I have repeatedly said that I did not consider our experiments conclusive; but the agents employed had the proper appearance and produced the results anticipated.

Re-examined by Counsel for Commonwealth—The two tests we tried at Muncy I do not consider conclusive; but the results connected with the symptoms led us to infer the presence of arsenic. In any case, if the general symptoms I have enumerated appeared, I should consider it a case of poison, and treat it accordingly.

[Counsel for the commonwealth again offered in evidence the vial alluded to, in the testimony of the witness last examined, said to contain a portion of the fluid, found in the stomach of Mrs. Earls; and to identify it further, called]

Peter Sheddy, sworn—[*Vial shown him.*] I got a vial like this from Samuel Derr, to give to Dr. Ludwig. It was wrapped up in a newspaper. I got it at Mr. Derr's house next door to Dr. Ludwig's. I took it and put my handkerchief round it, and brought it up here and gave it to Dr. Kittoe, by order of Dr. L. I met Dr. L. on his way home.

Cross-examined by Counsel for Prisoner—It appeared to be a vial that was in the paper. I did not open it. I can't say what was in the paper, but its appearance was like this. I was not at Dr. L's house to get it.

Dr. Edward D. Kittoe, called again—[*Vial shown him.*] This is the same vial I received from Peter Sheddy. I gave it to Dr. Ludwig.

[THE COURT decided against receiving the vial, upon the ground that it had not been sufficiently identified.]

Dr. John Peal, sworn—I was one of the physicians who attended at the burying ground. I was present when the body of Mrs. Earls was disinterred and opened. I assisted in the examination. I have heard the testimony of Dr. Ludwig.* I was one of the persons with whom the stomach was

*As Dr. P. was proceeding to give a detailed account of the *post mortem* examination, he was requested by the counsel for the commonwealth, in view of the time that had already been occupied on that subject, to omit it altogether, and proceed at once to an account of the chemical analysis at Muncy.

left after it was taken from the deceased. It was taken over to Muncy to Dr. Kittoe's drug store, for further examination. We took it from the bucket in which it had been deposited and put it in a basin. In presence of Drs. Dougal, Ludwig, and myself, there was an incision made into the stomach, which we found to contain about a pint of bloody matter, consisting of serum, mucus, and detached portions of the internal or lining parts of the stomach. We then proceeded to make some chemical tests of the fluid. I believe the first was with the *nitrate of silver*. We took some of the fluid from the stomach, and added to it some distilled rain water, and *sub carbonate of potash*—we touched the surface of the fluid thus combined, with the *nitrate of silver*; the result was a copious deposit of a bright yellow precipitate of a flocculent appearance. That was the first test. The next was, we took some more of the distilled rain water, *sub carbonate of potash*, and some of the fluid from the stomach, combined as in the first test, to which we added a solution of *blue vitriol*, or the *sulphate of copper*; the result was a copious grass green precipitate, called *Scheele's green*. That closed the second test. The result of each test indicated the presence of arsenic. Those two tests were all we applied to the contents of the stomach. In the next place we tested the arsenic of the shop, furnished by Dr. Kittoe, by distilled rain water, *sub carbonate of potash*, and a solution of the *oxyde of arsenic* of the shop. We touched the surface of that with the *nitrate of silver*, and found it to produce a sediment, resembling in appearance, the result of the first test. It was the same in appearance with the result of the first test exactly—the yellow flocculent. We then took distilled rain water, *sub carbonate of potash*, and the arsenic of the shop, to which we added a solution of the *sulphate of copper*, and found it to produce a precipitate of the same appearance as the second experiment on the contents of the stomach, viz: *Scheele's green*. From the examination of the body, and the results of the tests, we were led to believe that the death of Mrs. Earls was occasioned by arsenic—we found no other adequate cause for her death.

Cross-examined by Counsel for Prisoner—The intensity of the inflammation in the stomach would have been sufficient to destroy the patient, if there had been no arsenic. The appearances were the same as might have been seen from other causes producing the same degree of inflammation. I saw two or three stomachs while attending the University, which were taken from subjects, who died of inflammation of the stomach, that did not present the same appearance on account of having no detached portions of the inner lining or coats with them. The external appearance of this stomach was of a bright red, darker in some spots than others. The internal appearance corresponded with the external, with the exception of the detached parts of the coats. There may be other diseases beside poison, that would detach the inner parts of the stomach. The greater part of the small intestines appeared in a high state of inflammation—the internal coat was loose in some parts and highly inflamed. There might be other diseases which would produce the same effect. There was nothing in the appearance on dissection that might not have been produced by other causes than arsenic. *Arsenious acid* is used by naturalists in preparing birds. The presence of arsenic cannot be determined by the *post mortem* examination without a chemical analysis. I took no notice of any unusual rigidity of the limbs of the subject. We did not use lime water as a test. It is considered a very delicate test by some authors. We did not use the *sulphuretted hydrogen* as a test. We did not dry any of the precipitates nor burn them, nor did we attempt to

reduce the metal from the precipitates. I consider the *nitrate of silver* a very good test; but would not rely upon it solely. I would not consider the two tests used conclusive. I mean the tests alone, unconnected with the examination of the body; and I would not consider the examination of the body, of itself, as evidence of arsenic, leaving off the chemical tests. I did consider the examination of the body, and the chemical tests used at Muncy, as conclusive evidence of the presence of arsenic, without reducing the metal. I believe I would have to think there was arsenic. In our own opinion we concluded positively there was arsenic in the stomach; there is not the least doubt remaining on my mind on the subject. We concluded to have it tested further, to verify our opinion. I think the writers on medical jurisprudence that I have read, all agree that the reduction of the metal is necessary to prove the presence of arsenic—it may be so, but I am not sufficiently acquainted with the subject to say that it is so. I would suppose that there were other conclusive tests, but I cannot say what they are. We sent the stomach and a portion of the contents to Philadelphia to have them further tested. It just occurs to me that Dr. COXE, a very able author, considers the *nitrate of silver* and *sulphate of copper*, as infallible tests without the reduction of the metal. I am not prepared to say whether he considers it infallible for chemical and medical purposes only, or also sufficient in medical jurisprudence. I have not known in my practice, the common causes of inflammation to hurry a patient off with as much rapidity as was the case in this instance.

Re-examined by Counsel for Commonwealth—I think nothing but poison would produce so high a state of inflammation in so short a time.

Cross-examined, again, by Counsel for Prisoner—I have not seen any cases of death by cholera. Common cholera morbus produces rapid inflammation in some cases. The suddenness of the death from inflammation in the stomach is not of itself a proof of poison.

Dr. Edward D. Kittoe, called again—After the physicians had finished their examination, of the contents of the stomach at Muncy, the stomach itself was placed in a glass jar, which was stopped by a cork, and sealed over with wax. I should have stated that the stomach was previously covered with diluted alcohol. The contents of the stomach were put in a bottle with a ground glass stopper, which was also sealed over. Both vessels were labelled. They were sealed in the presence of the Coroner, and given into his care by the physicians, and by him again transferred into my care. They were packed in a box, and remained in my care, until I delivered them to Dr. JOHN K. MITCHELL. I delivered them to Dr. MITCHELL, in Philadelphia, on the Monday following, who immediately proceeded to make experiments. The jars were opened in my presence. I was present during the whole of the experiments, and assisted at all of them. The first experiments performed were tried upon the fluid which had been contained in the stomach. They were the usual ones of *ammoniated nitrate of silver*, and *ammoniated sulphate of copper*. These tests being applied to the liquid contents of the stomach, produced no satisfactory results, owing to the quantity of animal matter held in solution. Upon examining the bottle which had contained the contents of the stomach, there was discovered at the bottom a white powder, which was supposed to be the suspected poison. A portion of it was removed into a watch glass, and dried by the heat of a spirit lamp. A portion of it was then mixed with black flux, put into a glass tube, and heated to redness, by the aid of a blow-pipe. The product was a

fine arsenical ring—the same which I hold here. [Witness produced a small glass tube containing a very distinct metallic ring.] The specimens are marked with a diamond pen. This tube is marked “Earls—27th October, 1835—solid found.” Some particles of the crust or ring were removed and put upon a live coal, and gave out the arsenical odour. It is said to smell like garlic. Other fragments of the ring were put into a drop of ammoniated sulphate of copper, and formed the Scheele’s green; it was dried and is here; this is it—[producing a pill box.] It was placed in a pill box, and marked on the lid in my presence, “J. K. M. Dry arsenite of copper.” The blue ground is the crystallized blue vitriol, or sulphate of copper—that portion which did not enter into combination with the arsenic. After these experiments were performed, a part of the same white powder, found in the bottle, was dissolved in boiling distilled water, and a small portion of that solution was placed in this tube, and a drop or two of ammoniated sulphate of copper put into it on the end of a glass rod—it precipitated a Scheele’s green. [Produced a small glass tube containing a grass green liquid.] This tube is marked “Earls—arsenite of copper.” It is hermetically sealed. A part of the same solution of the powder was placed in another tube and a drop or two of ammoniated nitrate of silver put into it on the end of a glass rod; it threw down a copious canary yellow precipitate, which is here. [Produced a glass tube containing a dark coloured liquid.] This tube is also hermetically sealed and marked with a diamond pen “Arsenite of silver—Earls.” It has since that time become black by the action of the light. After that a part of the same solution was tested with lime water, in this tube, and threw down a white flocculent precipitate. [Produced a glass tube containing a liquid corresponding with the witness’ description.] This was also closed, and marked “Earls—Arsenite of lime.” These tubes are not marked in my hand writing, but were marked in my presence. The remaining portion of the solution of the powder was precipitated by a stream of sulphuretted hydrogen gas—the precipitate was a deep sulphur yellow. A part of the same was placed in this vial; the top of which was unfortunately broken, the morning I left Philadelphia. There are, however, some particles of the precipitate adhering to the sides of the vial. [Produced a broken vial as described.] This vial was marked “Sesqui sulphuret of arsenic.” They were all marked with a view that I might identify them. I should have stated that the solution before submitting it to the sulphuretted hydrogen was slightly acidulated with muriatic acid, for the purpose of destroying any alkaline matter it might contain. The rest of the precipitate was dried, mixed with black flux, placed in a glass tube, heated to redness and produced an arsenical ring. It is marked “Earls—from orpiment.” [Produced a glass tube containing a clearly defined metallic ring.] After these results I was asked whether I considered the experiments tried sufficient? I replied yes. A portion of the sediment (white powder) actually found in the bottle which contained the contents of the stomach, was placed in a glass tube and sealed and marked, “Earls—found among contents of stomach.” [Vial produced containing a white powder.] This is a part of the same powder we experimented upon.

[Counsel for the commonwealth proposed to ask the witness, “from all the experiments made, upon a part of the same sediment or powder, what is this produced in the vial?”]

Counsel for the prisoner objected, alleging that the witness had formed his opinion from the result of the tests—those tests and their results are now

in evidence before the jury, and it is their province to form their own conclusions in relation to them. If the witness has any further facts to relate, we will hear them; but inferences from those facts belong to the jury.

THE COURT without hearing the counsel for the commonwealth, decided that the question might be asked—to which the witness replied:—]

Dr. E. D. Kittoe, continued—From all the tests, taken in conjunction, I should say it is arsenic, *indubitably*. These results have been in my possession ever since that time. The contents of those tubes or vials are what I have stated them to be. Those several tests and the precipitates thrown down indicate the presence of arsenic. I should suppose any quantity of arsenic, over three or four grains, would produce death. I don't feel qualified to answer the question, whether there is sufficient quantity in the last vial to occasion death. Dr. MITCHELL conducted the experiments in my presence. I have made chemistry my study. There are some other experiments—the ones tried are the most approved methods of detecting arsenic at the present time.

Adjourned until nine o'clock to morrow morning.

SATURDAY MORNING, FEBRUARY 6.

Dr. Edward D. Kittoe, continued—I have also studied medicine. I should pronounce chocolate capable of holding a large quantity of arsenic in suspension. Although I have made medicine my study, I never graduated at any of the Universities, and therefore should not feel warranted in giving an opinion, on the question whether any substance but poison would produce such an appearance of the coats of the stomach as described in the case of Mrs. Earls. I know of no substance, except poison, which would produce so great a degree of inflammation in so short a time.

Cross-examined by Counsel for Prisoner—There are several opinions upon the solubility of arsenic in water. One part of arsenic will dissolve in eighty parts of cold water—water at sixty degrees. Thirteen parts of boiling water will take up one part of arsenic—upon the solution cooling, I think it will not retain more than three parts of arsenic in one hundred parts of water. I don't recollect the specific gravity of arsenic or chocolate. It is the opinion of the best writers, that there is no one test that can be relied upon as absolute verity, in regard to the presence of arsenic. I consider the reduction of the metal as the highest possible test: as an individual test. The alliaceous odour, individually, is not satisfactory. The sense of smelling is one of the most imperfect senses. There may be great uncertainty in colours, as tests; first, affected by light, and then by any foreign matter in the suspected substance—the light should be reflected. Chocolate is made of the cocoa nut; it is generally prepared with some greasy matter—old butter, I believe. It contains in itself a good deal of vegetable oil. Cannot say whether there is tannin in chocolate; there is tannin in teas. Tannin would prevent the action of some of the tests; it would alter the action of the test of *ammoniated sulphate of copper*. I do not know that chocolate contains an alkali; it is said by a distinguished French chemist that coffee does. In order to determine the character of an article, chemical tests are stronger evidence, than its mere external appearance could be. We did not reproduce the *white oxide* from the metal; we considered the other tests conclusive. I was present and assisted at the chemical examinations in Muncy; the metal was not produced there. There was a large quantity of foreign matter in the substance subjected to our chemi-

cal analysis at Muncy. I was by no means satisfied that the examinations at Muncy furnished conclusive evidence of the presence of arsenic. I did not examine, chemically, the re-agents used in Philadelphia; they were made expressly for the purpose, with the utmost care; I did not make them; they were made in my presence. I did not sleep in the laboratory of Dr. MITCHELL—it is not customary for any one to sleep in laboratories, I believe. It took from Monday till Thursday to make the examinations in Philadelphia; parts of Monday and Thursday were included. I boarded in Third street above Arch; the laboratory is at the Medical Institute, in Locust street above Tenth. We devoted the whole of each day, except the hours of meals, to the examination. The contents of the stomach were locked up in the laboratory when I went away, and always upon returning, were precisely in the same situation that I left them. The key of the laboratory was in the possession of Dr. MITCHELL. While engaged in this examination, we were visited frequently by other scientific gentlemen. The visitors consisted of some of the first practitioners of medicine in Philadelphia. There were also several chemists. Cinnabar will produce a ring similar to the arsenical ring. I know of no other mineral that will. Cinnabar is an ore of mercury—it is the *red sulphuret of mercury*. I have made some of these experiments myself, but have none about me. Arsenic is said by some writers to be anti septic, that is, prevents decomposition of dead animal substances. It is said to have a mechanical action on the stomach, when thrown into it in large quantities. Some high authorities say it is a caustic upon living matter. From the whole appearance of the stomach of Mrs. Earls, I should suppose there could be no disease but that occasioned by some acrid matter taken into the stomach, that would produce the effects which were observed in it. I never saw a case of cholera. [Here Mr. ELLIS handed to witness two vials containing imperfect metallic rings.] These vials contain imperfect rings produced by cinnabar. If there had been cinnabar present when we applied the *sulphuretted hydrogen* test, the precipitate would have been red. The yellow tinge on the metallic ring produced by Dr. DOUGAL, is accounted for, by its having been made from *orpiment*, or *sulphuret of arsenic*. I made the rings of cinnabar in these vials, at Mr. THOMAS HALL's hotel in this town. This ring is not so uniform as the arsenical ring, nor is it precisely the same colour. I suppose the colour is owing to the impurity of the cinnabar, from which these rings were made. There can be rings made from cinnabar which the best judges cannot distinguish from arsenical rings. *Corrosive sublimate* approaches nearer to the white powder exhibited here, than any other preparation of mercury. *Corrosive sublimate* is a poison. *Calomel* is the *sub muriate of mercury*; it is extensively used as a medicine. *Tartar emetic* is the *tartrate of antimony*. The preparations from antimony are also poisonous. *Tartar emetic* is a poison. I cannot say whether boiling water would take up the same quantity of arsenious acid if there was animal matter in the water, as it would if the water was pure. *White oxyde of arsenic* is most easily dissolved of any preparation of arsenic; it is readily taken up by oils—vegetable oils and fatty matter. The quantity of the contents of the stomach used at Muncy and taken away by Drs. Dougal and Ludwig, was about four ounces in all. There are sixteen ounces in a pint—fluid ounces. There could not have been less than three drachms of the powder found in the contents of the stomach in Philadelphia. We by no means supposed we had it all extracted from the contents of the stomach. There was nothing found in the stomach, but the bloody fluid, the powder and some flaky ma-

cus; among the powder was a small quantity of sand. I should suppose there had been a considerable quantity of arsenic thrown off the stomach; by vomiting. White arsenic is an oxyde of the metallic arsenic, formed by roasting the ores of cobalt in Saxony. It is found combined with other matters besides cobalt. Native or metallic arsenic is said to be not poisonous. Cobalt or fly-powder is known to be poisonous. It is used in its metallic state to give metal a lustre; it is used in making several metallic alloys. As an alloy it is generally deemed innocuous. I have, perhaps rashly, several times placed arsenic in my mouth; I never could distinguish any peculiar taste in it.

Re-examined by Counsel for Commonwealth—There are other articles which will produce a green besides arsenic—not *Scheele's green*, nor precisely similar. If *cinnabar* was present in place of arsenic, the precipitate would not be the same in any of the tests that we applied. If *corrosive sublimate* was present, the precipitates would not be the same as those produced; nor would *tartar emetic* produce similar precipitates. To make the matter short, there is no other article than arsenic, can produce all those results. The production of the metallic ring is considered the highest possible test.

Cross-examined again, by Counsel for Prisoner—I have answered that the production of the metallic ring is the highest and best possible individual test; but there are writers on the subject who deny that this test alone can be relied on.

Dr. James Hepburn, sworn—The *cause* of cholera might produce a state of disease as rapidly fatal as arsenic. The *cause* of yellow fever may also act as violently. I never have had a case of cholera, or yellow fever; we have had in this country high grades of bilious fever, rapid in their course, and resembling yellow fever. The inflammation here described, is said to have been very intense. It is not often that those intense appearances of inflammation will occur so soon. Those appearances may occur thus early in febrile diseases; I cannot say certainly; the vessels may be speedily distended with blood by congestion. The common symptoms of poisoning by *arsenious acid* are: an acrid taste, nausea, anxiety, vomiting, diarrhoea, pain in the region of the stomach, inflammation of the lips, tongue, palate, throat and œsophagus, pulse small, frequent and irregular, or slow and unequal, with oppressed breathing, palpitations, syncope or fainting, intense thirst, pains in the limbs, spasms, skin cold and clammy, frequent sinkings, convulsions and death. Dr. CHRISTISON divides the poisonous effects of *arsenious acid* into three orders of cases, according to the character and violence of the symptoms. In the first order, the poison produces symptoms of irritation, and inflammation along the course of the alimentary canal, and commonly kills in from one to three days. In these cases the quantity of arsenic taken is supposed not to have been great. In the second, the signs of inflammation are moderate, or even altogether wanting, and death occurs in from five to six hours, at a period too early for inflammation to be fully developed. In these cases the quantity of arsenic is generally large. In the third class, death is protracted for at least six days, sometimes much longer, or recovery may even take place, after a tedious illness; and the inflammatory symptoms are followed by those referable to nervous irritation, such as imperfect palsy of the arms or legs, epilepsy, tetanus, hysterical affections, mania, and coma. Here the quantity of arsenic taken is small, or a portion of it thrown up by vomiting. Discoloration of the skin after death, is not considered evidence of poisoning. The appearance about the nails, and ends of the fingers, as described, is a symptom before death. In

Mrs. Earls' situation, with the violent pain and distress under which she seems to have suffered, fifty drops of laudanum would be a moderate dose. I would have given that quantity. In her situation the system might have been more susceptible of the immediate action of deleterious substances. The existence of *arsenious acid* can be conclusively proved by tests, or reagents, where the quantity to be experimented upon is not too small. The *sulphuretted hydrogen gas*, the *ammoniacal sulphate of copper*, the *ammoniacal nitrate of silver*, *lime water*, the reduction of the metal, and the arsenical odour, are the most approved tests. I mean the production of the metallic ring.

Cross-examined by Counsel for Prisoner—It is not possible to determine by a *post mortem* examination, alone, whether a subject has died of arsenic. There is no anatomical appearance, by which you can judge of the actual presence of arsenic. There are appearances which would lead us to suspect it. The appearance of the patient before death, could not determine positively the presence of arsenic. The tests of *sulphate of copper*, and *nitrate of silver*, are not, alone, sufficient tests of arsenic, in a criminal case. About five grains of *arsenious acid*, would destroy life. It is probable death would not take place very soon, two or three days—might be four days or more. It might be some time before so small a quantity would begin to operate. ORFILA says no symptom has been observed for five hours. One thousand parts of boiling water, will take up in solution one hundred and fifteen parts of *arsenious acid*, of the *opaque* variety, and on being cooled down to sixty-nine degrees, Fahrenheit, will only retain twenty-nine parts. One thousand parts of cool water, will dissolve only twelve and a half parts of *arsenious acid*, after having stood at least twelve hours. There are four hundred and eighty grains in an ounce. Sixteen fluid ounces in a pint. A pint of pure water, would dissolve more arsenic than if it contained animal or vegetable matters. For the weight of a liquid pint, in Apothecary's weight, see *Wood & Bache's Dispensatory*, page 1119. Pure chocolate is composed of the cocoa nut, but is generally adulterated with other farinaceous substances, as rice flour; and fatty matters, as butter and lard; sugar; and spices, as cinnamon; vanilla is also sometimes added. I do not think chocolate, would take up as much *white arsenic* in solution, as water. I think a pint of chocolate, of the temperature at which it is usually drank, would not dissolve two drachms, in the course of fifteen or twenty minutes. If chocolate was continually agitated, a large quantity might be kept up in suspension. If there were solid food in the stomach, a portion of the arsenical powder, would no doubt attach to it, and be thrown up by vomiting. All that the chocolate would retain in solution, would of course be thrown up with the chocolate, and all that which it held in suspension. I think a good deal of it would come up in this way.

Examined by the Court—With any of the preparations of mercury, likely to be mistaken for the *white arsenic*, the *sulphuretted hydrogen* will throw down a dark precipitate, instead of a yellow, which it does with *arsenious acid*. Lime water is also a test, between mercury and arsenic; if the suspected powder was *corrosive sublimate*, lime water would throw down a yellow precipitate, instead of a white, as it does with the *arsenious acid*; lime water throws down a black precipitate with calomel.

Cross-examination by Counsel for Prisoner, resumed—RYAN and CHRISTISON say that a high state of inflammation will not take place in a few hours from this poison. My impression is, that it would require a longer

time to produce the appearances of inflammation in this case, than seems to have occurred.

Examined by the Court—In cases of sudden death from arsenic, it is supposed to act immediately upon the nervous system, interrupting the vital functions, especially those of the heart and respiratory organs. When the lungs are thus affected, the venous blood is no longer decarbonized there, but is returned to the left side of the heart, in its dark venous state, from which it is reluctantly propelled through the arteries, (instead of the revived bright arterial fluid,) to the various parts of the body, but totally unfit to support life, producing engorgement and congestion of the capillary vessels, especially those of the brain, and abdominal viscera. There is a case mentioned in the books, of a person who took a large quantity of arsenic, I think half an ounce, mixed up in a tumbler of water, in which death took place immediately, no mark of disease remaining.

Cross-examination continued—CHRISTISON is considered the best English, and ORFILA the best French, author on Toxicology. No one of the tests, taken by itself, will amount to more than a probability. Five tests will of course be five probabilities. You commence with one probability, but taking them in connection with each other, as you proceed, each strengthening the other, they increase in force, and presently amount to certainty. I think a fair presumption of certainty, as to the presence of arsenic, arises from a number of tests. The *ammoniacal nitrate of silver*, and *ammoniacal sulphate of copper*, as tests of *arsenious acid*, are rendered uncertain by the presence of vegetable and animal matters, in its solution, when the suspected poison is small in quantity, and only a slight change of colour anticipated. Having precipitated the *sulphuret of arsenic*, by the action of *sulphuretted hydrogen gas*, and from this produced the arsenical ring, or metallic crust, the arsenic will then be freed from animal or vegetable matter, with which it might have been mixed in the stomach of the deceased. If one of these tests, on being applied to a portion of the metal thus obtained, produces its characteristic result, you will then have more than a probability. The *ammoniacal sulphate of copper*, was thus applied in this case, producing its appropriate result, viz: *Scheele's green*, and this to my mind is a certainty.

Re-examined by Counsel for Commonwealth—The appearances of inflammation would be in proportion to the time the arsenic was in the stomach. There would be time for inflammation in seven or eight hours. All symptoms are more or less dependant upon circumstances.

Adjourned till three o'clock, P. M.

AFTERNOON SESSION.

Susan M'Callaster, sworn—I have heard Earls say he would lay his wife asleep. I heard him say this three times. It was before last christmas a year once, and twice after new year's a year. Once I heard him say she ought to have her throat cut. Marinus' wife was by I think when he said it. I heard him make no threats but these. I saw him poke her into the trough once at Mr. Mangus'—it was the water trough. He bent her over the trough backwards; it had water in it; it was a fountain pump. There was snow on the ground. She was abused and very much wet; and he tore the clothes off of her. I can't tell exactly how long he kept her in that situation; but I suppose about twenty minutes or so. Mrs. Marinus came to her assistance and relieved her. Betsey Mangus was present—there were different ones round, but I can't tell who they were. I went down with Mrs. Earls. The first I saw of Mr. Earls at that time, was at Mr. Mangus'. Mr.

Moritz was in company with him, and Maria Moritz also. I saw them first down at the bridge at Mangus'. Mrs. Earls did not say any thing that I heard—he said nothing to her while he was putting her in the water. I saw him last new year's a year, take and throw her out into the kitchen. He took her from the breakfast table by the neck and jerked her from the room out into the kitchen—then he brought her back into the room again by the hair! He caught hold of her hair and pulled her into the room. She was standing up then when he fetched her into the room again. He said nothing to her. I went to tell Mr. Griffin, to come up, for I was afraid Earls would kill his wife. Mr. Griffin went up; I did not go back. I saw him whip her once afterwards, that was after new year's. I was not living with them at that time. I saw him haul her over the floor twice with a stove rake; the rake was made of iron; a cross piece of iron fastened on wood. This was the morning before he poked her in the trough. He had the rake right under her chin, the iron part of it, and hauled her. She lay lengthwise on the floor on her back. I saw the commencement of it. She was sitting at the stove when he came in, and then he took up the rake and she took hold of it and he slung her round and threw her on the floor. I did not hear him say any thing at all. He was scolding her that she had not something for him to eat when he came home. It was between 12 and 1 o'clock in the day. He said nothing more to her till he got the rake. Mrs. Earls said nothing at all, that I heard.

Cross-examined by Counsel for Prisoner—I live in Milton; I have lived there about eight or nine weeks. I live with Wm. Morrison. I lived with Mr. Daniel Griffin before I went there; I was there about nine weeks—I was there when Katy Earls died, and remained there until the last court. I am not married. I lived at Mrs. Callahan's before I lived at Griffin's, and at Mangus' before that. I lived at John Earls' the first summer they moved up from Milton to Muncy; I came with them and remained about seven months, and then left them. I was at Griffin's when I heard Earls say he would lay his wife asleep. I still went to Earls' backwards and forwards. I was at Earls' at the time. I cannot write. Nobody put this down. I think Mrs. Marinus was there once, when he said he would lay his wife asleep. He said he would lay her asleep some time or other. Mrs. Marinus was in the room or kitchen—she was in the house. Earls and his wife were quarrelling together when he said it. He did not say she had better been asleep. Old Mrs. Earls was not by—Susan was. Don't know that Mary was; I saw Susan. I never told this to any body that I know of. I don't know when I was summoned to court. I told it first in Pennsborough, before the squires. He said it two or three times—can't remember when he said it. He did not say how he would lay her asleep. They were quarrelling together when he said it. Earls did not appear to be angry when he said it. She was not angry—they were quarrelling without being angry. He said good naturedly he would lay her asleep; and laughed about it at the same time. Katy would kind of smile. I did not laugh. I don't mind whether Mrs. Marinus laughed, nor whether Mrs. Marinus and I talked about it afterwards. Don't mind that I said any thing about it at all. I never told Mrs. Callahan. I heard John say it three times, and he'd laugh about it. I never see'd him in any other way than laugh when he was in the worst of his anger. She did not laugh—she kind of smiled after he went out of the room. I can't tell whether he was angry when he said this. I can't tell whether he kept her more than twenty minutes bent over the trough. I suppose it is about three quarters

of a mile from Earls' to Mangus', I never measured it. I went with Mrs. Earls down to Mangus'. Earls had a horse and sleigh with him—he drove down to Mangus' with the horse and sleigh. I was going down and she came running after me. I saw her catch hold of his horse's bridle there, before he put her in the trough. He bent her backwards right into the water. Oh yes, it did so wet her, we had to strip her in at Mangus'. I ran for Mrs. Marinus and she came out. He had her in the same situation when Mrs. Marinus came out. I did not hear him say any thing to her, before he put her in the trough. The horse was hitched fast to the fence by the trough. No person was in the sleigh then; old Mr. Moritz was in till he got to the bridge, there he got out. Mr. Earls got out to lay the fence down. Mrs. Earls held on to the horse, and I said "Katy let the horse go"—she still held on. Mrs. Marinus took up a club or a stone to hit John. I did not interfere. John left his wife go and ran after Mrs. Marinus into the house. This was a year ago this winter. I can't tell whether there was ice in the trough; there was ice outside pretty thick where he bent her over. It was moonlight. The children were all by when I saw Earls draw his wife from the breakfast table, last new year's a year. I lived at Griffin's, and just went up before he came home. She just had breakfast ready. Dan Griffin was not by. I went down and sent Mr. Griffin up there. Earls ordered his wife to take the bucket out from under the stove, where he had his lamprey eels in. She told Mary to go and do it; and he said *she* should do it. She said leave it stand till after breakfast, and she'd carry it out. Then he got up and took her by the neck and says, "I'll *make you* take it out." Then he pushed her into the kitchen, and pulled her in again by the hair. Then I went away—I had had my breakfast. Mrs. Griffin I think had sent me up for something; I ain't sure. John did not laugh any, he was very angry that morning. I had been there but a few minutes when John came home. I went down and told Mr. Griffin he should go up, for I was afraid Earls would kill his wife. Griffin went up. Mrs. Griffin did not go up. Can't tell whether it was before or after this he hauled her over the floor with a coal rake—don't know whether it was before or after new year's. There was no one by but myself. Mrs. E. and John were not quarelling about me. I lived at Griffin's then. It was between 12 and 1 o'clock—it was in the winter, that very day before he put her in the trough. She hollowed something, but I went out of the door. I think she had not hold of the rake. He pulled her from the stove towards the window. He threwed her down. She was sitting at the stove, he came in and said why have you not something to eat? She said something, then he up with the coal rake, and she caught hold of it—she lay on her back and let him pull her. I lived at Griffin's. I think I told Mr. Griffin to go up that Earls had his wife on the floor with a coal rake. I had no suspicion he was going to kill her. Sechler's is nearer to Earls' than Griffin's is. It is about one hundred rods to Griffin's. The old woman was not by—Susan was, she ran out in the kitchen. Can't tell where Mary was; I think she was living some where or other. I saw Earls whip his wife once, but I can't tell who was by. I lived at Griffin's then; and had been washing at Earls' that day. It was after dinner—I was hanging the clothes out—don't mind what Mrs. E. was doing, and don't know what he whipped her for; he was whipping her when I came in. He struck her across the back with his hand, and put her out of doors. I can't tell when this was—it was long before last christmas was a year. Katy was not drunk, I think; I never saw her drink any liquor. He pushed her out of the door, and hit her across

the back with his hand. The weather was warm then. This was at the shantee; some folks were in the kitchen, but I can't say who they were. This shantee is the bar room. I did not see Mrs. Earls take up the tongs to strike John. I did not hear him scold her for having taken a drink twice within half an hour—did not hear that mentioned. She did not take up the coal rake to strike John that I saw. I did not see any woman by the name of Swenk, about the sleigh or trough, the time that Earls put his wife in the trough. I saw John splash water on his wife. He tore the clothes off her. I did not hold the horse. My right name is Susan M'Callaster; the folks call me Susan Swenk, sometimes. Swenk raised me and I went by that name. Jacob Swenk, of Milton. I left there when I first came up with Mr. Earls.

Solomon Mangus, sworn—I never saw Earls, myself, abuse his wife. I was in the bar-room and heard a noise; I went to the bar-room door and looked out, and by that I saw a person running into the next door below the bar-room door which I took for John Earls. I went to the next room, and as I came there I saw Mr. Earls walking through the room towards the door where I thought I saw him coming in. I asked him "what is the matter?" He said "I know." He went out of the door and I went back into the bar-room again; as I came into the bar-room I saw Mrs. Earls standing in the bar. I think she came in from the kitchen, I could not see how she could come in but that way. She was crying and wet all over. I asked what was the matter, and dont know what she said. I told her it was too cold to stay there—she had better go into the kitchen to the fire. She went into the kitchen and I did not go in. Mr. Earls then came in at the bar-room door. At first when I saw him he had his over-coat and gloves on, when he came into the bar-room door he had them off. He asked me for a drink, and I set out the bottle and he took a drink, and then went into the kitchen—what passed there I can't tell you. He was in a little spell, and then came out and got in his sleigh and drove off up the road, and old Billy Moritz with him I think. After a little spell he came back from the direction of Moritz's and passed by toward home. The children were sent for and were all brought down and given their suppers—they were put to bed before he came back. He came down to my house then again and came into the bar-room and asked me for a drink; after that he asked me if his wife was not in the other room. I told him she was, and that he might go in. They were in there a good little spell together; I did not go in. She told him not to be going out to Moritz's—I could not hear well through the partition. Earls then said he wanted to take his children home; they had to come out of bed, and he took them up home. She stayed there until next morning, which was Sunday, after breakfast—then she went over to Alick Marinus' across the road, and stayed there till about noon, and then went up to Dan Griffin's. How long she stayed there I dont know only from hearsay—I believe she went home on Tuesday. Earls told me once that he was going to make a vendue and sell off some of his property, and sell his lot or rent it, for he could do nothing there—he would go to another place where he could do better. This was not more than two or three weeks before the death of his wife. He had a vendue—I was at it and bought some horse gears and three socket poles. He had a boat, he took that down the river and the horse and sold it the summer before. He sold a couple of beds, feather ticking, some old iron, horse gears, a trunk, a grindstone, some socket poles, and some old saws and augurs. He tried to sell another bedstead. He had no cow at that time, I bought a cow some time before that from him. I can't tell how

much more he sold—he sold some fire tongs and shovels. I dont know that he had rented. In the morning between three and four o'clock Livy Sechler came to my house to tell us that Mrs. Earls was dead. We had been making apple butter and some were up. I went up to Earls' the Friday after his wife's death about ten o'clock in the morning, he said his wife was dead; he allowed he would bury his wife on Sunday or Saturday as near as I can recollect. He wanted to hear what I had to say about it. We made it out, and I was allowing he might as well bury her on Saturday as Sunday, for he was there himself and nobody there but his children and his mother. We agreed to bury her on Saturday about ten o'clock, but the coffin did not come until about twelve. When the coffin came we took it into the house and Mr. Sheetz preached the sermon.

Cross-examined by Counsel for Prisoner—George Lilly made the coffin. It was a small funeral. I have seen larger funerals and I have seen less ones. There was a funeral sermon preached in the Baptist Meeting-house by Mr. Sheetz. Some people like Mr. Sheetz and some dont. He is a Lutheran. He came to the house before the corpse left. I believe he made a prayer at the house. I dont know that the pump trough was frozen over, there was ice round it. It scarcely ever freezes over, it is not frozen now. I think Alick Marinus and his wife and Susan Swenk was at the trough at the time alluded to. Old Billy Moritz was lame, and Earls said Moritz had paid him fifty cents to take him home—he had a sore foot—he is an old man. Some people in our neighborhood keep a corpse a little longer and some no longer than Mrs. Earls was kept. Mr. Sheetz lives about two miles from Earls'. I think John Hood went for Mr. Sheetz; he lives with me.

Jacob Hogendobler, called again—On the same day that we took Mr. Earls, and I think it was the first thing he told me, he asked me whether I thought he would get clear this evening; I told him I thought not, for they had sent, or were going to send, up to Williamsport for the Coroner, and have his woman raised and examined—also, they were going to send for JAMES DOUGAL to Milton, and if there was any arsenic in her they would find it. He said “there may be some in her, but I did not give it to her.” In the fall some time, last fall a year, or last spring, before the death of his wife, I went with Earls down to Milton; he took me down. Him and me talked about his going out to Moritz—I told him it was not right. He said nobody had catched him there; and that “a person would almost risk their life for a pretty girl.” I think that was all that passed at that time. He did not say who gave the arsenic to her.

Elizabeth Mangus, sworn—One evening Mrs. Marinus and I were sitting at the stove and heard a noise; then I went to the door and saw Earls have hold of his wife at the trough. I went down over the steps and Mrs. Earls ran into the room, through the kitchen and into the bar room. I went in at the other door and saw her standing in the bar all wet, and the sleeve of her dress was torn. I went into the other room, and Mrs. Marinus ran in and Earls after her, and he fell down. We went into the kitchen and put a dry dress on Mrs. Earls, and Earls came out and asked what was the matter. She told him he need not ask what was the matter, he knew well enough. He said nothing that I heard, but walked out. He came down again in the evening and began to scold, and asked her what made her fetch the children down. The children were all in bed, and he wanted to take them home; then I went and got them up and he took them all along but the two youngest. He said he would put Mrs. Earls on the tow path in the morning. Mrs. E. stayed all night. One Sunday I was up at Earls', Mr.

Earls was by, Mrs. E. asked Maria and Sabina Moritz into the house, and then asked Maria what business she had to go a sleigh riding with her man to Northumberland. Maria said she was not along; says Mrs. E. "you was along—John did not you tell me you had her along?" Says he "no." Says she "you was along." Maria said "you're a liar." Then, says she, "dout you call me a liar in my own house;" then Maria ran to the front door and wanted to get out, and Mrs. Griffin pushed her back. Some of them handed Mrs. Earls a stick and she struck Maria with it. Then Earls caught his wife and throw'd her back against the door, and ran to the front door and opened it, and the girls they ran out. He took Mrs. Griffin and kicked her out through the room. Mrs. Griffin and Mrs. Marinus they ran after the Moritz girls. Then Mrs. Earls got out on the tow path and he caught her and held her, and she picked up a little stick and he left her go, and she ran after them. This last was in the winter—this winter a year ago.

Cross-examined by Counsel for Prisoner.—I dont know whether Mrs. Earls caught Maria or not. When Maria wanted to get out Mrs. Griffin stood against the door. The stick Mrs. E. struck Maria with was about as thick as a broom stick. She struck her across the face. I did not see any blood fly. She struck her once, I dont know that she struck her oftener. I dont know that Earls was in at first, he came before Maria hollowed for help. Mrs. Marinus got to the pump trough first—I went down over the steps, but did not go to the pump. It was after dark; I think it was a moon-light night. Susan Swenk was there—Susan M'Callaster is her real name I believe.

Esther Griffin, sworn—Earls abused his wife at the time she called Maria in from the tow path. Maria would not come in until she saw Earls on the porch. She came in then and Mrs. Earls asked her what business she had to go to Northumberland sleighing with her husband, and staying with him after night. Maria said she did not. Mrs. Earls said she did; so with that Maria called her a liar. She said if she would call her a liar again she would strike her. Then Mr. Earls told his wife if she would hurt Maria, he would hurt her. Mrs. Earls told him to go away and let her alone, and not interfere with her, for she would whip her. Mr. Earls then took his wife and threw her down on the floor in the kitchen. I stood against the door and Maria wanted to get out; and then he caught hold of me and kicked me out of the room; then they, Maria and her sister, ran down the tow path. Mrs. Earls wanted to follow them, and E. stood on the tow path and held her. I never saw any abuse at any other time. He used to tell his wife if she could hug and kiss as well as Maria Moritz, he could love her much better than he did. Mrs. E. often asked him, when he was going away, where he was going; he said to Mr. Moritz's. She asked him what he was going to do there; and he said to see the pretty girls.

Cross-examined by Counsel for Prisoner.—I did not see Mrs. E. strike Maria, but she had a stick in her hand intending to strike her. I held the door because I thought Maria deserved a good whipping. I did not overtake Maria, when I chased her down the tow path. Maria ran, I ran, and Mrs. Marinus ran also. Mrs. Earls ran too after John let her loose, he held her—she did not overtake Maria. No dogs were put after the girls; we had none to put after them, unless we had sent Earls.

Daniel Griffin, sworn—In 1835, the first day of the year, one of Earls' children and Susan M'Callaster came down and requested me to come up. I went up. Earls and his wife had a dispute, and Earls had his wife by the neck with one hand and by the shoulder with the other. I tried to get him

to let loose of her; then he let loose of his wife and caught me by the collar, and asked me what business I had to interfere. I then told him that he ought not to abuse the woman in the kind of way that he did—he then told me that it was none of my business. While this happened squire Sechler came in; I spoke to him and asked him to speak to Mr. Earls, that it would have more effect than if I spoke. He tapped Earls on the shoulder and spoke to him, but it had no effect. He then caught her and told her if she would not be satisfied, he would put her in the cellar. He caught her by the neck with one hand and under the arm with the other, and dragged her into the cellar, and shut the door on her. I remained at the house about ten or fifteen minutes. Some time in June or July, I wont be confident which, in the year 1835, I came up to Mr. Earls' and he was in the shantee putting on his shoes. There was a dispute raised betwixt him and Mrs. Earls. He put on his shoes and went out into the kitchen, and picked her up and put her in the cellar. He said before that if she would not be still he would put her in the cellar. When he put her in the cellar he locked the door. I have been in that cellar, it is a pretty comfortable one, but middling dark if the door is closed. I never saw him put her there at any other time. I never heard him use any threats.

Cross-examined by Counsel for Prisoner.—John was always kind and good to his wife unless she fell at him with some kind of abuse. I live a pretty near neighbor to them; and had a good opportunity of knowing how he treated his wife. For several months before her decease they had not lived upon good terms. On new year's day spoken of, John had been out shooting the old year out and the new year in; he was as much in liquor as I ever saw him. I think he was not in liquor the other time he put his wife in the cellar—cant exactly tell. I was along with him when he went to shoot the old year away. You may call it a kind of a frolic, we had been taking a circle round the country.

Re-examined by Counsel for Commonwealth.—When we went to shoot the old year off, the first place we went to was Mr Ungst's; from there we went to Mr. Moritz's; from there to Mr. Daniel Oyster's; from there to old Mr. Oyster's; from there to Mr. Mangus'; from there to Christ'n Page's—then we returned home.

Cross-examined, again, by Counsel for Prisoner—We took a drink at every house, if we could get it. Mr. Marinus, Mr. Ungst, and several more, were along with us. Mr. Marinus is a married man; so is Mr. Ungst. They say I have a wife, myself. Mr. E. and I started out about sun down.

[The usual hour of adjournment having arrived, the court inquired of the counsel concerned in the cause, whether they insisted upon proceeding on the following day in the trial, it being Sunday. The counsel for the commonwealth promptly replied they did not insist; and the prisoner, in reply to the inquiry, expressed a willingness to be governed by the wishes of the jury in regard to the matter. The jury, on consultation, desired to leave the question to the decision of the court. Whereupon, the court ordered the jury to be kept together, as heretofore, by the two officers already appointed for that purpose, and directed an adjournment until Monday morning, at nine o'clock. Judge LEWIS remarked, at the same time, that he did not entertain a doubt that the court had the power to adjourn over the Sabbath day without the consent of either party, and he would take occasion to file an opinion setting forth his reasons for such belief, previous to the close of the present Oyer and Terminer.]

Adjourned until nine o'clock, on Monday morning.

MONDAY MORNING, FEBRUARY 3.

After the opening of the court, the President Judge, in accordance with an intimation given on Saturday evening, furnished the following written opinion in support of the decision then made, that the Court of Oyer and Terminer has authority to adjourn over the Sabbath day in the trial of a capital case, without the consent of parties; which was read and directed to be filed of record.

OPINION OF THE COURT

Of Oyer and Terminer in relation to adjourning over the Sabbath day.

“As the Court have thought proper to decline sitting upon the Sabbath day, during the trial of this cause, in opposition to the practice, in such cases, of several learned judges, it may not be improper to assign the reasons for the course adopted in this case under the circumstances stated on the record. It is admitted that in very early times, throughout all Christendom, the whole year was one continued term for the hearing and deciding of causes. This was occasioned by a wish on the part of the Christian magistrates to distinguish themselves from the Heathens, who were extremely superstitious in the observance of days and seasons; and in distinguishing themselves the former went into a contrary extreme and held court on all days alike, including *Sundays*. Many of the return days in England are still fixed upon Sunday, and remain as an evidence of the ancient practice. But in point of fact the court at this period never sits on the Sabbath day. 3 *Bl.* 276. 3 *Thom. Coke*, 354, *n. D. Register*, 19. By a canon of the Church, adopted in A. D. 517, it was declared “*Quod nullus episcopus vel infra positus die dominico causas judicare præsumat.*” This, with other canons, forbidding the holding of courts upon the Sabbath day, were received and adopted by the Saxon Kings, confirmed by William, the Conqueror, and Henry II, and so became part of the common law of England, which our ancestors brought with them into this country. 3 *Bur.* 1595, 8 *Cowen*, 28. Lord COKE declares that in the common law there be *dies juridici* and *dies non juridici*, and that the Sabbath day is not a juridical day. 1 *Inst.* 354. In 1766 a judgment was reversed because it was entered upon the Sabbath day, and that reversal was affirmed in Parliament. The judges were unanimous. 1 *Inst.* 354, *n.* 3, 3 *Bur.* 1595, 14 *Petersd.* 759, *Dyer*, 168, *Jones*, 156. The construction of the canon of 517, as adopted into the common law, was that it prohibited *judicial*, but not *ministerial* acts, and therefore, although judicial proceedings could not be had yet an arrest might be made as a ministerial act upon a Sunday. 9 *Coke*, 66, *b.* 2 *Cro.* 227, 7 *Com. Dig. title Temps B.* 3. *p.* 399. To remedy the evils of this construction the statute of 29th Charles II, *c.* 7, was passed, which prohibited the *servicing* or *executing* of any “writ, precept, warrant, order, judgment or decree, except in treason, felony, and breach of the peace.” The reason why this statute is confined to the prohibition of *ministerial* acts, is correctly stated by Lord MANSFIELD in 3 *Bur.* 1595, to wit: that it was needless to restrain the courts from judicial acts on the Sabbath because these were prohibited already by the common law. The statute was intended to restrain the courts from the *ministerial* acts referred to, except in cases of “treason, felony and breach of the peace.” The language of our act of 1705, *Purdon*, 850, is the same with the English statute, and the construction is the same. It is therefore, not the correct construction of the act of 1705, that because judicial acts are not prohibited by it they are allowed. They were prohibited before by the

common law and remain so still. The receiving of a verdict is not a judicial act, nor is it among the ministerial acts prohibited by the act of 1765, which relates only to the *service* and *executing* of writs and judgments. Necessity and law unite in sanctioning the court in receiving a verdict upon the Sabbath, in order that the jury may be discharged. 15 *John. Rep.* 119. In the United States *vs. Fries*, 3 *Dal.* 515, *n.* the court adjourned without the consent of the prisoner, on the authority of then recent precedents in England, in the case of *King vs. Hardy*, and *King vs. Tooke*. The jury were, however, kept together during the times of adjournment and once (on Sunday) were taken for recreation in a carriage into the country, still remaining under the charge of the officer. In *Getter's* trial, the court adjourned from Saturday to Monday. In *Mrs. Chapman's* trial the same course was adopted. In *Commonwealth vs. Huffnagle, et al*, the same thing was done, and although a new trial was granted upon another ground, no objection on that ground was sustained.

"The sages of the common law teach us that the law of revelation which is to be found only in the Holy Scriptures is one of the foundations of human laws. 1 *Bl.* 28. And the highest judicial tribunal in the commonwealth has decided that Christianity is part of the common law of Pennsylvania, 5 *Bin.* 55, 11 *S. & R.* 409. In a community professing to found its laws in part upon the Holy Scriptures, and where Christianity is part of the common law, it would be strange in its appearance, and unhappy in its influence upon society, if courts of justice in administering those laws were unnecessarily forgetful of the obligation to 'remember the Sabbath day to keep it Holy.'

ELLIS LEWIS."

February 8, 1833.

Christian Page, sworn—This winter a year ago the time that Earls threw his wife in the water trough, I came there shortly afterwards. I went into Solomon Mangus' house, and she was sitting at the kitchen fire crying. I did not hear Earls say any thing at that or any other time about her.

Cross-examined by Counsel for Prisoner—I live about half a mile from Earls' down the canal on the same side of the river.

John Green, sworn—I was present at the arrest of Mr. Earls; he was arrested at Mr. Mosteller's. He said it was nothing more than what he expected. The constable asked him to go along, and Earls told him not to be in a hurry, that he would go along peaceably. He said he was on his way to Mr. Oyster's, and had went that way to see Mrs. Mosteller, respecting a report that was in circulation respecting him—that they had requested him to lay his wife's hands on her breast, that they lay too low when she was a corpse, which he said was not the case; he said they allowed if he was guilty of the murder, the prints of his fingers would be left on his wife wherever he would touch her. Hogendobler then mentioned to him that the report was in town, as to him buying the arsenic. He swore he never bought any arsenic, but he bought ratsbane. He said he would buy it again, and he had a right to do what he pleased with it after he had it. Hogendobler then cautioned him not to talk in that way, for he would have to be a witness against him. He said then they might take him to jail or to hell—they might hang him and be d—d to 'em. "Kill me by the Lord, as Johnny Morton says." We then went on to Mr. Mangus', says he "I'll take a drink, by G—d, I'll have the one I like best, unless they do hang me, and I don't care what the hell the people says." He requested us all

to go on and let Hogendobler and him come on behind. The constable objected to that. He then requested us to divide and let Hogendobler and him go into his own house. When we came to the house we all went in; he sat down the bottle after we went in and we all took a drink. Hogendobler and Earls' mother and himself went up stairs. After he returned he requested us all to take a drink, and I don't know that any one drank. He then came out at the door, and told his daughter to put the bottle away and lock the door, and let no man in or he would mark her when he came home. We then went on to Mr. Callahan's; he went in there; he was in there a few minutes, and he came out at the door and started and run; he run a short piece and was overtaken. He then went on till we came to Mr. Thomas'; he swore there he'd have something to drink, or he'd go no farther. The constable objected to let him have any more drink. He then made an attempt to start round the corner of the house; Wendle took hold of him and prevented him from going. He then sat down and swore he would go no further unless they would get some way to haul him. Hogendobler insisted on his going on, and he did so; he went on very well from that to Muncy. The next morning he sent a man for Mr. Mangus, his mother and his children. Him and me were sitting in the parlor at Mr. Huffman's when his mother and children came; he went out into the bar room and he met her there; says she "My God, John, what have you done?" He told her to be still and make no noise there. They then went into a back room; he asked her then whether she had looked at the pint bottle that he had got full of rum; he said he thought likely she had taken it in that. The old woman answered him that the bottle of rum was used two or three weeks before Katy was confined. He then requested Mr. Mangus to raise his potatoes, to put them in the cellar, and get a man to chop wood two or three days for his mother—to take down his stove and put up his mother's—to take his stove and rent it, and take his clock home to Mr. Mangus'. He said he should take his vendue list, and get the notes of the different men who had not given them; and that he should collect what he could. I was with him when he was brought to prison. This conversation was before he was taken before the justices—it was through the day, and he was not taken to the justice's till after dark.

[Commonwealth's Counsel here proposed to ask the witness, what was the appearance of the Prisoner when he was arrested.

Prisoner's Counsel objected; and the Court decided the question could not be asked.]

John Green, continued—Hogendobler mentioned to him, that him and his wife had always lived very peaceably together in Milton—Earls replied, "it is a lie, not to call you a liar, but any body that says so is a liar." He said it was a d—d sight worse since he left it. He said he had been a bad man and well he knew it; but he was not guilty of the crime he was taken up for. He behaved very well on the road from Muncy to the prison. There were four of us came from Muncy with him.

Cross-examined by Counsel for Prisoner—The Constable (Turner,) Wendle, Dykens and myself, came with him from Muncy to Williamsport; we came in the stage after night. He was tied by the arms, but not ironed. He was not tied until we started from Muncy to bring him to prison. There was Turner, Wendle, Dykens, Swisher and myself, standing round him when we took him; he was in the house at the time; he made no resistance there. It is an open country from Mosteller's to Mangus'. It was after night when we got to Muncy; night came on about Thomas'—either at Callahan's or

Thomas'. We came about three and a half or four miles after night. There is one house from Thomas' to George Edwards'—Mrs. Stratton lives in it. It is about a mile from Thomas' and the same from George Edwards'. Part of the way between Stratton's and Edwards' there are ravines and laurels and the ground well calculated for a man to escape who is so disposed. The tow-path is in some parts high and steep—from the dam up to this side of Mr. Thomas' the tow-path is steep. From Mr. Thomas' up, the slope is more easy and gradual, say ten or twelve feet. It would be easy to jump down into the river without danger of breaking limbs. Between Mrs. Stratton's and Edwards' there is a small strip of bottom with ravines putting in from the hill. There is timber and laurel part of the way near to the tow-path and a part of the way pretty thick woods. Dykens and Earls had a little dispute just after we left his house—there was no dispute between him and any one else. We went up by the out-let locks—from there to Muncy there is an open plain. We took him to Mr. Hoffman's in Muncy. Dykens was present at Hoffman's when Earls' mother and children came there. He was in the back room at the time of the conversation before alluded to, and I think Wendle was in the room at the same time. We were all with him coming up except Hogendobler, who stayed back with the old woman till we came to Callahan's. Bigger part of them were in the room when he started to run at Callahan's; I was in the door; Hogendobler and Swisher were nearest to him; I could not see well, it was dark. We kept as near to him as we could conveniently. There is no place between Callahan's and Thomas' that I know of that he could escape—I am not much acquainted with the country there.

John Smith Dykens, sworn—I was present when Earls was arrested, and assisted in arresting him. We found him at Mr. Mosteller's, about a mile below Mangus'. He was talking with Mrs. Mosteller when we came in. When the constable took him, he rose up and thanked him, and said it was nothing more than he expected. He said he would go with us any place we thought fit to take him. On the road between Mosteller's and Mangus' he said we should kill him, or hang him, by the Lord, as Johnny Morton says, or some such expression as that. We went on to Mangus' and went into the bar room. We were there some time, I was out part of the time, and heard no conversation that passed there. After we left there he wanted us to stay back and let him and Hogendobler go ahead; he wanted no fuss made before his mother. This was refused. He then wanted us to go before and let him and Hogendobler come on behind; any way so as to get out from among us. We all went on together to Earls' house; I did not hear much of the conversation that passed there. I was out principal part of the time; Green watched one door and I stayed at the other. We got tired waiting and went into the house. He was baffling around from one part of the house to another and wanted to go up stairs. I told him that we could not wait on him any longer, it was getting very near night. He did not go immediately then, but appeared to baffle around. We then went in, two or three of us, and told him if he did not go we should have to compel him to go. He started; we went on, I cant tell the distance, there was a young woman come along, I think, he wanted to follow her, he wanted to talk to her; we would not consent and he got saucy on our hands; I was for having him tied; there was where we had the quarrel spoken of, he was for whaling me; however, he went on with us to Patrick Callahan's. I heard none of the conversation there, I was not in the house. He then came on very well to Thomas', he made a pitch there as was supposed to

jump over the railing—Wendle caught hold of him—he wanted to go in and get a drink, we would not let him. He made a jump toward the railing on the hill side—there is a kind of a run comes down between the two mountains, where a person could go up. He lay down a few yards above that. We were going to tie him and Hogendobler persuaded him to get up and go on peaceably. He got up and went on peaceably to Muncy. He would run in several places two or three hundred yards; we would be round him when he run. We came on to Hoffman's at Muncy, and stayed all night and next day; he behaved himself very well. We had some conversation in the room the day after he was arrested, while they were gone over to raise his wife. The day before he had told me that a story had been raised that he was afraid to touch his wife when a corpse; but he would go over and handle her as much as they wanted; but when the jury started he did not wish to go, he would rather retire—would rather stay at Hoffman's. While the jury were over that day, I was with him in the room alone, and I said to him, John, I am in hopes when the jury and the Doctors come back, there will be nothing of this thing—I said I was in hopes the Doctors and the jury would bring it in that she died a natural death, and he would be set at liberty. He made no reply to it. Says I, “John, you may be accused wrongfully in this thing, if you had the arsenic in your house, she may have taken it herself, and you'll be blamed for it.” He said to me, “yes, Dykens, that is all that troubles me.” He said that him and his wife had lived very disagreeably together; she had often threatened to put herself out of the way. He said he had often been afraid when he was out late fishing, to go home at night for fear of finding her a corpse when he would get home, and that he might be censured for it. He went on then to state that he had bought her a bottle of rum, some five or six weeks previous to that—that he did not know what had become of it; he believed she had kept it locked up in her trunk at the head of her bed, which she never had done before; he was afraid she had put the poison in that and had taken it. I heard him say nothing more until his mother came; we went into the back room, and then he mentioned the matter to his mother about the bottle. His mother told him that the liquor had been drunk up ten days or two weeks before that. The old woman turned round to me and said Katy went over her time two weeks, and mentioned that this liquor had been bought for that purpose when she was put to bed. I had no more conversation with him, and I believe I heard him say no more. The inquest returned before we brought him to jail—before we took him before the squire at all.

Cross-examined by Counsel for Prisoner—He stated that she had often threatened to put herself out of the way, and he was afraid to come home at night for fear he'd be censured for it. He did not say that others had told him so—he said no more than what I've stated. He said nothing about her declining to make up clothing from time to time that he had bought. John Earls was not tied at Hoffman's; when he was committed he was tied in the office. It was after dark when he was examined before the justices. We got to Williamsport about half after 10 o'clock; Mr. ROTHROCK (the jailer) had just gone to bed. I think Earls took three or four drinks between Mosteller's and Thomas', three certainly; one at Mangus', one at his own house and one at Callahan's. I was not in all the time at Mangus', at his own house, nor at Callahan's. He was a little lively, a little warm, he felt the effects of liquor, but was not to say intoxicated. He promised at Thomas' that if we would let him go in and take a drink he would go on peaceably. He

laid down above 'Thomas', so low that his elbow was upon the ground. I did not hear the conversation between John and the girl we met on the bank, on our way up. When I spoke to him about going over to see his wife raised, he said he would go if they wished him to go; if they did not he would rather stay at Hoffman's.

Re-examined by Counsel for Commonwealth—Earls was sober when I had the conversation with him at Hoffman's; he had had a *smaller* or two—we gave him two or three drinks a day, when we thought he needed it. He took very moderate drinks. The jury said nothing about his going over the river, it was merely a wish of our own, as we wanted to go ourselves; I don't think there was a juryman in the room.

John Green, called again. [The witness stated that since his former examination, a fact had occurred to him which he then omitted.] Earls stated that he had kept the ratsbane locked up in his chest; he said if his wife had taken it, she must have got it out of his chest and put it into the bottle, and put it in a trunk and kept it at the head of her bed. I don't remember who was by. It was on Tuesday afternoon, the day he was at Mr. Hoffman's.

Peter Wendle, sworn—I was one of the company that assisted to arrest Earls; we took him at Mr. Mosteller's; he then stated that he did not expect any thing else. We started with him and came on to Mangus'. I was not with him all the way between Mangus' and Mosteller's. We stopped at Mangus', and while we were there in the bar room, he was talking to some person, I don't know who, he then said, "we'll have a drink by G—d, and I'll have the one I love best, and I don't care what the people say." We walked up to the bar, and took a drink. The constable wanted to get Mangus to haul him up to Penasborough. He refused and said he would rather go afoot, if they would let him go by his own house; he said he wanted to see his mother. We then started afoot to go up the tow path; when we got to his house we stopped there and took a drink. He then went into the other room to talk to his mother; after being there a little while, the constable wanted him to go on, and he told him he would go as soon as he was ready. He then went out to the bar room again, and set out a bottle, and asked us to take a drink before we started. I believe the constable and myself were the only ones who drank. We then started to go up the tow path, and after we had passed Mr. Sechler's a little piece we met a woman; he then wanted to go back again, but Mr. Dykens told him he could not, he was a prisoner, and he must go with them. He then appeared to get cross at Dykens, and told him he would mark him, if it was seven years after that. We then came on to old Callahan's, and stopped there and took a drink; we stayed but a few minutes there, and started to come on, and after he got out of the house, he started and run for about two hundred yards. He then stopped, and walked on from that to 'Thomas'. He wanted to stop there for another drink, and the constable would not agree to it. He insisted on a drink, and said he could go no further without one. The constable insisted on his going on. He then turned off the tow path to get round the corner of the house; I took hold of him and told him he could not go, that he must go along with us to town. We got him out on the tow path again, and he then sat down and said he would not go any further. Before he sat down he turned round and said "Pete Wendle, you call yourself a stout man." I told him I considered myself stout enough to take hold of a man if it must be. He then said he would go no further, and if we wanted him to go to town, we must haul him. Some of the company

said we would have to tie him and carry him if he did not walk. He then agreed to walk and came on to town very quietly. I was with him all that night and the next day; he was very quiet all the time I was with him. On Tuesday morning he sent for his mother, and some of his children, and Solomon Mangus to come up and see him, and bring him some of his clothes. They came up about eleven o'clock in the day and brought some clothes for him. In the afternoon when the old woman and the little girls were ready to go home, they were in the room talking to Earls. He was telling his mother of some woman, I don't recollect the name, if it had not been for her there would have been nothing of this fuss. The little girl asked then, will papa have to suffer if that stuff killed mother? The old woman turned round and asked the little girl "what stuff?" Earls said then "its the laudanum I gave her, and that did not hurt her." I believe that is all that passed while I was with him there. Cant recollect the name of the woman he blamed. He said that he would have the one he liked best unless they would hang him. There is a gap in the mountain above Callahan's house where a man might get up. It is but a little piece from the house.

Cross-examined by Counsel for Prisoner—It was the second one of the little girls who was present when he was speaking about the laudanum; it was in the afternoon. Cant tell what Earls wanted to do when he tried to get over the railing at Thomas'. He started to run right at the corner of Callahan's house. I cannot tell what he intended by running, I did not take it as a piece of sport. Hogendobler was nearest to him and I think Swisher next. Earls said he wanted us to go on ahead, and he and Hogendobler would come on after us; he did not want us all to stop in with him at his own house, it looked rather bad. It was about sunset when we got to his house. It was after night when we left Thomas'; though not a dark night—cant recollect whether it was moonlight. If Earls had got off the platform at Thomas' he might have escaped; there is a draught there that a man might get up.

Charles Lebo, sworn—I was with them when they went to take Earls, but was not at the house when he was taken. I was not in with them at Mangus'. Along the road he said he expected they would hang him, but he did not care a d——n, he expected to go to hell any how. I was very unwell myself and was behind them a good part of the time. This expression was used between Callahan's and Thomas'.

Cross-examined by Counsel for Prisoner—I dont recollect that any person was by at the time. Some of the others were behind and some before; I was walking along side of him at the time. They were not more than ten or fifteen yards before or behind me. I put no question to him, directly. I dont recollect what he said before that remark; very little passed. He said nothing about old Johnny Morton at the time. I dont know that I said any thing at all in answer. I happened to be walking along side of him and took hold of his arm; he said he would be d——d if he would walk that way, it was too much like lashing rafts or arks together going down the river. I think it was between Callahan's and Thomas'—I dont know that I walked with him at any other place. He went into Patrick Callahan's—I was in awhile; but did not drink with him. I was in his own bar room. I did not ask why he expected to go to hell. I told this before the squire, I believe, in Pennsborough first. I dont recollect whether he had been running or not; he had been running before or after, I cant tell which. I was ten or fifteen yards behind him when he was running. I dont think he tried his best to run. I am not much acquainted with him;

He is a first rate fisherman. This has been repeated over between me and some of the company that was down there; I do not recollect of ever hearing Johnny Morton's name mentioned in the conversation. I never heard it introduced till I came to court here, I believe. I did not ask Earls to come over the expressions again when he used them. Dont recollect where he began to run.

George Lilly, sworn—In the morning when Mrs. Earls died, the measure [for her coffin] was sent to my shop. John Hood brought it. I made the coffin; I was to bring it to Earls' at nine o'clock on Saturday morning; the people were to meet at ten. I was to have it there at nine o'clock, that she could be put into the coffin before the people would gather. I brought the coffin as near as I can tell about twelve o'clock, and took it in and took the lid off, then I went out and the women put her in; after she was in, they called me in to screw the lid on. I did so. Then the women fetched the children to the coffin to see the corpse, before I shut it altogether; and they were crying and the women likewise. Then I put the leaves down and screwed them down. Several men took hold of it and carried it out and put it on my wagon. Earls was sitting at the head of the coffin when I put the lid on; he said nothing. He was doing nothing, but had a handkerchief in his hands; when the children and women were crying, he held it up to his face, over his face, like. After the coffin was put in the wagon, we crossed the river and went to the burying ground. When we came there a number of people were there, more than went along with us—they were all anxious to see the woman. I unscrewed the coffin at the grave, and they all went round to see her. The children were fetched up again to the coffin, they were crying. I screwed the lid down and we let the coffin down into the grave. That's all I know about it. At the grave John Earls went a little back like, and stood against a sapling, or small tree. He did not say any thing, or cry, that I saw. He did not come up to the coffin at the grave yard—he stepped a little back and leaned against a tree, and there he stood till we had put her down and covered her up. I did not see a tear on his face there nor at the house. I took particular notice of his conduct. It was rather because my suspicion had been excited that I took particular notice.

Cross-examined by Counsel for Prisoner—I was close by the grave. I never took notice how far a man should stand from the grave when he buries his wife. Cant exactly tell how far Earls stood from the grave—I did not measure it. I heard Mr. Sheetz preach the sermon, but was not in the house. I did not go into the church. I think Mr. Sheetz made a prayer at the house; after the coffin was closed, I think. There was a good many people at the house that did not go over the ferry.

Adjourned till half past two o'clock, P. M.

AFTERNOON SESSION.

Jacob Yoxheimer, sworn—On the 24th of July last, I went to Earls' house with an execution; I called on him for the money. I enquired of his wife whether he was at home; I went down to the river to see him about getting the money. He then d——d himself that he would not pay it; and stated that it was for a five dollar counterfeit bill, a contract of his wife's, and she must pay it. He told me I be to take her for pay, if she would not pay the money, or else get what property I could about the house to satisfy the debt. I then went back to the house and Earls directly followed me; he

then told her and d—d himself that he would not pay it, that she must pay it. He told her that she done as she pleased generally; that he was not going to pay it, she might take better care. The woman then excused herself, mildly and gently, and said that many a merchant had taken counterfeit money, and Mr. Cook had taken this of her, until he examined the "Detector" next day. He was very angry, and then stated to her that he'd be G—d d—d if he'd be bothered with her much longer, he would get rid of her some how or other, and if he could not in any other way he would make a vendue, sell off all he had, and clear out to the west and let her shift for herself.

Cross-examined by Counsel for Prisoner—Earls made no more threats of personal violence to his wife than what I have stated. I do not know that we had a quarrel—Earls was angry as I stated before, about paying the money. I took his watch and he talked that he ought to lick me.

Re-examined by Counsel for Commonwealth—[Witness produced an execution, Jacob Cook vs. John Earls, dated July 23, 1835—Receipt endorsed from Yoxheimer to Earls for the amount in full, dated July 24, 1835. Also from Cook to Yoxheimer dated July 30, 1835.] I took the watch because he would not pay me the money. I was going to take the watch away to advertise and sell it, and then he got willing to pay the money.

Samuel Garnhart, sworn.

[Mr. ARMSTRONG here stated, that the *corpus delicti* having been established, as he thought, he would now renew the offer of evidence to show the strong *attachment* that existed between the prisoner and Maria Moritz; and their improper intercourse and connection with each other. It is for the purpose of showing the *motive* which influenced the prisoner in the commission of the crime charged. 1 *Starkie*, 492.

Mr. PARSONS, for the prisoner, objected to the admission of the testimony because it implicated the prisoner and a third person in another crime, which might be the subject of another indictment. It is not competent to prove the commission of one crime on a trial for another—if adultery has been committed by the prisoner, which, said Mr. P. we do not admit, he is subject to indictment for that crime. But, he enquired, does it follow as a necessary consequence that every adulterer is guilty of *murder*? Will it be pretended that *all* who commit adultery are murderers? If so, then he feared there were many *murderers* who pass through this world unknown and unsuspected. Such a position is repugnant to common sense, and ridiculous in the extreme. Because a man has committed an assault and battery, does it follow that he has robbed the mail? or, if he has been guilty of larceny, that he has committed high treason? Moreover, the prisoner cannot be called upon in this trial to answer any charge but that contained in the indictment. If he has been guilty of other violations of the laws—those laws provide a punishment. Mr. P. admitted that the declarations of the prisoner shewing estrangement from his wife and attachment to another individual might be introduced; but nothing further. Any thing which is not in itself a violation of law might be adduced in evidence and he would be silent; but the moment *crime* is attempted to be proved, for which the prisoner is not upon his trial, he would raise his voice against it. Murder is perhaps the highest crime with which a man can be charged; and the rules of evidence should be strictly applied in cases involving the life of a fellow being—courts should be extremely cautious in admitting testimony of doubtful character. Mr. P. in conclusion, also cited the case of *Getter*, p. 14, tried

Before Judge MALLARY, and enforced the decision made in that case, rejecting evidence of *attachment* between the prisoner and a female named Molly Hummer.

Mr. FLEMING, for the prisoner, also opposed the admission of the evidence. He contended that if the fact were established that the prisoner had had criminal intercourse with Maria Moritz, it would avail nothing in the present trial—it would not necessarily follow that he was estranged from his wife and family, and prepared to commit the horrid crime of murder. It would prove nothing more than that he was disposed to gratify his carnal desires, at the expense of his reputation. The crime of adultery has no connection with that of murder, and proof of one will be entirely irrelevant on a trial for the other. Mr. F. again referred to the injurious effect which the admission of such testimony must necessarily have upon the character of a third person, who is not upon her trial, and whose mouth is sealed in the present investigation. He hoped this court would not suffer the reputation of an individual, against whom no charge had been preferred, to be forever blasted, in a judicial proceeding, where that individual was not a party.

Mr. ARMSTRONG, in reply, stated that the trial of Getter, which had been referred to by the counsel for the prisoner, is not precisely in point. There the offer was to show the gradual increase of crime, that one crime led to another, and that because he was an adulterer, he might have been a murderer. In *this view*, perhaps it was properly rejected. But I cannot, said Mr. A. assent to the opinion of Judge MALLARY that, because the proposition might involve the character of an individual not on trial, therefore it should be rejected. Every indictment for fornication or adultery, may involve the character of a person not on trial. So of conspiracies—the characters of persons not on trial may be involved. There could be no objection on an indictment for larceny, to proof that a burglary had been committed, to enable the defendant to steal—or that a person not on trial had assisted in it—although it would be a crime of higher grade. In the case before the court, it cannot be said that the evidence offered, has no connection with the charge against the prisoner. If it has the slightest tendency to prove motive or inducement to the crime, it ought to be received. The declarations of Earls have been already admitted. Acts are stronger than declarations, and would it not be strange, indeed, that as the evidence of motive increased, the propriety of its admission should be diminished?

Mr. CAMPBELL also rose in support of the offer, but the COURT intimated that it was unnecessary, and remarked, that if the counsel for the prisoner had any thing further to say, they would be heard.

Mr. ELLIS, for the prisoner, then rose, and stated that after the most mature deliberation, and with due deference to the opinion of the court, he felt bound to differ from that opinion as just intimated. We have all learned, said Mr. E. around this bar, and in all the halls of justice in which we have practised, that a prisoner must be tried upon the indictment, and on that alone—the crime must be set out with absolute certainty. We must confine ourselves within the record. Is scandal to be raked up to prejudice this jury? and is the prisoner to be tried for his life upon the slanders of an excited populace? We are not permitted to wander—we cannot trample upon the rules and monitions of law. Courts of justice should be pure, purer than gold seven times tried; they must surround themselves with all the learning, the decisions, and the experience of the past. What right have this court to sit here, and hear evidence of a crime with which the prisoner has not been charged; and a third person convicted of a crime

without a hearing? That person is one of the commonwealth's own witnesses, and shall she be stigmatized and disgraced before her testimony is offered; and for an offence for which she is liable to a separate indictment? The gentlemen upon the other side, who represent the commonwealth, I consider as standing in the peculiar relation of guardians of the public morals; and is this the way they guard them? As well might they invade every fireside in the neighborhood, and publicly in this hall proclaim every slanderous story which busy rumor may have set afloat, and thus blast the reputation of all who come within their reach. John Earls comes into court, clothed with all the rights and immunities which belong to every citizen in this commonwealth, and claiming a trial upon the specific charges which have been brought against him by the grand inquest of his country—he is prepared to meet those charges; but, enquired Mr. E., had that inquest in their finding averred that he was guilty of adultery?—have they put him upon his trial for that offence; a crime atrocious in its character, and severely punished by our laws? They have not—and the prisoner cannot now be called upon to answer for an offence which is thus without a moment's notice, or the least time for preparation, attempted to be pressed upon him. Such a course would be at variance with the rules of evidence and all the principles of the common law; and surely, said Mr. E., this court will not sanction so gross a departure from principles rendered sacred by the practice of the past, and which are the only safe guides to the correct administration of justice for the future. Mr. E. concluded by an earnest remonstrance against the adoption of a rule in this case, which the court might hereafter have cause to regret.

PER CURIAM—We have heard this question argued with great zeal, by the prisoner's counsel. We concur with them that it would be dangerous to depart from the rule of the common law. It is the rule upon which the consciences of Judges may rest with safety. Accordingly we found our decision upon the rule of the common law. All facts are admissible in evidence which are in their nature capable of affording a reasonable inference as to the disputed fact, 2 *Starkie*, 380. On the other hand, remote and collateral facts, from which no reasonable inference can be drawn, are inadmissible. Collateral facts are admissible to prove *intention, malice, or guilty knowledge, Ib.* 381. And it is not, as contended, an objection to such proof that it involves proof of a CRIME not charged. In an indictment for passing counterfeit coin, evidence of passing other counterfeit coin than that charged is admissible to show the motive and knowledge of the prisoner; and the same practice prevails in indictments for uttering counterfeit notes, 2 *Starkie*, 581, 378, 379. Proof may be given that a party was influenced by a strong motive of interest, 1 *Starkie*, 492, or shame, 1 *Starkie*, 492. In infanticide, proof that the child was illegitimate, although such proof necessarily involve proof of the guilt of the parent, is evidence to show that the motive for the act was to avoid the shame of detection. So in murder of a female, proof may be given that she was pregnant to the party charged, and for the same reason, *Ryon*, 267. This was permitted to be done in Dauphin county, in *M'Elhenny's* case, before Judge FRANKS. In *Getter's* case, proof was given that he had been forced to marry the deceased by reason of a charge of fornication and bastardy; and proof was also given of intimacy with, and attachment to, another woman. In *Mrs. Chapman's* case, evidence was given of intimacy with *Mina*, even in his bed-room. It is true, as a general rule, that one crime is not evidence of another, and that adultery is not evidence of murder. If an isolated fact of

adultery were offered for *such a purpose*, it would be rejected, as was done by Judge MALLARY, in *Getter's* trial. But where the evidence offered is necessarily connected with, and forms a motive for, the commission of the crime charged, it is not a sufficient objection to the testimony, that the evidence may tend to show the prisoner guilty of another offence in addition to the one charged. It is a general rule that where crimes intermingle, and one is evidence to prove another, the court must go through the whole, 2 *Starkie*, 379. Distinct utterings of counterfeit notes, of counterfeit coin, distinct burglaries and separate attempts at robbery have been given in evidence to show the *scienter*, 2 *Starkie*, 379 *n. Donally's case*. But the evidence offered is merely that of intimacy and attachment between the prisoner and Maria Moritz—and this not for the purpose of proving the act charged, but to show a motive for it, as one of the *links* in the long *chain* of circumstances which the Commonwealth have undertaken to establish. If an unconquerable attachment and an intimacy existed as alleged, and the deceased stood in the way of its enjoyment, the evidence ought undoubtedly to be admitted, as one of the links in the chain.]

Witness proceeded—One Friday evening some time in May, 1335, I went to the shoemaker's. I came back round by Mull's. I went past the stable up towards the house through the meadow; betwixt the house and the stable I met Maria Moritz; she had a handkerchief tied round her head. I went to go home, and I heard a noise about the stable, and I went there, and I heard John Earls and Maria Moritz talking about something in the stable on the hay mow. I heard a noise and I went away towards the house, and she came down through the stable and came out of the foddering room door, and went up and went into Mull's house. She came out again and stood at the house, about a couple of rods from the stable—she was at the front corner and I was at the back corner of the house. She called him and said "do you hear?" either twice or three times, I don't know which. Then he came out of the stable, and she stood there till he came up, he then went into the house with her and I went off home. At the time he went into the house with Maria, the clock struck eleven at night. They were in the mow from the time I came there, till eleven. Mr. Linn was the shoemaker I went to. Another time my boss's journeyman, Henry Keyser, and me went to that shoemaker's again, on Sunday evening. We met Mr. Earls and another man, a little way from Linn's going towards Moritz's. The other man had a cradle on his back. We went on to Linn's and came back home by Mull's. When we came to the stable we heard talking up there again. We made a noise and she came down as she did before, and he jumped out at the gable end. I am not sure it was him that time, but I thought it was by his voice when talking, and by his clothes after he came down. It was the upper part of the stable—they were talking in the hay mow—it was just before harvest, may be some folks had cut already.

Cross-examined by Counsel for Prisoner—It was one Friday in May the first time. I know it was May because the battalion was in May. It was on Friday evening, and the battalion was on Saturday. Perhaps it was eight o'clock when I first passed the stable. I saw no one coming down when I first passed, nor did I hear any one talking then. It was about eight o'clock when I came back from Linn's to Mull's. I did not go into the house. I stayed about the house and stable till eleven o'clock. I saw no other girls there. I was standing part of the time at the stable, and

part of the time at the house. No one was with me. I stayed because I wanted to see whether it was him. It was moonlight before I left. I heard Earls speak, but I cannot tell what he said. I was outside of the stable and he was inside. I know he was in because I saw him come out. I was up at the house when I saw him walking out—it is about two rods from the house to the stable. I knew it was Earls when I saw him walking; dont know what kind of clothes he had on. I know they were in the hay mow because I heard them crawling down, I could hear them stepping on the logs. I was close by the logs. I was not up to see whether there was any hay. They crawled down in the inside of the stable. There was a light in Mull's house; and it was there when I left. I was examined before the justices at Muncy. I have had difficulty with Maria Moritz; but did not watch her in consequence of that. The difficulty occurred before that night a long time. I lived about half a mile from Mull's, with Geo. Lilly. I did not state, before the justices how long Maria had been in the stable. I did not swear that she was there an hour. I dont recollect that I swore that it was more than an hour before she returned from the stable to the house. I did not speak to Earls that night—I heard him speaking to Maria. After he went into the house he said "good evening"—to whom I dont know. I swore about the clock striking eleven at the squires—I said it struck eleven when they went into the house. I did not go into the house at all. The paper was down and I could not see in at the window; I tried. I did not tell this story to any body until I told it at Muncy. I was not subpoenaed the first time I went to Muncy—George Lilly told me I should go there. I told Keyser, the man that was with me the second night, part of this but not all. I was standing close by the stable the second time when I heard them whispering; it was moonlight. I dont know exactly that it was Maria that time, but I suspected it was by her voice. I cant swear it was her. The man that jumped down at the gable end walked off towards Mr. Earls's. I went home—this was perhaps eight, nine or ten o'clock, on Sunday evening. We went there that time because we had seen Earls going in that direction.

John Shuman, sworn—I met Mr. Earls at Baltzar Garnhart's barn, going on his way to Moritz's. He asked me whether I could go down the river with him with an ark. He told me he would go on out to Moritz's, but I should not tell any body. Then I went on out to singing school, and stayed till singing was over. When I came back to Moritz's, where I boarded, they were all in bed, and so was he (Mr. Earls.) I went to bed to him where he lay; both of us laid there until he thought I was asleep, then he went out of my bed and went into the room where the girls slept; and he stayed there until between three and four o'clock next morning. Then he came out and told me I must get up, for it was time to start off. This was on Sunday morning. I got up and went into the room and asked for my clothes. I came out again after I had them, and directly Maria came out too, into the room where I was dressing. John was standing close by, and told her there under the pillow (where I slept) is some money, and you can get it. She told him if there is any there, when you come back I will give it to you again. So we came up to Muncy landing and started down the river with our ark that morning. Earls came there another time and took old Mr. Moritz and Maria down to Milton in a sleigh. They stayed that day and next night until about break of day next morning. This was last winter near about this time. The time he slept at Moritz's was last spring in March or April. Last winter they had a law suit up at Stratton's. Daniel Doubt and myself and Mrs. Mowrey and Maria Moritz started off

to come down from Stratton's. John Earls overtook us between Stratton's and Doubt's, and took Maria Moritz in with him. He would let nobody else in with him until he came to Doubt's and there he took in old Mr. Moritz. They went down to the bridge at Mangus', and he left Maria out and she ran up to the cross road that runs towards Muncy. He had to put the fence down to get his sleigh across, and there his wife met him, and took hold of the horse's bridle and kept hold of it up to the water trough at Mangus'. There he caught hold of his wife and put her down in the water trough like, and took his hand and throwed water up in her face; he tore her clothes and had her wet all over, so she had to get other ones to put on. He bent her down just over the trough and did not put her in at all as I saw. I was standing by and saw the whole of it. Mrs. Marinus came up to him, I dont know what she done, but he left his wife and run into the house after her. I afterwards stayed at Earls' once all night, and they seemed peaceable enough and did not scold.

Cross-examined by Counsel for Prisoner—When I met Earls the night of the singing school he had a horse. We left Moritz's between three and four o'clock. The horse was taken out of the stable that night. He did not state to me that he had been out in search of his horse. He was not down stairs before he wakened me up—after he wakened me up he went up to the stable, and then he came back and told me his horse had been taken out of the stable. We came from singing school a little after nine o'clock, Sabina Moritz was along. I slept up stairs—I heard Sabina go up to bed after I went to bed. John Earls was in bed with me when Sabina went up to bed. Maria was in bed before I got home. Henrietta, I rather think, was not at home—I cant tell. I had boarded at Moritz's about two months and a half at that time. I knew where Maria and Sabina slept—they each slept in a different bed, but in the same room. They did not sleep together—I know, because I saw it myself. When Henrietta was at home, she generally slept with one of the rest. I heard Sabina go in the bed that stood against the partition, where my bed stood against on the opposite side, John did not say how much money was under the pillow. Maria said if she found any she would give it back to him when he returned. I had my clothes part on when Maria came out—she had hers on. I did not hear John Earls say what he left the money for. Old Mr. Moritz and his wife slept down in the stove room that night where they always do. There are two chambers up stairs. Sabina went through the same room where I slept to get to bed. There was no lock to the door, I am sure of that, nothing but the latch, I had opened it often, for I slept in that room myself. I slept in that room when the girls were in it, but not in the same bed. Maria slept in one bed, Sabina and Henrietta in another, and I in the other. When I slept in the girls' room, no person slept in the other—it was warmer in their room. I never took a candle, I could find the road without. I had no candle the night Earls was there. Earls did not tell me he slept in the girls' room; I saw him go in. I could see him walking along, it was just middling dark. I did not sleep right away—I slept some, but not so much as I would have done, if he had not been there. I was going to school, and did morning's and evening's work for my board. It was either in March or April that John came there. I went with John to look for his horse, out in the fields, but did not find him. We run the ark for Mr. Mooroe. It is about seven miles from Moritz's to Pennsborough [*Muncy*]*—*we got to Pennsborough a little after sun rise. Earls piloted the ark. It is about two miles from Moritz's to Earls'.

Re-examined by Counsel for Commonwealth—We went from Moritz' to Muncy by the canal, down past Mangus'.

Mary Ann Earls, called again—Mamma went to Milton one Saturday evening; George Stine took her. Pap promised to go down for her on Monday. I cant mind if he went down for her on Monday or not. Me and Maria Moritz we slept together in one room, and pap he slept in the other. About twelve o'clock Maria she got up. I am not right sure that she went to bed to pap or not. She went down stairs,—I heard her lifting the latch up. I dont know whether she was out doors or not. That's all I know. My father slept in the front room, and we slept in the back room. Maria came back to bed to me about four o'clock. I did not hear any person call pap after Maria went out of the room.

[The court here intimated that this testimony was improperly admitted, and that had they been aware of its character it should not have gone to the jury.]

Eliza Grieb, Sworn—I have often seen Earls at Moritz's. I saw Maria one morning when I came over, at Mr. Earls' chair, and he says "dear Maria, what had you and the old woman yesterday?" She said, "not much." I came out of the door and went home. He caught her round the neck, and hug'd her and kiss'd her. This was last winter sometime.

Cross-examined by Counsel for Prisoner—Mr. Earls, Maria and myself were by and no one else. This was in Mr. Moritz's kitchen. Mrs. Moritz was in the room. Dont know where Sabina was; I think she was at school. Henrietta was not there. I think old Mr. Moritz was in the room. Dont think this was on new year's day. I live within a quarter of a mile of Moritz's. Maria said nothing when he hug'd and kiss'd her. He would not have got the chance to kiss *another* lady there. I have seen hugging and kissing before often. This was between breakfast and dinner. John came from home that day; it was after Christmas about this time in the year. I was examined at Pennsborough. I never had any difficulty with Maria. I was married; I am single now; my husband is not dead.

Hugh Donley, Jr. sworn—Some time last May, I was at Patrick Callahan's all night, at Muncy dam. I got up about three o'clock, before day, and went down to Sechler's lock. Between the dam and lock I met John Earls and Maria Moritz. I went down to the lock and stayed there a little while and came back to the dam and stopped there a spell—it was the day the show was at Muncy, [*the exhibition of wild animals.*] I started from the dam up to Muncy, and about two miles above the dam I looked up the hill, and I saw Maria Moritz standing there combing her hair. I went on a piece and looked around and saw a man coming out of the woods below, that I took to be John Earls. The day that John Earls was taken, I heard him say that he had bought ratsbane, but he never gave Katy any. He said he loved Maria Moritz, and he did not care a d——n who know'd it. It was before day when I first met them—I got up about three o'clock—it was about sunrise when I saw Maria afterwards. It was about the middle of May—it was the day of the big show at all events.

Cross-examined by Counsel for Prisoner—I was about six hundred yards from him when I saw the man I took to be Earls. He had just come out of the woods, and I saw him on the tow path. I think he had the same clothes on he has now. I heard Earls' conversation, as stated, near Linsley's locks, as I was passing him as they were taking him up to Muncy. It was about three-fourths of a mile from Earls' own house to where I met him

with Maria; the moon was shining; he was going up the tow path. I think Jake Swisher was by when he told about loving Maria and about the rat-bane—it was after dark.

Re-examined by Counsel for Commonwealth—Earls' house is below the lock house, in Muncy Creek township, Lycoming county.

The counsel for the Commonwealth here stated that Christiana Earls, a witness previously examined, desired to make some further statements. The prisoner's counsel objected, alleging that the woman was old and infirm, and easily operated upon by the excitement which pervaded the public mind. The Court directed the witness to be called, and remarked that she should be asked no questions. Mrs. Earls not being in the Court-house, when called, the Counsel for the Commonwealth announced that they would here close the testimony for the prosecution.

Mr. PARSONS opened the case for the prisoner as follows :—

May it please your Honour—

Gentlemen of the Jury :

After a tedious examination of witnesses for six days, we have it announced by the learned gentlemen, who conduct this cause on the part of the commonwealth, that their testimony is closed; I rejoice at the patience which has been manifested, by the intelligent jury which I this day have the honour of addressing, and the untiring attention with which they have listened to all the evidence that has been adduced by the commonwealth.

On behalf of the unfortunate prisoner at the bar, we have to call upon you for a further exhibition of your patience, and a continued devotion of your attention, to testimony that may be brought for your consideration, by the defendant, in this indictment. I ask but a faithful hearing for my client, and a full investigation of his case, for on that hangs all his future prospects in this life. Your verdict will unloose the chains that now bind him; break assunder the bolts and bars which now close his prison doors, and open wide, the gates of the gloomy dungeon, which for months has been his habitation, and set him free; or it will rivet closer those chains; fasten firmer those bars and bolts; close tighter the prison doors, and consign him to the gallows. Indulge me, gentlemen of the jury, while I caution you against those impressions, or prejudices, which may have honestly, and perhaps imperceptibly, crept into your minds, in relation to this cause, before you were empannelled in that box; for I say to you, that a cloud of prejudice more blighting than a mildew upon the vegetable world, has lowered upon this man's cause, and seems to blast all hope of a fair trial, unless your minds remain pure, and untainted. There is no perfection in this world; we are but human nature, and liable to human prejudices, and those too often unperceived creep into the purest heart, and undermine the strongest judgment; hence the necessity of fortifying the mind against its insidious attacks. I was much pleased with the remark made to you by the Court, in the early part of this trial, "that when the jury come into the box, their minds should be like a sheet of *white paper*." No impressions should be permitted to reign in your minds, but those created by the evidence. We ask of you in this investigation, to discriminate between the crime of *murder*, and other crimes with which the prisoner has been charged, by the counsel for the prosecution, and of which they allege he is guilty. We do not, as counsel for the prisoner, justify all his conduct, as disclosed by the evidence already before you. His conduct towards his wife was brutal and barbarous; and I stand not

here to palliate or deny it. It is said that his affections were estranged from his wife, that he left the sacred and hallowed rights of matrimonial life, and with the lurid fire of guilty passion, sought the adulterous pleasures of another. I do not justify such an act, but we say to you this is not *homicide*; it is not the crime you are called upon to try. I ask you to divest your minds of any prejudices, that may have arisen there against the prisoner in consequence of evidence admitted on those points. We resisted that evidence, but the COURT overruled our objections, and we bow with humble submission to their decision. But although that evidence was admitted by the COURT, to show a *motive*, for the commission of a crime—it does not establish the crime of *homicide*, with which he is charged in this indictment. It will be the duty of this jury to discriminate between the *motive*, and the *crime*, with which he is charged.

The principles of law and evidence, on which we rely for the defence of our unfortunate client, it is my duty to state to you in these remarks. The commonwealth asks not the blood of any of her citizens, unless the evidence clearly warrants it. We have examined the testimony now before you, and shall rely upon that principle of law which requires that the guilt of the prisoner be indubitably established by the prosecution—and we say that this does not establish his guilt—and that it has not been proved. The law presumes him innocent, till his guilt is fully proved. We shall shelter our client under those immutable principles of law, which form a complete and perfect shield to him—and protect him from the dark imputations cast upon his prospects, by the array of circumstances brought against him. Upon consultation with my colleagues, I say to you, gentlemen of the jury, as I stand in the presence of this Court, if we were in the place of that prisoner, we would not call a single witness to rebut any thing produced by the commonwealth; there is nothing but circumstantial testimony, which may all be true and still the defendant *perfectly innocent*. I should not have said that we would not call a witness were we in the place of the defendant, if we were not fully aware of the law of the land, that must govern in this case, and which will be read to you at a proper time. Permit me to say at this time, that in order to warrant a conviction on circumstantial evidence, the circumstances must be inconsistent with the prisoner's innocence. But we must pursue a different course in defence of this unfortunate man—he is unskilled in the science of our profession, and unacquainted with the rules of law—he relies upon the consciousness of his own innocence. John Earls has no friend to take his part in this trying hour, or act for him in this momentous scene, save here and there a weeping little child, who hovers round the criminal box, where their still dear but unfortunate and ill fated father is confined—there is none to stem for him the current of public opinion, and popular prejudice, which for months has been rapidly rolling against him, nor no one to repel the infamous falsehoods, which slander with its thousand blasting tongues has been spreading on the winds of heaven against him. He has been for four dreary months immured within the walls of the prison, none to select his witnesses, none but the officers of the law, to summon them; but with all these obstacles to encounter, we will adduce testimony which will clear away this mist and prejudice, and repel this attempt at conviction on circumstantial evidence of doubtful character.

We do not concede the point that Catharine Earls died from poison; it is a fact for the prosecution fully to prove. We will refer the Court, and you, gentlemen of the jury, to a number of the most respectable medical authorities, in relation to death by arsenic, and its detection in the stomach, by

chemical tests. We make no reflection upon the intelligent scientific gentlemen, who have been examined in this cause, in relation to the *post mortem* examination, and the chemical tests applied to the contents of the stomach of the deceased; it will be for this jury to say, whether the deceased came to her death by poison or not. But admitting that she died of arsenic, it will be for the commonwealth to fix upon the criminal agent; does it follow that the prisoner has done the act? It is not for us to say who has been guilty of the crime; we shall present the facts fully before you, and leave the jury to draw their own inferences as to the guilty agent.

We will prove to this jury, that years ago the woman who it is alleged has been consigned to the grave by my client, and who has gone to that bar where we must all one day appear, shortly after her marriage with the prisoner imbibed habits of intoxication. We will show that her general character was that of an intemperate woman. I would most devoutly wish that I might be spared these remarks, for I am aware that we ought to "tread lightly o'er the ashes of the dead." But when the interests of my client require this exposure, it is not for counsel to shrink from a faithful discharge of duty. For awhile she refrained from a free indulgence in the use of ardent spirits. About two years ago the prisoner and his family removed to Muncy dam. She soon resumed her intemperate habits—soon she became jealous of her husband. Whether the "green eyed monster" was seen through the reflection of the bottle, or whether she had a real cause for these dark suspicions in which she indulged of her husband's honor, is not for me to say, but will be for your consideration. We will prove to you that for some weeks before her confinement, she spoke of it as terminating her earthly existence—that she said she would not live beyond that period. She on one occasion remarked that she would not live long after her child was born; and to one person she said "that before one week passes by after my child is born, you will hear that I am dead." Unfortunately for my client, that confinement was her last, and her gloomy predictions were fulfilled. We will prove to you that on more than one occasion a few weeks before she was confined, Mrs. Earls, the deceased, told some of her friends and acquaintances as she was parting with them, that she would never see them again, that she had not long to live. In conversing with an old neighbor from Milton, she told him she would never see that place again. He enquired the reason, and she told him that her approaching confinement would end her life. Some weeks before her dissolution, she gave to her eldest daughter a dress that had been purchased for herself, stating that she would not want it, and that it was the last dress she would ever give her. The deceased about the same time purchased a dress for a younger daughter, stating that it would be the last the little girl would receive from her mother. We will show to you that Mrs. Earls on more occasions than one wished herself dead, and declared that she hoped John would have his neck stretched for it. We will also prove that she threatened her own destruction by means of poison, and that she would die by the taking of it; and that too, at the period when she was confined. In addition to this we will show to you a variety of other facts and circumstances which strongly go to show that the deceased was bent on self-destruction.

Testimony will be introduced on the part of the prisoner, to rebut many of the prominent facts and circumstances which are relied upon as evidence of guilt by the prosecution. We will show that as early as 1827, he purchased *arsenic* for the purpose of destroying the minks which devoured the fish caught in his baskets. We will prove that a few weeks before the death

of his wife, he purchased the same article, and for the same purpose, and that the prisoner used the *arsenic* purchased at Muncy on the day of the election, before the sickness or death of his wife, by putting it on a dead fish at his basket which had been partly devoured by the minks. We will show that other fishermen along the river have used it in the same way, so that any unfavorable inference which might be drawn from the circumstance of the purchase of poison by the prisoner will be fully explained. We will show that the witnesses for the Commonwealth are mistaken in what they have sworn about any *threats* made by the prisoner against the deceased; that if the defendant put his wife in the cellar, it was when she was intoxicated; and that all which has been sworn about his intercourse with Maria Moritz, that he was in bed with her as sworn to by John Shuman, or with her in the stable as asserted by Garnhart, was sheer fabrication. This, gentlemen of the jury, is but a brief outline of our defence, and but a few of the vast variety of circumstances which we will introduce in defence of our much persecuted but innocent client. It has been asserted by the counsel for the prosecution, that the prisoner viewed the dissolution of his wife with indifference, and remained like a "marble statue" unmoved by the afflicting scene. But we will show that all the forms of funeral rites and ceremonies known in the place where he lived were strictly observed—that a highly respectable clergyman attended at the house, preached a funeral sermon at the church, and aided the afflicted family in performing the last kind offices due to a departed relative—that so far from being like the unfeeling "marble" he might better be compared to the weeping willow; for with his little children around him he took a last farewell of the remains of his departed wife, after they were enveloped in the icy coffin, soon to be inurned in the still colder grave, with his eyes bathed in tears, mingling his sobs and cries with his fond little ones who were mourning over the corse of their lamented mother. All that kindness and humanity could dictate was performed by him after her decease.

His counsel, from a daily intercourse with him, minutely observing every act, and strictly watching every word, are as well convinced of his innocence, as of that of any person in this court house. And although conscious of the inconvenience of this jury, being confined as you are in this box, and separated from all society when you retire from it; yet we doubt not you will cheerfully listen to all we have to say, and with pleasure set the prisoner free.

Adjourned till nine o'clock to-morrow morning.

TUESDAY MORNING, FEBRUARY 9.

The Counsel for the Prisoner called

John S. Carter, affirmed—I keep an apothecary shop in Northumberland. About the first of October last a person called on me and enquired for some anise seed oil and asafoetida. He told me he used them in fishing. I asked him a number of questions relative to the manner of using them and where he fished. He told me he fished up near Watsonstown. I enquired something about his success in fishing—he replied that the minks or muskrats had got to preying upon his fish at nights in his basket, and he thought he ought to get some arsenic or ratsbane and see if he could not kill them. He asked for a fi'penny-bit's worth. I got the bottle down and gave him that amount. The person alluded to was the prisoner at the bar. I took particular notice of the man and remarked his clothing; and recognised him

at last court at the jail. We do not make a practice of selling arsenic to every person, unless sufficiently acquainted, without something occurs to remove suspicion. The reason I gave it to Earls was his enquiring for the other articles first, and the reason he gave for using it. I had no hesitation in giving it to him. We generally give one-fourth of an ounce for a five-penny-bit. I did not weigh it—I gave it to him on the point of a knife. He got two drachms as near as I could guess. The article is quite heavy, I dont recollect its specific gravity. What I sold Earls would lay on the point of a common case knife. A common tea-spoonful would be rather more than a drachm.

Cross-examined by Counsel for Commonwealth—There are four hundred and eighty grains in an ounce—sixteen grains in a drachm. It was about the first of October—the first week. I had been sick and got to the shop on the first, and left it the fourteenth; it was between those dates. We rarely use colored paper in wrapping up articles; we use white drug paper, and always put arsenic up in two or three papers to avoid accidents.

William R. Wilson, affirmed—I lived with Patton & Bright in Milton; they kept an apothecary, dry goods and hardware store. I knew John Earls when I lived there; he called on me frequently and got the oil of anise seed, asafoetida and arsenic. I dont recollect how often, several times I sold it to him. He told me he used the asafoetida and anise seed, for catching fish. I asked him if he made use of arsenic also to catch fish—he said not; that he used it to destroy minks or muskrats, I dont remember which, I rather think minks, that were in the habit of cutting his nets and taking his fish—destroyed his fish frequently in his nets and baskets. This was in the spring and fall of 1827. I have been out fishing with him, he lived in Milton at the time. I have seen him prepare it and put it in his basket. He put the arsenic on meat and put it into the basket. He fished then about the islands near Milton—Vincent's and Moodie's islands. Earls was a boatman; he went down on arks in the spring of the year. He was a pilot on the river. He was a fisherman. I have seen him boating—he managed a river boat before the canal was made.

Cross-examined by Counsel for Commonwealth—I left Milton in the spring of 1828, and have known but little of Earls since. I have seen him at the head of the line with canal boats. I never saw any minks destroyed, nor muskrats, with the arsenic. I have seen minks about Vincent's and Moodie's islands.

Re-examined by Counsel for Prisoner—Arsenic is sold as ratsbane, by the apothecaries to kill rats. I never saw any rats that were killed by the arsenic.

Samuel Earls, called—[*Prisoner's son.*] Being examined in relation to his competency the witness stated:—"I am going on eleven years old. I know about the oath I am going to take. If you swear to a lie you will go to hell. Nobody told me; I heard it myself. I heard it a good while ago. Father never taught me so. I heard people say it."

Witness sworn—The day pap was in the bar-room he said we should go along up to the basket. Then we was in the bar-room and went down to the river with the basket for lamprey eels. Then we went on up to the basket. Then he swung the canoe and tied her, when we got up to the basket. Then he got into the fish basket and there was a fish there that the minks had eat his head off. Then he sat down in the hind end of the basket. Then he told me to hand that fish to him. Then I did. Then he took a paper out of his pocket. Then he unslapped it; there was two papers, and he put some

white stuff in the fish, and told me to lay it in under the second fall. Then I did. Then he threwed the papers in the river. I asked him what he put it in for. He told me to kill the minks, they come and take the fish off so. Then he throwed the papers into the river, and John wanted to catch them. Pap told him to leave them go. He said the minks took the fish off so and hid them, he said he wanted to give them a dose. Then he untied the canoe. Then we went on down home. We met old Mrs. Callahan on the road. We could just see that it was getting dusk when we got home. It was the day before mam died. I went to Mangus' with Livy Sechler after mother died.

Cross-examined by Counsel for Commonwealth—Mother died about four o'clock in the morning; it was the day before that we went to the basket. There was no fish but that one in the basket. The colour of the paper papa untied at the basket was white and red. We had caught no fish for several days in the basket; it was not because the water was too low. We caught the last fish two or three days before that. My brother John was with us; he is younger than me. John asked me what it was for after I asked papa. The sucker was lying there from the night before. I did not eat my dinner before we went up to the dam; we did not have any dinner; we eat a piece. They were getting dinner when we started; grandmother was boiling some meat for dinner. She was cooking chocolate. The river was not very high nor very low—the water was running over the fall board when we went there. I have not been examined before. I told this story to Mr. PARSONS and that man, [pointing to Mr. ELLIS,] that was up in the jail before. Papa said I should hand him the fish, and did not say nothing at all about it. He put it in the inside of the sucker. I never stated that the river was so low we could not catch fish for three or four days before. I have not stated the water was so low it would not come over the fall board. Father never killed any minks there with poison as I know of. I never saw any minks there. I dont know how old my brother is. There are twelve days in a month, I believe.

[Mr. ELLIS, for the prisoner, here objected to questions of this character being put to the witness on account of his extreme youth, and his limited means of information. The COURT referred to the fact, that they were very nearly, if not quite, the same questions that were propounded by the gentleman himself, to one of the Commonwealth's witnesses on her cross-examination, and intimated that there ought not to be any objection. Mr. ELLIS observed that the cases were widely different. The case referred to by the COURT was that of Susan Earls, who had gone on for some time talking of weeks and months and seasons as fluently as if she had been of mature age. Those questions were asked her for the purpose of testing her knowledge of time and other matters of which she had been talking so freely. In this instance, the witness had attempted nothing of the kind, and it would be improper to cross-examine him in relation to a subject on which he had said nothing in his examination in chief. It was plainly evident, said Mr. E., that Susan had been schooled into her story; that she was the little alembic into which all the scandal of the country had been thrown, and there concocted and reproduced with tenfold bitterness and venom. The result has been clearly manifested by her conduct during the progress of this trial; totally estranged from every kind feeling and affection towards her father, she has perverted the laws of nature; for, said Mr. E., it is an elementary principle, written by Almighty God deep upon the human heart,

that the child shall love its parent. The COURT overruled the objections, and suffered the questions to be asked.]

Witness proceeded—There are six days in a week. There are twelve weeks in a month. I can read. I saw father put poison into a fish before. He put it into a market basket where he had some bait fish, and the minks came and upset the basket and got them out. This was two or three months before. The poison I saw pap put into the fish was wrap't up in one paper and another paper over that. It was all put in the fish. I dont know where he got the poison before he went to the basket. He said it was ratsbane. Grandmother wanted us to stay and get dinner before we went. He said he wanted to hurry up and get lamprey eels, and then he would come down and get supper. Pap gave us our pieces; we got bread and butter. We got the lamprey eels up at the point of the island over from the fish basket. John and me helped to push going up. Supper was ready when we got down. We crossed over from the fish basket to get the lamprey eels, and then come straight down—we got lamprey eels with a shovel. One tea-spoonful I guess it was pap put into the fish. The time he put it into the basket it was two times the point of his pen knife fall. There was a stone in the basket and he laid the poison round it.

Re-examined by Counsel for Prisoner—There were three falls in the fish basket; the water run over only the one fall board at the time.

Cross-examined, again, by Counsel for Commonwealth—I stay at the jail with my father. I have stayed there all the court.

Examined, again, by Counsel for Prisoner—I am locked up with my father at night. I stay here by him in the day time, in the court house. I sleep with him.

Daniel Doubt, sworn—

[The counsel for the prisoner proposed to prove by this witness the *declarations* of the prisoner in relation to being troubled with minks and muskrats at his fish baskets, and his intention to destroy them with poison.

The counsel for the commonwealth objected to the admission of the testimony; and contended that the *declarations* of the prisoner, unaccompanied with *acts*, could not be given in evidence by himself in his own defence.

The COURT sustained the objection, and at the same time remarked that if such *declarations* were offered in connection with the *acts* of the prisoner to which they had reference, they would perhaps be proper evidence to go to the jury.]

Witness proceeded—I saw Earls catching bait fish about the first of October last; he sat in his canoe. I just happened to come there while he was fishing. I did not join with him in fishing; I stood by; he was catching chubs with a hook and line. He told me he wanted them for bait fish; he was then preparing for fishing. I saw him putting out his out-lines and baiting them, and also going to his fish basket.

[Mr. ELLIS here submitted to the court whether the *declarations* of the prisoner, made at the time to which the witness has alluded, and in connection with the *acts* he has already proved, might not properly be adduced in evidence. The counsel for the commonwealth again objected; but a majority of the COURT decided that the testimony should be admitted.]

Witness proceeded—Before he went to his fish basket, I asked him how he was doing with his fishing, and said I suppose you are making money this season. "No, sir, says he, I am just about making a living; the Mr.

minks are troubling my fish basket, but some of these days I will set a bait for them that will stop them from troubling it hereafter." He went and set his out line and afterwards I saw him going to his fish basket. I have lived for a year past, as near as I can tell, about a mile and a half above Earls', on the tow path. I have frequently been at Earls', and through the past summer was there every week once or twice. I have not seen much ill treating. One time I saw her standing in the door scolding him, and he said to her "it is enough of that, shut up now," and with that she went into the house. I cant tell whether she was intemperate or otherwise.

[Mr. PARSONS, for the prisoner, proposed to ask the witness what was the general *reputation* of Mrs. Earls for temperance.

Mr. ARMSTRONG, for the commonwealth objected *in toto* to evidence of Mrs. Earls' *reputation*; he cared not what were her habits, had the prisoner on that account a right to murder her? He ought to be the last to disturb the repose of the deceased; and unless he pleads "*guilty with leave to justify*," the evidence is inadmissible. Mr. A. at the same time remarked that they did not fear any investigation of the character of Mrs. Earls, but if the Court decided it relevant, would willingly go into that subject and show that the imputations attempted to be cast upon her were without the slightest foundation.

Mr. PARSONS replied, that the commonwealth have attempted to prove that the prisoner had grossly abused and ill treated his wife; and the object of the present offer is to show the provocation—it is a part of the same transaction which they have given in evidence, and in this view he contended the testimony was pertinent, and ought to be admitted.

The COURT ruled that the general *reputation* of the deceased could not be enquired into *at present*, if at all; but any distinct *facts* in relation to her conduct might be shown.]

Cross-examined by Counsel for Commonwealth—I have been acquainted with Earls and his wife, back and forward since they moved to that place. I have often seen Mrs. Earls, but never saw her intoxicated.

Mary Swartz, sworn—I was very well acquainted with John Earls and his wife, in Milton. They were good neighbors, both him and his wife. They lived together on very good terms so far as I knew. I don't know any thing of Mrs. Earls' intemperance, nor any thing wrong of her. I lived just across the street from them.

[Here the counsel for the commonwealth, without objecting, permitted the prisoner to give evidence of the general *reputation* of the deceased for temperance.]

Witness proceeded—I never heard any thing of her drinking till here of late—till after they left Milton. I left Milton for two years. When I came back the people then said that she drank too much before she left Milton. That's all I know.

Cross-examined by Counsel for Commonwealth—It was only one person that told me so till after they moved out of town, and then the people talked about it. While we lived away from Milton we lived one year at Pottsville, and two years at Derrstown. I came up on a visit then when I lived in Derrstown, and stayed with her pretty near all day. I think this was about two years after I left Milton. I saw not a bit of liquor in the house at that time—she offered me nothing of the kind. Her appearance did not indicate any thing like a woman that indulged in the bottle. She was always very steady when I saw her.

Diantha Marinus, sworn—I lived at Mr. Earls' two months after they moved up to the dam. We lived a year near Mangus'. I was present at the time it is alleged the prisoner threw water on his wife. Betsey Mangus and I were sitting in the front room, and we heard a noise. She told me to come to the door that Maria Moritz was coming. I went to the door; I saw Mr. Earls jumping out of the sleigh; he said to Mrs. E. that she had tormented him enough, and he would throw some water on her. He took his hands and splashed some water on her as she was sitting beside the trough. I threw a stick of wood at him and he came after me. He fell into Mr. Mangus' door. He went out then and came in through the bar room. He asked Mrs. Earls what was the matter. She said he knew very well. He went out then. She held by the reins of his horse at the trough, when he jump'd out of the sleigh; she held but a few moments and let go as he jump'd out. She sat down beside the trough, when he threw water on her. No one had hold of her at that time. She was running after Mr. E. when she got to the trough. She took hold of the reins, down by the bridge and turned the horse in between the garden fence and the trough. He threw the water on her with his hands. I did not see Susan Swenk there at all. Mr. Earls and his wife were disputing once—he said that she had been intoxicated—she said it was not so. Says he, "Katy, it would have been better if you'd been asleep, than to have been at that act:" that is, being intoxicated. She flew in a great passion, and said she knew he would rather lay her asleep. Says he "Katy I did not say so, I said it would have been better if you had been asleep." She still said he did say so. He still told her that he did not. John did say that she might better have been asleep. I have seen Mrs. E. intoxicated. She was intoxicated at the time of this conversation. I have seen her intoxicated frequently. I was a good deal at Earls' while I lived opposite to Mangus'. The two months I lived at Earls' was last spring. One day when I lived there Mr. Earls was hunting some papers; he was getting her to look over those papers. He lifted a paper out of the drawer and it appeared to me that it had about two table spoonfuls in it. He asked her what it was; she snatched it out of his hands and said she knew what it was. The children were playing around the door a couple of days afterwards, and Mrs. Callahan's cow was there—the cow knocked one of the children over and she swore she would poison her. I asked where she would get the poison, and she said that was poison John lifted out of the drawer t'other day. She said she had got it with the intention to poison Maria Moritz. She said if she could not get revenge of her she would take something that would put an end to her own life. She said nothing more at that time. This was while I lived there, in the spring just before I went away. It was the last of April or beginning of May that I went away. One time Maria Moritz and Sabina went up the tow path; Mrs. Earls prepared herself with a stick again they came down—she swore she would kill Maria Moritz if she could. When they came down the tow path she invited them in; and asked Maria what business she had with her man at Northumberland. Mrs. Griffin and I and Betsey Mangus were by. Maria said she had not been along. Mrs. Earls said she was; and Maria said it was not true. Mrs. Earls struck Maria on the face with a stick; it was a hickory pole. Maria ran to the door; Mrs. Griffin caught her and pushed her back. Mrs. Earls struck her again. Mr. Earls came over and said "come old woman you must not raise a fuss on Sunday." He then kicked Hetty Griffin out of the house, and opened the door and let Maria and Sabina out and they run down the tow path. Mrs. Earls and Hetty Griffin followed them, and I also

for about one hundred yards—Mrs. Earls and Hetty Griffin went a good deal further but they did not overtake them. Earls threwed his wife back again the door when he told her not to raise a fuss on Sunday. John was down at the river when Mrs. Earls called the Moritz girls in. Dont remember whether my husband was with Earls or not. Mrs. Earls sent one of the children down for John to come up and see how she would whip Maria. He came up to the house and did not say any thing; but just listened to the conversation she had with Maria Moritz. I was not at Earls on last new year's day a year when he put his wife in the cellar. I was present on one occasion when Mrs. Earls struck John with a brush. Mr. Earls was once down at the river, Mrs. Earls went into the bar room and took a drink; when he came up he asked her what made her smell so strong, and asked whether she had not been drinking some liquor—she said she had not touched a drop for some time. She picked up the brush and struck him, and he ran out of the house. He told her she had better not try it again. She said she wished to the Almighty God that he would only kill her, and then he would get his infernal neck stretched for it. He went away from the door then and I went out into the kitchen. She would sometimes get in a great passion and would swear very hard. John Earls generally kept his papers himself. This happened last spring when I lived there. Mr. Earls is no scholar at all; he cant read writing nor write his name. Mrs. Earls could write and read writing. I believe I never saw Mrs. Earls strike John on any other occasion. When Mrs. Earls got angry she did not care much what she did. At the time she was going to whip Maria Moritz, uncle John told her she had better be quiet; she said she was not going to be quiet for him, and she would die before she would give up, and she would whip Maria Moritz. The prisoner is my uncle.

Cross-examined by Counsel for Commonwealth—John Earls is my uncle. I have been to see him at the jail since I came to court. We did not talk all these matters over. I have not talked this matter over with Earls at the jail or any where else since I came up. There has been nothing said between him and me about what I was to swear to. I went alone to see him; the jail keeper was in sometimes, and sometimes other prisoners. I have been up to see him every Sunday during two months. I have lived in town since last court. I dont know where my husband lives. John ran out of the house the time his wife chased him with a brush; dont know whether she hurt him much; she could take her own part. John was not generally very much afraid of her. They had quarrels every time she became intoxicated—the quarrels were about her being intoxicated, only sometimes she would throw up to him about Maria Moritz. I know of no other cause of their quarrelling but intoxication. I have seen her drinking liquor; no person was present when I saw her drinking; it was while I lived at her house. I never saw her drinking at any other time than when I lived there except once. I knew she was intoxicated by her appearance and the way she acted. She was obliged to go to bed sometimes. She was sober the day she called in Maria Moritz and her sister. Sometimes I saw her only drink but one drink a day, and that was in the morning. She usually drank whiskey. I dont know that John was more particularly averse to fighting on Sunday than on other days. She did not open the paper and show me what was in it, but said it was poison. She did not say where she got it. John said nothing when she snatched it from him. She did not say it was poison until a few days afterwards. John did not know it was poison—she said nothing about it being poison that day nor for a couple of days after-

wards. Mary Earls and Mr. Earls was by at the door. Earls kept the key. Mary Earls was by when Mr. Earls lifted the paper out of the drawer. Mrs. E. was sober then. I never saw the stuff that was in that paper. It was tied up in a blue paper, and appeared to be about two table spoonfuls. It was wrapped up square like and tied. I never heard John say any thing about having poison in the house.

Re-examined by Counsel for Prisoner—Sometimes when Earls would go away he would leave the key of this drawer with his wife.

Adjourned till three o'clock, P. M.

AFTERNOON SESSION.

Emily Welshanse, sworn—I was acquainted with John Earls and Mrs. Earls; they were good neighbors; had plenty to eat and plenty to wear. One time the little children were all about the stable laughing and hollowing. I went over to the stable and saw Mrs. Earls lying there in the stable. I took her by the head and mother took her by the feet and we carried her in. I smelt liquor on her, but I cant say whether she was drunk or not. We carried her in the house and I held her till my mother fetched a bed in. We laid her on the bed and my mother and me went off and left her there. A couple of days afterwards I went over there, and Mrs. Earls said there was a dreadful talk through town about her being drunk. She said she was longing for the liquor and had taken it, and had taken too much. She then spoke of the time I saw her in the stable. It was a good while before Earls moved up to the dam—a couple of years or so.

Cross-examined by Counsel for Commonwealth—She was in the family way when she said she was longing for the liquor. It was a good while before she was confined. I never saw her in liquor at any other time before or since. We lived in Milton at the time; we lived neighbors four or five years—just across the street. I was very often in while they lived there. I never heard before that of her taking liquor.

Re-examined by Counsel for Prisoner—I never heard after that from other people that Mrs. Earls got drunk.

George Welshanse, sworn—I never saw Mrs. Earls more than once that I thought she was in liquor; that was about four or five years ago. She was once at my house scolding and I thought it did not become her, and I told her husband of it. I was out of town a great deal and was not in their house more than ten times while Earls lived there. The neighbors generally in those houses said she liked to have a little whiskey once in a while. I never heard of her being in liquor but once after the time before alluded to. He removed to the dam from Milton in April 1834. He lived in lower Milton. The time I allude to was not the time my wife speaks of.

Cross-examined by Counsel for Commonwealth—Three or four of the neighbors only spoke of Mrs. E. being in liquor at one other time from the one I saw. I lived in Milton. I never heard it alluded to by the neighbors but one time.

Daniel Doubt, called again—I heard that Mrs. Earls should have been seen frequently intoxicated at Milton. I heard it last summer or rather in the spring. I cant say that there was much said about her being intoxicated where she lived last, at the dam. There was some such talk, but for my part I never saw any thing of it.

Cross-examined by Counsel for Commonwealth—The talk that I heard of about her intemperance was at Milton and also at the dam. I saw the woman frequently but never saw her out of the way.

Zachariah Welshanse, sworn—I was at Earls' two or three weeks before Mrs. E. was confined. I asked her where John was. She said he'd gone to the mill; but she expected him back soon. Says I, Mrs. Earls when are you coming down to Milton; she said she never expected to see Milton alive again. Then I walked down towards the river and she took one of the children and followed me down to the bank; we had some conversation there together, I don't recollect exactly what it was, but before I left her I asked a second time whether she'd call and see us when she did come to Milton. Her answer was a second time that she did not believe she would ever see Milton alive. This was between two and three weeks before she was confined; I mean before her death. I made no reply. She said nothing more.

Cross-examined by Counsel for Commonwealth—She was cheerful that day as I ever saw her. She talked and laughed and was as well as ever, I thought. She said these expressions very mildly. I never before that heard her say that she did not expect to visit Milton. I used her very words as near as I can recollect. I cannot give the whole conversation. She was not complaining—she did not speak of her approaching confinement.

Re-examined by Counsel for Prisoner—She did not seem to be any-wise serious about it—she had been talking about something else.

James M'Coy, sworn—About the middle of August last, I came down to Mr. Earls' from Patrick Callahan's; I went into the house and there was not any one in but Sam and the other boy and their mother. I asked her how she was, and she said she was well. She said she wished to Almighty God she had something to put her out of the way for she was troubled in this world. I asked her where John was, and she said him and Reuben Bartoe and Mr. Marinus were up fixing something about the fish basket. I then asked her for a drink of whiskey, they kept liquor to sell, she went in and gave it to me and I went out. I have been there frequently. I had a brother that boarded there for several months and I came frequently there to see him.

Cross-examined by Counsel for Commonwealth—Mrs. Earls did not tell me what her troubles were. I was not there at that time over ten or fifteen minutes. It was about the middle of August. She made no complaints against any one; she was not more serious in wishing for something to put her out of the way than she was in the rest of the conversation.

Jacob Hoffman, sworn—It was in the year 1834, I was working on the public works along the canal. I went to the Muncy dam and got work there. I stopt at Mr. Earls'; he kept a boarding house. I had come up with my flat and asked Mr. Earls whether he would board me and my hands for a while. He said for his part he would, provided the old woman would cook for us. I went and asked her whether she would cook for some more hands, for Mr. Earls had sent me to her. She said then that was the only way they had for making a living, and she would try to make room for us; she said she would cook. I went on to the dam and found it was inconvenient for me to board my hands there. The next day I told Mr. Earls that I be to leave him, it was inconvenient to board with him, and asked what I was in his debt. He told me to go to his woman, for he provided and she would take the money for it. I went to her and she told me how much it was, and she took the money for it. I have fished a great deal and worked a great deal. I used traps for catching muskrats and minks, and as much as ten years ago I have got ratsbane and set it for them to kill minks, muskrats and all other wild animals I wanted to kill. I have used it frequently, near-

ly every year, for fishing and for killing foxes and other wild animals. Muskrats and minks will take fish out of the baskets whenever they can get them. I have bought a shilling's worth at a time in Pennsborough and in Milton. I have bought it a couple of times from Bruner & Dawson, and sent for it frequently by my children and got it. If I put it in a fish basket or on the shore, I would put it on a fish or on any other kind of bait to catch them. I have cut the fish open for that purpose.

Alexander Marinus, sworn—I was along with Earls last new year's a year shooting away the old year. Earls and Dan Griffin came to Mangus' and we started from there between ten and eleven o'clock. We went to Daniel Ungst's, got him along, and from that came back as far as Billy Moritz's; then to Garnhart's; from there to George Oyster's; from there to Daniel Oyster's; Daniel Oyster went along, and we went to Benjamin Oyster's; then we went down to old Mr. Oyster's. We took a good drink now and then in some places where we could get it. From there we went up to Mangus' again, and stopped there and took a drink. Then I left them there and went on to Mr. Page's; from there I went home. Earls was drunker than ever I seen him that morning. One Sunday morning Mr. Earls sent down for me and I came up—the river had broke up on Saturday and on Sunday we were catching wood. Maria and Sabina Moritz came up the tow path past Earls' and one of Earls' little girls happened to see them go by and ran in and told her mother. Mrs. Earls came to the river and says she "John there goes them d——d whores of yours." She said she would watch them as they come back and she would call them in and give them a d——d good licking. Then John told her she should not make a fool of herself and go to quarrel with them on Sunday. He said there was so many young fellows there on Sundays, he did not want her to be quarrelling. Then she went to the house and got herself a stick, and carried it in and set it in the corner. This talk took place at the river bank. It was a maple stick about six feet long, the end off of a fishing rod—the but end. It was a fishing rod I had cut myself. Then when the Moritz girls came back down the tow path, she came to the river and says "there comes your d——d whores back again, and if you want to see your d——d whores get a good licking, come up and see it." Then she came up and stood at the tow path till they came and met her; when they came up, says she "Maria I want to speak to you a few words, come in if you please." Then Maria followed her into the house and she shut the door on her and turned the bolt. Sabina went in with her. John had come up by that time and him and me was standing between the house and shantee on the shantee porch. Then says she "Maria what business had you to go to Northumberland with my man." Maria says "I did not go to Northumberland with him." Then Katy said "d——n you dont lie, for you did go." Then says Maria "I know better I did not go." Then says Katy "dont call me a liar in my own house, or I'll break your d——d head for you." Then says Maria "I did not call you a liar." "Yes," says she "you lie, d——n you, you did," and with that she struck her with a stick. Then Sabina Moritz give Katy a kind of push and pushed her back a little. Katy says "if you do that again I'll hit you in place of hitting Maria." By that time Maria went to reach for the door to get out and Hetty Griffin stood against it and pushed her back; then Katy Earls struck her again over the head with a stick. Then John Earls said "you aint going to abuse the girls in my house on Sunday; if you want to talk to them on Sunday you must talk to them in reason or else leave it be to some other day." Then she went to strike them again, and John caught the stick

and gave her a push and pushed her back into the corner. Then he pushed Het Griffin away from the door and opened it and let them out and told them to clear themselves. After they were out he shut the door and kicked Het Griffin out through the room. He gave her a couple of kicks. The words he said to Het Griffin were, "clear out of my house you d——n bitch, dont be coming here to raise disturbances between me and my woman." Then Hetty Griffin, Diantha Marinus and Katy Earls ran down the tow path after them; Katy Earls did not get out of the house as quick as the rest. John did not hold Katy as I seen. He ran before her and says he, you look well running after the girls on Sunday. They followed Maria and Sabina below the bend, then Katy, Hetty and Diantha came back, and says Katy "I caught your d——d whore down there, and tore the veil off of her, and her cloak, and tramp'd her cloak in the mud and tore her veil up and throwed it into the canal." Then said John "you look c——d well after your chase." Says she "I look as well as you do." That is all I know about that. I have seen Mrs. Earls in liquor several times. I boated with Earls a good deal—the biggest part of three summers. I was frequently at his house and boarded there when we were at home. One time she was so full she had to go to bed and going up she kind of staggered against the house. Sometimes when she quarrelled with John she was in liquor, and at other times again she was not. I never saw John strike her. She always began on him as quick as ever he came into the house. I have often seen him turn and go off when she began on him, and go and get his canoe and cross the river and go after lamprey eels. I never saw John put her in the cellar, but I have often heard him say he would put her in if she did not quit her scolding. The cellar is sandy, clean, nice and dry. The door goes into it from the outside; it stands up pretty steep. I think there are five or six steps down from the pavement to the bottom of the cellar. There are two windows to the cellar. The house is pretty near square; about twenty-five feet each way; two stories high and a garret. The chimney comes out at the peak of the roof on the side next to Mr. Sechlers, [*the north east side.*] That is all the chimney that is in the house. There is a fire place below and one above. In the lower story the room is between fifteen and sixteen feet one way, and the partition runs clear through the house. One part is used for a sitting room and the other part is used for a kitchen. The kitchen is on the upper side next to Mr. Sechler's. There is a door comes into the kitchen from the side next the canal, and one from the side next the river. There is a door comes into the room from the side next to Mr. Mangus'—the lower side next to the shantee, [*the south west side.*] The stairs go up out of the kitchen. The upper story is divided the same way as the lower story is, as near as I can tell you. There is a door between the sitting room and the kitchen below, about the centre of the room. There is a door between the two chambers up stairs. It is a rough cast house on the outside. The stove was usually kept in the sitting room. The family eat part of the time in the sitting room and part of the time in the kitchen. The shantee stood at the lower side of the house down the canal. The canal runs in front of both buildings. The shantee stands the same way with the house, there is a small porch between the shantee and the sitting room. The shantee is about twenty feet long and fifteen feet wide, and has a shed roof. There is a door in the shantee to communicate with the door in the sitting room. The upper porch shades the lower porch but there is no roof over the upper porch. The stairs that go up into the shantee stand between the shantee and the house at the corner next the river. The shantee is called

the bar room and is all in one room. There has been a stove kept there. I heard Mrs. Earls say one time that she would not bother him long, or would not be with him a great while longer. It was after corntopping time of last year. The conversation was in her own house before I went down the river. She told me "I dont expect to see you any more," and I asked her why. Says she "I dont expect to live much longer than till after I am confined." I asked her what made her think that—she said she did not know, or something that way. I was going down the river to Harrisburg, and intended to come back about Christmas or new year's. At another time she said she would not live with him much longer. This was last Spring when I came back from being down the river. She was scolding John at the time, and I dont know exactly her language. Mrs. Earls was a middling hasty tempered woman. She was middling easy made angry. When angry she talked very roughly, and very fast, you could not hardly get in a word no way. I have heard her say, when angry, that she would not give up if she was to be killed or something that way. I saw her strike John once with a brush, I believe that was all.

Cross-examined by Counsel for Commonwealth—She said nothing about her confinement, when she said she would not see me again. She did not refer to it more then I have stated. I dont recollect the whole conversation. John Earls is uncle to my wife. I never saw John abuse his wife except scold and tell her to hold her tongue. When she accused him of going to Moritz's he would tell her he never was there, and laughed about it; and told her to shut up and if she would not shut up he would put her in the cellar—sometimes she would shut up and sometimes she would not. He never put her in the cellar that I know of. We were catching logs part of the Sunday, till we got tired and then we quit. I was in the room all the time the day Maria was there, he did not throw his wife out into the kitchen but pushed her into the corner. Mrs. Marinus that was examined here to-day is my wife. She helped to chase the Moritz's down the tow path too as far as I could see. Earls and his wife were disputing about Maria Moritz when Mrs. E. said she would not live long with him. She was a rash spoken woman when angry, when in good humor she was a very kind woman. She was good to her children, but not good to him for a year back. She quarrelled with me several times and quarrelled with her neighbors round. She was kind enough to her children, not as kind as some mothers, but always used them well.

Re-examined by Counsel for Prisoner—She used to whip John, who was a very bad boy; but she whipped Mary most of any of the children. The first time she went to Milton, she went on Swenk's boat—that was the time Maria Moritz lived there. We went to Williamsport on Sunday and on Monday went to Milton with the boat; I believe he fetched her home from Milton that time. She went once down after that on Saturday with us on the boat to Milton, we loaded goods at Milton, then we came back on Sunday about ten or eleven o'clock. Then on Monday he sent George Tryon down to Mangus' to get his wagon to go for her to bring her home. John and me fixed the goods in the boat to be ready to start on Tuesday morning, Mrs. Earls came home on Monday evening with George Tryon on a little wagon. This was the first year Earls came up to the dam.

Adjourned till nine o'clock to-morrow morning,

WEDNESDAY MORNING, FEBRUARY 10.

William Pott, sworn—In November, 1835, before the death of Mrs. Earls, I was going from Mangus' to Mrs. Stratton's, when I came to Earls' he had caught a great many eels, upwards of a hundred I think. I asked if he would let me have half a barrel, he said he would. Then several times after that for two or three weeks, I would still meet him and ask him if he had caught many. He said he had not caught any hardly, some *varmints*, either muskrats or minks, destroyed them in his baskets—he said he would put something in his baskets to destroy these *varmints*. I think it was about four o'clock in the morning Livy Sechler came to Mangus' and said that Mrs. Earls was dead. As soon as it was day light, or between day light and sun up I went up to Mr. Earls'. When I came there John was sitting back of his house on a bench on the river side. I asked him how he was, he said he was sick; when he pronounced the word sick, the tears began to drop down his cheek. I then asked him what was the matter with him, he said he felt very dizzy in his head. I said probably he had not slept any the night before and that made him dizzy, as his wife had died. He said he had slept, that was not the cause of it. That is all then. Him and me stept into his shantee and took a drink of whiskey. Then he requested me to go to Mangus' for Mangus to send up some beef. I went down and Mangus sent it up. I did not see any body when I first went up but Earls. I was not in the house. Earls fished a great deal last summer. He requested me then to stay with him that day—the day before she was buried. I stayed until a few minutes before the funeral left the house. He wished me to stay with the children till the funeral came back. He then told me there was two salmon in a box at the river, and asked me to clean them and have them cooked by the time the people came back from the funeral. In the evening after the corpse was buried, he asked me if I would stay with him all night. I stayed with him. A few minutes before the corpse was put in the coffin, I went up stairs where he was and asked him if he would wish to see the corpse before she was put in the coffin, he said not. Then I came down stairs and left him up there with the children, I think. About the time the corpse was put in the wagon I went up stairs and he walked down with me, but no conversation took place. I did not see John and the children come down to see the corpse; I was not by when the coffin was closed.

Daniel Griffin, called again—It was between a month and two before Mrs. Earls' death, I was at the river when he landed with his canoe coming from the basket. I asked him what luck he had—he said not much, for the minks or muskrats would come and eat them and carry them off. He showed me several that had been eat. They were eat from the head down two or three inches. Says he "I'll be d——d if I dont fix them." He said the first time he'd come to town he'd get some arsenic, and he would put it on some of the fish in the basket. I asked him what effect that would have—how he would get them afterwards. He said he did not care about the animals so as he destroyed them. I lived about two hundred yards from Earls'. I have seen Mrs. Earls intoxicated. I could not exactly tell whether she was intoxicated the last time he put her in the cellar. John said to her "you ought to be still, you are drunk again." After he put her in the cellar I walked with him down to the river—I told him that it was rather tough to put his wife in the cellar. He made answer, he did not wish to hurt her in the situation that she was in; but she must be punished in some way.

John Hood, called again—Mr. Earls requested me to go and get a coffin made after her death. Mr. E. asked Mangus whether it was necessary to

wait till Sunday for the burying. Mangus said then he might do as he pleased, but it was long enough the next day at ten o'clock. I went for Mr. Sheetz, the preacher, about two or two and a half miles from Earls' at Earls' request. I came up from Mangus' about half an hour after the women started from there, after Mrs. E's death. He said he would like the people from Milton where she came from, to know that she was dead; and if they buried her the next day at ten o'clock, they would not get word at Milton, and could not be up. He said they lived there so long, and there was acquaintances of hers, he wished them to know and attend the funeral. I came to live at Mangus' the first of May, 1835. Mr. Earls said he wanted Mr. Sheetz to preach a funeral sermon.

Cross-examined by Counsel for Commonwealth—Mr. Sheetz lives about a mile from Moritz's.

Mary Ann Earls, called again—One day mother she went to the drawer and got this piece of calico out [*witness shows the dress she has on,*] and she gave it to me. I asked her what's the reason she did not want it; she said she would not live long to make it. I cant tell when it was, but it was a month or so before her death. It was not made up; it was got for mother. Afterwards she got a piece of calico for the two little ones, and she said my sister might have it—I mean my sister Susan. Papa went in the drawer one day; he took up a blue paper, and asked mamma what it was; she took it out of his hand; she did not say any thing—did not tell him what it was. Diantha (Mrs. Marinus) was by. I know that Mrs. Callahan's cow knocked over one of the children. I never heard mother say what was in that paper. I have often heard mother say she would not live long—she just said that, that's all I heard her say—it was before she gave me this dress. I dont mind ever hearing her say any thing about wishing she was dead. I dont recollect that any body was by when she gave me the calico. I recollect the day the show was at Pennsborough last spring. Pap he landed a raft that morning, and the two men what was on it took breakfast at our house; dont know where he run from. It was middling early, about eight o'clock, when they landed the raft. I believe I went to the show that day. I believe Mr. Mangus got our boat, and we all went up in the boat. I made a mistake in my testimony before—Livy Sechler *was* in when mother eat her supper, the night before she died.

Cross-examined by Counsel for Commonwealth—I dont think I made any other mistakes. The frock was not made up before mother died. Mr. ELLIS asked me if it was not a mistake about Livy Sechler—that's the way I found it out. Mother said nothing about her approaching confinement at the time she told me she would not live long. Mother did not say any thing when she took the paper from father; it would hold one or two table spoonfuls. It was taken from pap's drawer—sometimes he kept the key, and sometimes she kept it. I was present when the cow knocked over the child—it was Eliza the cow knocked over. I was in the room all the time Livy Sechler was there; I was up before she came, and remained all the time she was there.

Daniel Doubt, called again—I have seen Earls go up to the dam in the morning by times—about sun rise or sometimes before it, to run craft through the Muncy schute, or to run them to tide. He would go up as far as Stratton's. This was last Spring. I have seen him on arks passing my house in the fore part of the day. He was called a pilot through the schute and down the river both. I have known watermen to enquire for him.

Sarah Mull, sworn—In May last, Maria Moritz came to live at my

house. I guess it was in August she left my house. Sam Garuhart was there through the whole summer, the bigger part of every Sunday; he would stay sometimes till it was time to go to bed. I could not get him away, sometimes I was partly undressed and sometimes in bed before he would go. He wanted to stay with Maria, and I would not allow it. I never heard Maria call to John Earls at eleven o'clock at night at our house. She slept down stairs when I would be alone. When my husband came home, then she would sleep up stairs. Earls was at our house one day in June last, cant tell what day it was; he wanted me to knit a fish seine for him. It was between twelve and two o'clock in the day. He stayed but a short time—no longer than while he talked to me about the seine. One morning in July, Alick Marinus and John Earls came to our house and wakened us. Maria was to take up in the harvest field of Wm. Moritz, her father. I did not work in the harvest field, but the other girls worked, (her sisters.) Earls was not there at any other time that I seen, during Maria's stay at our house. I was not away from home unless it was on Sunday sometimes. I never knew Earls to be in our house after night while Maria stayed with me. I am a daughter of Wm. Moritz, and a sister of Maria. I know the chamber at my father's house where my sisters sleep; there is a bolt in the inside of that door.

Cross-examined by Counsel for Commonwealth—I think the bolt has been there ever since they lived there—ever since I can mind; it is on the room door where the girls sleep; there is but one room door—the room is up stairs. There is a string with a latch to pull up. Sometimes they have three beds and sometimes four in the room. Strangers and boarders slept in the adjoining room. It is a couple of years since I took notice to the bolt; the bolt is made of wood. Maria did not keep company with any body while she lived at my house. She never kept company with any person while at my house without my permission. I cant tell whether Earls was about the stable or not; I was not out to see. Maria went home to stay with Sabina sometimes. It is not far from our house to father's—just across a meadow. The stable is about six or eight rods from our house. My husband was not at home when Earls came with Marinus to wake us. As they came to the house they came in right away; we have a bolt, but I dont lock the door every evening nor bolt it; it is very seldom I bolt the door. The outside door leads into the entry; the stairs go up from the entry. Maria went to stay with her sisters sometimes all night; Earls did not come there—I had no need to scold Maria.

Re-examined by Counsel for Prisoner—My husband was working from home last summer. Sometimes he would come home once a week and sometimes twice; he worked about two miles from home. I have noticed the bolt frequently within two years. Sometimes I am at my father's every day in the week.

William Mull, sworn—Sam Garuhart came to our house almost every Sunday; he was there sometimes in the evening of Sunday when I came home. He would stay until after we went to bed or were undressed, and I would have to get up and shut the door. I did not hear my wife request him to go away. I lived last summer with Captain Hutchison, near two miles from our house. I saw John Earls at our house once. He asked the old woman if she would knit a fish seine for him. There was no hay in the mow in the month of May. The floor of the mow was made with poles. The stable is about six or seven rods from the house—may be not quite. It is a cow stable; there is no thrashing floor to it.

Cross-examined by Counsel for Commonwealth—I have about five acres of land, some meadow and some upland. I keep a cow and sometimes two. I had two in the spring. I cant tell what portion was meadow—about an acre and a half of meadow, and may be not that, I never measured it. I fed the cows on straw. I keep the straw by the stable and over the pig pen. The over shoot forms a pig pen. The pig pen is made of rails. We put the straw at the gable end of the pig pen. There is kind of poles laid over the pig pen. I had some straw in the mow in the corner, and scattered over the poles; it was loose straw. The stable below is dirty; the cows stay there. It is a small stable; the gable end is open. It is about twelve feet to the top of the square. The mow floor is about five feet high. One stable door opens towards the house; it goes into the foddering room.

Sabina Moritz, sworn—When I came from singing school I slept with Henrietta and Maria. Maria and Harriet both sleep in the same bed with me. There was means by which the door could be fastened; there was a wooden wedge above the door to fasten it. When I came to the door, Maria got up and opened it; it was fastened. She bolted the door again after I was in. John Shuman came along from singing school, and a whole parcel of others. My sister Maria and me went up to Mr. Doubt's one Sunday; we heard Mr. Sheetz had meeting. We stayed there at Doubt's till afternoon. Then we went home; and as we were coming down past Mr. Earls', Mrs. Earls she came out, and told us to come in. She had her sleeves rolled up and her frock pinned up. She told us to come in, and we went in. Then she began to quarrel right away with Maria, as soon as ever we went in. She talked so fast and was so angry I did not understand what she said to Maria. Then Mr. Earls told her she should not raise a quarrel on Sunday. She said, "I dont care a d——n what you say;" then he said, "if you want to say any thing to the girl, tell her in a week day." Then Susan M'Allaster brought her a stick. Then Mrs. Earls took the stick out of her hand and struck Maria. Then Mr. Earls he pulled her away and told her she should quit. Then she told him she would not and she struck her again. Then Mr. Earls pushed her back, and Het Griffin was standing at the door; he pushed her away and opened the door, and we ran down the tow path and they followed, but did not overtake us. It was Hetty Griffin, Mary Earls, Mrs. Earls, Betsey Mangus and Mrs. Marinus that followed us. They run us pretty fast. Hetty Griffin was on pretty close behind me, and she said, "I swear I'll take the life of Maria if I catch her." I think this was in the spring. My sister Harriet and me went to Pennsborough two or three weeks before Mrs. Earls' death. She came out at the door as we came up and stopped us, and she asked me whether I would not come and nurse her when she got sick. I told her I did not know whether I could or not; I would ask mother whether she would let me go. She said she had asked Katy Haller and Katy Sarver and they could not come. She said if I would come she would give me some poison, and I should give her some after she was sick. I told her if she had such bad thoughts I would not come. Then she said, "if you dont come, I shall have it close enough to my bed that I can take it myself." She said, "well if you dont come, I have got trunks and chests that I will have close enough to the bed that I can take it." She said, "poison I'll take—poison shall be my death—and poison will be my death." Then she said, "before my child is a week old, you will hear that I am dead, and then you'll know what I have told you." Nothing further was said. All the reason she gave was, that she said she liked liquor so that she could not help but drink it. She was about a rod or so from the house at the

time of this conversation. My sister Harriet was with me, but she went off before she said much about it. She went on a piece, near Mr. Sechler's, where she stood till I come. When she heard her make such hard threats she went on. I told her then when I caught up what Mrs. Earls had said.

Cross-examined by Counsel for Commonwealth—I was sociable with Mrs. Earls. I was at her house several times. I had not been at the house from the time she struck Maria until this conversation. Mrs. Earls was at our house still. She was in the habit of visiting our house. She had not been at our house from the time she struck Maria till this took place. There is a good many strangers come to our house. We always bolt the outside door of our house. I knew that Mr. Earls was at our house—John Shuman and me met him at Garnhart's barn. When I came to the door of Maria's room she was not asleep. I told her to get up and open the door. There was three beds in the room that night. Harriet was in bed with Maria when I got in. We bolted that room door every night winter, and summer, the whole year round. I dont know why we bolted that door when the front door was bolted. Father he gets up sometimes at night and leaves the back door open—that's the reason we bolted the room. Nobody told us to bolt it; we always bolt it ourselves without being told. Nobody breaks into our house at night, or comes in without permission. When I tried the room door, I found it fast, and Maria opened it and said I should come to bed to her. We did not always sleep together, but she said I should. When I came in Harriet was not asleep. We was not very much crowded. I slept sound enough that night. After I was in bed awhile I went asleep. I heard no noise that night of any body getting up. I wakened sometimes during that night. If any body had got into that room I would have known it, I am sure of that. There was no man in our room that night. We did not talk about any body in the house that night. When we met John Earls he said he was going to our house then. I asked whether Earls was there when I came home, and then I heard him snore. I asked her whether Earls was there, and she said he was; that was before I went to bed. I slept with Maria the night before. Harriet was not there the night before. Earls slept out in the kitchen loft—the adjoining room. I heard him snore long after I went to bed. I made Shuman's bed, and swept up stairs next morning. I got up in the morning when Maria did; she came down stairs with me. Earls said he had his money laid under his pillow, and he did not know whether he had it all or not; he had dropt some and we should look and get it. I heard all he said; he said if we found any we should give it to him again, and we told him we would. This was at the head of the stairs, just as we were going down; it was not quite day light. He said he had his money in a handkerchief; this was right at the door of the room where he slept. That was the only time Earls was there all night. I found no money; nor Maria that I know of—I looked for it. John Shuman slept with Earls that night. I did not look under the pillow; he did not say any thing about a pillow. I never said "that father could gain any cause, because I would swear any thing he told me." I never said any thing about that my father could gain any cause. I was up to prison once to see Earls before the first court. My sister Harriet lived in Williamsport; her and me came up together. I told Harriet, Maria, and mother about Mrs. Earls going to poison herself. I told Harriet as quick as I caught up with her and told the rest when I came home. I never told any other person; but I told Mrs. Mull after her death, and nobody but my mother and sisters before. I asked my mother about going to Mrs. Earls; she said I must not go; if she

would get poisoned then it would be blamed on me. I never told John Earls of this at any time. I did not tell him at the jail; we did not talk about the court there at all—I was there no time. I never told Mrs. Earls' children, nor Earls' mother. Mrs. Earls was not angry; she was in a good humor when she told me that. I did not like to say any thing about it to no stranger—I did not like to tell it. She did not say any thing about the quarrel my sister and her had—Maria is here but mother aint. Mrs. Earls and me never had any disputes or quarrels. I never heard of any hard things she said about me.

Adjourned till three o'clock, P. M.

AFTERNOON SESSION.

Henrietta Moritz, sworn—My sister and me once were going to Pennsylvania; and just as we passed Earls', Mrs. E. called on us, and asked my sister if she would come and nurse her; she said she did not care, she would ask mother. She said she had a trunk close to her bed, and said she had some poison in there, and that after she was in bed she should give it to her. After I heard that she had such conversation as that, says I "Sabina come on, we'll not listen to it," and I just walked off. I went on as far as above Sechler's there, and she did not come, and I stopped there—I mean Sabina. Sabina stood and waited till she was done talking. After she came up she told me that Mrs. Earls said, poison she would take, and poison should be her death, and she would take poison. After she came home, Sabina told mother of it and told mother all about it. Mother said she should not go, if she had such mind as that; if she would do that, why then Sabina would be blamed for it. When Sabina and Shuman came home from singing school, Sabina came to the door; she rattled at the door and Maria she got up and opened it. After she came in Maria shut the door, and said, "I guess you are cold;" says she "yes." Maria said "Sabina, come in bed to us;" she came to bed to us and slept with us through the night. After Sabina came in, Maria bolted the door. There was but a wooden wedge in the door above the latch. We always kept it fastened by that wedge when we fastened it. I was not at singing school that night; John Shuman was with Sabina. The family were in bed before they came from school.

Cross-examined by Counsel for Commonwealth—I have stated exactly the words that Mrs. Earls used. This was the first thing Mrs. E. said; she did not say any thing more than just what I have stated. Sabina and me passed there and she stopped us; we were both together when she began to talk. I heard all I have said here, and that's all. I did not hear all that she heard. I heard all that was said to Sabina before I left her. O, yes, I heard all that. Mrs. Earls spoke loud to us. I never told Earls any thing about it—never. I allowed it was none of my business to say any thing about it. I did not say any thing to none of his family. I have been up to see Mr. Earls in jail; it was before the last court; my sister Sabina came with me. We did not just come up on purpose to see him, but I allowed while we were in town we might as well go there and see him. I did not say any thing to him at all—O, yes, I shook hands with him, and talked a little; he asked me how the rest was. Maria was not along. I did not want to make a noise about it, and did not like to say any thing about Mrs. Earls poisoning herself to other folks. John Earls was often at our house; I cant tell how often he was there. I was at home in bed when John Earls came for Shuman, it was in March or April; the girls told me he came for Shuman—Maria and Sabina. Earls and Shuman did not come together. I saw nobody come with Earls. I did

not hear him say any thing when he came—father was at home. Maria was at home and Sabina was at singing school when Earls came there. Earls slept above the kitchen. I sleep usually with Maria. Sabina sleeps by herself sometimes, and sometimes with us. Sabina is the youngest sister. Earls did not come into our room that night at all. I don't know just what time I fell asleep. Maria bolted the door. We always bolt the door. We always bolt the outside door below. We always keep ours bolted, because father sometimes gets up in the night and forgets to bolt the lower door. We found no money next morning. Maria and Sabina got up together—they got up first. I did not hear Earls say that he left any money under his pillow. Earls did not go to bed that night before I did. He was in the house when I went to bed. Father, mother and Maria were with him. It was late when I went to bed; I don't know what time father and mother went to bed. Maria went to bed along with me. There were three beds in that room where we slept. It was a middling cold night. I slept sound all night, but got awake once in a while. The latch of our door was fixed with a string so as to pull up. I was not asleep when my sisters got up; they got up early. There is a board partition between the two rooms, and a garret above.

Mr. ELLIS, for the prisoner, here asked leave to present the written statement of Susan Earls, made before the justices, which he alleged contained an important fact which she had omitted in her testimony before the court. The counsel for the commonwealth did not admit the paper to contain the testimony of Susan Earls, and it was required to be proved. The examining justices were called but were not in court; the counsel for the prisoner then called Solomon Mangus, who stated that he was not present at the examination of Susan Earls before the justices, and had never heard her say any thing about her mother saying she would poison herself. The statement was not signed by either of the justices, or the witness, and the COURT rejected it as not properly authenticated.

Dr. James Hepburn, called again—White arsenic has little or no taste in the powder. It is stated by *Mitchell & Durand*, who have lately experimented on the subject, that in strong hot solutions it has an austere taste. Six drachms in a pint would make a strong solution, certainly; I suppose that amount could be tasted in a pint of chocolate. I have placed the powder of white arsenic on my tongue; there was no particular taste, but an unpleasant sensation left in the mouth. Solubility is essential to taste—articles that are insoluble are tasteless. The organs of taste vary much, depending upon the state of health. *Nitrate of silver* is composed of *oxyde of silver*, dissolved in *nitric acid*. *Nitric acid* is composed of *nitrogen* and *oxygen*. *Nitrogen gas* composes the largest portion of atmospheric air. *Lunar caustic* is fused *nitrate of silver* run into moulds; it is generally pure enough for chemical or medical purposes. The definition of austere, is severe, harsh, sour of taste.

Cross-examined by Counsel for Commonwealth—I never heard it suggested before the recent experiments of *Mitchell & Durand*, that arsenic had an austere taste when in hot solutions. It would have more taste dissolved in hot water than in chocolate.

Alexander Marinus, called again—

Mr. ELLIS stated that this witness was recalled for the purpose of proving that the prisoner, John Earls, had never been legally married to his reputed wife, Catharine Earls, and that he had another wife now living, to whom he

had been married previous to his adulterous connexion with the deceased. Mr. E. stated that this fact had come to their knowledge but a few hours since; and they offered it to rebut the evidence of *motive* alleged by the counsel for the commonwealth to exist on the part of the prisoner for the murder of Catharine Earls. The counsel for the commonwealth objected to the evidence as out of place, out of time, and inadmissible in any point of view. The counsel on both sides discussed the question at length, when the COURT decided in favor of admitting the evidence—giving to the prisoner in this, as in other instances, the benefit of their doubts.

Witness proceeded—I know nothing about Earls' having another wife only what I heard Mrs. Ogle say. I never heard it from John Earls or his wife.

Samuel B. Barker, sworn—I know nothing of Earls' having another wife only what I heard his mother say.

The testimony in behalf of the prisoner here closed.

The counsel for the commonwealth then offered the following rebutting testimony.

Christian Page, called again—I never seen Mrs. Earls drunk in my life, nor never saw her drink any. I live half a mile from Earls'. I have lived that near her two years next spring. I never heard any body say she was drunk until I came to Williamsport, or not until her death. I know Sabina and Henrietta Moritz when I see them. Their character for truth and veracity in the neighborhood is not much. It is bad, all what I have heard yet. I am acquainted with Mrs. Marinus; she lived better than a year close to me. Her character for truth and veracity is not much—it is very bad; the folks never spoke well of her in the neighborhood. I know Alexander Marinus. His general character for truth and veracity is not much; the neighbors dont think much of him.

Cross-examined by Counsel for Prisoner—I have known Sabina and Henrietta Moritz two years again next spring. I have heard folks speak about their truth and veracity before this trial. A great many folks has been speaking of it in the neighborhood—I cant tell exactly how many. They said in the neighborhood that Mrs. Marinus was not to be believed on her oath. I never heard of her being a witness under oath before. I understand by "a general character for truth and veracity," a man of truth and honor, a man that speaks the truth and nothing but the truth. The neighbors did not believe what Alexander Marinus would say. I heard three or four say he was not to be believed. I heard it before Earls was arrested. I dont know that I ever said Earls ought to be found guilty; I always said I hoped he would have justice done him. I have had no difficulty with the Moritz family. I never had quarrels or disputes with Marinus or his wife. I would not believe Mrs. Marinus because she has told stories to me already.

Catharine Callahan, called again—We lived in that house that Earls moved up to. I never know'd the woman to drink any more than if I was to hand the glass she would take a little and pass it round as I would myself. I never saw the sign of a glass of liquor on the woman that ever I could notice. I live at the dam. The reports is bad in our neighborhood of Sabina and Henrietta Moritz, and the people dont believe them if they had the truth itself. It is the same way of Alick Marinus; the people dont think much of him for speaking the truth. The general character of Mrs. Marinus for speaking the truth is bad.

Cross-examined by Counsel for Prisoner—I have heard so many speak-

ing against the truth and veracity of Sabina and Henrietta Moritz, that it would keep you a while to write them. I have never had difficulties with them. I have known the Moritz's ever since they came there. I have known Mrs. Marinus more than a year. I have heard she was not to be believed on her oath before this trial came on. Every one I heard talking about her giving in evidence said it. I never heard any one speak of her oath until it was said she was coming here to give evidence. I dont know that I heard it said about Sabina and Henrietta Moritz previous to its being known that they were to testify for Earls. I heard of the Moritz's being examined as witnesses before this trial. I heard between the other court and this about Alick Marinus. I have heard of Henrietta Moritz being examined as a witness—and the people say they can gain any cause for their father. I heard it before ever this cause was thought of.

Jacob Hogendobler, called again—I have known the woman (Mrs. E.) somewhere near sixteen years, I suppose; before she was the mother of any child. I never saw the woman drunk in my life, and never heard tell of it but once, until I came here to court. I heard something about it the time she was in the stable; I was living in Milton at that time. The general character of Henrietta and Sabina Moritz for speaking the truth is bad. I heard it of Henrietta five or six years ago; I suppose I have heard it fifty times. I dont know so much about Sabina. I dont know much about Mrs. Marinus, for my part, that is, about speaking the truth. For truth Mrs. Marinus' character is generally bad. I never heard of her being on oath. I never heard much about Alexander Marinus.

Cross-examined by Counsel for Prisoner—This winter a year ago I saw Mrs. Marinus, and have known her from that time to this. I heard of her bad character for speaking the truth the first time I ever saw her. I heard Mangus' folks speak of her, and others on the packet boat. I have heard more say so. It is about seven or eight miles from where I live to Moritz's. I have lived about five years that near to them. I told the commonwealth's counsel what a couple of witnesses would say. I never threatened the prisoner's counsel for the course they have pursued. I never said Earls should have his neck stretched. Dont recollect of ever saying Earls would be hung. I have never discussed the character of Mrs. Marinus, as a witness, at Mr. Hall's table. I might have done it, but I dont recollect it if I did—I know her to be a bad woman.

John Shuman, called again—I often heard the people say Sabina and Henrietta Moritz could not be believed in all what they would say. I dont think their general character is altogether "FOR TRUTH" in every thing. I have heard of Mrs. Marinus—her general character for truth is not a great deal; for I know that she tells a good many lies myself. I never heard much about Alexander Marinus. I am acquainted with William Mull—I have heard a good many folks say that they would not believe him no more than nothing at all. I never heard much about Sarah Mull. It is about two and a half rods from Mull's house to his stable. I have seen Mrs. Earls several times, and stayed all night there one time. I never seen her taste a drop or out of the way.

Cross-examined by Counsel for Prisoner—I am going in twenty-two. *Character* means good or bad behaviour. I have lived about Muncy ever since I was twelve years of age, except about two years that I was in White Deer township. I cant tell what county White Deer is in. I live in Northumberland county now, in Turbut township. I never had any quarrels with Sabina or Henrietta Moritz—I never made love to them in all the days of my

life. I had some quarrels with Mrs. Earls but none with John. I lived at Moritz's about a quarter of a year and may be a little more—this winter a year ago. I heard of the character of Sabina and Henrietta before I got there; but not as much as I found out when I got there awhile. I never was examined before this trial commenced. I live with Mr. Brown at Watsonstown. I never told any person that I know of, that I knew all about these people's characters till just now.

George Lilly, called again—I never saw Mrs. Earls in liquor. I never heard any general report of it before her death. I live about two miles from Earls'—it will be four years in next spring since I lived there. The general character of Henrietta and Sabina Moritz for truth is bad; that is the general report. The general character for truth of William Mull is not too good—it is called bad.

Cross-examined by Counsel for Prisoner—I have heard a great many say that Mull's character was bad—I cant tell how many. I live between a quarter and half a mile from Moritz's. I never had difficulty with them. We are on good terms as neighbors, but dont go much together.

Hugh Donly, called again—I never knew of Mrs. Earls' drinking—for a year I lived within a mile of Earls'. The general report is that Henrietta and Sabina Moritz are not to be believed. Wm. Mull's general character for truth is about the same as the Moritz girls.

Cross-examined by Counsel for Prisoner—I live now I suppose about seven miles from Moritz's. I have known them about three years. I cant tell who all I heard speak of them—it is the opinion of near about all the people in Turbut township.

Dr. William R. Power, affirmed—I believe that writers upon the subject of diseases of women and children, universally speak of pregnancy as causing despondency of mind. Judging from my own experience, it is by no means infrequent for women a short time before confinement to anticipate an unhappy result—death.

Cross-examined by Counsel for Prisoner—They do not generally talk about suicide, nor about taking arsenic. I practised physic about seven years.

Dr. William H. Ludwig, called again—I have practised medicine four years where I now live. It is the case that women frequently before confinement apprehend an unfavorable issue to their pregnancy.

Adjourned till nine o'clock to-morrow morning.

THURSDAY MORNING, FEBRUARY 11.

Thomas M'Kee, sworn—I know Sabina and Henrietta Moritz when I see them—I cannot say much about their character for speaking the truth—the general report is that it is not good. William Mull's character for speaking the truth is not very good in our part of the country. I reside in Turbut township, Northumberland county, about a mile from Moritz's.

Cross-examined by Counsel for Prisoner—I have brought an ejectment against John Earls for the place where he resided. I claim the land—suit is now pending.

Catharine Callahan, called again—At the time I went to Earls' after the woman was dead, there was no trunk nor box near the bed. I saw none there when I dressed her the day before she died. I saw a trunk the day I dressed the baby—it came out of the other room. There was four caps—two or three little shirts—some baby frocks, and ten or eleven diapers in the

trunk. Some of the caps were new, as I thought. I think the other clothes were worn before. The diapers were clean and nice—they were made of muslin and had not been used for that purpose before. The dresses did not seem new to me, but they were good enough for any baby to wear. They were ironed up clean and nice, and put up carefully, and a piece of paper on the bottom of the trunk to keep them clean. Mr. Earls himself went for me; they had not spoken to me before to prepare for her confinement. Mrs. Sechler was there before me when she had her baby. There was not a paper in the world in the trunk but a half sheet of paper, and a paper of pins—part of the pins were gone—one row was left, and five or six old pins stuck into it that had been used before.

Cross-examined by Counsel for Prisoner—I examined the trunk the very day she lay in. To the best of my knowledge I saw the trunk brought out of the other room, and put at the foot of the bed on a chair; it was not set down along side of the bed. There was no chest or trunk near the bed when I came in the time she died; there was a chest over at the other side of the room—a clothes chest. The trunk was not locked that was brought in with baby clothes in—I dont know whether it had been locked at all. There was none near the bed when I was there the day before she died, that I saw.

Jacob Hogendobler, a witness previously examined, came forward voluntarily and stated—I want to mention that I *did* say to Zachariah Welshanse, in the Prothonotary's office, that I thought Earls stood a poor chance, or that he would be hung.

The counsel for the commonwealth here closed their rebutting testimony.

The counsel for the prisoner then introduced the following surrebutting evidence.

Edith Barker, sworn—I went to Mr. Earls', and said I would take the child to suckle it till after the burying. Then the old lady said, "how can I part with my little baby?—Katy is gone and how can I part with my baby?" I took the child home with me. The old lady went into the room to where the trunk stood and got some clothes. I did not go into the room till she came out. Then says I, "granny, these are too big, have you no smaller ones?" She said to me you can go and look whether there is any smaller ones or not; and I got up and went into the room with her, and looked into the trunk and got some smaller ones. There was a paper lying there, whether blue or brown I dont recollect which. I picked it up, and says I, "granny what's this?" she made me no answer, and I laid it down again. I did nothing with the paper. I dont know what was in the paper; on the outside there was something that looked whitish; it looked like buckwheat flour or something like it on the outside. It had either a white or blue thread round it. It was just rolled up, and whether it was tied, now I cant recollect. I cant say how much was in it; I cant say whether there was any thing in the paper or not. There was but a little of the stuff on the outside; and whether it lay on the bottom of the trunk, and got it dusted on or how, I dont know.

Cross-examined by Counsel for Commonwealth—It was rolled up in that manner, and not more than so long, [*witness referred to a flat package, about an inch and a half wide, and four inches long, resembling a paper of pins, shown her by the counsel for the commonwealth.*] It was not taken open at all. I laid it down where I got it. It was in the trunk that had

the baby clothes in. It was in the second room up stairs. We passed through a room to go to it. I think the old lady drew the trunk out from under a bed. There was a small fire place in the first room, and the women were sitting there what was at the house. It is likely it was a paper that pins might have been rolled in; I took no notice whether it was or not. I came up to court a week yesterday. I cant tell who subpoenaed me.

Daniel Doubt, called again—I have known Alexander Marinus and his wife. I have heard different stories about them; sometimes bad and sometimes good. I have heard nothing against their truth and veracity. They lived about two miles from me when they lived in that neighborhood.

James M' Coy, called again—I have known Alexander Marinus, about four or five years. I cant say any thing against the character of him and his wife; they never told me any stories that I know of. I never heard any thing against them; I was not much about there. I was about the dam while they lived there, and boated with him for Earls.

Cross-examined by Counsel for Commonwealth—I was raised about there, but I am most commonly on the public works.

Solomon Mangus, called again—Mr. Marinus and his wife was living down there in one of my houses. I think may be Mrs. Marinus would tell the truth on her oath. I think I would believe her on her oath as near as I can say about it.

Cross-examined by Counsel for Commonwealth—The general talk is that she has not a good character for truth; but on her oath I dont know what a person might say, but I expect may be she might tell the truth.

(*Testimony closed.*)

SPEECH OF JAMES ARMSTRONG, ESQ.

FOR THE COMMONWEALTH.

By permission of the Court;

Gentlemen of the Jury:—

The long and arduous examination of witnesses in which we have been engaged, has now been brought to a close, and the solemn task of deducing from the testimony the innocence or guilt of the prisoner at the bar, devolves upon you. That you will meet the emergency with proper firmness, I entertain not a doubt; and the untiring and patient attention which you have given to the evidence, is a sure guaranty to the prisoner that his case will receive a fair and impartial consideration at your hands. You are emphatically a jury of the prisoner's own choice. This Hon. Court informed him of his right of challenge, which has been exercised to its fullest extent; and you have been selected for your integrity, your intelligence and your humanity. In the progress of this case every necessary facility has been rendered to the prisoner—he has had the process of the Court to insure the attendance of his witnesses—his cause was continued at his instance from December till February Term; and with regard to the admission of evidence, every thing the least doubtful in its character, was resolved on the prisoner's side; and to this the counsel for the commonwealth accord their most cheerful assent, for they will never ask a conviction accompanied with doubts. He has also been favored with the ablest counsel, who with great experience, have united the most fervent zeal for their client; and in whose hands the defence could never suffer. Under such circumstances, should the issue be unhappy for the defendant, I should be strongly confirmed in the justice of your verdict. In this enlightened country, where every man by the constitution of the State has a "right to be heard by himself and counsel"—where no man can be compelled to give evidence against himself—where no man can be deprived of his life, liberty, or property, unless by the judgment of his peers, or the laws of the land; where the laws are mild in their character and benign in their influence, we can only rely upon the certainty of punishment, for the prevention of crime. As constituent parts of this court we each have our res-

pective duties to perform, and we must each share the overwhelming responsibilities that surround this cause. From you, gentlemen, who are called from your peaceful fire sides to take a part in the administration of public justice, much is expected. You are the bulwark of your country's rights—you are the fortification and wall against which the innocent may lean with safety, and the inexorable and dreaded tribunal at which the guilty fear and tremble. As men, you might be disposed to cast the mantle of charity over the sin of the culprit, and turn him over to that exalted court where the motive and the action are equally known; but as jurors, offended society calls upon you for redress. To the juries of our country must we look for the protection of all that is dear to us in life. All law is perhaps a reflection on society, and its very necessity, proves the depravity of our natures. Without it we are at sea without a compass—power usurps the place of right—the weak must yield to the strong—the poor to the rich—and malevolence and passion sway their sceptre over virtue and innocence. Yet what are civil and criminal codes, unless dispensed with wisdom and firmness? Why is it that “your house is your castle?” What is it that secures you in the possession of your homes and your property, where you may “sit down under your own vine and fig tree, and there is none to make you afraid?” Why is it that you can lay your heads on your pillows in safety, nor fear the midnight assassin? To what do we owe our characters and reputations, and whatever of peace and harmony prevails in the community? It is to the supremacy of the laws, wisely and judiciously administered.

For myself, as the prosecuting attorney of the commonwealth for this county, and for my colleague, I state unaffectedly that we feel the responsibility which hangs over us, with afflicting weight. The advocate perhaps should always feel the truth and justice of the conclusions he would arrive at. To this principle my feelings do not run counter, and I have no hesitation in saying from a view of the whole case before us, that my opinion and my duty flow in the same current. There was a period in the judicial history of Pennsylvania, when jurors were permitted to be sworn in capital cases, “well and truly to try the issue joined and a true verdict give according to the evidence,” and yet at the same time were totally disqualified by mental reservations. And of its pernicious tendency, a recollection of past events in our own county will be sufficient to convince you. But you, gentlemen, with your characteristic manliness and candor, have severally stated previous to being sworn, that you have no conscientious scruples on the subject of finding a verdict of murder in the first degree, the punishment being death, if the evidence would warrant it. Believing therefore that you have taken your seats in that box with minds free from all bias, and capable only of receiving impressions from the evidence, I shall address you with confidence that the rights of the commonwealth, as well as those of the prisoner, will be properly regarded.

You have been told that a “cloud of prejudice, black and blighting hangs round this cause.” But I beg you to remember it is from the defendant's counsel you hear this first. When you were empannelled as jurors, the court directed a private room for your convenience, and gave you two officers to attend you, with directions that you should speak to no one, nor should any person be permitted to speak to you. And never have the admonitions of a court been better observed. Whatever there may be of public excitement, it cannot have reached you. I will not deny the extraordinary degree of interest manifested on this occasion; this hall, crowded from day to day as it has been since the commencement of this trial, proves it. But is this an indication of “prejudice, black and blighting?” No. I rather regard the presence of this vast assemblage as an evidence of the veneration in which the institutions and laws of the country are held, and of an honest desire to witness their proper administration. When apathy and indifference reign among the people, and they shall cease to look upon the crimes of malefactors with abhorrence, then indeed may we fear that blind and misguided *prejudice* will hold the scales of justice. The commonwealth has been charged with “thirsting for blood.” This is but the common asseveration of counsel, and the exuberance of a zeal which, when better directed, deserves to be approved. Whether we have, in the course of this trial, exhibited any undue warmth, is a matter within your own observation, and to you we may safely appeal. For my own part, if there is any thing I have to reproach myself with, it is a degree of moderation and forbearance which the evidence in this cause, shows the defendant to be unworthy of. It is not my intention now to notice all the remarks made in the very full opening for the defendant; they will fall in hereafter in their proper place. But when you were told by the gentleman, (Mr. Parsons) that “if he were in the place of John Earls, relying solely on the laws of

the land, he would not ask counsel to stand up and say a word in his defence," surely, with the testimony staring us in the face, you will not look upon this as serious; nor will you, for the prisoner's sake, accept it as a specimen by which to decide on the soundness of the conclusions they are yet to submit to you.

With the peculiar notions that obtain with many as to the right to take away life, we have nought to do. The awfulness of death, and the terror with which it is met, is often dependant on the circumstances of education, or the want of it. When the Hindoostan mother voluntarily throws her living infant in the Ganges, to appease the wrath of her imaginary gods; or immolates herself on the funeral pile of her husband, she but obeys the law of her education, and yields to impulse, born in ignorance and nurtured in superstition—yet even there, where the light of the gospel religion seldom beams, the wilful murderer meets his doom and receives his adequate punishment. Murder, in whatever shape it may appear, has ever been considered as first and boldest in the calender of crimes; not only because it fills to overflowing the measure of human woe, but often sends its victims to account before "a world of untried beings," with "all their infirmities on their heads," and of all kinds of murder, that perpetrated by means of poison is the most base and wicked. It requires a heart so wretchedly depraved, so cruelly bent on mischief, that it cannot entertain one single quality that adorns the human character. What an illustration we have before us!

Without premising further, I shall proceed to the consideration of the case. I shall endeavour to offer you a plain argument, the object of which shall be, by a fair comment on the evidence, to make out substantially the truth of the facts laid in the indictment. By the act of 1794, *Purdon* 647, "all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilfull, deliberate and premeditated killing," &c. "shall be deemed murder in the first degree." There are two counts in this indictment; the *first* of which in substance charges John Earls, the defendant, with mixing and mingling certain deadly poison, to wit: white arsenic, in certain chocolate prepared for the use of his wife Catherine Earls, for her drink, and which he caused to be administered to her, thereby producing her death. The *second* count, charges the defendant with mixing and mingling white arsenic, with certain tea, prepared for her drink, and which was in like manner administered to her, thereby causing her death. You will perceive therefore from the nature of the offence charged, that you are relieved from the consideration of any secondary degree of guilt. Your duty will be to find him guilty in manner and form as he stands indicted, or return him to society as an innocent and injured man. There is no middle ground to occupy. This case does not admit of an accessory. The least participation constitutes a principal. We are told that "every man is presumed innocent, till he is proved guilty;" we concede to the defendant the benefit of the maxim; and we admit without being reminded of it, that the commonwealth are bound to make out their case. We promise you gentlemen to do so—not perhaps by what is termed direct and positive proof—but by a concatenation of circumstances so irresistible and absolute in their character, as to carry conviction to the mind of the most incredulous.

The order which this case admits of, readily presents itself to the mind. The first position which it is incumbent on the commonwealth to establish is, that Catharine Earls died of poison; and second, that John Earls, the defendant, is the guilty agent. This arrangement will draw into consideration all the important facts in the cause.

I proceed to maintain the first position. About the first of October 1835, John Earls purchased from John Carter, druggist, of Northumberland, as proved by him, a quantity of white arsenic, supposed to be about two drachms, or what would lay on the point of a case knife. On Tuesday the 13th of the same month, the day of the general election—he also purchased arsenic, or ratsbane as the witnesses called it, at the apothecary store of Bruner & Dawson in Pennsborough. On Wednesday the 14th, between three and four o'clock in the afternoon, Mrs. Earls was confined, and gave birth to an infant. On the evening of that day, she was visited by her nearest neighbour, Mrs. Sechler, who says she "left her bravely," and that on Thursday morning, "she appeared as well as a woman could be." Mrs. Earls then said "she was well and better than she formerly was," on such occasions. On the afternoon of Thursday, Mrs. Callahan called on her, and she then "seemed well and hearty as could be expected," drank a bowl of chocolate, and took some preserves and other things, which had been prepared for her dinner, with a proper relish. About half after six o'clock on the same evening, Miss Olivia Sechler called in to see Mrs. Earls, and walking up to her bed asked how she was. She replied, "she felt quite well."

She was then eating her supper. Alas! poor unsuspecting Catharine, she knew not that it was her last supper. A few short hours and she had "passed that bourne from whence no traveller returns." At half after three o'clock in the morning, she was a lifeless corpse.

With this outline of facts, and before noticing the testimony bearing on this part of the case, it may be well to refer to medical authority for the symptoms which characterize a death by poison from arsenic. In *Wood & Bache's Dispensatory*, p. 20, the following among others are enumerated; "an austere taste; fetid state of the mouth; continual hawking; constriction of the pharynx, and œsophagus; the sensation of the teeth being on edge; hiccups; nausea; anxiety; frequent sinkings; burning pain at the precordia; inflammation of the lips, tongue, palate, throat, and œsophagus, irritable stomach, so as not to support the blandest drinks; vomiting of matters, sometimes brown, at other times bloody; insatiable thirst; burning heat over the whole body, or a sensation of icy coldness; difficult respiration; cold sweats; a livid circle round the eye lids; livid spots over the surface; prostration of strength; loss of feeling, especially in the feet and hands; delirium; convulsions, &c. It is very rare to observe all these symptoms in the same individual. In some cases indeed they are nearly all wanting, death taking place without any pain or prominent symptom." It is also laid down in same book, p. 20, that "after death, the morbid appearances are various. In some cases no vestige of lesion can be discovered. The appearances, however in the generality of cases, are the following:—The mouth, stomach and intestines, are inflamed; the stomach and duodenum exhibit spots resembling eschars, and perforation of all the coats, and the villous coat of the former is in a manner destroyed, and reduced to the consistence of a reddish brown pulp." * * * and that, "it is a general character of this poison, to induce inflammation of the stomach in almost all instances, provided death does not take place immediately, whatever be the part to which it is applied." In *Cox's Dispensatory*, p. 121, it is stated that "on dissection, the stomach and bowels are found inflamed, gangrenous, and corroded, and the blood is fluid—soon after death, livid spots appear on the surface of the body, and the nails become blue," &c.

These are the symptoms which generally precede and follow death. Let us bear them in mind and compare them with those presented in the case of Mrs. Earls, and with regard to which there is no discrepancy among the witnesses who were present during the time of her illness. A short time after she had eaten her supper, the principal ingredient of which was chocolate, she became sick. She rolled on the bed, appeared to be in great pain, and vomited a good deal. Some mint tea was made for her, and she said, "it burns my heart." Some more was given her, and she drank and said, "it is the same as the first, it is bitter, it bites me in the throat." She called for drink, and when it was given her she could not drink. She called for laudanum, took 50 drops and it did no good. She complained of pain all over, and in the stomach; and, said her mother, "vomited on till she could vomit no longer, and then she gagged on so, till she died." This is the concurrent evidence of Rebecca Sechler, Christiana Earls, Mary Ann Earls, and Susan Earls, as to what immediately preceded death. Shortly after Mrs. E. died, and whilst her body was yet warm, Mrs. Mowrey, Mrs. Mangus, Mrs. Page, and other neighbor women came in and they proceeded to bestow that attention which the occasion required. Mrs. Mowrey, in her testimony says, "I mistrusted a little, and when I came to open her bosom, she had a mark as big as the inside of my hand between her breasts, and it was red and blueish like, her breasts were full of milk. She had that night a blue spot on her leg, and next morning she was spotted blue round the neck, and round her nails, and below her eyes," and in this, Mrs. Mowrey is corroborated by all the persons then present. Up to this period it will be recollected, nothing had been known of the purchase of arsenic by John; but the suddenness of the death—the unusual appearance of the body, and a knowledge of the fact, that the domestic tranquillity of the deceased and her husband, had for sometime been interrupted, led to suspicion, and suspicion to investigation. The Coroner of the county was sent for, and it was determined that the corpse should be disinterred. Accordingly Dr. Ludwig, and Dr. Peal of this county, and Dr. Dougal, of Milton, three of our most respectable physicians, were summoned to attend on the twentieth of October, at Clinton church yard. They attended at the time appointed; and I shall now detail to you from their evidence, that link in the chain of symptoms, afforded by the *post mortem* examination.

The body, which was identified as that of Mrs. Earls, by Dr. Dougal, who had been her attending physician at Milton, was taken into the Baptist church. This was on Tuesday, the fifth day after her death. The clothing being removed from the sub-

ject, it presented externally the following appearances—immediately below and between the breasts there was a good deal of discoloration, the skin over the abdomen also looked of a dark colour, and the abdomen looked depressed and flaccid, and on its inferior part, immediately above the pubis and hench bone, the skin was discolored as it is sometimes seen in incipient decomposition or putrefaction; the posterior parts of the head, neck and back, and also of the hips, were discolored, and of a red appearance. The nails on the fingers, and round the nails, were of a very dark color, and the back part of the lower extremities was a deep red, occasioned perhaps by the settling of the fluids. These were the most prominent of the external indications; and we shall now draw your attention to the internal evidence of death by poison as presented by dissection; and of which I will endeavor to give you a condensed view.

In the right auricle of the heart and ventricle, was found a quantity of dark colored blood, such as is natural in all cases after death; but there was also found the same colored blood in the left auricle and ventricle, a thing very unusual and scarcely ever to be seen. The external appearance of the stomach indicated the existence of intense inflammation, approaching a dark mahogany color, of the most intensity at the lower end—the color was deeper in some spots than others. The coats of the stomach were like to separate from each other when dissected, and the coats of the large intestine were so much affected that they were near separating. The smaller intestines were highly inflamed, and their internal coats softened, and appeared in places to be torn off from the muscular parts surrounding them. The large veins leading to the heart were much distended with dark thick blood, and the pericardium or living membrane of the heart contained above an ounce and a half of bloody serum. The dura mater or covering of the brain was much gorged with blood, as was also the brain itself. The head was examined externally to ascertain whether there was any injury upon it from violence—none was found. The veins wherever they occurred were engorged with blood, and there was a general softening of the muscles of the body. The stomach contained none of the articles which had been taken in as food. This, gentlemen, is a synopsis of the observations made at the church, and although the professional gentlemen were fully satisfied that the stomach presented sufficient cause of death, yet suspecting that arsenic would be found in it, they determined to subject its contents to further scrutiny. Accordingly the duodenum and stomach were carefully secured and placed in the charge of Mr. Kittoe, then present, and taken to his shop in Muncy. The stomach contained about a pint of bloody serum and mucus, with some detached parts of its internal lining. Mr. Kittoe having furnished the necessary means, he with Drs. Dougal, Ludwig, and Peal, proceeded to make the following experiments:—A portion of the contents of the stomach was mixed with distilled rain water, to which was added some sub carbonate of potash; the surface being touched with lunar caustic, there was thrown down a precipitate of pale yellow, or straw color, indicating the presence of poison. Again, to some of the fluid of the stomach, combined with sub carbonate of potash and rain water, was added a solution of sulphate of copper, and the result was a copious deposite of grass green, called Scheele's green, and equally indicative of the presence of poison. These two experiments were again repeated, substituting only the arsenic of the shop, in place of the fluid from the stomach, and the results were precisely similar. Dr. Dougal then took about three ounces of the fluid with him to Milton, and with Mr. Morrison, a good practical chemist, subjected it to a process of analization, a written statement of which has been read to you, and the result of which was the production of the *pure arsenic* in the shape of the arsenical ring; and what renders this conclusive is, that the arsenic of the shop, which was submitted to the same test, formed a ring which could not be distinguished in appearance from that produced from the fluid of the stomach. The specimens have been shown you. We might here safely stop, but I consider it my duty on this part of the case to bring the whole evidence before you, and to make "assurance doubly sure." After the experiments at Muncy, the stomach and contents were put in two bottles carefully sealed up and delivered to Mr. Kittoe, who, under the direction of the Coroner, took them to Philadelphia to have them more fully and accurately tested. The experiments were there conducted by Dr. Mitchell, one of the most eminent chemists in the city and well known to the public, assisted by Mr. Kittoe who is also an excellent chemist, and who has acquitted himself handsomely before this court. When the bottles were delivered to Dr. Mitchell, at Philadelphia, it was discovered that a white powder had subsided, which was supposed to be the suspected poison. A portion of it was removed into a watch

glass and dried by the heat of a spirit lamp; a part of this was then mixed with black flux, put in a glass tube and heated to redness—the product was a fine arsenical ring, which I now produce before you. The tube is marked “Earls—27th October, 1835—solid found.” Arsenic you will understand is, in its pure state, a metallic substance, and when we speak of the metallic ring, we speak of it as a production of the arsenic itself, and as the highest test known to science. Some particles of the ring thus formed was removed and put on a live coal and gave out the arsenical odour. It is said to smell like garlic. Other fragments of the ring were put into *ammoniated sulphate of copper*, and formed a Scheele's green, which was dried, and is now exhibited before you, marked “Dry arsenite of copper.” Another portion of the same powder was then dissolved in boiling distilled water and the solution put into a glass tube, a drop or two of *ammoniated sulphate of copper* added, and it precipitated a Scheele's green. You have the specimen before you, marked “Earls—*arsenite of copper*” and hermetically sealed. A part of the same solution was placed in another tube, and a drop or two of *ammoniated nitrate of silver* added, which threw down a copious canary yellow precipitate. This specimen is marked “*Arsenite of silver*—Earls.” It has become changed in color by exposure to light. Some of the same solution was then tested with lime water and produced a white flocculent precipitate. The tube is sealed and marked “Earls, *Arsenite of lime*.” The remainder of the solution of the powder was precipitated by a stream of *sulphuretted hydrogen gas*—the precipitate being a deep sulphur yellow. The specimen is before you. Some of this precipitate was then dried mixed with black flux, placed in a glass tube, heated to redness, and the metallic ring again produced. The specimen is marked “Earls—*from orpiment*.” After these results, Mr. Kittoe was asked if he was satisfied; and replying that he was, the experiments were closed. I now offer you the last specimen. It is a portion of the white powder just as it was taken from the stomach of Catharine Earls, and which proves to be the *arsenic itself*, pure as it was purchased from the shop.

When experiments have been conducted by men so professionally eminent as Dr. Mitchell, it is hardly necessary to quote authorities. I will, however, for the purpose of showing that the most approved tests known to chemical science have been employed, refer to *Ryan's Medical Jurisprudence*, p. 221 to 226, and *Wood & Bache*, p. 23. [Mr. A. here read the authorities referred to.] According to Dr. Christison, the concurrent indications of the three tests by *sulphuretted hydrogen*, *ammoniacal nitrate of silver*, and *ammoniated sulphate of copper*, are all-sufficient for detecting in an infallible manner the presence of arsenic. We have gone further; we have not stopped short of proof absolute; the production of the metal itself.

From the wide range which was taken in the cross-examination of our witnesses, I was almost induced to think that the whole field of chemical learning was to be explored, its fundamental truths overturned, and its conclusions shown to be the idle phantoms of pedantic brains. But lo! not one position has been attacked by evidence—not one principle assailed by authority. The laws which govern our liberties and our property, are just what we make them; but the laws of science are fixed and unalterable. Let me now ask, what are the objections to be urged against our analysis? They are few indeed. It has been said that certain vegetables combined with the solutions already mentioned, will change the color; and that *onions* will produce a green precipitate. This cannot be admitted. It is true they will mix and change the color, but no vegetable will cause a precipitate; and if they did, that precipitate would not produce a metal. If however, the defendant's counsel intend to insist that Mrs. E. died of eating onions, this hypothesis may be useful to them. It is said also that cinnabar will produce a metallic ring; true, it will. But it must be recollected that this is the only particular in which it can be assimilated to arsenic. When combined with any of the arsenical tests the precipitate is different. The specimen produced, is an argument not very favourable to the exception, and I believe there is no evidence to show that Mrs. E. had taken cinnabar. Some pains was taken to induce you to believe that the several tests, which if taken separately might be inconclusive, are therefore equally uncertain when taken together. Dr. Hepburn, whose professional and scientific character is well known to you all, is of a different opinion. He says probabilities may be so multiplied that certainty may be attained; and that if you find the metal by the tests, and reduce it back to Scheele's green, you have a certainty. All this has been done, and I may here add the declaration of Mr. Kittoe, as applied to the white powder found in the stomach of Mrs. Earls. “From all the tests taken in conjunction, I should say this is arsenic indubitably.”

The counsel who opened this cause for the prisoner was pleased to say that he “reflected not on the physicians, but they were mistaken.” If this were so, why

is it not proved? The reputation of the medical gentlemen forbids it. If they were mistaken, is it not strange that they should all corroborate each other, and that no witness could be found to contradict them. But is it not now apparent that the examination of the body, so far as relates to symptoms and appearances, is of secondary importance, since the deleterious drug itself was found in the stomach in quantities far more than sufficient to produce death. Had the prisoner attempted to account by evidence or in any rational way for the suddenness of the death, the extreme inflammation found on dissection, and the existence of arsenic in the stomach, then should we have held ourselves bound to answer; but in the absence of all testimony on these points, surely it will not be expected of us to search after causes which have been sought for in vain by ingenious counsel. I shall close my remarks upon this part of the case by bringing before you the uncontroverted conclusions of the several physicians after they had finished their examinations and experiments. Dr. Dougal says "we were satisfied there was sufficient quantity of arsenic in the fluid of the stomach to produce death." Dr. Ludwig says, "I believe that death was occasioned in this case by inflammation in the stomach produced by arsenic. I did not discover any other cause of death; I examined minutely." Dr. Peal also says, "the results were such as to lead us to believe that the death of the woman was occasioned by arsenic; I found no other adequate cause of death." * * * "from the whole examination and from the tests, we concluded positively that there was arsenic in the stomach—there was not the least doubt in my mind, not the least." Let me now dismiss a branch of the argument which, to us, who are neither physicians nor chemists, may perhaps grow tedious. Unwilling to rest on the naked conclusions of learned men, I have brought before you the theory of symptoms and tests as laid down in the books, and also the prominent facts corresponding with them; you will make your comparisons. But, after all, we are in almost every department of life obliged to depend on the knowledge of others, and you will find it much safer to rely on the conclusions of men whose lives have been devoted to scientific research, than to attempt, unassisted by the lights which science affords, to draw your own, which might be at variance with both facts and experience. The conclusions we ask you to adopt are free from doubt, and I feel persuaded they will accord with your own opinions. There is no contradiction with regard to them, and you are not left to grope your way in the dark mists of uncertainty. I must therefore take this part of the case as established beyond the doubt of incredulity itself.

The fact then, that Mrs. Earls' death was caused by poison, being distinctly proved, and there being no pretence of accident or mistake, the belief is forced upon us that it was the wilful and deliberate act of some guilty and abandoned wretch. To point him out, and to fix upon him the mark of the law's just vengeance so clearly, that "he who runs may read," shall be the object of the argument I have yet to offer you. I know it is difficult for the mind accustomed to repose on the peaceful scenes of private life, and move on in harmless quietude, to realize the amount of wickedness with which the world abounds. And often do we shrink back with horror from the necessity of identifying a fellow being with crimes at which our nature shudders. Yet painful as it is, the contingency which has drawn you together imposes it on you as a duty, from which I know you will never swerve. The learned gentleman who opened this cause for the defendant, stated that, although he did not admit Mrs. Earls died of poison, yet he would show the criminal agent if there was one; but he dared not to name the individual. To have done so then, was to have deprived himself of the chances which circumstances and fabricated testimony might furnish, of casting the imputation on any one—the defendant cared not whom. It was not among the least of the difficulties of counsel to determine on whom they could most successfully shift the charge of this "most foul and unnatural murder." Hence we see at one time the current of their inquiry bearing hard against the poor old mother, at another forcing itself after the spirit of a departed wife, and pointing to her as the unforgiven author of self destruction. The very alternative to which they resort, shows their conviction of the cause of death, and the necessity of fixing the impress of guilt on some one not on trial. Before taking up the testimony more immediately connected with the prisoner himself, let us examine the subterfuges which he has interposed.

First, then, as to the old woman, Christiana Earls, who it is insinuated was the person who wilfully administered the poison. She is the mother of the prisoner, resided in his family, and nursed his wife at the time of her confinement. She appears before this court in the character of a witness, and I shall endeavor to show that her own testimony, and all the circumstances which connect her with this

cause, are absolutely inconsistent with any intentional participation in the death of her daughter-in-law. Her very appearance before you precludes the idea. Past three score and ten, and bent down with the infirmities of age, her years should be her protection. At a time of life when all her faculties are impaired—when all those inordinate feelings and passions, which are ever the incentives to vice, have subsided—when all her energies were wasted; surely there can be none so bold (save her affectionate son) to charge her with the commission of so foul a crime. Let me ask for the old woman, the benefit of that principle which we have conceded to the defendant—that innocence is always presumed till guilt is proved. And I ask for the proof. From the beginning to the end of the voluminous testimony spread upon our notes, there is not one sentence tending to implicate her, save that which fell from the lips of this hopeful son, who told his little daughter at the jail that “it was that old bitch his mother done it.” But *she* was not then present, nor is his declaration any evidence of the fact. There is not the slightest evidence to show that she and Catharine were on bad terms, or that there was ever any difference between them; on the contrary, there seems to have been a good understanding, for she treated Catharine with the greatest attention and kindness during her illness. If the old woman knew any thing of the poison, is it not remarkable that she should make no effort to conceal the fact that she had prepared the very food in which it is alleged the poison was mixed, and that she should have feigned no excuses for Catharine’s sickness. In her testimony she says, “I made the victuals—Katy ate her dinner with a good appetite—she drank all the chocolate—she appeared well then, *O, la, I guess so!* After this I went up stairs and swept a little, then gathered a little wood and made a nice fire so she could get up that I could make her bed. I took a carpet and doubled it four times and laid it before the fire and set a chair on it; then she said I will get up—I was going to say she should have stockings on, but I saw she had a pair on. I went and got a cloak and put it round her—gave her the child, and made the bed. She then got up and went to bed again.” Now this happened the very afternoon before Catharine died; and how much of conscious innocence does the simple statement evince on the part of the old woman. How easy would it have been to have assigned a different cause for Catharine’s death, and instead of saying she was well, to have said she complained of being sick—that she had imprudently rose from her bed without sufficient covering—that she sat in a cold room without fire, without any thing on her feet or around her, and had thus caught a violent cold. All this could have been said without the fear of detection, as there was no person there at the time but herself—John having gone up to the dam with the children. Again, she states that *she* made the chocolate for supper, poured it out, set it on the stove, got the waiter, put all the articles on it, that she carried it up stairs and set it on a chair at the bed side, and that Katy ate hearty, saying “O mother how good that chocolate was,” and drank it all. Is it possible to reconcile this with guilt? She well knew that it was alleged the arsenic was mixed with the chocolate which Catharine drank for her supper; yet she here makes admissions which, were it on her own trial, and they were proved by another, might be almost conclusive against her. Before Mrs. Earls had finished her supper, the old lady came down stairs, and she says, “after a little I heard Katy vomit, and I let all fly and ran to the head of the stairs and said, Lord of mercy how comes it that you vomit so,” * * * “may be *that* chocolate hurt you and made you sick.” Now, if the old woman mixed the arsenic, it is beyond comprehension, and without the pale of probability, that she should be the first to point to the article that contained it; and the first to ascribe the effects to the proper cause. If she had wickedness enough to do the act, she would have had design enough to conceal it. If she had determined on the death of Catharine, she would not have been the first to arrest the progress of her work, by suggesting remedies for relief, and to stop the vomiting. Yet you find her the moment she sees how Catharine is affected, recommending spear mint tea, and when it was prepared by John, and tasted bitter, she thought it must be pepper mint, and observed, “I knew I had some spear mint, and I went to my drawer and found it right away; it seemed as it was to be so.” You will recollect, gentlemen, how the tear of gratitude started in the poor old woman’s eye, and her utterance was almost choked in the expression of the last sentence, “it seemed as it was to be so.” She looked on it as almost a special intervention of Providence that she should, at the moment of necessity, be directed to the very place where the article she wished was to be found, when perhaps it had been for months forgotten.

It is in vain to look for evidence against the old woman. Every circumstance to

which we can advert makes her innocence more apparent. We find her at one time, importuning John on the impropriety of his conduct in running after strange women, and at the request of Catharine, desiring him to stay at home. And what is the consequence? Catharine, on the supposition that she had been the prompter, is whipped by her husband. This was strongly calculated to beget feelings of sympathy for the one, and dislike for the other; for few mothers are disposed to tolerate the libertinism of a son. Shortly after Catharine was buried, the old lady says there was some talk about taking Catharine up, and she supposed as she was the mother, they wanted to keep it from her, and (knowing nothing of the cause at this time) she said something about it to John. His reply I will notice hereafter; but why did he not then charge her with the act if he thought her guilty. And why was it, when he sent for his mother to come and see him at Mr. Hoffman's at Muncy, where he was a prisoner, and when she met him in the bar-room exclaiming "my God, John what have you done?"—that he did not even cast a shade of suspicion on her, but "told her to be still and make no noise there." Yet he was in possession of all the information at this time, that he had when he made the charge to his children at the jail. How are we to account for the fact, that in the whole of Christiana Earls' testimony there is not the slightest shade of coloring in favour of herself? No disposition to withhold or conceal anything; nor is there the least desire evinced to implicate any other person whatever—not even that poor degraded wretch who is ready to tie the halter round the neck of his own mother. What an opportunity was presented here for retaliation? If she were so lost to all the feelings of humanity; so regardless of all consequences as to conceive and consummate the murder of a child; she would not stumble at a perjury, which would have for its reward the double object of revenge against her accuser, and of averting from her own head the penalties of the law. I would ask the jury, what advantage had this old woman to promise herself upon the unfortunate event which has happened? Was it the charge of a family of small children, and the care of an infant babe? surely this was not desirable. Yet, from the testimony of Edith Barker, you find what the affectionate outbursts of the poor old grandmother's heart were, when it was proposed to put the child out to nurse. "How can I part" said she "with my little babe—Katy is gone." And when they persuaded her she was too old to take care of it, she yielded with reluctance, saying "it is hard to part with the child and Katy too—now they are all gone at once." In scrutinizing the actions of men, we are apt to look after the motives that govern them. But what motive can we attribute to one who is old and decrepit—who has arrived at that age, when the rudeness of angry passions and vindictive feelings waste themselves away in the feebleness of worn out nature? who can have few desires to gratify, and few demands to make upon society, before she must, in the course of that providence which is dispensed to all mankind, be called to answer at the tribunal of an almighty and unerring judge. I will only add in support of what has been already adverted to, her solemn declaration on oath, that she "never heard a breath about the poison;" "God knows," said she "I never saw any poison about the house to my knowledge." And there is not one particle of evidence to show that she even knew of the purchase of arsenic by John, or of the purpose for which he pretended to use it. Believing you are satisfied with the innocence of the old woman, and that it is wholly unnecessary, I shall extend my remarks no further at present on this part of the case.

The next position taken by defendant's counsel, and on which they seem to place great reliance, is, that Catharine Earls took the poison herself, and voluntarily destroyed her own life. I believe it never happens that the person disposed to commit suicide calls upon an accomplice. We therefore look upon the ground now assumed as a bold contradiction of the first step in the defence; and we must be allowed to consider the arguments in its support, as an unconditional release of the old woman. The criminality then rests between Earls and his wife; and fearful indeed is the attitude of the defendant. But like the drowning man, he catches at the slightest particle that floats on the surface with as eager a grasp, as though it afforded security. After the character which has been given to the witnesses called to sustain the charge of suicide by the deceased, it would perhaps be unnecessary to say any thing by way of refutation. We will however pass in review the evidence manufactured for this point.

Diantha Marinus states, that when she lived with her uncle John Earls, "he was hunting some papers one day, and got her (the deceased) to look over them—he lifted a paper out of the drawer, and it appeared to me it had about *two table spoons full in it*; he asked her what it was—she snatched it out of his hand and said she

knew what it was." Again the witness states that she "said nothing about its being poison that day, nor for a couple of days after; she did not show it to me. Mary Ann Earls was by; Earls kept the key of that drawer himself." A day or two after this, "the children were playing around the door, and Mrs. Callahan's cow knocked one of them over, and she (the deceased) swore she would poison the cow. I asked her where she would get the poison? She said that was poison that John lifted out of the drawer. She got it with the intention to poison Maria Moritz; and if she did not get revenge of her, she would take something to put an end to her own life." Now the inference to be palmed on the jury is, that this paper, the contents of which the witness never saw, contained arsenic; *two table spoons full of arsenic!* enough to have killed all the people in this court house! Where would the deceased have got it? She was never known to have purchased any, nor would any Druggist have sold her that quantity. She could not have taken it from John, or he would have missed it, and it is not pretended that at that time, which the witness states was the beginning of last May, he had any. And how, pray, did it get into John's drawer, which was locked, and of which he kept the key? It appears he asked her what it was, and gave it no further attention. Why was not his suspicion then aroused? You will recollect, when John S. Dykens suggested that his wife might have taken it, "Yes," said he, "Dykens that's all that troubles me. We lived disagreeably together and she often threatened to put herself out of the way. I was often afraid, going home at night from fishing, of finding her a corpse and that I might be blamed for it." Now if this story were true, most certainly he would have suspected the paper referred to, and examined its contents. The only reason Mrs. Marinus had for supposing the paper contained poison, was from what she makes Katy Earls say, when the cow knocked over one of the children; and in this I shall show you from the testimony of Mary Ann Earls, that she was mistaken. Indeed she is not only contradicted by others, but she contradicts herself in many particulars. For instance, being very desirous to make out the deceased an intemperate woman, she says on her cross-examination, speaking of Earls and his wife, "I know of no other cause of quarrelling but intoxication." Forgetting that she had previously stated, that the deceased had threatened to poison Maria Moritz, and that she had struck Maria with a pole, because of the intimacy of the latter with the husband of the deceased. No one knew better than Diantha what the real cause of quarrel was. She had seen Earls taking Maria Moritz home in a sleigh; and when his wife followed them as far as Mangus', he got out and put her under the fountain pump, in the dead of winter, and tore the clothes from her back; all this had she seen and much more, and yet pretended she knew of no cause of difference but intoxication! But who is Diantha Marinus? She is, gentlemen, a lady who seems to despise the dull monotony of a married life, and to have determined to do business on her own account; for she tells us she "dont know where her husband lives;" although he has been loitering about the court from day to day, and has been examined before you as a witness. The firm I suppose has been dissolved, and each is "fishing on their own hook." She is the same lady whose character for truth is declared to be bad, by all her neighbours.

I will now give Mary Ann Earls' version of the paper found in the drawer. She says "Papa went to the drawer one day—he picked up a blue paper and asked mamma what it was, and she took it out of his hand. She did not say anything. She did not tell him what it was. Mrs. Marinus was by." This is a very different relation of the affair, and yet it is no doubt the simple truth. The deceased neither snatched the paper, nor did she say anything about it. Mary Ann further says, "I was present when Mrs. Callahan's cow knocked over the child, but did not hear mamma say anything about it." Now this is a direct contradiction of what is sworn to by Mrs. Marinus, who predicates her whole knowledge of the paper's containing poison, on this conversation with the deceased about the cow; and yet it is now proved by a person equally entitled to belief, that no such conversation took place.

The next witness in order, is James M'Coy. He says he stopped in at Earls' to get a drink of whiskey, and truly his appearance indicated his fondness for it. "I asked her" (the deceased) said he, "how she was? she said she was well; she wished to Almighty God she had something to put her out of the way, for she was troubled in this world." This was about the middle of August last. He adds, "I was not there more than fifteen minutes; this was all the conversation we had at the time. She was not making complaints against any one. She was no more serious in this than other conversations." This is the amount of M'Coy's testimony; and can it be believed, that without anything to lead to it, a woman would break out in such

a strain with an idle fellow who had just called in for "a drink of whiskey?" But even M'Coy did not think there was any thing serious in what she said. If it had been true that on the first of May, the deceased had two table spoons full of arsenic, as Mrs. Marinus would insinuate, why should she in the middle of August afterwards, wish for "something" to put herself out of the way? It does not appear that in the mean time she had either poisoned herself or Maria Moritz.

With regard to the testimony of Sabina Moritz, it bears on its face the stamp of falsehood. To repeat it is to refute it. She says that "two or three weeks before Katy Earls' death, she asked me if I would come and nurse her when she got sick—that if I would come she would give me some poison and I should give it to her after she got sick. I told her if she had such bad thoughts I would not come. Says she if you dont come I have trunks and chests, I will have them close enough to the bed that I can take it myself." * * * "Before my child is a week old you will hear that I am dead." Sabina further says that "all the reason the deceased gave, was, she liked the liquor so and she could not help but drink it." A more bare faced tale of falsehood was never sworn to in a court of justice, and yet it is endorsed by the oath of Henrietta Moritz. If the story were true, why did they not mention it to John Earls or some of his family?—They knew well the state of affairs that existed between their sister Maria and Earls, and would undoubtedly have communicated it to him; yet they say they only told their mother, Henrietta, and Maria. Now if Maria knew it, is it not as certain as holy writ that she would have told it to Earls, with whom she was in daily, aye and nightly intercourse—and if he knew it, is it not also as certain as that the light of heaven shines upon us, that he would (if innocent) when he saw his wife suddenly taken ill, vomiting and in the agonies of death, have suggested his fears of the cause, and informed those present of what he had heard, particularly as he pretends to have had forebodings of his own? Yet he was then silent as the grave on the subject of poison, hypocritically attributing his wife's illness to her taking cold. Are you able, gentlemen, to believe—can you conceive for a moment that Katy Earls would call on one of the Moritz family to nurse her—a family, of whose members she loathed the very sight, and who was the cause of all the misery of her life. And are you ready to accept for truth and verity the reason which the deceased is made to give for poisoning herself, to wit: because she loved the liquor so well. I am inclined to think it would be the first instance of suicide by arsenic for such a reason. The devotee to drunkenness usually prefers death from the poison he loves best. Nothing can be more evident than the effort of all these witnesses to make Katy's fondness for liquor, the cause of disturbance between her husband and her, when they well know it is not true, and are fully aware that the disgusting and shameful conduct of Earls with Maria was the whole and only cause.

That there has been a most grand and magnificent scheme of perjury here, planned and designed by the prisoner to save himself from deserved punishment, is too obvious to authorize a doubt. The curtain has been raised and the part that each was to play is distinctly seen. Diantha Marinus was to prove that the deceased had the poison in her possession: M'Coy was to prove she wanted something to put her out of the way, as she was troubled in this world; Sabina and Henrietta Moritz were to swear to the very time she intended to commit the act, and that she was to have a chest or trunk by the bed side to keep the poison in, so that she could take it herself. And to crown all, Edith Barker was to swear that after the death of Katy Earls, she found in a trunk near the bed of the deceased, a paper containing a white powder supposed to be poison:—thus the whole plan of defence was thought to be complete. But alas! all human calculations are uncertain. The scheme has been frustrated and the chain broken. The actors had forgotten their parts. Mrs. Marinus not only contradicts herself, but she is contradicted by Mary Ann Earls in relation to the most material part of her testimony. And as for Sabina and Henrietta Moritz you will recollect that they by no means agreed in their relation of the same facts. With regard to Edith Barker, to her credit be it spoken, she refused to supply for them the last link in the chain of falsehood which had been forged, although it was evident that this was the very purpose for which she was called. She ought to have been a witness in chief for the prisoner, yet it was not till the commonwealth closed their rebutting evidence, and proved that there was no trunk or box near the bed of the deceased, that they forced Edith to the stand and endeavored to extort from her by the most direct and pointed questions, the facts to which I have referred. But all would not do. When on oath she would not swear to that which she did not know. Instead of supporting the defence, her testimony strongly corro-

borates that of the commonwealth in an important particular, as I shall show presently when I have occasion to refer to it more fully. But, gentlemen, ought I not to be relieved from the necessity of commenting on the testimony of witnesses who are proved to be unworthy of belief. We have shown you by half a dozen persons of respectability, that the character of Diantha Marinus, Sabina Moritz, Henrietta Moritz and Alexander Marinus, for truth and veracity, is worse than worthless, and that they cannot be believed. Never have I witnessed such an absolute demolition of character in any case. And what is most extraordinary is, that with all the zeal and vigilance which has been exercised for the prisoner, not one individual could be found willing to give even a tolerable reputation to the persons just named. Certainly, then, not any thing they have said on this, or any other point, will have the least weight in your deliberations.

Some consequence was attempted to be given to a conversation which took place between the deceased and Zachariah Welshanse, who had been a neighbor of hers when she lived in Milton. Mr. Welshanse happened to be at Mrs. Earls' house about two or three weeks before her confinement, and after conversing awhile he asked her when she was coming to Milton. She replied that "she never expected to see Milton alive again." They then conversed on other subjects. "She was cheerful and used the expressions mildly, and was not complaining of anything that day." Mr. Welshanse adds, that "she was not very serious about it." Yet this is the language that is construed into a determination to take away her own life. Again, when about a month before her confinement, she gave her daughter Mary Ann, a piece of calico for a frock, saying she thought "she would not live to make it up for herself," this too is magnified by the powerful lens of imagination into the purpose of self destruction; notwithstanding Mary Ann declares she "never heard her mother say any thing about wishing herself dead."

Having considered the evidence adduced by the prisoner's counsel to show that the deceased took the arsenic herself, let us bring before you the circumstances opposed to this view of the case. The very idea of suicide is most abhorrent to our feelings, and we cannot contemplate it without supposing a diseased state of mind. It is oftener found to be the offspring of fancied, than of real grievances, and men are never tempted to the execution of such a purpose, unless under the immediate influence of some real or imaginary uneasiness, operating at the very moment of the act. Such was not the case with the deceased. She was well, apparently happy and conversed with cheerfulness to those around her, and even after she had drunk the fatal draft, unconscious of its deadly qualities, she complaisantly observed "O mother that chocolate was very good." I think it may be laid down as a principle, that the person who openly threatens to take away his own life, never intends to do it. And when notice is given of the time and the occasion, upon which it will be done, there is no ground for apprehension or alarm. It is not a work that is done by appointment. The disordered and melancholy mind, sick with all around, shuns the gaze of an unfriendly world, and in lonely horror seeks for hidden places to enact the tragic scene. That Catharine Earls might have had some fears that she would not live through her confinement may possibly be true. It is one of the most severe trials attendant on the life of a female; and too often carries with it the most melancholy presentment. It is impossible for female weakness entirely to shake off the gloom that hovers round and precedes an occasion of this kind. It is of the wisdom of Providence that it should be so; for he has said to the woman, "I will greatly multiply thy sorrow and thy conception; in sorrow shalt thou bring forth children." Doctor Power states, that "writers on the subject of pregnancy, universally say that it produces despondency." And, "judging from my own experience," said he, "it is not infrequent for women not long before confinement, to anticipate an unhappy result, or death." Dr. Ludwig also states, that "women frequently before confinement apprehend that there will be an unfavorable issue." Why then should the deceased be exempted from feelings inseparable from her nature and common to her sex? When we recall to mind the severe treatment she received from her husband—that he had cruelly beaten her with the horse lines not a month before, and that he had threatened to lay her asleep; there was every thing to impress most deeply on her feelings the situation to which she was shortly to be exposed. No wonder then that she should sometimes speak despondingly, and it is thus we account, most rationally too, for the conversation with Mr. Welshanse, and with her daughter Mary Ann, about the frock. But the hour of travail is now past, the gloom is dispersed, the weight is removed, and she finds herself the happy mother of an infant babe. If there be a moment in life when the soul pours itself out in purest sincerity before

God—when light and buoyant the heart sends forth to heaven its holiest aspirations of prayer and thanksgiving?—it is this! If ever there is a time when the heart is softened into kindness—when it forgets its enmities and moulded into forgiveness, desires to appear before its Creator, “void of offence;” it is this! Surely then, to fix in the bosom of a female at such a period, a design so hostile to all that is human and divine, is forced and unnatural. Allow to the deceased only that instinct which is common to the brutes of the field—a love of their offspring; and she had here a new reason to live, a new demand upon her care. She had another hope that if the husband of her affections did not love her, her children would.

The situation of Catharine Earls, and the disposition of her mind after the birth of her child, and immediately before her death, were altogether adverse to the inferences now drawn by the prisoner’s counsel. I shall refer to facts for the purpose of repelling the arguments to be advanced. Mrs. Callahan says, that “John seemed cheerful at the time of the birth, and she was rejoiced to see them sociable again.” She knew well the difference which existed between them, and its cause. On the afternoon of Thursday, when Mrs. Callahan called in again, she observed to Katy that she “was rejoiced that John went to talk to her again;” and Katy replied, “do you think but he stayed with me last night, and seemed good, and was always good on lying in, and would be still, if it was not for ugly Maria Moritz.” This was the evening she died. Now although John’s kindness was perfect affectation, still it had the effect of soothing his wife’s feelings, and driving from her mind the recollection of the wrongs he had done her, and of all desire to avenge them. It gave her hope of a change of conduct. The behavior of the deceased after she had drunk her chocolate, is worthy of observation. Had she known it contained the poison, would it have been possible for her to have conversed cheerfully with Olivia Sechler, without perturbation, without a single emotion to betray her work of death? No, it cannot be! Her nerves were unequal to the task. And when the deadly poison began to operate, see the extreme anxiety for relief, a thing which never occurs with those determined to take away their own life. She prescribes for herself; she takes hyson tea; then spearmint to stop the vomiting, and a mustard plaster is put to her stomach. She hopes she will get better, but the pain continues. She says to her husband, “O, John, go fast down to the bureau and there is a vial of laudanum.” It is brought, but with it no relief. Her mother asks, “how comes it that you vomit so?” She replies, “mother I dont know.” When everything had failed, hear her exclamations of distress and despair, “O, Lord, its gone so far I can get no help.” She was indeed beyond the power of mortal help. I ask you, gentlemen, to say, is not this evidence of a desire to live and not to die? If the latter was her choice, why not meet the doom she had fixed for herself, before the birth of her infant, and thus escape the pains of parturition? And as to the means, why not take the laudanum? it is that to which females most frequently resort for such purposes; and it is shown she had it in her possession.

I will endeavor to convince you, from the evidence, that it was impossible for the deceased to have taken the arsenic, without the knowledge and even assistance of those present. That it was taken with the chocolate is indisputable. It was the only article of her food with which it could be mingled, and this was drank in the presence of Earls and Olivia Sechler. It had been brought up by the old woman and placed on a chair at the side of the bed. How then could the deceased have thrown the arsenic into the chocolate without their observation, and where could she have kept it. If in a paper or vial it would have been discovered. And how could she get it—she had not been out of the room from the time of her confinement, and only once out of her bed. Beside, there was neither trunk, chest or anything else in the room or near the bed, where the article could have been concealed. The truth of this is established by the testimony of both Mrs. Callahan and Edith Barker. The former says, “when I went there when the woman was dead, there was no trunk or box near the bed.” * * “The day I dressed the baby, I got a trunk out of *the other room*—the old woman or little girls brought it in and set it on a chair.” This Mrs. Callahan states contained the clothes prepared for the infant, all neat, clean and in good order. There was nothing else in it except half a sheet of white paper, and a piece of paper that once had pins in it. She examined it carefully. Mrs. Barker corroborates Mrs. Callahan in the fact that the trunk which contained the child’s clothes, was in the room adjoining where the deceased lay. She knew it because she had gone to the trunk for the clothes on the day of the burial. But she further states, when put almost on the rack for the purpose of wringing from her a state of facts that did not exist, that she saw in the trunk a pa-

per either blue or brown, and she did not recollect which; she picked it up, said what is this, and laid it down again without opening it.—“On the outside of the paper there was something that looked *whitish* like buckwheat flour; it had either a white or blue string; it was just rolled up and whether it was tied or not I cant say; whether there was anything in it or not I cannot say; and whether the paper got the dust from the bottom of the trunk, I cannot say, for I did not take much notice.” And in her cross-examination she adds, “it is likely it was a paper that pins had been in.” However little there was to authorize it, much was expected from Edith Barker, and the disappointment was extreme. It was thought she would finish out and put the cap sheaf on the evidence of the Moritz’s. But how manifest the failure! If the paper contained arsenic, it could not be that which deprived Mrs. Earls of life, as it was found after her death. And if the paper used by her, how did she get it, and how did she return it back to the trunk? If there was anything suspicious about the paper, it was in the defendant’s power to have brought it to court; and its non production is a strong argument against the inference for which his counsel contend. There is not, gentlemen, one spark of truth in this dark insinuation against the deceased. It is one of the blackest of calumnies, got up by the prisoner as a *dernier resort* for the purpose of saving himself, by casting reproach on her whom he had robbed of life, and would now rob of character too. That she was innocent of the crime imputed to her, we have the most decided proof, and that, which, in this case, is irrefragable. We have the solemn declarations of the only man on earth who knew, made at a time when reason was at home—when calm reflection guided, and when all his words were weighed—we have the declaration of the prisoner himself. His daughter Susan, who visited him at the jail, anxious to know the cause of her mother’s death, says, “I asked papa if he thought mamma poisoned herself.” He said “no!” “I said who did it.” Said he, “it was that old bitch my mother.” Yes, gentlemen, the defendant himself exculpates the deceased, and it is only when he has failed successfully to implicate his aged mother, that he stabs at the dead body of his wife. So far I have said nothing of the more than ordinary inducements of the deceased, to hold fast on life. She had just given birth to an infant babe, for which she had prepared with all a mother’s care. She had round her a family of children whom she loved, and whom she always treated, as the witnesses say, with the greatest kindness. And what had she to promise herself by rushing uncalled for into the presence of her Maker? Was it that Maria Moritz should become the mistress of her children, and instil her corrupted morals into their minds? No, it was the last thought she would have ever entertained. She would have lived if only to disappoint the hopes of her who of all others she had reason to loath and despise.

The three main grounds of the defence, have now been noticed in a general way, and may again incidentally be taken up. With regard to the first, I must take it for granted that you believe the death of Catharine Earls was caused by arsenic. If so, it remains only to determine the guilty agent. It is admitted that there was no person present at the time the arsenic must have been administered, except the defendant, his mother, and the children. There is no pretence of even suspicion against the children. The necessity therefore on the part of the defendant, of showing either that his wife took the poison herself, or that her mother gave it, was imperative, in order to resist the conclusion which must inevitably follow a want of such proof. The counsel have undertaken to maintain these positions. If they have failed to do so; and if the commonwealth has shown to your satisfaction, as I conceive they have, that neither of them has, or can be sustained; the guilt of the prisoner results as a matter of course, and is as clear as demonstration can make it.

I shall now proceed to consider the evidence more directly connected with the prisoner himself, and of the circumstances which establishes his guilt. You are not to expect in a case like the present, direct and positive testimony; that would be unreasonable and against all experience. Of the whole catalogue of crimes which the darkest mind could conceive or engender, none is so easy of concealment as the administration of poison. The man who pledges you in the social glass—the servant who waits on your person; and she who does the honors of your table; may equally hold your life at the pleasure of their capricious will; and whilst in the exercise of the most kindly office towards you, may execute their envenomed purpose and secretly blot you from existence. The culprit who plots and carries into effect the destruction of his fellow man, never calls witnesses on the occasion; and his iniquity is only to be ferreted out by the few evidences which precaution may have forgotten, or ignorance left exposed. “It is essentially necessary to the security of mankind

that juries should convict when they can do so safely and conscientiously, upon circumstantial evidence; and that it should be well known and understood that the secrecy with which crimes are committed, will not secure impunity to the criminal," 2 *Starkie*, 962. Keeping in view the doctrines which govern this kind of evidence, I will endeavor to convince you that the facts bring the prisoner within the principles which authorize a conviction. The purchase and possession of the poison—the behavior of the prisoner on the night of his wife's decease—his cruelty and threats towards her—his declarations on being arrested—his attempts to escape, and the motive by which he was actuated, form such an array of coinciding circumstances, as must produce in the mind of every unprejudiced man the utmost moral certainty.

On the day of the last general election, the prisoner purchased arsenic at the store of Bruner & Dawson in Muncy. This fact is rendered certain by the subsequent admission of Earls himself. The time he selected to enquire for the article was most propitious to his purpose, and showed that his design was properly matured. It was at a moment when the store was full of people, the clerks much engaged in the hurry of business, and when his demand was not likely to attract much attention. That he managed most dexterously is evident from the difficulty we have had, independent of his own confessions, to prove the purchase, although the store was crowded with men. Francis Weiser, the clerk, was only able to say that on the day of the election when he was very busy and the store full, Earls asked him for an article on the medicine side of the store, which he immediately gave him, but could not recollect what it was. David Starrick, was in the store, and he can only recollect that "Earls came in and asked if they had any ratsbane," to which the clerk answered "yes." The testimony of these two witnesses together, make out the fact, when that of either would have been insufficient. Now had the purchase been made of the clerk when alone, his recollection no doubt would have been perfect; as was that of John S. Carter, with regard to what was purchased of him. The time then selected for the purchase was in accordance with the design of the prisoner, in whose hands we now find the means necessary to accomplish his object. It is laid down among the elementary principles that, "the usual connections between the conduct of a criminal agent and the supposition of his guilt are of too obvious a nature to be dwelt upon. The seeking for opportunities fit for the occasion—the providing of poison, or instruments of violence in a secret and clandestine manner—the subsequent concealment of them, attempts to divert the course of inquiry, or prevent investigation as to the cause of death, not unfrequently excite just cause of suspicion; above all, the restless anxiety of a mind conscious of guilt, very frequently prompts the party to take measures for his security which eventually supply the strongest evidence of his criminality," 1 *Starkie*, 493. These principles will apply with peculiar force to the prisoner. The opportunity he sought for was the confinement of his wife; he had provided the poison, and concealed its purchase from his family on his return from Muncy; for his mother swears that she never knew of any being in the house. On the day after the election, Catharine Earls was confined, and was more than usually well for the occasion. On the next day after her confinement, about noon, the old woman asked the deceased what she would have for dinner, and proposed to make some tea or chocolate. The deceased replied it would be too much trouble, but if chocolate was made she would take some, as she was fond of it. The old woman prepared the dinner, and after the table was set, she was surprised to see that John was going away, and had given the children "*pieces*." And she observed "why la, John, where are you going. I have made chocolate, the children are hungry, and they all like it." He answered, "I am going up to the dam with the little boys." Now, why Earls should leave home at that particular time and not return till dark, is a matter which might justly excite surprize, and forms, as I shall presently show, a link in the chain that binds him. Whether he was now foiled in his purpose by the approach of Mrs. Callahan, (who arrived at the house a few minutes after) as no doubt he had been by the presence of strangers and want of opportunity at the time of the confinement, I pretend not to say. The morning after the confinement would not answer, for then the sickness and death must occur in the course of the day, and the neighbors must be called in; at noon, for the same reason, and because of the presence of Mrs. Callahan, he must desist. But night comes and with it John returns, and for the first time he finds his family alone, and all things favorable. It was now dark and he came in and asked if supper was most ready? His mother replied "yes, I'll only go and take Katy's up, and then we can eat." "O," said he, "Katy dont want to eat yet till after a little—till after we eat." How he knew this, his mother could not tell; for the remark

was made immediately on his entering the house; he had not yet been up stairs, and therefore could not have obtained this information from his wife; nor does it appear that any other person communicated it to him. Beside, what difference could it make to her whether she took her supper while the family was eating or after. The object was plain—he had passed the afternoon in meditating on his infernal plot; the death of his wife could be no longer protracted, or it could not be so well ascribed as a consequence of her confinement. He had at last brought his mind to the determination, and resolved, that night, to remove the only obstacle to the gratification of his hopes with Maria Moritz. Hence it was that he desired his wife's supper might be delayed to afford him an opportunity of mingling with it the deadly poison. At his instance, then, the old woman poured out a bowl of chocolate for Katy, and placed it on the stove in the room where the table was set. The family then eat their supper, and the old woman being done first went out and put the large waiter on the kitchen table, and placed the chocolate on it. She then proceeded to get the preserves and other things from different parts of the house. It was perhaps at this time, while the old woman's attention was withdrawn from the chocolate that the arsenic was dropped into it. It was easy to elude her observation, for she says, "she could not be at the waiter, while she was getting the things." And that "her eye sight has failed and she does not hear very well." Whether John proposed to carry up the supper or not, the old lady is not certain, but she told him to hold the candle while she carried up the waiter and set it on a chair at the head side of the deceased, who then drank of the chocolate and said it was good. Unfortunate woman, it was her last supper! The old woman then went down stairs and left her son alone with his wife. Here was another favorable opportunity of putting the arsenic in the chocolate, which he could easily do without being perceived by her. He however remained but a short time till he also went down stairs, leaving his unsuspecting wife by herself to drink of the cup of death. About this time Olivia Sechler, called in, and she says, "I went into the kitchen and Earls was there; he did not speak a word to me, nor I to him; I was not down stairs a minute, before I went up; I saw him run up stairs directly after I went in." Why, I ask, should the presence of Miss Sechler, cause him to run up stairs again so quick? He had but the moment before came down. It was because he was apprehensive she might discover something that ought to have been concealed; his fears now begin to crowd round him, and his caution is aroused. He takes his seat at the foot of the bed, and when the children come up stairs, fearful lest their mother in her kindness, might offer them some of her chocolate, he orders them down stairs; and when his wife had finished her supper he took the waiter down himself, and did not return while Miss Sechler was there. It was not a care of his wife that hurried him up stairs; it was the waiter and its contents that was the object of his solicitude; but now the horrid deed is done and he withdraws. That the arsenic was given to the deceased at this time is certain and cannot admit of doubt. Mr. Ryan, in his *Med. Jurisprudence*, p. 228, states that in cases where arsenic has been criminally administered in food, "the first symptoms are usually sickness and faintness which generally commence in fifteen minutes." What time the deceased became sick and faint we cannot say, but the old woman states that "she went down to wash the dishes, and by that time she heard Katy calling for the pot, and after a little she heard her vomit." Mary Ann Earls says she came home about eight o'clock, and they were then getting supper, and about nine o'clock, her mother began to vomit. There is some discrepancy as to the precise time which elapsed after the chocolate was drunk, before the sickness commenced; but it is clear that the symptoms were strongly developed within an hour, which proves that the arsenic must have been given with the chocolate at supper. And as to the person who gave it—the conduct of the prisoner is so strange and unaccountable—and suspicion wraps itself so closely around him—there can be no room for mistake.

But let us trace him further. Susan Earls states that when her mother became sick, "she rolled on the bed, appeared to be in great pain, and vomited a good deal." Then her father said, "I have some mint down stairs that is very good for pains;" and Mary Ann states that her father went and made the mint tea himself, and poured it out for her mother who drank of it, and said "it tasted bitter; it burned her heart." The old woman then observed, "that must be pepper mint—I have some spear mint," and she immediately got it and put it in another tin, and this when prepared was also given her by John, and tasted bitter like the first. The deceased then desired the laudanum, and took fifty drops, but all afforded no relief. The old woman says expressly that she did not give any of the tea; and all the matter which

was ejected from the stomach, as also the tea which tasted bitter, was thrown out of the window by direction of the prisoner. Is it possible now to resist the presumption that arsenic was also put in all the tea that the prisoner had prepared for his wife? He had reason to suppose the first might have been discharged in the process of vomiting, (for the physicians inform us that the stomach contained nothing except bloody serum and mucus,) and determined to make sure work, under the pretence of relieving the deceased, he endeavored to hurry her from the world.

From the testimony, it appears that she became bad about nine o'clock in the evening, and at four o'clock in the morning she was dead. In seven short hours she becomes from almost perfect health, a pale and lifeless corpse. The pain and agony which she suffered must have been beyond description; and yet that cold and heartless man who disgraces the name of husband, never once asked what ailed her; nor did he once propose to go for a physician, or even for his nearest neighbors, who resided within five rods of his house, till earnestly solicited by his children; and not then till within thirty minutes of his wife's death; for Mrs. Sechler states they went immediately, and Mrs. Earls died within fifteen minutes after she came into the house. As soon as Mrs. Sechler came in she saw that the deceased could not live, and told Earls he must go for Mrs. Callahan, who lived up at the dam half a mile distant; but mark his indifference: his first care is his bottle, and when he arrives at Callahan's he wakes up the old man and they go back to the cellar and draw a bottle of whiskey, and after whiling away the time from twenty to twenty-five minutes, he enquires, "where is the old woman lying?" Mrs. Callahan heard him, and asked what is the matter? "O, says he, Katys' took bad, she has caught cold." Mrs. Callahan replied, "she could not catch cold, for the room was warm when I left there." I ask why should Earls assign this reason for his wife's illness, when he knew it was false; and he had pretended no such thing to Mrs. Sechler when he called on her. And why should he waste away his time in idle talk with Mr. Callahan, when he knew that every moment's delay must hasten the end of his wife? It was because he wished to keep back relief, and let his potent drug perform its work effectually, and without the presence of witnesses to repeat the story of her suffering. Mrs. Callahan threw on her cloak and proceeded with him, enquiring at the same time if Mrs. E. was bad. "Yes, said he," "she is very bad—she is vomiting." He had detained so long he might now tell the truth, as no doubt he thought it was then too late to do any good, and he was right; for before they reached his house he was met by his little daughter with that, which, though distressing to his children, was grateful intelligence to him. "Pap, mother is dead!" What a heart rending announcement would this have been to a fond and affectionate husband! But to Earls it was expected, and only drew forth the careless and apathetic reply of "hoot, no!" Mrs. Callahan then ran ahead, leaving Earls behind, and when she arrived at the house, she found Mrs. Earls on her bed of straw, but the vital spark had fled. In the meantime Earls was doubtless drowning the remorse of his guilty soul in the whiskey brought from Callahan's; for when he came in he overacted his part. "When he got within three or four steps of the head of the stairs he bawled out; and when he got on the floor where the corpse lay, he gave some terrifying stamps and blasphemed," using language too profane to be here repeated. But you will recollect that the acute eye of Mrs. Sechler detected the counterfeit. She says, "his conduct did not appear to me to be that of real grief, but appeared to be *forced and affected*; he would apparently cry out, but I did not see any tears." I submit, gentlemen, whether you have ever in the whole circle of your acquaintance, even amongst the most ignorant and wicked classes of society, saw real sorrow manifested in the same way. Yet with all his affected grief, Mrs. Sechler and Mrs. Callahan both say, that he never went near the bed, nor did he at any time while they were there go to look at his wife. His guilty conscience was perhaps already alarmed, and he dared not look on the pale countenance of her whom he had murdered, lest he might betray some emotion in the presence of those whose suspicions were even then awakened. Another circumstance here is worthy of notice. While Mrs. Callahan was standing at the bed side looking at the "dead woman," she caught hold of the little girl by the arm. There was something in her manner which arrested the attention of the prisoner, for said she, "he stood and looked as I thought at Mary Ann and me." At the same moment, Mrs. Sechler says, "I saw the tea running towards me; I looked up, and Earls was facing the tin cup at the fire which was upset. He was standing quiet and appeared to be paying attention to what Mrs. Callahan was saying to Mary Ann." The tea was then swept into the fire, and Mrs. Callahan sitting down beside Mrs. Sechler observed, "Mrs. Sechler is not this terri-

ble?" This tin contained the last of the herb tea, the rest had been thrown out of the window. Now, why Earls should throw over this tea, your minds can have but little difficulty to determine. There is no ground for supposing it an accident; the prisoner made no such pretence at the time, and it can only be accounted for under the supposition that it also contained a portion of the arsenic intended for his wife.

There is not a single point in which I am able to contemplate the conduct of the prisoner, without being forcibly struck with the truth of that corruption, said to be inherent in our nature, and of the total depravity to which we may be reduced in the absence of moral and religious influence. Behold him in the midst of his family, when none are present but his aged mother and his little children, at a time when his kindest care and attention was demanded by the situation of her he had sworn to cherish in sickness and in health—see him place the poisoned bowl before the wife of his own bosom—and see that unsuspecting wife, before his own eyes, drink the "lep'rous distilment" to its very dregs! Good Heaven! it is enough to "make the angels weep." The office of the assassin is honorable compared to the envenomed sting of this secret crawling viper. Had the cowardly wretch stood over her with his drawn dagger and said, "this hour shall be your last," then might she have had one poor chance for life; she might have pointed to the infant at her side; she might have reminded him of the protestations of his early love; an imploring tear might yet have reached his heart; or she might have cast one longing look to heaven and said, "Father, if it be thy will, let this cup pass from me!" But such was not the tender mercy of the prisoner; he had prepared the poisoned chalice for her lips, and he determined she should drink and die.

You have been already told of the admission by Earls, that he had purchased arsenic at Muncy. This admission was made at the time of the arrest, and without any inducement being held out to him whatever. He said to Jacob Hogendobler, John Green and others, "By G—d I know what I bought; I bought ratsbane, and they may hang me and be d—d." He was there cautioned against using such language, as the persons present might be witnesses against him; but he repeated it, saying, "he had bought ratsbane and he would buy it again, and he had a right to do what he pleased with it after he had it—they might take him to jail or to h—l, and they might hang him and be d—d." Now, if he had purchased the arsenic for an innocent purpose, why should he suppose he must be hung? And why should he use such extraordinary language within two days after he had buried his wife, when his mind ought to have been filled with sorrow and with grief? I leave you to imagine. But it is said by the counsel that the arsenic was purchased at Bruner & Dawson's for the purpose of killing the minks that took the fish from his basket. And for the purpose of substantiating this position, they call Samuel Earls, a child of about eleven years old, the son of the prisoner, to prove that his father, on the afternoon before his mother died, took him and a younger brother in a canoe up to the fish basket, about half a mile distant, and there took from his pocket some "white stuff" which was wrapped in two papers, one white and the other red, and putting some on a fish that lay in the basket, told the little boy to put it under the fall board, and he threw the papers into the river. Samuel then asked his father what he put it in the fish for? He said "to kill the minks, he wanted to give them a dose." And "*it was all put in the fish.*" There can be no doubt that this was a preparatory measure, intended merely to blindfold, and little Samuel, when necessary, was to be the witness. If anything should be said about the arsenic purchased at Muncy, he was thus enabled to account for its use. But if *all* the arsenic was put in the fish, where did that come from which was taken by Mrs. Earls. To strengthen this position, John Carter, an apothecary of Northumberland, is called and proves that "about the first of October last," the prisoner called at his store and asked for some anise seed oil and asafetida; said he used them for fishing; that the minks or muskrats got to preying on his fish, "and he thought he ought to get some arsenic or ratsbane," and stated that "he fished near Watsonstown." Mr. Carter then gave him two drachms, or about as much as would lay on the point of a case knife. It is somewhat strange that Earls should go all the way to Northumberland for this article, when it could have been procured much nearer home; and it is also strange that he should say he "fished near Watsonstown," when in fact he fished and lived at Muncy hills, five miles above that place. The object of this evidence is to account for the possession of the arsenic, and show it was used; but should we admit that he sometimes used it in the manner contended for, it would only prove his familiarity with the article, and afford a reason why he should prefer it as the means of accomplishing his wife's death. Suppose the prisoner to have used all he

bought at Muncy, at the fish basket, he has entirely failed to shew what became of that purchased of Carter. On the day of the arrest, when Jacob Hogendobler told the prisoner they had sent to Milton for Dr. Dougal, and if there was arsenic in the deceased they would find it, he said, "there may be some in her, but I did not give it to her." Now, why should he make this concession, if it were true that he had put *all* the arsenic he bought on the fish, and when he says, "I did not give it to her," it strongly implies a *knowledge* that it *was* given. If he had that in his possession which he got of Carter, why should he afterwards purchase of Bruner & Dawson? Yet he did so. And if he used all that he got of Bruner & Dawson, why did he retain that bought at Northumberland, which the event shows he must have done. There is another curious circumstance accompanying the purchase of arsenic at Northumberland, to which perhaps the counsel did not advert when they offered the evidence of Mr. Carter. In Mr. Hoffman's back room at Muncy, you will recollect, Earls stated that he had bought a bottle of rum some weeks previous, and wished to know what had become of it? His mother "turned round and said, *Katy had went over her time two weeks*, and this liquor had been bought for that purpose, when she was put to bed," and it had been drunk ten days or two weeks before. It seems then the arsenic was got of Carter, at the very time Mrs. Earls was expected to *lie in*; and so far from favoring the prisoner, it is most powerful proof that he intended to seize upon this particular occasion to carry his nefarious design into effect. I ask of the counsel to explain the singular coincidences which here present themselves—to inform us why it was that just when Mrs. Earls was expected to be confined, arsenic was bought at Northumberland; that two weeks after and just one day before she was actually confined, arsenic was purchased at Muncy; and that the night after her confinement, she is deprived of life by means of arsenic. Vain will be the attempt to account for these things on any other ground than a supposition of the prisoner's guilt. They may refer them to accident or chance; but I tell you they are the cold calculations of a heart that can delight to revel in cruelty and mock at suffering.

We are not obliged to rely for a conviction in this case on a few isolated facts; we are surrounded with circumstances so combined and multiplied as to exclude every hypothesis except that of guilt. The prisoner himself does not seem willing to admit, that he enjoyed happiness with his wife at any time, although it does not appear there was the slightest want of fidelity on her part. When one of the witnesses after the arrest observed to him "you and your wife always lived peaceable in Milton;" he replied, "it is a d—d lie, (not to call you a liar) but any man that says so is a d—d liar." It may be true indeed that not much peace prevailed in the family, and the admission fortifies the presumption of guilt, and shows why the prisoner was anxious to rid himself of an incumbrance, that stood in the way of his future prospects. The harsh and savage treatment which the deceased daily received from him, coupled with his constant threats, proves that in the end, he only carried out what he had premeditated long before. Permit me to bring to your recollection a few of the facts connected with this part of the case. Susan Earls thinks it is about a year since her father began to use her mother bad, which corresponds with what is known of his illicit intercourse with Maria Moritz. It is proved by Susan McCallister and several other witnesses, that on one occasion last winter, Earls was from home, and somewhere met with Maria, took her into his sleigh, and in disregard of the feelings of his wife drove past his own house. The deceased observing them, followed after as far as Mr. Mangus' half a mile below. There Earls got out of the sleigh, caught hold of his wife, and in the very presence of the abandoned prostitute he had with him, threw her into the trough at the fountain pump, wet her all over and tore the dress nearly off her back. She then escaped into the house of Mr. Mangus, and took refuge in the bar. Earls followed her in, and supposing no one in the house knew what he had done, hypocritically asked "what was the matter?" Mrs. Mangus kindly gave her another dress, and kept her for the night. The morning before this happened, he threw her down at his own house and "hauled her over the floor twice with the stove rake," by putting the lower end which was made of iron, under her chin and dragging her along. Again, on new year's morning, (a year since) "he took her from the breakfast table and jerked her out into the kitchen, and then he caught her by the hair and pulled her in again." At the same time, Oliva Sechler states, "he hauled her to the cellar, and she was there sometime; I went in to her and she was crying severely and her clothes appeared to be much torn." "At another time" says Miss Sechler, "about a month before her confinement he put her into the cellar and locked the door—he had her by the neck and shoulders and took her

down head foremost, her feet dragging on the steps; she tried to pull loose, but he swore she must go." He kept her there about two hours, and all because "she said he was out at Moritz's?" Upon another occasion when his mother was remonstrating with him about going to Moritz's, and supposing she was urged to do so by his wife, "he took the horse lines, doubled two or three times, and whipped her very hard while she was carrying the bread to the oven;" and when she had not given him a single word of provocation. When she was in the cellar on new year's day, "he swore if she would budge out of it he would kill her." He repeatedly said in the presence of his children and others, "he would lay her asleep," and that "he would make her take the tow path," meaning that he would drive her off. The scene which took place at the prisoner's house on a certain Sunday, as related by Elizabeth Mangus, you all recollect. Maria Moritz and her sister Sabina were there, and the deceased "asked Maria what business she had to go to Northumberland with her husband?" She replied "she did not." Mrs. Earls referring to her husband, said, "John did not you tell me you had her along?" He, taking part with Maria, "said no." Although the fact was directly the reverse. Mrs. Earls then observed to Maria, "you was along;" and Maria retorted "you are a liar." Then said the deceased, "dost you call me a liar in my own house," and she struck her with a stick. At this the prisoner seized his wife and threw her back against the door; and took Mrs. Griffin, who seemed to side with her, and kicked her out through the room—at the same time opening the door for Maria to escape. He has frequently whipped her, and swore she ought to have her throat cut.

In July last, when Jacob Yoxtheimer, the constable, called on Earls with an execution in favor of Mr. Cook, for a small debt, "he d—d himself he would not pay it; it was for a counterfeit bill which his wife had taken and she might pay it herself." Mrs. Earls "excused herself mildly and gently and said many a merchant had taken counterfeit money, and Mr. Cook had taken this of her." The prisoner then became very angry and said to her, "he'd be G—d d—d if he would be bothered with her much longer—he would get rid of her somehow or other, and if he could not in any other way, he would make a vendue and sell off all he had—clear out to the west, and let her shift for herself." And he truly has suited the action to the word—he has not only sold every thing that he could sell, but he has taken that "other way" to which he so significantly refers, to rid himself of what he considered the incubus of his life. Not three weeks before the death of his wife he made a public vendue and sold off all the household furniture he could dispose of, from his feather beds down to the shovel and fire tongs, and yet his wife appears to have been kept in perfect ignorance as to the *real* object. For when Mrs. Callahan visited her at the time of her confinement and saw the poor woman lying on an indifferent chaff bed, she exclaimed, "in the name of God why did you let John sell your bed?" The deceased replied, "the Lord knows; I know no more than you; but I would do or agree to anything in the world John does, so he quits drawing to Maria Moritz." Had he even gone to the west, and taken his children with him, his beds would have been necessary; but had he gone with Maria, and left the children to the care of his mother, or the overseers of the poor, then indeed he could have done without them. Can you then, gentlemen, have any difficulty from the facts already detailed, in believing the prisoner guilty? Are you able to say that all these things may be true and yet the prisoner innocent? Can you see no connection between *threats* and their *execution*? Does the barbarous and inhuman treatment of the prisoner to his wife furnish no index to her death? If so, I fear your criterion for deciding on the actions of mankind in the various concerns of life will often prove delusive. To me the wonder is she lived so long. If it be permitted in the wisdom of Providence that mortals here below may have a presentiment of death—and if the ills of life and buffetings "of outrageous fortune" may contribute thereto; then indeed it was not marvellous that the deceased should have been at times weighed down with fear and despondency, for never did a helpless and unprotected female drink deeper of misfortune's cup.

Allow me now, if you please, to direct your attention to some of the circumstances which attended the arrest. The prisoner resided about five miles from Muncy, on the river bank, at the foot of the Muncy hills. The officer in pursuit, however, found him at Mr. Mosteller's, a mile below, where he had gone, as he said, to see Mrs. Mosteller about a report in circulation that "they had requested him to lay his wife's hands on her breast as they lay too low;" it being the impression of some of the women that if he was guilty the print of his fingers would be left wherever he touched her. Whatever might have been the superstition of the women, his was

not less; for although he afterwards volunteered to say to John S. Dykens, that "if they raised his wife he would go along and handle her as much as they wanted," yet the next day when the jury of inquest were about starting, "he said he did not wish to go, he would rather stay at Hoffman's." When the prisoner was arrested, he thanked the constable, John Turner, and said he expected nothing else, although at this time he could have had no knowledge that process had issued. The constable who had taken John Green, Peter Wendle, Jacob Hogendobler, John S. Dykens and Charles Lebo, as his assistants, proceeded with the prisoner till they came to Mangus' tavern, about half a mile on their way. Here he began to be refractory, and exhibit evidence of a disposition to escape. "I'll take a drink by G—d," said he, "and I'll have the one I like best, unless they do hang me, and I don't care what the hell people say." I ask the respected advocates of his innocence, to reconcile this with the views they take of the case? Was this the language of grief for the loss of a wife whom he had consigned to the earth, but two days before, and at whose funeral he had got a clergyman to say prayers? Is this the sorrow of *that man* for whom the counsel told you "a respectable clergyman was called to implore the blessings of Almighty God?" If so, never did mortal man need blessings more! Can we doubt longer of either the act or the motive, when we find the prisoner the first to apprehend hanging as a consequence of his arrest, and the first to connect his mistress with his crime, and to declare his shameful intention in the alternative of his remaining unhung? After remaining a short time at Mangus', the prisoner wanted some of the party to go one way, and some another, to Muncy. This being objected to by the officer, he then wished them to let Jacob Hogendobler, who was an old acquaintance, and himself go ahead; this also was objected to, and he then desired the party to divide and let him and Hogendobler go alone—"any way to get out from among us," says Mr. Dykens; and assigning as a reason "that he did not want his mother to know of his arrest, she would fret so." On arriving at his own house he stopped, took his mother up stairs and told her "they had made a fuss about Katy." The old woman was distressed and fretted very much. Now, if the prisoner was innocent, why should he desire to conceal his situation from his mother? And if he thought her guilty, why not say something about it at this time? The prisoner here requested them all to take a drink, and told his little girl to put away the bottle and lock the door and let no man in, or he would *mark her* when he came home. He appeared to be anxious to waste away the time; but two or three of the men told him they must compel him to go, they could not be baffled any longer. They then started, and he observed a young woman coming along and he wanted to go back and talk to her. He became saucy and the men threatened to tie him. He then told Mr. Dykens he would *mark him* if it was seven years after. When they got to Callahan's, half a mile from his own house, it was dark; he insisted on stopping for a drink, and after remaining a few minutes came out and started to run for about two hundred yards, but finding that some of the men could keep up with him he stopped. This experiment was no doubt to try the springs of the party who had him in charge, to ascertain whether escape in this way was practicable. When they got to Thomas' tavern, a short distance, he insisted on another drink, and said he would go no further till he got it. The constable refused, and the prisoner made a jump from the tow path towards a gulph in the side of the mountain, where people frequently went up; but Peter Wendle caught him and brought him back again. He proceeded a few yards further and then laid down and swore he would go no further unless they got some way to haul him.

Attempts to escape have ever been considered as the strongest indicia of guilt. The innocent man, conscious of the rectitude of his own heart, is always ready to meet and not to evade justice. Are you at a loss to conceive the motive of the prisoner for drinking and delaying at every tavern till night fall? It was that the facilities of escape might be increased by the night. But it has been intimated that it would have been impossible to escape, as the pool of the Muncy dam was on the one hand, and the mountain on the other. To the prisoner these were advantages. He was acquainted with every pass and path in the mountain, and his pursuers were not; a few yards start would have put him beyond their reach. If, however, he did not want to escape, why did he attempt it? He told them "if they did not take care he would run up the mountain;" or "he would jump in the river." And he threatened both Dykens and Wendle with his vengeance, because, in the discharge of their duty, they prevented him. If such conduct is a demonstration of innocence, I ask what are the insignia of guilt? The declarations, as well as the acts of the prisoner, while on his way to Muncy, and at other times, are also full of meaning. He

said to Charles Lebo, whose character for truth is above impeachment, that "he expected they would hang him, and he did not care a d—n; he expected to go to h—l any how." And remember his affecting appeal to his little daughters, Mary Ann and Susan, in the jail. "*Girls dont be too hard on me; try and save me if you can.*" Language like this bespeaks his guilt in terms so loud, so clear, so strong, that comment does but weaken it. The behaviour of the prisoner, so far from being consistent with innocence, only begets astonishment in the mind, that even the *guilty* should be so far unmanned by conscience, and unarmed by wickedness, as to forget the first law of nature—self preservation.

The counsel for the prisoner have thought it a legitimate part of their defence, to shew that the deceased was an intemperate woman, and that shortly after her marriage she imbibed habits of intoxication. I must confess myself at a loss to conceive the advantage he expects to derive from establishing this fact. If it be really true, *we* might well insist on it as an additional motive which operated in urging the defendant to the commission of the crime charged. But the charge is not true, for the weight of evidence preponderates strongly in favor of the sobriety of the deceased. Between four and five years since, and while she lived in Milton, Emily Welshanse states that on one occasion she saw her somewhat in liquor, and she was then "in the family way." But the poor woman was sadly mortified about it, and apologised to Mrs. Welshanse, stating how the accident happened, and accounting for it most satisfactorily by the peculiarity of the situation she was then in. Mrs. Welshanse, however, says she never saw her so before nor since, and she lived next door to her until she left Milton. George Welshanse, who was also her neighbor, says he never saw her more than once in liquor, and never heard more than three or four persons say any thing about it. Yet these are the witnesses called by the defendant for the express purpose of proving her habits of intoxication. I say nothing of the Marinus' and the Moritz's on this head; you may believe them if you can. On the other hand, Daniel Doubt, a witness for the defendant, declares that he went past Mrs. Earls' house once or twice a week during the last summer, and never saw the deceased intoxicated; he could say nothing of her habits of intemperance. Christian Page lived within half a mile of her for nearly two years, and "never heard of her drinking before her death." Mrs. Callahan, who lived within half a mile, "never saw the sign of a glass of liquor on her." Jacob Hogendobler says, I have known the woman near sixteen years, and "I never saw the woman drunk in my life, and never heard tell of it but once, till I came here to court." The time he alluded to was the same referred to by Mrs. Welshanse. John Shuman, George Lilly and Hugh Donley, all neighbors to the deceased, testify that they know nothing against the woman's character for sobriety. This disgraceful part of the defence has therefore met with most signal defeat; and must recoil upon the defendant, who would thus traduce the reputation of his deceased wife, with redoubled force.

Another most extraordinary ground of defence was resorted to, and you may recollect with what solemnity the counsel informed the court and jury, "that the prisoner, John Earls, had never been legally married to his reputed wife, Catharine Earls, and that he had another wife now living to whom he had been married previous to his *adulterous* connection with the deceased." We resisted the evidence offered for the purpose of shewing these facts, for the reasons urged in argument, but the court in their liberality to the prisoner, very properly gave him the benefit of their doubts, as in other instances, and permitted them to make the proof. But unfortunately they could not prove any thing about it. Alexander Marinus says, "I know nothing about Earls having another wife, only what I heard Mrs. Ogle say." Samuel B. Barker says, "I know nothing of Earls having another wife, only what I heard his mother say." Neither Mrs. Ogle nor his mother was called, and here the farce ended. Perhaps the gentlemen would have been better pleased if the court had refused to receive the evidence, as then they might have had at least the advantage of the impression which their offer had perchance left on your minds. I will not say that this was what they designed. Yet it is clear the whole was a mere flourish. When the commonwealth offered to prove the improper intimacy that existed between the defendant and Maria Moritz, for the purpose of shewing *motive*, it was most fiercely resisted by the counsel, because it would "make out the charge of adultery," which was a distinct crime, and if true ought not to operate against him in this trial. But now, the defendant is willing to confess himself an *adulterer* even where, so far as regards the deceased, it was not true. Suppose, however, that the allegation was true, I ask the discriminating counsel, who say they offered it for the purpose of rebutting or shewing want of motive on the part of

Earls, to commit the murder, whether it would not have been equally effective in shewing want of motive on the part of Mrs. Earls to destroy herself. These abortive attempts of the defendant, to extricate himself from the dilemma in which his crimes have placed him, are powerful evidence of his guilt. He first insists that his wife was a drunkard, and then a prostitute. Is this "treading lightly o'er the ashes of the dead?" And how does all this chime with "all the forms of funeral rites and ceremonies known in the place," and which it is said were so "strictly observed?" Do men mourn over, and call clergymen to preach funeral sermons over their prostituted mistresses, and call them "departed relatives?" O, shame, where is thy blush! Hypocrisy, thou should'st veil thy face. Let the dingy scarf be torn off and cast to the wind, lest it bring into disrepute that well known badge of *real* grief. What shall we think of the man who is willing to declare before an assembled multitude, that he was an adulterer, and allow his little children to hear from their own father for the first time, that they were bastards, and their mother a prostitute. How deeply was it calculated to sink into their hearts, and be remembered to the latest period of their existence.

On the subject of motive, I have yet a few remarks to make. It is certainly true that in the commission of crime, men are generally actuated by some strong inducement; but where the offence is independently proved, its existence will be presumed. In the present case, we have shown the most powerful motive that could operate upon the human mind. An unconquerable attachment for Maria Moritz, fed and fanned into flame by the indulgence of the most brutal passions, and a consequent estrangement of all affection for his wife, is what has brought the prisoner into the pitiable situation in which he is now placed, to answer at the bar of justice for the highest offence known to her laws. I have no desire to connect Maria Moritz with the prisoner's guilt, further than my duty may demand; but may I not inquire, what was it that induced the prisoner to say to his little daughter Susan in the jail, that "*if he was hung he would see two more hung with him.*" Who did he refer to? When we look back to the spirit of prophecy, with which Henrietta and Sabina Moritz seemed to be endowed, and which enabled them to foretell the very time, the occasion, and the means which would bring about the death of Catharine Earls, can we doubt for one moment that Maria was their oracle? And are we not furnished with a key to unlock the observations of Earls to his daughter? Remember, also, his anxious inquiry of Jacob Hogendobler in the prison, "whether they had brought Maria Moritz up to be examined," stating that "he was afraid they would scare her, and she would say something that was not true." If there was no intimacy between them, why should he suppose that she, more than another, could say anything against him? It was because he feared she *might* be "scared" and would say something that *was true*. His fear of disclosures by Maria, speaks volumes against him, and shows how deeply she was in his confidence. They were daily and nightly in the habit of meeting at places of assignation, and their profligacy and lewdness knew no bounds. Samuel Garnhart proves that in May last, they were together in Mull's stable, and spent three hours in the hay loft after night. At another time, just before harvest, they were seen in the same place. John Shuman states, that while he boarded at William Moritz's, in March or April last, Earls came there to stay all night. Shuman went to singing school, and on his return found Earls in his bed; in a short time, and before Shuman got to sleep, Earls rose and went into the room where the girls, Maria and Sabina, slept, and stayed there till between three and four o'clock in the morning. Again, when Mrs Earls was at Milton, Maria was at Earls' and slept with Mary Ann; about twelve o'clock she got up, and, says Mary Ann, "I am not right sure if she went to pap or not—she went down stairs and lifted the latch up; I dont know whether she was out or not; she came back to bed to me about four o'clock." Hugh Donley states that in May last, he got up one morning about three o'clock to go down to Sechler's lock, and he met Earls and Maria between the dam and the lock. On his return, about two miles above the dam, he looked up the hill and saw Maria combing her hair, and a little further on saw Earls coming out of the woods. Mr. Donley also states that he heard Earls say on the day of his arrest, that "he loved Maria Moritz and he did not care a d—n who knew it." Eliza Grieb saw him embrace her in Moritz's kitchen—"dear Maria," said he, and "he caught her round the neck and hug'd her and kissed her." Recollect, also, the tantalizing and insulting language used to his wife, and in the presence of his children. Hear him tell her in the presence of his daughter, that "he loved Maria Moritz, and he would go to see her when he pleased, and stay at home when he pleased;" that "if she could kiss and hug as well as Maria could

he would like her much better than he did." Hear all this, and say if you can, that in taking away the life of his wife he acted without motive. If these statements were untrue, why not call Maria to disprove them? Of all others, not even excepting her sisters, Sabina and Henrietta, who make testimony "to order," she would be the best witness. Has she not been in daily attendance during the present court, and do I not even now see her, in despite of all modesty, sit facing me in the gallery? They dared not to call her, lest the rigor of a cross-examination might have wrung from her reluctant soul, truths too astounding for the prisoner's ear.

I have now noticed the principal facts in this cause, and will endeavor to bring my argument to a close. There are many things, I am aware, that remain untouched, but I will rely on the memory and observation of this intelligent and attentive jury to supply my omissions. We have proved, so far as human testimony uncontradicted could prove, that the death of Catharine Earls was caused by poison, criminally administered. If you are satisfied of this, it follows from necessity that a guilty agent was concerned. That agent, if there be any truth in circumstances, any virtue in evidence, was the prisoner at the bar. We have shewn it not only by the testimony bearing directly on himself, but by the complete overthrow of all the alternatives he has been able to interpose between himself and guilt. I ask you to reflect solemnly on the facts we have laid before you, and give them that consideration which will enable you, before God and your country, to find such a verdict as truth and justice may demand. It is all that the commonwealth ask. Be not shaken in the discharge of your duty, by the awful consequence which you will so often be told, must follow a conviction. The consideration of the punishment annexed to crime, can throw no light on the facts which constitute the crime itself. And, beware, I beseech you, of that false pity which has slain its thousands, and which too often takes its seat in the jury box, and silently sways its sceptre over the laws of the land. If the prisoner speak true, he has long since deserted one wife, and if the facts in this cause be true, he has murdered another.—Spare him through pity, and who can say that even Maria may not be marked as his next victim. Is your clemency so abundant, that you can prodigally waste it on that man who knew no pity? who could stand at the bed side of his suffering and expiring wife, unmoved as marble; whilst he watched the poisoned liquid coursing through her frenzied brain, till unfitted for the holy office of prayer, she is sent to eternity with all her sins upon her head, ere she could say, "Lord have mercy on me?" And yet not one throb escapes his bosom. If you have pity to spare, bestow it on the innocent and not on the guilty.

Strong appeals will also be made to your sympathy, and you will be addressed by the gentlemen who are to follow me, with a fervency and eloquence worthy a better cause. Let me, however, with deference warn you against a verdict extorted from your feelings, and which your judgment hereafter might condemn. How feelingly were you told by the counsel that the prisoner "with his little children around him took a last farewell of the remains of his departed wife," when she was about to be laid in the silent grave, "with his eyes bathed in tears, mingled his sobs and cries with his little ones who were mourning over the corse of their lamented mother." Yes, those "little ones" did mourn indeed; but their father mourned not with them. When the deceased was taken to the lonely church yard, and about to be consigned to her tenement of clay—when the coffin lid was removed and the children, weeping, came up to take their last look, where then was the prisoner? Did he approach the coffin? No. He shrunk from the gaze, "and stood back against a tree," till all the remains of Catharine Earls was covered up and hid from an unfriendly world. "I did not see a tear on his cheek" said the witness, "and I took particular notice." No, not one tear to moisten the grave he had prepared with his own hands. Yet this is the "weeping willow" that has been described to you.

Gentlemen, I will now close my remarks. I shall not anticipate the arguments of my friends on the other side; my able colleague, in conclusion will do them ample justice. In asking a verdict of "guilty," we desire you should be satisfied beyond all reasonable doubt; for it is neither the right, nor the interest of the commonwealth, to convict unless the evidence warrants it. We believe the prisoner has forfeited all claim to, and is no longer a fit member of, society. Should you through any mistaken conceptions of mercy turn him loose on the world, what security have you against a repetition of his offence. The man who has *once* wilfully and deliberately taken away the life of a human being, will do it again. It is not the wrongs of the deceased we would avenge. Catharine Earls is numbered with the dead and cannot

be recalled from the grave. It is the cause of the *living* that we plead. It is yourselves, your wives, your children and your friends, that I would guard against a ruthless murderer's hand.

SPEECH OF ROBERT FLEMING, ESQ.

FOR THE PRISONER.

With permission of the Court;

Gentlemen of the Jury:—

After an unusually protracted and laborious examination of witnesses, in the investigation of this highly important cause, I rise to address you as the best professional service I can render the prisoner at the bar. In the few remarks I shall make, I will endeavor to confine myself strictly to the testimony; and bear in mind that we have a mutual responsibility cast upon us, in consequence of our relation of jurors and counsel, that requires of you a candid and careful attention to every part of the defence of the prisoner, as well as to the allegations against him, and which imperatively demands of me a rigid scrutiny of the acts and testimony of those by whom it is attempted to establish his guilt. You may never hereafter be so unfortunate as to be called upon to pass upon the liberty or death of a fellow being; and I fondly hope that while I remain an humble advocate at this bar, it may not be necessary for me to assume a similar responsibility. I trust that I will be able to satisfy your minds, that upon the application of the principles of law, which govern in cases of this kind, to the evidence you have heard, that you cannot in justice to your own consciences render a verdict of guilt against my unfortunate and persecuted client. I say *persecuted*, because it is in vain for us to try to shut our eyes to the unparalleled excitement which prevails against the prisoner in every part of this county, and in an adjoining one, to an equal degree. Is it a mere idle curiosity, that has caused this hall to be crowded with spectators for the last ten days? Or, is it that disposition, least of all others to be commended, which actuates mankind to aid in slandering a man who is charged with crime; and to keep up an undue excitement and force upon the public mind, as a truth, that which they only know from tongues more to be feared than the drug arsenious acid itself? Men are too apt to give credence to rumors of this kind; it is not unusual to find the person charged with crime wrongfully convicted, neither is it unusual to find those who are totally void of an honest reputation, the most industrious to detect wickedness, and to impute crime to others—they envy an unblemished reputation, and what they envy, they are busy to destroy. In this instance, the enormity of the offence charged is well calculated to enlist the feelings of the unreflecting part of community against the prisoner; and let the learned gentlemen who are counsel for the commonwealth convince you if they can, that all is calm, cool reflection, on the part of the legion of witnesses they have examined for the prosecution. We, gentlemen, who have been laboring against this excitement, know and feel its force, and we fear nothing else. Upon the testimony we ask to be tried. We have fearlessly placed the fate of the prisoner upon "God and his country," which country you are, and we ask in his behalf at your hands to separate the prejudice from the testimony; and to take not the *charge* for the *offence*, or the *allegation* for the *proof*; but examine the testimony free of all its coloring; this done, and we feel confident of the acquittal of the grossly slandered, and much injured prisoner. To censure, and particularly to censure an individual, who is so unfortunate as to be accused of crime, is invariably a privilege claimed by those who are versed in the marvellous, through a base and selfish motive; for the act of reproaching others, to such minds carries with it an implied superiority, to the individual censured. So, in this instance, the commonwealth is not wanting in numbers, who are exerting themselves to the utmost, to build up an unenviable and short lived reputation, by false accusations against the prisoner. I pray you, gentlemen, recollect the immense importance of your verdict; if you err, it will remain an error, without remedy, the consequence of which to the unfortunate Earls, the tide of time can never eradicate or correct. I will now, without further prefatory remarks, proceed to the evidence.

The prisoner is charged in the bill of indictment, which has been read in your hearing, with the murder of Catharine Earls, by means of *white arsenic*; and the indictment contains *two counts*, in the *first* of which he is charged with putting the poison into chocolate and in the *second* with putting it into tea.

It appears by the evidence, that on the fourteenth of October last, Mrs. Earls was

confined; that the prisoner on that occasion evinced all the solicitude for her comfort that would be expected of any man; all the usual preparations were made by the prisoner; there is no exception taken to his acts in this respect. We are, therefore, to conclude that he provided raiment and all the delicacies for the table, suitable for a woman in her situation; but exception is taken to his attending to the business by which he in part supported his family, on the next day after his wife's sickness. It is abundantly in evidence that he caught and sold fish, and it is in evidence, that he went to his fishery in the afternoon of the fifteenth of October, accompanied by his little boys. Their family meal was not prepared on that day at the usual time, no doubt in consequence of the sickness of Mrs. Earls, there being no person there to nurse her or to cook, but her mother-in-law; but the elder Mrs. E. was about preparing dinner in the afternoon. When the prisoner started to his fishery, he had given his boys a piece, and when his mother told him that she was preparing dinner, and that she was making chocolate, he went on to his fishery, because it was then in the afternoon and if he had waited for dinner it would have been too late to have attended to his fishery. This is clear, from the fact of its being night when he returned. The making of chocolate is dwelt upon by the counsel for the commonwealth, as a matter within the knowledge of the prisoner, but the evidence is directly the reverse; for the first we hear of chocolate, is when his mother advises him of it when he had started to the fishery. It is alleged that he put arsenic into the chocolate, drank by his wife, in the evening after he returned; I ask you, gentlemen, to scrutinize his every act, from the time he returned until his wife became sick, and point out when and where he had an opportunity of putting anything into the bowl containing the chocolate drank by his wife, unperceived by his children or mother. You will recollect that the prisoner's mother drank chocolate with this comely lady, who has only one pair of husbands at present, (Mrs. Callahan,) in the afternoon when the prisoner was absent—that his mother consulted his wife as to what she would have for supper—and that the chocolate for the family in the evening, was made when Earls returned; hence the preparation of chocolate is not brought home to his knowledge, but was the act of his mother, at the request of his wife. When he returned from his fishery he made a very usual inquiry of his mother, to wit: "is supper ready," she replied, that it was, or would be as soon as she had taken Mrs. Earls' supper to her. Then his mother states, that either the prisoner, or the little girls, said that Mrs. Earls did not want hers until the family had supped. Earls and his children then sat down to supper, and his mother filled two or three cups of chocolate for them, and then filled a pint bowl of it for Mrs. Earls, and set it on the stove; she also sat down to supper, but she tells you that she was "soon done," or done before the others, that she was not hungry, she had eaten so recently with Mrs. Callahan, and as soon as she was done, she put the bowl of chocolate and a number of other matters on a waiter, and when the prisoner had risen from the table, she asked him to light her up to his wife's room, and that he immediately did so. Now in the whole of this transaction, when was it that the prisoner had an opportunity to put arsenic into the bowl of chocolate, without being seen either by the children or his mother. The children were at the table with him, the chocolate was not put into the bowl until after he had set down to his supper, and it was then set on a stove out of his reach, from his situation at the table. There is no evidence that he rose from the table until the time his mother asked him to light her, if he had got up and gone to the chocolate it must have been noticed by the children or his mother, for they state now from their recollection of the acts of the evening, many things of far less moment—hence, if you are governed by the testimony, and I feel confident that you will not by your imaginations supply the deficiency in the proof, you will be satisfied that the prisoner was not in reach of the chocolate, until his mother was in the act of carrying it up. On their way up the stairs, he had no opportunity of putting it in, for his mother neither carried it on her head nor on her back; but held it in full view before her, and she would have noticed any action of the prisoner which came so directly in contact with the food she was carrying. Now we have followed him through the whole of this scene, until the chocolate is placed on a chair by the bed of Mrs. Earls, without a moment of time when he could have placed the poison in the bowl unperceived; and I believe it is not alleged that he put it in when she was in the act of drinking it, yet he had no greater difficulty to encounter to get it in unperceived in the presence of his wife and Miss Secler, than he would have had in the presence of his children and mother.

The counsel for the commonwealth make a broad and general allegation that the prisoner put arsenic into the chocolate, drank by Mrs. Earls that evening; but, gen-

tlemen, you will require them to satisfy you from the evidence, and to show when it was the prisoner had access to the chocolate, and where he could have put anything into it without being instantly detected. You are asked to convict him upon circumstantial testimony; this is a species of evidence which requires the utmost degree of caution and vigilance in its application; and I trust, gentlemen, that the time has gone by, when proof that would convict a man of *murder*, would not convict him of *petty larceny*! As observed by one of our most eminent law writers, "it is an absurd and mischievous doctrine, that the nature of the crime charged ought at all to influence the measure of proof, and that out of policy, slighter proof is sufficient in proportion to the atrocity of the offence." And there can be no doubt as to the correctness of this doctrine; the character of the crime charged in the abstract, has nothing to do with the proof; *truth* has no gradations; if a proposition be *true*, there can be none *more true*, and the same degree of certainty must be arrived at by an unbroken, indisputable chain of connected circumstances in this case, that we would arrive at by positive and unquestioned proof, that the prisoner placed the poisonous drug in the bowl, and handed it to his wife to drink. But, to follow the testimony further, it is said that between eight and nine o'clock in the evening, of the fifteenth of October, Mrs. Earls sickened, vomited and became thirsty; and it is in evidence that everything was done that Mrs. Earls or the family suggested, to relieve her; spear mint tea was made by the prisoner and his daughter, and when it was given to Mrs. Earls she said it was bitter and could not drink it; the prisoner's mother suggested that it probably was pepper mint, and said she had some she knew was spear mint; that prepared by the prisoner and his daughter was then thrown out of the window, and his mother made tea of her mint, which also proved to be bitter to the taste of Mrs. Earls, and was rejected. This last tea was set by the fire, and Mrs. Earls asked the prisoner to get some laudanum, telling him where to get it; he did so, and at her request, and after she had repeated twice that she wanted fifty drops, he dropped it and Mary Ann counted; this she took. One of the little girls suggested the application of a mustard plaster to her mother's side, and prepared it, but it was not applied until after Mrs. Sechler went there. It was after three o'clock in the morning when Mrs. Sechler went to Earls'. She asked Earls to go for Mrs. Callahan, which he did, and before he returned his wife died. Mrs. Callahan would like to leave the impression on your minds, that the prisoner was guilty of unnecessary delay when at Callahan's, this being the only expedient she could adopt in her own mind to operate against the prisoner, and this is dwelt upon by the counsel. But, gentlemen, how fallacious it is to pretend that he delayed or prolonged his stay at Callahan's with any design. If he had wished more time to roll round previous to introducing this lady (who goes by pairs) into the room of his sick wife, he would have done it on his way to Callahan's, and not at the house in the presence of witnesses. You will recollect that Mrs. Sechler fixes the time between three and four o'clock in the morning, when the prisoner called her and asked her to go and see his wife; then after that the prisoner walked a mile in going to and returning from Callahan's, and after his return, Miss Sechler walked a mile going to and returning from Mangus' with the women who dressed the corps; and that the women who returned with Miss Sechler, to wit: Mrs. Mowrey, Mrs. Mangus and Mrs. Page, as well as Mr. Mangus, all fix the time as being between three and four o'clock when they went to Earls'; hence it must be clear to you that he did not intentionally lose a moment of time, when he went for Mrs. Callahan; because one hour would be well and industriously employed in collecting those women, allowing them a little more time to dress, than Mrs. Callahan took. She tells you that she threw her frock over her head and started off with him, which is to me, altogether a new way of wearing frocks! When the prisoner and Mrs. Callahan were going to Earls', he inquired of her about the physicians of the neighborhood, and particularly about Dr. Ludwig, who she very properly recommended to him, as a very deserving and skilful practitioner, and he spoke of going for him, thus showing that he was entirely ignorant of the extreme illness of his wife. When they arrived near the house they were met by Mary Ann, who told her father that her mother was dead. He could scarcely credit the dreadful reality of his bereavement, and went on into the house, Mrs. Callahan preceding him; there he met in every countenance those soul harrowing evidences of his loss, that banished every latent doubt or hope, and felt the shock as sensibly as men of finer nerves; the force of the reality unmanned him for the moment, and he gave vent to a bursting heart and agonised mind, in ejaculations and tears. Those evidences of grief are now brought to bear upon him, and construed into profanity and blasphemy. We had hoped, gentlemen, amidst this apparent deter-

mination to convict the unfortunate prisoner right or wrong, to have had those sacred feelings of our natural affections, those calls upon our common Saviour, and the gushing tear, as a slight balm now to be applied to the bleeding heart of our injured client; but even those, by the sordid and wicked malice of his unrelenting persecutors, are termed "crocodile tears and profane declamations." Is it possible that you will, first, in the absence of proof, presume that he placed the poisonous drug in the cup; and, again, that all the evidences of sincere grief which you have heard from the witnesses, were hypocritical pretences, in order to assist the commonwealth to make out their case. I pray you, gentlemen, reflect upon the inexpressible value of human existence, and deal not slightly or unadvisedly with so important a matter. I care not what the idle stories of willing minds may be in relation to his course of life, they must trace the poisoning of his wife home to him, with so much certainty that you cannot doubt about it.—If you have any doubt as to the criminal agent, the rule of law is emphatically settled that you are bound to acquit; and it surely would be the pleasure of this highly intelligent jury to acquit the accused if the evidence has not established his guilt beyond all controversy.

As much has been said about the spear mint tea, and the spilling of a cup of tea which was placed near the fire, it may be well to notice that part of the evidence. Mrs. Sechler states that Mrs. Earls died about fifteen minutes after she went there, and that the only expression used by Mrs. Earls after she arrived, was "drink"—that she took up a cup containing hyson tea, and put her finger into it to ascertain whether it was sufficiently warm for drinking; it was not, and she poured it into the cup on the hearth, which must have been the cup containing the spear mint tea prepared by the prisoner's mother, and poured warm tea out of a tea pot. Mrs. Earls was then unable to drink and expired in a few moments. After Earls returned with Mrs. Callahan, and some time had elapsed, he was standing by the fire in the room where the corpse lay, and where this cup was placed, and Mrs. Sechler observed the tea running across the floor. Suppose Earls upset the cup, what importance can you attach to it? The tea made by him and his daughter was thrown out of the window, hence the cup at the fire must have contained the spear mint tea made by his mother and cold hyson tea poured into it by Mrs. Sechler, and if anything was put into that tea it surely is not chargeable to him, as he could have known nothing of its contents; the quantity in the cup was much greater when he returned from Callahan's than it was when he left home; he paid no attention to it and was not observed to notice its being spilled. Mrs. Sechler would not say that Earls upset it; hence I must presume, gentlemen, without dwelling or seeking for further explanation about the tea, that you are satisfied that there was nothing connected with it tending to show misconduct on the part of the prisoner.

When Miss Sechler returned with the women, Mrs. Mangus was a few paces in advance of the others; when she came to Earls' house, she saw him walking back and forth weeping, and Mrs. Mowrey and Mrs. Page testify to the same thing; yet we are told that he is a hardened wretch destitute of every social feeling. We do not pretend that he is a refined scholar, or that his natural abilities have been improved and polished by education; by means of which he would be enabled to temper his grief according to the most approved fashion of mourning. No, we exhibit him as he is, an unlettered man, neither capable of reading or writing one word, a child of nature, giving vent to his grief accordingly. His lot has been a hard one; he has met all the rebuffs incident to obscure parentage and indigence; from his youth to the present day, he has earned his bread by the labor of his hands and not of his head, being little conversant with the refinements of society; yet, from the argument of counsel, we are to infer that in this most trying of all human trials, in the separation of man and wife by death, the unlettered and uncultivated orphan boy is to conform to the idle fashion of the day in his every act relative to this afflicting dispensation of Providence. On the morning after the death of his wife, we learn by the evidence of Wm. Pott, that this man of stone, with callous heart, had the hardihood to seat himself alone, unnoticed by human eyes, before his door, and there, unsought and unpitied, suffer the tears to flow from his never weeping eyes, unmoved by his loss, and uncalled by his obdurate heart! Is it possible that men of your intelligence can be induced to believe that this evidence of his solitary sorrowing for his departed companion was base hypocrisy? He needs schooling in that bane of human happiness to enable him to act the part of deception! I have no doubt that there are many men in the world in the first circles of society, who are hypocrites to perfection; they may be respected and their society courted; we may believe them virtuous, and the excellency of virtue is shown in its strongest light, by the very necessi-

ty such men think themselves under, of seeming to be virtuous—not so with the prisoner. You find him on all occasions fearlessly and regardless of consequences, speaking his mind, lacking so much in a knowledge of men as to believe every man his friend, and under that mistaken notion conversing with them freely, not supposing that every sentence he uttered was to be gilded by the imagination of his hearers, and to operate as a double fetter to secure him within the grasp of those who had sworn in their minds that he should be the first man whose blood should be judicially spilled in our county. Surely, gentlemen, when you find him weeping alone, where he could have no inducement to play the hypocrite, you will believe that he has a heart that can be moved, and that has felt the keen pangs of separation. Are those acts to be construed into guilt? I ask what would be your conduct under a similar trial? Are you prepared to say you would act more like a philosopher than the prisoner has done? and that you could control and temper your passion at will? Gentlemen, no man can tell, no man can feel the dreadful crush of blighted hopes, who has not been unfortunate enough to consign the partner of his bosom to the cold and silent tomb; hence, we do the prisoner the most manifest injustice, if we require of him more than of any other man; and it is a matter of little consequence what his acts may have been, for slander with its blasting tongues and jaundiced eyes, would pervert his every act into irrefragable evidence of guilt, when if the same act had been directly the converse it still would, in the mind of the prejudiced calumniator, have been equally conclusive against him. The prisoner's acts and conversations with the persons who kindly made the preparation for the interment of his deceased wife, are also attempted to be tortured into evidence of guilt. And where is the act or declaration during all that trying scene, that furnishes the slightest evidence to sustain this prosecution? His own proposition was to keep the corpse until the next Sabbath, which was the day following the one on which she was interred, but Mr. Mangus objected and proposed Saturday for the burial, which was agreed to. He procured the attendance of a minister of the gospel, which was calculated to collect a greater number of persons than would otherwise have attended. This fact shows that he had no desire to secrete the corps from the sight of any individual who wished to see it. He moreover wished to have the acquaintances of the deceased, resident in Milton, advised of her death, that they might be present at the funeral if they desired; women were sent for and taken to his house to make the necessary clothing; and at the time the coffin was closed you find him seated near it with his little ones gathered round him, collectively mourning their loss.

During all this preparation there was not a whisper of suspicion against him. No human being had imagined that he was guilty of any improper act, in relation to the death of his wife; yet you now find the undertaker, with some others who it would seem are versed in the science of witch-craft, endeavoring to induce you to believe they are persons of vast penetration, by swearing, to their own dark and malignant suspicions, when if these same worthies had been called on to swear previous to the prisoner's being arrested, they would at once have said they had no reason to believe the accused guilty of any wrong. This is evident, from the fact that not one of those willing persecutors of an injured man, had said one word relative to it until after his arrest, and very little until after the *post mortem* examination had been made; then the declarations of the professional gentlemen relative to their belief of the cause of her death, with the conjurations of willing minds, were all that were necessary as a starting point for those persons to fabricate a narrative of their erudition, in detecting the guilty, probably by a series of hair strokes drawn in the ashes, or some other as certain and infallible rule in the sublime art of hocus pocus!! If these persons had suspicions at the time of the funeral, is it not reasonable to suppose from their evident anxiety to procure the conviction of the prisoner, that they would then have disclosed them, and caused him to have been arrested? or will you suppose for the purpose of covering the discrepancies in their testimony, that they had not moral courage enough to do their duty? If you adopt the latter expedient, I ask you to remember that if they lacked in discharging their duty at one time, it is fair to presume they would disregard it at another. After the funeral they returned home to their labors, and not one of the host that now appear on the stage of action, communicated or suggested a single fact to another, derogatory to the character of the prisoner. The oath upon which the warrant issued, was not made by any of the witnesses who have been examined here; yet they wish now to leave the impression upon your minds, that they had suspicions when at the funeral. How different would have been the conduct of men of truth and honesty, who have an interest in preserving pure and

was contaminated the morals of the community, and in protecting their own lives, and the lives of their neighbors. As their evidence stands before you, you have the strongest reasons to believe their relation of the facts base fabrications—they dare not swear to anything until after his arrest; but now the reverse is the truth, they feel perfectly at liberty, and there appears to be a strife amongst some of them, who shall give the rivets of his fetters the surest and strongest blow. Will you, gentlemen, upon such evidence as this, regarding as you do the solemnity of the obligation under which you act, be willing to convict the prisoner? I trust not; but, on the contrary, you will require the commonwealth to establish his guilt by evidence that is beyond suspicion, and which has something substantial, reasonable and honest, to sustain it; for no man's existence is safe, if a jury will convict upon isolated and unconnected suppositions, many of which are in no manner connected with the issue, and others requiring the aid of the imagination to bring them to bear in any degree upon it. Whose life is safe? I pray you, gentlemen, regard the importance of your high office, and discriminate between the man who is actuated by an honest regard for truth, and those who live and fatten upon popular excitement.

Again, the prosecution has attempted to prove a motive, on the part of the prisoner, for the commission of the crime charged against him. The particular objects which influence men to act, are as various as men themselves; men placed in the same situation having the same senses and passions, and operated upon by the same causes, arrive at very opposite conclusions; and I must differ in opinion with the learned counsel for the commonwealth, relative to their arguments drawn from the evidence to establish a motive. Suppose you come to the conclusion, that the prisoner was influenced by amatory and sensual passions, generally, it goes no further towards establishing the allegation that he is a murderer, than the guilt of another charged with larceny, is made out by proof that at the time he was poor and needy. Although much importance is attempted to be given to a motive which I conceive has only been established by the aid of a luxuriant and vivid imagination, that his affections were estranged from his wife, but I ask where is the evidence establishing the fact? The motive, they allege, is proved by Shuman and Garnhart; the former swears that Earls was in Maria Moritz's chamber at her father's, and the latter that he was in William Mull's stable with her. In contradiction of the former, we have proved by two witnesses, who are entitled to equal credit with Shuman, that they have a distinct recollection of the acts of the evening and night spoken of by Shuman, and that the accused was not in Maria's chamber that night; but, on the contrary, that the three Miss Moritz's occupied the same bed that night; and, moreover, had their chamber door fastened. And in contradiction of the latter, we have shown by Mrs. Mull, that Earls was not in her house; and Garnhart, willing as he is to swear, does not say that he was certain that it was Earls who was in Mull's stable. Now you are asked to convict the prisoner of a crime, that would launch him into eternity, and as a necessary link in the chain of evidence, you are gravely solicited to believe Sam. Garnhart in preference to Mrs. Mull. Then how do these witnesses appear before you? The gentleman who has preceded me, has not shown any inducement on the part of Mrs. Mull, to swerve from the truth; we aver that Garnhart, to acquire the information he now retails, must have been guilty of one of the most degrading, mean and contemptible misdemeanors, known in any civilized land. Is it possible, that you will give credence to a man, who swears that he is a common eavesdropper, a pimp and a spy, and convict a man of a crime like this, upon such questionable and doubtful authority. Sir William Blackstone, the great commentator upon the laws of our mother country, in speaking of those guilty of this base offence, remarks, "that such, as listen under walls or windows or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance, and presentable at the court leet, or are indictable at the sessions and punishable by fine and finding sureties for their good behavior," 4 B. p. 168. What crime or misdemeanor would this fellow stop at committing? A man who will stand up here and unblushingly acknowledge his own iniquity, must be so hardened as to be fully prepared for perjury, or any other crime required by the emergency of his situation. The prosecution imputes the crime charged against the prisoner, to him particularly upon the evidence of this Garnhart, who they allege establishes the connection between Earls and Miss Moritz; then I ask you if you are governed by this rule, that proof of one crime is evidence of another, to notice that Garnhart is a subject to whom the rule will apply with all its force. Again, a witness is brought all the way here to prove that he "thought," he saw Earls at the distance of one fourth of a mile, early one morning in the neighborhood of Miss Moritz; this

stretching of the witness' vision, shows what will be resorted to in a hopeless cause, and sustains my position, that the imagination must supply the evident want of connection in this long series of circumstances or the prosecution must fail. If it were proved that he was intimate with and attentive to Maria Moritz, it does not necessarily follow that his affections were estranged from his wife, more than the fact of a man's taking a particular interest in any branch of science or business goes to prove that his previous dominant propensities are entirely obliterated by his partiality for his new vocation. If, however, you do believe those witnesses, we assert without fear of successful contradiction, that their testimony may all be true and yet be consistent with the prisoner's innocence; if so, the law which you will have fully and fairly explained by this learned court, and which is part of the evidence in every case, and equally binding upon your consciences, rules that he shall not be convicted upon such testimony. It is said that the settled law of the land operates hard in some instances, and I trust that you have no disposition to adopt a new principle in jurisprudence, in doing more than the law requires at your hands as jurors.

An attempt has also been made to prove that the prisoner was unreasonably abusive to his wife. If it even were satisfactorily shown that he treated her harshly, you would in your deliberations take into consideration his situation in life, the general deportment of his wife towards him, and the provocations and attendant circumstances in palliation; and here I may be permitted to remark, that whatever the more tender nerved part of community may say, or from their sensitiveness feel, against the man who ill treats his wife, yet we all know from actual observation that it is no very uncommon occurrence to see the husband so far behind the age in which he lives, as to pursue the fashion of the ancients in correcting his wife by flagellation, which I grant you characterized the age of barbarism. Yet much can be, and no doubt will be most eloquently said against the uncivil practice; still, from the nature of your present situation, being for the time and purpose excluded from society, it is your duty to carefully deliberate upon the circumstances connected with the allegations. In this case the prosecution has made a general averment of constant abuse, which is relied upon as one of the connecting links of this hypothetical chain and presented to you by the counsel as an indispensable part of the proof to warrant his conviction. You, gentlemen, must have noticed their failure in sustaining these charges, they have had the whole time of cohabitation of the prisoner and the deceased thrown open—the last sixteen years of his life have been scanned with all the cunning, care and industry of his persecutors, and it has resulted in their giving a coloring to his acts at three different times. On two of the occasions spoken of by the witnesses she was in a violent passion, playing the part of a *common scold*, and perhaps intoxicated, and at the other time spoken of, her acts were anything else than those of a woman possessing a particle of prudence or delicacy. She followed him through the snow to Mangus', more like a savage, than a woman who had ever heard of civilization. It is painful to me to speak thus of the acts of the dead; but I must forego my individual feelings and endeavor to speak of those acts as they are in fact, without regard to who the actors have been. It was asserted in the opening, that the prisoner put his wife into the trough at Mangus', no doubt with a view of keeping up this unhallowed excitement; but it turns out, as in the other points of evidence, the allegation was stronger than the proof—that after she had behaved highly improper in interfering with his horse, he threw some water on her with his hand to compel her to leave him. Then this is that inhuman abuse so highly colored by the imagination of counsel. It is a very easy matter to call those acts barbarous, and to give them other harsh appellations, but when you examine them you find that she was always the aggressor, and that the prisoner does not deserve the slightest censure on account of them. Why then press upon you circumstances of this kind, which at most are foreign to the issue, and attempt to attach so much importance to them? It is, gentlemen, because the counsel for the commonwealth understand perfectly what they are about, and are aware that the prosecution is weak in point of evidence, and that it is incumbent upon them to make the guilt of the prisoner so glaring that every one who hears the evidence must be convinced that he is guilty from the evidence alone, and not by rumor or previous prejudice. I have now given this part of the case all the notice I shall be able to at this time, and will proceed to another branch of the testimony; but before I close upon this point permit me to entreat you to confine yourselves to the testimony when deliberating upon the alleged motive and abuse, for I feel confident that upon a candid review of it, you will not find anything that will give rise to a reasonable suspicion against my client. Men are not to be judicially murdered in this far famed and favored land, to

gratify the malice of their enemies. You, as jurors, are the proper safe guard to protect us in our rights of life, limb and property. Your office is truly an important one; to the jurors of his country must every injured man apply for redress—to the sanctity and purity of the law, and its faithful and humane administration, every innocent prisoner looks with full faith and confidence for that liberty which is guaranteed to the injured and persecuted, by our free institutions. To you, gentlemen, in this instance, my unfortunate client looks with all that confidence and certainty that naturally buoys up and sustains injured innocence, for a release and honorable discharge from the worse than adder fangs of his enemies.

An exceedingly lame attempt has been made to show that the prisoner tried to escape after his arrest. This allegation is so inconsistent with his acts after the interment of his wife, that I cannot believe for a moment that you will give it any serious consideration. He was free as air from Saturday until Monday following; and there is no evidence of any preparation or appearance of his leaving home. If he ever had been disposed to fly from justice, he would not have waited until one of those man-catchers had laid his talons upon him, with the vain hope of doing it then; for the slightest reflection upon such a course would have convinced him that if an attempt was made to arrest him, the officer would be accompanied by a sufficient force to effect it. And you find the officer surrounded at all points, with stout, active young men, who were ready then, and some of them give us satisfactory evidence that they are ready now, for any emergency. Witness the conduct of Hogendobler, who manages to get into a fresh examination nearly every day; see his vigilance and his aptness at prompting the counsel for the commonwealth—from his conduct we would almost conclude that his very existence depended on his success in this prosecution. The prisoner submitted peaceably, and started for Muncy with them, and from that time onward, you must have observed that not one word escaped his lips, which has not been repeated here with as many variations and additions as there have been witnesses examined upon the subject, and each colored and variegated according to the proficiency of the witness in exaggeration. The prisoner's running when on the way to Muncy, is relied upon as proof positive of his intention to make his escape. Without repeating particularly all that was said by the witnesses relative to his running, recur to the peculiar state of feeling at that time. Earls had gone to Mosteller's in consequence of some witchcraft rumor started by Mrs. Mosteller; when there he was arrested, and by the time they got back to where he ran, they had taken several drinks of liquor; and being under a very great degree of excitement, owing to all these causes, he ran in a frolicsome manner; and recollect that when he did run he was always in advance of the posse. Then, if his intention was to make his escape, why not embrace the opportunity? It was, gentlemen, because he felt then, as he had ever felt, conscious of his innocence, and had no desire at that or any subsequent period to make his escape. You will also recollect that he inquired of one of the posse, shortly after he left Mosteller's, if they would get through to let him return home that night, evidently showing his impression at that time to be that he had nothing to fear from any human being, and that it had never occurred to him that there was any danger from false representations against him. Many of his idle expressions when on his way to Muncy, to be arraigned before that inquisition, are now retailed here as evidence. You may term them vulgar and profane if you will, but do they tend to prove that he had any knowledge of the cause of the death of his wife? If he had remained perfectly mute, from the time he was arrested until he was committed to prison, it would have been equal evidence in the imagination of the crowd who were collected round him, of his guilt; for it matters not what his acts or declarations may have been, it was sufficient for this posse to know that a charge was made against him, to justify them in putting the blackest construction upon them. It is not a man's personal friends who take upon themselves the office of arresting him upon a charge of this character; but, on the contrary, it is those who readily believe in the marvellous and go with minds illy prepared to hear anything favorable to the person accused. I do not wish to be understood to say that it was wrong in those persons to arrest him; after the warrant was issued, it was commendable to bring him before the justice; but I take exception to the evident coloring they have given his acts and declarations after he was arrested, and believe that you will agree with me that the opinion given by the medical gentlemen had a powerful influence upon the manner and matter of the testimony of several of the witnesses; and, moreover, that his declarations after his arrest were such as you would naturally expect from an uncultivated mind, and from a man who did no more than use the common phrase of his associates. However

profane such declarations may appear to those who have never mixed with men of his habits and associations, yet all who have been under the necessity of doing so, are aware that such expressions are looked upon as a matter of sport, and no evil attached to them whatever. Much has been said about his purchasing arsenic in Muncy on the thirteenth of October last; but we have followed his admission of that purchase with proof by his son, that he put "some white stuff" into a fish on the 14th of October to kill minks. We have also shown that the prisoner has been in the habit of using it for a number of years, for the purpose of destroying muskrats and minks, as occasion required. We have shown that he purchased arsenic and had it in his possession repeatedly, and that he actually used it for that purpose several years ago, and that others were in the practice of using it for the same purpose. Then these facts go very far to destroy the effect attempted to be produced by proof, of his acknowledging that he purchased arsenic at Bruner & Dawson's. It shows conclusively that he had constantly for years had the drug in his possession, and, therefore, no particular motive can be attributed to his having it at that time, more than to a druggist. We have proved that he purchased arsenic of Mr. Carter, of Northumberland, a short time previous to the death of his wife; then if his object in procuring the arsenic was to destroy his wife, why did he purchase more at so short a period before her death? Mr. Carter has stated very near the quantity sold him, and we are advised by the physicians that it was sufficient to have destroyed a number of persons; then is not the conclusion irresistible that he used the arsenic purchased at Bruner & Dawson's, as alleged by him, and proved by his son; and here allow me to remark that at the time he admitted the purchasing of arsenic in Muncy, he stated that he used it to destroy minks and muskrats; and you will be instructed by the honorable court, that if you take any part of the admissions of the prisoner into consideration when you retire from the box, you are bound to take the whole. Then if you deliberate upon the whole, it is explained away by the very means by which you receive information of the purchase; and the same explanation follows the arsenic purchased of Mr. Carter. Then arsenic being in common use by him, it requires no stretch of the imagination to suppose that Mrs. Earls knew of it, and where it was kept; but we have in addition to this presumption, positive evidence that she had poison in the blue paper she took from the prisoner. Again, it is in evidence from several witnesses that Mrs. Earls talked of dying, that she threatened to commit suicide, and that by means of arsenic. If you believe therefore she died from the effect of arsenious acid taken into the stomach, it is not an unreasonable inference to say she took it herself, fully aware of the consequences. What is it, pray, that a jealous woman will not do to wreak her vengeance upon those whom she supposes have injured her? I leave it for others to imagine; for my own part I can conceive of nothing too daring or violent. Witness Mrs. Earls' following the prisoner half a mile through the snow when he was carrying Moritz and his daughter home; and at another time beating Miss Moritz, and asking her husband to go to the house to see how she would do it. Is this not evidence that with her, jealousy was a dominant passion? Under these circumstances it is by no means an unreasonable conclusion, to say that she did, as she repeatedly declared she would, conceal the drug in her chamber, and at a suitable moment took the fatal dose.

I will now, gentlemen, refer to and read a few pages of law, from Philips's Evidence, to show how exceedingly cautious a jury ought to be in giving credence to circumstances such as are here given in evidence. [Here Mr. F. read several pages from the authority mentioned and commented upon them and continued to the jury.] I have now, gentlemen, given most of the prominent features of the evidence in this cause a short notice, and had intended examining some of them more fully, as well as to have turned your attention to the anatomical examination and chemical tests—but a severe attack of indisposition, with the labor attending this trial, have so far exhausted my strength, that I am under the necessity of closing my remarks; trusting that you will bear in mind many matters that I have not noticed and which are important to the prisoner. I close here more willingly, upon recollecting that I will be followed by my friends and distinguished colleagues; trusting, gentlemen, that you are not disposed to pronounce a verdict of guilty against the unfortunate Earls upon such evidence. I thank you kindly for your attention, and submit the cause to your charge.

SPEECH OF WILLIAM COX ELLIS, ESQ.

[The following is a condensed sketch of the argument of W. C. Ellis, Esq. one of the counsel for the prisoner, delivered in his defence.]

I am about to make the last effort I shall have in my power, to vindicate the cause of the prisoner. In attempting to make this effort I am overwhelmed with the magnitude of the trust confided to me, and with the importance of the duty which the partiality of the defendant has imposed upon me. I make no affectation of a sensibility not excited, and of a duty not felt. But these feelings are easily conceived, and an impression of this sense of duty may be felt, when we bring before us the cause, the subject, and the perilous situation of our client. I confess myself entirely unable to appreciate the anxiety that afflicts the learned counsel for the commonwealth—because, there is no evidence in the cause that can even assure the sanguine eagerness of that gentleman of the guilt of the prisoner.

I can sympathize, gentlemen, with the oppressive anxiety that you may have felt and still do feel, in the discharge of your duty. The prisoner and his counsel, have to tender you their common thanks for your patience, your endurance of long sittings without a complaint, for your close observance of all the testimony in the cause. I would wish to say to the jury, in the presence of so many of their fellow citizens, that all this is true, and that further, I have never known in many years practice in my profession, a jury to sit for more than two weeks, for nearly nine hours every day, and yet in all that time, that no juror has left the box for a moment. This unceasing watchfulness of the whole cause confided to you, assures the counsel for the prisoner, that you are prepared by a just sense of the awful responsibilities imposed upon you, to pass between the commonwealth and the prisoner at the bar.

The charge against the defendant is murder—it is more, it is foul, deliberate murder by poison; and the subject of that murder was the reputed wife of the prisoner, and the mother of his children; and the charge is further, that this murder was committed upon such a victim in childbed.

There are feelings, perhaps, arising out of the social combination of general society and dependant principles of self security, that rouse up with bitter retaliation upon the wretch who could be the author of such a crime. This principle of retaliation may lie deeper, it may be aided by principles of our nature, imprinted upon the heart of man, and above all it may be sanctioned by the obligations and influences of religious education.

It is not, then, surprising, that we have seen this hall crowded from day to day by spectators, exhibiting an interest in the cause trying, which, gentlemen, the like of you have none of you ever witnessed. These principles properly indulged and properly restrained, are securities for social order. In excess, their indulgence may overturn and uproot all the rights of the innocent. On this occasion we have complained that such feelings as I have described, have so influenced the public mind, that a prejudice against the prisoner, fore-judging his cause, has obtained; that we feel it and see its effects on every side of us. Against this complaint the gentlemen who conduct the prosecution protest. They can feel no injurious consequences likely to arise to their cause from this source. But to us, prejudice not to be convinced by facts and argument, is the premonition of death; like the noiseless foot of a pestilence, it walketh at noon day to destroy. That we should be insensible to this influence of public excitement, it is in vain to expect. That we should be the first to speak of it, is therefore proper, because we are to be the subject of its terrors.

You, gentlemen, have been admonished by the solemn administration of obligations rendered to each of you, sacred by your religious opinions, in the face of this court, and in the midst of this vast concourse of your fellow citizens, to try this cause according to the evidence, and a true verdict give between the prisoner at the bar and the commonwealth. He has placed himself for trial upon God and the country—you are that country—upon the evidence which I propose to discuss before you, we are about to submit the life of the prisoner, into your hands; but we trust we do so under the direction of Him, without whose notice not even a sparrow falleth to the ground.

The evidence relied upon by the counsel for the commonwealth, is not positive, it is not of that class which directly establishes the guilt of the accused, and excludes not only the probability but even the possibility of the innocence of the prisoner—of that class of testimony, which relies alone upon the accuracy and truth of the witnesses. But it is that kind of testimony and evidence called circumstantial and presumptive—because, upon the latter kind of evidence, presumptions are admitted

to arise, and to influence the jury, upon the proof of the existence of certain facts, which ought to have such relation to the crime charged, as in the case of positive evidence, to exclude the probability, nay possibility, of the innocence of the accused. It is of course a kind of evidence, required alike by common sense, the law, and every principle of social duty, to be most accurately, most cautiously examined. That it is a species of evidence, full of danger in its application, to the rights of each other, and to the life of an accused person, the records of courts both in England and this country, fully prove. There are distinguished instances of convictions and executions founded upon evidence of this kind, that to this day the guilt of the sufferers has not been established in public belief; but, on the contrary, are remembered with great pain, by all thinking and humane persons. Of this class, are the two celebrated cases of Miss Blandy, and Captain Donnellan. In other instances, persons have been convicted and executed who have after their death been proved to have been innocent; among these are the cases of Mr. Crawford, of Scotland, and Jennings, the servant at an English Inn. These cases will be read to you, either by myself or my colleague. The conclusion to be deduced from the history of convictions upon this species of evidence, is to weaken our confidence in it as a means of illustrating disputed facts. In positive evidence, the jury may err by relying upon the supposed truth of a perjured witness. In presumptive evidence, the occasions of error are increased one degree further, for the witness may not only swear to a false statement of facts; but the jury may err in the presumptions to be deduced from the supposed fact.

It will be a principle of our defence for the prisoner, that we beseech the jury to bear in mind, upon the true application of which, the life of the prisoner may depend. The principle to which I shall refer, will be insisted upon by my learned colleague; it has already been found in his opening of the testimony on the part of the defendant. It will be found in our best works upon the law of evidence. It is this—"that the facts in the first place shall be satisfactorily proved to have existed; that from every fact and all the facts taken together, the conclusion should follow with moral certainty; that the innocence of the prisoner must be excluded." If such should be the state of the evidence, then, although the counsel of the prisoner are perfectly satisfied of his innocence, they will yield him up to a verdict compelled to be given against him under such circumstances. By these principles, we are willing to encounter all the evidence in this cause, to examine it in its parts, and to submit to its legal effect taken collectively. Because we aver, and fearlessly encounter the prejudices of which I have spoken, if that excitement will allow its subjects to reason and to feel as men, that all the evidence in the cause, either considered in parts or entire, does not in either aspect necessarily exclude the innocence of the defendant. The facts may exist singly and connected, as the commonwealth has endeavored to arrange them, and yet John Earls may be entirely and purely innocent—as innocent as that child of his now hanging round the box of its wretched father.

The innocent, in all their innocence, may be stricken down by a verdict founded upon a misconstruction of the principles of evidence. Such, in the inscrutable providence of God, has been the case before. It may be in the present instance. But, if upon evidence such as is presented in this case, your verdict should fasten the felon cord around the neck of the prisoner, still would I hold, as a lawyer and a man, that no facts disclosed in the testimony can justify such a verdict. For we aver that there is no such coherence in the parts of the evidence, as to form the chain even of a close and compact narrative of facts—that none of the facts separately indicate guilt and the exclusion of innocence. Without further prefatory remarks, I will now proceed, gentlemen, to the examination of the testimony. In this duty, I pray your candid attention for my sake, for the sake of our unfortunate client, for your own account in view of the solemn verdict you are to pronounce.

The counsel for the commonwealth rely for conviction of the defendant upon the testimony, first, of Mrs. Sechler. What part of that testimony is there that can prove guilt? Is it that Earls himself aroused the witness in the dead of the night to come and wait upon his sick wife? was that the act of a murderer? Who obliged him to do this natural act of kindness and goodness? No one. Then the act itself and all that follows are exactly those of an innocent man. He was requested to bring Mrs. Callahan; did he refuse to do so?—not at all; he did as was suggested to him; he went for Mrs. Callahan and brought her; he could not have been long gone, for the distance being to Callahan's and back two miles. But he blasphemed. Such is the influence of prejudice on the mind of a narrator. What all others would have called

the language of agony, of deep feeling, of passionate grief, expressed in the rough language of an uneducated man, the very language of prayer, Mrs. S. construes into blasphemy.

We are not only not bound to give the constructions of a prejudiced witness, but if a construction can be fairly given to the language in favor of an accused party, we are solemnly bound to give that construction. One word as to Mrs. Sechler. I have every respect for her character; as a woman, I believe her to be entirely incapable of wilfully misinterpreting the words or acts of a party. But I may, I do, nevertheless, believe her to be much excited against the prisoner; as to the cellar scenes, they have nothing to do with the case, and are fully explained by Dan Griffin, Mrs. Marinus and Mary Ann Earls. This testimony, then, might as well have been omitted, but for the sake of connection in the narrative, it proves no crime. What then is there in the testimony of the next witness examined, Mrs. Callahan, to support this prosecution? She was present immediately after the death of Mrs. Earls; she details no delay on the part of the prisoner, in bringing her to the scene; true, he got a bottle of whiskey, but that is not murder. It was got because among people, such as John Earls and his family are, it has been an old fashioned notion, something older than any man's recollection in the jury, "that it is a sovereign remedy" in all cases of child-birth. Little is it that Earls could have done, that is not tortured into crime. Mrs. Callahan found him crying; she found him alarmed and using the common expressions indicating sudden grief, surprize and anguish; indeed the whole of her testimony is in direct accordance with the innocence of the defendant. Mrs. Callahan, honest woman, uses somewhat the same kind of expletives that seem to have been familiar to John—she never thought of blasphemy. This witness, then, in no manner supports the indictment. If he had not wept—then behold the marble hearted wretch! Did he weep—then see the vile hypocrite! Remember, gentlemen, if you please, that this is one of the witnesses to prove the defendant guilty. The prosecution seems to have swept the very dust of the ground, they have a mark upon every bush by the way side; the whole country have been pressed into their service, to press to the earth and crush in death the defendant at the bar. They have been armed with the whole power of the commonwealth to effect their purpose. The cry of blood has been heard from one end of the county to the other. The prisoner, in the mean time, has realized all the wo of absolute helplessness, bound down in iron in his gloomy cell, for nearly six months. So unequally do the parties appear before you.

Miss Sechler was present when the woman eat her supper, John was kind to her; saw the dead body of the woman; and yet more, months before, nay a year before, she witnessed the scene of John putting Katy in the cellar, to get clear of her in a family quarrel, provoked by herself, instead of beating and ill treating her. Gentlemen, it is again only necessary to say, that no crime such as is laid in the indictment is proved by this witness; nor is there a single circumstance from which the guilt of the prisoner can be inferred, but by doing a manifest violence to the evidence; and it will be remembered too, that this young woman showed no particular kindness of feeling towards the prisoner.

The testimony of Mrs. Mangus, taken altogether, is directly evidence for the prisoner; and the only reason that can be supposed to have induced the commonwealth to have brought her before you, was to get out the story of the pump and the trough, but a small part of the scene of which she saw. When she came to the house of Earls, as they passed through the house on the first story, they saw Earls in the bar room weeping—alone—no one with him. The gentlemen say this was acting—this was all for effect—very charitable—a strange place for enacting an exhibition of affected grief, in a solitary room of his house, the most remote from observation of any in the house, and not having even a child to witness the pretended affliction. The last scene preparatory to the funeral, is just such as the nature of the case would lead us to suppose it might have been. The children part with a mother in the grief of young children. The father looks for the last time upon the mother of the helpless little group around him with such feelings as rise up in the heart of all men under similar scenes.

Allow me, here, to notice more fully the subject of the funeral. You heard Mr. Solomon Mangus state the consultation which John had with him, as to the time proper to be chosen for the funeral; no hurry, no eagerness to despatch the business as the sequel to a deed of murder, and appalling guilt; nay, he proposed that the dead body should be kept till Sunday in order that the friends of the deceased could attend from Milton; this proposition seems to have been overruled by the advice of

Mr. Mangus. The grave clothes for the deceased are purchased by Miss Sechler, under the direction of John Earls. Respectable women of the neighborhood, Miss Sechler, Mrs. Thomas and her daughter, are procured to prepare this dress of the dead; no secrecy—no hurry—all done openly and in the midst of the neighbors of the deceased. A respectable clergyman of the neighborhood, is called upon to perform the solemn rites of our religion in the close of these funeral preparations. All this is as public and open to view, as usually occurs in these melancholy scenes; all evidences of guilt are not only unsupported by the whole funeral ceremonies and services, but they are absolutely negatived, and put down.

But what can we do that will blunt the edge of accusation on the part of the commonwealth? If a funeral sermon was preached, then it was the mere counterfeit of a decent respect for the deceased, and intended to lull suspicion, and cheat the public eye. If no such scene had occurred, then Earls would have been represented as a hard hearted monster, who in his villany neglected even the pretension of a becoming seriousness and sorrow upon the melancholy event.

When the coffin was opened at the grave, then the place where Earls stood, the sappling bush against which he leaned, are all minutely described by the witnesses, in order if possible that you may find something unnatural in the act to an innocent man. Thus it is that the commonwealth, out of a scene creditable in all its parts to Earls, has attempted to poison the whole with unsupported inferences.

I have shortly traced the funeral rites as they are represented to have been acted. They are performed in open day, at a proper time after the death of the deceased, and in the midst of her friends and neighbors, and altogether are strong evidences produced by the commonwealth of the innocence of the accused. For it must be remembered, that he was the person upon whom depended these arrangements. That if a foul murder had been committed, of which he had been the guilty author, or even the remote accomplice, a very different conduct would have been exhibited. Few persons would have been invited to the house preparatory to the funeral; that would have been hurried, and in the presence only of persons not likely to suspect the cause of death. No religious services would have graced the solemn scene, and the guilty man would have trembled at the presence of every additional neighbor who would have come to attend the ceremonies. Such feelings of agitation could not have been so suppressed as to have hid the guilty anxieties of the man. But such is not the case; all is open, all is tranquil, all is in accordance with the solemn decencies ordinarily bestowed upon the remains of departed friends and relatives.

Thus far, then, is there an absolute failure on the part of the commonwealth to affix guilt upon the prisoner. Thus far the evidence not only does not injure him, but unquestionably supports his defence. May I again ask you, men of the country, to consider these things.

We come to consider, now, other portions of the evidence against the prisoner. It is charged in the indictment that the deceased died by poison, administered, first, in chocolate, and secondly, in tea. The counsel for the prosecution contend that the occasion selected was either in the preparation of the supper, the chocolate and tea, or when granny Earls carried the supper up stairs to the bedside of the deceased.

I have before said that the prosecution have resorted to unusual pains to prove this crime upon the prisoner. They have brought before you every person and every thing, credible or unworthy of belief, relevant or remote, to sustain their charge. They have, moreover, trampled upon every law of feeling and humanity towards him as a father and a son. They have brought before you his infant children and his feeble old mother, to charge upon him the death of the deceased; and by the agency of witnesses so connected with him by nature and by blood, to demand upon their testimony the forfeiture of his life at your hands. One of these children, as you have learned, since the imprisonment of the defendant, has been in the custody, and under the tuition of a witness for the commonwealth, having, as we much fear, every disposition to encourage the most bitter and unnatural feelings of a child towards a parent. It is certainly true, that no witness has appeared before you, more influenced by a bold, confident, reckless, unreasoning prejudice, than the youngest of these children. None, in whom every feeling of caution or charity, of nature or humanity have been so absolutely wanting—scenes and words remote in time, forgotten and past, are gathered up and brought before you by this prodigy of wickedness and filial ingratitude, with the flippant readiness of a child repeating a well conned lesson. Is this nature or well directed instruction? The sensibilities of our nature, sanctioned by all conditions of society, and enforced by all the obliga-

tions of religion, seem in this young child to have been erased and forgotten.

There are certain affiliations of life that even the stern morality of the law respects. Thus, neither a wife nor a husband may be examined for or against each other; nor a lawyer against his client. But it would seem that although the deep written remonstrances of nature all oppose the introduction of children and parents, in criminal accusations, against the same relations by blood, in those especially that affect the life of a defendant; yet the law at this period of time permits their examination as witnesses. Then, gentlemen, I will proceed with a brief discussion of their testimony.

Mary Ann Earls is the oldest child of the defendant; she is the most likely to have noticed accurately what was done and what was said at the time of the death of her mother. Moreover, she delivered her testimony with so much modesty and propriety of manner, that we are persuaded she has left upon your minds, as upon all others without prejudice, a favorable impression as to the truth of her statement. She saw the chocolate prepared; she saw it dipped up by her grandmother, from the same of which the family made their supper; she saw the bowl before it was poured into it; the bowl was clean; nothing was put into the bowl but the chocolate. Gentlemen, in examining this cause you will already have perceived that I have abstained from repeating the testimony of the witnesses, word for word, I will not do so; it is absolutely familiar to us all. I believe we can, all of us, repeat it substantially from recollection—I will take it for granted that such is the fact. I regard your labor of attention which you seem to be so much disposed to accord to me, on behalf of our client—I regard also the time of the court, and, permit me to say so, I regard my own inability to support this long continued exertion. Well, then, this witness is produced by the commonwealth; they have not the right, even if they have the temper, to dispute the facts stated by her. It is a rule of law that a party may not discredit their own witness—this in criminal trials as well as in civil controversies. She is not our witness—we believe her statement—the commonwealth may not deny its truth. What then? This—that this witness being necessarily to be confided in, John Earls is not guilty—if not guilty, he is innocent as any man in your box. Their tale of suppositions and forced constructions is broken up. This witness was present from the time the chocolate was prepared to the death of her mother—she was present at the supper of the family and at the time of her mother eating her supper—she was present when the tea was given and when one part of it was made—she was present, as if in the providence of God, to repel this foul accusation, from the very commencement of the actings in which they charge that the alleged poison was given, to the end of the scene. And, gentlemen, what this witness swears to is in law, in reason and in fact, entitled to the highest degree of credit; because, she is produced by the commonwealth to sustain their charge; because, no one has attempted to impeach her for integrity and truth; and, moreover, because, no one could do so; because, also, that her testimony is in agreement with the truth of the case. If all this be so, how are we to build up a verdict against the prisoner upon this testimony? There is not one sentence of it which proves the *corpus delicti*, the body of the crime; but, on the contrary, if the counsel for the prisoner had called this witness for his defence, I may ask you, would not the whole testimony have been powerful evidence for him? Without hesitation, I may rely upon your cheerful assent to an affirmative answer.

The commonwealth in calling the next witness have had the benefit of a testimony delivered as willingly and bitterly as they could wish it; but as to the commission of the murder proposed to be proved, they have not been advanced a line—there is not a sentence of proof on this subject. And what is the kind of evidence on which you should be called to pronounce a verdict of guilty? This is the evidence—evidence, which would show that Earls had the means and the opportunity to give the supposed poison, and that he actually did give it. It is not evidence, which negating a probability that he had the means and opportunity and did do so; but that all this may be possible. You are not called upon to found such a verdict upon a possible state of facts. Such a verdict would be alike repugnant to humanity, common sense and law. The usages and law of the state, have made you the judges of the law and the fact in this case; unlike the rule in civil causes where the jury receive the law from the court, and the court learn the fact from the finding of the jury. It is neither the law nor practice, in Pennsylvania, to require a conviction upon such testimony; the interest and peace of this commonwealth require no such absurd decision at your hands; but guarding against the uncertainty and the danger of circumstantial evidence in all cases. And, above all, in the application of such evidence to the finding of a verdict affecting the life of a fellow being, and fellow citi-

zen, unless the texture of the facts and narrative be so compact and perfect, as to exclude the innocence of the prisoner, the verdict must be not guilty. This is without doubt the law, as it has been read to you and will again be insisted upon in conclusion by my colleague.

It is most probably the tale of abuse and ill treatment of Earls to the deceased that is relied upon to excite your belief that if capable of treating her ill on any past occasion, he could also be capable of seeking her life and of committing a murder. This is equally unfounded; no such inference can be fairly drawn. Because men fight with each other, is that evidence that either intend to commit murder? The law is otherwise. Because, even in a violent assault and battery of one man upon another, the law will not permit the party attacked to presume that his assailant intended to kill him—it will not permit the attacked party to use a deadly weapon in his defence; and if he should do so, and should unfortunately take the life of his assailant, it will be either manslaughter or murder, according to the peculiar character of the defence and attack. This is the well established law on that matter. Then, on the subject of ill treatment, is there one fact adduced in the whole evidence of all the witnesses which supports the supposition of the commonwealth, that you may hence infer a settled design to murder the deceased? As Susan Earls is to be at the head of the witnesses detailing these disgusting family quarrels, I think it best to consider of the matter in this place. In putting the deceased in the cellar on the first occasion it seems the prisoner was in drink, had been out all night with several of his neighbors, shooting the old year out and the new year in—a custom, true enough, “more honored in the breach than in the observance.” Dan Griffin, gives the truth of the matter. Miss Sechler says that she thought John was the worse of liquor; but Dan Griffin says he never saw John so much so before. The scene at the pump, is disgraceful to him as a man. Susan Swenk, if she is to be credited, would have the woman drowned at once. She says he poked her into the trough and held her there for twenty minutes! You know, well enough, that she did not tell the truth—you know, well enough, that against the life of a man, out of the mere wantonness of wickedness she swore to a deliberate falsehood. Her stove rake story is like her testimony here, neither are believed, and neither can be believed—no witness supports her. If Mrs. Marinus is credited, she made Earls release the deceased at the trough. In all that she stated about the scene, when she was seen or met by the other witnesses, she is supported by their testimony. Mrs. Mangus and her daughter support her; and their statement of facts is the same as related by Mrs. Marinus in all they saw. But no one supports the lies of Susy Swenk, or Miss M'Callaster, as the gentlemen are pleased to call their witness. Mrs. Marinus says Earls did not pat Mrs. Earls in the trough at all; but splashed water with his hand upon her. This, gentlemen, was the fact; and all this was done in high provocation between the parties, not in cool premeditated cruelty, but in a gust of passion. Susan and the old woman say that John struck Katy with the leather lines—it is greatly regretted that he did so. It was an act for which we do not stand here as his apologists. But among all who regret these acts, no one does so more keenly than John Earls himself. This too was an act done in violent anger at the foolish intermeddling and whispering of the old woman. But he put her once again in the cellar. This place has been described to you, as a light, clean, dry room; and Griffin, one of the witnesses for the commonwealth, says that he could not tell exactly whether she was drunk at that time or not; but that John then said she was, and said he did not want to hurt her. As to the stove rake story of Susy Swenk, it is not true—it is evidently false.

I have brought together in one view all the ill treatment that it is alleged Earls gave to Katy. There is a feeling so common to us all, to take the part of woman, if the subject of personal abuse from man, that we may always find it necessary to guard ourselves against the influence which such facts may have on our minds—and it is necessary here, peculiarly and strongly. The jury are to try the cause upon the evidence submitted to them; but it is that evidence which tends to establish the charge, and not evidence which may all be true and yet establish nothing. In all the parts of this evidence, is there one part that necessarily, or even probably, establishes a fore-determination concurrent with the acts themselves to take the life of the deceased? No honest, humane, man can say so. Does such testimony weigh a feather in the scale, upon a fair and candid enquiry to determine the guilt of the prisoner? I have remarked upon the excitement of the public mind against the prisoner. This kind of testimony may tend to feed this state of the public feeling. It may be counted upon, gentlemen, that you too cannot but sympathise with the

public feeling; and thus may the evidence, though conceded as not coming near the question of guilt or innocence of the defendant, be expected by the learned and experienced counsel conducting the prosecution, to aid in producing a conviction. Gentlemen, you have higher duties assigned to you this day, than to minister to a diseased state of the public mind. Your verdict is to be the subject often again and again in your coming years of future life, either of just and satisfactory recollections, or, if formed upon unsound and unwarranted conclusions, of bitter regret. So we aver before you, that as we believe the prisoner an innocent man of the crime charged against him, thus also do we assert, as lawyers, that the testimony so far as examined, in nowise sustains the charge. It details circumstances, alone, and these so loose and unconnected with the question trying, that no presumptions can be fairly drawn from them by which the guilt of the prisoner can be established. It is the peculiar danger of this kind of evidence that resting of necessity upon every fact that may seem even in a remote degree to affect the question under examination, so it may from its nature be supported by facts which have but a seeming and not a real connection with the accusation. So much the more is it apparent, therefore, that all superfluous evidence of the kind examined should be dismissed from your minds in making up your verdict.

On the subject of threats, the same course may be adopted as just exhibited in relation to personal ill treatment. Susan Earls, the younger daughter, and Susan Swenk, both say that Earls on some occasion said to Katy that he would lay her asleep. Susan Earls admits that Mrs. Marinus was present. It is well known to you, that if this threat had been repeated, and talked of by Katy before this child and this Susan Swenk, that they might easily admit it as an unquestioned fact, that John had used the expressions in the way stated; for by the testimony both of Susan and Mrs. Marinus it is found that John upon being charged by his wife with saying so, denied it, and said Katy I said no such thing, I said you had better been asleep than to have done or said the matter complained of. As to Susan Earls, of her disposition, outraging all nature, violating every principle of filial goodness, she has been trained by some one, or by many, to give a coloring to every word and act, such as to suit the views of those, who, right or wrong, would take the life of her father. She has been brought to a state of feeling against her father, shocking to contemplate, revolting to believe. How is it that no one of all the family, or acquaintance of the family, know or believe this statement? As to Susan Earls, unsupported by her sister, and contradicted by Mrs. Marinus, her cousin, we are not bound to believe her. As to the agreement of the testimony of Susan Swenk, it makes that of the daughter only so much the worse; no one would think of appealing to that witness to corroborate the testimony of another. Is her testimony the truth, as to the pump scene? You know it is not. If she falsified that part, what security have you for any other part? It is a rule of evidence well known, and resting upon the experience of mankind, that if a witness swears false in a part of the evidence, material to the issue trying, no faith or confidence is to be given to the rest of the statement of such witness. But, in addition to the holding of the deceased twenty minutes under the water, take this other fiction of the witness invented for this particular occasion: John had the stove rake, an iron cross, placed under the chin of Katy, and thus dragged a full grown woman on her back across the floor of the house! Is this not evidently a wicked falsehood? You know he could not do it. But, again, the daughter Susan she says was present; even Susan Earls remembers no such thing; and surely if a scene so suited to the present temper of that child to have remembered, and so disgraceful to her father, had really been enacted, you would first have heard of it from her. If this, also, is not true, you may with great propriety strike out all that this witness has said as unworthy of belief, from your minds, in deliberating upon your verdict. She thinks Mrs. Marinus was by once, when the threat was made, but she says nothing about the denial of John. She says he made the threat good naturedly! What! threaten the death of the mother of his children, in good nature! Shame! a little more monstrous than an idiot credulity could believe! But, if the words used are such as reported by Mrs. Marinus, then the man may have said so without excitement, or the slightest anger. She says further that Earls did not appear to be angry when he said it.

In a word, gentlemen, no threat can be supported upon the evidence of this witness. But, of all the witnesses examined for the commonwealth, no one ever heard a threat made by John except these two witnesses, excepting Mrs. Marinus, who explains it all away, by the declarations of John made at the time of the charge. Mr. Sechler's family live so near to Earls', that an angry conversation could be heard,

every word of it; yet no such threat was ever heard by them. Granny Earls and Mary Ann Earls appear never to have heard such language. No other of the witnesses, although tasked to remember every the most trifling act of Earls, has told you of these threats. Would you make your verdict upon such a foundation? Men of the jury, I cannot believe it of you—for even if true, yet it by no means follows that for such a reason the prisoner is guilty, it might all be true and yet the prisoner be innocent. So that for every reason you are bound to reject this evidence—first, because if true, it does not prove the crime alleged—but, secondly, because the fact itself is delivered to the jury by such doubtful, corrupt and degraded witnesses, that you have no right to believe the testimony. The commonwealth has no right to call upon a jury for the slightest over-exertion of credulity in favor of their witnesses or of their statements. The criminal law of Pennsylvania has for about half a century past been administered in mildness and mercy. The maxim of the common law that every man shall be deemed innocent until *proved* to be guilty, is also a favorite principle of the law of Pennsylvania. If we recur to the practice of our courts for our guide, and give this humane and christian principle of our law its proper and legitimate application in the present cause, you will be the more strongly justified in your own minds in refusing to credit any part of this testimony. If my suppositions are well founded, if my argument is predicated of a true state of the facts—then it follows as a proper and natural conclusion that Earls made no threats against the life of the deceased.

If I have given all the testimony its proper consideration—if I have credited the witnesses so far as they deserve belief and no further—if I have conducted this argument with candor, and referred fairly to the common principles of belief, and evidence, it results, that the commonwealth has not yet advanced one line further in support of the indictment against the prisoner. Up to this part of the cause, he stands before you innocent and free of all guilt. Though charged of an odious and revolting murder—though bound in iron and borne to the earth by the power of the commonwealth and the combination of all the means it may command, yet may the prisoner say I confide in my innocence, I stand erect before you, I put myself before God and my country for my acquittal.

Thus I have examined this last topic—a subject deemed by the prosecution of vital importance to their success—and thus do these pretended facts, appear to be unsupported by all their connections with the other evidence in the cause, and unsupported by sound, healthy and irreproachable testimony. As I shall have occasion again to speak of the witnesses in reference to their personal responsibility of character, I will content myself with these views and proceed to other topics of accusation.

The commonwealth relies, also, to obtain a verdict against the prisoner, upon confessions and acts of the defendant at the time of his arrest. Before this event occurred, it is evident that a public investigation of the cause of the death of the deceased seemed to have been determined upon—already had rumors of such an intention been widely circulated. The complaint and oath required before the issuing of the warrant appear to have been made by Mr. William Thompson, one of the gentlemen summoned here as jurors, who lives in a neighboring township, at least seven miles from the residence of the prisoner. From what I know of Mr. Thompson and the defendant, I may venture to say, that it is more than probable, before this event, the parties were entirely unknown to each other. These facts are referred to with a view to show you, that although it may not be directly in evidence before you that such was the case, yet that it is more than probable that Earls had been informed of the public feeling on the subject. Thus Major Dykens says that upon being arrested, he said to the constable, it was nothing more than he expected; and if the facts I have stated make the same impression on your minds, in regard to the knowledge of Earls of what was intended against him, that they have made on me, then we can conceive nothing more natural and at the same time more innocent than for Earls to use the expressions he did. These are the first expressions and this the first fact, occurring in their order on this subject; and, I pray you gentlemen, if these are candidly considered, what presumptions can be drawn from them against the prisoner? None—absolutely none. But the prisoner said he would go with them wherever they wished to take him; and until he became intoxicated from their frequent drinking he did so.

He wished one or two of the arresting party to go with him by his own house, standing by the canal, and that the rest of the party should take the hill road; and this was a purpose natural and full of kindness to his old mother. It was in order that she might not be alarmed at the great number of men having him in custody,

who were present. All these witnesses I believe state this fact in the same way, and surely the testimony must undergo a process of torture and twisting to make any other meaning out of it; yet this innocent and laudable object of the prisoner, is attempted to be so wrested by the prosecution as that it shall be construed into an intention to escape. But this intention to escape is refuted by the testimony of all the witnesses. He drank liquor twice at his own house, once at the tavern of Mr. Mangus' before they reached his house, and again at Patrick Callahan's tavern only a mile from his house. So that, Mangus' tavern being three-fourths of a mile below Earls', he had taken four drinks of whiskey in walking one mile and three-fourths; when they came to Mr. Thomas', therefore, nothing could be more in agreement with this state of the facts, than that the prisoner should fancy himself greatly in want of another drink. He began to conceit himself to be outrageously dry, and at the same time to act like a man feeling the effect of what he had drunk. He enacted divers fooleries in consequence of his drink. He wanted to jump down into the kitchen of Mr. Thomas—he laid down and declared if they would not let him have a drink there, they should carry him. Before he got there, he had run along the tow path; but the witnesses I believe all declare that they did not then believe he intended to escape from them—that he could not have done so at the place where the running took place is evident, for on the land side of the tow path there rises a perpendicular wall of rocks perhaps three hundred feet high, and upon the river side there would be a descent nearly perpendicular of from twenty to fifty feet, and perhaps more. But, when the party were in the open country, as from Mosteller's to Mangus', and from half a mile above Thomas' to Muncy, where an escape would have been peculiarly favored, from the nature of the ground, the country, the deep ravines, the dark thick woods upon the narrow bottoms, on the right of the river coming up, and the darkness of night, the absence of other assistants, the people of the neighborhood having of course retired to their houses, not an improper act was done by the prisoner—the witnesses all agree that he behaved well and went peaceably along to the office of justice Crouse.

Gentlemen, let us deal fairly with the prisoner—let us say, we will accord to his acts the same construction that in a similar situation, we would ask for ourselves. Let us be just, and let our justice be tempered with charity and manly feeling. If such shall be the state of your minds, and I have no reason to suppose it otherwise, then you will say that there is no evidence of a meditated escape on the part of the prisoner, from the time of his arrest until his arrival at Muncy. At that place, and on the way to prison, the witnesses all say that nothing could be said against his conduct. Since and during his long imprisonment his entire conduct has been without the occurrence of an act to injure him in the good opinion of those around him—like a man conscious of his innocence, he has with great tranquility and firmness heard the storm of high excitement and prejudice against him, and with the firm calmness of such a man, so threatened and so sustained, with a humble reliance upon the protection to be found under God, in the laws of his country, he is at length brought before you for his trial.

His declarations made in presence of those who arrested him are also relied upon by the counsel prosecuting the indictment. If they have failed, as they certainly have, to show any attempt or design to escape, yet they would rally in their defeat, and attempt to seize upon the rough unmeaning expressions of the prisoner, and from them endeavor to extract an argument in support of their charge. We hold our personal security, and our lives, upon the most uncertain guaranty, if every idle word a man may say, without thought or reflection, is to work the forfeiture of both. They are both of them gifts of God, which man may not value. Let us then adopt no code of evidence, which may effect both directly, which may prostrate the one and annihilate the other, without consenting first at least, that by the same principles and constructions, we would be willing individually to be tried. He said he had bought ratsbane, that he bought it frequently, that he had a right to do so, that he had used it for fishing, to kill the animals which so annoy a fisherman—that he would buy it when he pleased—and that if for such an act, they chose to hang him, they might do so, and kill him, as Johnny Morton used to say. This being in fact intended to assert his innocence, and at the same time to show his wit by quoting a phrase, so understood by those who heard him use it. These expressions for the collecting of which the commonwealth have summoned and examined all the arresting party, except the constable Turner, and Mr. Swisher, constitute the whole evidence founded upon declarations and confessions at that time. Do they admit that the prisoner was guilty? Was it the intention of the prisoner that they should have been so un-

derstood? It is a rule of law respecting declarations and confessions that all that was said shall be proved in order that a defendant shall not be convicted by an isolated sentence, which if taken in connection with the context, would clearly indicate a different meaning from the one proposed to be deduced.

The prisoner on that occasion repeatedly asserted his innocence. The irritation and warmth which he exhibited upon being informed that he had bought arsenic, is perfectly explained, when he not only said that he had often done so and had a right to do so, but, when in addition, we have proved that he did so ten years ago, and for the very same purpose for which he averred he had bought the drug at the time in question. Not as in the case of Mina; the prisoner did not attempt to fabricate a falsehood, and to screen himself by an affected use of the drug, which in reality never existed; Earls was no naturalist, he said nothing about preserving birds or beasts; he would have required some instruction to lie gracefully; he had not had the benefit of scientific lectures upon the antiseptic qualities of the mineral; the simple man did not even know its common name, and when charged with having bought arsenic, as a matter injurious to him, he repelled the charge with animation and anger, and said that he knew what he bought, that he had bought ratsbane. Honest, simple man, he knew indeed that he had bought what would kill muskrats and minks, and in having done that, he required to be further instructed to learn the criminality of the act. If these declarations can be tortured into a meaning hostile to the life of the prisoner, may I ask the gentlemen of the jury, if confessions so pointless, so destitute of strength, and certainty of meaning, and bearing upon a different subject, to wit, the right of the defendant to an estate in land, would be deemed by them of sufficient merit to defeat a title by deed and possession? Surely not. It would be required that the declarations themselves should contain their own illustration; nothing would in the case proposed be left to vague and uncertain presumptions. And can it be possible that we shall suffer our imaginations to be so excited, on this occasion, as that pointless declarations, which have not edge enough to affect a civil right, shall yet be sharp enough to cut away the life of the prisoner?

Remember, gentlemen, that these declarations, and every other which took place at the time of the arrest, happened upon an occasion of great excitement and agitation of mind. Remember, also, that if the evidence is credited, the prisoner was much affected with drink. A man may be sober enough to possess all his muscular power in increased strength, while the energy of the mind shall be greatly impaired. These facts are to be taken into consideration in reviewing this part of the testimony.

As to the purchase of arsenic, the act itself exhibits no criminality of design. We have shown by the testimony of Mr. Wilson, that in the year 1826 or 1827, Earls was accustomed to use this drug in his business as a fisherman—that he had not only sold it to him for that purpose, but had seen the manner in which he employed it. By Jacob Hoffman, who at about that time lived near to where John Earls lived, and who also was a fisherman, that he then used the same drug and for the same purpose—and, further, that he used it still for similar objects. We have proved by Mr. Doubt, and by the little boy, his son Sam, that John on the day preceding the death of the deceased, used what we must believe was arsenic, at his fish basket. That it was all used and the papers thrown in the river. By Mr. Carter we have shown that the prisoner accounted to him for his object in purchasing it of him in Northumberland, that he wanted to use it as a fisherman. If Earls had used arsenic, as a fisherman, ten years ago—if Mr. Hoffman had so used it, and for a longer time, and still continues to use it for the same purpose, and if you believe that Earls so used it immediately up to the day of the death of the deceased, is there not a possession of the article shown consistent with the purest objects, and with the most perfect innocence? If you believe these facts, you must believe that the mere possession or purchase of arsenic is not inconsistent with the innocence of the prisoner.

If any witness had seen the prisoner mix a white powder with the food or drink of the deceased, the nature of which was not then known, and this, too, but shortly before the last sickness of the deceased, then would there be a fact, in connection with the possession of the article, upon which you could have rested your opinion of guilt. As the facts now stand you have no such evidence. You have no facts in evidence in relation to this matter, the deductions and presumptions necessarily arising from which, exclude the innocence of the defendant; upon the great principle which I announced to you, which would govern us in the examination of the testimony, you are then to acquit. For you are to enquire into the evidence by rectified principles of reason and argument, and to emancipate yourselves from

suppositions and prejudice; you are to deal with all the facts in evidence as men of science, and as well instructed criminal lawyers. The law and institutions of our government repose this confidence in you, where you are created judges of the law as well as the fact in criminal trials.

The case of *Miss Blandy*, a lady of rank and character, was tried in 1752, before an eminent English judge. She was convicted upon doubtful, inconclusive, presumptive evidence; she died at the foot of the gallows protesting her innocence. To this day her execution is remembered with sorrow and bitter regret—at this day she is universally believed to have been cruelly and wrongfully convicted. The case of *Captain Donnellan*, was tried before judge BULLER, in 1781, and upon the same kind of evidence. That trial, too, has left upon the public mind the same impression, that he also was the victim of excited prejudice, and erroneous principles of evidence.

Think not, gentlemen, that should you give to the facts in evidence before you, a weight which legally they do not merit, that you will be supported in your verdict of "guilty" by subsequent confessions of the prisoner. Treasure not up this error as a consolation in the after years of your lives, when the solemnities of this trial shall be over, but not forgot. We have been told by the prosecuting attorney that there are men among you who could do their duty at the cannon's mouth. Be it so; I honor the integrity and independence of the jury; I seek not to arouse your fears of the bitterness of after thought, but to stimulate your judgment to its legitimate exertion.

Has a homicide been committed? Did Mrs. Earls die by poison? My object has been to show that even if so, the evidence does in nowise support the charge against the prisoner. The testimony of the medical witnesses in relation to the anatomical investigations after death has been left under the care of my learned colleagues. Though in nowise qualified for the task, the chemical examinations of the same witnesses, was, with the assistance of my colleagues, submitted to me. In this solemn and affecting trial, it is pleasant to find one agreeable incident. I take pleasure, gentlemen, in noticing some of the witnesses who have been sworn on these subjects before you, although they stand not in need of commendation from me. I cannot entirely suppress the expression of the pleasure it has given me, to witness the acquirements and scientific knowledge exhibited by all the medical gentlemen examined before you. It is a proof that in several of the instances referred to, we have gentlemen born among us and educated in the midst of us, and others who have come to reside among us, who are qualified to perform the important duties which they have assumed, to the great advantage of the society in which they live. Dr. Ludwig, Dr. Hepburn, and Mr. Kittoe, were respectively examined with such care, as we had it in our power, by the learned counsel for the commonwealth, by his honor the president judge, and by the counsel for the defendant. They have sustained this examination with great credit to themselves and with advantage to the case trying. From all this examination, you have seen how difficult it is, in the contents of the stomach of a deceased person, to detect the actual presence of arsenic. You have seen that not any one test or agent can be relied upon. You have seen that all and every of the tests employed in the examination of the subject here, have been at some one time each relied upon as conclusive and certain. You have seen that other experiments have succeeded to demonstrate the uncertainty of each. Lastly, the reduction of the metal has been triumphantly announced as an absolute certainty. You have found by the testimony of the witnesses referred to, and by the books which we have read to you, that even that test cannot by itself be relied upon. You have metallic crusts before you so much resembling the arsenical metal, that they could not be distinguished from each other, yet shown to have been made from another mineral. The nature of man is such, that he contents himself not with the labor of the past, nor with the acquisitions of the present. The natural sciences, resting upon observation and induction, continually supply the means of their progressive improvement. The time has not yet arrived when the presence of this mineral poison may be certainly affirmed in a *post mortem* examination of a human stomach. We cannot understand the rule by which such a fact is attempted to be established, that although all the tests be respectively admitted to be inconclusive and uncertain, yet if these tests are taken together, they may be certain and may be relied upon. It is this, that any given number of uncertainties may be multiplied by each other,

and that the product resembling none of the terms employed, shall be a certain result.*

But, if the jury should believe that Mrs. Earls died of poison by arsenic, still it in nowise establishes the fact that it was administered by the prisoner or with his knowledge. There remains to be considered a subject introduced into this trial as the motive for the commission of this supposed homicide. This has been so introduced because no other adequate cause can be charged upon the prisoner. And upon the admitted principle that all the important acts of men are founded either upon one influencing motive or upon compound motives.

The court have permitted a third person to be introduced by the testimony in the cause—Maria Moritz. The prosecution have endeavored to show an attachment of the prisoner to this girl; they have endeavored to show an improper intercourse between the prisoner and her; these acts so endeavored to be proved by them are not proved without contradiction. As to the scene represented by Shuman, it is contradicted not only by the fact of other persons being present, to wit, Sabina and Henrietta Moritz, sleeping in the same room and bed with Maria, but by their evidence that no such scene took place. As to the stable scene it was in the dark, and it was not probable that the witness could identify the person of Earls or even that of Maria. As to the statement of Mr. Donley he goes no further than to say he saw a man who looked like Earls coming out of the woods at a distance both from him and the girl. The whole intimacy is just such as would be described in any case where people have more to do with the business of their neighbors than their own. Of course you have had, at the least, every act of this kind, supported or unsupported in fact, given in evidence. There is not such a wonderful deal of delicacy and charity in the world as to suffer such acts not to be brought into this trial. I may venture to say, that the prosecution have relied upon this matter as the master and controlling point of their cause. The gentleman, Mr. ARMSTRONG, who has opened the argument for the commonwealth has been pleased to introduce our attempt to show that Earls was not lawfully married to the deceased. Having done so, we are released from any obligation not to treat of a matter not in evidence. Take our willingness to prove all that the witnesses knew of the matter, and they might have been, the one a member of the family of Earls, and the other married to his niece, and we could easily have shown what was known in the family. In a word, no person who witnessed our offer, and heard all that was said, can believe anything else than what was said, that the wife of John Earls is yet alive and living in this state. Take it thus, then where is the motive on the part of Earls to take the life of the deceased, to get clear from marriage obligations that did not bind him neither in law nor in fact? The gentleman has rounded off some showy sentences on this subject. But, after all, if Earls was not lawfully married to Mrs. Earls, he could have no inducement to commit such a crime as is charged upon him. If any of the established circumstances be wholly repugnant to the supposed fact, the hypothesis cannot be true, 1 *Starkie, Ev.* 483. If you believe from our offer, and from the argument of the gentleman, that the wife of Earls is still living, the above quoted rule applies as to motive. We have nothing to do with the morality of the question, whether Earls was living with Mrs. Earls and lawfully married. The commonwealth have not charged in the indictment that the deceased was the wife of the prisoner, nor have they attempted to prove it by a single witness, nor is it admitted by the defendant or his counsel. A presumption of marriage in a civil case, from acts, cohabitation and the birth of children, may be presumed under many circumstances; but we deny that this can be done in a criminal prosecution, and that, too, a capital one. Nothing is to be presumed against innocence and human life; all must consist of positive proof.

It will be in vain to talk of this position of the defendant, fixing the crime of adultery upon him with the deceased. That is not our present concern. It takes away the very foundation of the evidence against him, in reference to Maria Moritz and the deceased. It is vain to talk of the illegitimacy of the children of the deceased, because if their birth has not been in lawful wedlock, no silence would invest them with legal rights.

* In the course of the trial and in the argument, Mr. ELLIS referred very fully to authorities to support the principles of the foregoing synopsis of his argument. On the subject of the tests, he referred chiefly to the 2d volume of *Dr. Beck's Medical Jurisprudence*, p. 203, to 211, to *Mrs. Chapman's trial*, p. 65, in note, to *Henry's Chemistry*, 222, 223, 328, 329, 330.

Thus, gentlemen, I have attempted to show that you cannot rely upon any part of the evidence delivered against the prisoner, upon which to found your verdict against him—a verdict to cut up by the root all his hope of life—to close his eyes forever upon the world around us—to consign him, upon the uncertainty of loose presumptions, to an early and ignominious death—and to take from these little children the last parent and protector left to them.

In the argument, of which the preceding is a sketch, Mr. ELLIS referred to 2 *Starkie*, Ev. 959, 960, to 1 *Starkie*, 506, 507, 510. If the jury should be of opinion that Mrs. Earls died of poison, he left the enquiry whether she had taken the poison of her own act to his colleagues.

Mr. ELLIS examined all the evidence much more minutely and in detail, than is indicated in this sketch of his argument, which is intended merely to give an outline of it. This may be easily conceived when it is known that he was about eight hours engaged in delivering it.

SPEECH OF ANSON V. PARSONS, ESQ.

FOR THE PRISONER.

With submission to the court,

And you gentlemen of the jury:—

Save us, save my unfortunate client, gentlemen of the jury, from the *tender mercy* of the commonwealth, which has been so kindly vouchsafed on this occasion. We have been repeatedly told by the counsel for the prosecution, during the progress of this trial, and it has been reiterated in a five hours' speech by the Attorney General, that they ask not the conviction of the prisoner—that every kindness and compassion has been manifested towards him, and all the liberality which the purest sympathy could dictate, has been extended to him by a benignant commonwealth.

For the prisoner we claim no such kindness, nor ask either compassion or mercy from the prosecution—nor have we received it during this protracted trial either from them or any other source. All we demand for the unfortunate prisoner is *Justice—stern, unbending justice*; which he claims as a sacred right at your hands.

It is upon you, who are in criminal cases the judges of the "*law and the fact*," that he relies for a faithful administration of the principles of criminal jurisprudence which irrevocably fix his fate, and forever seal his doom. You possess not the power of extending mercy to any one accused of crime—so, on the other hand, you ought to guard every avenue of the heart against any prejudices that perchance might steal unperceived within your bosoms, and warp your better judgments, and give a direction to your decision, not warranted by the evidence or the principles of immutable justice. When we are told by the counsel for the commonwealth, of their great mercy and liberality to the prisoner, and the extreme indulgence of the Court, on matters of evidence, in what does it consist? I deny that any favor or indulgence has been granted to him, except what is guaranteed by the constitution and laws of his country—nor hardly that. Nothing has been claimed by the counsel for the prisoner but what they thought was warranted by the rules of evidence, and the law of the land, nor nothing granted by the opposing counsel or the Court, that was not sustained by authority, nor all that we think (with great submission to their Honors' decision,) ought to have been decided in favor of the prisoner. Conscious of the innocence of our client, we feel satisfied to rest his chances of an acquittal on the justice of his cause, and the want of proof to sustain the present charges preferred against him, without an appeal to your feelings, your passions, your clemency or sympathy. Even if I possessed those oratorical powers, which seem the gift of high heaven to some gentlemen of the profession, of arousing the all fervent feelings of the heart—or fanning the glowing fire of compassion in the soul, for injured innocence—or breathing in your ears as on the softness of a summer's breeze, that mercy which man should extend to his fellow man, as he expects it hereafter from the Almighty ruler of the Universe—or attempt to paint to your view, the grief and sadness of the children of this afflicted man, who amid his distress and the persecution of an infuriated populace, have in your presence clung around him, still owning and acknowledging him as the parent of their infancy—I should prove recreant to the trust reposed in me by the prisoner at the bar to indulge them. For it is by an address to your reason and your judgment, that a favorable influence can be expected for the defendant.

In discussing this highly important cause, my duty requires that I should argue it as I would any other; depending on a dry detail of facts and fixed principles of law, to govern in its decision.

After the lucid and eloquent speeches of my colleagues, in behalf of the prisoner, perhaps, gentlemen of the jury, I shall trespass upon your time and weary your attention in exerting my humble efforts for him. But a high regard for professional duty, due to him whom I represent, urges me to place his cause in its true aspect before you. And pardon me, if I again solicit you, to guard your minds against impressions made upon them by facts not in evidence. And caution you not to be borne away by that unchecked current of popular prejudice, which seems ready to bear him to the abyss of destruction, unheard, untried and uncondemned. The multitudes which have for two weeks past, thronged this "temple of justice," not only to gratify an idle curiosity, but with a gangrened prejudice, to irritate and excite the whole body of the populace to a dangerous state of popular feeling; and that by agents little less guilty than the prisoner is charged with being, urged on to a point, disgraceful to our county—and all tending if possible, to exert an unfavorable influence on the minds of this jury against the prisoner. It is of that feeling, of that spirit, which I say to this jury *beware*. With these few brief remarks, I shall proceed to state to you the principles on which we predicate the prisoner's defence.

I. I shall contend, that all the evidence is circumstantial—and that in order to authorize a conviction on circumstantial evidence, the circumstances must be so conclusive, that they cannot be true and the prisoner innocent. Further, that those circumstances must be such as to exclude every other supposition or hypothesis than the guilt of the prisoner—and all these must be made out by the commonwealth, before the prisoner need offer any testimony to explain a single circumstance established against him.

II. That the facts and circumstances must be proved so conclusively that there is not a *reasonable doubt* in the mind of the jury, that the prisoner is the criminal agent.

III. That the foregoing propositions are based upon the assumed fact, that the deceased came to her death by poison—which fact is not conceded, but we shall contend that the jury may fairly entertain a doubt, that the deceased died of poison.

IV. That the facts proved by the testimony introduced by the defendant, explain all the prominent circumstances given in evidence by the commonwealth—and show that there might be some *other criminal agent* on whom the circumstantial evidence would fix much stronger suspicion of guilt, than the prisoner at the bar.

V. That the testimony introduced by the prisoner, ought to raise a reasonable doubt in the mind of the jury of his guilt, and that *doubt* operates as an acquittal by the law of the land.

It cannot be questioned that circumstantial evidence is much inferior to positive; and, although I concede that there are cases in which a jury are justified in convicting on testimony of this description, still it ought to be clear and indubitable, and the circumstances of the most convincing and satisfactory character, and preclude all *doubt* of the prisoner's guilt.

Before I proceed particularly to consider my first proposition, permit me to call the attention of the court and this jury to some authorities on this point. Here Mr. Parsons, read from 1 *Starkie*, on evidence, pages 505, 506 and 507, also, from pages 499, 501, 502, 511 and 512. *Phillips Evidence*, (appendix) pages 43 and 58. *M'Nally* on evidence, 579. And also, read the remarks of the late Judge *Brackenridge*, upon circumstantial evidence, from his miscellaneous writings.

From those authorities you learn, gentlemen of the jury, the great certainty requisite in order to authorize a conviction on such evidence; and as is very justly remarked by Mr. *Starkie*, "it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of proof." Is the proof before you of that certain, determinate and unerring character? Does it exclude every other conclusion than the guilt of the defendant? There are five classes of circumstances relied upon by the commonwealth for a conviction.

I. The facts that transpired on the evening when Mrs. Earls died.

II. The conduct of the prisoner after the decease of his wife, and at the grave yard.

III. The threats and violence used towards his wife, previous to her death, his abandonment of her, and attachment to another female.

IV. The fact that the prisoner purchased arsenic a short time before the death of his wife.

V. The conduct of the prisoner at the time of his arrest.

It is admitted by the counsel for the commonwealth, that no one of these circumstances is in and of itself sufficient to convict the prisoner; but they allege that taken collectively they authorize a verdict of "guilty." I will consider each of those various circumstances according to the foregoing classification; and

I. What were the facts and circumstances that transpired on the evening when Mrs. Earls died.

It is clearly in evidence that during the afternoon preceding her death, John Earls and his two little boys, were away from home, they were up at the fish basket, and were met by Mrs. Callahan, about sun down, as she was returning from Earls' to her own house. The family meal is prepared by old Mrs. Earls, after candle light, and the prisoner and his little children as usual surround the family board. The old lady had prepared some chocolate for their supper, and before the family began their frugal repast, she dipped some from the vessel in which it was placed on the table, into a pint bowl for the deceased; this was put by her on the stove, while the family were eating their supper. The prisoner according to the testimony of the commonwealth, did not leave the room; he was already seated at the table; enquired of his mother what Katy was to have for supper, and in the presence of all the family, that portion for the deceased was prepared by the old lady herself. After the prisoner had finished his meal his mother asked him to hold the candle and light her up stairs, while she carries to the sick room of the deceased that which had been provided for her. Was there anything unusual in this, or calculated to excite suspicion? Is there a fact connected with the supper arrangements, or of preparing the bowl of chocolate for the deceased, that is out of the ordinary course of events? And is a jury to infer guilt from circumstances, that equally indicate innocence? It has been asserted by the counsel for the commonwealth, that because the prisoner took with him his little sons to the fish basket before they had their dinner, (although he took the care of giving them a piece, perhaps sufficient to satisfy their hunger before they started,) it is a strong circumstance of a guilty and murderous heart in him. And surely none but the suspicious eyes of the prosecuting attorney could discover the semblance of guilt in this. Was it cruelty to the children? Surely not, for they complained not of hunger; or rather, to draw the strongest inference from it, was it not evidence of a childish curiosity in them to accompany their papa on a fishing expedition at the sacrifice of a dinner, which probably would not be required by them after the bountiful provision made by the father. We are also told by the learned gentlemen, that the bowl of chocolate which old Mrs. Earls prepared for the supper of the deceased contained the *fatal potion* which ended her life. Did the prisoner prepare it? Had he the least agency in its preparation, or in setting it before his wife? Was it possible (if the testimony produced by the commonwealth can be relied upon,) that he could have placed the arsenic in the bowl without detection? The chocolate was cooked in the same vessel with that of which all the family partook that evening unharmed! Old Mrs. Earls took the part allotted for the deceased from the vessel herself; she placed it upon the stove. During these acts, John Earls was sitting at the table, the candles were lighted. Two of the children and the old lady on oath have declared, that nothing was put in the bowl by the father during this period; nor could he have done it without detection. It was the old lady, the witness for the commonwealth, which removed this *poisonous bowl* from the stove and placed it on a waiter to carry up stairs, together with some articles of food which had been prepared for the deceased. During all these arrangements the prisoner was at the table eating his supper. At what time, at what period, and when was the precious moment seized upon by him, to drop the poisoned drug within the chalice cup, unseen, unobserved, and undetected by human eye? It was said by old Mrs. Earls, in one part of her testimony, that after she had done eating she took the bowl of chocolate from the stove and placed it upon the waiter on the table in the kitchen, and then put upon it the other articles of food; that she completed her supper first, and after John Earls had finished his supper he was walking about, although she is not certain that he had done eating before she called him to light her up stairs. Hence the learned counsel who has addressed you for the commonwealth, says, that after the chocolate was placed upon the waiter, the prisoner as with "a murderous step" stole into the kitchen and put the arsenic in the chocolate. But from this position, that gentlemen is driven, by the fact sworn to by Mary Ann Earls, who says, her father *did not leave the table*, until her grandmother called him to light her up stairs with all the provisions upon the waiter. Nor does the old lady assert with any degree of positiveness that John

had completed his meal before she called him; and what shows conclusively that such is the case, is the fact that she asserts in relation to herself, which is that she ate but little supper, and to use her own language, "got done a good bit first" and immediately prepared the supper intended for Katy, all of which was done within a few minutes, and perhaps seconds, from the little she did, and the very few preparations that were made by her. But the old lady stated on the cross examination, that she could not tell whether John rose from the table first, or not; she remarked that "he usually was done eating first." And Mary Ann Earls expressly swears, that her father sat at the table till she had done eating; and in her own simple narration of the facts she says, "when papa got up from the table, granny she set the bowl on the waiter, and said now John you light me up." If we take a survey of the whole testimony of the old lady and Mary Ann, the position assumed by the opposing counsel as to the time when they allege the prisoner put the poison in the chocolate is untenable. Independent of all this, there is not the least particle of evidence to warrant the supposition that he did the act. Why are wild and fanciful presumptions like these to be indulged in, when truth and certainty are requisite to sustain this indictment?

I deny that there is a *probability* that the prisoner did put the poison within the chocolate as assumed by the gentlemen who has addressed you for the prosecution, while the old lady was making ready the provision for the deceased, even if you carry the "*doctrine of probabilities*" to its most indefinite extent. Then when did time, space, or opportunity, offer for the prisoner to do the act? Old Mrs. Earls, swears, that when John was lighting her up stairs, he walked behind her; that she saw nothing put in the chocolate, that in fact he had no opportunity of putting it in, and none was put in; she then placed the waiter on the chair, beside the bed of the deceased, and they both came down. Can any fair and unprejudiced mind draw an inference of guilt from these circumstances? After this, Miss Sechler came into the house; as she entered the door of the room, she states, that John Earls went up stairs; in about one minute she followed, and with her, his eldest daughter; when she entered the room John was sitting a short distance from the bed, talking with his wife; she also states, that he appeared very kind to her; that the deceased was eating her supper and after she had done, he carried the waiter down stairs. These facts we are told indicate guilt. When the wife of the prisoner was confined to her room, was there anything out of the ordinary course of events for the husband to be in the room, when a neighbor calls? It is said he repaired to her room, as soon as he saw Miss Sechler enter the house, but the evidence is that she entered the room first, and that Earls went from the kitchen up stairs, consequently they were not in the same apartment; nor is there the slightest reason to suppose that he saw Miss Sechler, when she came into the house, or that he knew she intended going to the room of his wife. Why should he go to the room, then, if he had done the murderous deed; would he have any fears of its detection during the drinking of the chocolate; a drug perfectly tasteless, which could be discerned by no human being mingled with chocolate, or would he have desired to set by and see his wife in the presence of his daughter and a stranger, drinking the *cup of death*, or coolly view his felon's work, or see her, undisturbed, and unmoved, draining to the dregs, the liquid poison which in a few short hours, would make her a breathless corpse. Call him murderer, call him fiend, or what you please, I deny that John Earls could have ever set by and seen all this. Rough as his manners are, hard as his lot has been, and unrefined as were his associates, he has a feeling heart; evidence of which has often been disclosed in this cause, amid all the wickedness the prosecution would ascribe to him. Nor is it consistent with a felon's feelings, or a criminal's conduct; the black deed is done, fear takes possession of his soul, and he looks not on the work of his destruction calmly and unconcerned, while the fangs of death are seizing its victim. But it is said that he carried the waiter down stairs; hence you are to infer that some guilty motive induced him to do this service. What object could he have? Miss Sechler, Mary Ann and the old lady, all concur in the fact, that the deceased drank all the chocolate—hence there was no part of the poisoned liquid left to be disposed of. Did he fear that some particles of the white poisonous substance would adhere to the vessel used? Where is the evidence that he cleansed it, or washed the bowl? Is it not in proof by the old lady, that she washed the dishes, that night, and was washing them when Katy was taken sick? Is it not in proof that the old woman was in the kitchen, does she swear to any such thing? Was there anything unusual for a man in his humble circumstances to carry from the room of his sick wife.

the waiter from which she had taken her meal—particularly when no nurse was in attendance? Why then impute an improper motive to this defendant?

Gentlemen of the jury, we now come to a more interesting, and to all concerned a more important part of the scenes of that evening. In about two hours after this last meal was taken by the deceased she became sick and commenced vomiting—the prisoner as well as the mother repaired to her room; every attention and kindness was manifested by the prisoner for his wife, during the few distressed hours that she survived this fatal attack. It was suggested by the deceased, that mint tea would allay the vomiting with which she was sorely afflicted, and seemed ready to sever the cords of life. The prisoner immediately offers his aid and prepares it. But the commonwealth have spread upon this record, that in certain tea, the poison was also administered, as set forth in the second count in this indictment. And it has been alleged by the opposing counsel, that, not satisfied with poisoning the chocolate, and when he saw the wife of his bosom writhing with pain and agony insupportable, and when thus kindly offering to administer an opiate, to alleviate that excruciating bodily distress, he taints it with the same death dealing drug, that had been used as the means of her destruction. But how miserably such a charge has been sustained by evidence. It is conclusively proved by Mary Ann Earls, that her father took a clean tin cup and placed the mint leaves in it, that she saw the cup and nothing was in it, that she was by and saw her father pour the water on the mint leaves, and saw him pour the tea from a cup into a saucer, and give it to her mother to drink. The deceased complained that the taste was bitter. The old lady then observed that perhaps it was “pepper mint” instead of “spear mint”—and that she had some which was really the “spear mint.” She then prepared some, and that also was given to Mrs. Earls who complains of it as having the same bitter and offending taste; in preparing that the prisoner had no agency, if the proof offered by the commonwealth can be relied upon.

Then, I ask, does this support the second count in the indictment, of administering the poison in tea? Is not that charge repudiated by the testimony of the prosecution? Those remedies for pain prove ineffectual, and the deceased suggests that laudanum may perhaps alleviate her suffering. With that attention which has marked the prisoner's course through the whole of this deeply interesting scene, he immediately gets it; prepares for her fifty drops, (a portion which Dr. Hepburn tells you was suited to the desperate state of her disease.) The family dispensatory is exhausted, and the often tried remedies avail not. The prisoner proposes to call the aid and assistance of their neighbors, but to this the deceased objects, alleging “that she hoped soon to be better;” a fleeting hope for her more deceptive than a moonlight shadow; and why she appeared to indulge in it will be for another branch of this argument. At length, without the consent of his wife, he calls in Mrs. Rebecca Sechler, the nearest neighbor. This old lady looks at the deceased and can prescribe nothing, and advises that Mrs. Callahan should be sent for as being more skilled in the healing art than herself. To this the prisoner immediately assents and goes for her; although a more deadly foe to this unfortunate man walks not on earth than her Irish ladyship, Mrs. Callahan, alias Mrs. Ryan. He calls up her husband who meets him in the bar room, and here is a scene of passing events on which the counsel for the prosecution have commented as if it were the turning point of their cause. And what is it, “John tells Patrick that his old woman is sick, and is she bad says Patrick, yes she is, indeed, says John, and I want a quart of whiskey,” and they both without delay repair to the cellar to draw it, and this is thought an irresistible argument of guilt against the prisoner. Is it not a fact and is not that established clearly in proof here, when one of a family is sick in the neighborhood where the prisoner resides, they always buy whiskey or liquor of some description? These were the habits of the place; the prisoner and even the deceased had been accustomed to its use. Whether the act was justifiable or not, requires no consideration here—is it evidence of guilt against the prisoner? Clearly not. He did not suppose that she was in a dangerous situation, and although he knew she was seriously ill, and perhaps many days might roll by before she would be restored to health, from all that had passed he could not apprehend a fatal termination to her supposed malady. Himself and family and his neighbors were watching beyond the midnight hour; nature was weary because deprived of rest. Was there any thing unusual, or what had not happened in thousands of instances before in this country, that ardent spirits were purchased on the occasion when one of the family is sick? And why, we enquire, should this now be brought as an evidence of guilt against John Earls, or as proof that he was indifferent to the fate of his wife? But as soon

as the whiskey is drawn he calls Mrs. Callahan, requests her to go with him to his house, and describes in his own plain and simple language the illness of his wife. On the road down he speaks of going for a physician; he remarks that when they lived in Milton Dr. Dougal was his family physician; it was too far to send there on this emergency; he then enquires of Mrs. Callahan relative to the merits of Dr. Ludwig. She gives him a character for correctness of practice which no one doubts but that he deserves. And from the brilliant display which we have had of that gentleman's high medical attainments on his examination in this cause, a more distinguished man in his profession could not be found in our county. He resolves at once to send for him; they pass on to the house of the prisoner, and before he reaches the threshold of that door, which, one short half hour before he had passed, his daughter meets him and communicates the sad intelligence that her mother is dead. He exclaims "it is not so!" and hastens to the room with all the power he possessed; and as he arrives at the door of the room which had been the lodging of his wife, old Mrs. Sechler, with the mind of a prejudiced witness, would endeavor to make you believe that his conduct was improper; to give you her own language "he gave some terrifying stamps and blasphemed." And is this so? The enquiry was made in what his blasphemy consisted. And she tells you that he cried out O, Lord God! Jesus Christ! Wonderful blasphemy! To whom, I ask, should his supplication be directed, but to Him who controls and governs the universe, who holds the destiny of the humblest creature in his hands? Did he make those exclamations in an irreverent manner? No. Mrs. Sechler, with the jaundiced vision through which she viewed every thing, dare not so tell you. It is in evidence from another witness that tears flowed from his eyes, when thus he called upon his Lord and his God, whom all are bound to worship. This, in John Earls, is called blasphemy, which in any other individual would have been hailed as an evidence of the most devoted piety and holy reverence for that Being who gives life and takes it away at pleasure, who "even numbereth the most minute particles of matter." Why are a jury thus called upon to distort the conduct of a man filled with grief, and when suddenly surprised with the death of the reputed wife of his bosom? Another circumstance is sworn to by Mrs. Sechler, which is brought to bear against him on this occasion. She tells you that while Earls was standing by the fire the tin cup containing mint tea was upset, and that the witness saw the water passing on the floor, but who did it she does not know. And you are called upon to infer that the prisoner did the act; of that inference the commonwealth are entitled to the full benefit; for if he did, he could have had no guilty object to accomplish, for the tea that he had made for the deceased had been poured out of the window when its taste proved obnoxious to Mrs. Earls, and before the old lady made hers for the deceased. Then, gentlemen of the jury, scrutinize even with a jealous eye the whole conduct of the prisoner, from the hour of noon on the day of Mrs. Earls' death, down to the period when he entered the chamber where his wife lay a breathless corpse, and I ask you in the spirit of justice and candor, is there anything from which a fair inference of guilt might be drawn? Then why cast imputations on the conduct of this man from circumstances that would have scarcely been recollected had they happened to any other individual.

II. The second class relied upon is the conduct of the prisoner after the decease of his wife and at the grave yard.

Let us examine and see what his deportment was. After the first bursts of feeling had passed away, when a proper period had elapsed, other females are sent for, and among those that came to the house were Mrs. Mangus, Mrs. Mowrey, and Mrs. Page. During the period that passed after they were sent for and their arrival, nothing particular transpired, from which any one asserts his guilt appears. When Mrs. Mangus and the others arrived at the house, they all concur in telling you that there was a light in the room down stairs; that John Earls was there alone; that they looked in through the window and saw him walking the room in great distress and *crying*. Is this the man whom the counsel for the commonwealth have told you stood like a "marble statue," and saw, unmoved, the scene of grief and death around him? Were those "crocodile tears," or his agony feigned for hypocritical purposes? No. Earls had left the chamber of death, and unobserved or unsuspected by any human being, shut himself within his room, and was there pouring forth the sorrow of his heart in the presence of none but the all seeing eye of the Omniscient Creator; there in solitude and silence he was lamenting over the death of his wife, when by accident those women looked through the window and saw him giving vent to the overflowing grief of his heart. I call upon you, gentlemen of the jury, to say

whether this portrays the character of a felon, and stamps the indelible disgrace of murder on John Earls. On the contrary, is it not all-powerful evidence of innocence, and does it not go most clearly to illustrate the fact that he was ignorant of the cause of her death, and that he viewed it as a mysterious dispensation of the wise disposer of human events, in thus suddenly depriving him of the partner of his early years? Give then, I pray you, the prisoner the full benefit of that inference in his behalf.

After the clay cold corse had been dressed for the charnel-house, which it was soon to inhabit, and in the morning after he had sent for a highly respectable neighbor with whom he consulted, the time for the funeral was fixed; and one day shorter too, than desired by the prisoner, at the suggestion of his friend Mr. Mangus; and still all the witnesses concur in saying that the inanimate relict was kept as long as is usual to keep the dead unburied in that neighborhood, and as long as is usual throughout our country in ordinary cases. Is this the rude haste of burial that we were told by the Attorney General, in his opening speech, would be exhibited as powerful evidence of guilt? After the funeral arrangements are made, the usual badges of mourning are prepared for himself and his little daughters to wear on following the remains of the deceased to her silent home. All that decency and propriety would dictate in relation to the deceased, or to funeral ceremonies, was strictly observed by the prisoner on that occasion. A clergyman in the neighborhood is requested to attend the burial and preach a sermon in the church. This holy and respectable man attends, and at the house of the prisoner, before the sad funeral procession leaves his dwelling, supplicates the benediction of heaven on this afflicted man and his bereaved family. The last melancholy funeral rites are performed—the body is deposited in the grave—and the neighbors and friends repair to the church where a sermon is delivered by this minister of Christ. The conduct and demeanor of the prisoner during these solemn services has been differently represented by the witnesses who have testified in the cause. Mrs. Mangus tells us that after the corpse had been placed in the coffin the prisoner expressed a wish once more to see the remains of his departed wife, before the coffin lid should be forever closed upon them, and she entombed in that “narrow house appointed for all the living.” That he then came down stairs surrounded by his children, and took a long last farewell view of their beloved relative. She further states to you that Earls and the children wept greatly—to use the language of the witness “they all cried very much, Earls and the children”—in this she is corroborated by one or two others. But George Lilly, the undertaker, says no tears were shed by Earls; that he took particular notice for he “had his suspicions.” No wonder he did not see it; a man indulging such gloomy and horrid apprehensions would not have seen them, had there been a “fountain of tears.” But, gentlemen, you will recollect that those are all witnesses of the prosecution, and it is the business of the counsel for the commonwealth to reconcile their own testimony if they can. That the prisoner shed tears of deep sorrow for the loss of his wife, and wept with his children around the coffin, no one who heard the testimony in this cause can doubt. But it is said that at the grave yard he did not act as one mourning over the loss of a wife. No one tells you what his deportment was but George Lilly; he says that the coffin was opened at the grave, at the request of the neighbors who had assembled the other side of the river, and who had not been at the house of the prisoner, and that he did not then step forward to view the corpse, but stood a few feet from the grave and did not shed a tear. This has been the theme of many remarks and strongly animadverted upon by the Attorney General; and it would seem that no act of this unfortunate man, comports with innocence in the eyes of that gentleman. For, when the testimony was so conclusive that the prisoner was greatly afflicted at the loss of his wife, he tells you they were the tears of the *hypocrite* and drawn forth to elude suspicion; and when it is proved that at the grave yard he shed no tears, but stood in silent sorrow, gazing on each clod of earth which was covering all that was mortal of his lamented wife, then he tells you that the prisoner is an obdurate, and hardened villain, because he wept not before the staring multitude. What could he do which would be deemed an innocent act, by those who are so astute in seeking for some ground of accusation? But, gentlemen of the jury, if we view his conduct with the eye of fairness, and survey his every act during the whole of that melancholy scene with the vision of candor, no one can doubt but that it is the deportment of unsuspecting innocence. For when he indulges in grief, and gives vent to the full tide of irrepressible sorrow in his heart by tears, it is in secret and alone, where no human eye can see the inward agony of his soul; at his own house, when but few friends are around him, he takes a farewell look at her clay cold form, and if the rising grief of his heart

proves too powerful he indulges in tears in the presence of but few. And when he is at the church yard, surrounded by many he exerts his manly powers to suppress the overflowing streams of sorrow. And is not this a fair delineation of the character of innocence? Would the felon who seeks to conceal his criminal acts do thus? In public, amid the gaze of a surrounding multitude, would he not shed most profusely his tears of rank hypocrisy, and in secret laugh over his success in crime? Judge, then, whether my client's conduct in these various instances indicates guilt, or innocence. Say whether circumstances like these are to be taken as evidence of guilt, on which a jury are to base their verdict of condemnation, and consign to a *felon's death*, and a *murderer's grave*, him who has thus passed through those dreary walks of sorrow. If so, the house of mourning, and the grave yard, may be styled inquisitions of crime, where innocence cannot dwell unsuspected.

III. The third class of circumstances in our order of arrangement, is the threats and violence used to his wife previous to her death, and his estrangement from her.

Whether the prisoner ever threatened the life of his wife admits of great doubt, and on that subject the evidence is contradictory. His little girl Susan, tells you, that he said "he would lay her asleep." She tells you, also, that Mrs. Marinus was present when this expression was used. Mrs. Marinus states, that some difficulty arose between Earls and his wife; he was reproving her for some act she had done, and observed to his wife "you had better been asleep," than doing that for which he was rebuking her, when Katy replied "I know you would like to lay me asleep;" to this the prisoner answered that he did not say so, and that he intended no such thing. Unquestionably Mrs. M. has given you the true version of the affair. Nor is it surprising that Susan should have mistaken what her father said, or have forgotten the explanation made at the time by him when the controversy arose. And as to all that Susan M'Allaster has said about it, I lay it entirely out of view as unworthy of regard by an intelligent jury. You all listened to her story, and her answers on the cross examination; all of which could not fail to convince every candid observer that she is undeserving of the least credit. This is the only pretended threat, or assertion of the prisoner, that he would take the life of his wife, that has been attempted to be proved by the commonwealth; and I submit to your grave consideration whether it is entitled to the slightest weight, sustained as it is by very doubtful evidence, and uttered under circumstances that could not be deemed as evincing the least degree of malice against the deceased, or of a wicked, murderous and diabolical disposition in him. Could it be considered as even forming a weak and slender link in the long chain of disconnected circumstances on which the prosecution rest their cause? That his treatment of the deceased was cruel and unfeeling, on some occasions, is unquestionably true; but when we take into view the roughness of his manners, the station in society which he held, his total want of refinement, and education, and the hardened companions with whom he associated, is it surprising that on some occasions he may have manifested an unfeeling heart towards his wife?

But we are told that he treated her with cruelty and barbarity. When was the first time of which there is any evidence in this cause that it occurred? At a new year's, when he had been out with many of his neighbors keeping the holyday—in the language of the witnesses "shooting the old year out and the new year in." On his return, the witnesses all concur in saying, that he was intoxicated, more so than they had ever before seen him during his life. She then accused him on that improper occasion of being at Moritz's; and jealousy, with its scorpion stings, was vented upon him without restraint. Being highly excited with liquor, and conscious of his innocence that evening of having violated the laws of matrimonial life, he became easily offended, and instead of beating her cruelly, he put her in the cellar. Although I do not justify that act, I deny that it furnishes any evidence of guilt in this trial. The next act of violence that is alleged against him occurred in June 1834. Earls came up from the river and found his wife exceedingly intoxicated; he accused her of having been at the "whiskey bottle;" this she denied, although her every act and word, showed that she had too long paid her devotion to this idol of her taste, and still persisted in that denial, until a quarrel ensued, and to save her from exposure to the public gaze, on a warm day in summer he placed her in the cellar, without violence, until she was sufficiently sober to be seen by her friends. I ask you, is this cruelty? or rather was it not mercy and kindness in the husband thus to save her and himself from contumely and disgrace? And does this act add the least force to any circumstance against him? or is it evidence of a mind bent on mischief; and can it under this aspect of the case be considered as furnishing the least proof of a wick-

ed and malignant heart? Is this unfortunate man to be convicted of the heinous crime of *homicide* on such slight evidence of cruelty as this? But the ridiculous and fabricated story of the famous Susan Swenk, about John Earls drawing the deceased across the room with the stove rake, I shall pass without much comment; because of the improbability that the event ever happened, and being fully satisfied that this intelligent jury after witnessing her appearance during the whole examination are convinced that no reliance can be placed on what she has said; and that no human being ought ever to be convicted of the lowest crime on the veracity of such a witness. Is there then testimony in this cause of such violence and barbarity of the prisoner towards the deceased, as shows a heart utterly regardless of social duty, and a mind filled with malice, ready to wreak upon her as an object of detestation. But it is said if these acts do not furnish evidence of a *motive* for doing the horrid deed with which he is charged, that the prisoner had lost all affection for his wife, and had become passionately attached to another female—or, if the all absorbing passion of *love* had not gained a perfect ascendancy over him, and controlled his every act, that still guided by the most licentious wishes, and for the purpose of an uncontrolled enjoyment of them, he was ready to sacrifice the life of one to whom he was bound by ties and considerations of the strongest character to protect, and to have saved from every ill. It is in vain to pretend that the soft, tender, and soul subduing passion of romantic love, should ever gain that unchecked and uncontrolled sway in the bosom of this man, which would drive him with frantic impatience, to deeds of blood and murder, that grace with thrilling interest the tales of fiction; and form a theme from which the novelist would weave the fine wrought web of enrapturing romance. To say that a man, utterly destitute of education, who was brought up in the humblest walks of life, and from his boyhood inured to scenes of hardship, and all the coarseness and roughness of a boatman's pursuits, should be governed by sentiments as refined and exquisite as those which guide the hero of fancy, is too absurd for the consideration of an enlightened jury. It is in minds of a very different mould, and men whose habits and pursuits are of a very different character, where feelings of this description reign. Nor do the facts in this cause warrant the conclusion that an undying and unalterable attachment existed between Earls and Maria Moritz, who is said to be the object of it. If the witnesses are believed there is nothing in the cause that warrants such a conclusion. His little daughter has testified that when angry her father has declared to her mother "that he loved Maria Moritz." This seems to me to evince a desire to tantalize his wife rather than any peculiar attachment he had formed for Maria. There is no act or declaration proved before this jury that exhibits anything like the affection which would induce even a man in his rude and unpolished state to solicit in marriage the hand of this female who has been the subject of so much remark; or that would go to satisfy any candid observer of human actions that John Earls had a desire to be released from those sacred obligations that bound him to the deceased.

But it is alleged that licentiousness of the most debasing character directed the prisoner's course; that, lured and seduced by the fascinations of a lewd and prostitute woman, he was so far ensnared by her various attractions that he was ready to sacrifice every earthly consideration on the altar of *passion*. The learned gentleman who has addressed you for the prosecution seems almost to have exhausted our language in selecting sentences to describe fully the base and degraded state of that abandoned woman. And many witnesses have been introduced by the commonwealth to show how utterly lost to female virtue, honor and decency she had become—and to exhibit in her, a looseness of conduct and character that would disgrace the inmates of a brothel. Be it so, and I am willing this jury should consider Maria Moritz as degraded as the counsel opposed to us desire; and if she is thus debased and that is her true character, why should Earls have committed the crime of murder to have participated in this degradation to human nature? He had nothing to fear but the light punishment inflicted by our statute law for vices of this description, and which is rarely visited upon the offender. It has been conceded during this argument that John Earls was never legally married to the deceased; that he had another wife to whom he had been legally married when he began living with the deceased sixteen years ago. Then why should he fear her when he could cast her off as unworthy any longer to serve his purposes? And what motive could influence him to destroy her who only bore his name, if licentious indulgence could be obtained with the facility sworn to by John Shuman, or if the accommodation of Maria was of that liberal kind proved by Mr. Donley. So far, then, from the dissolute character of that female furnishing a motive for the commission of the crime,

the argument is ten-fold stronger for the prisoner; for would he jeopard his own life, and imbrue his hands in human blood without a higher object, when, if the infamy of Maria Moritz is established, all the sensual passions which we are told ruled and governed him, were gratified without molestation. No barrier of female honor or decency interposed—nor binding vows of matrimonial life encumbered or disturbed him. And what evidence of *motive* for the commission of this deed of blackness and of murder do all these acts furnish? None! I say none!

IV. The fourth class of circumstances relied upon is that the prisoner purchased arsenic but a short time before the death of his wife.

I am conscious that the purchase of a poison so hurtful and destructive as arsenic by an individual unskilled in medicine, and who from his pursuits in life could hardly be supposed to want it for any scientific or medical purpose, in cases of death by poison, is a strong circumstance against the individual accused, if he has recently bought the article, unless he satisfactorily accounts for it and shows the object to be one for which the article would be probably used. It is conclusively proved to this jury that the prisoner as early as 1827 purchased the article for an avowed and worthy purpose, and used it for the destruction of those animals that interfered with his fishing affairs. It is equally clear that he has repeatedly purchased it since and used it in the same manner, and we have proved by the testimony of Jacob Hoffman, a highly respectable farmer from the neighborhood where the prisoner resides, that he has for *ten years past* been in the habit of purchasing the article for a similar purpose; that he often used it for the purpose of killing the minks that devoured the fish which were caught in the basket. Can it, then, with any degree of fairness, be alleged that there was the least impropriety in the purchase by Earls of that article? Was it unusual for him to require a poisonous substance of this description for the purpose of enabling him the better to pursue his accustomed avocation? It is asserted by medical writers of high authority, that arsenic is an antiseptic, and consequently, gentlemen frequently use it for scientific purposes, such as the curing of birds and the like. And why should not the prisoner be permitted to use it for an object equally beneficial to him, without suspicion of the darkest hue being cast upon his motives?

An eminent writer upon medical jurisprudence, in remarking upon the circumstances that fix the criterion of guilt in cases of poison, refers to "the purchase or possession of poison a short time before the date of the alleged crime, and the procuring it under false pretences, such as for poisoning rats when there are none on his premises to poison, or for purposes to which it is never applied." (*See Ryan's Medical Jurisprudence, p. 266.*) If the prisoner has accounted for the recent purchase of the article, then no unfavorable inference can be drawn from it. And can there exist the least doubt in the mind of any one that the identical arsenic he purchased at Muncy was used by him in the manner described by his little son Samuel Earls? Is not the fact most incontrovertibly established that he had been greatly injured by the minks? Did he not state to his neighbors that those animals were greatly injuring him, and that he would destroy them? Was, then, the purchase of the poison made for an idle purpose? Do we not conclusively show that he had sustained an injury by those creatures; and did he not use it as he contemplated when he bought the article to destroy them? If suspicion rests upon the defendant because of the recent possession of the article, then that possession is fully accounted for, and the reason why he procured it clearly shown to be one that an individual above accusation, and removed from suspicion would assign. It seems to me if the clouds of suspicion, arising from the purchase of poison so soon before the death of Catharine Earls, hung over him, they are dissipated by the lucid and satisfactory manner in which he has thus accounted for every circumstance connected with it.

V. The fifth and last class of circumstances relied upon by the prosecution is the conduct of the prisoner at the time of his arrest.

In order fully to appreciate the force of the circumstances arising from the conduct of the defendant when arrested, it is requisite that we recur to all the facts attending the execution of that warrant which was the inception of the present prosecution. The blind superstition of old Mrs. Mosteller had first raised the report that the deceased had died of poison in consequence of an allegation on her part that Earls was afraid to touch the corpse of his wife, lest, peradventure, the print of his fingers should be left on the inanimate clay of the deceased; this, according to the vulgar prejudice of many in the neighborhood, and to the believers of ghosts and hobgoblins was conclusive evidence that Earls had murdered his wife. This strange, ridiculous story had reached his ears; he knew that it was without foundation. A

further report had reached himself and family that the excited neighborhood were to disinter Mrs. Earls, and his timorous mother had requested him to run off, which he refused to do. He had gone to Mrs. Mosteller to enquire whether her superstitious notions had induced her to be the author of such a slander. While there this party of six men came with the constable at the head and arrested him. He observes after the arrest, "it is no more than he expected;" and this we are told is an evidence of conscious guilt. After the great degree of excitement that he understood was aroused, and fanaticism, bigotry, as also superstition was brought to its aid to kindle higher the flame of public prejudice against him, and accusing him of being the murderer of his wife, was it at all surprising that he should anticipate a criminal prosecution for this alleged offence? And while he was yet discoursing with this "fortune teller," he is arrested and told that he was a criminal. What more could he expect, and was not the exclamation a natural one; and are you to infer guilt from so slight a circumstance as that? But we are told if this is not sufficient, there are others sworn to by this *gang* of witnesses which conclusively substantiate the prisoner's guilt. I will briefly examine what each of those witnesses has said. Jacob Hogendobler is the first that is called. My colleagues have very forcibly commented upon the credibility of this witness, and if he has deemed their language severe, or thinks the castigation he received a sore one, permit me to say I consider it justly merited, and that I fully concur in all of their remarks. I am not disposed to lavish any abuse upon this man; his conduct as a witness during his examination, and the restless and unwarranted interference in this trial, speak their own comment to a jury when they weigh his testimony by the standard of truth. But I cannot forbear presenting the facts already fresh in your recollection, before this assembled multitude, as a fearful admonition to all who may be tempted to depart from the path of truth, that a disgraceful exposure awaits them. This man was called upon by the commonwealth as a witness; and when submitted to a cross examination, there was evidently a great degree of prejudice existing in his mind against the prisoner, and a desire to exaggerate every circumstance against him; the recollection of the witness is exhausted; he retires on the supposition that *all* had been stated that he knew in relation to the cause. Often after this he was seen in open court communicating with the Attorney General while other witnesses are examined, and then after a lapse of two days he comes before the court *voluntarily* stating that he had omitted something which he wished to communicate, and with all the feeling of a party in a cause he gives a train of conversations with the prisoner that he fondly deems will go more fully to evince the prisoner's guilt. Having discharged all the venom that his malevolent heart could contain, and that too I fear at the expense of his conscience, Jacob again retires, until the commonwealth wish if possible to impeach the credibility of some of the defendant's witnesses, and then a new field is opened for an exhibition of his bitterness against the prisoner, and Jacob again appears and stands ready to impeach the veracity of any witness who had appeared for the defence. The suspicion of the prisoner's counsel could but then be aroused, and we asked him if "he had not said that John Earls would be hung," and many other enquiries were put calculated to expose his prejudiced mind, all of which he most unequivocally denied. After leaving the court and during the evening, having ascertained that we would flatly contradict him and prove that "he said that John Earls would be hung," and many other things which he had denied, the next morning he again appears *voluntarily* before the court and asks liberty to explain, and admits all which he had so explicitly denied the day before. An admirable subterfuge for a witness to avoid contradiction when he sees a fearful exposure awaits him. I leave this witness and his testimony before an intelligent jury to determine what reliance can be placed upon his assertions, whether life is so cheap that it must be destroyed by the deep malignity of *such a man*. There is one feature about the testimony of those witnesses who arrested Earls which is very striking. I allude to the discrepancy between them in relation to his declarations. But all concur in one fact, and it is in this, that John was highly excited with liquor soon after his apprehension, if not at the time. That he should when intoxicated have made assertions that were highly improper is not surprising; that his expressions were of a coarse, vulgar and profane kind, I do not deny; but they were precisely such as might be expected from a bold, rash and daring boatman, when accused of a crime of which he knew he was innocent. And clearly they were not in the nature of confessions or admissions of guilt, nor if fairly understood and viewed with the eye of candor to be received as evidence of it. He in the most reckless manner states to them, "take me and hang me by the Lord, as old Johnny Morton used to say," a speech almost

without meaning, and one which no man who had taken the life of his fellow being would make; it was a remark of a very volatile and sportive kind. We are told that he attempted to make his escape, and the foot race after they passed from the house of Mrs. Callahan is brought as evidence of it. And pray what does it amount to? Earls had taken a drink in there; he came out and told them that he would run away from them and starts off, and two of the company kept up with him. Mr. Lebo tells you that he was very ill and not able to move with much rapidity, and yet he followed within fifteen or twenty yards of him. And what was his opportunity for escape? A steep mountain on one side whose face was almost perpendicular, and the pool of the dam on the Susquehanna river where the water was excessively deep on the other, and the officer with his company which arrested him all upon the towing path of the canal with Earls. To pretend that under these embarrassments he would have attempted to escape, is idle and ridiculous. But it is said that when he reached Thomas' house he refused to walk and attempted to jump over a platform at the end of the house and was caught by Wendle; but what was his object? Did he not declare that it was for the purpose of getting a drink? He was quite-intoxicated; the artificial thirst which he had created for ardent spirits was not easily allayed, and a desire to gratify that appetite alone induced him to endeavor to enter the house contrary to the wishes of his pursuers, and those who were holding him in duress. And although he then refused to go further without a wagon, it was evident that it was a caprice excited by artificial stimulants which induced him to prefer riding to walking, and the placid manner in which he after a very little persuasion was induced to continue his pedestrian trip to the office of the magistrate, is conclusive evidence that it was not to evade an investigation of his conduct that induced him to trifle with the constable and his band.

We are also told that Earls admitted he had purchased arsenic, and true he did with indifference to its consequences. He told the reason why he had purchased it and what he had done with it, and has proved before this court and jury that he used it for the purpose which he then disclosed. "He said he had purchased and would do it again for the purpose of destroying the minks, and he would tell it to their teeth." Does this satisfy the mind that crime was lurking in the heart, and that this was all bravado? No, gentlemen, it portrays in true colors the character of the man, and the indifference with which an innocent man accustomed to his adventurous course of life, views danger and an accusation which all the better feelings of his heart told him was groundless. And there are some facts connected with the arrest calculated to show that the thought of eluding justice, or escaping from the hands of the officer of the law could not have entered his mind. When they left the canal the company walked through an open country for nearly three miles to Muncy, and part of the way through the woods. Earls was perfectly acquainted with the country around them, all the recesses of the forest, and it was after night and no moon whose rays would light their path, yet he does not offer to escape; when, if that had been his object, the moment he entered the woods he would have been lost to his pursuers. When brought to Muncy he is detained for more than twenty-four hours at a public house, most of the time in charge of but one man; no fetters, handcuffs, or cords bind his powerful limbs, and he a man of nearly twice the physical strength of his keeper. Had he been desirous of evading a trial, might he not have eluded the most active of the officers of justice? With all these various facts and considerations attending his arrest, I submit to every unprejudiced mind whether there was anything in it inconsistent with the innocence of the prisoner.

I have now remarked generally on the respective classes of circumstances relied upon by the commonwealth to sustain the present indictment. And permit me to enquire, might not all these be true and still the prisoner not be guilty of the crime charged against him? Do they exclude every other hypothesis, or reasonable probability of his innocence? What circumstance have we discovered during this brief survey of the testimony that cannot be reconciled with his entire freedom from guilt? yea, I might say, suspicion of it. And do not these circumstances, weighed in the strongest manner against him, leave a doubt upon the mind of the jury? If so, that *doubt* operates as an acquittal, and demands from you a verdict in his favor. This is the testimony for the prosecution, and on this would a jury hazard a conviction? Could the mind and conscience rest easy after a verdict of guilty against this man on the evidence before you adduced by the commonwealth? And this must be done before any one fact need be offered by way of defence.

But, gentlemen of the jury, if one dark suspicion has crossed your minds from this evidence that all was not right with my client, and that a shade of guilt had

been cast o'er his path by this cloud of witnesses for the prosecution, I think it all is dissipated by the testimony offered by the prisoner, and all suspicion must vanish before the clear rays of truth and innocence reflected by the facts which we have proved. I deny that we are called upon to fix a criminal agent; it is for the prosecution to point him out so clearly, that no human being can mistake him—that his guilt should be as conspicuous, and the evidence of the crime as indubitable, as that fixed by Divine vengeance upon Cain, the first foul assassin who stained his hands with the blood of man. But I shall contend that the testimony produced by the defendant for your consideration, designates more clearly a criminal agent than any laid before you by the commonwealth, and in briefly reviewing this branch of the case I shall arrange it under three classes.

I. That there were motives as powerful for the deceased to commit suicide as there were for the prisoner to commit the murder charged upon him.

II. That the previous declarations of the deceased, that she would take her own life, are strong evidence of self destruction.

III. The deceased had arsenic in her possession and therefore she had the means that effected her death.

I. And first, what were the motives for the deceased to leave this world for an untried and eternal existence—uncalled by her Creator? It is admitted by the prosecution, that the prisoner and the deceased were never married—true it is that they had lived together as man and wife for sixteen years, and in open violation of the laws of society, in disregard of the law of the land, and in contempt of the sacred commands of their God. That a continued reflection on this open and constant commission of crime, should be calculated to produce depression of spirits in the mind of this unfortunate female, would be in accordance with our knowledge of the human character. She saw (if the testimony of the commonwealth is to be relied upon) that the slender ties by which the prisoner was bound to her were about to be severed—that the fancied affection, or preference which she had fondly hoped was cherished by him for her was illusory, and all the tenderness of heart, or kind affections that he possessed were about to be placed upon a *harlot*; and for aught she knew this abandoned creature would soon be brought to act the mistress of the house of her pretended husband. For the deceased was well aware that no marriage contract or connubial engagement, bound the prisoner to her—that their little ones around them just shooting into youth and life were branded with the disgrace of illegitimacy. Would it be surprising then if the never-dying consciousness of shame should prompt her to any deed of darkness, or destruction, that would prove even a fancied antidote for the cankered guilt, gnawing at the secret fibres of her heart? Or that the blind infatuation of jealousy, with the rage of a demon, would drive this female to take her own life and involve him who had aroused those jealous passions, in the guilt of her own self murder, as a punishment for his unfaithful conduct. For *revenge*, of the deepest and blackest die, is the inseparable ally of jealousy; and that long engendered in the soul, fits the subject who has encouraged its growth for any grade in crime. And the powerful motive that might take possession of her mind and induce her to leave, what to her was a scene of distress and unhappiness, would be the consideration, that if John continued his devotion to Maria, and chose to make her the mistress of his house, and the object of his attachment, instead of continuing it upon the ill-fated Catharine, she had but a poor claim on him for a support, and perhaps would be driven from his doors to seek food and raiment by her own industry, or suffer the ignominy of pauperism. And the dire misery of poverty often drives its subject to desperation. Would it be strange, with all the embittered hatred, that the frequent domestic quarrels, and the brutal violence of the prisoner towards the deceased, (which the prosecution allege he has been guilty of,) is calculated to foster and increase, that if she did commit suicide, that the cause of her death should be buried in the same silence with her own mortal remains, and thereby indirectly take the life of him who had been the cause of her destruction. Here then are causes, and inducements for self murder, as forcible and more strongly marked in character, than any which have been exhibited against the prisoner to destroy his wife. Why then, may she not be considered as the agent of her own death, and the cause of all the misery about to be heaped upon the unfortunate prisoner? I am aware that there is something very revolting and abhorrent in the mind, against the belief that one whose memory we would gladly wish to reverence has been her own murderer. But no sickly delicacy about the dead, ought to prevent a minute investigation of the cause of a death alleged to be violent, when, by so doing, the life of one in full being may thereby be saved. If *motive* is a strong

circumstance to convict on presumptive evidence, wield that *isolated* circumstance with the same force against one who has committed the crime of self destruction. Let the same kind of evidence have its equal weight against the deceased and the accused.

II. The second class of circumstances on which we rely that she might have committed suicide, are the previous declarations of the deceased, that she would take her own life, and they are powerful evidence of self destruction.

The melancholy predictions, and often repeated assertion by Mrs. Earls, that she should die at this confinement, that this sickness would be her last, coupled with the fact that her existence was terminated at this particular time, is very remarkable, and cannot be rationally accounted for on any other supposition, than that she died by her own hands. These facts tend irresistibly to impress the mind with the firm conviction, that she had long contemplated being the cause of her own death, and that she had resolved that self murder should be her fate, disregarding the consequences that such a death might produce on others, and perhaps glorying that she would bring destruction on her husband, whom she fancied was slighting her love and devotedness. It is an incontrovertible fact, and in accordance with the experience of mankind, that those bent on the commission of suicide, whether that determination arise from a hallucination of mind and a deranged state of the intellect, or from a weariness of this world, arising from domestic or other misfortunes, invariably indulge themselves in those dark and mysterious hints about their shortness of life, presaging particular periods when they shall bid adieu to the joys or sorrows of earth, and assume an untried and unknown state, in that world where the comprehension of man has never reached. If threats of destruction made by the prisoner against the deceased are to operate as a circumstance of guilt against him, why should her threats of doing violence to herself, or her prophetic declarations of her short earthly career not be entitled to the same weight, when the probabilities are so strong that she must have died from her own hand? Why did the deceased tell her little daughter that she soon must leave them? Why say to an acquaintance that she would never see Milton again, or her old friends there? and this communication was made to a young man, and delicacy forbids that she would have had an allusion to any other cause, than that of suicide. She tells to Mrs. Marinus if she could not get an opportunity of giving the poison to Maria Moritz, she would take it herself. This shows the state of her mind, the object she had in view as it regarded her own life. Why should she say to James M'Coy, a young man who had often been at the house, that "she wished to Almighty God, she had something to put her out of the way, for she was troubled in this world?" It can be accounted for only on the ground that she was brooding over the sorrows of her lot and from a morbid melancholy state of mind, she desired to be free and wished to be relieved from all the overburdened cares, and poignant wretchedness that seemed cast upon her path. Why did she say to Alexander Marinus, when he was about to go down the river, that she never expected to see him again and that she had not long to live, unless she was contemplating this death which seems was her portion?

If this testimony is believed it furnishes a chain of circumstances more strongly to illustrate the guilt of herself, as being the one who committed the murder in this case, than any which has been exhibited to show that Earls took the life of the deceased. But we are told that the witnesses introduced on the part of the defence are not entitled to credit. And I admit an effort has been made to impeach the general character of some of them. Let us enquire what witnesses are not impeached, and who stand above suspicion, who have testified to the declarations and threats made by Mrs. Earls a few months or weeks before she died. Mary Ann Earls, the daughter of the deceased, is the first that gives an account of them; this witness was introduced by the prosecution, and on her testimony they firmly rely to sustain this indictment, therefore it will not be in their power to question the correctness of her story, or invalidate the force of her testimony; consequently she must be presumed to have told the truth so far as the commonwealth is concerned. Zachariah Welshanse, is the next witness who speaks of them, his remarks are fresh in your recollections, and no one has questioned his veracity. James M'Coy has also testified most conclusively to this point, and the envenomed tongue of slander has not whispered aught against his character for truth and veracity. Then there is the testimony of three witnesses who are entitled to full credit, that unequivocally establish the fact of her unshaken belief that she soon would die, and that too by her own hands.

Diantha Marinus, Alexander Marinus and the Moritz girls, all testify to the same

facts. Now it is a rule of the law of evidence, if a witness is impeached and that witness is corroborated by the testimony of others whose credit is unshaken, then the assertions of that witness are entitled to full credit. Again, if an effort is made to shake the credibility of a witness by impeaching his general character, and there is a failure in the attempt, then such witness is entitled to the fullest credit. Let us apply this last rule to Mrs. Marinus. The first witness that speaks of her character is Christian Page; his language is, that "her character for truth and veracity is not much—it is bad so far as I know." This witness does not say that her general character for truth and veracity is bad, which is the only matter that can be given in evidence to impugn the veracity of a witness; he says it is bad as far as he knows. This man has not pretended that he was acquainted with her reputation generally; it is merely his own individual opinion, and not *her general reputation*, which is the only thing that could be legally enquired of, and of that this witness by his own admission is ignorant.

Mrs. Callahar, who from her own acknowledgment on oath here is living in an open state of adultery, is the next witness called to give evidence as to character. A woman who, herself devoid of reputation, is called to speak of one of her own sex, and what does she say? Why "Mrs. Marinus does not bear a good character in her neighborhood," when she admits that her acquaintance has been but short with Mrs. M., and when she stayed but a few months in that part of the country—when Mrs. Callahan never heard three persons speak of it in the world, and then only to reiterate the scandal propagated by her own slanderous breath, which would pollute if possible the reputation of the individual whose name she would only mention. Jacob Hogendobler is the next that is called, and he admits that he knows nothing about Mrs. Marinus' character. John Shuman is the next, and he knows nothing of her general character. George Lilly is next called, and he utters not a word against her. Those are all the witnesses called by the commonwealth to invalidate the testimony of Mrs. Marinus, or to injure her reputation. To support her, we have introduced Mr. Doubt and Mr. Mangus, who have known her for some time; they are men of business, and whose acquaintance through the neighborhood is much more general and extensive, they tell you her character is good, they have not heard it called in question, and Mr. Mangus says he would believe her on her oath. Then upon the subject of character most unquestionably the weight of evidence is in her favor; she is corroborated in her statements by others who stand unimpeached, therefore, it is the duty of the jury to give full credit to all she said.

Alexander Marinus, stands still clearer from suspicion; even less has been said against him; and from the candid, fair and impartial manner in which he has given testimony, little doubt can be entertained of the truth of all he has said. Then here are five witnesses, who are entitled to the fullest credit, that all concur in establishing the fact of those declarations by the deceased, of a desire to be removed from this world, and of a determination to sever the cords of life with her own hands. If she died in consequence of the presence of arsenic, from whom did she receive it? Who administered the deadly potion, and mingled the fatal cup, which deprived her of life in this sudden manner? Does any one doubt but that she was her own destroyer? Another circumstance on which we rely to show that the deceased might have committed suicide, is the fact that she had arsenic in her possession which it is alleged was the means that effected her death.

It is conclusively established that many months anterior to this melancholy affair, Mrs. Earls had this destructive drug in her possession; she threatened to make use of it for the purpose of poisoning the cow of a neighbor. She wished to conceal it from her husband, and when by accident he happened to find the paper which contained it, she at once in a rude manner takes it from him, makes no explanation of her conduct, and gives no reason why she does not wish him to know the contents of the paper. But in speaking to her niece, Mrs. Marinus, a day or two after, the secret is disclosed. She states why she kept the article—that it was for the purpose of destroying Maria Moritz. The hatred of the deceased towards her, was of the most malignant nature, (whether without a sufficient cause is not for me to determine;) no time or opportunity seems to have offered favorable to gratify the bitterness of her anger against this female, arising from jealousy of the most savage kind. Is it strange that Mrs. Earls should have destroyed herself? In cases of death by poison, the possession of the article, unaccounted for on some rational ground, is strong evidence of guilt. (See *Ryan's Med. Jur.* 228.) And why, when there is a great probability of self-murder, should not the same circumstance have its full weight; why not receive it with all the force to establish the one crime, as the other, when

they are of the same grade, and deemed equally offensive to God and man? Let the argument have its full effect for the prisoner, as it is intended to have against him. Is not the presumption arising from her possession of the article, too conclusive to be passed in silence? For the sake of the deceased, I would gladly be willing that the grave, more dark and concealing than the veil of charity, should hide this last fault and cover her every crime; but when to conceal and hide them, would endanger the fate of the living, a duty which we owe the prisoner and the world, requires that this last and fatal crime should be brought to the public view.

Gentlemen of the jury, having brought to your consideration all the prominent facts and circumstances which operate against the prisoner, and those which arise from the testimony that has been produced in his favor, can any unprejudiced mind say that the circumstances are of that conclusive character which would authorize a verdict of guilty against him? Does not a reasonable doubt exist of his guilt? If so, then the law of the land, the solemnity of your duty on oath, requires a verdict of acquittal. There are a number of authorities upon the subject of doubts that arise in the minds of jurors in criminal cases, and suffer me to call your attention to a few on that subject. See *M'Nally's evidence*, p. 578; 1 *Starkie*, 514; and a very learned American judge has said that if one juror entertains a doubt, it should operate as an acquittal of the prisoner. See 3 *Wilson's Law Lectures*, p. 177; 2 *do.* 387. And the propriety of this principle cannot be more fully illustrated than by directing our attention to the various reported cases where there have been convictions on circumstantial evidence, where subsequent events showed the entire innocence of the individual charged with the offence. Here Mr. PARSONS read from *Philips' Evidence*, appendix, pages 67 to 71, 82, 89, and 92, and perhaps no cases more clearly show the great impropriety of convicting on circumstantial evidence. In a case like the present, fraught with doubt and uncertainty, the remark of Lord Hale (familiar as household words) may be repeated with its full effect, "that it is better that ninety and nine guilty persons should escape than that one innocent individual should be condemned."

I am conscious of the unpleasant and awful situation of this jury; and if error should arise in your deliberations, (which God grant may not be the case,) let me entreat you to err on the side of mercy, and then the conscience could rest secure in all after life, and solace the soul of man in the regions above. It is highly important that you weigh well the verdict you are soon to pronounce upon this ill-fated man. And let us for a few moments cast our eyes to the future, and contemplate events that might arise. Suppose that amid this vast mass of evidence, you should pronounce the awful and irrevocable verdict, of *guilty*: the sentence of the law which necessarily follows, and must be rendered by this court, is that of *death*. The prisoner is taken from this place to the lonely dungeon, from whence he is daily brought, and there await the dreadful day of execution. Before that dread hour shall arrive, probably some months may roll by—and although heaven grant that long life may be the portion of each and all of you, yet man knoweth not the day or the hour he may be called to leave the scenes of earth for another existence, and if one of you should be cut off from this life amid your health and usefulness, before the awful day of the prisoner's execution should arrive, and summoned to the presence of the Unknown God, and there learn from the book of life, out of which man is to be judged, the events of your earthly career, and it should be disclosed to your astonished view, that this man is innocent, that while public excitement was aroused, and unfounded prejudice reigning, you had condemned to death a man free from the guilt of murder; would not even heaven itself, with all its blissful pleasures be to you a scene of unutterable misery?

Do not, gentlemen, I entreat you, expose yourselves to the unhappiness that awaits the consciousness, that the *innocent* have been condemned by your decree. I have no appeal to make to your feelings or your passions, although the persons to be affected by your verdict may well excite sympathy and compassion in every bosom; and if *mercy*, angel-eyed and heaven-hearted as she is, ever wept over the misfortunes of mortals on earth, it would be over this ruined and sacrificed family. The wife after a few short hours' illness dies; the husband is accused of being her murderer, and the mother, borne down with years, her cheeks furrowed with age, is called to witness the trial and degradation of her son. His little daughters, just budding into womanhood, by the unbending requisitions of the law, appear as witnesses against him, and, joining with their little brother, cling about the criminal box where their accused, half condemned, but still beloved father is confined, mingling their tears and prayers with his, for a safe deliverance from the high and vengeful

crime with which he is charged. The little infant that scarce drew one day's nourishment from a mother's breast, has appeared before you in the arms of a stranger, (a witness in this cause) as if by its childish smiles to supplicate mercy for an innocent father. For these little ones I plead not; nor no appeal to your kindness do I make in their behalf. It is on the high and ennobling ground of the rules of law, that I place his right to an acquittal. It is to the intelligence and justness of a jury that I apply for a safe deliverance of this man. We call upon you to scrutinize every syllable of this testimony, as if your own existence depended upon the result, before you pronounce upon it. We pray you, who are the judges of the law and the fact, to regard the wisdom of the law which has been sanctioned and sustained by the experience of ages, and be satisfied beyond a *doubt* that these facts cannot be true, and the prisoner innocent.

SPEECH OF FRANCIS C. CAMPBELL, ESQ.

FOR THE COMMONWEALTH.

If the court please,

Gentlemen of the jury:—

Having given a most patient and attentive hearing to the evidence in this cause, you are fast approaching the period when it will become your solemn duty to pronounce upon the fate of the prisoner at the bar. The crime with which he stands charged is one of the deepest dye. Murder, perpetrated by means of *poison*, has, among all civilized nations, been considered an offence of peculiar enormity and of the most malignant character. It has been observed by an eminent law writer that, "of all species of deaths, the most detestable is that of poison;" and the reason he assigns for its being so, is this, "because it can of all others be the least prevented either by manhood or forethought." The midnight assassin who steals to the bed side of his sleeping victim, and accomplishes the bloody deed by the pistol, the dagger, or the knife, must hold an inferior place in the scale of crime, compared to him who administers the deadly potion to the object of his malice. In the one case death is instantaneous—in the other—disease, attended by the most agonizing pains, and heart-rending sufferings, as in the case before us, are the precursors of dissolution. When man presents the poisoned cup to his fellow man—we shudder at the thought of his depravity and the cruelty of his heart! The very act evinces such cool deliberation, such a settled purpose and diabolical disposition—that we are induced to believe it were impossible to conceive of any offence of a still deeper hue. But, when we behold the husband, and that too upon an occasion when, if ever, the sympathies of our nature are called into lively exercise—when the heart of the *savage* is softened and indicates *some* degree of feeling—mingling the deadly poison with the food prepared for his unsuspecting wife, prostrate on her bed of confinement, with her new born babe slumbering by her side; we are lost in the contemplation of a scene, exhibiting a heart so regardless of all social duty and abandoned to the most enormous crimes!

But, gentlemen, it is not my desire, as counsel for the commonwealth, to arouse your feelings upon this interesting occasion; and why the counsel for the prisoner should have so repeatedly referred to an existing prejudice, and public feeling against the defendant, I am at a loss to conceive. Excitement has not been unusual on similar occasions, and *may* proceed from the most laudable and praiseworthy motives—an honest disposition in the citizens at large to see that the criminal jurisprudence of the country is not disregarded by suffering offenders to go unpunished. We are not to presume that the crowds that have been in daily attendance during the progress of this trial have been actuated by any base or inhuman feelings towards the prisoner at the bar; but rather, that they have been prompted by a spirit of curiosity, so natural to us all, accompanied by a desire to see the majesty of the laws vindicated, and their violators brought to condign punishment. I charge you to divest yourselves of all prejudice, if any such has infused itself into your minds. We neither *ask* nor *expect* a conviction at your hands unless founded on the clearest principles of law, and the testimony in the cause. A verdict, in any case, induced by a vindictive feeling, or prompted by public clamor, would be contrary to the spirit of our institutions, and have a direct tendency to subvert those rights and liberties so extensively enjoyed, and highly prized by us as citizens of the United States. When the time arrives that such motives actuate the minds of jurors, we may indeed tremble for the safety of our republic. But, while the trial by jury re-

mains pure and undefiled, we may trust our most precious rights to that *box*, as the ark of our safety. It has been asserted that the prisoner has not had a fair opportunity of bringing his defence before you. That he has been in confinement, and had no friend to render him assistance. You have heard, that, owing to the alleged absence of some of his material witnesses at Dec. term, the cause was continued until the present court. The same means were in his power that all other prisoners enjoy. Whenever required, the process of the court has been promptly granted him. We have heard of nothing being withheld, that was requisite to enable him to establish his defence. He has had the services of counsel of learning, experience and ingenuity, who have displayed unwearied zeal, and great ability, during the progress and throughout the whole of this tedious and important cause, leaving nothing unattempted that their ingenuity could suggest or their eloquence enforce. The court, acting in the discharge of their duty to the commonwealth on the one hand, and the prisoner on the other, and ever remembering the humane injunction "to administer *judgment in mercy*," resolved every piece of testimony offered, either by the commonwealth or the prisoner, of a doubtful character, in favor of the prisoner, thereby affording him every advantage, consistent with the faithful administration of justice. There was a limit at which it became the *duty* of the Court to stop; for by the admission of illegal testimony, the rights of the commonwealth would have been brought into jeopardy. Hearsay testimony, with the well known exceptions, recognised by the law, is never admitted in judicial investigations, and would be productive of the greatest evils. No man's life, liberty, reputation or property would be secure if all testimony was not delivered under the sanction of a judicial oath.

But it has been urged that the evidence adduced on the part of the commonwealth is merely presumptive, or circumstantial, and, therefore, dangerous to be relied on. In support of this position, the counsel for the prisoner have referred to a variety of cases to be found in the books on criminal law, and have artfully applied them to your passions. If the nature of this kind of evidence is not rightly understood, and juries are induced to disregard it, great injustice will be done the public; and the authority of the law be set at naught. Why are you permitted to hear such evidence, if, the moment you have heard it, you are to cast it aside as deserving of no consideration? When a case is brought before you which depends not upon *positive proof*, but upon a variety of circumstances, tending to prove a certain fact, as honest and intelligent men, regarding the solemn oaths you have taken, you are bound to consider it, deliberately and maturely, to give it all the weight it deserves, and if it carries with it conviction to your minds, it is your duty to act upon it, fearless of the consequences—useless, otherwise, would be those reasoning faculties, and that capacity to judge which your Creator has given you. The incendiary, who, in the silent hour of the night, applies the torch to your dwelling, or the prowling thief, or murderer, calls upon no witnesses to behold his guilt! If not by presumptive evidence, how are you to trace out their villainies and crimes and bring them to punishment? They must all pass with impunity, and a jury, under the continual dread of doing wrong, are never to do right. In more than half the crimes that are committed, no positive proof could possibly be produced. How are you to discover the assassin, unless by resorting to the *means* used and the *motives* which induced him to commit the direful deed. Former grudges, threatening expressions, barbarous treatment—the purchase of *poison*, or other instruments of death, without being able to account for them, in a satisfactory manner, and a variety of circumstances, unusual and extraordinary in the conduct of men, and which can only be calculated for mischief, *must*, when the case is presented for public investigation, become the subject of close examination, and upon their conclusiveness, or otherwise, the party charged must be pronounced guilty or innocent.

We do not differ from the counsel of the prisoner, in regard to the rules and principles laid down in the books, applicable to circumstantial testimony. These are too well known to all lawyers—have been so long recognized and acted upon, as to admit of no question. Among those referred to by them, is the following, as laid down in 1 *Starkie, Ev.* 506, *Sec.* 76. "It is essential that the circumstances should be of a conclusive nature and tendency. Evidence is always indefinite and inconclusive when it raises no more than a definite probability in favor of the fact, as compared with some definite probability against it, whether the precise proposition can or cannot be ascertained. It is, on the other hand, of a conclusive nature and tendency when the probability in favor of the hypothesis exceeds all limits of an arithmetical or moral nature." The learned writer and compiler of this standard work, in this passage, gives us a summary of the law on this point. We wish you

in your deliberations to be guided and governed by it, and in so doing, also bear in your minds the humane maxim of the law, quoted by the same writer, in the course of his observations, "that it is better that ninety-nine offenders should escape than that one innocent man should be condemned." I repeat, that the commonwealth does not *ask* at your hands the conviction of the prisoner unless we have established his guilt according to those settled principles of law, and by a chain of circumstances, excluding all probability of any other being the criminal agent, to the satisfaction of your minds and consciences, "beyond all reasonable doubt." To this last principle read from *Philips's Ev.* 58, and *1 Starkie, Ev.* 514, we do most cordially accede. It is this that places circumstantial evidence in the same rank with positive. You have also been told that this kind of evidence ought to be received with great caution, and books have been read to shew this, and cases of *innocent* men who were condemned upon such testimony and executed. We agree with the gentlemen that it ought to be received with great caution; and where the circumstances are few, that caution ought to be, if possible, the greater. But, after all, it is but *caution* in the reception, that is enjoined, and not a disregard or rejection of such evidence, for the same writer, in the same volume, page 78-9, observes, "It is essential to the well being, at least, if not to the very existence of civil society, that it should be understood, that the secrecy with which crimes are committed, will not insure impunity to the offender. Circumstantial evidence is allowed to prevail to the conviction of an offender, not because it is necessary and politic that it should be resorted to, but because it is in its own nature capable of producing the *highest degree of moral certainty* in its application. Fortunately for the interests of society, crimes, especially those of great enormity and violence, can rarely be committed without affording vestiges by which the offender may be traced and ascertained. The very measures which he adopts for his security not unfrequently turn out to be the most cogent arguments of guilt." I shall refer you, gentlemen, to but one more passage to be found in a work of high reputation on criminal law. *1 Chitty*, 458-9. "From the obscurity with which some kinds of crime are frequently covered, the jury must often be compelled to receive evidence which is merely circumstantial and presumptive. It would be to little purpose to detail the curious distinctions which some of the *older* writers have taken, and the multifarious instances with which they have endeavored to explain them. It seems, however, to be a good general rule that no one ought to be convicted, before a felony is known to have been actually committed; so that no one should be found guilty of murder before the death of the party is actually ascertained; nor of stealing goods, unless the owner is known, merely because he cannot give an account in what way they came into his possession. But the circumstance, that individuals have occasionally suffered on presumptive evidence, whose *innocence* has been afterwards ascertained, ought not to prevent juries from attending with *caution* and deliberation, to this species of evidence; for the evil is comparatively small to that general impunity, which the worst offenders might obtain, if this kind of proof were never to be regarded." From these authorities you will readily perceive that we do not conflict in our views as to the nature of, and manner of receiving and acting on, this kind of evidence. We are all seeking after the *truth*, and to obtain it, upon this occasion, must avail ourselves of the means which the law places in our power. By a conscientious and faithful use of these, you cannot but arrive at a correct decision of this case.

In summing up the testimony, I shall endeavor to bring it before you in as clear and comprehensive a manner as possible, with a view to precision and arrangement. This, from its being so voluminous, is no easy task, and yet my duty requires that I should adopt the method most likely to accomplish this object. The one which presents itself to my mind as best calculated to embrace all the testimony, and at the same time afford me an opportunity of replying to the arguments of the counsel for the prisoner, pretty much in the order in which they were made, is the following:

- I. Did the deceased come to her death by means of poison?
- II. Did she commit suicide?
- III. If not, did the prisoner perpetrate the act?

I think I may say, without fear of contradiction, after the full, clear and scientific details given by the several physicians and chemists examined on this occasion, that your minds must be free from all doubt, that the deceased came to her death by poison, and that that poison was *white arsenic*. Indeed, the counsel for the prisoner appear to be so fully satisfied of the fact, that they have dwelt but little on that part of the case. True, they speak of the uncertainty of probabilities in themselves, and

that an indefinite number of these cannot, in the nature of things, produce certainty. But this argument, as you will readily perceive, is not founded in reason and good sense. One circumstance, for instance, may not, and ought not, to induce a jury to convict; yet a number of circumstances connected and well supported, will, and should lead to a conviction. So in the science of chemistry, and the tests used to ascertain the presence of arsenic, you have heard that no *one* test, or perhaps any *two*, are deemed *conclusive* by writers on medical jurisprudence; yet, when *all* the most approved tests are resorted to and concur in producing the same result, by a variety of experiments, it is acknowledged by all writers, who are deemed good authority, that absolute certainty has been attained. But the learned counsel have attacked the science of chemistry itself, and have held it up to your view as undeserving of any confidence—as altogether a chimeræ. They have compared it to soap bubbles, “blown by one chemist to-day, and exploded by another to-morrow;” a vain speculation upon the credulity of the world! I would ask, are the gentlemen serious when they address you in this style? No, gentlemen, as men of science themselves, they know full well that chemistry occupies a conspicuous place among its sister sciences; and men who have devoted their lives and talents to the pursuit of it, have secured for themselves an undying fame, as public benefactors. By its laws and analyses, the principles of all bodies are ascertained. By it the various properties of our food, the nature of the medicines used to restore health, and an infinite variety of matters closely connected with our comfort and well being, are understood and regulated. This science, like all others, is progressive, and capable of still higher degrees of improvement; and important discoveries are made from time to time, that go to elucidate and advance those made at an earlier day.

I shall, however, proceed as briefly as possible, to bring to your view the testimony bearing upon this point, and in doing so shall endeavor to omit, as far as practicable the scientific terms used by the medical gentlemen who have been examined. Indeed those gentlemen, at the intimation of the Court, explained most of the terms used by them in the course of their testimony, and, I presume, you felt no difficulty in comprehending them.

As an accurate examination of the body of the deceased was of the greatest importance, the Coroner of the county selected distinguished men in their profession to attend at the place of disinterment, with the jury, to examine the external appearance of the corpse, to open the body and make the anatomical examination. Drs. Dougal, Ludwig, and Peal attended, and have given you a clear and satisfactory account of their operations. The veins of the brain were much distended, and very dark colored. The veins of the lungs were also filled with the same colored fluid. The nails on the fingers were of a black color. They next opened and examined the heart. This fountain of life exhibited peculiar evidence of violent action. There had been more blood sent to it than is usual and of a darker color. The left auricle and ventricle presented an appearance scarcely ever seen, being half filled with the same colored blood. The stomach next became the subject of examination. And here the indications of the existence of poison made their appearance by a strong inclination in the coats to separate from each other, a dark colored fluid, and intense inflammation, approaching to dark mahogany color. The small intestines throughout their whole extent were likewise in a state of inflammation. Discovering no other cause of death than that occasioned by the diseased state of the stomach, they removed it and a portion of the connected intestines, with their contents, for the purpose of experimenting. The first experiment was made at Muncy, with a portion of the liquid taken from the stomach, which was suspected to contain, from its appearance, a large portion of arsenic. Two of the usual tests were applied, one of which threw down a precipitate of a straw-colored appearance. The other produced a green substance, called Scheele's green, both indicating the presence of arsenic. They next took white arsenic of the shop, and applied the proper tests, and the result was the production of a solution similar to that obtained from the stomach. From these experiments they tell you that the conclusion they arrived at was that of arsenic being present in the stomach; altho' they do not wish it to be understood, by any means, that these tests *alone* are conclusive. They are not relied upon by us as such, notwithstanding some writers would appear to favor such a conclusion. We have further evidence on this part of the cause, and still more satisfactory in its nature. I allude to the experiment made by Dr. Dougal and Mr. Morrison, at Milton. These were carried further than those at Muncy, and the glass tubes exhibited shew the crust or arsenic attached to them. They also tried the experiment on the arsenic of the shop, in the mode described

to you, and produced a glass, shewing the result to be similar. But, gentlemen, we do not stop even here. In order to place this matter beyond all possibility of doubt, the stomach, with the contents, were put into glass bottles, carefully sealed, given into the care of Mr. Kittoe and by him taken to Philadelphia to be submitted to a course of the most searching analyses. This young gentleman, himself a great proficient in the science of chemistry, and whose testimony has been delivered with so much honor to himself, engaged the services of Dr. Mitchell of that city—one of the most eminent chemists and physicians of the present day. The chemical agents were all prepared by Dr. Mitchell in the presence of the witness, and with the utmost care. The experiments were continued from day to day, with the assistance of Mr. Kittoe—several physicians and chemists of the city being in attendance during the progress. The various results of these have been given by Mr. Kittoe in detail, and in the most satisfactory manner, accompanied by the production of the glass tubes, or vials, containing the matter referred to, and hermetically sealed. These you have examined, and my colleague having gone so fully into this part of the case it would be an unnecessary consumption of time to repeat the testimony of Mr. Kittoe; I shall merely observe that a fine arsenical ring was produced; the peculiar odor discovered; the Scheele's green formed, by several modes; the canary yellow; a white flocculent precipitate; and in the last place a metallic arsenic ring. Here then we have the highest degree of proof, by the production of the *metal itself*, and the process by which it was obtained at every stage, exhibiting the peculiar properties and characteristics of this poison. Mr. Kittoe accordingly was asked whether he considered the experiments sufficient, and he unhesitatingly replied that he did. And he now tells you that the tests, taken in conjunction, and precipitates thrown down, indicate the presence of arsenic *indubitably*. In addition to this testimony, we have that derived from the symptoms in the case of the deceased, compared with those given by the medical gentlemen, from the most approved writers on the subject of arsenic. These are in general, nausea, vomiting, a sense of burning heat in the stomach and gullet, pain in the stomach, retching or effort to vomit, and pain all over the system, attended by great thirst. Where the quantity taken is large, death ensues in the course of a few hours; or may be instantaneous, if excessive. In the case before you the quantity which must have been received into the stomach of the deceased is supposed to have been five or six drachms—a dose sufficient to occasion death in a few hours, and you find she did expire with the word "drink," upon her tongue, in about nine hours from the time she ate her supper.—But the gentlemen tell us that other substances will produce rings similar to the arsenical ring, and in corroboration of their assertion exhibit two rings, made during the trial, by Mr. Kittoe, from *cinnabar*. But that gentleman tells you, that there is a difference between the cinnabar and the arsenical ring in *form and color*; and what is conclusive, that the same tests being applied, the precipitates would not be the same in any one case. Dr. Hepburn states that the *sulphuretted hydrogen*, with any preparation of mercury, as for instance, salts of mercury, will throw down a *dark* precipitate instead of a *yellow*, and that lime-water would also be a test between mercury and arsenic; that if it were corrosive sublimate, the lime water would throw down a yellow precipitate. From all this evidence in conjunction, it is impossible for any rational mind to entertain a doubt of the acrid matter found in the stomach of the deceased being white arsenic; that this occasioned her death is equally clear. The gentlemen who made the *post mortem* examination, have, without hesitation, given it as their opinion that it was the arsenic that terminated her existence. This conclusion is entitled to the greatest weight, being drawn from the best sources of information, by the aid of professional learning and experience, and delivered under the solemnity of an oath, in a case where the life of a fellow being depends in a great measure, on their testimony. It is laid down in *M'Nally's Ev.* 329, "that in general, it may be taken that where the testimonies of professional men, of known skill and just estimation are affirmative, they may be safely credited; but, when negative, their evidence does not amount to a disproof of a charge, otherwise established by various and independent circumstances." In the case under consideration we have detailed the various and peculiar circumstances here referred to, which of themselves, would be sufficient to establish the fact of death by poison, and, in addition to all these, the affirmative testimony of three medical gentlemen, of acknowledged skill and experience; which places the truth of the position beyond all doubt.

Having thus disposed of the first division of my argument, I proceed to the second. Did Catharine Earls commit suicide?

This is an important part of the case. The counsel for the prisoner assert that she did, and have relied principally upon this allegation in their defence, contending that the evidence in the cause goes further to establish *that fact*, than the guilt of the prisoner. In considering it I shall take a fair and a full view of the testimony relied on by them to sustain their position, and see how it can, by any possibility, avail them.

In the first place it is alleged that she had a *motive* for the commission of the act. And what was this powerful motive, that could induce this unfortunate woman, to seek her own life at a period of time so peculiarly interesting to the female sex, and by a death, the most painful and awful, bring herself to an ignominious grave? In the language of the gentlemen we have the answer. That she never had been married to the prisoner, but had lived with him as a "prostitute," and had "brought forth another infant to add to her disgrace," and that moreover she was a "degraded drunkard." And they would have you believe that her remorse of conscience was so excessive at the contemplation of these offences, that nothing short of self-destruction could atone for them. These are the motives assigned. But where do we find the *evidence* to sustain the position taken? You may search in vain for the smallest particle applicable to the first, and *very little* can be found bearing upon the second. The gentlemen were permitted by the Court to give evidence of the *fact* that the prisoner had a lawful wife in full life at the period of time when he and the deceased commenced living together, and that they never had been married. But you saw the attempt at such proof was altogether a failure. They could prove *no such thing*. True, they offered to make out something like a report, by hearsay evidence, but, were most properly stopped by the Court, who could not sit to hear such a misapplication of the rules of evidence. And yet the cause has been argued as if the *fact* had been established. No doubt, gentlemen, you were astonished at the course taken. To thus attack the reputation of the murdered woman, in the absence of all testimony, was taking a liberty I did not anticipate, and was contrary to that spirit of charity which is an inducement to cast a mantle over the admitted errors of the dead. The great zeal of the counsel must be received as the *only* apology that can be made for this violation of the truth. As to the charge of her being a degraded drunkard, you have heard all the evidence they could adduce on that subject, and it is principally made up of idle rumors which when traced amount to very little. But, I do aver, that the weight of evidence that can be relied on goes to repel the allegation of her being an habitual drunkard, as they would have you believe, and is in favor of her general sobriety. Therefore, if such a thing had ever been heard of as a confirmed drunkard resorting to poison to put a period to his life, because he could not *leave off drink*, which is the argument here, yet there is no evidence to show that such was her condition. But, the position is too preposterous to be entitled to any further consideration.

Much reliance has been placed on the declarations of the deceased in regard to her not living long, and the counsel would have you believe that these evince a settled purpose of her mind to destroy herself. I shall examine the expressions used by her carefully. When asked by Mr. Welshan when she was coming to Milton, she replied, that she never expected to see Milton again, or to live to see it. This was a short time before her death. She appeared cheerful, and laughed and talked as usual. So that it appears there was nothing very serious intended at this time, and the expressions used were mere words of course, or uttered without much reflection. But, it is said that she replied to her daughter Mary Ann, on another occasion, when asked by her, why she did not want certain calico, then given to the witness, "that she would not live long enough to make it up." This was about a month before her death. And that to another person she said she did not expect to live much longer, than till after her confinement." On being asked why she thought so, she replied, that she "did not know." Now, gentlemen, allow these expressions their utmost force, and what do they amount to? Here was a woman approaching the hour of her confinement, which, no doubt, she anticipated with fearful apprehensions, from her former experience—increased, perhaps, by the recent violent treatment she had received at the hands of her husband. The sentence pronounced by the Judge of all the earth upon the mother of our race, remains unrevoked to the present hour; and the testimony of the physicians examined, establishes the fact that women, generally, in the situation of the deceased, are given to despondency, and apprehend an unfavorable issue to their confinement. There is nothing, therefore, remarkable in the language of the deceased, when we take her situation into view.

But it is said she made use of expressions evincing an intention to destroy her own life. That she said in the presence of M'Coy, "she wished to Almighty God she had something to put her out of the way, for she was troubled in this world." The witness was in her company but a few minutes, and had but little conversation with her. That she had trouble, gentlemen, the history of this cause abundantly shows; and those expressions, rash and improper as they were, no doubt were uttered under excited feelings, at the cruelties she experienced from the prisoner. As to the relation given by Diantha Marinus of what passed between her and the deceased, no regard ought to be paid to it whatever. In the first place she is the niece of the prisoner, and, therefore, may be under a strong bias to testify in his favor—but a conclusive reason and one which must prevail in law, is, that we have proved by a number of witnesses that her general character for speaking the truth is so *bad* that she is unworthy of belief. The story of Sabina and Henrietta Moritz, is of the same stamp. Indeed, so well satisfied were the prisoner's counsel of the *falsehood* of it, that they did not even bring it to your view, or found an argument upon it. It was so altogether improbable that the deceased would have made known her intentions, if she had any such, of poisoning herself, to these girls, with whom she held no intercourse, and who are the sisters of that abandoned wretch, who was the cause of all her domestic troubles, that no one could believe a word they said; but, when you heard us calling up witness after witness to prove their general reputation *so bad*, that a court of justice has seldom exhibited a scene so degrading to a witness, and not a person could be found among the crowd in attendance to speak a word in their favor, did you not at once, as it became your duty to do, dismiss from your thoughts all that these witnesses had said.

As a further reason to induce you to believe that she destroyed herself, they have proved that *after* her death, a paper rolled up, with a string tied round it, was found in a trunk containing the infant's clothes, which stood in the adjoining room to that in which the deceased was confined. It has not been shewn what it did contain, if it contained any thing, but that on the outside there was something of the appearance of buckwheat flour. Now, in the first place, it is not shewn that this paper contained *white arsenic*, or, secondly, that she had any access to it, or the means, or opportunity of taking it. She died on Friday morning and this discovery was made on Saturday. On Wednesday, about three or four o'clock in the afternoon, she was confined, and was up but once and that was on Thursday afternoon, a few minutes, while her bed was made. The trunk appears, at all times, to have been kept in the other room and out of her reach; so that from all these circumstances, it follows as a natural conclusion, that she did not make any use of the contents of the paper whatever they were. Nothing was found concealed about her bed, or in any other way, in which she could have had any liquid, or other matter, in which to take the poison; for, surely, it could not be imagined that she could take it in its dry state, unmingled with any other article. The prisoner had no idea of this, but suggested that she must have taken it in the rum purchased for her two weeks before. But, gentlemen, has it not struck you as very remarkable, that this paper, with its contents, has not been produced? In whose custody was it? It was in the house of the prisoner. Discovered the day following that on which his wife died in a violent and alarming manner; so much so as to excite immediate suspicion that she came to her end by some improper means. But, I ask you, gentlemen, *when* was that paper deposited in the trunk? We have proved by Mrs. Callahan that she examined *all* the contents of the trunk on the day Mrs. Earls was confined, and dressed the new born babe, and that there was *then* no such paper in it as the one described; that the only papers, were a loose one spread on the bottom of the trunk, and another with some pins. I leave you to draw your own inference as to who placed it there, and what the motive was. This, no doubt, was intended to serve as a link with the testimony of Mrs. Marinus, and Sabina and Henrietta Moritz, to fix the act upon the deceased. To call upon you to say that this paper contained arsenic, and that after taking a portion of it, she had deliberately done it up and replaced it in the trunk, is, in the absence of all testimony on the subject, asking too much at your hands. Again, if it had not been in the trunk before, but was concealed about her bed, why, I ask you, would she take so much pains as to leave her bed and deposite the paper in the trunk? What reason could be assigned for such extraordinary conduct? I have listened in vain to discover any in the arguments of counsel. It would have been more convenient for her to have cast the residue of the fatal drug into the fire, than to have taken the course alleged. Yes, gentlemen, this very circumstance, kept back by the prisoner till the very close of his defence, carries con-

viction to my mind that the facts stated by M'Coy, the Moritz's and Mrs. Barker, were prepared, connected and arranged, as was supposed, by the prisoner and his friends, so as to prevent a discovery of his crime. But that Being who brings to light "the hidden things of darkness," and who can at His pleasure baffle the wicked designs of men, has, in this case, exposed the plan laid to screen the murderer from the penalty that awaits him.

If determined on self destruction, why defer it till after she had passed through the perils of child-birth? The gentlemen reply, because she had no disposition to take the life of her offspring. But if she was so regardless of her duty to God, and resolved to rush uncalled into His presence, with all her sins upon her head, would she have bestowed one thought upon the consequences? With her the sacrifice of her unborn babe would have been, if any, a minor consideration. The argument in support of this position is more consistent with reason, and all experience, than that advanced by the prisoner. A person determined on committing suicide discovers more anxiety as to the *means* and the *opportunity*, than the *time*. Why should this intention have been deferred till a period, when, from the attendant circumstances on women in her situation, there would be less probability of a favorable opportunity presenting itself to accomplish her design. Besides, here was an additional inducement to live. A helpless infant just brought into life, claiming a mother's love and attention. Hard, indeed, must have been that mother's heart, and brutalized must have been her senses, to have so disregarded the voice of nature, and sink herself below the condition of the "beasts that perish!"

We will now take a view of her conduct during the short period of her confinement. The clothes for her infant had all been prepared, by her own hands, and put away with the greatest care. The child is born. Attentive neighbors call in and find her doing well, and enjoying as much ease and comfort as could be expected by any woman in her situation. She ate her dinner with a good appetite. Gave suck to her infant. Took her supper after candle light, and appeared quite composed in her mind, and at peace with all around her. She seems to have entertained no improper feelings towards her husband. Indulged herself in no terms of reproach at his past conduct towards her—unfeeling and inhuman as it had been. So far from this, she said to one of her female visitors, in speaking of him, that "he would use her well but for Maria Moritz." And on being asked why she suffered him to sell her feather bed, she merely replied, "that she was agreed to anything he done, so that he would only quit going after her." Here was an opportunity afforded her of making confidential communications to her female friends—if anything more than usual was bearing upon her mind, but we hear of nothing of that character. They discovered, or imagined, no such thing. There was nothing in her conduct or conversation that could give rise to suspicion. It is also worthy of observation that she was not disposed to give any unnecessary trouble in the preparation of her food, but expressed a willingness to partake of anything that might be got for the family. Another circumstance that may be supposed trivial in its nature, but which is characteristic of the *mother*, is this, that on the eldest daughter's returning home in the evening the deceased took the infant in her arms and shewed it to her. This was a short time before drinking of the fatal bowl. Gentlemen, it cannot be contended with any degree of plausibility, that she had at this time swallowed the large amount of arsenic found in her stomach; for had that been the case her sensations and conduct would have been totally different. Instead of being at ease and cheerful, she would have been gloomy in her mind—not inclined to conversation, and under the most dreadful apprehensions of her approaching dissolution. On the contrary, you find her in perfect health, and a few moments afterwards eating her supper with a good appetite; and it is not until nine o'clock, that she is seized with vomiting. I bring these facts to your view because it has been argued in a serious and emphatic manner, that so large a quantity of arsenic could not have been taken in a pint of chocolate, without being discovered, and that, therefore, she must have taken it at different times. But at what times, and in what manner, she could have taken it, the counsel for the prisoner do not undertake to suggest. The evidence is altogether silent on the subject, and that which we have in the cause, all goes to repel the idea of her taking poison previous to the time alleged by the commonwealth. I would also observe what opportunity had she of mixing the arsenic with her food? Her daughter Mary, Miss Sechler and the prisoner were all with her at different periods, while eating her supper, and it dont appear that she was ever left entirely alone. But what was her conduct after she was taken sick? Does she not by her declarations and actions manifest entire ignorance of the cause? On being

asked what could occasion it, she replied "*she did not know—that may be the chocolate was too strong.*" Yes, gentlemen, in these expressions we have the evidence of the dying woman, that this chocolate contained the cause of her sickness and death. Can it be believed for one moment that she would thus have declared a falsehood, and prevaricated, with death in view? No! her conduct is perfectly consistent, throughout, with that of a person ignorant of the cause of her illness. We find her anxious to have the mustard plaster prepared and applied. To take the mint tea to settle her stomach—and, as a last resort, directing the prisoner to give her fifty drops of laudanum. Finding no relief from all these usual remedies—but her agonies increasing every moment, we hear her uttering these words of despair, "it has gone so far that I can get no relief!" Is this the language of a self murderer? And this the conduct of a person determined on self destruction? It is in direct opposition to all experience and a contradiction in itself. It appears from her language that it was *relief* she desired and not *death*. Had it been *death*, she would have obstinately refused all remedies calculated to counteract her object, and would have patiently awaited the moment that was to terminate her existence. She would have hailed it as a *welcome*, instead of anticipating it as an *unwelcome* period. It is said she was opposed to any person being sent for. And what does this amount to? It merely shews that for sometime after she was taken ill, she apprehended nothing serious—was not aware of her danger, and, therefore, wished to give no unnecessary trouble. I defy the ingenuity of any man, taking all the circumstances into view, to torture this evidence so as to admit of any construction favorable to the views of the prisoner.

But, gentlemen, I shall close this branch of my argument, by the prisoner's own declarations. I allude to what passed in the jail between him and his daughter Susan. On being asked by her whether he thought her mother had poisoned herself, he replied, "no;" and on being interrogated further as to who he thought did it, he said, "it was my mother that old bitch that done it." Here then, in the silence of the prison—with his daughters by his side and having full time to deliberate, we hear him repelling the charge now made against his injured and murdered wife. In the very face of this acknowledgment, his counsel have attempted to rest his defence on the fact of her having poisoned herself! But, you must have observed, that in doing so, they have studiously kept out of view this important testimony. They say, in speaking of the testimony of this witness, generally, that she has been tutored—but what evidence have they adduced in support of the allegation? None. And it is unreasonable to imagine she *could* be tutored to give evidence against her father in his perilous situation. True, he told both his daughters in the prison, "not to be too hard upon him, but try and save him if they could"—and with this appeal made to them, at such a time and on such an occasion, it is contrary to our nature, and all experience, to suppose that anything has been stated by this witness, but what a sense of the obligation she was under to speak the truth, forced from her. She was an intelligent witness, and underwent a long cross-examination, without any material contradiction. And, again, if she stated a falsehood, why not call upon her sister Mary, who she says was with her at the time, and who has been examined, to contradict her. And here I will take the opportunity of saying a few words in reply to the remarks of the gentlemen, as regards these children being produced as witnesses against their father. The necessity of the case required it. They were competent witnesses, and the commonwealth had a right to their testimony. Painful as was the scene of a child giving evidence against a parent, on such an occasion—yet, the law is "no respecter of persons;" nor can it regard the feelings of any individual. Besides, *they*, with their *little brother*, were witnesses *for* as well as *against* the prisoner. The son's testimony has been strongly and exclusively, relied upon to show how the prisoner disposed of the arsenic traced into his possession; which was a most material part of his defence.

The counsel for the prisoner have asserted, with great apparent confidence, that the circumstances detailed in evidence, are more conclusive of the allegation that the deceased committed suicide—than that he is guilty of the crime charged; that, a doubt, at least, having been raised as to the *criminal agent*, you ought to acquit. This has been urged with great zeal and ingenuity, accompanied by more than ordinary appeals to your feelings. As this was the strong ground of defence, it was to be expected that an unusual effort would be made to maintain it. But, have they succeeded? Can it be possible that they have raised a reasonable doubt in the mind of any one of you? If they have, acquit the prisoner. But, I am at a loss to perceive, on taking the whole of the testimony into view, how any man of the law

discernment, can entertain a doubt. There appears to have been neither motive, inclination, means nor opportunity, for her to commit the act. In the absence of these, it would be an absolute absurdity to say she did. As well might we look for an effect without a cause. As rational beings we are operated upon by motives—and acts, of any kind, are rarely performed without some object to be attained or answered.

Having, as briefly as the nature of the testimony would enable me, disposed of the second division of my argument, I shall proceed to the consideration of the third, to wit: did the prisoner perpetrate the act? That he is guilty of the foul and deliberate murder with which he stands charged, must be manifest to your minds from the testimony disclosed in your hearing, and which has received your undivided attention for so many days. In his case we have a powerful motive—a strong inclination—ample means and a full opportunity. I shall discuss these in order.

That he was under the influence of the most powerful motive that can operate upon the human mind and passions, there is abundant evidence. His affections and inclinations had been withdrawn from the wife of his bosom and were centred in another. With this prostitute he lived in a state of adultery, for many months previous to the death of his wife. You will not ask me for the evidence of this fact. I point you to the disgraceful scene, upon two occasions, at Mull's, as disclosed by Garnhart. I will not trespass on your time by recapitulating the evidence, which is fresh in your recollection, on this part of the case. But, we are told that this witness is contradicted by Mrs. Mull and her husband, and therefore, no credit ought to be given to his testimony. They say, moreover, that he appears in the odious character of an *eavesdropper*, and therefore ought to be suspected of every thing mean and disgraceful. You heard the young man's testimony, and could judge of his credibility and fairness. There is nothing in the circumstance of his being there so remarkable as to render it at all improbable; nor was it unlikely that his curiosity would be excited to ascertain what was going on. But Mrs. Mull is certainly liable to more suspicion as regards the truth than Garnhart, for she is the *sister* of the party implicated, and would be likely to conceal as far as possible, her disgrace. As to William Mull, independent of the manner in which he gave his testimony—which, of itself, was sufficient to destroy his credibility; we proved by a number of witnesses, that his reputation for truth was so bad that he was unworthy of credit. So that there can be no reason for rejecting Garnhart's evidence. Again, I draw your attention to what took place at Moritz's, as related by Shuman. His testimony is clear and positive, and, if believed, establishes the fact of a criminal connection between the prisoner and Maria Moritz. And I ask you why it should not be believed? The reply given is, because it is expressly contradicted by Sabina and Henrietta Moritz, the sisters of the party criminated. Without entering into an examination of their testimony, and pointing out its contradictions and improbabilities, I shall merely remark, that these witnesses are entitled to no credit, in consequence of their reputation for truth being so bad, as already observed in a former part of my argument. I, therefore, consider the testimony of Shuman as unimpeached. At another time Mr. Donley informs you that he discovered the prisoner and the same female, in company, in the woods, near the big road, and under suspicious circumstances. The testimony of this witness has not been attacked. In addition to these, we have the repeated declarations of the prisoner that he "loved her," that he "would go to her when he pleased," and that "a man would almost risk his life for a pretty girl;" of the truth of which last declaration we have the melancholy instance before us. Accordingly we find him using familiarities with her, even in the presence of others; evincing a strong attachment, and upon all occasions manifesting an unequivocal partiality for her.

The consequences naturally to be expected from this course of conduct on the part of the prisoner, were remonstrance and reproof, in the first instance, and unavailing bursts of passion and feeling, at different times, on the part of the deceased; who, from the evidence, appears to have been a woman of high spirit and not at all calculated to bear with the treatment she received. This was the unhappy cause of the quarrels and dissensions of which we have had so much evidence. Until this unfortunate attachment took place, we hear of no difficulties between them. At Milton there appears to have been nothing of the kind. Several, who were their near neighbors in that place, have been examined as witnesses, but nothing of that nature has been disclosed. Having now set at nought his marriage obligations, and entered on a course of crime, we find him going on step by step, until his heart becomes hardened and his conscience seared.

We have it in evidence that at different times and upon various occasions he threatened to "lay her asleep." To one witness he said that "he would be d——d if he would be bothered with her much longer, that he would get rid of her somehow or other." At another time he said "she ought to have her throat cut." These expressions, unaccompanied by any acts of violence to her person, shew a wicked and depraved disposition, capable of desperate deeds. But when we go further and shew acts of cruelty and barbarity seldom heard of in a christian land, we are prepared for all that followed. Behold the scene at Mangus' pump—in the dead of winter, with snow and ice upon the ground, when in the presence of several, he seized his victim, bent her over the trough, tore her dress, and wet her from head to foot; and was only prevented from committing further outrage, by the timely interference of a person who ran to her assistance. You next find her concealed in the bar of Mr. Mangus and in tears, while the prisoner is prowling in quest of her. The family give her dry clothes and she receives their protection. I shall not repeat all that took place at that time, as the facts have been so often referred to already. But, it is said the testimony is conflicting. That on letting go the bridle of his horse, she sat down by the trough and he merely splashed the water over her. How ridiculous! And, I may add, how false! Who proves this? The same Mrs. Marinus, whose character for truth I have already observed upon; and she is contradicted by the others who have testified on this point. See him at another time seize her when seated at the breakfast table, thrust her into the kitchen, and then pull her back into the room by the hair of her head. We have evidence of his twice dragging her to the cellar, where she was compelled to remain once under peril of her life, and at another time under lock and key. In this humiliating situation she was visited by Miss Sechler who found her in tears, with her clothes much torn. The second of these outrages was committed not more than one month previous to her confinement. But, gentlemen, not satisfied with these acts of cruelty, we have proved that he repeatedly beat her, and on one occasion doubled the horse lines, and whipped her severely. This was not more than two or three months before her death. Other acts of a similar character have been detailed in the course of the evidence but it is not necessary that I should refer to all of them particularly, for it is truly painful to our feelings to dwell upon conduct so disgraceful to any man. The prisoner has attempted to account for some of these threatenings and deeds of barbarity. But, has he succeeded in doing so? Flimsy, indeed are the reasons assigned. The true reason, or cause of all these, may be traced in general to his own bad conduct with Maria Moritz. On this subject, whenever broached by his wife, or brought into view in any manner, he was particularly sensitive; and gave loose to his violence of temper. Here, then, we have, in addition to motive, a strong inclination, manifested by threats and acts of cruelty, to put a period to her life. Previous threats, and conduct, such as we have shown, are always, in cases of this kind, entitled to great weight, in as much as they indicate a wicked mind and malicious disposition.

Before I proceed to treat of the *means* in the prisoner's power, I shall ask your attention to the *time* selected to carry his horrid purpose into effect. This discovers great forethought and deliberation. Had his infernal design been accomplished while she was going about in her usual health and strength, the suddenness of her death, and circumstances attending it, would have excited immediate suspicion. But the chance of detection would be much less, provided she died during her confinement. Sudden changes often take place with women in that situation, and many times death comes unexpectedly upon them. The prisoner seems to have been fully aware of this, for we find him artfully replying to Mrs. Callahan's enquiry after the cause of her illness—that she had taken cold. Mrs. Callahan replied that this could not be the case, for she had left her warm and doing well, not long previous. This, I think, is a satisfactory answer to the question put by the prisoner's counsel, in argument—"why not do it months before."

That he purchased about two drachms, or near two tea spoonfuls of arsenic during the first week in October, at Northumberland, he himself has shewn. It is also in evidence that on the 13th of the same month he bought the same article at the drug store of Bruner & Dawson at Muncy. This was the day preceding that on which the deceased was confined. Now the counsel admit that the having of arsenic in his possession, if the purpose is not explained or accounted for, is entitled to great weight; and so it is laid down in the books. And how do they attempt to account for it? We are told that on Thursday afternoon he took his two little boys and went to the fish basket, and that in their presence he put *one tea spoonful* of

some *white stuff*, in a dead fish for the purpose of killing the minks and muskrats, that were in the habit of frequenting the basket. That the papers in which the stuff was done up, were thrown into the river; and this is the *only* offer we have heard to account for the use of the poison, acknowledged to have been in his possession. Taking it for granted that what he put in the fish *was* poison, what, I would ask, became of the rest of it? There were two purchases made within a few days of each other, and, but a small portion accounted for. The gentlemen tell us that you must *presume* the rest was used in the same way, as that was the ostensible purpose for which it was purchased. This does not follow as a matter of course; particularly when there is a strong suspicion of an improper use having been made of it. It was for the prisoner to have cleared this matter up, and not having done so, the rule applies, and it ought to have due weight. There are some singular coincidences attending this matter, and difficult to reconcile with the prisoner's innocence. It appears by the testimony of his mother, that the deceased expected to have been confined about two weeks earlier than she was. About that period we find him purchasing arsenic at Northumberland, a considerable distance from his place of residence. Again, he purchased at Muncy on the day before her confinement, and on the day that she actually was poisoned, we find him in a great hurry, and just as the family were sitting down to dinner, going to his basket, and there depositing a small portion of the article in a dead fish. These acts, his counsel view as all consistent with his occupation as a fisherman, and not in the least degree calculated to raise suspicion against him. They are, however, links in the chain of evidence, and taken in connection with the great variety of circumstances before you, will receive your deliberate consideration.

Gentlemen, I shall now draw your attention to a very interesting and important part of this case. I allude to what took place immediately before, and after supper. Christiana Earls has given you a full narrative of all that took place, and of the conversation between her and the deceased, in the course of the afternoon and evening. There is nothing remarkable in all this, nor can it throw any light on the cause. She had partaken of her dinner with a good appetite, remained in excellent health during all the residue of the day, and had as good an appetite for her supper. Chocolate was prepared by the old woman, of which the deceased was fond. She was in the act of getting Mrs. Earls' ready to take up to her, before the others sat down to table; when the prisoner came to her and said "Katy don't want her supper till after we are done." She then dipped a pint bowl full and set it on the stove where it remained till after she was done eating. She then removed it to a waiter that was placed on a table in the kitchen. There she left it, and went to a cupboard in the adjoining room to get some preserves, and other articles, to take up with it. It was at this time, we say, the poison was deposited in the bowl. The counsel for the prisoner triumphantly exclaim, "the commonwealth don't get the prisoner from the supper table till the tray is carried up stairs!" But, the gentlemen forget that Christiana Earls expressly says that "he had got through and was about." So that here was a full opportunity afforded him to deposit the arsenic in the chocolate. The evidence is, that he was not out of the room and kitchen from the time he rose from the table, till he lighted his mother up stairs. The children, it appears, during this time remained at the table. That the poison was in the chocolate there cannot remain a doubt, and that there was no opportunity of putting it in after it was carried up stairs, I take it, is equally clear; therefore the position we rely on, I consider as established beyond all controversy. That the prisoner was remarkably attentive while the deceased was eating her supper, and manifested a great degree of anxiety, is apparent from the testimony, and suspicion as to the reason of this is naturally excited. Here we behold him suddenly changed from the threatening cruel husband—regardless of the happiness or life of his wife, to the apparently kind, dutiful and commiserating companion. But, ah! gentlemen, this was all a gross deception! A mere cloak to his fiend-like conduct! Whilst his unsuspecting victim is partaking of the food, and drinking of the poisoned bowl, see him lying upon a bed, on the opposite side of the room, watching his prey, like some ferocious monster! Having left the apartment for a few moments, and gone down into the kitchen, we find him, as soon as Miss Sechler came in, and without saying a word to her, running up the stairs, and on that young woman entering the room where the deceased was confined, she found him seated, near the foot of the bed, talking to his wife, and in the language of the witness "he seemed kind to her." As soon as she had finished her meal, he took up the tray and carried it down stairs, and we don't find him returning until her vomiting commenced, about one

hour afterwards. Then he indeed makes his appearance. And for what purpose? To take charge of the vessel in which the contents of her stomach are emptied, and see that it is thrown out of the window to avoid detection; as according to the evidence of Dr. Hepburn, portions of the arsenic would adhere to the food she had received, and be cast up with it. But, it has been urged that he prepared several kinds of tea to relieve her. Yes, gentlemen, and how far this was calculated to answer that end remains a matter of suspicion. On tasting the mint tea, she complained that it was bitter and burned her heart: and, the large amount of arsenic found in the stomach, besides what must have been thrown off, strengthens the presumption that the various teas administered, contained portions of it. Indeed, the counsel for the prisoner have contended, that so large a quantity could not have been drunk in a pint of chocolate, without discovering the austere taste, spoken of by Dr. Hepburn, and they, therefore, infer that she must have taken it at different times. Therefore this argument sustains, and justifies, our position. But we do not deem this of great importance in establishing the guilt of the prisoner; although it goes to shew a degree of cool, persevering wickedness, without a parallel. But, we think it is not a strained inference, when we say that the deceased did discover this austere, or sour taste, at the time of drinking the chocolate, from the declaration made use of by her to the old woman, on being asked what could have made her sick, that "may-be the chocolate was too strong," to which the witness replied that could not be, for she made "nothing too strong." Now, chocolate has been proved to possess two properties peculiarly adapted to the use to which it was applied by the prisoner. The first is, that having a taste itself, the austere, or sour taste, of the arsenic occasioned by being mixed with warm liquid, would not be so readily discovered, as if put into hot water, or tea. The second is, that it will hold arsenic longer in suspension, or prevent it from settling, than, perhaps, any other article would do. The first, may account for the taste not being so sharp, as to lead her to reject it—as she did the different kinds of tea administered to her; and the second, for so large a quantity being contained in a pint, without collecting in a short time, in the bottom of the bowl. The gentlemen would have you suppose that the prisoner, instead of being an unlearned, ignorant man, must have been well acquainted with chemistry, to have known those peculiarities of chocolate, and to have made a selection of that article accordingly. But, this conclusion does not follow, by any means, from the circumstances in the case. It was a mere fortuitous matter with him. For we do say, and we think we are warranted by the evidence, that he put it in the tea as well as the chocolate, without regarding the various properties of the respective articles. This is a sufficient answer to the suggestion of the gentlemen.

How extraordinary was the conduct of the prisoner, during the whole period, from her first taking sick until the moment of her death. For six hours and a half, and whilst the deceased was experiencing the greatest agonies, we find the prisoner loitering about the house, making no attempt to procure a physician, or even calling in a neighbor; till urged, at last, by his little daughter, he goes for Mrs. Sechler. When that respectable matron arrived, and saw the situation of his wife, she told him he had better have a doctor, for that she did not know what ailed her. Yet, did he even then, shew any disposition to procure medical attendance? Nothing of the kind! It has been urged as a manifestation of his sincerity and innocence, that he talked about Dr. Ludwig, to Mrs. Callahan, and that he said after his wife was dead, "if he had only called in a doctor." And why did he not? Several men of eminence resided within a few miles of his house. It is all in vain to attempt to induce you to believe that it was owing to reluctance on the part of his wife that he did not. She had been suffering the most bitter torments for hours, and had shewn every desire to obtain relief. No, gentlemen, these professions were all made without the smallest particle of sincerity or truth. To have called in a doctor, he knew full well, would have led to an immediate discovery of the cause of her suffering; and hence it was he made no endeavor to procure one. Again, he is directed to go for Mrs. Callahan, toward whom the gentlemen have not been sparing in opprobrious epithets. He goes; but what is his conduct? He proceeds with the utmost deliberation, notwithstanding his wife is then at the point of death, and actually did die fifteen minutes after the arrival of Mrs. Sechler, and before he returned with Mrs. Callahan. You find him, instead of calling up Mrs. Callahan, and hurrying her on to the scene of distress, calmly and leisurely going to the cellar with Patrick to get a bottle of whiskey! Not until this matter was disposed of, more important to him than the life of his wife, do we find him informing Mrs. Callahan

that "she had caught cold," and was "taken very bad." Was this like the conduct of a man who had one spark of feeling for a human being, tortured, agonizing and expiring, as his wife was, during those moments? And yet his counsel would have you believe that he was attentive, compassionate, and did all in his power to relieve her and bring her assistance. As they approach the house, his daughter, Mary, met them and announced the death of her mother. Mrs. Callahan immediately started and ran ahead of them. The prisoner betrayed no particular emotion, but followed to the house. When he came to the head of the stairs, he "bawled out," to use the language of Mrs. Sechler, and when he entered the room in which the corpse lay, "gave several terrifying stamps, and made use of blasphemous expressions." Was it the language of sorrow, or, as his counsel would have you suppose, a fervent ejaculation, expressive of his grief? Nothing of the kind! He did not even approach the bed to look upon the countenance of the deceased, but passed off into the adjoining room! The next we see of him is while he stands facing the fire, and the tea is running on the floor from the upset tin cup. There he stands! attentively listening to what Mrs. Callahan was saying to his daughter Mary by the side of the corpse.

Much has been said about the prisoner being sorrowful, and shedding many tears upon various occasions, going to shew a deep state of feeling at his bereavement. But, Mrs. Sechler has told you, that she perceived no marks of real grief, nor tears shed while she remained; and this was at a time, when, from the awful circumstances attending her death, and the suddenness of it, we would naturally expect the hardest heart to discover some degree of emotion, and, if there were tears to shed, to drop them then. True, as the women and neighbors began to come in, we have it in evidence, that he was seen to make use of his handkerchief, and tears were observed. But, gentlemen, the man who could commit so heaven-daring a crime, might easily act the hypocrite with a view to conceal it! It seems, however, that the part was not so well sustained as to avoid suspicion. The eyes of many were upon him, and the mask was, at times, unguardedly laid aside. Behold him in the church yard, when the coffin was unscrewed, and his children were led up for the last time, by their kind and feeling neighbors, to take a parting view of the remains of their mother, before she was deposited in the silent tomb, and were dissolved in tears, upon this affecting occasion, standing unmoved, with his back to a tree, perfectly indifferent to all that was passing! He neither approaches the coffin; heaves a sigh or drops a tear! We have seen the same kind of indifference exhibited at other times, before the body was removed from the house. These are treated as minor and unimportant circumstances by his counsel, but, they are entitled to their weight, in searching out the truth in this case, and will receive it at your hands. If they are to be disregarded, why do the gentlemen picture to you in such glowing colors, his lamentations and distress of mind? You will take all these things into view and reconcile them if you can. As to the remarks made, that the witnesses who here detailed these circumstances, were not so suspicious at the time, as they would now have you believe, were credulous, superstitious and given to exaggeration, we reply, that they were the neighbors of the prisoner, and well aware of the treatment the deceased received at his hands; they were likewise acquainted with her situation as to health a few hours previous to her death, and all the attendant circumstances; when we take all these into view we need not be surprised that their suspicions were awakened; it would have been more extraordinary had they not been. You have seen also that these witnesses are persons of respectability.

The circumstances attending the funeral are also much relied on as evidence in his favor. We are told that mourning badges were provided for himself and children, and that a sermon was preached upon the occasion. That he had sent for Mr. Mangus and consulted with him as to the expediency of interring the corpse on Saturday or Sunday, intimating a preference for Sunday, as it would give time to notify her old neighbors and friends at Milton, so that they might have an opportunity of attending. But, on being told by the witness, that "he could do as he pleased," do we find him determining on Sunday as the time for the burial, and sending word to Milton? No, gentlemen, on the contrary, the coffin is ordered to be ready by nine o'clock on Saturday morning. As early a period as was consistent with the necessary arrangements. But, we are told she had all the rites and decencies of christian sepulture. And, I ask you, would it not have been extraordinary if she had not? If the usual and customary ceremonies in burying the dead, had been departed from, and she had been hurried to her grave in an unfeeling and

inhuman manner, would not a greater degree of suspicion have attached to the prisoner, than actually did? He was fully aware of this, and, no doubt, thought that by resorting to the forms usual on such occasions, and this "mockery of woe," his heinous crime would pass unnoticed. The whole history of this case must satisfy the mind of any man, the least conversant with human nature, that the prisoner was capable of, and did practice, the system of deceit and hypocrisy attributed to him.

The body having been deposited in the earth, no doubt the prisoner flattered himself that all evidence of his guilt was removed and that he was safe from the reach of justice. But, that Being who rules the universe, and who has commanded "that whosoever sheddeth man's blood, by man shall his blood be shed," has by many circumstances, brought this crime to light, and caused the prisoner's own acts, and conduct, to lead to his conviction. Accordingly we now find the mask entirely torn off, and the hardened *murderer* standing disclosed in all his deformity! His language and behaviour after being arrested are powerful evidence against him.—We are told that "innocence is bold as a lion," and that his conduct can all be reconciled with a sense of innocence. We admit the correctness of this position, in general, but deny the application of it to the prisoner. The boldness displayed by him was altogether of a different character. It was the boldness of a man hardened in crime! *Innocence*, like *truth*, is, at all times, consistent with itself—it is not one thing to-day and another to-morrow. We find wanting in his conduct all the characteristics of innocence and truth. When arrested upon the charge of having murdered his wife, it would have been naturally expected, if innocent, that he would have been horror struck at the enormity of the accusation brought against him, and would have immediately protested his *innocence*, in a firm and consistent manner. But, instead of doing so, we find him declaring to the officer and his assistants, that "it was no more than he expected." Why expect to be arrested if innocent? His counsel would have you believe there was no ground for suspicion against him. That all things had been so contrived and conducted that no human penetration could discover aught amiss. Ah! gentlemen, conscience—that faithful monitor within, which makes cowards of the guilty!—accused him at the time, and, he unguardedly, made use of the language stated. We next find him prevaricating and swearing that he never had purchased arsenic, but had bought ratsbane, and had a right to do with it *what he pleased*. On being cautioned by one of the company not to talk in that manner, as his acknowledgments would be given in evidence against him, he replied "they might take him to jail or to h—ll—might hang him and be d—d to them." In the bar-room of Mr. Mangus we hear him make use of this remarkable language, "I'll take a drink by G—d, and I'll have the one I like best, unless they do hang me, and I don't care what the h—ll the people say."—And again, while on the way to the justices' office, he said he "expected they would hang him, and he did not care a d—n, that he expected to go to h—ll any how." Now, I ask you, is this the language and boldness of innocence? Are any tears shed now? Have we any manifestations of affection or regard for the wife of his bosom, so lately cut off from her family of helpless children, and ushered into "a world of untried being," and it may be, with all her infirmities on her head.—Nothing of the kind is either seen or heard. Does not the conduct of the prisoner exhibit a total absence of all feeling, and a recklessness of purpose, at variance with all his former pretensions? Yes, gentlemen, I will go further, does it not amount to an acknowledgment of his *guilt*, and the *inducement* which led him to perpetrate the cruel, and most deliberate, murder.

An attempt to escape from justice has ever been considered a mark of guilt, for "the wicked flee when no one pursueth." In the case before us we also have this evidence. The officer who had him in custody in the first instance proposed procuring a wagon to carry him. This the prisoner declined. What his reason was for doing so is not a mystery. My colleague has given you his views fully in regard to this part of the case, and they carry with them great force. He next attempts to divide the company, and not succeeding in this scheme, several efforts are made to escape. He started and ran some distance but was overtaken. His counsel have shown you that he is athletic and fleet of foot, and we think that we are justified in inferring that this was, at least, an experiment, to ascertain if escape was possible. Having been foiled in this attempt, we again see him making a sudden jump or spring towards the hill side, where, it is in evidence, there was a ravine or break, by which a man might have passed up and eluded pursuit. Upon another occasion he sat down and swore he would go no further, unless they got some way of hauling him. These, with other singular acts of behaviour, while on the road, and

which are fresh in your recollection, show a course of conduct in the prisoner, which I am at a loss to know how to reconcile with his innocence. Indeed, his ingenious counsel have found it a difficult task to account for it in any manner, the least plausible. At one time they would have you believe it was all done in sport; that he intended nothing serious by it, and that he afterwards came on peaceably and without any difficulty. In reply to all this, we say, that it was a strange time for sport and levity, and that the respectable men who had charge of him did not look upon it in that light, but the reverse; and as to coming on peaceably, they had to threaten to tie him and carry him, if he would not walk; such was his peaceable and submissive deportment. Again, they say he was drunk, and did not know what he was about. But where is the evidence to sustain this allegation? A strong endeavor was made to establish this fact, which they deemed so material; but in this they totally failed. Although he had about three drinks, in all, yet he was by no means intoxicated. The officer, very properly, prevented him from taking as much drink as he desired. Much has been said with regard to the conduct of the persons who had him in custody, and who have been examined as witnesses. They have been charged as blood thirsty, and seeking the condemnation of the prisoner, with an inhuman zeal, and persecuting spirit. But, is not this the mere declamation of counsel, unsupported by one spark of evidence. He was treated by them with more lenity than his conduct gave him any right to expect. He was cautioned, when using the language referred to, by the very man, Jacob Hogendobler, who is now made the object of their most pointed and severe remarks, and, in whom, the prisoner, seems to have placed the greatest confidence. True, he was one of the principal witnesses against him, and was called several times to the stand. But, there is nothing unusual in this. It is a matter of common occurrence. This was also the case with other witnesses during the trial of this very cause. But it is said he came forward voluntarily and divulged facts that he had not disclosed on his first examination. And, suppose he did, was it not right that he should do so? He was in attendance as a witness—brought by the process of the Court, and compelled to remain in attendance until the evidence was closed. It is equally clear that if he did omit to state anything material to the issue trying on his first, or any subsequent examination, to which his attention was not at that time drawn, or which had at the moment escaped his recollection, it became his duty, under the oath he had taken to tell the whole truth, to come again before the court and make it known. Had he not done so, but wilfully kept back any material facts—he would have been guilty of perjury, according to the settled law of the land. But, it is said he was officious—discovered a strong inclination to have the prisoner condemned, and had said he ought to be hung. That he was seen speaking to the counsel of the commonwealth, during the progress of the trial. As to having formed and expressed an opinion of the guilt of the prisoner, it seems he was not alone in this respect, for several of the jurors were challenged for having done the same. If this opinion has so warped and prejudiced his mind, against a fellow creature now being tried for his life, as to render him incapable of stating the truth, and to induce him to speak those things which are absolutely false, and you believe him so wicked and base as to be in this situation—you will give the prisoner the full benefit of such conclusion. The respectability and character for truth, however, of this witness is too well known and established, to be the least impaired by anything that has been alleged—for, be it remembered, the counsel for the prisoner did not presume to call a witness to impeach his reputation in any respect. But it is said he held conversation with the commonwealth's counsel; and so did most of the witnesses. This is really too trifling a charge to be treated seriously. I would thank the learned gentlemen to inform me how they arrive at the knowledge of facts, important in a cause, and which on the examination in court, they wish to direct the attention of witnesses to—unless by a previous conversation with the witnesses, and ascertaining from them the facts that can be relied on, so that the proper questions can be put, and the truth elicited. All lawyers know that for want of this precaution, it often happens, that material matters pass unnoticed, on the trial of a cause, which might, had this course been taken, have given the event a totally different aspect. It is the usual, and the proper, mode to pursue. The gentlemen, no doubt, from their well known caution and industry in preparing causes generally, and more particularly in this case, have pursued the same course; and I will venture to say, they not only held free communication with their own witnesses, but also with those of the commonwealth. We do not feel the least inclined to retort. We are bound to presume the interviews had with our witnesses were solely for the purpose of arriving at the truth—and that no attempt was made, by any one, to interfere

with their consciences, or keep them back from speaking the truth, the whole truth and nothing but the truth. I felt it my duty to make these observations as this witness has been selected and made the object of particular and scurrilous remarks. The witnesses for the commonwealth have all passed in review before you, and I think I may say, with confidence, that sitting as you have done in that box, separated from the world, free from all excitement, with minds anxiously inquiring after the truth and nothing else, that you have not discovered in them that disposition to magnify circumstances and to seek the life of the prisoner, that has been so uncourteously, to say the least of it, attributed to them. We can excuse counsel for saying many things, in the course of argument, under excited passions and feelings, which upon a different occasion would not be justifiable. The witnesses, thus attacked, can rely, with confidence, upon the rectitude of their own conduct and the favorable opinion of the public.

Gentlemen, I will now claim your attention to what transpired at Mr. Hoffman's tavern, in Muncy. A great deal may be collected from this part of the case. I recognize that humane principle of the law that the admissions, and confessions, of a person charged with a criminal offence, are to be taken altogether, that which operates in his favor as well as that against him; and that they must be perfectly free from all inducement held out to the party, by promises, threats or otherwise. You have heard that nothing of this kind took place. Had there been, the court would, at once, have rejected the evidence. We are, therefore, to take his declarations as voluntarily made, and give them the weight they deserve. On being informed that they were about raising his wife, and getting Dr. Dougal to ascertain whether there was any arsenic in her—he made this remarkable observation, “there may be some in her, but I did not give it to her.” Now, if innocent, what reason had he to suppose there was arsenic in her? Did he suggest anything of this kind at the time of her death, or before her interment? Not a word do we hear on the subject. It is not till the moment the body is about to be raised, and the important fact brought to light, that we hear this intimation given. His conscience accused him at the instant, and he betrayed what was bearing upon his mind. He then resorted to this stratagem to induce those present to believe that his wife had taken the poison herself. He tells them that he had bought her a bottle of rum, sometime previous, and could not tell what had become of it. That he believed she kept it in a trunk, at the head of her bed, locked, and had taken it in that. But, on the arrival of his mother, and his asking her about this bottle, the scheme vanishes, for she replied that the rum had been used two or three weeks before; at a period when Mrs. Earls had expected to be confined. But, gentlemen, there is another fact stated by the prisoner upon this occasion that I deem worthy of particular remark, and which, no doubt, has been deeply impressed upon your minds. It is this, “he said if it had not been for some woman, there would have been nothing of this fuss.” The name of the woman was used by the prisoner, but, is not now recollected by the witness. Gentlemen, we may readily suppose who this woman was. It does not require any great depth of penetration to comprehend who, and what he alluded to. This woman has figured conspicuously in this cause, and to his intimacy with her, may be traced all his conduct towards his unfortunate wife, and the horrid crime with which he is now charged. Other declarations, and language of a suspicious import, were used by him at the same time, but as these have been repeatedly brought to your view by my colleague, and the prisoner's counsel, and commented upon, you have, doubtless, given them their proper weight, and marked their tendency.

But, gentlemen, as black a trait as I have discovered in the character of the prisoner is the attempt he made to charge this crime upon his aged mother. I allude to the language used to his daughters in the jail, that “it was that old bitch his mother that done it.” This evinces a heart as hard as adamant—and a disposition to sacrifice even the woman that gave him being! But, where is the evidence of her guilt, or of her having participated, in the most remote degree, in this cruel deed? We look in vain for the smallest particle. Does her conduct during the confinement of her daughter appear anything like that of guilt? From the evidence it is shewn that they lived in peace with each other. She was remarkably kind and attentive to her during that period; and although not a woman of refinement of manners, yet she seems not devoid of those traits of character peculiar to her sex. She must, on the contrary, have been a fiend incarnate, to have participated, at such a time and on such an occasion, in so cool, so deliberate and so foul a murder—and that too without any motive that can be imagined. Nor can any part of her conduct since give rise to the least suspicion. The manner in which she addressed him on their

meeting at Hoffman's, already referred to, shews anything but a sense of guilt in her, nor did he then even insinuate that she was the person that had done the act. In conducting the defence, and in the argument, his counsel have departed altogether from this position taken by the prisoner, and have relied solely on the ground of the deceased having committed suicide. Besides, this old woman was examined and cross-examined, and if the counsel had thought her the guilty person, with all their ingenuity, they might have arrived at something like an exhibition of it. Although not obliged to criminate herself—yet suspicion might have been raised, by a proper course of interrogation, so as to have answered the object of creating a doubt in your minds; a matter of such vital importance to the prisoner. But we find nothing of the kind attempted. The testimony given by her is a plain, undisguised statement of facts, corroborated by other witnesses, and even relied upon by the prisoner's counsel, with other evidence in the cause to sustain the allegation that the deceased committed suicide, and that the prisoner is innocent. Yes, he said she did it. Here we find him, at the same moment that he told his daughters, in unqualified terms, that their mother did not perpetrate the act, now allege for the purpose of clearing him, and blasting her reputation, that his mother did it. But what did he mean by this? True, she was made the unconscious instrument of bearing the fatal bowl to her daughter. But this, of itself, leaves not a stain behind. If he intended, what, no doubt it was his design to induce others to believe, that she had knowingly and wilfully done the deed of death—then, we naturally inquire, how he acquired this knowledge? If he knew of it, at the time, and countenanced it, in any way, he stands guilty in the eye of the law. On the other hand if he knew of it, and yet did not divulge the fact immediately, but endeavored to conceal it, and shelter the criminal from justice—what are you to think of his declarations now, and in what light does he appear? View his conduct, in either way, and it is by no means that of an innocent man. But the very fact of his at one time pointing out his wife, and at another time his mother, as the criminal agent, goes to shew that he was undetermined as to which, or what course to take, in order to protect himself; and seemed to await the most favorable contingency of events that might arise, to rest his defence upon. His counsel have selected these, as they suppose affording the only chance of defending him successfully, and whilst they attempt to make a felon of his deceased wife, they totally exculpate his mother.

Having brought to your notice the material evidence in the cause, and replied to the prominent arguments on behalf of the prisoner, as, I trust, in a satisfactory manner, I shall submit the case to you after a few additional observations. You have been told "that the prosecution have resorted to unusual pains to prove the crime upon the prisoner;" that "every law of feeling and humanity has been trampled upon," and that he has hardly enjoyed those rights which are guaranteed to him by the constitution and laws of his country. I ask you, gentlemen, whether you are prepared to give an answer of approbation to these allegations of counsel, or, rather, have you not heard them uttered with astonishment. My colleague and myself appeal to this honorable Court—to yourselves, and the audience in daily attendance, to bear witness to our conduct during the progress of this cause. We do not feel conscious of having violated any principle of morality, law or religion; nor have any of the rights and privileges of the prisoner been in the smallest particular disregarded. His vigilant counsel, ever on the alert to seize upon the smallest matter that could turn up in his favor, would never have stood by and seen his sacred rights withheld or abused. Had the counsel of the commonwealth been so far forgetful of their duty, their character at this bar, and their respect for the Court, as to have attempted an invasion of the rights of a fellow man arraigned at the bar of his country to answer for one of the highest crimes known to our law, this honorable, humane and intelligent Court, sitting as counsel with the prisoner, would at once have crushed the attempt in terms of marked disapprobation. Our duty to the commonwealth it was obligatory upon us to discharge with fidelity and according to the best of our abilities. We trust we have done so. The cause was prepared with all that care and attention that was requisite to insure a conviction, if the prisoner was guilty; our duty demanded this at our hands—the commonwealth having confided to us one of her most important trusts—had a right to expect a faithful discharge of it. The laws of the country, and the welfare of society do not countenance that sickly kind of mercy that the gentlemen speak of so eloquently, which, if indulged in, would be productive of the most fatal consequences. The certainty of punishment, say all writers on the subject, is the great excellence of every criminal code, and of the administration of public justice. But what certainty could there be in the convic-

tion and punishment of offenders, if those who are entrusted with the execution of the laws, prove careless and indifferent in the discharge of their duty, and "bear the sword in vain?" None! Crime would stalk unpunished through the land to the terror of the citizens and the disgrace of the nation. The counsel have drawn a most affecting picture of the situation of the prisoner, with his little children weeping and clinging around the criminal box. True, it is a moving sight, and I have witnessed your feelings of humanity mingling with the stern dictates of duty. It is a painful struggle—and was the testimony of such a character as to leave a reasonable doubt upon the mind of any one of you, it would, perhaps, be the happiest period of your life, when you should return to this bar to pronounce a verdict of not guilty. But, a conviction of the truth compels us to say, that from a dispassionate view of the evidence in the cause, this happy relief does not await you. The facts disclosed all point to the prisoner, and centre in him as the guilty person.

You have been asked in a most impressive manner, that in case you should condemn this man on the testimony you have heard, and it should be made manifest to yourselves and an assembled universe, on the great judgment day, that he was innocent of the charge, what would be your feelings on the important secret being revealed? Gentlemen, the only reply we can make to this appeal, is this, that all that is required or expected of us now, is to act according to the light and knowledge we possess, with an honest disposition to discharge our duty faithfully, as God and the laws of our country require. And in doing so, if we err, it will never be a cause of self-reproach in this life, nor a condemnation or unhappiness in the world to come. I may ask you on my part, if, being satisfied of the guilt of the prisoner, you should still be induced by feelings of humanity, or those moving appeals to your passions, to acquit him, how would you reconcile this to your consciences, under the solemn obligations resting upon you? The duty you have to perform, I am deeply sensible, is of the most painful and solemn nature. The life of a fellow being is in your hands. From this duty you cannot, you will not shrink. The prisoner looks to you for a deliverance, if innocent; and the commonwealth for a verdict of guilty, if the charge has been sustained.

CHARGE OF THE COURT.

The Hon. ELLIS LEWIS charged the jury as follows:—

Gentlemen of the jury—

This important trial is gradually drawing to a close, and the period is fast approaching when you will be relieved from the arduous duties in which you have been engaged. The court have witnessed with regret the privations to which you have been subjected. Ever since you were empannelled in this cause, you have been placed under the charge of the officers and kept constantly together. But this was necessary, in order that you might be preserved free from the excitement which agitates the public mind, and thus be able to discharge the solemn obligation which you are severally under to determine this cause according to the evidence delivered before you in court, and not according to popular feelings and prejudices. It is unknown to the court, and immaterial to you, whether the excitement is for or against the prisoner at the bar. It is sufficient for you to know that this cause must be determined by the law and the evidence. We have no doubt of your determination to found your verdict upon these, and these only. The court have observed, with pleasure, the undivided attention which you have devoted to this cause, and, that during the whole course of the time, no juror has at any time desired to withdraw from the court house, during the sittings of the court, either for recreation or otherwise. For this close and severe application to business, thus facilitating the progress of the cause, the court feel it to be their duty to express to you their thanks.

In the investigation of that part of this case, involving questions in medical jurisprudence, we have been greatly aided by gentlemen of science in chemistry and in medicine. With the eminent scientific acquirements of Dr. Hepburn we were acquainted before, and also with the eminent professional ability of Dr. Dougal. But we were agreeably surprised to witness the great chemical knowledge of Dr. Kittoe, and the extensive professional knowledge of Dr. Ludwig. The duty of giving evidence in Courts of Justice, is one of the most irksome and responsible duties which belong to the medical profession. These gentlemen have discharged

that duty in a manner so candid, plain and satisfactory, and exhibiting such extensive research in the sciences which they profess, that they are entitled to the commendation of the community. It is proper that we should acknowledge the obligation in this public manner, and we do so with great pleasure.

We have been greatly aided, likewise, by the ability with which this cause has been conducted by the professional gentlemen engaged on each side. The prisoner has been aided by three gentlemen of distinguished ability, standing among the first in the profession to which they belong; and they have discharged their duty with a zeal and ability which does them honor. The commonwealth has also been represented by gentlemen of the first character in the profession, and the manner in which they have sustained the interests of the state, must receive the high commendation of the community. We have had these aids in the trial of this cause, and it seems proper that we should make the acknowledgment.

Something has been said, in the course of the argument, in relation to the responsibilities which have fallen upon you. The duties you have to discharge are responsible ones; but they are responsibilities from which you are not to shrink. It is proper that you should feel these responsibilities, but a just sense of them should have no other influence upon your minds than to induce you to examine into the case with the more care and deliberation, and to come to a determination according to the very best judgment you can command. On the one hand, the prisoner, if innocent, is entitled to demand at your hands, a speedy deliverance from the jeopardy in which he is placed. On the other hand, if guilty, your duty to the commonwealth requires you to say so, in order that the law shall have its course.

This is a criminal case. In criminal cases, the jury are the judges of the LAW, as well as the FACTS. The court is the constitutional organ to advise you in matters of law. It is then left to you to make such a determination as your judgment shall sanction. The prisoner at the bar stands charged with the crime of wilful and deliberate MURDER. The first count charges him with the murder of CATHARINE EARLS, by means of *white arsenic*, mingled in a bowl of chocolate. The second count charges him with the murder of the said CATHARINE EARLS by means of *white arsenic* mingled in a bowl of tea. By the common law, murder is the voluntary killing of a person of malice aforethought. If the poison was designedly administered, with intention to kill, the malice is implied. By the act of assembly of the twenty second April 1794, it is declared that "all murder which shall be perpetrated by means of poison, shall be deemed murder in the first degree." It will not be necessary for you to enter into any inquiry in regard to the distinction between murder in the second degree and murder in the first degree. In this case, the crime charged is that of murder in the first degree. And, under the evidence in the cause the prisoner must be entirely acquitted, or absolutely convicted of the crime with which he stands charged.

Some objection has been taken to the description of the poison. It is true that the drug is known among chemists by the names of *arsenious acid*, *white oxide of arsenic*, &c. But in France, Spain, Germany and England it is also known by the name of *white arsenic*. The term *white arsenic* is that which is most usually adopted in legal proceedings. The poison is legally and properly described by that name. While upon this question it may be proper to remark that it is immaterial by what kind of poison Catharine Earls was destroyed. If she was murdered by the prisoner, by means of poison of any kind, it will be sufficient to sustain the indictment.

In entering upon the investigation of this cause, the prisoner is to be presumed innocent of all crime until his guilt is established by evidence. The circumstances should, to a moral certainty, exclude every hypothesis, but that of the prisoner's guilt, before you can find him guilty. If you can take any view of the facts, which shall consist with his innocence, that view ought to be adopted; and if you have reasonable doubts of his guilt, those doubts entitle him, by the laws of his country, to an acquittal. The legal test to be applied to the evidence, is, is it sufficient to satisfy your understandings and consciences, beyond all reasonable doubts, of his guilt? If it is of this character you ought to find him guilty; if it is not of this convincing character you ought to acquit him.

The inquiry may be divided into two branches: first, was the death of Catharine Earls caused by poison? Second, if so, was it designedly caused by the prisoner at the bar? And here it may not be improper to notice a fallacy used in the course of the argument in regard to what was called the *science of probabilities*. One of the medical gentlemen testified that in his opinion neither of the chemical tests, by itself, would be sufficient to establish, with certainty, the presence of arsenic, but

that a certain number of tests would be sufficient for that purpose. It was urged, that if no *one* was sufficient, all together would not be sufficient, and that a multiplication of nothings could never amount to any thing. But a chemical test, indicating the presence of arsenic, is not *merely nothing*. It counts something, and a sufficient number of tests, under proper management, may establish, with certainty, the existence of arsenic. One log may not be sufficient to erect a building, but a number of logs may be sufficient; one shingle may not cover it but a number of shingles may be sufficient for the purpose.

The first branch of the inquiry then, is, was the death of Catharine Earls caused by poison? In coming to a conclusion, on this part of the case, the jury will consider all the circumstances. And, first, the *suddenness of her death*. It is in evidence that she was confined on Wednesday, the fourteenth day of October, 1835, and after delivery, was left by the matron who attended her, as well, if not better, than usual. The next day, Thursday, the fifteenth, she sat up with her child by the fire, in order that the bed might be made—exhibited the infant to one of her daughters—gave it nourishment at her breast—ate a hearty dinner—was cheerful and pleased with the attentions of her husband, and between seven and eight o'clock in the evening ate a hearty supper, consisting, among other things, of a *pint bowl of chocolate*. In little better than an hour she was seized with violent vomiting, and between three and four o'clock, in the ensuing morning, she was a corpse. This, of itself, would not prove that her death was caused by poison, but it is a circumstance to be taken into consideration. In the next place, the *symptoms* are to be taken into consideration. Orfila, who is esteemed the best French writer on the subject of poisons, enumerates a large number of symptoms which may exist in cases of poisoning by arsenic, but he adds that it is rare to see them all in the same person, and sometimes all are wanting. Among the symptoms generally attending cases of that kind, according to the testimony of the medical gentlemen, are: vomiting, pain in the stomach and all over the body, a sense of burning heat in the stomach, intense thirst, efforts to vomit, gagging. The evidence is, that Catharine Earls vomited till she could vomit no more—gagged—complained of pain all over, and called for drink with the last words she ever spoke. You will judge whether the symptoms described by the medical witnesses as generally existing in cases of poisoning by arsenic, were to be found in the case of Mrs. Earls. If so, it is another circumstance worthy of consideration. The next matter worthy of attention is: the *appearances of the body on dissection*. These are not uniform in cases of poisoning by arsenic; but the appearances which, the authorities say, are sometimes to be found, are, livid stripes or patches on the body, the coats of the stomach highly inflamed, and easily separable, the duodenum and intestines also inflamed, the brain turgid, the cavities of the heart filled with blood. You have heard the evidence of the physicians who conducted the *post mortem examination*, and will judge whether these appearances were found upon that occasion.

According to the testimony of the physicians, all the cavities of the heart, not only the auricles, which receive the blood into it, but the ventricles, from which it is made to pass out, were filled with blood; and that this appearance was unusual and unnatural.

When we have the evidence that this strong muscular organ was thus suddenly arrested in the performance of its last pulsation, it may be regarded as a circumstance indicating the influence of some violent and unnatural cause. Still, this is not, of itself, to be regarded as sufficient proof that the death was caused by poison. It is to be taken into view, with the other facts in the cause. The next subject for consideration is the chemical tests which were applied to the contents of the *stomach* and *duodenum*, which were conveyed to Muncy for examination. Here, in the presence of the scientific gentlemen assembled, two of the usual tests were applied; first the *nitrate of silver*, which produced the *yellow precipitate*, which should be produced if arsenic were present; and, secondly, the *sulphate of copper*, which produced the *grass green*, called *Scheele's green*, a paint with which many of you are familiar, and which is composed of arsenic and copper. The results in these cases were such as should have been produced, according to the laws of chemistry, if arsenic were present. These two tests, are insufficient of themselves, to establish the presence of poison; but they may be regarded as indications which should be considered with the other facts in evidence. A portion of the contents of the stomach was taken to Milton, where other experiments were made, in the presence of Dr. Dougal and Mr. Morrison, a chemist of that place. The *ammoniacal sulphate of copper* produced the *Scheele's green*—the *sulphuretted hydrogen gas* produced the *yellow*

sulphuret or *orpiment*, and this precipitate, on being sublimed, produced the *metallic ring*. These results were such, as by the laws of chemistry, ought to have been produced, if white arsenic were present in the substance to which the tests were applied. These are strong indications of the presence of arsenic, but as the ring is not so clearly exhibited on the tube as is usual in such cases, and as no tests were applied to it for the purpose of proving it to be the metallic arsenic, it is not to be regarded as *conclusive* evidence of the presence of that poison. The remaining portion of the contents of the stomach and duodenum were conveyed by Mr. Kittoe to Philadelphia, and there in his presence and in the presence of that eminent chemist Dr. Mitchell, further experiments were tried. It was discovered in Philadelphia, that a *white powder* had subsided, and was deposited at the bottom of the jar which contained the fluid intended to be examined. This was supposed to be the poison. A portion of this was placed in a tube and sublimed over a spirit lamp with the usual preparations for producing the metallic arsenic. A fine and well defined arsenical ring was produced which you have seen exhibited before you. Some portions of this ring were placed upon a live coal and gave out the alliacious odour of arsenic, which is a smell somewhat resembling garlic. Other portions of the metal were tested with the *ammoniated sulphate of copper*, and produced the *Scheele's green*. Another portion of the *white powder* was then dissolved, and this solution, with the *ammoniated sulphate of copper*, in like manner, produced the *Scheele's green*. With *ammoniated nitrate of silver* it produced the *canary yellow*, which is produced by arsenic. By the laws of chemistry this yellow arsenite of silver changes its color by the action of light from yellow to black, which you find from the specimen exhibited is the case here. A part of the solution of the white powder found was then tested with *lime water*, which produced the characteristic results of arsenic, a *white flocculent precipitate*. The remaining portion of the solution of the white powder was precipitated by a stream of *sulphuretted hydrogen*: the precipitate was of a deep sulphur yellow, characteristic of the presence of arsenic. A portion of this precipitate, under the usual management for subliming, produced an arsenical ring; the metallic arsenic. In addition to all these experiments, a vial containing a portion of the white powder itself, as it was found in the stomach, is produced here in court, subject to the application of any further test which may be thought necessary to determine its nature. We have, further, the opinion of gentlemen of medical and chemical science, that this substance is indubitably arsenic, and that in their opinion the death of Catharine Earls was caused by arsenic. To entertain any doubts, upon this part of the case, after all this evidence, standing as it does, unrebuted and unrepelled, would be to doubt against a mass of overwhelming testimony; against the opinions of gentlemen of high professional skill, and against a combination of some of the highest chemical tests which can be furnished by the lights of science. The court have no doubt whatever upon this part of the case, and, as it belongs to the department of medical jurisprudence, we have deemed it our duty to express the clear conviction which this evidence has produced in our minds. Still you will remember, that in this, as in all other questions in this cause, you are the judges. If you come to the conclusion that her death was caused by poison, the next inquiry to which we are brought, is: was it designedly caused by the prisoner at the bar? This is a matter of fact which belongs peculiarly and exclusively to you to determine.

In proceeding to determine this question, you will remember that you cannot convict unless the chain of circumstances is so strong, and so connected together as to exclude every hypothesis but that of the guilt of the prisoner; and that if there is any view which can be taken of the facts of the cause which shall consist with his innocence, it is your duty to adopt that view, and to render a verdict in his favor. The hypothesis offered by the prisoner's counsel is, that Catharine Earls destroyed herself—that she committed the crime of suicide. In support of this defence, the declarations of the deceased have been given in evidence. These declarations may be divided into two classes:—first, those indicating a state of despondency and that she would not live long, or would not survive her approaching confinement. And, secondly, those indicating a specific intention to destroy herself by poison. To account for the general declarations of despondency, the commonwealth's counsel have shown, by two witnesses, Dr. Power and Dr. Ludwig, that this is not unfrequent with ladies in the condition of pregnancy. You will judge whether these declarations were produced by this cause alone, and will also determine whether, if they were so produced, the state of mind thus occasioned would be likely to continue after she had passed in safety through the hour of nature's extremity. The specific

declarations of an intention to destroy herself depend chiefly upon the testimony of Diantha Marinus, Sabina Moritz, Henrietta Moritz, and, perhaps, James M'Coy.— If this evidence is believed, your verdict ought to be in favor of the prisoner. But the evidence of self-destruction depends mostly upon the testimony of Diantha Marinus, Sabina and Henrietta Moritz. In deciding whether these witnesses are to be believed, you will take into consideration the evidence adduced by the commonwealth to impeach their character for truth and veracity. So far as Sabina and Henrietta Moritz are concerned, no attempt whatever was made to sustain their reputations for truth. You will also compare this with the circumstances attending her death—her willingness and anxiety to take remedies to remove her complaint.

It is in evidence that while she was suffering with pain and violent vomiting, she declared in answer to an inquiry as to the cause of her sufferings, that *she did not know*. If she had taken the poison herself, for the purpose of self-destruction, she did know the cause of her distress, and must have known in that case that she was shortly to appear before the bar of God. It would be singular if, at such a time, she would falsify. If you should come to the determination that she did not destroy herself, the inquiry still remains, whether her destruction was designedly caused by the prisoner at the bar.

Among the facts in support of the indictment, the commonwealth have given in evidence the purchase of arsenic by the prisoner, on the thirteenth of October, the day before the confinement of Catharine Earls. But the prisoner has shown that he was in the habit of using this drug in the destruction of minks which visited his fish basket—that he purchased it at other times for this purpose, and that he placed some upon a fish in his fish basket, the day before the death of his wife. This evidence diminishes the force of the evidence arising from the purchase of arsenic. Still the fact remains, that he had the arsenic within his reach, and knew its deleterious properties. And if the other evidence in the cause, satisfies you that he used it for the purpose of destroying his wife, and by that means accomplished that object, you ought to find him guilty. If the other evidence does not satisfy you of his guilt, you ought to acquit him.

As one of the links in the chain of circumstances, which the commonwealth have undertaken to establish, they have attempted to show a motive for the commission of the crime. With this view, evidence was given tending to show that the prisoner's affections had become estranged from his wife—that an intimate and close attachment existed on his part, towards Maria Moritz, and that the deceased stood in the way of the prisoner, so that he could not enjoy the gratification arising from this improper intimacy, and that therefore, it is alleged, there was a motive to remove the deceased out of the way, as an obstacle which interfered between the prisoner and the object of his desires. This is resisted by the prisoner, on the ground that there is no evidence of a *marriage in fact*, between the prisoner and the deceased, and it is urged that if there was no marriage there could be no motive to dissolve it. It is in evidence that the prisoner and the deceased lived and cohabited as man and wife for more than fifteen years; that they were, during that time, the parents of seven children, and that they were constantly recognized by each other as husband and wife. This evidence is not rebutted by any counter evidence. The Court have already instructed you that the prisoner is to be presumed innocent of all crime, until his guilt is established by evidence. That principle will apply to this part of the case. The presumption is, that this cohabitation was an innocent cohabitation, in accordance with the laws of the land, and therefore that it was under the sanctity of matrimonial obligation. It is not to be presumed, without evidence, that these parties were living, during all this period of time, in open adultery and in violation of the law. If, therefore, the attachment to Maria Moritz is shown to be so strong as alleged, there is sufficient evidence of the marriage with the deceased, to make out the motive assigned. The jury will bear in mind that the motive is only one link in the chain of circumstances, and that the intimacy with Maria Moritz, no matter how criminal it may have been, is not to be regarded as proof that the prisoner is guilty of the crime charged in the indictment. One crime is not to be inferred from the existence of another.

The jury will determine from the evidence, whether the prisoner seriously attempted to escape from those who had him in custody, on this charge. If the prisoner made a serious attempt to fly from the justice of his country, it may be regarded as a circumstance against him, because the "guilty flee when no one pursueth."

We have now, gentlemen, discharged the last duty imposed upon us, until your verdict shall require others at our hands, imparting FREEDOM OF DEATH, to the prison-

er at the bar. In the language of the law, and in the language of the counsel for the prisoner, he has placed himself upon God and his country. You are that country. If innocent, he is entitled to a speedy deliverance—if guilty, the obligations you have taken, require you to say so. May that Omniscient Judge, at whose dread chancery we all must answer for our proceedings here, guide you to a righteous and correct determination of this all-important cause. Gentlemen, the cause is with you.

At half past five o'clock, P. M. on Monday the 15th, the jury retired for final deliberation, and the court adjourned to meet forthwith at the ringing of the bell. At twenty minutes before seven, on the same evening, the court opened, and the jury returned a verdict of "GUILTY, IN MANNER AND FORM AS STATED IN THE INDICTMENT." The jury being polled, at the request of the prisoner's counsel, severally assented to the verdict.

After the verdict had been recorded, Mr. Parsons, for the prisoner, requested time, until the following morning, to move for a new trial and in arrest of judgment. The Court thereupon adjourned till nine o'clock on Tuesday morning.

TUESDAY MORNING, FEBRUARY 16.

The counsel for the prisoner move in arrest of judgment, for the following reasons:—

1. That it is not alleged in either count in the indictment that the defendant knew the *white arsenic* to be a *deadly poison*—as, by law, the commonwealth was bound to allege.

2. It is not alleged in the indictment that the chocolate in which it is averred that the *white arsenic* was mixed and mingled, was given to the said Catharine Earls to drink, either by the said John Earls or any other person.

3. That the second count does not allege that the defendant intended to commit the crime "of his malice aforethought," as is therein alleged he did commit it.

The counsel for the prisoner also move for a new trial on the following grounds:

1. Because one of the jurors had made a bet on the week before the court that the defendant would be convicted; and this fact was not known to the defendant or his counsel until after the jury were sworn, and then during the progress of the trial.

2. That one of the jurors was seen and believed to be asleep during the delivering of the testimony, and frequently while the argument of the cause was progressing.

After the several reasons assigned for a new trial and in arrest of judgment had been argued at length, the court delivered their opinion as follows:—

BY THE COURT.—The second count omits the averment that the prisoner *intended by means of poison to kill and murder the deceased*. It is at least doubtful whether this count is sufficient. The prisoner is entitled to the benefit of this doubt, and the judgment on the second count, is, therefore, arrested. The first count contains an express allegation of the prisoner's intention of his malice aforethought to kill and murder the deceased; and his knowledge that white arsenic was a deadly poison is sufficiently shown in the averment that he *did knowingly, wilfully, and feloniously, and of his malice aforethought, put, mix and mingle, a certain deadly poison, to wit: white arsenic, &c.* It is not necessary to aver that the chocolate containing the poison was given to the deceased to drink either by the prisoner or any other person; it is sufficient if it appears by the indictment that for the purpose of murdering the deceased he mingled the poison in chocolate which he knew was prepared to be administered to her to drink, and that she did drink it, and was thereby destroyed. All this is apparent from the indictment, which is drawn according to the precedent in the case of *Miss Blandy, 3 Chitty, c. d. 528*, which was followed in the cases of *Mina*, and *Mrs. Chapman*. The first count of the indictment is therefore valid. It is true that in civil cases, where there is a general verdict of damages on several counts of a declaration, one of which is defective, the judgment must be arrested as to both, because the court cannot apportion the damages. But the rule is different in criminal cases, where the court are bound to pass the appropriate sentence on each valid count in the indictment. The first count contains a complete charge of murder in the first degree, and as the verdict stands the commonwealth has a right to call for the judgment of the law upon that count.

The reasons in support of the motion for a new trial have not been sustained by any evidence. The objection to one of the jurors, on account of offering to bet on the event, was communicated to the prisoner's counsel more than ten days before the verdict. It ought to have been laid before the Court as soon as known. The rule is settled that a party cannot take his chance of a verdict in his favor, and at the same time keep in reserve a motion for a new trial, 5 *Bin.* 340. The same principle applies to the objection that one of the jurors was asleep in open court during a part of the trial. If this were a fact, it occurred in the presence of all parties, and might have been shown. But there is no evidence of either of these allegations, and the Court do not consider them sufficient to justify a further continuance for the purpose of proving them. Judgment is therefore ordered on the first count of the indictment.

The Court then addressed the prisoner as follows:—"Prisoner! have you anything further to say why sentence of death should not be pronounced?" To which he replied—"Well, I think I have not had a fair chance—I AM INNOCENT!"

His Honor, ELLIS LEWIS, thereupon delivered the sentence of the law as follows:

SENTENCE.

The Court cannot conceal their deep and unutterable emotions at the melancholy predicament in which you are placed. They sympathize deeply with you and with the innocent little ones who still cling around you in this distressing hour of extremity. Whatever you may suggest for their welfare and protection, will be cheerfully and faithfully attended to by the Court. Painful as may be the task, and deeply as we are affected on this solemn occasion, we are required to perform our last melancholy duty in this cause by pronouncing the sentence of the law.

You have been charged with the crime of wilful and deliberate murder. The humanity of the law extended to you the privilege of twenty peremptory challenges, without assigning any cause whatever, and as many more as you could assign cause for. You enjoyed the full benefit of this humane provision, and a jury was thus empanelled of your own selection. You have had the benefit of able and distinguished counsel, whose zealous and talented exertions in your behalf, have done honor to their heads and hearts. In the progress of the cause, all doubtful questions which arose, were uniformly solved in your favor. If you offered evidence of doubtful admissibility, your evidence was uniformly received. If the commonwealth offered similar evidence and you objected to its admission, such evidence was uniformly rejected. If you offered evidence out of its proper order in time, it was discretionary with the Court to receive or reject it, but your evidence was constantly received. And in accordance with another humane provision in the law, the jury were instructed that if they entertained reasonable doubts of your guilt, those doubts entitled you to a verdict of an acquittal. You have therefore had as full and as fair a trial as the laws of the country ever extend to any individual whatever.

Of all crimes, that of wilful and deliberate murder is perhaps the most foul and unnatural. Of all means by which a deed so dire can be committed, that of POISON evinces, perhaps, the most cold-blooded deliberation. Of all persons who may be the subject of this crime, the wife of your bosom—the mother of your children—the partner of your lot—whose name and whose civil existence was merged in your own, should have been the last to be thus destroyed in the hour of unsuspecting confidence. Of all occasions for a deed so dreadful, the selection of that period when she was prostrated upon the bed of her confinement, with the new-born babe in helpless infancy by her side, manifests "a heart the most regardless of social duty and fatally bent on mischief." Of such a murder, and with such attending circumstances, a jury of your country have pronounced you GUILTY.

It was a deed of darkness—but, as if the finger of Providence had interposed, in accordance with that well established truth that "murder will out," public suspicion was aroused. The grave gave up its contents—that heart whose affections had clung around you for more than fifteen years, was the first to proclaim, by its ventricles filled with blood, that its pulsations had been suddenly arrested by the operation of some sudden, violent and unnatural cause. The chemical affinities of nature's elements rushed together to confirm the charge, and to identify the poisonous drug by which the life of this unhappy woman was destroyed. The solemn spectacle this day presented, may be a lesson to all around, and to those who follow us in all time

to come, that no deed of dark iniquity can hope to escape detection. As your time must necessarily be short in this world, you are admonished to prepare to appear at the bar of that Almighty Judge, whose Omniscience enables him to distinguish with unerring certainty the innocent from the guilty. We are to take the verdict as establishing your guilt with absolute certainty, and must proceed to pronounce the sentence of the law, which is, that you, JOHN EARLS, be taken hence to the place from whence you came, within the jail of the county of Lycoming, and from thence to the place of execution, within the walls or yard of the said jail; and that you be there hanged by the neck until you are DEAD! And may God have mercy upon your soul.

On the 28th of March, an application in due form was made by the counsel for the prisoner to the Supreme Court, sitting in Philadelphia, for a writ of error, accompanied with a brief argument by Mr. Parsons, in the form of a letter addressed to the Chief Justice. A copy of which, together with the reply of Judge Gibson, has been politely furnished the reporters, by the prisoner's counsel.

LETTER OF A. V. PARSONS, ESQ.

BELLEFONTE, MARCH 23, 1836.

HON. JOHN B. GIBSON:

SIR—I came to this place for the purpose of attending an adjourned court, and brought with me the enclosed copy of a record from Lycoming county, of the conviction of John Earls, for homicide, intending to apply to his Honour Judge HUSTON for a special *allocatur*, for a writ of error in said case; but learning that he was in Philadelphia, and that the Court were sitting in Bank, I beg leave to make the application to your Honour, in order that it may be laid before the whole Court. And if the reasons that we assign are deemed worthy of any consideration, I most respectfully request that the writ may be allowed, in order that the counsel of the prisoner may be heard before the highest tribunal in the state, in behalf of one condemned to die, and his case fully considered by that Court.

Learning from gentlemen of great experience in the profession, that in applications of this description, it is usual to forward a copy of the errors intended to be relied upon, and assigned, if a writ of error should be granted—also, a brief argument on those errors, together with a reference to the authorities—it is with the utmost cheerfulness that I comply with what I suppose to be the established practice, although I came to this place totally unprepared for it.

1. The first error we complain of is, that the Court erred in not arresting the judgment on the first reason assigned upon the record.

2. That the Court erred in not arresting the judgment on the second reason assigned upon the record.

3. That the jury did not ascertain in their verdict the degree of murder of which the prisoner is guilty, whether of murder in the first or second degree, as they were bound to do according to the provisions of the second section of the act of the 22nd of April, 1794.

4. That the Court erred in pronouncing sentence of death upon the prisoner as the verdict of the jury is now rendered.

The first reason assigned in arrest of judgment is "that it is not alleged in the indictment that the defendant knew the *white arsenic* to be a deadly poison as by law the commonwealth is bound to allege." In indictments precedents may be said to be law, and on a careful examination of the books of forms in criminal cases within my range, I find but one precedent where it is not averred that the defendant knew that the substance was a deadly poison. In *Archbold's Criminal Pleadings*, page 233, the form is so drawn. In *3 Chitty C. Law*, page 530, (side page 775,) the form is drawn in the same manner; in the next page the same form is given—so in the following page 777; such likewise are the precedents in every other book that I have been able to obtain; and it appears to me to be a very necessary averment. For one might innocently administer poison as a medicine, ignorant that it would kill—or it might be given to a sick person through mistake. The knowledge and intention with which the poison is given seems to me to constitute the very essence of the offence; and in Pennsylvania, where there are two degrees of murder, I hold it indispensably necessary. The only precedent that I have seen at variance with the above view will be found in *3 Chitty*, page 528. And I apprehend that in that case, (which was the indictment against *Mary Blandy*, for the murder of her father) the indictment was drawn to meet the facts of the case. It will be recollected that in England there are not two degrees of murder. And by a

reference to the facts in her case it will be seen that her confession was the evidence relied upon. She had formed an attachment for a married man, an officer in the army—she was opposed strongly by her father in her wishes, and the lover was forbidden to enter the father's house. He conveyed to her in a letter some white powders, which he assured Miss *Blandy*, if given to her father, would cause him to change his views upon the subject of her marriage, and she gave them; stating, and denying most unequivocally, that she knew that they contained a poisonous substance. Now, if it had been averred that she knew that it was a deadly poison, the prosecution would be bound to satisfy the jury of the fact, and probably they might not have been able to do it. And although in England such an indictment might be holden to be good, in that particular case, still I shall contend that in Pennsylvania it is not good; for I will endeavor in another part of my argument to show that one may be convicted of murder in the second degree, where the killing is by poisoning.

There are analogous principles which might be cited, that would fortify strongly the position which I assume; but, in an application like the present, I deem it unnecessary to bring them fully to the view of the Court.

The second error complained of, is, that "it is not alleged in the indictment that the chocolate, in which it is averred the white arsenic was mixed and mingled, was given to the said Catharine Earls to drink, either by the said John Earls, or any other person." This I hold to be necessary; for in all cases where a homicide is committed by a blow, it should be explicitly stated that the same was given by the prisoner. See 1 *Harvins P. C.* page 283. For if the poison was mixed and mingled by the prisoner, and it was taken by the deceased through mistake, or without his knowledge or procuring, he could not be convicted of murder in the *first degree*. But what I consider to be a strong reason why a writ of error should be allowed, and why the judgment should be reversed, is, that the jury have not found the degree of murder of which the defendant was guilty. This I hold to be indispensably necessary under the act of the 22d of April, 1794, *Purdon's Digest*, page 593. That act places all murder perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, or burglary, upon the same footing. And the act expressly provides that the jury, before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict whether it be murder in the first or second degree. Here is a positive injunction, an absolute direction to the jury, as to the form and manner of their finding, and one which cannot be disregarded without violating the act of Assembly; the law is imperative. And what adds great force to this requisition, is the clause which follows, and declares if such person shall be convicted by confession, the Court shall proceed by examination of witnesses, to determine the *degree* of the crime, and give sentence accordingly. No matter in what form the indictment is drawn, nor how the killing is alleged to have been done, no distinction is made in the finding of the jury, let the charge be made as it may in the indictment. And I apprehend the legislature could hardly have found language to have pointed out the duty of the jury in more imperative terms. But it is said there is a *dictum* in the case of the *Commonwealth vs White*, in 6 *Binney*, 179, that militates against this construction. And it is a mere *dictum*; not the point decided in the cause. The Chief Justice, who delivers the opinion of the Court, there remarks, "if the indictments were so drawn as plainly to show that the murder was of the first or second degree, all that the jury need do, would be to find the prisoner guilty in manner and form as he stands indicted." Without stopping to inquire whether an indictment might be so drawn as to supersede the necessity of the jury finding the degree, it will be sufficient for me to show that the present indictment is not of that character. For I have no doubt but that if one kills another by poison, he may, in some cases, only be guilty of murder in the second degree, and a jury would have a right so to find. It is the deliberation or premeditation with which the act is done that constitutes the crime of murder in the first degree. Suppose, as in the case of *Mary Blandy*, when she received those powders from the officer, a jury had been fully satisfied she was ignorant that they contained a poisonous substance, but believed them to be really what she asserted they were represented to be by him who sent them, "love powders," and their effect would be to reconcile the father to her choice; might not a jury with propriety find such defendant guilty of murder in the second degree. Or, suppose a father opposes the marriage of his daughter; she is about to elope in the night time with her suitor, and in order that the parent shall not discover the hour of her departure, she should give him a portion

of laudanum, to make him sleep, avowedly for the purpose of concealing from him her absence, and with no other intention—unfortunately the father should sleep the sleep of death—should the daughter be indicted for poisoning him; would any one doubt but that a jury or a judge on the confession, could with the strictest propriety find it to be a case of murder in the second degree. Or, further, suppose a man prepares and mingles arsenic to poison a servant and the vessel containing it is placed in some convenient spot, awaiting a proper hour for its administration, and a child or the wife of the man accidentally should drink it, without the knowledge of the father, surely he would not be guiltless, yet who would say that he could be convicted of murder in the first degree? And yet in all those supposed cases the indictment would be for murder by means of poison, as in the case under consideration.

There is no doubt but that a penal statute like this ought to be construed strictly, and in favor of life; and there is as little doubt but that the jury in a case of killing by poison should designate the degree of *the murder*, as much as in any other case. For if the indictment had alleged that the killing was premeditated, would not the jury be bound to find the degree of crime? So far as I have been able to obtain any information in relation to the practice from members of the profession, in all cases since the passage of the act, the jury have fixed the degree of murder, let the indictment be in what form it may.

I have examined two cases in the Oyer and Terminer in Centre county, and I find them entered in that way. One is the case of the *Commonwealth vs. Negro Dan*, tried at the November term, 1802, before Judge RIDDLE; the verdict is in the following form: "Do say that *Negro Dan*, otherwise called *Dan Byers*, the prisoner at the bar, is guilty of the felony and murder whereof he stands indicted in the first degree." The other case, the *Commonwealth vs. James Monks*, tried before Judge HUSTON at November term, 1818, and it is as follows: "Do say that they find the defendant *James Monks*, guilty of murder of the first degree, in manner and form as he stands indicted." I think on examination, it will be found from the passage of the act of 1794 to this time, the jury have always found the degree of crime. See *Addison's Rep.* 255, *Penns'a. vs. John M'Falls*, tried in 1794, also the case of *Penns'a. vs. Samuel Lewis & others*, same book, page 279, tried in 1796. If the early construction of the act in all cases has been that the jury should find the *degree of murder*, and the practice has been uniform throughout the state, it would form a powerful argument for the prisoner; and if an *allocatur* is granted we will be prepared on the argument to show what the practice has been. It is impossible for me in so brief a manner to do justice to this important subject, and certainly if any doubt exists as to the legality of the conviction, justice demands that the prisoner should have the benefit of it. I would therefore most respectfully solicit a hearing for this unfortunate man, before the highest tribunal of the state; it would perhaps soften in a measure the pangs of death to this ill-fated individual should he be satisfied that his conviction was *legal*, and I will assure your Honor that it would greatly relieve the feelings of his counsel if the court of last resort should decide upon the regularity of the judgment now rendered.

I am with high respect

Your obedient servant,

A. V. PARSONS.

JUDGE GIBSON'S REPLY.

PHILADELPHIA, 10TH APRIL, 1836.

Dear Sir—

I have laid your application for a writ of error, in Earls' case, before my brethren, and am charged to say that after mature consideration, we can see nothing in the exceptions that could affect the question of the prisoner's innocence or guilt; without which, we could not feel ourselves justified in interfering. You will find the principle which governs in similar cases, laid down in 6 *Binney*, 403, and 3 *S. & R.* 199. The indictment, beside, is not conclusively defective, though the weight of precedent is certainly the other way in regard to the *scienter*. For the sake of the prisoner, we regret this decision; but our discretion is not an arbitrary one. See in addition, 4 *Yeates*, 319, 2 *S. & R.* 302.

Very respectfully,

Your obedient servant

JOHN B. GIBSON.

A. V. PARSONS, Esq.

CONFESSION

OF

JOHN EARLS,

WHO WAS EXECUTED AT WILLIAMSPORT, PENN'A, MAY 24, 1836,

FOR THE

MURDER OF HIS WIFE

BY POISON.

(Published for the benefit of his orphan children.)

WILLIAMSPORT:

PRINTED BY THE PUBLISHERS.

1836.

Entered, according to the act of Congress, in the year 1836, by A. CUMMINGS, JR.
and WILLIAM F. PACKER, in the Clerk's office of the District Court of the United
States for the Western District of Pennsylvania.

THE CONFESSION OF JOHN EARLS,

Made the twenty-first day of May, A. D. 1836, in relation to the murder of his late wife, Catharine Earls, for which he has been sentenced to be executed by the Court of Oyer and Terminer of Lycoming county, Pennsylvania.

THIS CONFESSION made solely to his late counsel, ANSON V. PARSONS, WILLIAM COX ELLIS and ROBERT FLEMING. I was born near Williamsport, in Loyalsock township, Lycoming county, and to the best of my knowledge I was thirty-four years of age upon the sixteenth day of March, 1836.

I was married to Ann Jackson, in the month of June 1820, at Harrisburg, by the Rev. Mr. Lochman—we lived together about two months, in Fishing creek valley, in Perry county, Pennsylvania; we then separated.

I was under a contract to marry my late wife, Catharine Earls, before my marriage with Ann Jackson, and the agreement was interrupted and broken, on account of the opposition of my mother and one of my sisters. I was married to Ann Jackson during this interruption of the agreement. The marriage with her was made inconsiderately, and was consummated while I was attending a Fair at Harrisburg.

After I had separated from my first wife, I renewed my intimacy with Catharine Thomas, and married her in the spring of 1821. We moved to Milton, in Northumberland county, about harvest time of that year; we never lived happily together. I continued to live in Milton, for thirteen years. In March 1834, I moved with my family to the Muncy dam. I always followed the business of a boatman, waterman and fisherman.

Shortly after I settled there, I became acquainted with a young woman of that neighborhood, named Maria Moritz. This acquaintance grew into an improper intercourse between her and me—and I became passionately attached to her. On this account I began to meditate the destruction of my late wife. We lived very unhappily together, on account of my intimacy with Maria Moritz. I had it in view for several months before her death, to get clear of the encumbrance of my marriage with her, by taking her life. With these wicked and murderous intentions I purchased white arsenic of Mr. Sheffley, of Lewisburg, in Union county, in the month of August 1835; I told him I wanted it to destroy rats. I put a small part of this arsenic in an apple, by cutting the skin and putting it in the apple with a knife. My wife ate the apple, and soon became sick and vomited. She recovered shortly afterwards. She took it in the evening—and appeared to be well next day. I abandoned the design of taking her life in that way, and was alarmed at the reflection upon the subject.

Subsequently the design to do this cruel and wicked act was again considered and cherished by me. I bought another small quantity of arsenic of John S. Carter, a druggist in Northumberland; I told Mr. Carter that I wanted to use it to destroy minks and muskrats, in my business as a fisherman. I purchased this also with an intention to give it to my wife. I put a small quantity of it in a tumbler of sweet cider, which had been recently brought home. This was two or three weeks before her confinement, in the evening; in about half an hour, perhaps longer, she became sick—she vomited a good deal—she seemed well enough the next day. Some of the arsenic I lost by carrying it in my pockets.

I continued to meditate the taking of the life of my poor wife in order that I might indulge my attachment to Maria Moritz. Upon the day of the general election, in October 1835, I purchased white arsenic again of Bruner & Dawson in Muncy. I am not certain what I paid for it, but I rather think it was 12½ cents. I used some of this by putting it in a fish at the fish basket in the afternoon of the day in which my wife took the rest, as stated by my little son Samuel in his testimony upon my trial—his statement is correct. After I came home, my mother was preparing a supper for my wife—she poured out a bowl full of chocolate for that purpose and placed it on the stove. I ate my supper with my children, and then while my mother was getting ready to take the supper up stairs to my wife, I PUT THE ARSENIC INTO THE CHOCOLATE AS IT STOOD UPON THE STOVE. I took the candle and lighted my mother up stairs with the supper so prepared by myself, to take the life of my unsuspecting wife. I sat upon a chair by her, at the foot of the bed on which she lay, *while she ate the poisoned supper of chocolate!* The statements of Miss Sechler and of my daughter Mary Ann, in their respective evidence upon my trial, are correct as nearly as I can recollect.

When my wife became sick, and began to vomit from the effect of the arsenic, which she had taken in the chocolate, mint tea was prepared for her by my daughter Mary Ann and myself; I PUT ARSENIC IN THE TEA; it was so put in that my daughter did not know of it. My wife tasted it, and said it was bitter. My mother and I then made another cup of the same kind of tea for my wife; I ALSO PUT ARSENIC IN THAT, but it was so done as that my mother did not know it. She tasted that also, and said it was just like the other. The testimony of the witnesses, as to her sickness and death, *is correct so far as I know the facts.* I went for our neighbor, Mrs. Callahan, as quickly as I could, because I began to be alarmed at the consequences of the act I had done.

The mint tea, which Mrs. Sechler in her testimony stated was upset at the fire, and which she saw running towards her on the floor, *was intentionally upset by me*, but was so done as to have the appearance of accident; she was right in her suspicions in relation to that matter.

I had kept myself partly intoxicated for some months before I committed this worst of all the bad acts of my life, being infatuated by my attachment to Maria Moritz.

My poor old mother has been suspected to have been a party in this horrid and cruel murder. I here state, as a duty I owe to the world, to my mother, and to my Creator, that she was entirely innocent and ignorant of

the act. I have stated that my mother advised me to drown my deceased wife. This she never did do; I made the statement to my late counsel and other persons, hoping that suspicion might rest upon her, and that the public would consider me innocent. On one occasion my mother said to me if Catharine was out of the way I might get Maria Moritz.

No human being was concerned with me in concocting, contriving, or executing this cruel deed; and the only exciting motive that urged me to take the life of my wife, was the unhallowed and ill-fated attachment I had formed for Maria. Although frequent domestic quarrels arose between my wife and myself, yet those for nearly two years past were in consequence of the attention which I devoted to Maria Moritz.

Before we removed from Milton to Muncy dam, and after we removed there, my wife was occasionally intoxicated, which formed another source of our domestic unhappiness. I have, in some of our quarrels, struck my wife with my hand, and injuriously beaten her; but I did not knock her down and draw her over the floor with the stove rake, as testified to by Susan McCallister on my trial; she was mistaken in that statement.

My affection for Maria Moritz was far greater than for any other woman I ever saw; when absent from her I was extremely miserable. This attachment, for many months previous to the death of my wife, disturbed all tranquillity of mind, and drove me almost to madness; it tormented me by day, and made me sleepless at night.

It was the desire of enjoying the society of Maria Moritz, and of marrying her, that induced me thus wickedly and feloniously to take the life of my wife at the time I did; and her confinement seemed to me to be the favored hour of destroying her without suspicion.

I often proposed to Maria that we should elope together from this country, and that I would then marry her; but she refused to leave the neighborhood where she then resided, and I became satisfied I could not marry her so long as my wife was alive; and while in this unfortunate state of mind, I conceived the horrid idea of taking her life by *poison*.

I feel it also to be a duty charged upon me, by the great solemnity of my present situation, to state, before my approaching death, that up to the twenty-first day of May, 1836, in the afternoon of this day, the three gentlemen who have been my zealous, earnest and deeply interested counsel, to wit: ANSON V. PARSONS, ROBERT FLEMING, and WM. COX ELLIS, have all of them individually been earnestly instructed by me upon all occasions, in an implicit and unquestioned belief in my entire ignorance and innocence of this *wicked and cruel deed of blood*.

My defence, I have reason to believe, was conducted under this impression by my counsel, and, therefore, I presume, it was made with greater zeal and earnestness, than commonly occurs in similar cases. I think it proper and necessary to state this matter as a justification for my counsel in the public opinion, in reference to their great exertions in my defence; and in reference to their steadfast kindness to me since my conviction and sentence.

What I have said in relation to my counsel in this particular, it is also among the duties of my closing life to repeat in reference to my spiritual advisers, the *Rev. Henry Lenhart, Rev. Isaac Stratton, Rev. John Thomas, Rev. Thomas Tanneyhill*, and also of *Jacob Rothrock, Esq. and Mr. Wm. Wilson* and others, that I have constantly impressed upon them as perfect and sincere a belief in my absolute innocence, as it was in my power to effect.

I have to all persons, since my arrest, denied my guilt. I have, at length, under great and overwhelming mental suffering, deemed it to be my duty, in the presence of all men, and before the awful judgment of my Heavenly Father, before whom I am shortly to appear, to make this *public confession*.

Before I go hence, I wish also to say, that as I have offended deeply against the laws of both God and man, so also there may be those who have done wrongs to me; as I hope for my own pardon, forgiveness and redemption through the mediation of our blessed Lord and Saviour Jesus Christ, upon a free forgiveness to all, I here also declare that I cherish no feeling of bitterness nor malice towards any man, and I beseech the forgiveness of those against whom I may have offended.

I wish also to state further as one of my last duties, that I have been treated with great and constant kindness by Major *Charles Low*, the Coroner, by *Jacob Rothrock, Esq.*, the keeper of the prison under Major *Low*, by *Thomas W. Lloyd, Esq.*, the Sheriff of the county, and by *Mr. John Bradin*, the keeper of the prison under him. To all these men, to my counsel, to my excellent spiritual advisers, to the Coroner, Sheriff and keepers of the prison, I tender my sincere thanks.

In reference to the religious services of many excellent christians who have visited me, instructed me in the best of all human knowledge, and who have in my cell by my side, so constantly prayed to God for my pardon and forgiveness, I am under obligations which I cannot express. Among these, most distinguished of all, is the *Rev. Henry Lenhart*, whose unceasing devotion and kindness to me I am bound particularly to mention.

his
JOHN X EARLS.
mark.

This Confession made the day and year first above written; on the evening of the same day signed and deliyered in our presence.

H. LENHART,
THOS. W. LLOYD,
JOHN BRADIN,
A. V. PARSONS,
ROBERT FLEMING,
W. COX ELLIS.

* * * The foregoing is the entire *Confession* of JOHN EARLS, as made to his late counsel, in relation to the "most foul, strange, and unnatural" murder for which he had been convicted, and was then under sentence of death; the original manuscript of which is now in the hands of the Reporters.

As many exaggerated rumors have prevailed in various sections of the country, since his conviction, relative to his participation in other crimes—and in the commission of other murders—it may not, perhaps, be amiss to remark, in this place, that, when questioned, he pertinaciously denied that he had ever taken the life of a fellow being, except in the horrid instance now disclosed, and for which he was about to atone with his life. He had been guilty of other offences against the laws; but had never before stained his hands with human blood.



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