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TRIAL

OF

JOHN H. SURRATT

IN

THE CRIMINAL COURT

FOR

THE DISTRICT OF COLUMBIA.

HON. GEORGE P. FISHER, PRESIDING.

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VOL. II.

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WASHINGTON:  
FRENCH & RICHARDSON.

PHILADELPHIA:  
J. B. LIPPINCOTT & CO.

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By Mr. MERRICK :

Q. Was it before or after you had been over to the jail that you saw Judge Pierrepont ?

A. I could not tell you whether it was before or after ; I do not remember. I recollect seeing the judge, but whether before or after I could not say.

Q. Do you recollect what time in the day it was you saw Judge Pierrepont ?

A. No, sir. I think now it was after the adjournment of the court in the afternoon.

Q. Did you leave for home that evening ?

A. No, sir. I did not leave for home until the next morning.

Q. You talked to the man who came into your store in Elmira to buy shirts ?

A. Yes, sir. I spoke to him the same as I would to any other customer.

Q. You have talked with the prisoner in jail ?

A. I have.

Q. Mr. Cass, there are various modes of recognizing an individual ; one by his moustache and his general look, and another by his general action and talk. Tell us, if you please, what is the basis of your opinion that this is the man you saw in the store ?

A. Well, the first thing is, that the minute I saw him I recognized him as the man I saw in my store. I did so before I got near him. I saw at once that he was the man I had seen there.

Q. When you came to talk with him, did you recognize a similarity of voice and of action ?

A. Yes, sir ; a similarity in his speech, which led me to suppose he was a Canadian.

Q. I understand you to say, then, that you recognized him the minute you saw him, and that after talking to him you recognized the voice and action ?

A. I did.

By Mr. BRADLEY :

Q. Was there anybody else here from Elmira, three weeks ago, besides the gentlemen you have named ? Do you remember a Mr. Miller being here ?

A. O, yes, sir. I saw Mr. Miller.

By the DISTRICT ATTORNEY :

Q. Was the time you have mentioned the only time you ever saw the prisoner ?

A. The first time I saw him was in my store, and the second time was in jail.

Q. How long did this conversation continue ?

A. Probably from five to ten minutes. It would not exceed ten minutes—probably not so much.

Q. You cannot state whether his hair was dyed at that time or not ?

A. No, sir. I did not take notice enough of him to notice that.

By Mr. PIERREPONT :

Q. What made you think he was a Canadian when you saw him ?

A. I had a friend of mine from Canada the fall before, wearing the same kind of a coat.

Q. When you came to talk with him, did you still think he was a Canadian ?

A. Yes, sir ; from the tone of his voice.

Q. And you recognized the same tone of voice in the jail ?

A. I did.

FRANK H. ATKINSON, sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside ?

A. In Elmira.

Q. State whether you have any public or private office there.

A. (Laughingly,) I have the honor of being an alderman of the city of Elmira.

Q. What is your business?

A. My principal business is that of a bookkeeper for the house of Stewart & Ufford, in Elmira.

Q. Where were you occupied in April, 1865?

A. At the same place.

Q. But not in the same store where you are now?

A. No, sir. Our store was burned last winter. We were in Nos. 20 and 22 Lake street in April, 1865.

Q. Do you recollect of a gentleman coming into that store on the 13th or 14th of April with any peculiar dress?

A. I do.

Q. Give us a general idea of the dress.

A. The only portion of the dress that I noticed particularly was the coat. It was, as I remember it, a coat buttoned up with a full row of buttons in front and on the sides; with a belt fastening about the waist, and the skirt gathered into it below the waist.

Q. Do you remember the color?

A. It was some dark color, either quite a dark gray or a dark blue; I think more likely the former.

Q. Did you hear him in conversation with anybody?

A. I did.

Q. About what length of time was he there, do you suppose?

A. I could not say. He was there probably ten minutes after I went in.

Q. With whom was he talking?

A. He was talking with our cutter, Mr. Carroll.

Q. Have you any means of fixing the date?

A. The only means I have of knowing the date is this fact, that it was the time when one of our house was in New York buying goods. I made an entry in the cash book showing when he took money to go to New York, and when he got back from New York and settled his account.

Q. State when he left.

A. The date of his leaving is the 12th of April, 1865.

Q. The date of his return?

A. The 15th of April, 1865.

Q. Have you ever seen that man since?

A. I think I have.

Q. Where did you see him?

A. I saw him in the jail, above here.

Q. Is that the same man? (Pointing to the prisoner, who had been requested to stand up.)

A. I have no doubt but that is the same man.

Q. Did you have any conversation with him at the jail?

A. I did.

Q. Was there anything in the tone of his voice and manner which would enable you to recollect?

A. Yes, sir; more especially in the manner. I do not remember the tone of his voice so much as the manner of the gentleman. I saw him and heard him talking. My attention was called particularly to him by his dress. I took particular notice of that, and it was his manner that impressed me with a recognition of him.

Cross-examined by Mr. PIERREPONT:

Q. Wont you open your book again and tell the jury what that book is?

A. It is a petit cash book.

Q. Do you enter in that book all the cash that is received and paid out?



A. No, sir.

Q. What do you enter?

A. We only enter the cash accounts on our ledger—such as merchandise, expenses, &c., and the individual accounts of members of the firm, and of the clerks, and of money loaned or borrowed, if such should ever be the case.

Q. Look at that book and read the entry there that relates to the business of one of the house.

A. The date is "April 12th," under the heading of "Loan account." "D. E. Ufford, New York, \$105." On the 15th, his charges, "D. E. Ufford, expense, &c., in New York, \$95 62."

Q. From that you know when he left and when he got back?

A. Yes, sir.

Q. When did he leave?

A. He left on the evening train of the 12th.

Q. When did he get back?

A. He got back on the morning of the 15th.

Q. When was it you saw the man with the peculiar dress in your place?

A. I could not state. It was either the 13th or 14th.

Q. Which?

A. I could not say.

Q. Did he buy anything?

A. I do not know that he did?

Q. Do you know whether he did or not?

A. I do not.

Q. If you sold him anything it would be entered, would it not?

A. No, sir; the amount of the sale would be entered, but not the individual—

Q. It would be entered on something, would it not?

A. It would be entered on a ticket, and then figured up on the cash account.

Q. It would go into the cash account, would it not?

A. Yes, sir.

(Mr. BRADLEY. There would be nothing to show who made the purchase?

A. No, sir.)

Q. The amount would be known and appear on the cash book?

A. Not the amount. In our business the amount of each sale is put on a ticket and that ticket placed upon a spindle. The aggregate of the tickets is footed at night, and that aggregate entered on the cash books.

Q. If one of you sold a coat on a particular day you would have something that would go to show who sold it?

A. We should if it was a coat to be made, and a measure to be taken; otherwise not.

Q. It would be either entered as a cash sale, or entered somewhere on your books?

A. No, sir.

Q. Could any person in your house sell a coat and put the money in his pocket?

A. He might possibly do it.

Q. There was no way of knowing?

A. No, sir.

Q. Was it the custom?

A. I could not say it was the custom to sell coats and put the money in the pocket. As I said before, the custom was, when a person made a sale, to put the amount on a ticket, and place that ticket on a spindle. As I said before, the aggregate of the amount on the spindle was footed up, and entered on the cash book as a sale.

Q. What was done with the papers on the spindle?

A. They were destroyed—that is, thrown into the waste-basket and burned

Q. And that is the way in which the entries would go upon the cash book

A. Yes, sir.

Q. When did you next see this man after that day—the 12th, 13th, or 14th, or whenever it was?

A. I think I saw him in this room.

Q. How long ago?

A. I should judge three weeks ago.

Q. Is his beard in the same condition now that it was three weeks ago?

A. I should judge it was, or nearly so.

Q. Is it in the same condition now as it was when you saw him in Elmira?

A. His beard is of a different shape now from what I remember of its being then.

Q. Tell the jury how it was when you saw it at Elmira.

A. My impression is that the goatee was not as long then as it is now, and covered rather more of the surface of the chin.

Q. You are sure there was a goatee covering the surface of the chin at that time?

A. I am.

Q. Were there side whiskers then?

A. I do not remember any side whiskers.

Q. Was there any moustache then?

A. If any, but a slight one. I think there was a slight moustache.

Q. The difference between the goatee now and then is, that then it covered more space?

(Mr. BRADLEY. And was not so long?)

A. Yes, sir.)

Q. Do you think it was of a lighter or a darker color than now, or of the same color?

A. It was very near the same color.

Q. There is no more difference than the ordinary dressing of it would make?

A. Probably not. I did not recognize any material difference in the color.

Q. But what day of the month you are not willing to state?

A. No, sir; I could not say whether the 13th or 14th.

Q. Had you ever seen him before that time?

A. Not that I know of.

Q. Will you tell us at what hour of the day you saw him there?

A. It was after I came in from my lunch.

Q. What time of day?

A. I generally, and did at that time, have my lunch at half-past 12. It was somewhere after that. It might have been 2 o'clock.

Q. Do you think it was?

A. I could not say positively. I went to my lunch at half-past 12, and my memory is, that when I returned from my lunch I saw this man there.

By Mr. BRADLEY :

Q. I understand you to say that you have no doubt about this being the same man?

A. No, sir.

JOSEPH CARROLL sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside?

A. In Elmira, New York.

Q. Where did you reside in April, 1865?

A. In Elmira, New York.

Q. What was your occupation at that time?



A. I am a cutter in a clothing establishment.

Q. Were you at that time?

A. I was.

Q. In whose clothing establishment?

A. Stewart & Ufford's.

Q. Do you recollect any gentleman coming into the store about the time of the assassination of the President dressed in any peculiar manner?

A. I do.

Q. Who attended to the man in the store?

A. I did.

Q. Describe his dress.

A. He wore a coat with a shoulder-piece on, pleated in front and behind, of mixed goods.

Q. When you say "mixed goods" do you mean gray?

A. I do not mean gray exactly. I mean a sort of brownish color. There were a variety of colors in it.

Q. Anything else peculiar about the dress, except the pleats, &c.?

A. It was a dress that was not usually worn.

Q. Did you ever see one like it?

A. Not exactly like it.

Q. Did you ever see any of the Canadian costumes, as they are called?

A. I thought the gentleman was a Canadian at first.

Q. How was the coat fastened?

A. At the neck, and at the waist with a belt.

Q. State whether you had any conversation with that man.

A. I did.

Q. How long did it continue, do you suppose?

A. It might have lasted twenty minutes or thereabouts.

Q. State whether or not he came there for the purpose of getting clothes?

A. He came there for the purpose of getting clothes; at least he spoke so.

Q. Do you remember whether he was measured for any clothes?

A. No, sir.

Q. Why not?

A. We did not have the goods he inquired for.

Q. Can you state whether you were in expectation of those goods, and said anything on the subject of expecting them?

(Objected to by Mr. PIERREPONT. Objection sustained.)

Q. State if you can find the date with any degree of certainty.

A. The first time was the 13th. He came in on the 14th also.

Q. He came in twice?

A. Yes, sir.

Q. How do you fix it was those two days?

A. By our petit cash-book.

Q. What fact is there in the cash-book that enables you to fix the date?

A. Mr. Ufford, the proprietor of the house, went to New York on the night of the 12th.

Q. When did he get back?

A. He returned on the morning of the 15th.

Q. Do you fix it by that?

A. Yes, sir.

Q. Between those two dates?

A. Yes, sir.

Q. Did you ever see that man afterwards?

A. I did.

Q. State when and where you saw him first.

A. In the jail.

Q. Did you have any conversation with him?

A. Some.

[The prisoner was here requested to stand up.]

Q. Is that the man? (pointing to the prisoner.)

A. That is the man.

Cross-examined by Mr. PIERREPONT:

Q. How long have you lived in this country, or have you always lived here?

A. I have lived here for some twenty-eight years.

Q. What country did you come from?

A. St. John's, Newfoundland.

Q. To what place did you go when you first came to this country?

A. Boston, Massachusetts.

Q. How long did you stay there?

A. I staid there up to thirteen years ago.

Q. Then where did you go?

A. To Elmira, New York.

Q. Have you been there ever since?

A. I have.

Q. How long have you been cutter in this tailorshop?

A. Thirteen years the 5th of last March.

Q. Did you sell this man that came that day anything?

A. No, sir.

Q. Did you think he was a tailor, or did you tell anybody you thought so?

A. No, sir.

Q. Did you have a conversation with any one in which you told them the man you saw there you thought was a tailor?

A. No, sir.

Q. Do you know an officer in your place named Knapp?

A. I do.

Q. Did you talk with him about it?

A. He came into the store one day and I think we spoke something on the subject. I know we did.

Q. Do you remember what you told Knapp?

A. He spoke to me something about it, and said that if I was going to Washington he would like to go when I did, and asked me if I knew anything about the matter. I remember speaking something about him. I do not distinctly remember the amount of words we used at that time.

Q. At any time do you remember telling him anything about thinking that he was a tailor?

A. I never did. I never thought he was a tailor.

Q. Did you give any reason why you talked with him?

A. I spoke to him about his dress. It was a sort of dress that was rather peculiar.

Q. You told Mr. Knapp so?

A. I do not remember whether I did or did not.

Q. Do you know Major Field of your place, who keeps a hotel?

A. I do.

Q. Have you talked with him about it, any?

A. I think a very little.

Q. Did you tell him on what day you saw this man there?

A. I fix my dates from the time Mr. Ufford went to New York and returned.

Q. Did you tell Major Field on what day you saw him there?

A. I do not remember. I think I did not.

Q. Did you tell Mr. Knapp on what day you saw him there?

A. I do not distinctly remember.

Q. Did you tell Mr. Knapp that you knew on what day you saw him, from the fact of knowing from the books at what day one of the partners was in New York?

A. It may be that I did not know at that time.

Q. Did you tell him that you did know the day, from that fact?

A. I knew the date Mr. Ufford went to New York, and of course I could not state any other date.

Q. Did you tell Mr. Ufford so?

A. I think not.

Q. Did you tell Mr. Ufford it was on the 12th or 13th?

A. It may be, but I know very well from our books what the dates were?

Q. Didn't you tell Mr. Ufford that it was on the 13th, and that you knew it from the fact of the time the partner of the house was absent?

A. I do not know that I remember distinctly.

Q. What date did you tell the deputy marshal, Mr. Covell, he was in your store?

A. After consulting the books I could not have told him other than are mentioned there.

Q. Did you tell him the date?

A. I do not know; but if I did, I could not have told him any other date than that in the books.

Q. Did you tell him anything about it?

A. O, he spoke to me about it, saying that I had said to Mr. Knapp that it was on the 12th.

Q. What did you tell him?

A. I could not have fixed any date other than that on our books.

Q. I ask you what you told him?

A. Do you suppose I am obliged to give everything I say to a person without; being as I am now?

Q. What is the matter with you now?

A. I am placed on oath, and I understand my position very well.

Q. Did you tell him a different thing before you were on oath?

A. (With great emphasis) No, sir.

Q. Then we do not understand what you mean.

A. Then you and I are just alike, because I do not really understand you.

Q. Did you tell the deputy marshal anything about the time you saw the man come into the store: Do you understand?

A. Yes, sir; anything in the English language, I understand, I think.

Q. Will you answer the question, then?

A. I could not have fixed the date any other than I have done.

Q. Do you think that is an answer to my question?

THE COURT. If you recollect, you can say so, and if you do not, you can say so. You must answer "yes" or "no."

Mr. PIERREPONT. I will repeat.

Q. Did you say anything to the deputy marshal about the date at which the man came into your store?

A. I do not remember distinctly.

Q. Do you remember at all whether you did?

A. Well, he came in very hurriedly, and asked me if I was going to Washington; said he, I would like to know the time, and see if we cannot go together. We might have had some conversation relative to the matter, but as to the date, I do not know that I remember distinctly.

Q. What conversation did you have relative to the matter?

A. He told me that he supposed he would have to go to Washington, and if so, he would like to go when we did, as it would be much more pleasant, and more comfortable.

Q. Did you then tell him what the date was when the man came into your store?

A. I might have; but I could not have told him accurately, without consulting our books.

Q. Did you tell him inaccurately?

A. I do not distinctly remember.

Q. Did you tell him that it was on the 13th?

A. I know the first time was on the afternoon of the 13th.

Q. Was that what you told him?

A. I cannot distinctly remember.

Q. What did you tell him, is what I am asking you?

A. So many persons ask questions about that time, that it would be almost impossible for me to remember.

Q. Did you tell Mr. Knapp what time he came in?

A. I do not distinctly remember.

Q. Did you tell the deputy marshal, or Mr. Knapp, that the man who came into the store was in your opinion a tailor?

A. I did not.

Q. Neither of them?

A. No, sir.

Q. Did you tell them that the man said he was a tailor?

A. I did not.

Q. Did you say anything to either of them on the subject of the man being a tailor?

A. I did not.

Q. Did you tell either of these gentlemen that he came in on the 14th?

A. If I told them anything at all, I said the 13th or 14th.

Q. Did you tell them anything about the day on which he came into your store? If so, what was it?

A. I do not distinctly remember.

Q. Do you remember indistinctly?

A. I was very busily engaged at the time the marshal came in, and I do not remember distinctly.

Q. Do you know Colonel Foster?

A. I do not.

Q. Do you know a man named Roberts, a detective?

A. I do not.

Q. Did you talk with two men who came to see you together awhile ago?

A. I do not remember of speaking to any persons particularly.

Q. Do you remember speaking to any persons since the trial commenced, in relation to the date you saw the man you call Surratt at your place—one, Mr. Roberts, and the other, Colonel Foster?

A. I do not know any person named Mr. Roberts, or Colonel Foster.

Q. Do you remember any two persons coming and talking with you since the trial commenced, who were not living in your place?

A. I do not remember.

Q. Is it your best memory that nobody—strangers—did talk with you?

A. I do not know anything about it.

Q. Do you easily remember the faces of people that you have held some conversation with?

A. I think I do.

By Mr. BRADLEY:

Q. Did these parties, Knapp and Covel understand that you had been summoned here as a witness by the defence?

A. Yes, sir.

Q. Knowing that, they came and talked with you about it?

A. They came and talked with me about it. I do not know whether it was knowingly or not, but I presume it was.

Q. They understood you were coming here as a witness for the defence?

A. Yes, sir, of course, or otherwise they would not have asked these questions.

Q. With that knowledge, they came to you and had that conversation?

A. I cannot say whether it was knowingly or not. It was a small town, and every person knows the other person's business, and I suppose they knew.

Q. Did any of these gentlemen who called on you represent that they came on the part of the defendant?

A. Those gentlemen that I spoke of were for the prosecution, as I understood it. They were summoned here, but of course I knew nothing as to why they were summoned.

By Mr. PIERREPONT:

Q. Then you did understand that those two who came were for the prosecution?

A. I knew they were summoned here.

Q. Have you taken any interest in this trial?

A. Not particularly.

Q. Did you in any of the former trials of the conspirators?

A. I did not.

Q. Did you express any sentiments about the war while it was going on?

A. I did not.

Q. You did not take either side?

A. I do not know that I made an expression on either side.

Q. You did not care?

A. Yes I did. I wished the success of the Union, of course, because I had a son in the Union army.

Q. That was the reason?

A. I was interested in where I resided, as I suppose all men are, are they not?

Mr. RIDDLE—(*sotto voce*)—Some don't seem to be.

By Mr. BRADLEY:

Q. Do you recollect my son?

A. I do.

Q. Did he call to see you last fall?

A. Yes, sir.

Q. Who was with him; do you remember?

A. I did not know your son at the time; I was sent for to Mr. Robinson's office.

Q. Is not Mr. Robinson of the highest character in the profession there?

(Objected to by Mr. Pierrepont.)

By Mr. MERRICK:

Q. At the time Mr. Bradley called upon you and before you consulted your books, was it not impossible for you to fix the date at which you saw the man?

A. Of course it would have been impossible.

Q. The only way you could find the date was by your books?

A. Yes, sir.

Q. When did you first examine your books for the purpose of ascertaining the date?

A. I asked the bookkeeper to see what those dates were.

Q. How long before you came on?

A. I could not remember distinctly.

Q. Since last March?



A. Yes, sir, of course.

Q. Not long before you came on here the first time ?

A. Not long.

The court here took a recess until 10 o'clock to-morrow (Saturday) morning.

SATURDAY, *July 13, 1867.*

The court met at ten o'clock a. m.

JOSEPH CARROLL recalled and further cross-examined.

By Mr. PIERREPONT:

Q. Do you know Mr. Knapp ?

A. I do.

Q. Do you see him here in the room ?

A. I do.

Q. Do you know Mr. Covell ?

A. Yes, sir.

Q. Do you see him here ?

A. Yes, sir.

Q. Do you know Mr. Roberts ?

A. I was shewn a man this morning ; I do not know whether his name is Roberts or not. I saw the same man yesterday afternoon.

Q. When before that did you see him ?

A. I saw a man walking with Mr. Covell who they said was Roberts ; I did not see his face.

Q. Where was it ?

A. At Elmira, New York.

Q. Did you talk with him ?

A. No, sir.

Q. Did you talk with him anywhere ?

A. I did not, I think.

Q. Did you have any conversation with Mr. Knapp, at Elmira ?

A. Yes, sir.

Q. When ?

A. It was before I came down here the first time.

Q. How long ago ?

A. About three weeks ago ; I do not exactly remember the time.

Q. Was Roberts with him ?

A. I did not see him with him ; I do not remember.

Q. If he had been right by his side looking at you and talking with you, you would have remembered ?

A. I was busy cutting in the rear room of the store ; he may have had some person in the front store without my noticing him. I do not remember seeing Mr. Roberts.

Q. Did you say anything to Mr. Knapp about what you could testify to ?

A. I talked with him some about the matter.

Q. Tell the jury what you said.

A. I do not know that I can remember the precise words. He asked me if I was going down on the Surratt case ; I told him I was. I think he asked if I could identify the man ; I told him if the man looked like the person I had in my mind, I thought I could identify him.

Q. Was Roberts present when you said this ?

A. I do not remember seeing Roberts at all.

Q. Did you say anything to him about this man being a tailor ?

A. No, sir ; never.

Q. Did you give him any answer as connected with his being a tailor or your being a tailor? Did you give that as a reason for remembering him?

A. I gave him no such answer. I gave him no reason to think that man was a tailor, because I did not think he was.

Q. Did you tell him how you came to talk with him?

A. I said like this—that in my business I talked very freely with customers.

Q. Did you say that man told you he was a tailor?

A. No, sir.

Q. Did the man tell you he was in the same business as yourself?

A. He did not.

Q. Did you tell Mr. Knapp so in the presence of Roberts?

A. No, sir.

Q. Did you tell Knapp in the presence of Roberts, when you had seen him?

A. I think I might have told him.

Q. When did you tell him you had seen him?

A. I remember I got the dates from Ufford's being in New York.

Q. What did you state to Mr. Knapp about the date when you saw that man who you thought might be the prisoner? When did you tell him you saw him?

A. I think I told him the 13th and 14th of April.

Q. Did you tell him you saw him the 14th?

A. I think I did.

Q. Cannot you remember whether you did or not?

A. I think I did; there were so many questions asked and so many persons interested about that time that I may be mistaken.

Q. Cannot you tell whether you said you saw him on the 14th?

A. I think I said the 13th and 14th.

Q. Do not you think you told him the 12th and 13th?

A. I do not think I did.

Q. What do you say about that?

A. I do not remember.

Q. They were asking you a great many questions, and very particular about the date; were they not?

A. I do not know.

Q. Did not they seem to be very particular on that point?

A. They did not appear to me to be very particular.

Q. Are you particular in your memory about it? Can you remember what you told him?

A. I do not remember telling him 12th and 13th.

Q. Did you tell him it was the 12th?

A. I do not remember that I did.

Q. Did you tell him it was the 13th?

A. From the time I got the date I could not have told him otherwise.

Q. Did you tell him it was the 13th?

(Question objected to by Mr. Merrick as having already been answered. The court said the witness might be asked about each date separately.)

Q. Do you remember you told him it was the 14th at all.

A. If my memory serves me, I think I did.

Q. Is it the best of your recollection that you did?

A. My best recollection is that I did; I think I told him it was the 13th and 14th.

Q. Did you tell Mr. Covell when it was?

A. I think I did.

Q. Where?

A. After he returned from Washington to Elmira. I was speaking to Mr.

Covell in relation to the matter ; he asked me what time I thought it was ; I told him the 13th and 14th.

Q. Did you tell Mr. Covell it was the 12th ?

A. I think I did not.

Q. Did you tell him it was the 13th ?

A. I think I told him it was the 13th and 14th.

Q. Did you tell him it was the 12th or 13th ?

A. I think I told him the 13th and 14th.

Q. Did you tell him it was the 12th and 13th ?

A. I do not think I mentioned the 12th.

Q. Did you tell him it was the 13th or 14th ?

A. I told him it was the 13th and 14th.

Q. That is the best of your recollection ?

A. That is the best of my recollection.

Q. Have you any doubt that you told him that ?

A. No, sir ; I have no doubt that I told him that. Mr. Covell said to me that Mr. Knapp had said it was the 12th and 13th ; I told him I had no recollection of it ; that the only way I fixed the date was the date of entries in our petty cash book.

Q. Did your petty cash book have that date ?

A. It shows that one of the proprietors of the store left in the afternoon of the 12th and returned on the 15th.

Q. What did you tell Mr. Covell about that petty cash book ?

A. I told him that it showed Mr. Ufford left on the 12th ; and I told him that this man came on the day after Mr. Ufford left for New York.

Q. Mr. Ufford left on the evening of the 12th and this man came the day after ; did you tell Mr. Covell so ?

A. I do not know that I told Mr. Covell these words ; I had some such conversation with him.

Q. Did not you tell each of them the same thing ?

A. I might.

Q. Did not you tell each of them that he called twice in one day ?

A. No, sir.

Q. You are sure of that ?

A. Yes, sir.

Q. That he called in the morning and afternoon ?

A. No, sir.

Q. Did not you tell either of them that ?

A. No, sir.

Q. Did not you tell either of them that he called the next day after Mr. Ufford left ?

A. Yes, sir ; I told them he called in the evening of the 13th.

Q. Did not you tell either of these men that he called the next day after Mr. Ufford left ?

A. I think I told them he called on the afternoon of the 13th.

Q. How many times did you see these men ?

WITNESS. See what men ?

Mr. PIERREPONT. Mr. Covell and Ufford.

A. When in Elmira I saw them almost every day.

Q. How many times did you talk with Mr. Covell about this ? Do you remember more than once ?

A. I think I did.

Q. When did you talk to him the second time ?

A. I could not remember the date. It was on the Sunday after we returned from Washington. I could not fix the date exactly.

Q. Did you tell him the same thing both times ?



A. I do not remember. The substance must have been the same.

Q. Did you see Mr. Knapp the second time?

A. I have seen him a number of times.

Q. Did you talk with him on these occasions?

A. I have talked with him.

Q. Did you see Roberts with him more than once?

A. I never saw Roberts more than once.

Q. Did you see some man that might be Roberts?

A. I saw some one man who I was told was a detective from Washington.

Q. Did you see that man more than once?

A. I do not know.

By Mr. BRADLEY:

Q. Did you say you were asked any of these questions by Mr. Knapp when Mr. Roberts was present?

A. I never saw Mr. Roberts to identify him. I do not think that he was the man who stood outside of the doors.

By Mr. PIERREPONT:

Q. The man you think was a detective how many times did you see with Mr. Knapp in Elmira?

A. I never remember seeing him with Mr. Knapp.

Q. Did you see him with Mr. Knapp?

A. No, sir; I saw a man with Mr. Covell one evening, who I heard said was a detective from Washington.

Q. With Mr. Covell when Mr. Knapp was present?

(Question objected to by Mr. Bradley; who objected, further, that counsel went on asking questions after he objected.)

The court said that whenever counsel objected, counsel on the other side should stop until the objection was disposed of.)

Q. Now, did you see with Mr. Covell a man you thought was a detective?

A. A man I was told was a detective. I did not think so. I saw that man with him.

Q. Did you talk with Mr. Covell when you saw that man you were told was a detective?

A. I saw he was standing in the hotel; I said good evening, or something of that kind. The man was not with him then.

Q. Did you have a conversation upon the subject of the time you saw the man who you thought might be Surratt when the man you were told was a detective was present?

A. No, sir.

Q. Now, will not you tell us whether you saw Covell after you came from Washington the first time?

A. Yes, sir; I saw him after I came back.

Q. Did you see him while here the first time?

A. Covell was not here when I was at Washington. No, sir.

Q. Did you see him and talk with him after your return?

A. Yes, sir.

Q. After you came here the first time did you see the prisoner?

A. Yes, sir; in jail.

Q. After you saw the prisoner did you talk with Covell about him?

A. I think he asked me if I identified him. I said he was the same man I saw.

Q. Did you not tell Covell you could not identify him?

A. No, sir.

Q. That you are sure of?

A. Yes, sir.

Q. Did not you tell him so at that time ?

A. No ; neither then nor any other time.

Q. Did you tell either Mr. Covell, Mr. Knapp, or Mr. Roberts that you could not identify him ?

A. I did not. I never spoke to Roberts. I did not tell that to either of them.

Q. Do you remember whether there was any particular fasting on the day the President was murdered ?

A. I remember that it was Good Friday.

Q. Where did you go on Good Friday ?

A. I was at work, or at least I went to the store. The store was closed up during the day after the assassination.

Q. Closed on the 14th on the day of the assassination ?

A. On the day after the assassination.

Q. I have not asked you about that. I asked you about the 14th, the day of the assassination.

A. I do not think it was ; it may have been.

Q. At what time was it closed on the 14th ?

A. As soon as the assassination was announced every store was closed ?

Q. At what time was it announced on the 14th ?

A. It was not announced on the 14th.

Q. At what time on the 14th was the store closed ?

A. It was not closed on the 14th. I think I have answered that. At any rate I now answer it was not.

Q. At what time on the 14th did you go to the store ?

A. I cannot remember the hour. My hours vary.

Q. Did you go to church on the 14th, Good Friday, at all.

A. I think not.

Q. And you cannot tell what time you went to the store ?

A. I do not remember distinctly what time I went. In case the store was closed, or otherwise, I went to the store.

Q. Do you remember whether the store was closed on Good Friday ?

A. I remember the stores were closed on the morning when the assassination was announced.

Q. Do you understand my question ? I ask you if you can tell us at what time on the 14th it was closed ?

A. It was not closed on the 14th that I remember.

Q. At what time was it first opened ?

A. I do not know. I did not go there as early as that.

Q. At what time did you get your dinner that day ?

A. I suppose I got it at my residence or dwelling.

Q. And you say, on the 13th a man came in there who, you think, was the prisoner ?

A. Yes.

Q. He wanted to get some things you had not got ?

A. Some clothing, yes.

Q. Did he get anything ?

A. Not that I remember.

Q. You say he came in again on the 14th ?

A. Yes, sir.

Q. What did he want on the 14th ?

A. I told him we had not the goods he spoke of yesterday ; Mr. Ufford was in New York, and that it was quite likely the following day we would have the goods he was inquiring about. He came in the second time and I told him the goods were not in the store ; might be at the depot.

Q. Mr. Ufford went on the night of the 12th and on the 13th you told him you thought they might come?

A. I told him I thought they might come the following day. At that time we were hurried, and he sent certain things by express. I thought they might have come through in one day to Elmira.

Q. Did any of his goods get there on the 14th?

A. They did not get there on the 14th.

Q. You say he called in on the 14th. What did he say?

A. He inquired if those goods had come. I said they had not.

Q. What goods?

A. The goods he was inquiring for the day before.

Q. At what time in the day did he come in the last time?

A. It was in the forenoon, in the morning I may say.

Q. Was anybody else in the store?

A. I do not know whether there was or not.

Q. How long did he stay?

A. He only stayed a little while.

Q. Do you know which way he came from?

A. He appeared as though he came from Water street.

Q. Do you know which way he returned?

A. He seemed to return the same way.

Q. Did you see him on that day afterwards?

A. No, sir.

Q. Did you see him on the 14th?

A. Yes, sir.

Q. You say you saw him on the 14th. You are sure about that?

A. Yes, sir.

Q. You never told any person that you could not recognize him?

A. I never told any person I could not recognize him.

Q. How long did you talk with him on the 14th?

A. On the 14th I talked with him very little. I was very busy cutting.

Q. Did he call twice on the 13th?

(Question objected to by Mr. Bradley as having been already answered. Objection sustained.)

Q. Did you tell either of these gentlemen that you asked him if his name was not Surratt?

A. No, sir; I could not have told them that, for I did not know who he was.

Q. I ask you if you did not tell them that?

A. I did not tell them anything of the sort.

Q. You did not tell either of these men that you asked this gentleman if his name was not Surratt, and he said it was?

A. No, sir.

Q. You did not tell them that was the reason you knew it was him?

A. No, sir; I was in the store at the time acting as clerk and waiting on them.

Q. You did not tell either of them, after your return, that you were mistaken about it?

A. No, sir.

Q. When did you first hear his name was Surratt?

A. I heard it a little while before we came down here. I do not remember how many days.

Q. There was nothing suspicious about the man you saw there?

A. No; I should think not.

Q. He did not excite any suspicion in your mind?

A. Not at all. I thought he was a Canadian when he first came in.

Q. You never thought much about the matter, it not being one that awakened your suspicions?

A. No, I should never have thought of it again if my attention had not been called to it in connection with this case,

Q. Did you tell either of these gentlemen the man said he was a southerner?

A. I did.

Q. Did you then tell them that you asked him if his name was Surratt?

A. I did not ask the man such a thing. I simply asked him if he was a southerner, and he said he was.

Q. Did you tell anybody that you asked him if his name was Surratt?

A. I never knew he was Surratt until lately.

By Mr. BRADLEY :

Q. You say he came to your store from the direction of Water street. Was there any hotel on that street?

A. Yes, sir.

Q. What was the name of it?

A. The Brainard House, or the Rathburn. The hotel is owned by Mr. Rathburn, I think.

Q. How far is it from the store of Ufford & Stewart?

A. I suppose a block and a half. I do not know exactly the distance. I am not good at distances.

Q. Not very far off.

A. No, sir.

Q. You have been asked a great many questions about Major Foster. You see him sitting by Judge Pierrepoint. Now do you know him?

A. I saw him in the cars.

Q. Did you have any conversation with him at all?

A. No, sir.

Q. Did you know who Major Roberts was. Did you ever hear of him before?

A. No, sir.

Q. Was he the one pointed out to you as the detective from Washington?

A. I saw a man in Elmira who was pointed out to me as such.

Q. Have you seen him since.

A. I saw him last evening. I was told he was a detective. I do not know whether he was the man. Mr. Covell told me there was a man by the name of Roberts at Elmira, a detective.

Q. Did you have any conversation with Knapp or Mr. Covell after you left to come here, or since you arrived.

A. Yes, sir.

Q. Was there anything said to you on the subject of your testimony?

A. Something yesterday. Mr. Knapp, referring to the question, asked me whether this man was a tailor; said he must have misunderstood me; that he supposed that was the way in which I got acquainted with Surratt; that he understood it in that way. I do not know that I can use his precise words. I know that in my business I get acquainted with customers very easily in waiting upon them. He said he must have misunderstood me.

Q. Have either of these parties been following you up in Elmira since you have been summoned as a witness?

A. A great many persons have been asking me questions since then.

Q. There or here?

A. There more particularly. Persons who would come into the store where I was cutting and ask this, that, and the other.

Q. In talking with them did you undertake to go into minute statements, or when you were engaged in your business did you casually speak about them?

A. When I was engaged in business, I could not pay much attention to the conversation going on.



Q. Did you understand Mr. Knapp and Mr. Covell that they were hunting up evidence for the government?

A. Yes, sir.

Q. And employed by the government?

A. I do not know. I understand they were hunting up evidence for the government.

By a JUROR :

Q. Which one of the gentlemen was it who was so desirous of coming on with you?

A. Mr. Knapp.

By Mr. PIERREPONT :

Q. Who summoned you for the defence; what officer?

A. Mr. Kirby.

Q. Was it not Mr. Covell?

A. The day we left Washington the last time, Mr. Covell came in and read a summons.

Q. Mr. Covell came in and read a summons and served it upon you?

A. He came in and read it; and also Mr. Kirby read one to me the same day.

Q. You know Mr. Field—commonly called Major Field?

A. I do.

Q. Did you tell him in Elmira or Washington the time you saw the man you thought to be the prisoner?

A. I may or may not. I do not remember distinctly. I talked with him on my return from Washington the first time.

Q. He talked with you before he came to Washington?

A. I think not.

Q. Did you tell Major Field you could not recognize the prisoner?

A. No, I never told that to any person.

Q. Did you tell Major Field you saw him on the 12th and 13th?

A. I do not remember whether I did or not.

Q. Did you tell Major Field it was the 14th?

A. In all probability.

By Mr. BRADLEY :

Q. You have had conversations with all these parties and many others, and have been asked divers questions about this matter, have you not?

A. Yes, sir.

Miss OLIVIA JENKINS sworn and examined.

By Mr. MERRICK :

Q. Where did you reside in April, 1865?

A. I was at Mrs. Surratt's house.

Q. Did you know Mr. Weichmann who lived in the house?

A. Yes, sir.

Q. Did you know Miss Honora Fitzpatrick?

A. Yes, sir.

Q. Did you know Miss Anna Surratt?

A. Yes, sir.

Q. Did you know Mr. and Mrs. Holahan?

A. Yes, sir.

Q. Did you know John Surratt?

A. Yes, sir.

Q. Do you recollect the day the President was assassinated?

A. Yes, sir; very well.

Q. It was on Good Friday, was it not ?

A. Yes, sir.

Q. Was John Surratt about the house Good Friday ?

A. No, sir.

Q. When had you last seen him before Good Friday ?

A. About two weeks before.

Q. At what time in the day was it that you saw him then ?

A. I saw him in the evening—Monday evening.

Q. Whereabouts in the house did you see him first ?

A. I saw him in the parlor.

Q. Do you recollect about taking supper or getting it for him ?

A. Miss Fitzpatrick was sent down stairs to get his supper.

Q. Do you recollect taking a walk with Mrs. Surratt, Anna Surratt, and Miss Fitzpatrick about the 25th of March, in the course of which Mrs. Surratt stopped at the Herndon House ?

A. Yes, sir ; I remember her stopping there. We went to the church together, and in coming back she stopped.

Q. Did Miss Anna Surratt stop with her ?

A. Yes, sir.

Q. Where did the rest of the party go while she stopped at the Herndon House ?

A. Miss Fitzpatrick, Mr. Weichmann, and I walked down the street a little way and returned.

Q. Did you know a man who sometimes came to that house by the name of Wood ?

A. No, sir ; I never saw him.

Q. Did you never see such a man ?

A. I do not know.

Q. Did Mrs. Surratt say when she stopped at the Herndon House she was going there to see Payne ?

A. No, sir.

Q. Did she say who she was going to see ?

A. No, sir.

Q. Did you take supper at Mrs. Surratt's on Good Friday ?

A. No, sir ; I did not go to the table that evening. Miss Fitzpatrick went down to get supper. I did not go down.

Q. Do you recollect when they were at supper ?

A. Yes, sir.

Q. Was the bell rung while they were at supper ?

A. Yes, sir ; the bell was rung after we were at supper. A gentleman called and left two papers for me.

Q. You went down to supper after Miss Fitzpatrick went down on the night of the assassination ?

A. I did not understand you ; I thought you meant the night Miss Fitzpatrick went down to get supper for Mr. John Surratt. I went down that night.

Q. You were at the table ?

A. Yes, sir ; in the dining-room.

Q. Did any one ring the bell while you were at the table ?

A. Yes, sir.

Q. Who answered the bell ?

A. Miss Anna Surratt.

Q. Did you know who called ?

A. A gentleman by the name of Scott, of the navy ; he left two papers for me.

Q. Was the bell rung at any other time while you were at supper ?

A. No, sir ; I did not hear it.

Q. It was only rung that once while you were at supper ?

A. No, sir.

- Q. Did you hear any footsteps going into the parlor while you were at supper ?
- A. No, sir.
- Q. After you got through supper on the night of the assassination, Good Friday night, where did you all go ?
- A. We went up into the parlor.
- Q. Who went up into the parlor ?
- A. Miss Anna Surratt, Mrs. Surratt, Mr. Weichmann, myself and Miss Fitzpatrick.
- Q. Did you engage in general conversation, or what did you do ?
- A. Miss Fitzpatrick and I were teasing Mr. Weichmann. Miss Anna Surratt retired very early. She was sick.
- Q. How long did you and Miss Fitzpatrick keep up that entertainment ? How long were you there together ?
- A. I guess we were there till near 10 o'clock.
- Q. Who left the room first, you or Mr. Weichmann ?
- A. Mr. Weichmann.
- Q. Did you leave at the same time ?
- A. No, sir.
- Q. You bade him good night at his room door ?
- A. No, sir.
- Q. You did not ?
- A. No, sir ; I did not.
- Q. Are you positive of that.
- A. Yes, sir ; I am positive of that ?
- Q. Tell these gentlemen whether or not you noticed anything peculiar in Mrs. Surratt's manner that night.
- A. No, sir ; she seemed the same as usual. I never saw any excitement about her whatever.
- Q. Did you observe her walking up and down the room in a nervous, excited condition ?
- A. No, sir.
- Q. Were you in the parlor all the time Mr. Weichmann was there that night ?
- A. Yes, sir.
- Q. Did you hear Mrs. Surratt ask Mr. Weichmann to pray for her intentions ?
- A. No, sir.
- Q. Did Mr. Weichmann say he could not pray for her intentions without knowing what they were ?
- A. No, sir ; I never heard any such conversation.
- Q. Did you go to breakfast the next morning after the assassination with the family ?
- A. Yes, sir.
- Q. Who was at the table ?
- A. Mr. Weichman, Mrs. Holahan, Mr. Holahan, Mrs. Surratt—Miss Anna Surratt came in late.
- Q. Was Miss Fitzpatrick there ?
- A. Yes, sir.
- Q. Did you hear Miss Anna Surratt say the death of Lincoln was no more than the death of a negro in the federal army  
(Question objected to by Mr. Pierrepont. Objection sustained.)
- Q. Did you hear Mr. Weichman, say he had his suspicions about this matter ; that he intended to tell the government all he knew about it ?
- A. No, sir.
- Q. Did you hear him say he intended to tell them all about Booth and who he associated with ?
- A. No, sir.
- Q. He said nothing of that kind ?

A. No, sir.

Q. Now I come down to the next night. You were taken to the provost marshal's office?

A. I was.

Q. Were you in the parlor when Captain Smith came in?

A. Yes, sir.

Q. State where you were sitting, where Miss Fitzpatrick was sitting, and where Miss Anna Surratt was sitting when Mrs. Surratt came in with Captain Smith?

A. Miss Anna was sitting on the sofa. I think I was sitting on a chair about as near as I am to this gentleman, (three or four feet.) I do not know where Miss Fitzpatrick was sitting; I think, perhaps, on the sofa.

Q. Did you observe Mrs. Surratt whisper anything to Anna after she came in with Captain Smith?

A. No, sir.

Q. After the night of the assassination, on that morning, after the detectives went away, were you in the parlor?

A. I do not remember. I think I came into the parlor that morning. I think I came down stairs.

Q. Were Mrs. Surratt, Miss Anna, and Miss Fitzpatrick in the parlor?

A. Yes, sir; and Mr. Weichmann.

Q. Did you at any time hear Anna say anything like this; "O, ma, all this will bring suspicion on our house; just to think of that man having been here an hour before the murder?"

A. No, sir.

Q. Did you hear Mrs. Surratt say, "Anna, come what will, I think John Wilkes Booth was only an instrument in the hands of Almighty God to punish this proud and licentious people?"

A. No, sir.

Q; You heard nothing of that kind?

A. Nothing at all.

By Mr. BRADLEY:

Q. Do you know the handwriting of John H. Surratt?

A. Yes, sir; I think I know his handwriting.

Q. You have seen him write?

A. Yes, sir.

Q. And seen his handwriting?

A. Yes, sir.

Q. Look at that (entry of John Harrison in arrival book of St. Lawrence Hall, Montreal,) and state whether that is his handwriting or not.

A. No, sir; I do not think it is. The "r" in Harrison is not like his. Let me see the book again. (After further examination;) Yes, I think it is.

Q. Now look at that also, (another entry of John Harrison in the same book.)

A. Yes, sir; that is his also.

Q. Look at that, (register of another hotel shown witness.)

A. Yes, sir; that is his also.

Mr. BRADLEY stated that he did not put this last register in evidence until he had taken further proof in regard to it.

Mr. PIERREPONT asked what register it was?

M. BRADLEY said he would inform him when he offered it in evidence.

Q. You state that you were at Mrs. Surratt's on the evening the President was assassinated. Do you remember in the course of that evening anything being said about a letter?

(Question objected to by Mr. Pierrepont. Objection overruled.)

Q. Did you see Miss Ward have such a letter; and did Booth go into the middle of the room and ask her to let him read the letter?



A. Do you mean on the evening of the assassination ?

Mr. BRADLEY. Yes, or any other evening.

A. No, sir ; no other evening.

Q. Did you, any evening when Booth was there and Miss Anna Ward was there, see Booth ask her to let him read a letter and see a lady's name in it ?

A. No, sir.

Q. Was anything said when Mr. Weichmann was there the evening before the assassination, after John Surratt had left, about the receipt of a letter in the course of that evening ?

A. Yes, sir ; I think there was a letter received.

Q. At that time when the letter was received and read, did Booth come into the middle of the room and ask Miss Ward to let him see the letter, and see a lady's name in the letter ?

A. No, sir ; I did not see Booth leave his seat at the time I saw him.

Cross-examined by Mr. PIERREPONT :

Q. Are you any relation of Mrs. Surratt ?

A. Yes, sir ; I am a niece of hers.

Q. Do you know this gentleman setting here, Colonel Olcott ?

A. No, sir.

Q. Were you examined before him ?

A. No, sir.

Q. Were you examined before anybody ?

A. No, sir.

Q. Do you know this gentleman, Colonel Foster ?

A. No, sir.

Q. You are sure you do not know this gentleman, Colonel Olcott ?

A. No, sir ; I may have seen him.

Q. Have you ever been examined before either of them or both of them together ?

A. No, sir ; I never was examined.

Q. You were not examined at all ?

A. No, sir ; they may have asked me some questions, but if they did, they were very slight.

Q. Do you understand what I mean by examination ?

A. I suppose you are examining me now.

Q. Yes ; and now were you ever examined before either of these gentleman or both ?

A. No, sir ; I was not.

Q. Were you taken anywhere the night you left Mrs. Surratt's ?

A. Yes, sir ; to the provost marshal's office.

Q. At the provost marshal's office were you examined before these two gentlemen. Were you examined there before anybody ?

A. No, sir ; I think Mrs. Surratt was examined alone.

Q. I ask you whether you were examined ?

A. No, sir.

Q. Were no questions asked you ?

A. I do not remember.

Q. Were not questions asked you and the answers put down in writing ?

A. No, sir ; not to my knowledge. They may have done it. I was asked if I knew the man Payne at the provost marshal's office.

Q. Were you in the Old Capitol prison ?

A. I was in Carroll prison.

Q. Were you examined in Carroll prison ?

A. No, sir.

Q. You were not examined anywhere ?

A. No, sir; not to my knowledge.

Q. Perhaps I can recall to your mind. Do you remember anything about taking a photograph of Booth to this gentleman, Colonel Olcott?

A. No, sir; I did not.

Q. You did not at any time?

A. No, sir.

Q. You did not see anybody take it to him in your presence?

A. No, sir. There was an album there.

Mr. BRADLEY objected to this as having nothing to do with the case.

Mr. PIERREPONT said he merely asked the question to refresh the memory of the witness. Objection withdrawn.

Q. Have you any memory of such a fact as a portrait of Booth, a photograph of Booth, being given to this gentleman?

A. No, sir; I think they spoke of its being in the album.

Q. Did you see it taken out of a book or album or anything else?

A. No, sir.

Q. Did you see Booth's portrait at that place?

A. Yes, sir; I think I did.

Q. Do you know what was done with it?

A. I do not.

Mr. BRADLEY said he could not understand where this was leading.

Mr. PIERREPONT said he understood, and that he was not called on to reveal it to the counsel.

Q. At the time you saw this portrait of which you speak were you not examined?

A. No, sir; not to my knowledge.

Q. Could you have been examined and answered questions without your knowledge?

A. No, sir, I think not. There may have been some questions asked me. I do not remember whether there was or not.

Q. Do you remember whether you gave any answer?

A. No, sir; Miss Surratt, Miss Fitzpatrick, and myself were taken into a room at the provost marshal's office, leaving Mrs. Surratt alone with the officer.

Q. Have you any memory as to what questions were asked you at either place?

A. No, sir; I do not remember.

Q. Do you remember whether an officer asked you questions and wrote down the answers?

A. I do not remember answering any questions, and I do not remember any questions being asked.

Q. You do remember being there?

A. Yes, sir; I remember being there.

Q. Tell the jury when you first went into that house to board.

A. I went there to visit in the latter part of March.

Q. What day in March?

A. I cannot remember.

Q. Can you tell about the day?

A. I think it was the last week in March.

Q. How long did you stay there?

A. I staid there until the night of the 17th of April, when I was taken to the provost marshal's office.

Q. Did you go there as late as the 28th of March?

A. I do not know.

Q. It was the last week in March, then, and things that occurred prior to the last week in March you do not profess to give?

A. No, sir.

Q. Where were you prior to the time you went there ?

A. I was at home in Prince George county.

Q. If you have spoken of anything in your evidence that occurred some ten days before the last week in March, it could not have been anything you saw; it must have been something you heard?

Question objected to by Mr. Merrick. He had not asked the witness about any occurrence before the last week in March.

Mr. PIERREPONT thought differently.

Mr. MERRICK said the first date he had inquired about was the one when the witness, with Mrs. Surratt, Miss Ward, Miss Fitzpatrick, and Weichmann went to church, and on their way back Mrs. Surratt stopped at the Herndon House.

WITNESS. I did not say it was the 25th of March. I do not remember whether it was that day or not.

Mr. PIERREPONT. I now repeat my question. Anything that occurred prior to the last week in March, in Washington, do you or do you not acknowledge knowing about ?

Question objected to by Mr. Merrick.

Objection overruled by the court. The prosecution may prove that this witness came as late as the 29th or 30th of March.

Q. Now tell us whether you were at Mrs. Surratt's prior to the 28th of March.

A. Yes, sir; I think I was.

Q. What day were you there prior to that ?

A. That I cannot remember.

Q. Were you there on the 27th ?

A. Yes, sir; I must have been.

Q. Were you there on the 26th ?

A. Yes, sir; I think I was.

Q. Were you there on the 25th ?

A. I do not know whether I was or not.

Q. You say you were there on the 26th. What day of the week was that ?

A. I do not know, sir.

Q. What day of the week did you go to your aunt's ?

A. I do not know. I do not remember.

Q. Do you remember what day of the month you came there ?

A. No, sir; I do not remember the date.

Q. Anything that occurred in Washington prior to the time you came to live with your aunt you do not know of yourself, do you ?

A. No, sir.

Q. Did you come on Sunday ?

A. No, sir; I did not come on Sunday—I do not think.

Q. Did you know the 26th was Sunday ? Did you come on Monday ?

A. I do not know what day of the week I came.

Q. You know you did not come on Sunday ?

A. No, sir; I do not think I came on Sunday.

DAVID BARRY, residence Prince George's county, Maryland, sworn and examined.

By Mr. BRADLEY :

Q. How are you at present employed ?

A. I am at present an officer in the State Constitutional Convention, at Annapolis.

Q. You were in the late civil conflict, I believe. On what side were you ?

A. I was two years in the confederate army under General Lee, in Virginia.

Q. At what time did you return to Prince George's county ?

A. I returned I think in November, 1862. In November or December, I am not sure.

Q. State how far from Surrattsville you reside.

A. About a mile and a half.

Q. Were you at Surrattsville on the 25th of March, 1865?

A. I was.

Q. Now state whether you saw John Surratt there or not?

A. Yes, sir; I saw him.

Q. Who was with him?

A. I cannot say; when I first saw him he was alone. I afterwards saw him in company with a lady he called Mrs. Brown.

Q. Did you see Mrs. Surratt there?

A. I am in doubt whether I did or not. I rather think I did. I think in crossing the passage in her house I saw Mrs. Surratt in the passage.

Q. Proceed and state whether you, in company with John Surratt, went from that place anywhere else; and if so, where you went.

A. Yes, sir; I accompanied them to Port Tobacco.

Q. How long did you remain at Port Tobacco?

A. I should like to say why I went to Port Tobacco. There was a man in Port Tobacco who belonged to the signal corps of the confederate army. I was anxious to see him in order to get information from two sons I had in General Lee's army. I understood from a man by the name of Howell, represented to be a blockade-runner, the day before Surratt came down, that he was at Port Tobacco. I mentioned it to Surratt, and asked him if he knew whether this man was there. He replied, "Yes." How he got his information I forget. He then offered me a seat in his carriage, remarking at the same time that it was somewhat doubtful whether he returned himself, but said if he did not return I could drive the carriage back; that he intended to see a lady he had in charge across the Potomac river, and if necessary, to Richmond.

Q. You staid all night at Port Tobacco?

A. I did.

Q. Now state whether Surratt wrote any letter in your presence, and whether you brought it to this city.

A. Yes, sir; I think he did. (Exhibiting letter of the prisoner to Brooke Stabler relative to returning horses, dated March 26, 1865, heretofore placed in evidence.)

Q. State whether you brought back these horses, or whether anybody else did.

A. I brought them back.

Q. What did you do with them?

A. I delivered them to Howard's stable—I think it was; I do not recollect positively. Surratt mentioned Brooks; he described Brooks to me. I think he said he was lame.

Q. Before you went to the stables and returned these horses did you go to Mrs. Surratt's?

A. No, sir; I went immediately to the stable and delivered the horses.

Q. After that did you go to Mrs. Surratt's that evening?

A. I did, after tea, or after dark.

Q. State as well as you recollect who you found there.

A. I knocked at the door, and Miss Fitzpatrick came to the door. She showed me into a room occupied by Miss Surratt, Mrs. Surratt, and, I think, Miss Jenkins—at all events Miss Jenkins may not have been in the room, but I saw her while I was there. Mr. Weichmann and two other gentlemen were there, one of whom she introduced as Booth; the other she did not introduce.

Q. Did you find out his name?

A. I heard him spoken of as Port Tobacco.



Q. You are quite sure that Booth and the man called Port Tobacco were there? Did these gentlemen remain some time after you were there?

A. No, sir; soon after I got there tea was announced. Mrs. Surratt invited me to tea, but as I had taken my tea I declined. Booth and Port Tobacco then left.

Q. You are quite sure that you met Weichmann with Booth and Port Tobacco at Mrs. Surratt's?

A. Quite sure. I talked with Weichmann, and exchanged a few words with Booth.

Q. Did you spend the evening at the house?

A. No; I did not remain long. I went there at the request of Surratt, to deliver a message to his mother.

Cross-examined, by Mr. PIERREPONT:

Q. Take that letter (letter exhibited to witness in direct examination) and look at its date.

A. Yes, sir; the letter is dated March 26, 1865.

Q. Can you tell the jury now the date when you came up here with these horses?

A. It was the 26th of March, 1865.

Q. Sunday?

A. Yes, sir; Sunday.

Q. They were gray horses?

A. Yes, sir; both gray horses.

Q. When you brought the horses you took that letter to the stable?

A. Yes, sir.

Q. And when you had done that you went to Mrs. Surratt's house?

A. Yes, sir; in the course of the evening.

Q. And at Mrs. Surratt's house you saw Weichmann?

A. Yes, sir; I saw him. I had seen him before.

Q. You spoke at the house of having brought back the horses?

A. Not in Weichmann's presence.

Q. Did you speak of it to anybody?

A. Yes, sir; to Mrs. Surratt.

Q. You saw Booth there?

A. I saw a person Mrs. Surratt introduced as Booth—a man she called Booth.

Q. That was on the evening of the 26th?

A. The same day this letter was dated. It was written in the morning. I delivered it in the evening.

Q. You saw another man they called Port Tobacco?

A. They called him Port Tobacco after he left. He was not addressed as Port Tobacco in his presence.

Q. Where did you see Mrs. Surratt before you took these horses to bring up?

A. I did not see Mrs. Surratt when I took these horses at Port Tobacco to bring up. Mrs. Surratt was not there. I saw her at Surrattsville, I think. I am not positive about it; my impression is that I saw her in the passage.

Q. Now please state to the jury when you saw her in the passage.

A. The day before, which was Saturday, the 25th of March.

Q. And then you saw a woman who John told you was Mrs. Brown?

A. Yes, sir.

Q. Where did you see her last?

A. In Port Tobacco.

Q. Who was with her?

A. John Surratt.

Q. What did John Surratt tell you he was going to do?

A. He told me he was either going to put her in safe hands to be taken to Richmond, or, if necessary, he would take her to Richmond himself. He sent this message to his mother: that if he did not cross the river he would be home the next day by the stage; that if he did cross the river, he would return as soon as he could.

Q. Who was the blockade runner you spoke of?

A. Howell was his name.

Q. Do you know his first name?

A. I think Augustus.

Q. Who told you who he was?

A. I have known him a long time.

Q. Did Surratt tell you about him?

A. He may have spoken to me about him. I knew him better than Surratt did. He had been a resident in that county for a long time.

Q. Was he with Surratt in Port Tobacco?

A. O, no, sir; he was arrested the night before we got there.

Q. Who was the signal man you speak of?

A. Charles Keyworth; he was a lieutenant in the signal corps of General Lee's army.

Q. Did you find him?

A. No; he was not there. I heard where he was—about eight or ten miles from Port Tobacco, at a place called Newport.

Q. The last time you saw Surratt he was in Port Tobacco?

A. Yes, sir; on the 26th of March.

Q. Describe this woman he called Mrs. Brown.

A. She was a rather slim, delicate woman. I think she had black eyes and dark hair. I do not recollect whether I saw her with her bonnet off. I think she wore her veil down nearly all the time. I saw her at the table.

Q. She was delicate in size?

A. I think so; that is my recollection.

Q. What was her age, about?

A. I should say she was under thirty.

Q. The only way you know of her name being Mrs. Brown was from John Surratt?

A. That was all.

By Mr. BRADLEY:

Q. I understand you to be distinct in your recollection that Dr. Wyvell did not bring back these horses, and that you did?

A. I am very distinct in my recollection that he did not bring back the horses, and that I did.

Q. And you are quite sure that you met Atzerodt with Booth and Weichmann at Mrs. Surratt's?

A. Yes, sir; Port Tobacco. I did not hear him called Atzerodt.

By Mr. PIERREPONT:

Q. And you are equally sure of all the other things I have asked you about?

A. I think I am.

BENNETT F. GWYNN—residence Prince George's county, Maryland—sworn and examined.

By Mr. BRADLEY:

Q. You live in the neighborhood of Surrattsville?

A. Within about a mile.

Q. Did you know Mrs. Surratt in her lifetime?

A. I did.

Q. Do you recollect of seeing Mrs. Surratt at Surrattsville on the 11th and on the 14th of April, 1865?

A. I recollect seeing her on the 14th.

Q. Was she at your house on the 11th?

A. She was at my house on the Tuesday preceding the 14th.

Q. Who was with her?

A. Mr. Weichmann.

Q. State whether she was there on business or not?

A. Yes, sir; she was there relative to the purchase of some land by a man by the name of Nothey, from her husband in his lifetime. I was a party to the transaction and the business was settled through me. She held the note of Mr. Nothey, who had been up there to see her, and wanted her to appoint a time.

Mr. PIERREPONT. Never mind that.

Q. Did you see Mr. Nothey relative to that business?

A. Yes, sir.

Q. Was anything done towards the settlement of that business that day?

A. No, sir.

Q. You may state whether or not the debt had been long due?

A. Yes, sir; it had been due for several years.

Mr. BRADLEY produced a letter signed George H. Calvert, jr., stating that he himself could identify the handwriting.

Mr. PIERREPONT said he would stipulate as to the handwriting, but objected to the introduction of the letter, as having nothing to do with this issue.

Mr. BRADLEY supposed it was competent to show the business that Mrs. Surratt went to Surrattsville on on the 11th and 14th of April, and that it was legitimate business.

The COURT said it had already been shown that she had business with Mr. Nothey when she went there, and that it was unnecessary to go into the details of it.

Mr. BRADLEY said he desired to show what the business was, and for that purpose he offered in evidence the letter from Mr. Calvert.

Mr. PIERREPONT said if the counsel would state that the object of introducing the letter was to disprove anything the government had offered, he would not object.

Mr. BRADLEY replied, that was not his object.

The COURT decided not to admit the letter in evidence.

Mr. BRADLEY reserved an exception to the ruling on the part of the defence.

Q. Did you see Mrs. Surratt there on the 14th of April?

A. Yes, sir.

Q. At what time in the day?

A. About five or half past five in the afternoon.

Q. Had you been to Marlboro'?

A. I had been to Marlboro', our county town, to attend court.

Q. State where you saw her at Surrattsville that afternoon, and what she was doing.

A. When I was passing, Mr. Jenkins I think it was, called to me, and said his sister was there and wanted to see me; I did not know she was there until he called to me. I drove my buggy to a position in the front part of the house and got out; I saw her buggy at the door.

Q. Was anybody in it?

A. No, sir; not at that time. She said to me she had started to come to my house.

Mr. PIERREPONT. You need not tell what she said.

Q. Was Mr. Weichmann present at that time?

A. Yes, sir.

Mr. PIERREPONT said he had not called out that conversation in Mr. Weichmann's examination, and objected to its being called out by this witness.

Mr. BRADLEY said he proposed to give Mrs. Surratt's actions and sayings as had been done on the side of the prosecution.

(Objection sustained and exception reserved to ruling.)

Q. You say she came out and had some conversation with you. Did you see her get into the buggy ?

A. Not then.

Q. Did you see her go to the buggy ?

A. I did ; I went to the buggy to help her get in, when I called her attention to the fact that the buggy was not safe.

Q. Was anybody in the buggy then ?

A. No, sir.

Q. You stopped her from getting in ?

A. I did ; I told her it was not safe ; I called her attention to it as being dangerous.

Q. Then what further did you do ?

A. I saw Mr. Nott crossing from the other side ; he was, I think, the bar-keeper ; I asked him if he could not get a piece of a rope, saying that Mrs. Surratt's buggy was broken ; that it was not safe to go home in. He said he would and went off to get a rope. I then called Mr. Weichmann's attention to it, and explained to him how it could be tied to make it safe. I then said to Mrs. Surratt that my wife had been very sick ; that I had been away from home all day, bade her good evening and left.

Q. What part of the buggy was broken ?

A. It is what is called the fifth wheel.

Q. It was you who called her attention to the broken buggy ; it was you who directed Mr. Nott to get the rope, and you who showed Mr. Weichmann how to tie it up ?

A. I did.

Q. Did you see John M. Lloyd there ?

A. I did not ; I did not go through the public part of the house at all.

Q. You think this was about half-past five o'clock ?

A. I think it was about that time.

Q. You knew Mr. Weichmann ?

A. Yes, sir ; I had a slight acquaintance with him.

Q. Has he ever been at your house ?

A. He was there, I think, on one occasion.

Q. More than once ?

A. Not until he came down with Mrs. Surratt.

Q. He was there once before ?

A. Yes, sir.

Q. In the course of that visit of Mr. Weichmann, did he say anything about furnishing information to the confederates about the condition of the Union army, or the confederate prisoners ?

(Question objected to.)

Mr. BRADLEY said his object was to show the intimate relations with those parties and to connect him with an active interest in everything that was going on in relation to Mrs. Surratt's house and the people who visited there, for the purpose of showing that interest in the witness Weichmann, which would induce him to testify against others in order to escape himself.

(Objection sustained.)

Cross-examined by Mr. PIERREPONT :

Q. You were not in the confederate service, were you ?

A. No, sir.

Q. You have been called Captain Gwynn ; what were you captain of ?



A. I was commissioned by Governor Hicks as a captain of a volunteer company of cavalry.

Q. When were you commissioned ?

A. I really do not know whether it was in 1859 or 1860. In 1860, I think.

Q. Where did you see Mrs. Surratt the day of the murder ?

A. At Surrattsville.

Q. Did you see her anywhere else that day ?

A. No, sir.

Q. Did you see any guns there that day ?

A. I did not.

Q. Did you see a field-glass there that day ?

A. I did not.

Q. Were any guns secreted between the rafters in that house while you were there, to your knowledge ?

(Question objected to by Mr. Bradley and objection sustained.)

Q. Did you have anything to do with the escape of Booth on the night of the murder.

A. I did not, indeed.

Q. Had you anything to do with any plan to interrupt Mr. Lincoln when coming from Annapolis ?

A. No, sir.

Q. You had nothing to do with any such plan ?

Mr. BRADLEY. Mr. Lincoln coming from Annapolis to Washington, when ?

Mr. PIERREPONT. Any time.

A. No, sir.

Q. Which side did you take in the war ?

A. I did not take either side particularly ; I had a substitute here in the Union army.

Q. Which side did you sympathize with during the war ?

A. I sometimes sympathized with the southern people who were oppressed, and sometimes with the other side. Anything that was not right I was opposed to.

Q. You state that you bade Mrs. Surratt good-night after you had told Mr. Weichman how to mend the buggy ; did you stay to see it mended ?

A. No, sir.

By Mr. BRADLEY :

Q. You have been asked whether you assisted Booth to escape, and various other questions affecting your character as a citizen ; I wish to ask you if you were a secessionist or took any part in secession, or against the United States ?

A. I did not.

By Mr. PIERREPONT :

Q. In what you stated about your sympathies you understood my question ?

A. Yes, sir.

By Mr. BRADLEY :

Q. Do I understand your answer to that question to be that you sometimes sympathized with the North and sometimes with the South in their distress ?

A. Yes, sir.

Q. Had you anything to do in aid of blockade-running against the laws of the United States ?

A. I had not.

Q. You did not assist in it ?

A. I did not.

Q. Have you ever heard your character or position questioned by anybody ?

(Question objected to by Mr. Pierrepont and objection sustained.)

Q. Were you in the habit of coming to Washington almost daily during that period?

A. I came frequently.

Q. Did you ever see any pickets at the blacksmith shop, three miles beyond Good Hope?

A. I did not; I never saw them beyond the District line.

By Mr. PIERREPONT:

Q. Do you say there were none there?

A. I say I never saw any there.

Q. Do you say the government placed none there?

A. I do not know.

By a JUROR:

Q. Was any one sitting in the buggy at the time you called Mrs. Surratt's attention to the fact that it was not safe.

A. No one.

By the COURT:

Q. Where was Mr. Weichmann when you called Mrs. Surratt's attention to it?

A. Mr. Weichmann was standing by her side.

Q. How far from the buggy?

A. I suppose, two or three feet.

J. Z. JENKINS sworn and examined.

By Mr. BRADLEY:

Q. Did you meet your sister, Mrs. Surratt, at Surrattsville the day before the assassination of the President?

A. Yes, sir; I was there.

Q. State for what purpose you were there with her.

A. I was there when she and Mr. Weichmann came. She showed me a letter she had received from Mr. Calvert.

Q. Was Mr. Nothey there?

A. No, sir.

Q. State whether Mr. Nothey was expected there, and whether she waited for him.

A. That I do not know.

Q. What was the nature of her business there?

A. Her business was with Mr. Nothey. She wrote a letter, or got Mr. Weichmann to write one for her, for Captain Gwyn to show to Mr. Nothey; she likewise had two judgments which Mr. Calvert had obtained against her husband, the late John H. Surratt. I made the interest on these judgments out for her.

Q. Did you make any calculation of interest on the Nothey debt?

A. I disremember whether I did or not, so far as that was concerned.

Q. Did she leave before you did, or did you leave first?

A. She left before I did.

Q. Did you know anything about the breaking of the spring of that buggy?

A. I did not.

Q. At that time were you in the habit of coming to town frequently?

A. Not very frequently.

Cross-examined by Mr. PIERREPONT:

Q. Mr. Weichmann wrote the letter to Mr. Nothey, did he?

A. I think he did.

Q. Please tell the jury where Mr. Nothey lived.

A. He lived three or four miles from Surrattsville, in the direction of Piscataway.

The court at this point took a recess for half an hour.

## AFTERNOON SESSION.

BERNARD J. EARLY sworn and examined.

By Mr. BRADLEY :

Q. State if you knew Mr. Michael O'Laughlin, who was tried by the military commission at the arsenal.

A. Yes, sir.

Q. State whether you saw him on the morning of Friday, the day on which the President was murdered.

A. Yes, sir.

Q. State where he was that morning from seven o'clock, until ten or eleven.

A. After seven o'clock that morning I first saw him at the Metropolitan Hotel.

Q. Did you see him as early as seven, or afterwards ?

A. After seven, I should judge, for we had left orders the previous evening to have us waked at seven o'clock.

Q. You were called, and what then happened ?

A. We were called at 7 o'clock, but we didn't get up immediately, but about a quarter of an hour afterwards, and came out of the room.

Q. Fully dressed ?

A. Yes, sir ; with the exception of our hair, which had not been combed. I then looked through the key-hole into O'Laughlin's room, which was immediately adjoining ours, and saw him laying on the bed, still asleep ; I rapped at the door, and told him to get up, and meet us down stairs. Mr. Murphy, Mr. Henderson, and myself then went down stairs into the saloon and had a drink. We went from there to the shaving saloon, and were sitting in there when Mr. O'Laughlin came down stairs. We asked him to take a drink, but he said he would wait until after he got shaved.

Q. So that you all four got shaved that morning ?

A. Yes, sir.

Q. Where was this ?

A. At the Metropolitan Hotel.

Q. After you had all got shaved which way did you go ?

A. We then went up to a restaurant kept by a man named Welcker, over Wall & Stephens's clothing store. We ordered breakfast, and had to wait until it was prepared for us.

Q. Did you take your breakfast there or not ?

A. We did.

Q. After breakfast where did you go ?

A. After breakfast we came down Pennsylvania avenue. Mr. Murphy, one of the party, stopped in at the Metropolitan Hotel to see a friend of his, and was to rejoin us at the National. The rest of us continued on to the National Hotel. When we reached there Mr. O'Laughlin went to the desk and inquired for a friend of his, and then went up stairs to see him. He told us to wait there for him. Mr. Henderson and I then walked back to the rear of the hotel.

Q. You were gone how long ?

A. I should think fifteen minutes. When we came back we did not see him there. We waited there awhile, in the mean time having some cards written by the card writer in the hotel, and then went on to the reading room, and remained there some ten or fifteen minutes, when, O'Laughlin not making his appearance, Mr. Henderson and myself sent up our cards to the room where he had

gone, requesting that he should come down. The waiter returned immediately, and said he was not there; that there was nobody in the room. The three of us, Mr. Murphy having rejoined us, went down to Ruliman's, on Pennsylvania avenue, between Third and Four-and-a-half streets, where we saw him standing in the bar-room.

Q. How was O'Laughlin dressed that morning?

A. He had on a black slouch hat, a black cloth frock coat, and pantaloons and vest of very conspicuous plaid—purple and green.

No cross-examination.

EDWARD A. MURPHY sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside?

A. In Washington at present.

Q. In what business are you engaged?

A. The plumbing business.

Q. Did you know Michael O'Laughlin, who was one of the conspirators tried before the military commission?

A. Yes, sir.

Q. Did you see him on the 14th of April, the day on which the President was murdered?

A. Yes, sir.

Q. State where you saw him, and what you knew about him that morning?

A. We had engaged a room the night before at the Metropolitan, and I had ordered the waiter to wake us up at seven o'clock in the morning. About seven he woke us. We did not get up immediately, but laid there some little time. When we did get up I went and rapped at O'Laughlin's door and requested him to get up. He says, "Very well, I will get up."

Q. Where was this?

A. At the Metropolitan Hotel. We did not wait for him to dress, but went from there to the barber shop and got shaved.

Q. Where was the shop?

A. In the Metropolitan Hotel.

Q. It leads off from the main entrance?

A. Yes, sir. After getting shaved we took a drink. Then O'Laughlin came down. We asked him to take a drink. He said, No, he had not been shaved yet. We waited for him to get shaved, and then he afterwards took a drink.

Q. You all four got shaved there?

A. Yes, sir.

Q. And you each took your drink there?

A. Yes, sir.

Q. Where did you go next?

A. We went from there to Welcker's, on the avenue, above Ninth street.

Q. What happened there?

A. We there ordered breakfast.

Q. Did you have to wait for it to be prepared?

A. Yes, sir.

Q. And you remained there until when?

A. I should judge until between nine and ten o'clock.

Q. From there where did you go?

A. From there down towards the National Hotel, where I stopped for a awhile. I had made arrangements to meet the other parties at the National Hotel. I stopped at the Metropolitan Hotel ten minutes, I suppose, and went from there into the National. I there saw Early and Henderson.

Q. Was O'Laughlin with them?



A. No, sir.

Q. How long did you stay there ?

A. From the time I left them until the time we started away from the National Hotel, and met O'Laughlin at Rulman's, it must have been, I suppose, half an hour.

Q. Then you found him at Rulman's ?

A. Yes, sir.

Q. Where is that ?

A. On the avenue near Four-and-a-half street.

Q. Describe to the jury how O'Laughlin was dressed that morning.

A. That morning O'Laughlin was dressed in a black cloth frock-coat, I think. He wore a black hat. The pants and vest, I am positive, were of large Scotch plaid.

WILLIAM FAILING sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside ?

A. In Canandaigua.

Q. Where did you live in April, 1865 ?

A. In Canandaigua.

Q. What business were you engaged in ?

A. The hotel business.

Q. What hotel did you keep ?

A. The "Webster House."

Q. Look at the book before you and tell me if that is the register of the Webster House at that time.

A. (After examining the book :) Yes, sir ; it is.

Q. Who was your clerk at that time ?

A. A young man by the name of Pratt.

Q. Look down upon that page dated the 15th of April, and state whether you find the name of John Harrison.

A. Yes, sir ; there is such a name there.

Q. Where from ?

A. He is put down as from New York.

Q. Are there any names after it on that day ?

A. Yes, sir.

Q. Would that show at about what time John Harrison arrived and was registered ?

(Objected to by Mr. Pierrepont)

Q. Would the names of the parties as they arrived be entered in the regular order ?

A. Yes, sir.

Q. Now can you state, from looking at that register, whether that party arrived late or early ?

(Mr. PIERREPONT objected. The witness could not state whether he arrived at all, so far he had now got. If he would state that this party ever did arrive there and enter his name he would withdraw all objection. Until then he would insist upon his objection.)

Q. Were you at home that evening ?

A. I am not positive whether I was there in the fore part of the evening or not. I had been to Rochester, and I may not have returned until late in the evening.

Q. At that period what were the hours of arrival of the different trains at Canandaigua ; take the train from Elmira, what time did it arrive there ?

A. I think at that time from about eight to nine o'clock, or somewhere along

there. It may have been ten o'clock. I remember distinctly that it was what we call the last train in the evening.

Q. Were there any entries registered after that of John Harrison?

A. There are one or two here, I think.

Q. At the bottom of the page. In whose handwriting is that name?

A. In the handwriting of a young man that I paid off that evening, and who then quit. He wrote his name here himself.

Q. He was your clerk?

A. Yes, sir.

Q. You paid him off that Saturday evening and he quit?

A. I think it was that evening, but I am not certain.

Mr. BRADLEY. I now propose to offer this in evidence. I have proved by Miss Jenkins the handwriting to be that of John H. Surratt.

Mr. PIERREPONT. Now I will ask him some questions.

Q. Where were you on the 14th, the day of the assassination?

A. I do not know, but I think probably at home.

Q. Where were you on the 15th, the day following the assassination?

A. I think I was at home.

Q. What day were you at Rochester?

A. I do not think I was at Rochester until the following Monday, the 17th, I think.

Q. You have seen this book before, have you not?

A. Yes, sir.

Q. Do you know where this book has been for the last three months?

A. Yes, sir.

Q. Where?

A. When I sold out to Mr. Chamberlin I sold the book to him, and it remained in his hands until a short time ago.

Q. How long ago?

A. I should think since this trial commenced, some two or three weeks ago.

Q. Do you know what was done with it then?

A. I believe it was taken back to Mr. Chamberlin, and when I came down here I brought the book with me.

Q. Was it brought away from there?

A. Yes, sir.

Q. Where was it brought to?

A. I brought it here and left it.

Q. With whom did you leave it?

A. I left it at the office of Mr. Bradley.

Q. How long ago was that?

A. Some ten or twelve days ago.

Q. From that time till now had you seen it?

A. No, sir.

Q. By whom were these names at the bottom written?

A. By Selin Pratt, who was a clerk in my office.

Q. He wrote down these names here: "S. Pratt," "S. B. Bratt," "S. B. Bratt?"

A. All of those. The lower name I am pretty sure is his.

Q. What book is this? (Holding up a small book containing a list of various names.)

A. That is a book which we used as a sort of night or check book.

Q. What did it mean?

A. It meant this: If a gentleman came and entered his name on the register such a day in the week and called for a room, we would set off a room to him, put his name on this book, and charge him with what he had.

Q. Won't you take this book and tell us whether this name of John Harrison was charged to any room?

A. I find a good many names here.

Mr. BRADLEY. Some of these leaves are evidently gone.

Q. Do you find that name, or that anybody who represented that name, was at your house?

A. (After a careful examination.) No, sir; I do not find anything in the shape of that name.

Q. Won't you tell the jury what you did with those books after you left there?

A. This one (the small one) I packed up with a lot of other books—the help book and several others. This register I sold to Mr. Chamberlin when I left, and he took and used up the balance of it.

Q. And you kept the small one?

A. I kept all the old books that were in the office.

Q. Won't you state what you did with that book?

A. I packed this with the others up in a box or trunk and carried them all home.

Q. Where did you put them?

A. Away with a lot of other stuff that I considered useless, in my wood-shed chamber.

Q. Did anybody come there to examine it, to your knowledge?

A. I did not see it examined.

Q. Do you know anything about the other book being examined, and where that other book was put?

A. Mr. Chamberlin took possession of this book (the register) when I sold out to him, on the 22d day of April, 1865.

Q. You had nothing to do with that afterwards?

A. No, sir.

Q. You yourself did not see it afterwards?

A. No, sir.

Q. You did not see that name written there?

A. No, sir; not to my recollection. I do not think I did.

Q. You have no recollection as to who wrote it, or when it was written?

A. No, sir.

Q. Have you any recollection whatever about it?

A. I have not.

Q. None, whatever?

A. I was away about that time. The clerk did the business then, and I could not tell anything about it.

Mr. PIERREPONT stated that he objected to its being offered in evidence.

Mr. BRADLEY desired him to state the ground of his objection.

Mr. PIERREPONT replied that the ground was very obvious.

Mr. BRADLEY said he had proved the handwriting, and he now desired to have the ground of the objection stated, for he could not conceive what it could be.

Mr. PIERREPONT said this was not a letter sent to, or received by, anybody; but it was a name, of which there were a great many there. As to who wrote it, or when it was written, there was no evidence.

Mr. BRADLEY remarked that there was evidence of the handwriting.

Mr. PIERREPONT said there was no evidence as to when it was put there. According to the theory of the defence it was put there more than two years ago, and yet nobody was produced to show that it was ever put there, or that the man they claim to have put it there was ever in the house. The fact that such a name was upon the book which was taken away from the place and brought here to Washington, was not evidence of the fact that it was put there at that time, and never was evidence in any court.

Mr. BRADLEY desired to have Mr. Chamberlin called and sworn.



Mr. FRANK O. CHAMBERLIN was then sworn and examined, as follows :

By Mr. BRADLEY :

Q. Where do you reside ?

A. In Canandaigua.

Q. What is your business ?

A. Hotel keeping. I am keeping the Webster House.

Q. Did you purchase out Mr. Failing ?

A. Yes, sir.

Q. Did you at the same time purchase the register ?

A. Yes, sir.

Q. I will call your attention to the entry of John Harrison under the date of April 15th. State, if you please, when your attention was first called to that, and by whom ?

A. I think since this trial commenced ; before that time my attention was called to it by Mr. Bradley, jr.

Q. Where ?

A. At the Webster House, Canandaigua.

Q. And the entry was then the same as it is now ?

A. Yes, sir ; I should think that it was.

Q. Were those names written at the bottom as they are now ? Do you see any alteration at all in them ?

A. I do not.

Q. To whom did you deliver the register ?

A. I do not know whether it was to Mr. Failing, or to Mr. Bradley, or Mr. Kirby ; I cannot recollect. I think I gave it to Mr. Failing the day he came to Washington.

Q. And until you gave it to Mr. Failing to bring here it had been in your possession ?

A. I think it had.

Cross-examined by Mr. PIERREPONT :

Q. When did you take possession of the hotel and that book ?

A. I think it was April 17.

Q. What year ?

A. 1865.

Q. When you took possession of that book was there any such name as John Harrison in it—that name to which your attention has been called ?

A. I could not tell.

Q. What did you do with the book ?

A. It laid on the counter there until it was used up.

Q. Then what did you do with it ?

A. I think it lay on the desk in the office.

Q. For how long ?

A. Until it was brought here.

Q. Then it lay on the desk there for two years and more, did it not ?

A. Yes, sir ; it lay there until the last date in it—the 31st of December, 1865.

Q. Then it was used up to that time, was it not ?

A. Yes, sir.

Q. Then it continued, until after it was used up, to lay on the desk ?

A. Yes, sir.

Q. How long ?

A. It continued to lay on the shelf under the desk in the office.

Q. How long did it continue there ?

A. Until it came here.

Q. It was open to everybody, and anybody could have got hold of it ?

A. Yes, sir.

Q. Anybody could have written in it, could they ?

A. Yes, sir.

Q. You do not know, then, whether that name was written there for two years ?

A. No, sir.

Q. Look along on any leaf of that register and tell us whether or not there are vacant lines there on which could have been written half a dozen names ?

A. (After examination :) Yes, sir.

Q. You have told us where the book lay and when it was put there, and that you did not know that that name was on it. After it was put in that place, where you say it was open to everybody, will you tell the court and jury whether it might not have been taken away and been gone for months ?

(Objected to by Mr. Bradley. Question withdrawn.)

Q. I will ask you whether there were months that you did not see it and know whether it was gone or not ?

A. It lay where it could be seen every day, but it might not have been noticed ; it was not in use.

Q. If it had been gone for months would you have noticed it ?

A. I might and might not ; I had no use for it.

Q. It was in a public place, under the desk, and your attention was not called to it ?

A. No, sir. There were envelope boxes and another register there with it.

Q. Will you tell us when anybody first came to ask you about that register ?

A. Mr. Bradley was the first man.

Q. When was that ?

A. I cannot tell here ; I could at the hotel, as I have a memorandum of it. It was a short time before the trial commenced.

Q. In what month ?

A. Last month—June, I think.

Q. Do you think it was the early part ?

A. I should think so. (After a pause.) My recollection now is that it was the 23d of May.

Q. Will you tell us what the man said to you who came there to get the register ?

A. I cannot recollect all he said.

Q. Tell all you can recollect.

WITNESS. Which man do you mean ?

Mr. PIERREPONT. Whoever it was that came to get the register.

WITNESS. Mr. Bradley, jr., it was.

Mr. PIERREPONT. Well, tell us all he said.

A. He subpoenaed me.

Q. Did he say anything to you about ever having examined that book before ?

A. He said he had been there twice unbeknown to me.

Q. Did he tell you when he had been there twice unbeknown to you, and examined that book ?

A. No, sir.

Mr. BRADLEY, Sr. Mr. Clerk, will you now swear my son ?

JOSEPH H. BRADLEY, Jr., sworn and examined.

By Mr. BRADLEY, Sr. :

Q. Will you state when you first visited Canandaigua, and examined that register ?

A. From information which I received from the prisoner, who was confined in jail, I proceeded to Canandaigua, going from the city of New York, and arrived there on Saturday, the 16th day of March, 1867. I proceeded to the Webster House direct. I am not quite sure whether it was the 15th day of

March, or a day earlier or later, but at all events, I arrived there, and proceeded to register my name. In looking around the office, I found under a desk there this register, which I took the liberty of opening, and turned at once to the date of the 15th of April, to look for the name of John Harrison, and found the identical name there registered.

Q. Was the book in the same condition then as now ?

A. In precisely the same condition. I made inquiries in regard to it of the clerk in the office. He was not the same one who was there in 1865, that one having, as I was informed, gone to open a public house for himself. Without stating anything as to the object of my visit, I staid at the hotel as long as it suited me, and then proceeded to another point in pursuit of this investigation. In the month of May, on a second trip in search of information on this subject, I returned to Canandaigua in anticipation of the trial which was fixed for the 20th of that month. I arrived there the night of Wednesday, the 22d, or Thursday, the 23d. I again looked at the book, which was just where I had left it, and found it in the same condition. I made my errand known to the clerk of the hotel, and ascertained that Mr. Chamberlin was out of town, having gone to a house-warming of a friend of his, who had opened a hotel at the head of the lake. He returned the next day. I then had a private interview with him, and stated to him the object of my visit. He sent and had the book brought up into the room where we were. I then directed his attention to this entry, and afterwards served the process of subpoena upon him to attend with that book at this court. That is all I know upon the subject, except that I know the entries are precisely the same now as they were then in March last, when I first saw it. I got all my information from the prisoner.

Mr. BRADLEY, sr. Mr. Clerk, will you now please swear me ?

Mr. PIERREPONT said if it was in it then, it could not have been altered since. What possible use, therefore, could there be in swearing Mr. Bradley, as he supposed he proposed to be sworn on this point.

Mr. MERRICK insisted on Mr. Bradley being sworn.

Mr. PIERREPONT remarked that if the gentlemen insisted upon it, they could not help it.

Mr. JOSEPH H. BRADLEY, sr., was then sworn and examined.

The witness said: Mr. Failing delivered that book to me some three weeks ago. It has never been out of my possession until to-day. It is in precisely the same condition now that it was then.

Mr. BRADLEY, after retiring from the witness stand, inquired if the Court had any difficulty about coming to a conclusion.

JUDGE FISHER remarked that he had.

Mr. BRADLEY begged to call the attention of the Court to the evidence in the case. The government had taken the trouble to prove that certainly from the 18th of April, 1865, to this day the prisoner could not have been in Canandaigua, and the defense had proved the entry in that book to be in the handwriting of the prisoner. Could he have made it after the 18th—up to this day ?

Mr. PIERREPONT said that he could have made it in the jail here without the least difficulty, from the evidence already given in the case. The witness Chamberlin had stated it might have been away two months and he not have known it. There was no difficulty whatever about it. They were not suggesting now nor had they suggested that the counsel for the defence had anything to do with any such thing, and therefore the great effort to repel an intimation of this kind seemed to be quite uncalled for.

The COURT thought that when a record of the description of this book was offered in evidence there ought to be some evidence accompanying it, showing the fact that some party came there and made an entry at the time this is purported to have been made. Two years and some months had elapsed since that time this entry purports to have been made, and they did not know where the



prisoner was all that time. It was possible, though he did not wish to be understood as intimating any opinion on the subject, that the entry might have been made after the 15th of April and before the 17th of September, the day when he is said to have sailed from Canada for Europe. That was the question that presented itself to his mind.

Mr. BRADLEY reminded the court of the evidence given by the government, that while in Canada, up to the time he sailed, he was kept in concealment.

The COURT said that might have been so and yet he have been in this country. He was under a great misapprehension if there was any evidence to show a negative of the fact that he never was in the United States after the 15th of April.

Mr. BRADLEY said that having proved the handwriting, he thought the weight of the evidence was a matter for the jury. He offered it as tending to show that the entry was made by the prisoner in Canandaigua on the date mentioned in the book.

The Court here examined the book, and Mr. Bradley called attention to the fact that several entries had been torn from the check or night book, and that it had been packed away until it was placed in the hands of the government.

Mr. MERRICK argued that the prisoner could not have written the entry after the 18th of April, as Surratt was out of the country, and remarked that it could not have been done since his arrival on board the ship in February last, for the prisoner had been confined in jail, and prohibited from intercourse with the outside world. He was debarred by the warden from the use of pen and ink, and the Court had ordered that no one should visit him.

Judge FISHER. I never issued an order of the kind, for I never thought it necessary to do so. I have always thought a prisoner's friends had a right to visit him while in confinement.

Mr. MERRICK stated that the prisoner's counsel had requested the court to give orders admitting parties to visit the prisoner, because there were certain members of Congress prowling around the jail desirous to see the prisoner for bad purposes, and the counsel did not wish them or other persons who desired to see him for bad purposes to go there.

The COURT said that something might have been said on the subject, but he was sure that he had given no such order, nor said anything that could be so construed.

Mr. MERRICK went on to argue that on principles of common sense the book should be admitted. It was as much entitled to admission as was the pocket-handkerchief offered by the prosecution, with Surratt's name on it.

Mr. PIERREPONT said this was the first time he had ever heard a person, who claimed to be educated as a lawyer, get up in a court of justice and seriously argue that a man could make evidence for himself, and then bring it in for the purpose of securing his acquittal; that it was the same thing when a man undertook to bring in his own writing, his own acts, as when the government undertook to bring in such against him. Anybody who had the slightest particle of common sense in his head knew perfectly well that if that entry could be introduced in evidence, as in the prisoner's handwriting, every word that it should say could be introduced. Suppose, then, there stood on that register such an entry as this: "John Harrison Surratt, Washington city. Wilkes Booth murdered the President. I thank God I never had anything to do with it, and never heard of it." Such would have to be admitted if the name could be. See what the effect would be. If such were allowed, any murderer, any assassin, could acquit himself. Test the case. This murder occurred on the 14th of April, 1865, and, from the testimony in the case, the prisoner at the bar had never left this country until the 17th of September, 1865. From April to September, five months after the murder, did he remain in this country in his various disguises. He knew that his mother had been tried; he knew that his co-conspirators had been tried; and he knew, as the proof is, that some of them

had been executed; and he lay on the border, within twelve hours' ride of Canandaigua, this whole five months, while these things were going on, and he shrinking from the investigation. Why should not he be preparing to defend himself? Why should not he come down in his disguises and make this entry there for the purpose of raising the presumption, if he should be seized and brought to trial, that he was there at the time now claimed? As the court would see, on looking at the register, that there were five or six blank lines on each page, and from the easy access which was had to the book, he could very easily, in his disguise, have gone and made this entry there. He had ample opportunity to do it. If he was not an idiot he would be fixing up such testimony as would help him in his defence when he should be tried, which he anticipated would finally come.

Judge FISHER said that it was past the usual time for adjournment, and he would hold the point over till the next sitting. He ordered that the court now take a recess until Monday morning at 10 o'clock.

MONDAY, *July* 15, 1867.

The court was opened at 10 o'clock.

The COURT proceeded to deliver his opinion on the question of the admissibility of the Webster House register, offered for the purpose of showing the prisoner to have been in Canandaigua on the 15th of April, 1865. It is as follows:

The register of the Webster House, Canandaigua, offered in evidence when we took a recess on Saturday, cannot be allowed to go to the jury at present. It was proved by the proprietor of the house, who kept it on the 15th April, 1865, to have been the register used by him and turned over by him on Monday, April 17, 1865, to his successor, who swears that he kept the same book lying open on his counter until all the blank leaves were filled up, and then placed it under the counter, where it could have been, without his knowledge, used for any purpose, whether honest or fraudulent. This is just precisely one of the cases which the ancient and well-established rule of evidence, that a prisoner shall not be allowed to manufacture evidence for himself, was intended to meet. It is said that the name "John Harrison," standing on that register for the 15th April, 1865, having been sworn to by Miss Jenkins as the handwriting of Surratt, it ought to be admitted as evidence tending to prove that he was present at Canandaigua at that date. But, as I have just said, it is evidence made by himself, and, although it might be put in evidence against him if in his handwriting, yet it cannot be used as evidence in his favor, just as any diary which he may have kept in his handwriting might be produced against him, but could not be produced in evidence in his behalf.

Besides, the fact, if established beyond all peradventure, that the name "John Harrison" is in the prisoner's handwriting, does not even tend to show that he was in Canandaigua on the 15th April, 1865. The name could as well have been written by him in Canada, or Rome, or Egypt, as in Canandaigua. The book has been at the mercy of anybody for more than two years. It could have gone to Canada and back a hundred times; or the prisoner, during his stay there in Canada, could have gone to the book just as often. The entries below the name of "John Harrison," as well as that entry itself, may as well have been made at any other time as on the 15th April, 1865. It is to guard against just such contingencies as this that the rigid rule of evidence to which I have alluded was established.

If the defence had proved by any credible witness that the entry of the name of "John Harrison" had been made at the hotel in the regular course of business, on the 15th of April, by a person passing under that name, the book might go in evidence as a memorandum of a fact made at the time of its occurrence, and thus proof that the entry was in Surratt's hand would tend to show he was there at that time. It is only as a memorandum, so made, that it is allowed to

speak at all, and it cannot take the character of such memorandum until it be shown that it was so made at the time and place of which it is desired to speak.

Let the principle be once established that such evidence as this register as it now stands is admissible, and the proof of an *alibi* will be the easiest thing made that could possibly be conceived of. A crime may be committed here, the guilty party may escape to Canada, registering himself in an assumed name wherever he may stop, and will only have to travel back again, write his true name at or near the bottom of the appropriate page of the hotel register wherever he stops on his return, with one or two friends to write their names under his, and the defence of the *alibi* is complete.

Mr. BRADLEY stated that he was in a condition to show, by evidence, that Surratt was not in the United States between the 18th of April, 1865, and September of that year; that he remained in Canada; and it could be shown that he was in the charge of friends there all the time, and never left there until he went out of the country. He proposed to offer that evidence. Witnesses were on their way who would state those facts; persons of the highest respectability. He reserved an exception to the ruling of the court.

WILLIAM FAILING—examination resumed.

By Mr. BRADLEY :

Q. What was the ordinary railroad route from Elmira going to Albany, and thence to Canada—would it have come through Canandaigua, or not ?

A. Yes, sir ; most generally it would.

Q. That would be the ordinary route ?

A. Yes, sir. There are other routes from Elmira.

Q. Looking at that entry in the register, can you state at or about what time of day the parties reached Canandaigua—I mean Harrison, and the other two parties whose names follow on the register ?

Mr. PIERREPONT objected. If the question was made general, and the witness asked what time parties would naturally arrive, he would raise no objection.

Mr. BRADLEY. I will then ask the witness this question :

Q. Looking at the entries in that book, and from them, taking the regular course of business, at what time would parties arriving from Elmira reach Canandaigua ?

Objected to by Mr. Pierrepont, on the ground that the "book" had nothing to do with it.

The COURT said it seemed to him that the proper question would be : "What time would parties coming from Elmira to Canandaigua, and stopping there, arrive according to the regular course of travel and business?" The book he did not consider at all in evidence.

Mr. BRADLEY inquired if the court overruled the question he had put.

The COURT said he did. That he thought the question he had suggested was the proper one.

Mr. BRADLEY reserved an exception ; and then requested the reporter to read to the witness the question framed by the court. This being done—

The WITNESS said : There were different trains. One train arrived in the forenoon, between 10 and 11 o'clock, and another, I think, but I am not positive about that, arrived in the evening, between 9 and 10 o'clock.

Q. What is the direct route from Canandaigua going to Montreal from New York ?

A. There are two or three different routes. One is called a direct route, going from Canandaigua to Rochester, from Rochester across to Coburg, and so on down the Great Western railway.

Q. Going by way of Albany, how ?

A. You want to go through Syracuse, Canandaigua, and Auburn.



Q. On the 16th of April, 1865—Sunday—what time, going by way of Syracuse, did the train leave Canandaigua for New York?

A. I do not think there were any trains on Sunday going east, on the New York Central.

Q. The train, then, would leave either Sunday night, or Monday morning?

A. Yes, sir.

Q. What time at night on Saturday night—two years ago—do you remember?

A. I think the last train went between 7 and 8 o'clock.

Q. A party arriving at Canandaigua between 8 and 9 o'clock, would then have to lay over until Monday morning?

A. Those that were going east, until Sunday night, or Monday morning.

Q. That register, I understand you to say, you turned over to Mr. Chamberlin, when he purchased you out. How long was that after the 15th of April?

A. I think we had made an arrangement before the 15th of April, but I delivered possession on the 22d of April.

Q. Up to that time, was that book in your possession?

A. It was. It is a book that I used.

Q. Turning to this book that you call your night book, state to the court and jury what dates are left out from it? what is the last date before the leaves are missing?

A. 12th of April, 1865.

Q. What is the first one on the leaf remaining?

A. The 20th.

Q. How can you account for the loss of the pages containing the intermediate dates?

A. As this book was so near full, Mr. Chamberlin thought it was not necessary to leave it with him, and so this, among other things that I thought would be of no use to him, I just packed up, and put away in a woodshed chamber of a house which I had bought in the village of Canandaigua. It was quite a large chamber, and the children used to use it as a playhouse. They used to get out the books, keep school there, play soldiers, and everything of that sort. That is the only way I can account for these dates being gone. I think it was all right when I put it there.

Q. When did you first refer to that book again?

A. I do not know that I ever had that book in my hand after I put it there, or ever saw it, until I was notified about coming down here, some two or three weeks ago. In looking among the old books, this was found.

Q. Did you find it, or some one else?

A. My son and his wife lit a lamp and went up in the dark chamber after we moved where we now live, and found it in a basket or box among other books.

Q. Did he bring it to you?

A. Yes, sir.

Q. State whether when you examined it at that time you noticed that that leaf was missing or not?

A. I did not until he spoke about it. I told him he had better go back and look among the other papers and books; that it was there somewhere. He went back again and looked and said he could not find anything of it.

Q. Would that book, if it were perfect, show who staid at your house on Saturday night, the 15th of April?

A. Yes, sir. We kept it for that purpose.

Q. It is in the same condition now as when you first found it, or when your son brought it to you?

A. Yes, sir.



Cross-examined by Mr. PIERREPONT :

Q. If a person came to Canandaigua on the 15th, which was Saturday, as we all agree, he could not get away from there by railroad until the next Sunday night, could he ?

A. I think it goes on Sunday night.

Q. At what hour ?

A. I think between 7 and 8 o'clock.

Q. And that would be the first opportunity he would have to go, would it not ?

A. Yes, sir ; I think it would be, either east or west.

Q. From Canandaigua to Canada, you say there were three roads ?

A. Yes, sir.

Q. Did a lady die in your house on the 15th of April, 1865 ?

A. Not to my recollection.

Q. Mrs. Wood ?

A. I do not recollect.

Q. Did you know the deputy provost marshal ?

A. I knew most of the officers there by sight.

Q. Did the deputy provost marshal board with you ?

A. I think he did.

Q. Did the deputy's wife die there ?

A. Not to my recollection.

Q. Did the wife of either the provost marshal or his deputy die there on the 15th of April, 1865 ?

A. Not that I recollect.

Q. Do you recollect of any woman dying there ?

A. A Mrs. Bull died there while I kept the house.

Q. I mean in April, 1865.

A. No, sir ; not anybody.

Q. I speak now of Saturday, the 15th of April. Were you there at the time ?

A. I think I was ; but I am not sure. I was there in the evening.

Q. When did this lady to whom you have alluded, die at your house ?

A. Six months previous to that.

Q. You have the night book, as it is called, there have you not ?

A. Yes, sir.

Q. Did not that night book show who staid at your house ?

A. That is what we kept it for.

Q. And it would show it if the leaves were here, wouldn't it ?

A. Yes, sir.

J. N. DUBARRY sworn and examined.

By Mr. BRADLEY :

Q. State where you reside.

A. Harrisburg, Pennsylvania.

Q. State whether you have any connection with any railroad, and for how long you have had it ?

A. I am general superintendent of the Northern Central railroad, and have been for five years and a half.

Q. On the 15th of April, 1865, where were you ?

A. At Harrisburg, Pennsylvania.

Q. Can you state from memory—if not, please refer to any record you may have—whether the cars came through from Baltimore to Harrisburg on the 15th of April, 1865 ?

A. I would not like to testify from memory.

Q. Well, sir, refer to any memorandum you may have ?

A. (Looking at a book before him:) The mail train of the 15th did not leave Baltimore.

Q. Any other train, and when?

A. I notice by the records that there was a train called a fast accommodation train that left at 6.20 in the evening and went to the Relay House at 7 o'clock.

Q. Explain; what Relay House?

A. The Relay House of the Northern Central road, is where connection is formed with the Western Maryland line, seven miles out of Baltimore.

Q. When did it go through to Harrisburg?

A. Two trains left Baltimore on the evening of the 15th.

Q. What time did they leave or arrive at Harrisburg?

A. They left Baltimore at about ten o'clock p. m.

Q. And arrived at Harrisburg when?

A. At 2.50.

Q. State what trains left Harrisburg on the 15th going north.

A. There was a train left Harrisburg going north at 2:14 p. m.

Q. Was there any possible means by railroad communication, or otherwise that you know of, by which a party leaving here at 11 o'clock on Friday the night of the 14th, could have reached Harrisburg at that time? I mean that day, not in the ordinary course of travel.

A. We had no train up on the 15th of April out of Baltimore in the morning.

Q. State when the train that left Harrisburg reached Elmira?

A. The train arrived at Sunbury at 4.35.

Q. Between Sunbury and Williamsport your road does not run, I think?

A. No, sir.

Q. Was or not communication interrupted at that time by broken bridges or otherwise?

A. The roads had been heavily damaged by a flood at that time.

Q. At Williamsport you take it up again?

A. Yes, sir.

Q. Give us, if you please, the time when that train would be due at Elmira; and, if you have any knowledge of the fact, the time that it did reach there?

A. The passenger train was due to leave Williamsport at 7.20 in the morning.

Q. What other time during the day?

A. That was the only passenger train running at that time.

Q. Then the passenger train leaving Harrisburg at 2.14 p. m. would be due in Elmira, when?

A. That train would not have gone further than Williamsport on the Central road on that day?

Q. You mean that it could not have gone from Williamsport to Elmira on that day?

A. I understood the question to be: "Could the train leaving Harrisburg at 2.14 get to Elmira that night." I answered no; not by the schedule.

Q. You have no memory, or no entry, of any special train being run through on that day?

A. No, sir.

Q. Give us the running time from Harrisburg to Sunbury?

A. Two hours and thirty-five minutes. From Sunbury to Williamsport is off my road, and I have no record of that at all.

Q. Can you speak from memory?

A. About two hours.

Q. On that day?

A. I have no record of that day.

Q. But you are frequently on the road, and speaking from memory, you say it was a two hours' run from Sunbury to Williamsport?

A. Yes, sir.

Q. Then from Williamsport to Elmira ?

A. Five hours and a half.

Q. That is about ten hours through from Harrisburg to Elmira ?

A. Yes, sir.

Cross-examined by Mr. PIERREPONT :

Q. Won't you tell the jury where you were at 12 o'clock at night on the 14th of April, 1865 ?

A. I was, I think, at Sunbury that night; but I cannot say the hour I arrived there.

Q. Were you on the train ?

A. I came from Williamsport to Sunbury.

Q. Were you there at about 12 o'clock ?

A. I think I was.

Q. Which way were you running ?

A. I was coming towards Harrisburg.

Q. When did you come to Harrisburg ?

A. I left Sunbury on the morning of the 15th, about half past seven o'clock.

Q. When did you reach Harrisburg ?

A. About half past ten.

Q. How long did you stay there ?

A. That was my residence; I do not remember my next absence.

Q. How long did you stay at Harrisburg at that time ?

A. It may have been a week; I cannot recollect my next absence.

Q. Were you on a train after 10½ o'clock at any time on the 15th ?

A. No, sir.

Q. Were you on any train on the evening of the 15th ?

A. No, sir.

Q. Were you on the 16th ?

A. I do not think I was ?

Q. Were you in Baltimore on the morning of the 15th ?

A. No, sir.

Q. Then you do not know of your own knowledge, or from any memorandum you ever made, what train left Baltimore on the morning of the 15th ?

A. No, sir; not from personal knowledge, nor from any memorandum I made.

Q. Were you in Elmira at 7.20 on the evening of the 15th ?

A. No, sir.

Q. Do you know whether a train arrived at Elmira at that hour, 7.20, on the evening of the 15th, that had come from Baltimore, or that connected with the Baltimore train ?

A. I do not; I was not at Elmira.

By Mr. BRADLEY :

Q. You do know, as I understand, that no train from Baltimore could have passed through Harrisburg on the 15th which could have reached Elmira by 7.20 in the evening ?

A. From the records of the road.

Q. Were you on the road yourself? You came down from Sunbury that morning.

A. I came from Sunbury to Harrisburg on the morning of the 15th.

Q. You were in Harrisburg all day of the 15th after 10½ o'clock, and therefore no train could have passed through from Baltimore without your knowing it ?

A. I would have known it.

Q. At what hour in the evening at that time did the train leave Elmira coming south ?

A. No train at that time left Elmira in the evening coming south.

Q. Turn to the 13th, if you please, and see if any train left Elmira, coming south, after 12 o'clock, on the afternoon of the 13th?

A. There is no record of such a train.

Q. No train leaving Elmira after 12 o'clock on the 13th? Now what time of day on the 13th and 14th did the trains coming south leave Elmira?

A. The schedule called for a train leaving there at 8 o'clock in the morning.

Q. Leaving Elmira at 8 o'clock on the morning of the 13th, at what time would the parties reach here?

A. They should have reached Baltimore about 7 o'clock the next morning, if the connections were all made.

Q. That is, it would take about twenty-three hours to run from Elmira to Baltimore at that time?

A. Yes, sir.

Cross-examination by Mr. PIERREPONT:

Q. Do you say that there was no train running through from Elmira with soldiers on that day?

The COURT. Which way?

Mr. PIERREPONT. This way, coming south on the 13th.

A. I cannot say that there was no train with soldiers.

Q. Do you know Mr. Fitch?

A. Yes, sir.

Q. What did he do there in 1865.

A. He moved the trains; he was clerk to the superintendent.

Q. Have you seen him here?

A. I just now caught his eye.

Mr. BRADLEY. Do you mean to say in April, 1865; was not he in Williamsport in 1865?

WITNESS. Yes, sir.

By Mr. PIERREPONT:

Q. He moved the trains, didn't he?

A. Yes, sir.

Q. You tell the jury that there had been some interruptions from freshets?

A. Yes, sir.

Q. How did they get along with the trains; did they stop them?

A. They did for some time.

Q. On the 13th, 14th, and 15th?

A. The road was partially repaired, and one train was running through daily.

Q. They ferried?

A. That was not on my route.

Q. Don't you know they ferried?

A. I do.

Q. Didn't you go over the ferry yourself?

A. I did on the 14th.

Q. But you were not at Elmira on the 13th?

A. No, sir.

Q. And you do not know that a train did not leave there with soldiers on it that day?

A. I do not.

Q. If they had left they could have come, could they not?

A. Yes, sir.

Q. Won't you tell us whether the trains were running from Elmira here on the time tables at these dates?



WITNESS. On what dates ?

Mr. PIERREPONT. The 13th and 14th.

A. On the 13th my record shows that there was a first and second mail train running on schedule time, and that there were two freight trains running on schedule time from Elmira to Williamsport.

Q. Were there any trains that did not run on schedule time ?

A. I have no record of them.

Q. Were there any ?

A. Not that I am aware of.

Q. When interruptions of schedule time occurred on one part of the road, it would affect it on the other, would't it ?

A. Yes, sir.

Q. Suppose this to happen—that a train running from Elmira should leave Elmira at 7.20, and another train, a slower train, should leave at 12.20, and this slower train, by reason of some detention of the express train, should overtake the express train at a distance of fifty-eight miles from there, and the passengers should get on to the express train; it would make a difference, would't it ? They would arrive at their destination sooner ?

A. Yes, sir.

FRANCIS E. FITCH sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside ?

A. I now reside at Elmira, New York.

Q. What is your occupation ?

A. I am train-master. I am called superintendent's clerk.

Q. Where did you reside, and where were you employed, in April, 1865 ?

A. I resided at Williamsport, Pennsylvania, and was employed in the same business that I am now.

Q. Have you any memorandum, or can you speak from memory, as to the time of the arrival at Williamsport on the 15th April, 1865, of the train from Harrisburg going north ?

A. No, sir; I did not see any train arrive, so I could not speak from memory.

Q. If a train had arrived you would have known it ?

A. There was none on my road at all. I did not know anything about them.

Q. Not at Williamsport ?

A. South of Williamsport I did not know anything about them.

Q. In April, 1865, how did the passengers from Harrisburg for Williamsport and Elmira reach Williamsport ?

A. By railroad.

Q. What railroad ?

A. "P. and E." railroad.

Q. At what town does the Central railroad terminate, running up from Harrisburg ?

A. At Sunbury.

Q. How far is Sunbury from Williamsport ?

A. Forty miles.

Q. There was regular railroad communication between Sunbury and Williamsport ?

A. I was not over the road at all, but I have understood there was.

Q. Don't you know the fact that the cars arrived there with regularity ?

A. I am as certain as I could be, and not be on it myself.

Q. Didn't you see them arrive at Williamsport ?

A. I did not. I saw some men on the 15th who said they came from Harrisburg on that morning.

Q. I want to know what was the communication from Harrisburg to Elmira during these five days in April; what route parties took from Harrisburg to Williamsport?

A. I know nothing except what I gathered from other folks, but I suppose the trains run regularly with the exception of transferring the passengers across the river twice.

Q. You started them from Williamsport to Elmira?

A. Yes, sir.

Q. What time did your train leave Williamsport for Elmira?

A. Mr. Dubarry has given it.

Q. Just look yourself.

WITNESS. To what day do you refer?

Mr. BRADLEY. The 15th.

WITNESS. I haven't it.

Q. The records of the movements of the train on the 15th?

A. I have the schedule only; I have the 13th.

Q. Look at the 13th.

A. The train going north from Williamsport on the 13th left there 25 minutes late that morning.

Q. What was the hour of starting?

A. The hour of starting, I think, was at 7.20.

Q. That was the 13th?

A. Yes, sir.

Q. Now the 14th?

A. I have no record of the 14th?

Q. Nor the 15th?

A. No, sir.

Q. Have you any memory about it, as to whether the train run or not?

A. I could not speak positively, but I suppose they run; I could not tell, however, whether they did or not.

Q. Was there any other time in the day except 7:20 for the trains to leave Williamsport for Elmira?

A. On the 13th there were two trains advertised to leave Williamsport—7.20 and 7.25 a. m.

Q. Both in the morning?

A. Yes, sir.

Q. You have no record of the 14th or 15th?

A. No, sir.

Q. At what hour did that train reach Elmira, running time?

A. The first train's running time was five hours and thirty minutes; and the second train, which was the slower, was eleven hours.

Q. Have you any memorandum of the trains coming south from Elmira on the 13th, 14th and 15th?

A. Of the 13th only.

Q. Give us the 13th.

A. From the record I find that four trains left Elmira on the 13th.

Q. Which were they?

A. They were two passenger and two freight trains; that is, two sections of a passenger train and two freight trains.

Q. What time did they leave Elmira?

A. The passenger trains left there at 8 o'clock in the morning.

Q. What time did the freight trains leave?

A. 8.05 in the morning.

Q. Was there any train later in the day?

A. I have no record of any.

Q. What time did they leave Elmira, coming south, on the 14th?



A. I have no record; I can only give the time they should have left.

Q. Give the time they should have left? I refer to the regular passenger trains.

A. They are advertised to leave there at 8 o'clock on the morning of the 14th; I am not certain that this schedule run the 14th; I do not remember.

Q. Was there any other train that left Elmira on the 13th except those two you have mentioned?

A. I have no record of any.

Q. Ought not your office to contain a record?

A. It ought.

Q. Have you searched for it?

A. I have not searched the office for the original record myself.

Q. Have you searched for a copy?

A. This is a copy that I have.

Q. That is the 13th?

A. Yes, sir; I have none of the 14th.

Q. Have you any memorandum in your office showing that any other train left Elmira except this?

A. No, sir.

Q. Passengers by the train leaving there at 8 or 8.20 should reach Harrisburg at what time?

A. I cannot say positively as to that, but I think they had to lie in Williamsport until ten in the evening, and so reach Harrisburg at 2 in the morning.

Q. Did they not in 1865 lie in Williamsport until the Erie train coming from the West reached Williamsport?

A. I think the regular passengers did; but there must have been other trains.

Mr. BRADLEY. I am speaking of your knowledge. You do not know of any other?

A. My memory is not worth anything as regards speaking positively of certain dates.

Q. Is there any train coming south from Williamsport, except from Williamsport to Sunbury?

A. I do not know of any other railroad. They call it east and west.

Mr. BRADLEY. But it is going southeast from Williamsport to Sunbury, and there it strikes the Northern Central, which brings them to Harrisburg and Baltimore. Is there any other route coming south from Williamsport?

A. I am not aware of any other railroad coming south.

Q. Then they left Williamsport at 10 or half past 10 at night. What time did they leave Williamsport coming from Sunbury?

A. I think between 9 and 10—perhaps at 10.

Q. Can you tell by your schedule what time they reached Harrisburg?

A. No, sir.

Q. I thought you said about 2 o'clock?

A. That is my memory—that is by the schedule time.

Q. Then they reached Baltimore at about what time?

A. Reached there at 7 o'clock in the morning. They were advertised to reach there at that time.

Cross-examined by Mr. PIERREPONT:

Q. Where were you on the 13th of April, 1865?

A. I cannot say positively, but I suppose I was at Williamsport.

Q. That is your best memory?

A. Yes, sir.

Q. Won't you tell the jury, as near as you can, how far Williamsport is from Elmira?

A. Seventy-eight miles.

Q. In what direction ?

A. Elmira is north of Williamsport.

Q. What was the running time at that period between Elmira and Williamsport by the passenger train ?

WITNESS. On the 13th ?

Mr. PIERREPONT. Yes, sir.

A. Five hours and thirty minutes.

Q. You moved the trains on the 13th yourself ?

A. The trains moved themselves, [laughter ;] that is, the conductors moved them. I did not give the order for the train to start. Each conductor started his own train.

Q. Were you at Williamsport superintending ?

A. I was at Williamsport, I think on the 13th.

Q. Won't you tell the jury at what time on the 13th the train left going south ?

A. I have no record of any train south from Williamsport, and therefore cannot say positively.

Q. Can you say at what hour it left ?

A. I can say at what hour they were advertised to leave there.

Q. What hour was that ?

A. About 9 o'clock in the morning, and about 10 o'clock p. m.

Q. The interruptions that had occurred at that time were supplied by ferry ?

A. I never was over the route when the ferry was employed.

Q. These other routes you know nothing about yourself, I suppose ?

A. I was not on them.

Q. Do you know what other routes there are that run from Elmira to Baltimore ?

A. I think four. One route is from Elmira to Great Bend, from Great Bend to Scranton, from Scranton to Northumberland, from Northumberland to Sunbury, and then to Harrisburg.

Q. Give us the second.

A. I think there is another one which runs from Elmira to Great Bend, from Great Bend to Scranton, and from Scranton to Philadelphia.

Q. What other one ?

A. There is another one from Elmira to Great Bend, from Great Bend to Scranton, from Scranton to Allentown, from Allentown to Reading, and thence to Harrisburg. There is likewise one from New York.

By Mr. BRADLEY :

Q. How far is it from Elmira to Great Bend ?

A. I cannot say, exactly. I figured it up not long ago as being eighty-five miles further by way of Great Bend and Scranton than by the direct route.

PATRICK McDONOUGH sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside ?

A. In Philadelphia.

Q. You have been or are now in the legislature ?

A. I have been, but I am not now.

Q. You were in the late army ?

A. Yes, sir.

Q. State if you know John Lee, examined as a witness in this case.

A. Yes, sir.

Q. Did you know him in Philadelphia ?

A. Yes, sir.

Q. Do you know his general character, among those with whom he is associated, for truth and veracity?

A. Yes, sir.

Q. Was it good or bad?

A. Very bad.

Q. Would you believe him on his oath?

A. I would not.

By Mr. PIERREPONT :

Q. When did you know him in Philadelphia?

A. I knew him from about 1843 until about 1853 or 1854, I think

Q. Were you in the army with him?

A. No, sir.

HENRY A. COOK sworn and examined :

By Mr. BRADLEY :

Q. Where do you reside?

A. In Philadelphia.

Q. Were you in the service during the late war?

A. Yes, sir.

Q. Do you know John Lee, who has been examined as a witness in this case?

A. I do.

Q. Did you know him when he resided in Philadelphia?

A. I did.

Q. Do you know his general character, among his neighbors and among those with whom he associates, for truth and veracity?

A. I do.

Q. Is it good or bad?

A. Very bad.

Q. Would you believe him on his oath?

A. I would not, if he was interested in any matter.

By Mr. PIERREPONT :

Q. Do you think he could tell the truth on any subject?

A. I presume he might.

Q. You have some doubt about it?

A. I have. His general reputation is that he is a natural liar. [Laughter.]

JOHN O'DONNELL sworn and examined.

By Mr. BRADLEY :

Q. Where do you live?

A. In Philadelphia.

Q. Do you hold any office there?

A. I do.

Q. What?

A. I hold the office of constable.

Q. What ward?

A. The 5th.

Q. Do you know John Lee, who has been examined as a witness in this case?

A. I do.

Q. Do you know his character for truth and veracity among his neighbors, and those among whom he associates?

A. I do.

Q. What is it?

A. It is bad.

Q. Would you believe him on his oath?

A. I would not.

Cross-examined by Mr. PIERREPONT :

Q. Do you think he could tell the truth?

A. He might, if it would be of any benefit to him.

Q. Otherwise he could not, could he?

A. If he was to be a loser by it, I do not think he could.

Q. Suppose he was not to lose or gain anything, would he then tell the truth?

A. He might.

Q. It would be accidental, wouldn't it?

A. Yes, sir; very accidental, I think.

EDWIN G. LEE sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside?

A. In Texas within the last six months.

Q. Where prior to that time?

A. In Virginia during the summer preceding.

Q. You are a native of Virginia?

A. Yes, sir.

Q. And have lived there all your life?

A. Yes, sir.

Q. State if you bore any commission in the army of the Confederate States and if any, what?

A. The last commission I held was that of brigadier general.

Q. State where you were in the month of April, 1865.

A. In the province of Canada.

Q. Were you on duty there; or for what purpose were you there?

A. I received a sick furlough for the period of six months, based upon a surgeon's certificate.

Q. While you were in Canada did you meet the prisoner, John H. Surratt?

A. I did. I saw him first on the 6th day of April, 1865.

Q. State whether he brought any despatch to you; and if so, from whom?

(Objected to by Mr. Pierrepont.)

Mr. BRADLEY submitted to the court a written statement of what he proposed to prove by the witness, and desired to have the court rule upon such paper.

Mr. PIERREPONT stated that there were several points in the paper to which he did not object, and others to which he did. He therefore thought the better plan would be for counsel to proceed to interrogate the witnesses on such point as he thought proper, and then, when a question was put which they deemed improper, they could make their objections, and the court could rule upon it. Everything would thus clearly appear upon the record.

The COURT inquired of Mr. Bradley what he proposed to have done with the paper.

Mr. BRADLEY said that he proposed to have it made part of the record of the case as a ground of exception.

The COURT replied that that counsel might do, if he desired; but, inasmuch as the paper contained propositions which were not objected to, as well as many that were, it would be difficult for the court to rule upon it as a whole in the shape in which it was then presented. He thought the better way would be for counsel to put whatever questions he thought proper to the witness, and then, as objection was made, the court could proceed to rule upon them *seriatim* as they came up.



Mr. BRADLEY said he had hoped to save time by pursuing the other mode, but he would, of course, acquiesce in the suggestion of the court in the matter. The examination of the witness was then resumed.

By Mr. BRADLEY :

Q. State whether Surratt brought any despatch to you ; and if so, from whom ?  
(Objected to by Mr. PIERREPONT.)

The COURT said he ruled the question out, on the ground of its being *res inter alios*.

(Exception reserved.)

Q. On his arrival at Montreal, did he deliver to you any paper ?

(Same objection, with a like ruling. Exception reserved.)

Q. Do you know whether or not, at that time, Mr. Jacob Thompson had any funds of the confederate government in Montreal ?

(Same objection, with a like ruling. Exception reserved.)

Q. Do you know what disposition Mr. Jacob Thompson made of any of the funds of the confederate government in his custody in Montreal ?

(Same objection, with a like ruling. Exception reserved.)

Q. Do you know whether the prisoner received any money, or not, through Jacob Thompson, at Montreal ?

(Same objection, with a like ruling. Exception reserved.)

Q. While in Montreal, did you ever have opportunities to see the prisoner—from April 6 to April 12, 1865 ?

A. I had opportunities of seeing him at his room at St. Lawrence Hall, the hotel where I boarded.

Q. Between the 6th and 12th ?

A. Yes, sir, if he were there, because I did not see him on the 12th ; that is, if I did, I do not remember it at all.

Q. Did you employ him, while he was in Montreal, on any business calling him into the United States, on or before the 12th of April, 1865 ?

(Same objection as heretofore had, with a like ruling. Exception reserved.)

Q. Did you see him when he left Montreal to come to the United States, on the 12th of April, or whatever day he came away ?

A. I did not.

Q. Do you know upon what business he came to the United States ?

(Same objection, with a like ruling. Exception reserved.)

Q. Do you know whether he was to come to Elmira ?

(Same objection, with a like ruling. Exception reserved.)

Q. Do you know whether he was to come to Elmira on any business to occupy him there ?

(Same objection, with a like ruling. Exception reserved.)

Q. Was he employed by you at Elmira for compensation to come into the United States to do any business for you ?

(Same objection, with a like ruling. Exception reserved.)

Q. Were you aware of the fact that he had left Montreal to come to the United States ?

A. Of my own knowledge, no, sir. (After brief reflection.) Yes, I think I am, too ; because the next time after I saw him——

Mr. PIERREPONT objected to the witness reasoning on the subject. They wanted the facts.

WITNESS. I am not going to reason, except this far——

Mr. PIERREPONT said he must not reason at all.

WITNESS. Then I cannot answer at all.

The COURT. You must speak only of facts within your own personal knowledge.

Q. Were you aware of the fact that he was about to leave Montreal to come to the United States?

(Same objection as heretofore had, with a like ruling. Exception reserved.)

Q. When you last saw him, did you leave him with the understanding that he was to come to the United States?

(Objected to by Mr. Pierrepont.)

The COURT said the witness could not speak of the purposes of the prisoner. He must speak only of his acts.

Mr. BRADLEY inquired whether he could not speak of the understanding with which they separated?

Mr. PIERREPONT said he could not tell anything about an understanding.

Mr. BRADLEY. Nor of an agreement between them?

The COURT said he could not; that an agreement between them was no more than an agreement between two parties in this room made now.

Q. Did you lose sight of him several days while you were in Montreal before the 17th or 18th of April?

A. I did.

Q. When you saw him again did he make any report to you?

(Same objection as previously had, with a like ruling. Exception reserved.)

Q. Did he have any sketch and exhibit it to you?

(Same objection as heretofore had, with a like ruling. Exception reserved.)

Q. Did he report to you the state of facts at Elmira?

(Same objection, with a like ruling. Exception reserved.)

Q. Do you know at or about what time you arrived in Montreal after you had left the scene some time?

A. At the close of the interval of the several days that I mentioned just now he arrived in Montreal. I next saw him either on the 17th or the 18th of April. My own impression has been, ever since I have thought over the matter at all, that it must have been the 17th, though I am not positive. I am positive, however, that it was one of those two days.

Q. Do you recollect at all how he was dressed when you first saw him in Montreal?

(Objected to by Mr. Pierrepont on the ground that they had given no evidence with regard to his dress in Montreal. Objection overruled.)

A. I recollect nothing of his dress except that he wore a large ordinary travelling shawl that covered his shoulders and his body below his waist, and nearly to the skirt of his coat. If he threw that off at the moment I first saw him, I do not remember what his dress was.

Q. Do you remember his costume when you last saw him in Montreal before he left you?

A. I do not.

Q. Do you remember whether he then had a moustache or a goatee?

A. He had a very light moustache. It looked to me like one that had never been shaved off at all, but just allowed to grow. It was like a boy's moustache. The goatee was very light. When I say light I mean in quantity. I do not remember whether it included an imperial or not. I know that there was not an imperial alone; but whether the goatee grew to the lip or not I do not remember.

Q. Do you remember whether he had a shawl when he went away?

A. I do not.

No cross-examination.

DAVID C. ROBINSON sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Elmira, New York.

Q. Do you recollect being at Brainard's Hotel in 1865?



A. I do.

Q. Do you know who kept it in April, 1865?

A. It had several different proprietors in the course of a month. There was one firm by the name of Granby & Walker, or Walker & Granby, who kept it through the largest part of April, 1865; I think as late as the latter part of the month.

Q. After the 15th?

A. Yes, sir; I think so.

Q. Have you or not made very diligent search for the register of that hotel during that period?

A. I have.

Q. And have been unable to find it?

A. Yes, sir.

No cross-examination.

Mr. BRADLEY asked for an attachment for General Eckert, who had been subpoenaed as a witness, but had left with the express understanding that he would return on being telegraphed for. Also, for Mr. Tillotson, manager of the Western Union telegraph.

The COURT thought it ought first to be shown that the parties in question had received the telegrams. He thought it would save time to send a special messenger for them.

Mr. BRADLEY said he would have done so on Saturday, but was desirous to save the government the expense. He would now do so.

AUGUST BACHUS sworn and examined:

By Mr. BRADLEY:

Q. Where do you reside?

A. In the city of Washington.

Q. Where were you living in April, 1865.

A. At Winter Garden.

Q. Where?

A. Between Tenth and Eleventh streets, on Pennsylvania avenue.

Q. Was that an exhibition of dancing and music?

A. Yes, sir; a concert saloon.

Q. Do you remember the day of the assassination of the President?

A. Yes, sir.

Q. Was there any music and dancing in the room on that day and in the evening?

A. There was.

Q. During the daytime?

A. No, sir.

Q. Did you ever have any music and dancing there on Friday in the daytime?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. What sort of tables had you?

A. Round tables.

Q. Did people go there and drink in the daytime?

A. Sometimes they did in the daytime.

Q. Did they sit down at the round tables and drink?

A. I do not know that they did that day.

Mr. PIERREPONT. I do not speak of that day, but as to whether it was the habit of your place to have drinking there?

A. Yes, sir.

Q. Did you have any woman or women dancing there ?

A. Yes, sir ; we carried on the concert business.

Q. You sometimes had a woman dancing there ?

A. Not in the daytime, except Mondays and Tuesdays.

Q. On the 14th did you have women dancing there in the evening ?

A. Yes, sir.

Q. You had persons drinking there around the tables ?

A. Yes, sir.

By Mr. BRADLEY :

Q. Did you at three o'clock in the afternoon, or at any time before sunset, have any music or dancing there that day ?

A. No, sir.

Q. Your place was on the avenue ?

A. Yes, sir ; it was on D street, between Tenth and Eleventh.

Q. Any building between that and the avenue ?

A. No, sir.

Q. You are cut off from the avenue by just such a triangle as that in front of Metropolitan Hall ?

A. Yes, sir.

Q. Was there any other concert saloon except this and Metropolitan Hall between Tenth and Twelfth streets ?

A. No, sir.

By Mr. MERRICK :

Q. Yours is on the north side of the avenue ?

A. Yes, sir.

Q. Did you ever see as many as twenty or fifty people in there in the daytime sitting around the tables drinking ?

A. No, sir.

Q. Did you ever see as many as twenty people sitting round the tables in the daytime ?

A. No, sir ; never. Maybe there might be five, six, or eight ; not many more.

By Mr. PIERREPONT :

Q. Did you know Teutonia Hall ?

A. Yes, sir.

Q. Where was that ?

A. On the avenue, between Ninth and Tenth streets.

Mr. BRADLEY objected to the counsel for the prosecution going outside of the limit of Tenth and Twelfth streets, as that was the locality fixed by their witnesses.

Mr. PIERREPONT read from page 124 of the testimony of Vanderpoel on this point, as follows :

“ Q. You think it was between Tenth and Eleventh, or Eleventh and Twelfth streets.

“ A. Yes, sir ; it was along there. I have not been there since to see.

“ Q. You do not know what the place was ?

“ A. I do not recollect. It was Metropolitan Hall, Washington Hall, or something of that sort. I could not swear positively to the name.”

The COURT ruled that the witness might be inquired of as to any place in the immediate neighborhood of Tenth and Twelfth streets on the south side, as the witness was not definite in his testimony as to the place.

Q. Won't you tell us where Teutonia Hall is ?

A. It is on the south side of Pennsylvania avenue, between Ninth and Tenth streets.

Q. Were you in Teutonia Hall at any time along about the middle of April?

A. I was sometimes.

Q. Tell us what kind of tables they had.

A. I could not tell that. They had some round and some corner tables.

Q. Do you know whether they had dancing there?

A. They had a rehearsal there.

Q. Won't you tell us what time of day they had the rehearsal?

Mr. BRADLEY. On the 14th of April.

WITNESS. I do not know when they had a rehearsal. Their rehearsal was before the exhibition; generally in the morning.

By Mr. BRADLEY :

Q. Did you ever know them to have a public performance in Teutonia Hall on a Friday in the daytime?

A. No, sir; I do not know anything about their business. I went there sometimes and had a glass of beer.

Mrs. ANNIE BACHUS sworn and examined.

By Mr. BRADLEY :

Q. State, if you please, where you lived in April, 1865.

A. 318 D street, between Tenth and Eleventh.

Q. At Winter Garden?

A. Yes, sir.

Q. Do you remember the day of the President's assassination?

A. Yes, sir.

Q. State if there was any performance during the day—any exhibition, dancing or music.

A. No, sir; not in the daytime.

Cross-examined by Mr. PIERREPONT :

Q. What time did it begin in the evening?

A. At 8 o'clock.

Q. Did they have any rehearsals before they began?

A. Yes, sir.

Q. At what time of day?

A. When we had rehearsals it was between 10 and 1 o'clock.

Q. What kind of tables had you in the hall?

A. Round tables.

Justice A. B. OLIN, heretofore sworn in the case, took the stand for the purpose of making an explanatory statement. He said :

I would like, if the parties will permit me, to make an explanation of what was testified to by me a few days ago. When I had concluded my testimony on that occasion the counsel for the prisoner kindly handed me what purported to be a report of the testimony given by me before the military commission at the arsenal, when Mrs. Surratt and others were tried. The testimony, as reported in the printed volume, which I had never seen before, is to the effect that I did not discover on the floor the remains of the plaster cut from the hole in the wall, in which the brace was fitted to close the door, nor the shavings from what I supposed to be the gimlet hole bored into the door of the box. On the other day, as the jury will probably remember, I testified that, according to my recollection, I did discover this plaster and these shavings. I have no means of knowing whether the report that is produced here of the

testimony that I gave before the military commission is an accurate report or not. All I can say with reference to it is, that if I were called upon to testify to-day again, after some reflection on the subject, I would testify as I did a few days ago, and yet I ought to say, perhaps, that after such a lapse of time as has occurred between the transaction and the present hour, if what was shown me be a correct report of my testimony before the military commission, it is more likely to be accurate than testimony recently given by me, because all the circumstances were then fresh in my recollection, and the transaction was a recent one. After this lapse of time it is quite possible that I may be mistaken in reference to that fact, as to whether I saw the plaster on the floor, cut from the hole in the wall, or the shavings that were cut by a penknife from what was apparently a gimlet hole through the door. That is all I can say in reference to the matter. The counsel for the prisoner forebore to cross-examine me upon that subject, and I thought it due to the case, as I am about to leave town this afternoon, to make this statement in reference to it. My recollection at present is such that if I were called upon to-day I would testify that I saw that which I testified to the other day, and yet, as I before observed, it is quite possible that I may be mistaken in reference to it.

By Mr. PIERREPONT :

Q. Will you state whether you saw the shavings that you testified to the other day, and the mortar at the same time ?

A. I never saw either, unless I saw it that Sunday morning.

Q. Is your recollection now the same as it was the other day when you testified ?

A. I should say so.

By Mr. BRADLEY :

Q. If I understand, you were examined about twelve days after you made that examination ?

A. I do not recollect ; it was soon after, when all the facts and circumstances were fresh in my memory.

Q. Didn't you take notes of the examination of other persons ?

A. Yes, sir ; I took most of the preliminary examinations until the War department took charge of the matter.

Mr. BRADLEY stated that Pitman's official report was shown to Judge Olin the other day, and that he would now hand him the literal report as made by Mr. Sutton, which was undoubtedly correct.

Judge OLIN, after examining the report handed him, remarked it was substantially the same as the other, and then added :

Some of the circumstances attending that examination are indelibly impressed upon my mind ; for instance, the fact that it was reported that probably the ball was fired through the door. Having heard that report before I made the examination, I took particular pains to ascertain how it was. I recollect now very distinctly the fact that the small hole bored in the door had been cleaned out by a sharp cutting instrument, and yet, in reference to the question as to whether I saw the plaster and the chips, it is quite possible that I am mistaken as to what I testified to the other day. I would be more likely to recollect distinctly the fact so recently after the occurrence than I would be after this lapse of time.

By Mr. PIERREPONT :

Q. As you reproduce the scene, you say you have a distinct memory about examining that hole ?

A. Yes, sir.

Q. What is your present belief about finding the shavings or chips ?

A. That is my belief—that I found them.



Q. And so with regard to the mortar?

A. Yes, sir.

Mr. BRADLEY. When a thing is fresh upon the mind——

Judge OLIN. Of course you know very well that an honest man would be more likely to remember a transaction that occurred a short time before, than he would after the lapse of years. That is all I can say about it.

Mr. PIERREPONT. Wouldn't it depend a great deal on the way his mind was called to the circumstances, whether it was made to be a circumstance of importance?

Judge OLIN. Doubtless so.

Mr. BRADLEY. Didn't you say that it was a circumstance of importance that you were inquiring into?

Judge OLIN. The important circumstances in my mind were, perhaps, these: First, the fact that the door was braced or prepared for a brace; and second, the question as to whether the bullet was fired through the door, or whether some other contrivance was resorted to to effect an entrance into the box of the theatre.

The court here took a recess until to-morrow (Tuesday) morning at 10 o'clock

TUESDAY, *July* 16, 1867.

The court met at ten o'clock a. m.

FRANK O. CHAMBERLIN recalled and examined.

By Mr. BRADLEY:

Q. I understand that you took possession of the Webster House on the 17th of April, 1865

A. I was not in full possession; I commenced invoicing there.

Q. You took possession of that book (register) at that time?

A. I commenced invoicing the furniture, &c. I did not take full possession until the 22d.

Q. During that time until the 1st of January, 1866, where was that register?

A. It lay on the office counter.

Q. It was in daily use until that time?

A. It was until and including the 31st of December, 1865.

Q. It could not, therefore, have been put out of the way without your knowing it?

A. I do not think it could.

Q. It was in constant, daily use?

A. It was.

Mr. BRADLEY said he understood the witness to testify to these facts on his former examination, but as there seemed to be a misunderstanding about it, he had recalled him for that purpose.

Mr. PIERREPONT said he understood the same facts, except as to the precise date.

Q. Can you state at what time the first train from Albany arrived at Canandaigua, the middle of the month of April, 1865; say the 14th, 15th, or 16th?

A. They have arrived the last two years at about 10 o'clock; they now arrive at 10.30 a. m. That has been the usual time for the last two years.

Q. I refer to the train that leaves Albany in the morning.

A. That arrives at about the same time in the evening, about 10 or 11 o'clock.

Q. How long did it take that train to run through?

A. I should think about eleven or twelve hours. There were three trains a day each way; one arrived at 10.30 in the morning, another at 4.55 in the afternoon, and the third at 10.30 at night.



Q. Have you taken this middle train which arrives at 4.55 repeatedly?

A. Not very often; I know of its arrival.

Q. Can you state whether it does not leave Albany at about 6.50 in the morning?

A. I do not know the leaving time.

Q. The three trains arrive in Canandaigua from New York at 10.30, 4.55, and 10.30 respectively, and did at that time.

A. I think they did; that has been the usual time for the last two or three years since I have been there.

Q. Do you know at what time the train arriving at 10.30 left Albany; did it leave at midnight?

A. I could not tell what the leaving time is, it is about 222 or 223 miles.

Q. Is that a train by Syracuse?

A. Yes, sir.

Q. The direct route from Albany to Canandaigua?

A. Yes, sir.

Cross-examined by Mr. PIERREPONT:

Q. Look in your register, May, 1866-7, under date of 13th of May, 1867. (Register shown witness)

WITNESS. I have that date.

Mr. PIERREPONT said he stated now, that there might be no misunderstanding as to his intention, that he offered this evidence to show that Mr. Bradley, jr., himself entered his name under the wrong date. He did it for the purpose of showing how such errors might occur. He would show that there was an error of three months.

Mr. MERRICK asked if that register was before the jury.

Mr. PIERREPONT replied in the negative, but said the defence had given evidence that Mr. Bradley went there, and his object was now to show that there was an error of three months in entering his name on that register. It was merely to show how such errors might occur.

Mr. BRADLEY said he could not imagine under what rule such evidence could be admissible.

Mr. PIERREPONT said the object was to show the impropriety of introducing the register at all, to prove anything as to a person being at a hotel at a particular time.

Mr. MERRICK remarked that the counsel seemed to show a proper appreciation of the principle upon which this question ought to turn, that the register ought to go before the jury, leaving the question of its accuracy or inaccuracy for them to determine.

Mr. PIERREPONT said the very object of asking this question was to show that it ought not to go to the jury; that it proved nothing whatever.

Mr. BRADLEY said he thought this evidence had been introduced for another purpose; that it was for an ulterior purpose having no reference to this case at all; that it was for the purpose of discrediting the evidence of one of the counsel who had been examined, and who was now away from the court, sick.

Mr. PIERREPONT said he thought he understood his own purpose, and that it was simply what he had stated. He had not noticed that Mr. Bradley, jr., was not here, and would therefore waive his question for the present.

The COURT said the evidence was inadmissible at any rate; that the register had been ruled out.

Mr. MERRICK desired to show that there is no error in the register; that Mr. Bradley was actually at the hotel at the time his name was registered.

The COURT said the register of 1865 had been rejected, and if the purpose was to introduce this register, it would also be ruled out. If it was the intention of counsel to make another effort to introduce the register of 1865 in evi-

dence, it would be as well to allow any question in reference to this to remain until that should be disposed of.

Mr. PIERREPONT said he had withdrawn his question in regard to it, but desired to ask the witness one or two questions upon another point.

Q. When did you arrive at the Webster House?

A. I was there on Monday, the 17th of April, I think.

Q. Can you tell whether there was anybody dead there at that time, or who died there?

(Question objected to and objection sustained.)

Mr. JOSEPH H. BRADLEY, jr., here came into court and made the following statement:

If the court please, my attention has been called to an error in my statement in reference to the time when I was at Canandaigua. The error arose in this way: I went to New York for the purpose of obtaining letters of introduction to Mr. Robinson's father. These letters I did not obtain at that time, but they followed me back to Washington. That was in March. On my second trip to New York, for the purposes of this case, I went by way of New York, and from thence by the Erie road, reaching Canandaigua on the 13th of May, going through Elmira and seeing Mr. Robinson's father. On my return trip I arrived there, it appears, on the 22d of May, which corresponds with the entry in that book. The error occurred by confounding my first visit to New York with the one when I proceeded on to Canandaigua. On both these visits I saw this register and made an examination, as I testified to.

DAVID H. BATES recalled and examined.

By Mr. BRADLEY:

Q. Look on the left-hand page of the book now before you (register of the Webster House, Canandaigua, 1865,) and tell me in whose handwriting the entry of the name of John Harrison is made.

A. I believe the name of John Harrison, here entered, to be in the handwriting of John H. Surratt.

Q. Now look at this other register shown you, (register of the Spottswood House, Richmond, Virginia, 1865,) and say in whose handwriting the name of Harry Sherman there is.

Question objected to by Mr. Pierrepont on the ground that no evidence had been produced with regard to the Spottswood House register.

Mr. BRADLEY said his purpose was to prove that this name written on the 29th of March, 1865, was in the handwriting of John H. Surratt. The government had traced him to Port Tobacco, and left him there on the 25th, with the avowed purpose of going to Richmond. His purpose was to prove that he went to Richmond, arriving there on the 29th, and that he returned, arriving in Washington on the 3d of April, when it had been proved by the prosecution he was here, and leaving here on the 4th arrived in Montreal on the 6th. He expected to account for him during all the time when the government had failed to account for him. One of the pretences upon which the prisoner's connection with this conspiracy rested was that his visit to Richmond was connected with the conspiracy—that he took money to Jacob Thompson, in Canada, and in order to connect him with it they brought Jacob Thompson into the conspiracy. His, (Mr. B.'s) purpose was to show when the prisoner went to Richmond how long he staid there; what he got there; how he came to go from Richmond to Montreal, and thus account for him, showing his occupation the whole time in an employment utterly inconsistent and irreconcilable, so far as the testimony is concerned, with any active co-operation in the alleged conspiracy. He could not conceive upon what rule the government were allowed to take him to the Potomac river on his way to Richmond and the defence not permitted to show where he went and what was his purpose.

Mr. PIERREPONT said he did not object to the defence showing when the prisoner arrived in Richmond, or when he left Richmond.

The COURT remarked that the evidence offered did not seem to him to be relevant.

Mr. BRADLEY remarked that the prosecution had introduced the statement of Dr. McMillan, of the prisoner's declaration in reference to his going to Richmond.

The COURT said it would be proper to introduce evidence to contradict those declarations, by parties present at the time the declarations were made, or to give the entire declarations in evidence if only a part had been given, but that they could not be met by the declarations made at other times and places, and the acts of the prisoner stood on the same ground precisely, in that respect, as his declarations.

Mr. PIERREPONT hoped the court would rule upon these questions as they came up. The question now was, whether the witness should be allowed to state his opinion of the handwriting of a certain entry in this Spottswood House register.

The COURT decided that the evidence could not be admitted. No testimony had been presented in reference to this book. So far as any evidence was concerned the book might have been picked up in the street. Counsel brought a piece of paper with the name written on it, and asked witness to state in whose handwriting it was.

Mr. MERRICK remarked that it was then merely a question of the order of proof, and that, conforming to the ruling of the court, he should proceed to introduce evidence identifying this register.

Mr. PIERREPONT said before this witness left the stand he proposed to ask him a question with reference to the register of the Webster House.

Q. You say you find the name entered there about which you have testified. Tell the jury under what dates that entry is.

Mr. BRADLEY remarked that if that register was before the jury it was very well, but if not it was evidence for the court. Witness could not tell the jury anything.

Mr. PIERREPONT (to witness.) You need not tell the jury anything. You may point out the entry to the court, and answer the question in a tone the jury cannot hear.

WITNESS turned to the court and made an explanation of the entry referred to.

Mr. BRADLEY. I now want to hear what has passed between the witness and court.

The COURT said there was nothing whatever upon which any cross-examination could take place, in relation to this register. If the register should go before the jury the witness could then be examined in regard to dates. The witness had simply stated to him that there were no lines drawn between the dates of the 15th and 17th of April.

J. B. TINSLEY, jr., sworn and examined.

By Mr. BRADLEY:

Q. Where were you employed in March, 1865?

A. At the Spottswood Hotel, in Richmond.

Q. State whether that is the register before you of the Spottswood Hotel for that year.

A. Yes, sir; it is.

Q. Have you any other books of the hotel with you?

A. Yes, sir.

(Other books brought and laid before the witness.)

Q. Look at the name of Henry Sherman on that register, and state, if you

can from that or memory, whether he was at the Spottswood House on the 29th of March, 1865.

A. Yes, sir; he was.

Q. Do you recollect the fact of his being there?

A. I do not recollect the individual. I know the party who registered that name did stop in the house.

Q. Now turn and state how long he staid there.

A. He came on the 29th of March to supper, and left the 1st of April after breakfast. He left the hotel at that time.

Q. Would you be able to recognize the party if you were to see him?

A. No, sir; I think not.

DAVID H. BATES, recalled and examined.

By Mr. BRADLEY:

Q. I now ask you to look at the handwriting shown you, (name of "Harry Sherman," on register of Spottswood House, Richmond, March 29, 1865,) and state in whose handwriting it is.

A. I believe the signature to have been written by Surratt.

Q. By John H. Surratt, the prisoner, you mean?

A. Yes, sir; John H. Surratt.

HENRY HALL BROGDEN, sworn and examined.

By Mr. BRADLEY:

Q. Where were you employed for the months of March and April, 1865?

A. In Richmond, up to the 2d of April.

Q. Were you there from the 29th of March till the 2d of April?

A. Yes, sir.

Q. Did you see the prisoner there?

A. I did.

Q. Under what name did he pass?

A. He passed there under the name of Sherman.

Q. You knew who he was?

A. I knew who he was. That was the name he passed under there.

Q. State whether you were with him and saw Mr. Benjamin, the secretary of state.

(Question objected to by Mr. Pierrepont as having no relevancy to this case, it not being to contradict anything offered in proof on the part of the prosecution. Objection sustained by the court. It was of no consequence what interview the prisoner might have had with Mr. Benjamin. He might have preached a sermon in Richmond three times in a day and not affect any matter involved in this question.)

Q. Were you with him at the time he left there for Canada, in April?

(Question objected to by Mr. Pierrepont for the same reason as last. Objection sustained by the court, and exception to ruling noted.)

Q. Do you know how he was occupied while he was there?

(Question objected to, and objection sustained.)

Q. Do you know when he left?

A. I know when I last saw him.

Q. State when you last saw him.

A. I last saw him on the evening of Friday the last day of March, 1865.

Q. You did not see him when he left?

A. I did not see him when he left.



DAVID H. BATES recalled and examined.

By Mr. BRADLEY :

Q. You will find the name of R. N. Jones entered next to that of "J. Harrison," on the 15th of April, on the book before you, (register of Webster House, Canandaigua, New York,) and some pages further forward you will find the same name entered, R. N. Jones. State whether they are in the same handwriting.

(Question objected to by Mr. Pierrepont. The entry of the name of Jones had nothing to do with this case.)

Mr. BRADLEY said the object was to lay a foundation to prove the register.

Objection overruled.)

A. I believe these two entries of the name of R. N. Jones to be in the same handwriting.

FRANCIS P. BURKE, sworn and examined.

By Mr. MERRICK :

Q. What business were you in, in April, 1865?

A. I was the coachman of President Lincoln.

Q. Did you drive his carriage to the theatre on the night of the assassination?

A. Yes, sir.

Q. After the President left the carriage, tell the jury whether or not you remained immediately in front of the planking placed there for parties to get out on.

A. I drove a distance of about ten or fifteen paces up towards F street.

Q. Ten or fifteen paces away from that platform?

A. Yes, sir.

Q. Then, the rear of your carriage was ten or fifteen paces from the nearest part of the platform?

A. I think so; it projected about ten yards I should say, to the best of my knowledge, from where the carriage stood.

Q. You drove far enough forward to allow other carriages to come in front of the platform?

A. Yes, sir.

Q. Were you on the box most of the time that night?

A. I was all the time that night, with the exception that two of my friends whom I knew asked me to go in and take a glass of ale with them. I left a man in charge of the carriage until I returned.

Q. At what time did you go in and take a glass of ale?

A. I think after the first act was over.

Q. How long did you remain taking that glass of ale?

A. I suppose about five or ten minutes.

Q. And then returned to the carriage?

A. I then returned to the carriage and went on to the box.

Q. Did you remain there?

A. Yes, sir.

Q. I understand you to say you remained all the time on the box, with the exception of these five or ten minutes?

A. I remained after the carriage first came.

Q. Did you observe anybody coming round your carriage and peeping into it?

A. No; I took no notice. They may have passed by. I saw no one looking into the carriage. I did not see anybody.

Q. Did you hear anybody about the theatre calling the time that night?

A. No, sir; I did not. In fact I did not pay much attention. I felt tired. I was rather drowsy, and leaning back with my elbow resting on the carriage.



I had been out all day. I could not say that I saw anybody that I paid any attention to.

Q. You did not go to sleep, did you?

A. O, no.

Q. Did you see anybody sitting on the plank platform while you were there?

A. No, sir. I did not notice.

Q. Did you see any soldiers sitting there for half an hour?

A. No, sir. I could not say I saw any soldiers.

Cross-examined by Mr. PIERREPONT:

Q. You were sitting on your carriage which had gone on past the platform, were you not?

A. Yes, sir. It had gone past ten or fifteen feet.

Q. And any one in your rear you would not have seen?

A. I would not have seen him. I had my head turned towards my horses.

HENRY H. BROGDEN, recalled.

Mr. BRADLEY said he proposed to ask Mr. Brogden what passed in reference to the payment of any money to Surratt by Mr. Benjamin—how much money and what description of money. The witness, Weichmann, had given in evidence that the prisoner had in his possession ten or eleven gold pieces when he returned from Richmond.

Mr. PIERREPONT said the evidence, of course, was not admissible. Weichmann did not say the prisoner got it from Mr. Benjamin.

Mr. BRADLEY said he proposed to put questions in due form, and they could be ruled out as they were asked.

Q. I now ask you whether while you were in Mr. Benjamin's office on the day you saw the prisoner there, there was any transaction between him and Mr. Benjamin, in which money was paid by Mr. Benjamin to him? If so, state how much was paid, and for what purpose, and in what form of money.

(Question objected to by Mr. Pierrepont. Objection sustained.)

Q. I then ask whether you saw Mr. Benjamin pay prisoner ten \$20 gold pieces on the 31st of March, 1865?

(Question objected to. Objection sustained.)

Q. My next question is whether you know for what purpose that money was paid to the prisoner?

(Question objected to. Objection sustained. Exception reserved to ruling in respect to this and the two preceding questions.)

Mr. MERRICK proposed to offer in evidence an affidavit made in Liverpool by the witness McMillan, a printed copy of which was furnished by the counsel for the prosecution, to be considered as the original.

Mr. PIERREPONT objected to the introduction of the affidavit on the ground that the witness McMillan was not shown the affidavit.

Mr. MERRICK said he was asked in reference to it, and his attention called to it. Objection sustained, and exception to ruling noted.

STEPHEN F. CAMERON, sworn and examined.

By Mr. MERRICK:

Q. State to the jury in what service you were engaged during the late war.

A. I was engaged in the confederate service.

Q. Did you cross the ocean in company with Lewis J. McMillan?

A. With Surgeon or Doctor McMillan; yes.

Q. The one who was examined here as a witness.

A. The same; I recognize him now in court.

Q. In what boat did you cross?

A. In the steamer Nova Scotia.

Q. From what place?

A. From Quebec.

Q. To Liverpool?

A. To Liverpool—stopping at Londonderry.

Q. Did you have any conversation with him on that voyage?

A. I did; immediately after I formed his acquaintance.

Q. Did he state to you anything of his conversation with John Surratt, in which Surratt told him he was in Elmira the 14th of April, and only learned the morning succeeding that the President had been assassinated?

A. He did.

Q. Did he ever state to you that Surratt told him that he was in Elmira; that he went from there to some town, the name of which he could not recollect, but which had an Indian derivation?

A. He so stated. I tried to recollect the town by repeating all the names of towns in New York having an Indian derivation I could think of; but he could not recollect it, nor could I.

Q. Did he further state that Surratt first learned of the assassination of President Lincoln at the city of Elmira, and that he immediately turned his face towards Canada?

A. Yes; he assigned that as the reason.

Q. Did he ever state to you in any conversation on board that boat, or elsewhere, that he was on intimate relations with Surratt on shipboard; that Surratt could not have been guilty of participation in the assassination; that he really regarded him as a victim?

A. He did, in answer to my question, whether he was in favor of compromising himself as an officer of the line of steamers, by furnishing shelter and affording facilities to such a man for leaving the country.

Q. Did he ever state to you that Surratt told him that the plan for the abduction of Mr. Lincoln was the individual enterprise of Booth, and that he furnished \$4,000 or \$6,000 for that purpose?

A. He so stated, and mentioned those sums specifically.

Q. Did he state that the whole plan was laid by Booth?

A. Yes; by "that reckless man, Booth," I think was the expression; and that he always regarded it as the individual enterprise of that man.

Q. At what time was it that you had these conversations with him? do you recollect the date?

A. Not without reference to my diary. (Diary consulted by witness.) It was on Monday, the 30th of October; I left on the 28th.

Q. Did he ever say to you at that time, or after the 26th of September, 1865, that he had never communicated his conversation with Surratt to any one else?

A. He stated so, emphatically. I made a very earnest appeal to him not to state what he had mentioned in that conversation in regard to Father LaPierre. He stated that he was his early schoolmate, and that he had not repeated it to any one else; he told me so, positively and solemnly, and he cannot deny it.

Q. Did he tell you that Surratt did not know of his mother's position until about the day of her execution?

A. He did; he defended John Surratt when I assailed him on that point.

Q. You state, distinctly, that he said he had not repeated that conversation?

A. Yes, sir; I had written to Father LaPierre on the subject.

Cross-examined by Mr. PIERREPONT:

Q. Dr. McMillan, the gentleman sitting by the district attorney, is the person you refer to?

A. That is the individual.

Q. When was the first time you ever saw him?

A. On the steamer.

Q. What date ?

A. The day of my arrival on the steamer—the 28th of October, 1865.

Q. You made these entries in your diary at the time ?

A. At the very time.

Q. You wrote them down at these dates ?

A. I did ; at the time.

Q. Have you got them there ?

A. I have.

Q. Was he present when you wrote them down ?

A. On one occasion, the 3d of November, when he gave me the address of Surratt in Liverpool, I wrote it down in his presence.

Q. That you wrote down in his presence ?

A. Yes, sir ; he gave me a pencil, and I wrote it down. He abstracted the direction of a letter from a post office, which he gave me, and for which I gave him a small present.

Q. What was the present ?

A. A tobacco-pouch, worked with beads by the Indians.

Q. You gave him that present for the information ?

A. Yes, sir ; and for his politeness to me.

Q. Was it for this information that you gave him the present ?

A. Yes, I did ; I wanted to know where John Surratt was.

Q. You wanted to find him out, did you ?

A. I wanted to meet him.

Q. You were not in pursuit of him ?

A. No.

Q. But you would like to find him ?

A. I thought I would like to meet him.

Q. Do you know Mr. Creswell ?

A. I know John Andrew Jackson Creswell.

Q. The Senator ?

A. I believe he is.

Q. Do you know John McCullough ?

A. I do.

Q. Where did you know these gentlemen ?

A. In Elkton, Maryland.

Q. How came you there ?

A. I married in Cecil county ; settled there for a time.

Q. Settled in what ?

A. I was in business for a time.

Q. Settled in what business ?

A. In the grain business.

Q. That was your business, was it ?

A. Yes, sir ; for a time, until I became a student for the ministry, and I then became an Episcopal minister.

Q. How long did you continue in the grain business ?

A. I think it was something more than a year ; perhaps a year and a half.

Q. How old were you when you went into the grain business ?

A. I may have been twenty-two or twenty-three.

Q. Were you married ?

A. I was ; I was with my father-in-law.

Q. Did you continue in the grain business more than a year ?

A. No, sir ; not much more than a year.

Q. Was there any difficulty or trouble in it ?

A. I was not very successful as a business man.

Q. And when you abandoned the grain business you went into the ministry ?  
Where did you study ?

A. At the General Theological Seminary, New York.

Q. Were you admitted or licensed ?

A. I was ; I received deacon's orders from Bishop Whittingham

Q. When did you get deacon's orders ?

A. It was on the Trinity Sunday ordination of 1861, I think.

Q. What day was that ?

A. I do not remember the day ; it was on Trinity Sunday.

Q. About what time of the year ?

A. It must have been in May or June, 1861.

Q. After you went into the ministry, what did you do ?

A. I left for the South about that time.

Q. When did you leave for the South ?

A. I think I first crossed June 24, 1861.

Q. Had the war commenced when you took orders ?

A. Yes ; I then intended to remain.

Q. Were you educated in Maryland ?

A. I was to some extent ; I received a portion of my education in New York

Q. Were you born in Maryland ?

A. No, sir ; I was born in the city of Philadelphia.

Q. Were you educated there ?

A. I received some instruction in my early life there, probably.

Q. In what school ?

A. I was so young when I left there I am not able to state.

Q. By whom were you educated ?

A. In part by Stephen Roswell.

Q. And you took orders in the Episcopal church ? Are you in that church now ?

A. No, sir ; I became a Roman Catholic.

Q. When did you become a Roman Catholic ?

A. The 1st of May, 1865.

Y. Before you were an Episcopalian, what were you ?

A. In early life I was a Catholic ; I was educated a Catholic in early life.

Q. Then you were educated a Catholic and became a Protestant ?

A. My early religious education, until I was ten or eleven years old, was that of a Catholic.

Q. And then you became a Protestant ? How long did you continue a Protestant ?

A. It was four years.

Q. How old were you when you began to be a Protestant, and how old when you ceased ?

A. I cannot recollect positively my age, except by looking back. I will ask you to give me one question at a time.

Q. When did you first become a Protestant ?

A. I attended Episcopal church, by direction of my father, when I was about ten or eleven years old.

Q. Was your father a Catholic ?

A. No ; he had a strong prejudice against the Catholics.

Q. Was your mother a Catholic ?

A. She was before she was married.

Q. Has she been since ?

A. No, sir ; my father did not approve of that religion.

Q. When did you go back again to the Catholics ?

A. I have told you I made an open abjuration of the Protestant faith on the 1st of May, 1865.

Q. Where did you make your open abjuration ?

A. Before the Vicar General, of Quebec.



Q. How long did you continue a clergyman in the Protestant church before you made your open abjuration?

A. I think I told you once before—four years.

Q. When did you first get to Richmond?

A. I left the 24th of June, 1861. I arrived at Richmond on the 3d or 4th, or, perhaps, the 6th of July. I was sometime running the blockade.

Q. You ran the blockade, did you? Who did you see when you first got into Richmond?

WITNESS. The first time?

Mr. PIERREPONT. Yes.

A. I saw great numbers of persons—soldiers and civilians.

Q. Were you acquainted with them?

A. With some of them.

Q. You were a Philadelphian?

A. No, sir; I had lived for some time in Maryland. My family were there.

Q. Does your father live in Maryland?

A. He has lived there.

Q. You went into the grain business, at Elkton, I believe. Did you do anything else while you were there?

A. No, sir.

Q. Were you ever at Winchester, Virginia?

A. Yes.

Q. Will you tell the jury when you were there?

A. I was there in the first year of the war, when Bradley Johnson's regiment was there.

Q. For how long?

A. I was then connected with the army, and only remained there for a few days at a time.

Q. With what army?

A. The confederate states army.

Q. What were you doing?

A. I was chaplain to the regiment.

Q. How many times were you in Winchester?

A. Well, I think, three times.

Q. While you were chaplain in this confederate regiment you were there three times only?

A. I am not sure that I was there but three times—that I made but three separate visits.

Q. Were you charged with stealing anything there?

A. Never, sir.

Q. Were you not charged with stealing some silk dresses in Winchester, and taking them to your wife?

A. Never, sir.

Q. Were you not so charged by the confederates themselves?

A. Never, sir; I bought some silk dresses in Richmond, which I paid for, and sent them to my wife.

Q. Was there any difficulty about these silk dresses?

A. I never heard of any.

Q. You never heard of any charges that you stole them in Winchester?

A. Never, sir. If any such charges were ever made, they were by liars.

Q. You did not hear of them?

A. No, sir.

Q. This is the first you have heard of them?

A. The first time.

Q. Did you get any silk dresses in Winchester?



A. Never, sir; I bought two silk dresses in Richmond, for which I gave a pistol, when I ran across the Potomac from Maryland.

Q. My question is whether you got any in Winchester?

A. No, sir; I did not.

Q. Did you get any in Richmond?

A. I bought two there.

Q. What did you give for them?

A. I gave a pistol.

Question objected to by Mr. Bradley as having been already answered.

The COURT stated to the witness that he need not answer the questions if he wished not to answer them.

WITNESS replied he preferred to answer.

Q. Did you buy anything else in Richmond?

A. I have bought many things in Richmond.

Q. Did you have any difficulty about any silk dresses you bought at Richmond?

A. Never; I got them there myself, paid for them, and sent them by some friend to my wife. I gave \$40 apiece.

Q. Did you not state that you paid for them with a pistol?

A. I exchanged a pistol, the value of which was \$80, and obtained for it two silk dresses at \$40 apiece.

Q. Were the silk dresses new?

A. They were.

Q. Were they made up?

A. No, sir.

Q. And you never heard of any difficulty in regard to them?

A. Never; I heard my wife would not receive them.

Q. With what regiment were you in the confederate service?

A. The first Maryland.

Q. What were you doing in it?

A. I was chaplain.

Q. Did you continue chaplain the whole time?

A. I always held a commission. I decline to answer that question any further.

Q. My question is, did you continue chaplain the whole time?

A. I always held a commission in the confederate states army. I was detailed to other business.

Q. Do you decline to answer my question?

A. Simply because it is irrelevant and impertinent.

Q. That is your reason; if it is, the court will tell you whether you are required to answer it or not?

The court said the witness might decline to answer any question, the answer to which would tend to degrade him.

The witness replied that he did not then decline to answer anything, that there would be nothing in any answer tending to degrade him.

Mr. MERRICK said the court had already decided that any witness might decline to answer questions of this sort, tending to affect his position.

The court remarked that he had already said that.

Q. What was the date at which you left your regiment?

A. When it broke up.

Q. What was the date?

A. I am not sure, so many events occurred about that time.

Q. Can you tell when you first entered it?

A. My commission was dated the 4th of July.

Q. Did you enter it then?

A. As soon as I could arrive in Winchester, I entered it.

Q. And you continued in it until it broke up. For how long?

A. For about two years, I think. It may have been a little more than a year and a half.

Q. And you continued as a chaplain in the service for these two years?

A. I did.

Q. Were you in any other service than that of chaplain?

A. Latterly, I have been.

Q. During these two years?

A. Not during these two years, unless it was as a volunteer scout or something of the sort.

Q. Did you go away from your regiment?

A. Whenever I had a furlough I went away.

Q. Did you go away?

A. I did, when I had a furlough.

Q. Where did you go?

A. I always went to Richmond when I had a furlough.

Q. Did you go anywhere else?

A. Perhaps to Petersburg.

Q. Did you go to Petersburg?

A. Yes, a number of times.

Q. Did you go anywhere else?

A. Yes, to a number of places.

Q. Did you go into the States?

A. I do not think I crossed into Maryland, while the First Maryland regiment was regularly enrolled.

Q. When was the first time after you entered the confederate service as chaplain, that you came into the other States?

Mr. BRADLEY. [To witness,] you can answer that or not, as you please.

A. It was not long after the battle of Cold Harbor.

Q. What was the date?

A. I do not remember the date.

Q. Cannot you tell the month?

A. I do not remember the month.

Q. Cannot you tell the year?

A. I do not know that I can. I do not pretend to have as good a memory as some witnesses who have preceded me.

Q. Is not your memory good?

A. It is admirable. But I prefer in the matter of dates to refer to my diary.

Q. Will your diary tell this?

A. No, sir, not that year.

Q. Then your diary will not help you in regard to that?

A. No, sir. I can say that it was shortly after the seven days' battles before Richmond. Soon after the battle of Cold Harbor.

Q. Where did you go to?

A. To Maryland.

Q. What part of Maryland?

A. I decline to localize any place through which I passed in Maryland, and which might compromise any of the people who gave me hospitalities.

Q. Then you decline to answer that question?

A. I decline.

Q. Did you go into other states than Maryland?

A. Not the first time.

Q. Did you the next time?

A. Not the second time; No.

Mr. Bradley again cautioned the witness that he need not answer these questions.

Q. Where did you go?

A. On these two occasions I went into Maryland only.

Q. Where on the next occasion ?

A. Into Kentucky.

Q. What part of Kentucky ?

A. Covington was the last place.

Q. Kentucky was not one of the confederate states, was it ?

A. No, I believe not.

Q. What were you doing in Kentucky ?

A. I was en route to Canada.

Q. You were not en route to Canada as chaplain of your regiment, were you ?

A. I was en route to Canada to report for service.

Q. To report for service as chaplain ?

A. No, sir.

Q. You had not much to do as chaplain in Canada about this time, had you ?

A. There was room for a good deal of that service.

Q. Did you perform service as chaplain there ?

A. I did not perform service as chaplain. I did as minister in churches at Toronto and Montreal.

Q. You did not as chaplain ?

A. Yes, I visited the sick—those who were confederates, especially.

Q. When did you first go to Kentucky ?

A. It was about November, 1864, or the latter part of October in that year, that I was directed to report to Canada ; and I travelled through Kentucky en route.

Q. Who ordered you to report in Canada ?

A. Secretary Benjamin.

Q. To report as chaplain ?

A. No ; my orders were not stated.

Q. Did you think it was to be chaplain ?

Mr. MERRICK. No matter what you thought.

Q. When did you get there ?

A. I think I can recollect the date precisely. It was the 15th of November.

Q. Have you the entry of the date you got there in your diary ?

A. Yes, sir, I have.

Q. Will you tell us exactly ?

A. I looked at it the other day. It was Wednesday, November 16. My entry is on the same day of the following year, 1865, and that "this day one year ago, I crossed into Canada by Niagara Falls."

Q. When did you make that entry ?

A. A year afterward, when it states it was made.

Q. Did you make all your entries a year afterward ?

A. No, sir.

Q. How long afterward ?

A. Generally on the same day.

Q. Now tell these gentlemen when you got out of Kentucky ?

A. I propose to write a book on the Secret Service of the confederacy, and I will send you a proof copy in advance.

Q. I want you now to tell this jury a little about your secret service.

A. I will answer cheerfully anything connected with the assassination.

Q. When did you go out of Kentucky, and how did you go ?

A. I rode through there on horseback with two men as guides ?

Q. Were you disguised ?

A. No, sir ; I rode in my soldier clothes as far as Lexington.

Q. Then what did you do ?

A. I took the train for Covington.

Q. Where did you go next ?

A. I crossed over to Cincinnati and remained there till evening.

Q. Did you go in disguise ?

A. No, sir.

Q. Did you wear your soldier's clothes ?

A. I told you I left my soldier's clothes just before we got to Lexington.

Q. What did you put on ?

A. I put on a citizen's dress.

Q. How long did you stay in Cincinnati ?

A. I left the same evening.

Q. Where did you go ?

A. I crossed by Cleveland to Buffalo. I stayed one night in Buffalo, and left early next morning for Niagara Falls.

Q. At what time did you get to Niagara Falls ?

A. I cannot recollect the date.

Q. Can you tell the month or the year ?

A. It was in November, 1864.

Q. Then in November, 1864, you went into Canada the way you have mentioned ?

A. Precisely.

Q. How long did you stay there ?

A. I left Canada on the 14th of January, 1865.

Q. Where did you go to ?

A. I went to Richmond.

Q. Which way did you go ?

A. I came through this city.

Q. Did you come in disguise through here ?

A. I wore spectacles.

Q. Did you wear them because your eyesight was affected ?

A. No, sir ; I wore them to affect the eyesight of others.

Q. Who did they affect ?

A. I do not know. I should not be here if I had not.

Q. Why do you say you could not be here ?

A. I think if I had been passing through Washington not in disguise, it would not have been so safe for me.

Q. When did you pass through Washington on your way to Richmond, in disguise ?

A. I started on the 21st of January, 1865.

Q. Did you stop in Baltimore ?

A. No, sir ; I passed through on the night train.

Q. Did you stop here ?

A. I took breakfast here.

Q. Where ?

A. I do not think it necessary to state where. I will state, however—I prefer to state ; otherwise, you may infer I took it somewhere else. It was at the Kimmel House.

Q. Did you see anybody here ?

A. I saw a number of persons.

Q. Did you see Booth here ?

A. No, sir.

Q. Did you ever see him ?

A. No, sir ; not that I know of. I have seen his brother act.

Q. Did you ever see Booth, the assassin ?

A. I did not.

Q. Did you ever see Payne ?

A. Never, that I am aware of.

Q. Did you ever see Surratt in Canada ?

A. Never in my life, except at Liverpool.

Q. You say you never saw Surratt in Canada ?



A. I got a glimpse of him in April, 1865, after the assassination. It was, I think, four or five days after.

Q. You saw him there in Canada ?

A. Yes. Father La Pierre told me it was John Surratt, and asked me if I wanted to see him. I said, No.

Q. You left in January for Richmond ? Did you succeed in getting to Richmond ?

A. I did.

Q. When did you get into Richmond ?

A. February 1, 1865.

Q. Was this in performing your duty as chaplain ?

A. It was a work of mercy on that occasion.

Q. Was the business between Canada and Richmond in discharge of the office as chaplain of a regiment ?

A. That depends on how enterprising he is.

Q. Your enterprise got you into Richmond early in February ?

A. Yes, sir ; the 1st of February.

Q. And the same description of enterprise kept you there how long ?

A. I finished my business in four days.

Q. Whom did you see there ?

A. The brother of the prosecuting attorney of this court—Major Carrington, was the first person I met.

The DISTRICT ATTORNEY. He is not my brother.

WITNESS. Well, Major Carrington.

Q. Was he the only one you saw ?

A. No, sir ; I saw Secretary Benjamin.

Q. When did you leave there ? Have you some note of that ?

A. Yes, sir ; I left there, for the Potomac, on Saturday the 4th of February, 1865.

Q. Where did you go ?

A. To the Potomac river.

Q. Where next ?

A. Crossed into Maryland.

Q. Did you cross to Washington ?

A. I did.

Q. You came here again ?

A. Came here again.

Q. How long did you stay here ?

A. Two or three hours.

Q. Did you see anybody here ?

A. I saw one young man of our army, whose name I do not recollect.

Q. Did you come here on business to Washington ?

A. I passed through here as the shortest route to Canada.

Q. You did not come here on your business in Canada ?

A. I came here in course of transportation to Canada.

Q. You went from here to what point ?

A. Philadelphia.

Q. Did you stop there ?

A. I went directly through.

Q. My question is, did you stop in Philadelphia ?

A. I have stated that I went directly through.

Question repeated.

A. I stopped while the cars were taking me through the city

Q. How long.

A. I do not know the time.

Q. Did you see any person there ?



A. No person that I knew.

Q. Where did you next go ?

A. To New York.

Q. How long did you stay there ?

A. For breakfast.

Q. Did you see anybody you knew there ?

A. Not a person.

Q. Had you any business as chaplain in New York ?

WITNESS, (to the court.) Is that a proper question ?

The COURT. You may answer the question.

WITNESS. I have no objection to answering the question, but it seems to me trifling.

Question repeated.

A. My business was to go to Canada, and I went on detached service.

Q. What do you mean by detached service ?

A. When a person is taken from the ranks or other position he may occupy in the service, and is absent within the lines of the enemy, a person so acting is generally called on detached service.

Q. When you are within the lines of the enemy on detached service, you are not acting as chaplain ?

A. A man may be doing the business of a Christian in any service, and may conduct himself as a Christian, even as a prosecuting attorney.

Q. Was a chaplain's service detached service, in your judgment ?

A. I considered it a service in which any Christian might be engaged. It was to save the lives of human beings.

Q. Did you consider it the service of a chaplain on which you were engaged ?

A. I considered it a benevolent office.

Q. My question is whether you considered it the service of a chaplain in the army ?

A. Do you want my impression ?

Mr. PIERREPONT. I want you to tell these jurymen whether you do or not ?

WITNESS, (turning round towards the jury.) For the benefit of the jury I will state that my object in going to Canada was to save the lives of five men.

Mr. PIERREPONT. You may stop right there and answer my question.

WITNESS. I thought you wanted me to tell the jury.

Q. My question is whether you considered the detached service on which you were engaged as the service of a chaplain ?

A. You are as familiar with the distinctions between the lines of service in the military as I am, and therefore you do not require information. I decline to answer.

Q. Had you anything to do with the St. Albans raid ?

A. I was in Virginia when it occurred.

Question repeated.

A. Nothing in the world as to its inception.

Q. Did you ever talk with this gentleman (Dr. McMillan) about that raid ?

A. Yes, sir ; I did. I told him I did what I could to save the lives of the boys.

Q. Perhaps you told him something else. We will see presently. Did you ever tell him anything about forging any papers in relation to that raid ?

A. No, sir ; I did not. The papers I carried were genuine.

Q. Did you change the dates of any papers ?

A. No, sir ; I did not ; nor did I tell him so.

Q. Did you tell him what you knew about these papers.

A. I may have said something about them.

Q. Will you state exactly what you did tell him about these papers connected with the St. Albans raid ?

A. I do not remember having told him about any papers. I know the attorneys stated that they were papers "cooked up." That was not true. The papers I carried were genuine, and were given to me by Mr. Benjamin.

Q. Did you tell this gentleman anything about "cooked up" papers?

A. I dare say I may have spoken on that subject.

Q. Did you tell him anything about the dates of the commissions for that raid?

A. I did not. The papers which I carried were all genuine.

Q. I am not asking you whether they were genuine or not, but whether you told him they were dated back?

A. No, sir; I did not.

Q. Did you tell him anything more about the papers connected with the St. Albans raid?

A. I do not recollect.

Q. Did you tell him you had anything to do with the St. Albans raid?

A. I did not, for I was in Virginia when it occurred.

Q. Did you tell him you had anything to do with the raid?

A. I did not. I told him I was a messenger for the raiders.

Q. Where did you go as a messenger for the raiders?

A. I went to Richmond.

Q. Where did you go from?

A. I left Toronto on the 14th of January; I think my voyage commenced there.

Q. You went for the raiders?

A. I went voluntarily.

Q. You went for the raiders as their messenger?

A. Yes, sir.

Mr. Bradley said that was putting an answer in the witness's mouth; that he had stated he carried the papers voluntarily, and not as their messenger.

Q. Did not you say you went as their messenger?

A. I did; I carried papers.

Q. You knew what the character of that raid was?

A. Yes; I knew it was retaliatory.

Q. Was that the "christian service" you alluded to just now?

A. All wars are very unholy service.

Q. I want to know if that was the "christian service" in which you were engaged to which you alluded just now?

A. Yes, sir; I told you I went to save their lives.

Q. You went for these raiders to Richmond to save their lives?

A. Yes, sir; that is what I went for.

Q. You were going to save their lives in that way?

A. Yes, sir; by producing testimony that they were soldiers, and were doing the same thing in New England that the federal army were doing in Georgia.

Q. This testimony that they were soldiers required commissions, did it not?

A. I believe so.

Q. Did you get commissions?

A. I did; I received them from the hands of Mr. Benjamin.

Q. Will not you tell the jury when you received these commissions from the hands of Mr. Benjamin?

A. It was the day before I left Richmond.

Q. Now turn to your diary and see if you can tell us the date?

A. Yes, sir; my diary says I started for the Potomac on the 4th of February, 1865. This was the day before. I received them on the 3d of February, 1865.

Q. When did that raid take place?

A. I recollect very well from other circumstances that it was on the 19th of October.

Q. Prior to that ?

A. Yes, sir ; it was in the year 1864.

Q. The raid took place prior to the time you got the commissions ?

A. Unquestionably. There would have been no occasion for me to save their lives if it had not.

Q. How long prior to the raid did it take place ?

A. I think I told you the raid took place October 19th.

Q. These commissions you received the following February ?

A. The commissions that I brought were the commission of an officer and an extract from files in the war department that the other men were regularly enlisted soldiers in the confederate States army.

Q. My question is, how long after the raid did you get these ?

A. I told you I left the 14th of January, and that I arrived in Richmond February 1 ; that I received them on the 3d.

Q. And the raid occurred in 1864 ?

A. Yes, sir.

Q. Now, did you tell this gentleman (Dr. McMillan) that these commissions were dated back ?

A. I do not think I could have done so, because, in the first place, they were not commissions. There was a commission for one officer, and the others were testimonials of private soldiers.

Q. Did not you tell him that these testimonials were dated back ?

A. No, sir.

Q. Did not you tell him that you dated them yourself ?

A. Never, sir ; it is a falsehood.

Q. Did you tell him anything about it ?

A. I have no recollection of any conversation on that subject.

Q. On the subject of the papers ?

A. We may have spoken of my bringing the commissions.

Q. Did you ?

A. We did, I think.

Q. Will you tell me what you said to him about it ?

A. I said that it was stated in the evidence in Canada that these papers were "cooked up," but that I had received them from the hands of Mr. Benjamin.

Q. When you received them from the hands of Mr. Benjamin, what did you do with them ?

A. I took them to Canada.

Q. For what purpose ?

A. I passed them to the attorney for the prisoners.

Q. For what purpose ?

A. To prove their identity as officers of the confederate States army.

Q. To save these raiders ?

A. To save them from extradition—to show that they were my brother soldiers.

Q. You wanted to prevent them from being delivered to the United States ?

A. Yes, sir ; and I think the United States are now very glad that they did not get them. They are more humane now than they were then.

Q. That was the reason you took the papers to Canada ?

A. It was : they were my brother soldiers, belonging to the same command I think there were very few traitors in the confederate army.

Q. When you got back on that commission, while on detached service, or as chaplain, what then did you do ?

A. I requested to be sent back to the confederate army.

Q. Did you get back ?

A. I started and was on my way when I heard of the arrest of President Davis—Mr. Davis.

Q. You were on your way where ?

A. On my way to Halifax ; intending to go *via* Matamoras to Texas.

Q. What then did you do ?

A. I remained *in statu quo*.

Q. Where did you remain ?

A. I have lived the last two years at a little village near Quebec, with the exception of the time I was in Europe.

Q. Was it before or after this raid that you made your renunciation of the Protestant faith and became a Catholic ?

A. Some three months before ; I went for this purpose ; I was in conversation with a Catholic bishop in regard to the change.

Q. Did you make your renunciation of Protestantism before or after the raid ?

A. Unquestionably it was after ; it was on the first of May.

Q. Have you been studying for the ministry since ?

A. No, sir ; I have a wife and three children.

Q. Are you studying for it now ?

A. No, sir ; I am engaged entirely in literary pursuits. I am writing this book of which I have spoken, and of which I have promised a copy to the gentleman.

Q. Book on what ?

A. On the secret service of the South.

Q. You were in the secret service of the South ?

A. I was so regarded when sent.

Q. What you did was called the secret service.

A. Yes, sir.

Q. By that you mean a spy ?

A. No, sir.

Q. What does it mean ?

A. It means a man who is willing to risk his life in any position for the cause in which he is engaged.

Q. I think that is a very good definition. You were willing to risk your life in the secret service ?

A. I have performed that duty several times.

Q. And you did risk your life in the secret service ?

A. I have risked my life many times.

Q. Where do you live now ?

A. I reside near Quebec, at St. Michel.

Q. Where is that ?

A. Fifteen miles from Quebec.

Q. Are you in any occupation except writing this book ?

A. That is all. I have been professor.

Q. Professor of what ?

A. Professor of language and of music.

Q. What language ?

A. When I was in Paris, of the English language, my native language, the one I understood best.

Q. You are professor. You are not professor of French ?

A. No, sir ; I understand the French.

Q. You were teaching—that is your occupation ?

A. Yes, sir ; to earn my subsistence when I was away in exile.

Q. When did you reach Liverpool when you went over on the Nova Scotia ?

A. We were nine or ten days on our passage. It must have been the 7th or 8th of November, 1865.

Q. Before you got over there were you in the band of Moseby at all ?

A. Never. I do not think I ever saw Moseby.

Q. Were you in Morgan's band ?



A. I was. I was his chaplain.

Q. What was his business ?

A. He was a confederate general of cavalry.

Q. His band were pretty well known, were they not ?

A. I believe he was regarded as a man of a good deal of daring.

Q. Were you with him when he made his raid into Ohio ?

A. No, sir ; I was not connected with the command at that time.

Q. When did you become connected with Morgan's band ?

A. When I returned to the confederacy, after I was a prisoner, I was appointed to his command.

Q. How long were you a prisoner ?

A. Three months.

Q. What prison ?

A. Carroll prison, in this city.

Q. What were you put in there for ?

A. They captured me in crossing the Potomac, one night.

Q. Did you tell them you were a chaplain ?

A. They were aware of that ; I had religious books with me when I was captured, and they confiscated them.

Q. Did you make known to them your religious character at that time ?

A. I never made any professions of my religious character.

Q. Was this Morgan the man who was called "Guerrilla Morgan ?"

A. His enemies so denominated him.

Q. Then we know who the man is. When you got over into Europe, how long did you stay there ?

WITNESS. (To the Court.) Am I obliged to answer all these questions in regard to my private business ?

The COURT said the question was a proper one.

A. I resided in Europe eleven months.

Mr. BRADLEY reminded the witness the Court had already told him he need not answer any question affecting his position in society.

The COURT said the witness might decline to answer anything that put him in danger of indictment or would tend to degrade him.

WITNESS. Then I am ready to answer everything—any question that may be proposed.

Q. Where did you go ?

A. I arrived in Liverpool and remained there a week or two. When I left town I transferred myself to Paris.

Q. Did you see Surratt there ?

A. Yes, sir ; I saw him in Liverpool. I went to see him.

Q. Where else did you see him ?

A. Never anywhere else except in Liverpool, and only twice there.

Q. You did not give him any money in Liverpool ?

A. No, sir ; I had none for myself.

Q. When you arrived in Liverpool, did you go to see this gentleman, (Dr. McMillan) ?

A. I did the following Sunday, I think it was.

Q. Will not you tell these gentlemen what you told him about Surratt ?

A. I think I said to him, at that time, that the award for the arrest of Surratt had been withdrawn, or that I had heard such a report. I knew he was after that. I suspected him, and I told him this and found out the place where he was staying for that purpose.

Q. That is what you told him ?

A. Something to that effect.

Q. Did you tell him that Surratt was the greatest scoundrel you had ever seen ?



A. No; I do not think I ever said that of Mr. Surratt. I did say before I had heard any explanation what I thought of Surratt not going forward to aid his mother during her trial, and Dr. McMillan defended him, and said Surratt was kept in utter ignorance of all that was going on.

Q. My question is whether you told Dr. McMillan in Liverpool that Surratt was the greatest scoundrel you had ever known, or words to that effect?

A. No, sir; I could not have said that.

Q. Did you say it?

A. I could not have said it.

Q. How often did you see Dr. McMillan in Liverpool?

A. I think only when he gave me his address.

Q. Did you call to see Dr. McMillan?

A. I called to see him for the purpose of informing him that this offer of award for the arrest of Surratt had been withdrawn. I thought his appetite for money might stimulate him to search after Surratt.

Q. And you did not want Surratt searched after?

A. I regarded him as innocent even before I had heard any evidence.

Q. I ask you if you did not want Surratt to be concealed and not searched after.

A. I think no Christian man wants an innocent man persecuted.

Question repeated.

A. I am not a man to sell another man's life for money.

Q. Do you understand my question?

A. Perhaps I do. You may repeat it if you like.

Question repeated.

A. Unquestionably I would not have given him up when I believed him to be innocent.

Q. You still believe him innocent.

A. He was sensible in concealing himself, though he did not take any particular pains to conceal himself. He went round to public places seeing curiosities with Dr. McMillan.

Q. Is that all the answer you have to give to my question?

A. I will tell you more if you desire it.

Q. You wanted to conceal Surratt?

A. I did. I believed Dr. McMillan would betray him. He had expressed such infidel sentiments that I believed for money he would betray him.

Q. Did you say anything to this man (Dr. McMillan) about infidel sentiments?

A. He virtually admitted them.

Q. Did you say anything to this man about infidel sentiments?

A. I did. We both conversed upon the subject freely.

Q. You felt shocked at his sentiments, didn't you?

A. Somewhat.

Q. You did not consider them religious?

A. Not considering that he had two sisters in the nunnery.

Q. I am not asking you about his sisters, I am asking you about his sentiments.

A. I was shocked; Yes.

Q. Did you say anything to him about his religious sentiments?

A. I did. We discussed the doctrines of the Catholic church. I tried to convince him that he had made a mistake in going away from it.

Q. You were somewhat violent in favor of the church were you not?

A. Like most converts; Yes.

Q. You were then a fresh convert; I believe you have told us that?

A. Yes, sir.

Q. Did you write any articles for the newspapers over there?

A. Yes, sir.

Q. For what papers?

WITNESS. Is it necessary that I should state that?

The COURT. Unless you think it will tend to degrade you.

WITNESS. No, sir; I don't think that; I thought the articles were rather creditable.

Question repeated.

A. I wrote for the Liverpool Post while I was there.

Q. What other papers?

A. I wrote one or two articles perhaps for other papers.

Q. Did you write for the Daily Courier?

A. Perhaps I gave one or two little notices to the Courier.

Q. Which side did you take in your articles, the rebel side or the Union side?

A. The war had ceased and I had no opinions upon that subject.

Q. Which side did you take?

A. There were no sides to take, there was a common country.

Q. Did you write in favor of either side?

A. I wrote upon the subject of the rebel vessel Shenandoah, and stated facts,

Q. Did you write anything about the confederacy, stating that the confederacy had exploded? Did you write anything about it in its praise, showing that your sympathies were on its side?

A. I have been writing truths for the last year.

Q. Which side are you on now?

A. I trust I am a loyal citizen of the United States.

Q. Are your sympathies against the rebel side?

A. No, sir.

Q. Had you any confederate clothes on that ship?

A. I had.

Q. What did you do with them?

A. I kept them.

Q. Did you make an exhibition of them?

A. Some gentlemen came in my state room and I showed them to them.

Q. Did you wear them?

A. I have no recollection of having worn them.

Q. Where did you go from Liverpool?

A. To London.

Q. How long did you stay there?

A. A week or two.

Q. What did you do there?

A. I tried to make some literary connection to write. I did not succeed. I did not admire the English, and I went to France.

Q. That was the reason you left?

A. Precisely.

Q. The reason was that you could not get employment, and therefore you did not admire them?

A. I preferred to remain in France and have the advantage of acquiring a foreign language.

Q. When did you go to France?

A. (After consulting diary.) It was about the middle of December, 1865.

Q. Before you left Liverpool you stated that you told Dr. McMillan of the withdrawal of the proclamation offering a reward for the arrest of John H. Surratt?

A. I said I had seen a report—I was not certain—but I had seen a report it was going to be withdrawn.

Q. And you told Dr. McMillan so.

A. Yes, sir, I did. I thought it was desirable.

Q. Now give us the date when you left Liverpool ?

(Referring to diary.)

A. I think it was Wednesday, the 22d of November, 1865.

Q. You said you had told him before that, that the proclamation had been withdrawn ?

A. I did not say that ; I said that I had seen such a report.

Q. Where had you seen it ?

A. I do not recollect now.

Q. How long did you stay in Paris ?

A. Six months.

Q. What did you do there ?

A. I gave lessons in English to a French family.

Q. Did you ever see Surratt after you left Liverpool ?

A. No, and I only saw him on two occasions at Liverpool, and the first time there were witnesses present.

Q. You never saw him after that ?

A. Never until yesterday.

Q. Where did you go from Paris ?

A. I travelled there through the United Kingdom.

Q. Of what ?

A. Great Britain ; through Ireland and Scotland. I also travelled through Spain.

Q. Did you get any means from the confederacy to travel upon ?

A. No, sir, I never received anything from the confederacy ; hardly my pay.

Q. When did you come back to the United States ?

A. I came to the United States about six weeks ago.

Q. When was the last time you had been in the United States prior to six weeks ago ?

A. The last time was about February 13, 1865.

Q. Then from February, 1865, you had not been in the United States until a few weeks ago ?

A. Not until a few weeks ago.

Q. Had you been in the confederate States ?

A. There are no confederate States.

Q. Where had you been ?

A. I had been in Canada, with the exception of the time I was in Europe.

Q. In what ship did you return ?

A. In the China.

Q. Who was the captain ?

A. I forget his name.

Q. Where did you land ?

A. At Halifax.

Q. Where did you go from there ?

A. To Quebec.

Q. Where from there ?

A. Here.

Q. You went with some priest, did you not say ?

A. This priest lives about fifteen miles out from Quebec.

Q. At what place ?

A. St. Michel de Bellechasse ?

Q. What is the name of the priest.

A. I hope you will not require me to answer that. It cannot possibly have anything to do with this case. It is out of respect to the good cure's feeling that I prefer not to mention the name.

Q. You are not in any occupation, I understand, except writing at present.

A. Not at present

Q. You mean the person you have lived with is a real person?

A. One could hardly live with a myth. I have told you that I lived with a curate of the Catholic church.

Q. You are not a curate?

A. No, sir. They sometimes admit laymen to their association when they are of a respectable character.

Q. Has your family been with you all the time?

A. No, sir.

Q. Have they been with you any of the time?

A. I have corresponded with them.

Q. I ask whether any of your family have been with you any of the time?

A. No, sir.

Q. Were your family abroad with you?

A. No, sir. It was as much as I could do to support myself.

Q. Did your family go abroad with you?

A. No, sir.

Q. Did you see them abroad?

A. No, sir.

Q. Did you see any of them?

A. No, sir.

Q. When did you last see them?

A. I saw my wife shortly after she was imprisoned here in Washington.

Q. How long ago?

A. It was during the progress of the war. They took her prisoner on board the Mary Washington, and kept her there, at the navy yard, for three or four days. While she was imprisoned there an infant child died.

Q. When was that?

A. The second year of the war.

Q. When since?

A. I saw her once in Baltimore, when I was there on a mission.

Q. When was that?

A. I do not remember.

Q. About when?

A. About 1863, I think.

Q. Have you ever seen her since?

A. No, sir.

Q. You have spoken of your children. How often have you seen them?

A. She brought my children to see me when she underwent the risk to meet me in Lower Canada.

Q. Have you seen your children since 1863?

A. No, sir.

Q. Are they living?

A. They are.

Q. Where?

A. At Elkton.

Q. They and your wife live there?

A. Yes, sir. I heard from them the other day.

Q. You have not been there?

A. No, sir, not yet; I have been waiting on this case day by day.

Q. How long have you now been in Washington?

A. About six weeks, I think.

Q. Have you been furnishing any evidence in this case?

A. I made my affidavit myself last spring when Mr. Surratt was first arrested.

Q. Were you summoned here?

A. No, sir; I volunteered to come and tell what I knew. I wrote to Mr. Bradley in advance, before he had had any communication with me, and told



him about what I could prove. I was induced to do this by reading McMillan's affidavit, published in the "Times" of December 11.

Q. You had talked with the counsel before McMillan was cross-examined?

A. Oh, certainly, I had made my affidavit last spring, stating then the same facts that I have stated here.

By Mr. BRADLEY :

Q. You say you were not summoned. Didn't you have a summons served upon you?

A. Yes, sir, at Ogdensburg; a summons, or something of that sort.

By Mr. PIERREPONT :

Q. Was there any indictment against you?

WITNESS. Where?

Mr. PIERREPONT. Anywhere.

WITNESS. I never heard of one.

Q. At Elkton?

A. I never heard of any.

By the DISTRICT ATTORNEY :

Q. Do I understand you to say that you wrote down in this diary the answers of Dr. McMillan at the time they were given to you?

A. Oh no, sir; I made notes of the persons I met on the voyage, and of the conversations I had had with them on the several days. For instance, I would write, "Talked with Dr. McMillan to-day, on such a subject." That is all. The general scope of the conversation I would remember, because as I was writing this book I took particular pains to remember all that was stated.

Q. When you were asked the substance of that conversation, did I understand you to say that you referred to the diary, and could state exactly what he did say?

A. No, sir.

Q. How do you remember?

A. Because it is entered on the diary here—the day on which I formed his acquaintance, the day I talked with him, (tendering the diary to the district attorney.) Here is the book, it is quite at your service if you desire to look at it.

Mr. MERRICK objected to giving the diary to the District Attorney, as it was something that was not at all in evidence.

Q. When did you make the entries of the conversation you had with Dr. McMillan?

A. I made the entries at the time of the dates that are there recorded day by day. Some are in pencil and some are in ink. Here is one of November third, which I wrote in pencil on the rail of the steamer in 1865, while Mr. McMillan was present.

Q. What interval would elapse between the conversation with Dr. McMillan and the entry in your diary?

H. I have just told you that I made this entry in his presence. He gave me his address and I wrote it down; here it is.

Q. When did you make these other entries?

A. Day by day.

Q. And you are able now to state from these entries the conversation that you had with him?

A. No, sir; I did not state that. I remembered the substance. I have made notes at different times of this matter.

Q. How are you able to recollect?

A. Well, sir, it was a very interesting subject and I have a very retentive memory.

Q. You did not gather it then and put it down in that book?



A. I have abstracts here—little short notes. I have been accustomed to preach from notes, and therefore it is only necessary for me to put down a few odd notes, and I can always connect them afterwards.

Q. And under these circumstances you now undertake to state the conversation you had with Dr. McMillan at that time?

A. I do, because I have repeated them over often to different persons from that time to this. I have repeated the substance of the conversation to the curate, and others with whom I have lived, and to others, as also my suspicions as to the integrity of his motives towards Mr. Surratt.

By Mr. BRADLEY :

Q. At what time did you receive your pardon from the President?

A. I took the oath of allegiance to the United States in Paris, before Mr. John Hay, about or nearly a year ago.

Q. What time did you receive your pardon?

A. Last month, I think.

Q. Last week?

A. That would be last month, wouldn't it?

Q. Up to that time did you or not consider it unsafe for you to come into the United States?

A. Yes, sir; I remained quiet and did not appear on the streets publicly.

By Mr. MERRICK :

Q. You were going to state in the cross-examination that you had expressed some hard sentiments towards Surratt on ship-board because of his not coming on here when his mother was in such danger, and that McMillan had defended him. Will you now please state what you were going to say, but were stopped from saying?

A. I stated to Dr. McMillan that when John Surratt first arrived in Montreal I believed him to be as innocent as other gentlemen whose names had been associated with him in a proclamation that was issued, because this proclamation was issued before any proof could have been given here on the subject. Though I believed him innocent, yet, as he had neglected to follow the advice Father LaPierre and I had extended—which was that he should go to Washington and tell all he knew—I felt more like giving him up than protecting him. He says: "You do the fellow injustice there, because he was in so secluded a place that he knew nothing of the progress of the case, and was sedulously kept in ignorance of it by the gentlemen who surrounded him, who kept saying: 'Everything is going on well. You know your mother is innocent; they cannot murder her; and she will be finally saved, if you keep quiet.'"

Q. I understood you to say, in reply to a question by the counsel, asking about your sympathies, that they were no longer with the rebels, because there was no rebellion.

A. I so understand it. I took the oath of allegiance last fall in Paris before Major Hay.

Q. And you acquiesce in the present condition, and claim to be a loyal citizen?

A. I so regard myself, and trust to do my duty to the Constitution.

Q. Something further was said to you in regard to the infidel sentiments expressed by Dr. McMillan in your conversation. What was said about that matter?

A. He certainly expressed doubts as to the future existence of the soul, because my argument was to this effect: "You medical men are so apt to be scientific; you are so accustomed to chopping up the human body, and to destroying it by chemical analysis, that you think it is all gas. I think this is rather a weakness of the medical profession."

Q. What did he say ?

A. He did not withdraw his opinions as to what he had expressed about the future of the soul.

By Mr. PIERREPONT :

Q. Did Dr. McMillan state to you what you have just now repeated in relation to Surratt's concealment ?

A. Yes, sir.

Q. He said it when and where ?

A. He spoke on that subject very often. After two years lapse of time I cannot pretend to localize—to state what particular part of the ship it was said on.

Q. It was said on the steamer while crossing the ocean ?

A. Yes, sir.

Q. You are sure of that ?

A. Yes, sir.

Q. You have been asked about your pardon ; won't you tell us when you got your pardon ?

A. It is dated the 4th of June, and was given to me the 3d, 4th or 5th of July.

Q. Given to you on the morning of the 4th of July, wasn't it ?

A. Yes, sir ; it was a very happy omen.

Q. Who gave it to you ?

A. The counsel for the defence.

Mr. BRADLEY, Sr. My son gave it to you, didn't he ?

A. Yes, sir.

Q. Who obtained it ?

A. I made my own affidavit and wrote my own letter to the President, requesting Mr. Bradley, as he went into town, to present it to his excellency.

Mr. BRADLEY, Sr. Which I did.

Q. When ? since you came here to testify in this case ?

A. Yes, sir.

The court here took a recess for half an hour.

#### AFTERNOON SESSION.

LEWIS J. CARLAND, recalled by the defence.

By Mr. MERRICK :

Q. State to the jury whether or not you know Louis J. Weichmann.

A. Yes, sir.

Q. Did you take a walk in company with Louis J. Weichmann and Mr. Brophy, in the spring or summer of 1865 ?

A. I took a walk with Mr. Weichmann, and we called on Mr. Brophy. He introduced me to Mr. Brophy on that walk.

Q. And was that after the time that he had testified before the military commission ?

A. Yes, sir, after the testimony had closed.

Q. Did Mr. Weichmann state to you in that conversation that he was very much troubled in his conscience about the testimony he had given at that trial ?

A. He did. He wished me to go with him to St. Aloysius church, as he said he wished to make a confession ; that his mind was so burdened with what he had done, that he had no peace.

Q. Did he say to you that he was going to confession to relieve his conscience ?

A. Yes, sir ; he did.

Q. Did you say to him, "That is not the right way, Mr. Weichmann, you had better go to a magistrate and make a statement under oath?"

A. I did.

Q. Do you remember his replying to you, "I would take that course if I were not afraid of being indicted for perjury?"

A. He did make that remark to me, and I then asked him the particulars. He said if he had been let alone, and had been allowed to give his statement as he had wanted to, it would have been quite a different affair with Mrs. Surratt than what it was. In the first place, he said that when he came home and had a half-holiday, Mrs. Surratt said it was a pleasant day——

Mr. PIERREPONT. Never mind all that.

WITNESS. He said it would have been very different with Mrs. Surratt if he had been let alone.

Q. Did he say who troubled him?

A. Yes, sir; he said the parties who had charge of the military commission.

Q. Did he say to you that he had been obliged to swear to the statement that had been prepared for him, and that he was threatened with prosecution for perjury—threatened with being charged as one of the conspirators unless he did?

A. Yes, sir; he did; that it was written out for him, and that he was threatened with prosecution as one of the conspirators if he did not swear to it.

Q. Did he say to you anything about his having been told by a man that he had made the confessions or statements in his sleep?

A. Yes, sir. He said that a detective had been put into Carroll prison with him, and that this man had written out a statement which he said he had made in his sleep; and that he had to swear to that statement. I asked him why he swore to it when he knew it was not true? He said part of it was true, but not all the points that he could have given, if he had been let alone, were contained in it.

Q. It was on account of that statement that he wanted to go to confession—to relieve his conscience?

A. Yes, sir.

Q. Did he tell you that on the 14th of April, 1865, the day of the assassination, Mrs. Surratt had told him that she wanted to go to see Mr. Nothery on business, having received a letter from Calvert requiring her immediate attention; and that they had gone to Surrattsville, and when they found Mr. Nothery was not there, and that he and Mrs. Surratt had started to come home, when they met Mr. Jenkins, in turning around to see whom, the spring of the buggy was broken?

A. He didn't tell me the particular man, but he told me that if it had not been for some gentleman calling them back after they had started to Washington, Mrs. Surratt would not have seen Lloyd that day. He said further, that in turning round to go back, the spring of the buggy was broken; and that then it was they met Lloyd.

Q. Did he tell you that when Mrs. Surratt learned that afternoon he had a half holiday, that she said she would like to go to Surrattsville, but did not know where to get a buggy, and that he then told her to send for Booth, and that she replied she did not know Booth was in town?

A. Yes, sir.

Q. He told you that he had suggested sending for Booth, and that she said she did not know Booth was in town?

A. Yes, sir; and he further told me of the conversation that he had with Booth when he went down after the buggy.

Mr. BRADLEY. There is no doubt about this being the man. (pointing to the witness Weichman.)

A. No, sir. I have met him frequently.

Cross-examined by Mr. PIERREPONT :

Q. Have you ever been examined before ?

A. Yes, sir.

Q. Where were you examined ?

A. I was examined before Judge Olin, and then I was examined in the War Department. I do not know who they were who examined me.

Q. Was your examination taken down in writing ?

A. It was, sir, I believe.

Q. Did you state any of these things then that you now state ?

A. No, sir ; because I had not had this conversation with Mr. Weichmann until after I got out of prison.

Q. Did this conversation take place in the prison ?

A. No, sir.

Q. Where ?

A. In the street.

Q. Where ?

A. In a walk from Ford's theatre. He came up there after me. We walked down past this building to a house at which I was to call, on C street, to see a family. We then went down to St. Aloysius church. When we got down there he went inside, and I sat down on the steps and waited until he came out.

Q. Did he go to confession ?

A. I do not know whether he did or not. I did not go in the church.

Q. Is confession customary in the Catholic church ?

A. He is a member ; he can tell you.

Q. I ask you.

A. I believe so.

Q. Don't you belong to that church ?

A. I do.

Q. Does he too ?

A. I don't know. He says he does.

Q. I ask you whether confession is customary in the church ?

A. It is, I believe.

Q. Was there anything in his manner that was excited at the time ?

A. He got excited afterwards down in Dubant's saloon.

Q. Did he recite Shakspeare ?

A. Yes, sir.

Q. Hamlet ?

A. Yes, sir ; Hamlet's Soliloquy on Death.

Q. Were you alarmed at his state of mind ?

A. Not at all. I was alarmed at the statement made to me. I was astonished at any man making such a statement as that to me.

Q. It was very shocking ?

A. Yes, sir ; it was to me.

Q. When you were examined before, did you state anything about having stood up in front of the steps of the theatre at the time of the murder ?

A. Judge Olin did not get as far as that with me. He got as far as six o'clock in the afternoon in my examination.

Q. Did not anybody get as far as that with you ?

A. Never, in my examination.

Q. Didn't they get so far as to ask you where you were in the theatre all the time ?

A. No, sir ; they did during the day. I stated my business was in the theatre.

Q. Didn't they, in the examination at the War Department, get so far as to ask you where you were during the night of the assassination ?

A. No, sir.



Q. Did Judge Olin, in the examination before him ?

A. I do not think Judge Olin got as far as to ask me where I was at the time the assassination took place ?

Q. Did they, at the examination at the arsenal ?

A. No, sir.

Q. Then you were not, at any time until in your examination here, asked where you were at the time of the assassination ?

A. No, sir.

Q. Have you stated that, on the evening of the assassination, for more than an hour before it, you were not in front of the theatre ?

WITNESS. When and where ?

Mr. PIERREPONT. Anywhere, on either of these examinations.

A. No, sir ; never.

Q. Did you state so, in your examination at the War Department ?

A. No, sir.

Q. Did you state so on your examination before Judge Olin ?

A. No, sir.

Q. Did you state so on your examination at the arsenal ?

A. No, sir.

Q. Have you had any other examinations ?

A. None but here. The testimony I gave at the arsenal was in regard to Spangler. I have never read it or seen it. Whether I did get as far as that in my examination, or whether any question was asked me about that, I do not now remember.

By Mr. BRADLEY :

Q. Have you seen your examination at the War Department ?

A. No, sir.

Q. Was it ever shown to you at the time of your examination ?

Mr. PIERREPONT said he was now examining the witness, and did not care to have him taken out of his hands in that manner.

The COURT said that when counsel had entered upon the examination of a witness he should be allowed to conclude that examination without interruption. Then, if there was anything that counsel on the other side desired to have explained, or any additional inquiries, the witness could be turned over to him. Only one counsel at a time, however, should be permitted to examine the witness.

By Mr. PIERREPONT :

Q. Will you tell us what day of the month it was you had this walk with Mr. Weichmann ?

A. I cannot exactly tell the date, but I can find it out in a very short time.

Q. Can you tell the day of the week ?

A. No, sir.

Q. Was the trial going on, or not ?

A. No, sir ; it was after the trial had closed.

Q. Weichmann told you that he had stated things that were not true ?

A. Yes, sir.

Q. And that his conscience was terribly troubled about it ?

A. Yes, sir.

Q. And that he wanted to make confession ?

A. Yes, sir.

Q. Did he tell you that he wanted you to aid him in any way in his confession ?

A. No, sir.

Q. You were in no way a priest, to receive confessions ?

A. No, sir ; never.

Q. What was your business ?

A. My business was then, as now, costumer.



Q. Were you a religious and devout man at that time—I mean were you noted in that way, so as to lead him to talk to you?

Mr. MERRICK objected to the question. Objection overruled.

WITNESS. I decline to answer.

Q. When did you leave the city?

A. After the trial. I left the 25th of July.

Q. You did not leave until then?

A. No, sir.

Q. Where did you go?

A. To Baltimore.

Q. Was this conversation after you went to Baltimore, or before?

A. Before I went to Baltimore. I never saw that gentleman (Weichmann) after the execution until I met him here.

Q. Do you know when Weichmann left the city?

A. I do not. I avoided his company ever after that.

Q. Have you avoided it ever since?

A. I never met him afterward until I met him here the other day, when he shook hands with me.

Q. Why did you avoid his company?

A. I thought he was a dangerous man.

Q. That was the reason, was it not?

A. Yes, sir.

Q. Was it on account of this confession made to you?

A. Yes, sir.

Q. Did you invite the confession?

A. No, sir.

Q. It was wholly voluntary?

A. Yes, sir; wholly voluntary on his part.

Q. Had you ever been in such relations with him as to invite him to a religious confession of his guilt?

A. No, sir; never.

Q. Are you still connected with the theatre?

A. Yes, sir.

Q. What side did you sympathize with in the war?

A. I did not sympathize with either. I was doing a business with a mixed population and I kept myself neutral.

Q. Where neutral?

A. In this city.

Q. You told us the other day that you were from New York.

A. No, sir; I told you I was from Boston.

Q. When I questioned you further didn't you tell me you were from New York?

A. You asked me if I was raised in Boston and I told you no, that I was raised in New York.

Q. When you were examined before the military did you say you were from Baltimore?

A. I was never asked the question.

Q. Well, you were born and raised in New York?

A. No, sir; I was born in Toronto, Canada.

Q. When did you come to the United States?

A. In 1845 with my family.

Q. During this war you did not sympathize with these rebels?

A. I did not sympathize with either side.

Q. You did not sympathize with the Union side?

A. With neither side.

Q. You felt wholly indifferent?

A. I sympathize with every one who is in trouble.

Q. You only sympathize with the side that happened to get beat ?

A. No, sir ; I did not sympathize with that.

Q. Did your sympathies change in the progress of the war from time to time ?

A. No, sir ; it was quite an indifferent matter to me.

Q. You didn't care which side succeeded ?

A. No, sir ; it did not make much difference to me.

Q. You did not care ?

A. No, sir.

Q. You did not care whether the Union government was destroyed or not ?

A. It didn't make any difference to me.

Q. And you didn't care whether the confederacy succeeded or not ?

A. No, sir.

Q. And you didn't care which army was slaughtered ?

A. Oh, yes, sir ; I did care about that.

Q. Which army did you sympathize with ?

A. I am opposed to war ; I did not want to see either army slaughtered.

Q. Were your sympathies with either army ?

A. Neither.

Q. You didn't care for one more than the other ?

A. No, sir.

Q. Are your feelings the same now as they were during the war ?

A. Yes, sir.

Q. You were wholly indifferent to the safety or the ruin of the government ?

WITNESS. Of the government ?

Mr. PIERREPONT. Yes, sir.

WITNESS. Well, as I don't happen to be in any particular part of the government, merely doing business here as a foreigner, why I have no particular interest.

Q. Then you are a foreigner, are you ?

A. Yes, sir ; I was born in America, but not in the United States.

Q. Did you know of Weichmann going away ?

A. No, sir.

Q. Didn't know of his going to Philadelphia ?

A. No, sir.

Q. How long before this trial did you meet him in Washington ?

A. Some time before the 4th of July.

Q. Of what year ?

A. 1865.

Q. Had you been intimate with him ?

A. I was intimate with him as long as we kept together—until I shunned him, shook his society.

Q. Where did your intimacy begin ?

A. In the penitentiary.

Q. When was that ?

A. During the trial at the arsenal.

Q. When did your intimacy end—before or after the trial was over ?

A. After.

Q. How long after ?

A. I do not know how long.

Q. Your intimacy was pretty short ?

A. It commenced in the month of May, and ended in the latter part of June.

Q. Do you feel friendly towards him ?

A. I have no antipathies towards him at all.

Q. Do you feel hostile at all ?

A. No, sir; not in the least.

Q. Never have

A. No, sir.

Q. Have never expressed any hostility?

A. No, sir.

Q. And you had not when you heard him make these revelations of this perjury?

A. No, sir; I wanted to shun his company—that is all.

Q. And you did shun it?

A. Yes, sir; I did.

By Mr. BRADLEY :

Q. You have been asked about hostile feelings; you may have feelings which would lead you to avoid a man without feeling any hostility to him?

A. I suppose that is what I mean; I say I have no antipathy towards him, but I do not wish to hold any communication with him.

JAMES J. GIFFORD sworn and examined.

By Mr. MERRICK :

Q. Do you know Mr. Weichman?

A. I have seen him. I have no acquaintance with him.

Q. Were you in Carroll prison with him?

A. Yes, sir.

Q. This is the man here? (pointing to the witness, Louis J. Weichman.)

A. Yes, sir.

Q. Did he say in your presence that an officer of the government had told him that unless he testified to more than he had already stated they would hang him too?

A. I heard the officer tell him so.

Subsequently ordered to be stricken out by the court.

Q. Who was present at that time?

A. James Maddox.

Subsequently ordered to be stricken out by the court.

Q. Did Weichman ever say anything to you about wanting to go south?

Mr. PIERREPONT objected, and, at the same time, asked that the answers to the first two questions be stricken out, as they did not relate to this trial, and were not contradictory of anything Weichman had said, as would appear from a reference to his testimony.

The testimony of Weichman on this point was referred to and commented upon by the counsel, when

The COURT said he thought the objection which had been made a proper one, and directed the answers already given to be stricken out.

Mr. MERRICK reserved an exception.

Q. At any time when you, Weichman, and Maddox were present in Carroll prison, after Mr. Bingham left there, did Weichman say anything amounting in substance to the fact that Bingham had threatened him, if he did not state more than he had already?

The DISTRICT ATTORNEY objected, on the ground that the question being a collateral one, counsel was bound by the answer of the witness.

The COURT said he had no recollection of having ruled the question to be a collateral one.

Mr. MERRICK remarked that the court had made no such ruling.

The objection was overruled, and the witness directed to answer.

A. I never had any conversation at all with Mr. Weichman after that time.

Q. Was Mr. Ford there in prison with you?

A. Yes, sir; he was up there.

JOHN MATTHEWS sworn and examined.

By Mr. MERRICK :

Q. State where you were in the month of April, 1865, and what you were doing.

A. I was in the city, playing at Ford's theatre.

Q. What is your profession ?

A. I am an actor.

Q. State where you were on the afternoon of the 14th, and whether you met Booth on that evening.

A. I did.

Q. Where did you meet him ?

A. On Pennsylvania avenue, above Thirteenth street.

Q. Opposite one of those triangular spaces ?

A. Just at one of those triangular enclosures.

Q. Was he walking or on horseback ?

A. He was on horseback.

Q. On what side of the street was he ?

A. The north side.

Q. Did he ride up to the curbstone to speak to you ?

A. Yes, sir.

Q. Did you hold any conversation with him ?

A. Yes, sir.

Q. How long were you conversing with him ?

A. From three to five minutes.

Q. Was he leaning over his horse's shoulder talking to you ?

A. Yes, sir.

Q. Had hold of your hand ?

A. Yes, sir. We crossed hands. He held the reins with the left hand, and took mine with the other.

Q. Did his hands shake much ? Did he appear to be at all nervous ?

A. Yes, sir ; I saw he was nervous and agitated.

Q. Did he leave any impress of his nails on your hand ?

A. Yes, sir ; he squeezed very warmly.

Q. What kind of a hat had he on ?

A. A dark hat.

Q. What is your height ?

A. About five feet seven.

Q. State whether or not, at that time, Booth placed any paper in your hands ?

A. He did.

Q. Was it a sealed paper ?

A. Yes, sir ; sealed and stamped.

Q. What did you do with it ?

A. Put it in my pocket.

Q. When did you next see it ?

A. I saw it in my room immediately after the shot was fired—that is, a few minutes afterwards—when I succeeded in getting out of the building.

Q. You were in the theatre at the time the shot was fired ?

A. Yes, sir.

Q. Did you open the paper ?

A. I did.

Q. What did you do with it after you opened it ?

A. I read it.

Q. What then did you do with it ?

A. Burnt it up.

Q. In whose handwriting was it ?



A. I think in the handwriting of Booth. I have seen his name on photographs; and since that time I have seen a letter written by him.

Q. What was on that paper, and whose names were signed to it?

Mr. PIERREPONT. I object to that, and don't desire to discuss such a proposition.

Mr. BRADLEY said it was a serious matter, and asked the court to indulge the counsel until to-morrow morning. It was expected to show that the contents of the letter was an agreement between four conspirators, neither of whom is on trial here. He didn't know whether the matter had ever reached the ears of the Court. This witness had been examined before the Judiciary Committee, and that was how the defence found the matter out.

The COURT said he had studiously avoided hearing and reading anything concerning this matter, premising that he might possibly have to try some case connected with the conspiracy. He did not think counsel had such a low estimate of him as to approach him with anything of the kind beforehand.

Mr. BRADLEY stated that he did not think it would be wrong for the court to see or read the contents of the letter and form an opinion as to its admissibility; but he thought it was a grave matter, as showing who were the original conspirators, who had entered into an agreement and signed it together, and directly touching the innocence of the prisoner.

Without further discussion, at 2.45 p. m. the court took a recess till to-morrow morning at 10 o'clock.

WEDNESDAY, July 17; 1867.

The court was opened at 10 o'clock.

After the calling of the list of jurors by the clerk had been concluded, Mr. BRADLEY, sr., said, when the court adjourned yesterday a proposition was made to introduce an agreement between Booth and others in relation to the conspiracy. He admitted the paper would not be evidence for the prosecution, because it would show that Surratt was not in the conspiracy, but it was clearly admissible when offered by the defence. He held that it was pertinent to the issue, and when any evidence was offered it was for the court to determine whether the evidence offered is pertinent to the issue, and it is for the jury to determine the weight of the evidence. If the court can see that the jury may draw an inference from a fact offered, it must go to the jury. It is exceedingly difficult to ascertain whether any positive rule of law governs the admissibility of testimony, and he had therefore hunted up no authorities. What is offered in evidence as a fact bearing upon the issue which this jury is now trying, and in the absence of any positive rule of exclusion it must go to the jury. If there is such a positive rule it is for the prosecution to show it. This is not a case where the prisoner might have manufactured the proof, but it is the declaration of the party, made at the very act, and it is as much a part of the *res gestæ* as though it were written at the moment of the transaction. It is the concerted plan signed by the actors immediately preceding the action, and they go from the table and commit the acts which the prosecution have shown and proven. The prosecution have proven the execution of the act, and the defence now desires to prove the agreement to execute; and in view of the testimony already given none could suppose that the prisoner assisted in fabricating this proof. Two questions are involved in this trial—one whether he was a conspirator to murder the President, and the other whether he was an actor in the murder. These are totally distinct questions. The charge here attempts to fix the prisoner as engaging in the murder, and the conspiracy is to be shown as proof. Another question was, whether there was a conspiracy to kill, and that is the gist of the inquiry here. Who were the conspirators and what was the real object of the conspiracy is a question for inquiry. Ordinarily a conspiracy is a secret, and is to be proved by circumstantial evidence, for if it were made public, then the conspiracy would

be exploded. The prosecution has attempted to show that there was a conspiracy. What conspiracy? They say they trace the conspiracy from 1863 until its culmination, and they thought Surratt and others were engaged in a conspiracy. This was proven by Weichmann's testimony. If they have proven anything by this witness, it is that the conspiracy he (Weichmann) testifies to had terminated and failed in March, 1865. After that time they never brought the parties charged together by any one witness, and it is therefore a question for the jury whether there were two conspiracies and what became of that conspiracy in March. They have offered to prove that Surratt was here on April 14th, and we must meet that point. They offer evidence from which they infer that Surratt was in that conspiracy, and the defence meet that by offering the agreement of the conspirators and showing that Surratt was not a party to that agreement. The prosecution had produced Booth's diary to show that the murder was decided upon on April 14, and can the defence then be precluded from offering the agreement to murder, in which the name of the prisoner does not appear? It is not the confession of the party who had done the deed, but it is the agreement to do it, and the prisoner is excluded from the agreement, and he could, therefore, see no reason or could conceive no rule of law why the evidence should not be admitted. He (Mr. Bradley) admitted that elementary writers argued that circumstantial proof was better than positive proof, but no writer ever held that circumstantial evidence was better than positive written proof. Here was a contract that committed men to the gallows; a contract that would never have been entered into except by men who had lost their reason—madmen; a contract to commit a murder that has not its parallel. It was not kept in their possession and secreted by them, but handed to a third party, to be used as evidence against these four men who boldly offered themselves a sacrifice for what they deemed to be the nation's wrongs.

In this contract the prisoner could not participate, and it is due not only to the prisoner but to others that have been murdered, that all the facts connected with the conspiracy should be brought out, and this paper cannot be excluded except upon the most inexorable rule of law. If it were the prisoner's own act it could not be offered in evidence, but it is the act of the conspirators, to the exclusion of the prisoner. The question of the admissibility of this evidence is a question for the jury. How is he to prove that he was not a co-conspirator except by the agreement agreed when he was not there? The first conspiracy, which was to abduct, culminated on the 16th of March, and the prosecution had never brought the parties together again, and the effort now is to fix the prisoner with another conspiracy made on the 14th of April, and agreed upon in writing. To this inviting the prisoner was not a party, but it was in evidence that he was invited, after the failure of the first conspiracy, to come to Washington and enter into another. Here is that other conspiracy agreed upon, but to which Surratt is not a party, and he (Mr. Bradley) could see no rule that could exclude the evidence.

Mr. CARRINGTON said he did not deem it necessary to say much against the admission of this testimony, for the subject was too plain. It was an attempt to offer a paper said to be a copy of one which had been written by one Booth, who was not a witness. It was not even an original paper, for the witness says he destroyed that. It was nothing but hearsay evidence, and the evidence of a third party, and he did not suppose the court would for a moment entertain it. In regard to the unjust imputation cast upon honorable men, that the conspirators tried at the arsenal had been murdered, he would answer that at the proper time and in the proper manner. All who were condemned by the military commission met a deserved murderer's death. The prosecution would show the country that Surratt was the armor-bearer of Booth, a man who was false to his country, false to his government, and who deserted his mother, and by flight had admitted his guilt.

Mr. MERRICK, interrupting, asked Mr. Carrington what authority he was quoting. He supposed this was a question of law.

Mr. CARRINGTON said he understood these feeble attempts at wit. It was to create laughter, and the same spirit would create a mob if possible. In conclusion Mr. Carrington argued that the testimony should be excluded.

Judge FISHER ruled that the testimony was inadmissible. It might have been the very object of conspirators to thus screen some of the parties to the conspiracy by getting up this agreement.

Mr. MERRICK reserved an exception.

JOHN MATTHEWS—cross-examination.

By Mr. PIERREPONT :

Q. Won't you tell the jury from what country you came to this ?

A. I never lived in any other country ; I was born here.

Q. Where ?

A. In Ohio.

Q. And from Ohio where did you go ?

A. I lived in Maryland until I was 16 years of age ; and have lived in almost every other northern city.

Q. What part of Maryland ?

A. Western Maryland.

Q. What is the name of the town ?

A. Cumberland.

Q. Were you there educated for the stage ?

A. No, sir.

Q. Where did you get your education ?

A. In various parts of the country.

Q. Did you take any part in the late rebellion ?

A. No, sir.

Q. Didn't you take either side ?

A. No, sir.

Q. Your sympathies were neither for the Union nor against it ?

A. My sympathies were for the Union ; I was sorry to see the country broken up. I had my own ideas as to what brought on the war.

Q. Your ideas were not in favor of putting down the rebellion by war ?

A. No, sir ; not by force of arms. I once thought it could be done by legislation, but I have now lost all hope with regard to legislation.

Q. Were you ever educated for the ministry ?

A. No, sir.

Q. Did you make any preparations toward it at all ?

A. No, sir ; I am not good enough ; others may think themselves good enough, but I have too much respect for the profession to think so.

Q. You were good enough for the stage ?

A. No, sir ; I do not flatter myself that I am good enough for the stage, for I have too high an opinion of that to think so.

Q. Let us know how your memory is ; is it good or bad ?

A. Very good ; I have very often had great occasion to test it. I have had at times a wonderful amount of study to do.

Q. Do you think it is unusually good ?

A. I think it is ordinarily good.

Q. Is it fully up to ordinarily good ?

A. I think so.

Q. Which do you think would be the better, your memory ten days after an event that occurred two years ago, or your memory now of such event ?

A. I think anything as impressive as all the circumstances connected with



the assassination would be as deeply impressed upon my memory when I was 100 years old, as it would be an hour afterwards.

Q. Do you think that you would be more likely to remember correctly any little incident connected with an event happening two years ago, ten days after it happened than you would be now ?

A. Some trifling incident connected with the event might be forgotten.

Q. No, but if you carefully stated an incident a few days after such event, while under oath, would you be as likely to have stated it correctly then as now.

A. I think so.

Q. Quite, wouldn't you ?

A. Yes, sir.

Q. On the 21st day of April, 1865, were you examined ?

A. I do not know the date ; I had the honor of being waited upon by various persons.

Q. Were you sworn ?

A. Yes, sir.

Q. Won't you take this paper (handing witness deposition taken by Colonel Foster) and state if you have ever seen it before ?

A. (After examining the paper,) I remember of being examined ; and I remember that my testimony was taken down by a phonographic writer, but I never met this man after he had deciphered it, or written it out in long-hand, until quite recently.

Q. Were you sworn at the time, the 21st of April ?

A. I do not know about the date ; I had forgotten Colonel Foster. I thought Major Burnett was the man. Having seen the phonographic reporter since, it has been brought to my recollection that there was an examination before Colonel Foster.

Q. I will ask you whether these questions were then put to you :

"Q. When did you last see Booth ?

"A. A day or two before this transaction."

Did you say that ?

A. I do not know whether the question was put in that form or not.

Mr. MERRICK said that the counsel was examining the witness in regard to paper which he had stated he had never read and had never seen. He would submit whether that was a regular course of examination.

The COURT replied that it was just the course counsel for the defence had been pursuing during this examination. They had put questions from a book (Pitman's Report) which it appeared the parties had never read and never seen ; and he did not see any reason for interposing to prevent counsel for the prosecution from doing the same. The examination would, therefore, be proceeded with.

Q. State whether on that examination, in the month of April, 1865, this question was asked you under oath, and the reply given here made :

"Q. When did you last see him ? (referring to Booth.)

"A. A day or two before this transaction."

A. I do not remember whether the word "last" was put in the interrogatory.

Q. Was your answer "A day or two before the transaction ?"

A. Very likely ; I cannot say positively that it was.

Mr. PIERREPONT. It goes on :

"Q. When ?

"A. He passed me on the avenue."

Do you remember that ?

A. I remember passing him several times on the avenue.

Q. Did you say that ?

A. Possibly so.

Mr. PIERREPONT. I will read on :



“Q. Did you have any conversation?”

“A. He was on horseback; only a few words; we passed the compliments of the day.”

Did you swear to that?

A. Possibly so. I often saw him on horseback, and often passed the compliments of the day.

Q. Did you swear that was the last time you did see him?

A. I cannot say that I did.

Q. Will you say you did not?

A. No, sir; I think it is very likely I did.

Q. Did you think it was a mistake?

A. I do not know whether I am most likely to be mistaken, or the man who wrote down the examination.

Q. I want to have you tell the jury.

A. I cannot say that I am more infallible than anybody else.

Q. Did you state then what he gave you?

A. No, sir; the reason I destroyed the paper was because I knew very well—

Q. Did you state that he gave you anything?

A. No, sir; those who were the wisest knew the least at that time.

Q. When you were asked, on that examination, when you had seen him immediately prior to that, did you answer “Not for some time.”

A. I had not seen him for some time, I think, before meeting him on the avenue.

Q. Then if it was two days before or later, it alluded to the time prior, did it?

A. I suppose it did.

Mr. PIERREPONT. I will read further:

“Q. Had you any conversation with him during that time besides passing the time of day?”

“A. Nothing that I remember.”

Q. Was that your answer?

A. Cannot possibly say.

Q. Did you state at that time that he gave you anything?

A. No, sir; I did not.

Q. You are sure of that?

A. Yes, sir.

Q. Your memory is good, you say?

A. I think, on that point, it is pretty good.

Mr. PIERREPONT. Let me read a little further:

“A. He presented me with a box in reference to a present I had made him.”

A. Oh, yes, sir; that occurred a long time before.

Mr. PIERREPONT continuing:

“Some personal ornament, &c.”

A. I remember such an occurrence as that. That didn't occur at the interview on the avenue, but at a prior time.

Q. My question is whether you said it did.

A. I remember saying then, during that examination, that he presented me with a box, but that was a long time—some several days—before this interview.

Q. Did you tell anybody that he presented you with this letter?

A. I did.

Q. I mean on this examination of which we have been speaking?

A. No, sir.

Q. Let me understand. When this question was asked you as to when you last saw Booth, did you say a day or two before this transaction, alluding to the assassination?

A. I do not remember that the word “last” was included in the form of the question. I may have been asked when I had seen him.

Q. Suppose you were asked that, what did you say? Did you say a day or two before this transaction?

A. Possibly.

Q. What is your memory about it?

A. It is possible I did say so.

Q. Did you say immediately after that that, you had not seen him but once on that day?

A. No, sir; but once in a long time. It strikes me I had not seen him for a day or two before that Friday, because I think I asked him where he had been that I had not seen him.

Q. When did you last see him before this transaction?

A. On the stage of the theatre that night.

Q. When last before that?

A. On the avenue.

Q. When last before that?

A. I cannot tell; I think it might have been a couple of days.

Q. Where had you seen him?

A. I think I met him up in the neighborhood of the theatre.

Q. What day?

A. I cannot positively say.

Q. Can you tell the jury whether you did say, in answer to a direct question as to when you last saw him, that it was a day or two before the transaction, alluding to the assassination?

A. A day or two, or thereabouts.

Q. You did say that?

A. Possibly.

Q. Then, in answer to the question as to when you last saw him, you did not state that you saw him on the 14th?

A. No, sir; not the last time.

Q. You did not state that?

A. No, sir.

Q. But you stated it was a day or two?

A. I stated that I had seen him a day or two before that. I do not remember of answering him before the last time.

Q. My question is, did not you state in reply to this question: "When did you last see him?" that you saw him a day or two before this transaction.

A. I say again, that I do not remember that "last" was included in the form of the interrogatory as to when I had seen him.

Q. Did you intend to convey the idea on that examination that you had not seen him for a day or two before the assassination?

A. I answered the question as it was put, I suppose.

Q. Didn't you intend to convey that idea?

A. I did not wish to have it understood that I had been with him that day, because I had understood that persons who had been seen speaking with him on that day had been interrogated—

Q. Did you intend to swear under oath that you had not seen him that day?

A. No, sir; because the question was not in the form you put it now.

Q. Did you so swear?

A. I do not think so, understanding the question as I do now.

Q. Didn't you understand the question then?

A. Possibly; but I did not understand the question to be then what it is now.

Q. Don't you say now to these gentlemen that you did not intend to let it be known that you had seen him?

A. Distinctly.

Q. Then if this question was put you: "When did you last see him?" did you say "A day or two before the transaction?"

A. Again I say, that I do not believe the word "last" was mentioned in the question.

Q. If it was mentioned was that your answer?

(No response.)

Q. Was the question asked you in these words: "When did you last see him?"

A. Again, I say, that I do not think the question was put in that form.

Q. Do you know what answer you gave?

A. A couple of days before.

Q. You say the reason that you did not want him to know that you saw him that day was, because you thought it might involve you?

A. Yes, sir.

Q. Didn't you answer that you saw him a day or two before the transaction?

A. I think likely.

Q. Didn't you think that that would involve you as much as to say that you saw him that day?

A. No, sir.

Q. Why not?

A. Because it was not so near the hour when the deed was done. I will say that before the Judiciary Committee I was allowed to read my examination before I signed it. I have not had the privilege this time. I am not sure that that is my examination correctly reported.

By Mr. MERRICK:

Q. The counsel has asked you the "whys" and "wherefores" of your doing several things; now, tell the jury why you destroyed that paper.

Objected to by Mr. Pierrepont.

WITNESS. I would like to state what occurred between Mr. Booth and myself at the interview when this paper was given to me.

The COURT. You cannot do that. The testimony relating to that paper has been ruled out.

WITNESS. Your honor, some of the newspapers have stated that I said that paper was given to me with an air of great secrecy, and in case anything should happen—

Mr. PIERREPONT interrupted the witness and stated that they could not undertake to contend with newspapers; that this was a serious trial in a court of law.

Mr. MERRICK submitted that the witness still being on the stand, if he found his testimony of the day before had been misunderstood by anybody, and wanted to make an explanation, it would be but extending a kindly privilege to allow him to do so. He says it has been stated in the public press that he stated yesterday this paper was handed to him with an air of great secrecy.

The COURT said the witness would be permitted to say whether it was handed to him with an air of great secrecy or not.

Mr. PIERREPONT said he did not object to his stating that.

WITNESS. I will say then that it was not. He simply said—

Mr. PIERREPONT. Stop if you please.

The COURT. You cannot state what was said on the subject.

THOMAS T. ECKERT sworn and examined.

By Mr. MERRICK:

Q. Have you ever seen this diary before. (Handing witness Booth's diary.)

A. Yes, sir.

Q. Did you ever see that letter on that loose leaf? (Handing witness Booth's letter in pencil to Dr. Stewart.)

A. I have.

Q. Is that the original letter obtained from Dr. Stewart?

A. I do not think it is, but I am not certain about it.

Q. Where is the original?

A. I saw it last in the War Department when I was here some time ago.

Cross-examined by Mr. PIERREPONT:

Q. Have you seen the paper that you speak of?

A. Yes, sir.

Q. The one you think is the original?

A. Yes, sir.

Q. Do you know whether it was part of this book, (the diary,) or a blank leaf from it?

A. I believe it to be a blank leaf from that book.

Q. Can you find the paper?

A. I do not know. It is my impression you have it. I last saw it in your possession.

Mr. PIERREPONT. I remember you showed me some paper when you were here before. Was that the one which you think is the original?

A. Yes, sir.

Q. Where did you get it?

A. Either from General Baker or his brother. It is my impression that I got it from General Baker.

Q. Won't you state when you got it?

A. I cannot give you the date.

Q. Do you remember its contents?

(Objected to by Mr. Bradley on the ground that as the paper had been traced to the possession of the gentlemen, they must first produce the paper before its contents could be spoken of or show that it has been destroyed or lost. Objection sustained.)

Q. Do you know in whose handwriting it was?

(Objected to by Mr. Bradley. Objection sustained.)

Q. Did you get the original from Dr. Stewart?

A. No, sir.

Q. Then you do not know whether it was the original or not?

A. No, sir; it is only my impression that it is the original.

Q. Who did you get it from?

A. I think from General Baker. I may be mistaken.

Q. Do you remember whether it was in an envelope or not?

A. It was not in an envelope.

Q. You have seen a copy of it as published in the newspapers, have you not?

A. I think it was there published, but I do not remember of having seen it.

Mr. PIERREPONT said he had not seen the paper in question since the day witness had alluded to, but it possibly might be in his possession among his papers.

(Judge Pierrepont here examined his papers, but did not find it, and, at the suggestion of Mr. Merrick to give him time for further search, the court at 11.50 a. m. took a recess for half an hour.)

On reassembling Thomas T. Eckert resumed the stand, and his cross-examination was continued by Mr. Pierrepont.)

Q. This is the slip of paper handed you awhile ago. (Exhibiting to witness leaf found in the diary of Booth.)

A. It is.

Q. Won't you look and see whether that is a part of the leaf of that diary. (Handing witness the diary and the leaf.)

(Mr. BRADLEY objected to the question. The jury could examine that matter for themselves. They did not want the opinion of the witness.)

The COURT said that he understood the witness to have stated in his examina-



tion-in-chief that he did not believe this paper presented here to be the original letter. He supposed the object of the question was to test his memory, and to ascertain the ground of his belief.

Mr. PIERREPONT said his object was to show that it was the only letter ever written by Booth to Dr. Stewart.

Mr. BRADLEY did not see how it followed that it was a letter written by Booth because it was taken out of the diary, which was the question.

Mr. PIERREPONT said counsel would see presently how it followed.

The objection being overruled, an exception was reserved.

Q. What do you say?

A. I think it came from this diary.

Q. Do you find where it was torn out?

A. I did find once. I have not looked since.

Q. Will you look at the paper and state in whose handwriting it is?

Mr. BRADLEY said it was wholly immaterial whether that came out of the diary or not. The question between them was what paper was sent by Booth to Dr. Stewart. The counsel for the prosecution had produced a letter which they claimed was sent by Booth to Dr. Stewart. They had placed General Eckert on the stand to show that that was not the paper which was sent by Booth to Dr. Stewart. Was it a matter of any consequence whether or not there were a half dozen letters written in that book and the paper was torn out of it? Did it tend to throw any light on the question as to whether or not General Eckert recognized the original? He had stated that that was not the original sent to Dr. Stewart.

The COURT said he understood that they now wanted to prove that this was the original, and he regarded any questions which would lead to that as admissible.

Mr. BRADLEY said he did not pretend to say that it was not proper for counsel to examine General Eckert to see whether this was the original or not. He had understood the witness to say, however, that the counsel had in his possession two papers at the time he spoke to him and that he pointed out the original; and that he did not regard the paper now handed to him as the one he so pointed out.

The COURT remarked that he understood he was trying to show this was the one.

Mr. PIERREPONT said that was his object.

The COURT. Proceed with the examination.

Q. Will you state whether that is Booth's hand writing?

Mr. MERRICK. Let me inquire first if you ever saw Booth write?

WITNESS. No, sir.

Mr. BRADLEY. Did you ever receive any papers from him, or act upon his writing in any way?

WITNESS. No, sir.

By Mr. PIERREPONT:

Q. State whether you are an expert in deciphering handwriting and all those things connected with it?

A. I have had a great deal of experience, and so far as my own business is concerned feel that I can judge pretty correctly.

Q. Compare that paper now with the writing in the book, and state in whose handwriting, in your judgment, is that paper?

A. In the handwriting of Booth.

Mr. BRADLEY desired to have it noted that he objected to the question and the answer, and reserved an exception.

Q. Have you ever seen any paper in the handwriting of Booth that was sent to Dr. Stewart, unless in your opinion this is the one?

A. No, sir.

Q. Never have?

A. No, sir; in the handwriting of Booth.

Q. You have been inquired of about another paper. Won't you tell us where you last saw that other paper?

A. In this book.

Q. Was it one of the leaves of the book?

A. I believe it was.

Q. The last time you saw it it was in that book?

A. Yes, sir.

Q. Won't you state where you saw it?

A. I handed it to you at the desk here.

Q. You have never seen it since?

A. No, sir.

Q. You never received any of the papers from Dr. Stewart?

A.

By Mr. MERRICK:

Q. Did you ever point out the difference in the two papers?

A. Yes, sir.

Q. Did not you tell Mr. Pierrepont that that was not the original paper that Dr. Stewart had?

A. I did.

Q. You told him the paper you got from Dr. Stewart was not that paper, but the other one that is not here?

A. The other paper which I have just stated I saw in this book is, as I believe, the original paper sent to Dr. Stewart.

Q. By Booth?

A. I do not know by whom.

Q. The paper you say that you believe to be the original one you last saw in the possession of the counsel on the other side?

A. Yes, sir.

Q. Was not the handwriting of that paper which you saw in the hands of counsel on the other side, like the handwriting of this one?

A. It did not seem to me to be in the same handwriting.

Q. Do you know in whose handwriting it was?

A. I do not.

Q. Did you compare it with any of Booth's handwriting?

A. Yes, sir.

Q. Was it a leaf of the diary?

A. I believe it was.

Q. The same diary as that?

A. Yes, sir.

Q. Was it attached or detached?

A. Detached.

Q. Did you see that one at the same time that you saw the one before you?

A. No, sir; not at the same time.

Q. When was the first time you saw that one?

A. I do not remember the date, but about the time I got the diary—when the diary first came into my possession.

Q. When the diary first came into your possession you saw that one that is now in the diary?

A. Yes, sir.

Q. When did you first see the other one?

A. It was after the examination of Dr. Stewart. I do not remember the date.

Q. How do you know that the other one is the original paper?

Mr. PIERREPONT objected. If he did not know the original paper he objected to his being asked how he knew.

Mr. MERRICK said the witness had stated that the other one was the original paper. He would ask him this question :

Q. How do you know it generally ?

A. It was the paper handed to me by Baker, and it is the paper described by Dr. Stewart in his statement.

Q. Which of the papers came to you first ?

A. This one.

Q. Then did you send for the other one ?

A. I did not.

Q. How did the other one come ?

A. It came after the arrest of Dr. Stewart.

Q. This one came to you with the diary. You never saw the other one until after the arrest of Dr. Stewart. When he was arrested the other paper turned up, and the other paper is described as the one he received from Booth.

By Mr. BRADLEY :

Q. Look at that paper before you, and see if it has ever been pinned together as though it contained any money, or anything else in it.

A. No, sir ; it doesn't seem to have been pinned.

Q. Has it any folds in it ?

A. Yes, sir.

Q. Was or not the paper to which you refer as the original pinned together as though it had contained the money referred to in the paper ?

A. Yes, sir ; it contained pin holes.

Q. Was that paper which you now have before you detached from the diary at the time you received it ?

A. It was.

Q. And enclosed in an envelope, or simply folded ?

A. I do not remember of its being folded.

Q. There are no marks in it showing that it had ever been pinned together ?

A. No, sir.

Q. The other paper had such marks in it ?

A. Yes, sir.

Q. State again the appearance of the paper. Was or not the other paper—the one that is not produced here—discolored or dirty, as though it had been carried in the hands of a servant, or some one else ?

A. It was.

Q. Is this one so ?

A. It is discolored, but not to the extent the other one is.

By Mr. MERRICK :

Q. What was your position relative to the government of the United States at the time these papers came into your possession ?

A. I was Acting Assistant Secretary of War, I think. My appointment as Assistant Secretary had been made out, but I do not think I had accepted it at that time.

By Mr. PIERREPONT :

Q. This paper that you spoke of the other day was in the diary when you first saw it ?

A. Yes, sir.

Q. How long after the evidence was given here by Lieutenant Baker about that paper that you spoke to me about it ?

A. It was after that examination, but how long after I do not know.

Q. And the paper that you were then shown, and which you last saw in the diary, was not in Booth's handwriting?

A. I do not believe it was.

Q. You have been asked to describe that paper. Will you now state what was written in it?

Mr. BRADLEY objected, as the paper had been traced to the possession of counsel.

Mr. PIERREPONT said he had no doubt that it had been here, for he remembered distinctly of having seen it. If it had been mislaid in any way it was very easy to show its contents, for it had been published, he believed, in the New York Herald.

Mr. MERRICK said it would first have to be proved that the paper was lost before oral testimony could be given of its contents.

The COURT said that would have to be done.

Mr. PIERREPONT said that the paper might possibly be found, as all the papers in the case had been placed in charge of Mr. Middleton, the clerk.

Mr. MERRICK did not understand that any papers had been placed in the hands of Mr. Middleton, except such as were offered in evidence. If any papers which had not been offered in evidence had been placed in his charge he desired to see them.

Mr. PIERREPONT said he should not offer any paper in evidence until counsel had an opportunity to see it.

By Mr. PIERREPONT :

Q. After Baker had stated in his examination that he had obtained this paper from Dr. Stewart, you then showed me this other paper which you last saw in the diary?

A. Yes, sir.

Q. It was not, you state, in your judgment, in Booth's handwriting?

A. No, sir.

Q. And you stated to me that you could not tell whether Dr. Stewart ever had it or not; that you did not get it from him?

A. I did.

By Mr. MERRICK :

Q. Didn't you state to the counsel that it was the one that Dr. Stewart had?

A. That was the impression I got from Stewart's statement.

Q. Did you or not tell Judge Pierrepont that Baker, who had just been examined, was mistaken about this paper, and that the other was the original?

A. I did not hear the statement made by Baker, nor was it explained to me by any one; but it was simply stated to me that Baker had identified this paper as being the paper taken from Dr. Stewart.

Q. Who told you that?

A. Judge Pierrepont.

Q. Then what did you tell him?

A. That I did not believe this was the paper; that Baker was mistaken.

Q. Did he have the original, or did you give it to him?

A. I gave it to him. The original was in my possession, and left by me in my safe at the War Department; and I presume not seen by any one until I returned here on the 28th or 29th of June. I then went and got the original and brought it down here and showed it to counsel, and left it with him.

Q. And you were then here under subpoena as a witness for the United States?

A. Yes, sir.

By Mr. PIERREPONT :

Q. And you left it in this diary?

A. Yes, sir.



By Mr. MERRICK :

Q. Did you tell the counsel that that paper came to you after Stewart's arrest?

A. I do not remember that I did.

By Mr. PIERREPONT :

Q. Did you ever tell him a word about Stewart's arrest, or that he even ever was arrested?

A. I do not think I did.

Mr. PIERREPONT. I want to understand from counsel, if this paper which has been alluded to can be found, whether they will let it go in without General Eckert being kept here to identify it.

Mr. BRADLEY. I have no sort of hesitation if the gentlemen will identify this paper in any way, to having it become evidence the same as though General Eckert were here to identify it.

Mr. PIERREPONT. If it should be impossible to find it we will want to prove by General Eckert its contents. As it has been printed we know what its contents were. It was published in the Herald.

Mr. MERRICK. How came it in the Herald? I will ask the witness if he ever furnished a copy of it?

A. No, sir. I have not seen the publication alluded to; I have heard of it.

By Mr. PIERREPONT :

Q. You testified about this before, I believe?

A. Yes, sir; before the Judiciary Committee.

By Mr. MERRICK :

Q. You testified, I think, that that was not the original paper?

A. This (referring to the paper in his hand) is in my opinion the original paper written by Booth.

By Mr. BRADLEY :

Q. But is that the paper sent to Dr. Stewart?

A. That I cannot say.

By Mr. PIERREPONT :

Q. Was not this diary before the committee?

J. A. W. CLARVOE recalled by the defence.

By Mr. BRADLEY :

Q. Were you in Canada in April, 1865?

A. Yes, sir.

Q. State, when you started to Washington, where you started from in Canada?

A. From Montreal.

Q. At what time of day?

A. 3.15, I think.

Q. What time did you get to Albany?

A. I did not come by way of Albany.

Q. Which way did you come?

A. By the way of Springfield, Massachusetts.

Q. What time did you get to New York?

A. I left Montreal on the 22d at 3.20 and got to New York about two o'clock on the following day, the 23d.

Q. You were about twenty-three hours then in coming from Montreal to New York?

A. Yes, sir.

Q. Is that the shortest route?

A. I was informed so; that it was the quickest route. In my first trip to Canada, through Troy to White Hall, and there took the steamer to Canada; coming back by way of St. Albans.

Q. Did you go on straight there?

A. Yes, sir.

Q. At what time did you leave New York for Canada, when you went by way of Albany and Troy?

A. I left that night about ten o'clock.

Q. What time did you get to Albany?

A. I do not know, as I passed through there in a sleeping car.

Q. What time did you get to Montreal?

A. I got to Montreal at ten o'clock on Saturday the 22d.

Q. Can you tell about the time between Albany and Montreal?

A. I cannot.

Q. Can you state the time between New York and Albany?

A. I am not positive that I can.

Q. You can come pretty near it?

A. I should judge it to be about five hours.

Q. From Albany to Montreal, then, is twenty-four hours less five?

A. Yes, sir.

Mr. BRADLEY. Nineteen hours?

A. Yes, sir.

Q. Did you ever travel west from Albany?

A. Yes, sir.

Q. What is the time from Albany to Syracuse?

A. I do not know.

Q. What is the time from Albany to Buffalo?

A. That I do not know; I have never taken any minutes of my travels on those routes at all.

JOHN T. FORD recalled and examined.

By Mr. BRADLEY:

Q. Were you in Carroll prison with Weichmann?

A. I was there, I think, thirty-nine days and a half.

Q. Did you tell him that he was mistaken as to the time when Pescara was performed?

(Question objected to by the district attorney. Objection sustained.)

Q. Did he ask you what night Jane Shore was performed?

(Question objected to by the district attorney as irrelevant and collateral, and on the ground that the witness, Weichmann, stated he did not remember. Objection sustained, and exception to the ruling noted.)

Q. Did he state to you, while in Carroll prison, in the presence of two other persons, that the reason he had no clean clothes there, or was short of clean clothes, was that he had left his clothes at Mrs. Surratt's to go into the wash?

(Question objected to by the district attorney on the ground that the witness, Weichmann, in response to the question said he did not remember.)

Mr. Merrick. (referring to Weichmann's testimony,) said that to this question the witness answered positively "No, sir."

The COURT said then the question might be answered.)

A. He stated that in substance.

Q. This question was asked the witness Weichmann. "I ask you if you did not tell Jarboe and some one else in the Carroll prison that being taken before Mr. Stanton and interrogated as to what you knew, if you knew anything of the parties engaged in the plot to murder the President, you did not say you did

not know anything?" The reply was, "No, sir; I do not remember that." Were you present in any such conversation?

(Question objected to by the district attorney. Mr. Merrick said he supposed if Mr. Ford was the same one else the foundation had been sufficiently laid. Objection sustained.)

Q. Was John M. Lloyd in Carroll prison with you?

A. Yes, sir.

Mr. MERRICK read from the cross-examination of the witness, Weichmann, "Didn't you tell Mr. Lloyd on your examination below that you had sworn to a whisper? A. I do not remember; I may have told him so; I believe that I did.

Q. Do you remember what his reply was? A. No, sir."

Mr. MERRICK said he proposed to prove by this witness what Mr. Lloyd said in reply.

The COURT said he could not do that, Weichmann testified that he did not remember what Lloyd said.

Q. Did Weichmann tell you that he had told the Secretary of War where John Surratt was at the time of the assassination?

A. He did.

Q. What did he say?

(Question answered by witness.)

Mr. PIERREPONT asked to have the answer just given stricken out, as it did not relate to anything Weichmann had testified to. The Court so directed.

Q. I ask you if he did not tell you he knew where John Surratt was at the time the assassination took place?

A. He told me that he told the Secretary of War.

Cross-examined by Mr. PIERREPONT:

Q. What did he tell you he told the Secretary of War?

A. To the best of my recollection he told me that John Surratt was in Canada, Montreal, and that he had seen a letter from John Surratt received the day of the assassination, dated the 12th, I believe.

By the DISTRICT ATTORNEY:

Q. How long has it been since these conversations occurred to which you have testified?

A. I think they occurred the first week in May, 1865, to the best of my recollection.

Q. Did you make any note of them at the time?

A. I did make some memoranda of what occurred in prison at the time I was there.

Q. Did you of conversations that took place?

A. Not specially.

Q. Then do you recollect of making notes of these conversations with Weichmann?

A. I cannot say I ever made a note of that special conversation.

Q. Do you recollect stating what he said shortly afterwards?

A. I have talked with the people connected with my establishment in regard to this whole conversation.

Q. When did this conversation impress itself upon your mind?

A. I was affected by his evidence at the military court. It rather startled me that he should contradict to such an extent his statements to me.

JAMES L. MADDOX recalled and examined.

By Mr. MERRICK:

Q. Were you in Carroll prison with Mr. Weichmann.

A. I was.

Q. This man sitting here? (Pointing to Louis J. Weichmann.)

A. Yes, that man sitting behind Judge Pierrepont.

Q. Did you go up to the War Department with him to Mr. Bingham's office?

A. I do not know whether it was Mr. Bingham's office, or in what department; it was in Winder's building.

Q. Did any officer of the government at that time tell Weichmann that unless he testified to more than he had already testified that they would hang him?

(Question objected to by the district attorney. The court had already ruled on the same question.)

The COURT asked whether the object was to put this in as a substantive fact, or to contradict Mr. Weichmann.

Mr. MERRICK replied as a substantive fact first.

The COURT said counsel must confine it to this trial.

Mr. MERRICK said he did not know whether any trial was designated.

The COURT replied that the witness could be asked as to that.

Q. Was there any particular trial referred to at that time?

A. I think there was.

By the COURT:

Q. When was that conversation?

A. In the month of May, 1865.

By Mr. BRADLEY:

Q. Was it before the military commission?

A. It was while the trial was going on.

Q. Before he had been examined as a witness?

A. I think it was after he had been examined.

Q. After he had been examined by the military commission?

A. I think so; I will not be positive.

Mr. MERRICK said then he put the question and he understood the court to rule it out.

The COURT said he did unless it was proved that Weichmann on this occasion referred to the trial of John H. Surratt. The question was excluded when asked of Weichmann, and counsel must expect the same rule to be applied to this witness.

By Mr. MERRICK:

Q. Did Weichmann ever say to you that an officer of the government had stated to him that unless he testified more they would hang him?

(Question excluded as irrelevant. It could not be proved as a substantive fact upon this trial.)

Q. I ask you whether Mr. Weichmann said to you that he was told by Mr. Bingham that if he did not state, more fully than he had done, all he knew, he would be treated as one of the conspirators—not these precise words, but the substance?

The COURT asked whether that related to this trial.

Mr. MERRICK said he understood that objection to it was withdrawn, and he offered it as a substantive fact.

The COURT said the question was inadmissible. A witness could not be contradicted, except in reference to a fact which could be given in testimony as tending to prove or disprove the offence alleged.

Mr. MERRICK stated that he had no other witness present in court. One other witness was expected to-day, and he had learned, by telegram, that he would be here to-morrow. The defence would be able to close their case to-morrow, and would have done so to-day, if their witnesses had been present.

The court thereupon took a recess until to-morrow at 10 o'clock, a. m.



THURSDAY, July 18, 1867.

The court was opened at 10 o'clock.

REV. L. ROCCOFORT sworn and examined.

By Mr. MERRICK :

Q. State if you know Louis J. Weichmann.

A. Yes, sir.

Q. Did you ever have any conversation with him?

A. Yes, sir.

Q. Outside of the "confessional?"

A. Yes, sir.

Q. Did he ever tell you that he was employed in an office in the War Department, and engaged to send information to the southern confederacy?

The district attorney objecting, Mr. Merrick read from page 321 of Weichmann's testimony, to show that he said he had never given to Mr. Roccofort any such information as it was now sought to show he had given.

The DISTRICT ATTORNEY said it was a cardinal rule, with which all were familiar, that a witness could not be asked a collateral question with a view of afterwards contradicting him. The question which was asked in this instance being a collateral one, the counsel were bound by the answer. The charge in the indictment was a charge of a conspiracy to murder; in pursuance of which conspiracy the parties therein named did kill and murder the deceased. Could the fact, if it be a fact, that this witness took advantage of his official position to furnish information to the South, tend to throw any light upon the issue then before the jury, as to whether there was such conspiracy, and whether the object of that conspiracy was carried out? If what was proposed to be proved was evidence for any purpose, it was to cast a cloud of suspicion upon the witness, in other words, to show that he was an accomplice. It did not tend to show that it was such. But even if it did, it would not be contended that the testimony of an accomplice was not to be received, and was not entitled to the same weight as that of any other witness when he was corroborated by others. He submitted that whatever was the object, whether to show that this witness was an accomplice or a co-conspirator, it must be done by witnesses who could prove facts tending to show his connection with it, but not in the indirect way proposed by asking him certain questions calculated or intended to cast a cloud of suspicion upon his testimony, and then inquiring of another witness as to whether he had not made a statement inconsistent with that to which he testified.

Mr. MERRICK said that there were two grounds upon which they offered this proof. In the first place, they charged that if there was any conspiracy at all, Weichmann was in that conspiracy. That his testimony was the testimony of an accomplice, seeking to save his own life by the betrayal of his associates. The testimony as given went far to establish that fact. If he was an accomplice, it became a substantive fact which they had a right to prove, and they had the right to prove it for the reason that the law said that the testimony of an accomplice was to be taken with great caution by a jury. The English rule was that the party could not be convicted on the testimony of an accomplice alone. That such was his character, and such were the inducements held out to him to falsify, that the temptation was too strong to entitle his testimony to the same weight that would be given to that of a man who was not in a position to be influenced by those temptations. A conviction could not be had on the testimony of an accomplice alone. If a conviction was had, the court would set the verdict aside. The testimony of an accomplice must be corroborated by other evidence.

The DISTRICT ATTORNEY said he never had asked and never would ask the conviction of a party upon the uncorroborated evidence of an accomplice, but the

point he submitted was that, if the defence charged Weichmann with being an accomplice, they must prove it by witnesses who could testify to facts within their own personal knowledge tending to show it, and not by asking the witness a collateral question, and then introducing other witnesses to contradict him. He did not wish to be understood, however, as admitting that Mr. Weichmann was an accomplice or a co-conspirator, or that he had done anything inconsistent with the character of a faithful public officer. He had argued the question upon the theory of the defence, simply assuming that position for the sake of the argument.

Mr. MERRICK held that if the act of the accomplice was a substantive fact which he had a right to prove, he had a right to inquire of the witness regarding it and then to contradict his statement by the testimony of other witnesses. He was only prevented from contradicting the statement of a witness on the stand when he inquired of him with regard to a matter which was not a substantive fact, but entirely collateral, and which could have no influence in determining the issue before the jury. If, then, the fact that he was an accomplice was a substantive fact, which might influence the decision of the jury upon the issue before them, they had the right to ask him, first, whether he was so or not, and if he replied in the negative, to prove he was by other witnesses; or they had the right to ask him whether he had done certain acts, the doing of which acts would be facts from which it might be inferred that he was an accomplice. He proposed to prove by this witness that Weichmann stated that his business in the War Department was to hold the office he then occupied under the federal government for the purpose of aiding the rebel government at Richmond; and that in his office he received information in an official capacity as an officer of the United States, which he did communicate to the confederate government at Richmond. Was not that fact a fact from which it might be inferred that he was an accomplice?

The COURT said it was if he should prove that the confederate government was the principal in the murder of Mr. Lincoln.

Mr. MERRICK replied that the court had admitted testimony showing the sympathies of the parties with the one government or the other, and why? Did the court admit it because the confederate government was the principal in the murder of the President? He was free to confess that he did not at the time understand the ruling of the court, but he was acting in this case in accordance with the rules as laid down by his honor, and not according to his own views. By the ruling of the court they had the right to show the feelings and sympathies of this witness as between the rebel government and the government of the United States. He therefore submitted that in their judgment this testimony was admissible under the ruling of the court upon two grounds: First, as a fact which might tend with other facts to show that he was an accomplice; and, secondly, as a fact showing his sympathies, as the court had allowed the sympathies of other witnesses to be shown.

The COURT said the rule of law in regard to allowing questions to be put to a witness on cross-examination with a view of showing his sympathy, disposition, and temper in the case, was one thing; but a proposition to show such by other and independent witnesses as a substantive fact was another and quite a different thing. It was a well-settled and familiar rule of law that the witness might be cross-examined (and the ruling was first made for the defence in this case) with a view of ascertaining the temper and disposition of the witness. When counsel, however, came to examine another witness in order to contradict what had been said by a former one on his cross-examination, they were confined in the examination of that witness to those matters which were relevant and pertinent to the issue. He did not see how proof as to whether Weichmann was in this office for the purpose of assisting the confederate government could tend to throw any light upon the issue in the cause. Suppose it were proved by a host

of witnesses that he was there; that he was placed in that office by some chicanery and fraud, for the purpose of communicating information to the rebel government; unless it could be shown that it was part of the plan of the rebel government to murder President Lincoln, the testimony would be altogether irrelevant. If it could be shown that that was a part of their plan, and that Weichmann was a party that was engaged for the purpose of giving information in order to aid them in effecting that plan, then the evidence would be admissible. Counsel, however, had asked Mr. Weichmann on cross-examination whether or not he ever had any conversations with Mr. Rocoffort, in which he told him he was employed to furnish information to the rebel government. They were estopped by the answer of the witness from proceeding further, for the reason that when they came to test the matter as to whether or not they could have given this evidence as a distinctive, substantive fact, as tending to prove their side of the issue, it would be found they could not do it. The question is therefore overruled.

Mr. MERRICK reserved an exception.

Reverend JACOB A. WALTER sworn and examined.

By Mr. MERRICK:

Q. State to the jury where you reside.

A. In Washington, at the corner of 10th and G streets.

Q. Did you know the late Mrs. Surratt?

A. Yes, sir.

Q. State whether or not you were her spiritual adviser.

(Objected to by Mr. Pierrepont as irrelevant. Objection sustained. Exception reserved.)

Q. State whether or not you administered the consolations of religion to her on the day she was hung.

(Objected to by Mr. Pierrepont as irrelevant. Objection sustained. Exception reserved.)

Q. Were you present when she was led from her cell to be executed?

A. I was.

Q. State to the jury whether or not she avowed her innocence at that time.

(Objected to by Mr. Pierrepont as irrelevant. Objection sustained. Exception reserved.)

Mr. MERRICK. I now propose to ask this question:

Q. Did or not Payne, just before he was led to the gallows, declare to you and General Hartranft that Mrs. Surratt was perfectly ignorant of any conspiracy to murder the President, or of any conspiracy to abduct him?

(Objected to by Mr. Pierrepont as irrelevant. Objection sustained. Exception reserved.)

JOHN J. REEVES sworn and examined.

By Mr. BRADLEY, Jr.:

Q. Where do you reside?

A. In Montreal, Canada.

Q. What is your occupation?

A. Tailor.

Q. Do you know the prisoner at the bar?

A. I do.

Q. Did you ever make any clothes for him in Montreal?

A. I did.

Q. State what garments you made for him.

A. I made a Garibaldi.



Q. When was that ?

A. In April, 1865.

Q. Can you state what day of the month ?

A. Between the 8th and 9th.

Q. Describe it.

A. It was a Garibaldi of cloth; a pleated garment with the pleats in front; also in the back. The wristbands were plain, same as the shirt, with a belt round the body.

Q. What was the belt made of ?

A. Of the same material.

Q. Describe how it buttons in front.

A. There are, I believe, about four buttons in front, and one in the belt.

Q. Do you recollect the color ?

A. It is of a cloth mixture.

Q. Have you any doubt that this is the gentleman that bought that coat ?

A. This is the gentleman that bought the coat.

Q. Did you see him after the purchase of this coat ?

A. I did.

Q. Where ?

A. At my own place.

Q. What do you mean by your own place ?

A. In the store.

Q. About what time ?

A. I think I could tell very near by reference to my cash book. I could tell by that what time I received my pay.

Q. Can you approximate to the day without the aid of your cash book—was it before the 20th of April ?

A. O, yes, sir; before the 20th.

Q. Was it after the 18th ?

A. I should think it was near about that time; as near as I can recollect, between the 11th and the 18th. He left his measure on the 8th or 9th, and it then took some time to make the garment up.

Q. Have you your measure book in town ?

A. Yes, sir; it is at the hotel.

Q. Do you recollect when he returned to Montreal, and where he went ?

A. I do.

Q. State about what time he returned and where he went.

A. He returned to Montreal, and came to me and said that the coat was too tight around the neck. I altered the coat and made it larger around the neck. I asked him where he was staying, he having commenced talking with me about one thing and another.

Q. About what date was that ?

A. In fact I could not say; somewhere between the 11th and the 18th.

Q. Did you see anything of him on his return to Montreal; what do you know of his staying at Montreal ?

A. I saw him at the hotel.

Q. Did you see him anywhere else ?

A. Yes, sir; I saw him at Father Lapierre's. That is where I first got acquainted with the gentleman. From thence he came to my place, and I made him this garment.

Q. Did he stay any time with you ?

A. Yes, sir.

Q. How long ?

A. About two days, I think.



By Mr. BRADLEY, Sr.:

Q. You say he staid with you about two days. What was the interval of time between his getting the clothes and his coming to your house to stay?

A. There was an interval of five days, I think.

Q. You can state whether he was lying there privately and concealed?

A. No, sir. He was in my room opposite the post office. The window was open and everything of the kind.

Q. Where did he go from your place?

A. A gentleman by the name of Mettevie came and got him at my place. They went away in a carriage and I went with them. He said he wanted to drive over to Long Point, and we did drive there.

Q. How far did you go?

A. I went about thirteen miles.

Q. After the lapse of five or six days from the time you furnished him these clothes you saw him again, and he then came and staid two days?

A. Yes, sir.

Q. And from that point he went with Mr. Mettevie to Long Point?

A. Yes, sir.

Q. Did you see him afterward?

A. I did not.

Q. Did you see him shortly before he left for Europe?

A. I did.

Q. Where was that?

A. At my door.

Q. In the interval between the time you left with Mr. Mettevie, and up to that time, you did not see him?

A. I did.

Q. You did not see him in the interval?

A. No, sir, not in the interval; but having forgotten a small stick which he had, he came over with two other parties to get it. My wife had put it away somewhere and we could not find it. Therefore I told the party with him I would return the stick when found, and I did so.

Q. For the two days he was at your house was it possible for him to have been absent ten or twelve hours without your knowing it?

A. No, sir.

By Mr. BRADLEY, Jr.:

Q. Do you know Mr. H. B. St. Marie?

A. I know him by reputation, not personally.

Q. Where do you know him by reputation?

A. In Montreal.

Q. Do you know his reputation for truth and veracity?

(The DISTRICT ATTORNEY objected, on the ground that before a witness should be permitted to state the general reputation of a party for truth and veracity, or to express an opinion as to whether he should be believed on oath or not, the court should be satisfied that he possessed sufficient knowledge to enable him to pass that opinion. He held that the examination of this witness had not evinced such knowledge on his part. Mr. Bradley said he thought he had shown that the witness was possessed of such knowledge. For the purpose, however, of more clearly ascertaining this fact, he would interrogate the witness further.)

Q. Did St. Marie reside in Montreal?

A. So I understood. He used to formerly.

By the DISTRICT ATTORNEY:

Q. Do you know the fact, yourself, that he staid in Montreal?

A. Yes, sir.

Q. Do you know where he lived?

A. No, sir. I do not know him personally.

Q. All you know of his residence there is what you heard from others?

A. Yes, sir.

By Mr. BRADLEY:

Q. When you say you did not know him personally, do you mean that you are not personally acquainted with him?

A. Yes, sir. I know him by sight, but I am not personally acquainted with him.

Q. You know that he did reside in Montreal?

A. Yes, sir.

Q. But did not know where his dwelling was?

A. No, sir.

By the DISTRICT ATTORNEY:

Q. I will ask you if you know from your own personal knowledge that he resided in Montreal?

A. Yes, sir.

Q. How do you know?

A. I saw him there.

By Mr. BRADLEY:

Q. I will ask you whether the same man you spoke of was not there as a clerk in a government office?

A. Yes, sir. He was in a bank in Montreal.

Q. When?

A. That is, in fact, more than I can tell.

By the DISTRICT ATTORNEY:

Q. Did you yourself see him in the bank doing business, or do you know it simply from others?

A. All I know is from others.

Q. You have no personal knowledge on the subject?

A. No, sir.

By the COURT:

Q. What is your personal knowledge as to his residence there? How long time do you know, of your own knowledge, that he was residing in Montreal?

A. I should think off and on for about two or three years.

Q. During what years did he reside there?

A. I could not exactly tell the time.

Q. Cannot you fix some approximate time?

A. No, sir; I could not.

Q. During the years 1860-'61-'62-'63-'64-'65?

A. Before 1860.

Q. How long before?

A. I could not exactly say.

Q. Was it as far back as 1855?

A. It might be between 1855 and 1865.

Mr. BRADLEY said they expected to prove the exact time by another witness. He then said, I desire to know, if he cannot fix the date by any other means. He would ask him whether he didn't leave there after the breaking out of the rebellion in the United States?

A. I was not there then.

Mr. BRADLEY said they would postpone any further examination on this point until they fixed the time by another witness.

Cross-examined by Mr. PIERREPONT:

Q. What business are you engaged in ?

A. I am a tailor.

Q. Were you a tailor in 1865 ?

A. Yes, sir.

Q. Where was your shop ?

A. It was on Notre Dame street.

Q. Keeping it yourself ?

A. Yes, sir.

Q. You saw the prisoner there ?

A. Yes, sir.

Q. What time ?

A. Early in April, 1865.

Q. What day ?

A. I could not exactly tell you the day.

Q. Cannot you tell when he got his measure ?

A. I can show you by my books.

Q. Can you tell without your books ?

A. Some time between the 8th and 9th.

Q. When did you next see him ?

A. I saw him at Father La Pierre's.

Q. When ?

A. About the same time ; the same week, in fact.

Q. What day did you see him next ?

A. He came back with his coat to get it altered. I could not state exactly the day when he did come.

Q. When did you next see him after the 8th or 9th ?

A. I should think about the 11th.

Q. When did you next see him ?

A. At Father La Pierre's.

Q. When ?

A. That is more than I can tell you, exactly when. I saw him before he started for Europe.

Q. Can you tell about when it was ?

A. I could not exactly say.

Q. Was it in April ?

A. Yes, sir.

Q. What day in April ?

A. I cannot tell.

Q. You saw him at Father La Pierre's on the 11th ?

A. Yes, sir.

Q. How many days after meeting him there did you next see him ?

A. I was in my place.

Q. How many days after you saw him on the 11th before you ever saw him again ?

A. I could not exactly tell you.

Q. I do not ask you to tell me exactly. About how many days was it ?

A. I could not exactly say the perfect time.

Q. I do not want you to say exactly the perfect time. About how many days after the 11th did you see him ?

A. About five or six days.

Q. That would bring it up to somewhere about the 17th or 18th when you saw him ?

A. Yes, sir.

Q. You saw him somewhere about the 17th or 18th ?

A. Yes, sir ; about that time, supposing——

Q. Somewhere between the 17th and 20th, you saw him the next time ?

A. Yes, sir.

Q. When did you next see him ?

A. When he was going.

Q. When was that ?

A. I could not say, further than that it was in the latter part of April.

Q. You saw him some time between the 17th and 20th of April, and then you say you saw him again after that. How long after the 17th of April ?

A. As I said before, when this Mr. Mettevie came and got him at my place, we rode down to Long Point.

Q. When did he come and get him ?

A. I could not say exactly.

Q. How many days did he stay at your place ?

A. Two.

Q. He wasn't concealed any ?

A. No, sir.

Q. Who did you say came and got him ?

A. Mr. Mettevie.

Q. At the end of the two days this man came in a carriage to get him, and you all rode off together ?

A. Yes, sir.

Q. Was there another party with him ?

A. There was a brother of Mr. La Pierre with him.

Q. What did they do ?

A. We went down to Long Point.

Q. What time of day was it ?

A. About five or six o'clock in the afternoon.

Q. Was it light, or dark ?

A. Light.

Q. Light when you got there ?

A. Yes, sir.

Q. How long did it take you to go ?

A. About an hour and a half.

Q. What day of the month was it when you got there ?

A. I could not state that.

Q. What day of the week ?

A. That is more than I can tell you.

Q. Can you tell the year ?

A. I just told you ; 1865.

Q. Are you sure about that ?

A. I am.

Q. Was it in May ?

A. No, sir.

Q. Was it in April ?

A. It was in April.

Q. Was it in the forepart of April ?

A. No, sir ; the latter part of April.

Q. Was that Father La Pierre's house ?

A. No, sir.

Q. You said that this man and you and Father La Pierre's brother went with the prisoner down somewhere.

A. I do not know where they went afterwards.

Q. To whose house did you go with him ?



A. We went to a place there, and I left him in a tavern at Long Point.

Q. Did you leave the carriage?

A. No, sir; the carriage brought me back.

Q. Did Father La Pierre's brother come back with you?

A. No, sir.

Q. Who did you leave him with?

A. Mr. Mettevie.

Q. In the tavern?

A. Yes, sir.

Q. And you never saw him after that?

A. No, sir.

Q. That you are sure of?

A. Yes, sir.

Q. Did you make any clothes for him except the Garibaldi jacket?

A. Yes, sir; I made a pair of pantaloons.

Q. Anything else?

A. No, sir.

Q. Did you make any priest's garments for him?

A. No, sir.

Q. Did you see him with any one?

A. No, sir.

Q. You never saw him after that time?

A. No, sir; I never saw him after I left him down below.

Q. How many of you went with him?

A. Three in the carriage.

Q. Three besides him?

A. No, sir; two.

Q. You were one, Father La Pierre's brother was two, Mr. Mettevie was three, and the prisoner was four. Then there were four, weren't there?

A. Yes, sir.

Q. Why did quite so many of you go?

A. Because it was a pleasant evening.

Q. On account of the pleasantness of the evening?

A. Yes, sir.

Q. He never came to you any more?

A. No, sir.

Q. You never saw him again?

A. No, sir.

Re-examined by Mr. BRADLEY:

Q. How about the stick of which you have spoken. Did he ever get that cane back from you?

A. I think he did.

Q. When was that, and where?

A. At Montreal.

Q. Didn't you see him then?

A. Yes, sir; when he went away.

Q. When you tell this gentleman that you never saw him after you left him at that tavern, do you mean that he didn't come back to get that stick?

A. He came back to get the stick.

Q. Then you did see him again?

A. Yes, sir. I was not recollecting about the stick. It was a small ratan. I have never seen it since.

Q. When you answered Mr. Pierrepont when he pinned you so strongly, that you never saw him after you left him at that tavern, you do not mean to say that you did not see him when he came back and got the stick?

A. No, sir; he did come back and get the stick.

By Mr. PIERREPONT :

Q. Then you were mistaken in your answer to me when I pinned you, as the counsel says, so strongly ?

A. It is very hard, in fact, to recollect.

Mr. PIERREPONT. Yes, it seems to be.

SARSFIELD B. NAGLE sworn and examined.

By Mr. BRADLEY :

Q. State where you reside.

A. In Montreal, Canada.

Q. What is your profession ?

A. I am an advocate, of the firm of Nagle & Pagner.

Q. How long have you resided in Montreal ?

A. Since 1859, permanently. I was there before that time as a student at college.

Q. State, if you please, whether, since 1859, you have known H. B. St. Marie, who was examined as a witness in this case, as a resident in Montreal.

A. In 1858, 1859, 1860, and 1861, I believe he boarded at the same hotel where I did. The hotel was on two streets—at least, there were two hotels owned by the same proprietor. He was on one side, and I on the other.

Q. Had you any personal acquaintance with him ?

A. Not personal. I saw him frequently and heard him speak, but I was not intimate with him.

Q. Do you know the fact of his residing there during those years ?

A. I know he was in Montreal at that time. I did not watch him particularly, but he was there certainly.

Q. At what public institution or college were you educated ?

A. When in Montreal at the St. Mary's Jesuit College.

Q. Did you know there Dr. McMillan, who has been examined as a witness in this case ?

A. Yes, sir.

Q. Have you known him ever since ?

A. Yes, sir.

Q. Did you know him while he was residing in one of the parishes between Montreal and Quebec, or two of them ?

A. No, sir ; I was not aware he resided in one of those parishes. I knew him when he resided in Lennoxville.

Q. Had you or not frequent occasion to visit that neighborhood ?

A. Yes, sir ; I had business there very often during the summer months when I had nothing to do in Montreal, but to attend to some land affairs for my father.

Q. You knew him also in Montreal, did you ?

A. Yes, sir ; I knew of his going to the university, and taking his degree of Doctor of Medicine.

Q. State, if you please, whether you thus had opportunities of learning and knowing the general character, among those with whom he associated, of the witness McMillan.

A. I had opportunities of knowing him since he left the college more particularly than when he was there.

Q. I mean since he left the college, and while he was pursuing his profession in Lennoxville, or elsewhere ?

A. I had more opportunity of knowing his character from hearsay at Lennoxville than elsewhere.

Q. General report ?

A. Yes, sir ; general report.

Q. Now state whether it was good or bad for truth and veracity. I speak of his general character, among those with whom he associated, for truth and veracity. Had you thus opportunities of learning and knowing his general character for truth and veracity?

A. I have heard it spoken of.

Q. Generally?

A. Yes, sir; generally.

Q. Was it good or bad?

A. It was not good.

Q. Was it good or bad?

A. I should consider it was bad from common report.

Q. From that general reputation as to his truth, would you believe him on his oath?

A. I would have great doubt about it if I were interested myself.

Cross-examined by Mr. PIERREPONT:

Q. Won't you please tell us what gentleman you ever heard speak against the character, for truth and veracity, of Dr. McMillan?

A. I have heard a number.

Q. Who?

A. I have heard Antoine Trudeau, of Waterloo.

Q. When?

A. In the month of March, I think it was.

Q. What March?

A. Last March.

Q. What was he speaking about?

A. He was in my office in Montreal.

Q. What was he talking about?

A. We happened to speak about this trial—John Carroll and some others—in Montreal.

Q. You were talking about this trial?

A. The trial hadn't then commenced; but we were talking about the arrival of the vessel containing the prisoner; I believe he had not arrived at that time.

Q. That is what you were talking about?

A. Yes, sir.

Q. Had you then heard of or seen any statement that had been made about him?

A. I had not at that time; Trudeau had.

Q. He spoke about it, did he?

A. The way the conversation arose was this: He asked me if that was the same McMillan who had resided at Waterloo.

Q. You were speaking of the statement McMillan was said to have made in relation to the prisoner, were you not?

A. We were not.

Q. What you were saying had nothing to do with the prisoner?

A. It was relative to his coming to this country in the vessel, and his capture in Alexandria. Trudeau asked me if it was the same McMillan who resided in Waterloo, who had made this complaint; then I hadn't seen the complaint, and didn't know anything about it; my impression was, that it was on somebody else's complaint; I was surprised when Trudeau told me that McMillan was the party who had denounced Surratt.

Q. You say you were surprised?

A. I was.

Q. Tell us why you were surprised that McMillan had denounced Surratt.

A. Because McMillan being a friend of mine and a school-fellow, it took me by surprise that he should be a party from Canada who should find out this young man who had got away to a foreign country.

Q. Tell the jury why you were surprised that McMillan, who you say was a friend of yours, should have told of the whereabouts of this man who was supposed to be one of the assassins who had got into a foreign country.

A. I had understood that there was a reward offered, and I was surprised that a person at such a distance as McMillan should come forward and give information to take this man's life; I considered him in the light of an informer.

Q. It was that that surprised you?

A. And the fact of my being acquainted with the person.

Q. You had been well acquainted and were a friend of McMillan?

A. We were at the same college together.

Q. Schoolmates?

A. We were not in the same class, but we were in the same college.

Q. Tell the jury whether, when you and McMillan were in college together, he was then considered a liar?

A. I never entered into particulars concerning him.

Q. Did he bear such repute?

A. No; he did not.

Q. While your friendship continued with him he did not bear the repute of a liar?

A. I never took the trouble since he left the college to inquire.

Q. Did you ever hear such a thing, while you and he were friends, that he bore the character of a false man, or a liar?

A. I did not; if I had heard it I would have ceased to be a friend of his.

Q. Your surprise arose from the fact of his giving this information, didn't it?

A. I have answered that question.

Q. Was there any other thing that surprised you?

A. Nothing more than that.

Q. Did you take any part in this war that our country has been through?

A. No, sir.

Q. Did you manifest any sympathy for the one side or the other during the war?

A. Yes, sir. During the time of the Trent affair I felt a slight leaning towards the South.

Q. Did you feel a slight leaning towards the enemies of our country afterwards? for the people in the south were not all rebels. There were a great many good Union people there, and they suffered more than we at the north.

Mr. BRADLEY. They did not make as much money as some of us.

WITNESS. I never had any strong sympathies with either side. I had friends on both sides.

Q. What side did you take during the struggle?

A. My sympathies were more towards the South than the North, though I had no interest whatever. I had no particular interest. My sympathies were only excited when the Trent affair arose, and we were called to arms in Canada.

Q. Were any public charges made against you in Montreal?

A. No, sir; not that I am aware of.

Q. Have you any idea to what I allude?

A. I have not.

Q. Were you not public prosecutor or something of the kind there?

A. No, sir; I never was.

Q. What is the office that is known here as "public prosecutor" called there?

WITNESS. The office you are now occupying?

Mr. PIERREPONT. Yes, sir.

WITNESS. It is the attorney general who is supposed to prosecute, but he delegates that power to another gentleman to represent him.

Q. Were you ever so engaged?

A. No, sir.



Q. For the city were you ?

A. No, sir.

Q. Were any charges made against you by any house there ?

A. Never.

By Mr. BRADLEY :

Q. I understand you to say that your acquaintance with Dr. McMillan was principally when you were in college. I do not understand that there was any intimacy or relation of friendship between you after you left college.

A. Nothing very strong afterwards. He went one way and I went the other, and it was only when I found him at Lennoxville that I became aware of the fact that he had gone out there to practice. We are neither friends nor enemies.

Q. Being a friend of yours, you were surprised at his betraying Surratt ?

A. Generally among young men attending the same college there is supposed to be more or less intimacy, and it was on that account I was surprised to find that two Canadians should have been the parties to trace up the prisoner.

Q. The counsel has asked you with regard to McMillan's character. I ask you now as to any facts within your knowledge touching his moral character.

(Objected to by Mr. Pierrepont as testimony could only be given as to the general character of the party for truth and veracity. Objection sustained.)

By Mr. MERRICK :

Q. I understood you to say that if you were interested you would have great doubts in regard to believing McMillan on oath.

WITNESS. I will explain what I mean : From what I know of him, not personally but from hearsay in that locality, if I had a lawsuit wherein I wanted a witness, I would not certainly take his oath.

Q. If you were a jurymen would you take his oath ?

(Objected to by Mr. Pierrepont. Question overruled.)

Mr. BRADLEY stated that he proposed to introduce three witnesses who spoke only the French language. One of them knew something of English and could no doubt understand the questions as put to him in that language, but he found great difficulty in so expressing himself in English as to make his meaning intelligible. He was a French advocate, and in the section from which he came all the pleadings and records were kept in French. With regard to the other two, one spoke English some little, but very little ; the other not at all. He would therefore ask to have Colonel James R. O'Beirne sworn as interpreter.

The COURT said of course if the witnesses alluded to were unable to understand the questions put to them in English, or unable to respond in that tongue, it would be desirable to have an interpreter. As he supposed there would be no objection to Colonel O'Beirne acting in that capacity, he could be sworn.

LOUIS W. SICOTTE was then sworn as a witness, and Colonel James R. O'Beirne as interpreter.

Before the examination had been entered upon, the district attorney said that he understood this witness could speak English very well comparatively, and therefore he objected to having his testimony given through an interpreter until it was discovered by the court that it would be impossible to conduct the examination in English.

The COURT said the examination might be proceeded with in English, and then, if it appeared an interpreter was necessary, Colonel O'Beirne could be called upon.

The examination was then proceeded with in English as follows :

By Mr. BRADLEY :

Q. State, if you please, where you reside.

A. In Montreal, Canada.

Q. What is your profession ?

A. Advocate. I am at present employed in the Crown's law department.

Q. How long have you resided in Montreal ?

A. Since 1858.

Q. While residing there, did you know St. Marie, who has been examined as a witness in this case ?

A. I did not meet him in 1858 ; but I have seen him since 1859, and from then up to 1862. Perhaps I may have met him before, but I did not notice him at all. From 1860 to 1862 he was employed in the educational office.

Q. Had you an opportunity during that time to know what was said of him among those with whom he associated, as to his truth and veracity ?

A. Yes, sir.

Q. Was his general character for truth and veracity good or bad ?

A. Very bad.

Q. From that general character—from what was said of him by people with whom he associated—would you believe him on his oath ?

A. No, sir.

Cross-examined by Mr. PIERREPONT :

Q. Did you ever talk with St. Marie ?

A. I spoke to him once or twice. I have never been well acquainted with him. I met him one day in Montreal when he was there.

Q. When was the first time you ever met St. Marie to know him ?

A. I saw him when he was a law student ; he was at the same time employed in the education office.

Q. Did you talk with him then ?

A. Only on business.

Q. Did you talk with him on business ?

A. Yes, sir.

Q. When did you next see him ?

A. Since 1859, and up to 1862, I saw him sometimes, but not very frequently.

Q. Have you seen him often since that time ?

A. No, sir.

Q. Did you see him often between 1859 and 1862 ?

A. I met him one day on the street. I was not acquainted with him. I spoke to him one day on business.

Q. You had business with him once ?

A. Yes, sir.

Q. Did you associate with his friends and acquaintances ?

A. Yes, sir.

Q. Were you intimate with the same persons with whom he was intimate ?

A. Yes, sir. I will explain if you will let me.

Mr. PIERREPONT. Go on.

WITNESS. I had occasion last winter to live in La Pierre. He is a native of that place. There I met many persons who knew him perfectly well since his birth, and I heard those persons speak of him in such a way—

Q. At this time, had you heard that he had betrayed Surratt in Rome ?

A. No, sir. I began to work in Lapierre in the month of November, and the arrest of Surratt was not till some time after. I heard many persons speak of St. Marie in the way I referred to.

Q. After the arrest of Surratt in Rome, did you hear anything about it ?

A. Yes, sir ; many people spoke of it then.

Q. Did you know the fact that Surratt was arrested in Rome on the information given by St. Marie ?

A. Certainly.

Q. Did you know that he escaped there from the guards at the time of this conversation ?

A. The only thing I did know then was that St. Marie made the deposition against Surratt, and that Surratt was arrested.

Q. You heard that ?

A. Yes, sir.

Q. That was much discussed, was it not ?

A. Yes, sir.

Q. Many of those people with whom you moved thought that it was not right, didn't they, for St. Marie to betray Surratt in Rome ?

A. There were some people speaking in that way, but they were discussing him generally.

By Mr. BRADLEY :

Q. I understand you to say that the conversation to which you first referred was in November, before you heard of the arrest of Surratt ?

A. O, certainly ; the first conversation I heard regarding St. Marie was when he left the education office ; but I heard the conversation in his own native land in November, and up to the time of his arrest.

Q. November of what year ?

A. Last November.

Q. After you had heard of the arrest of Surratt you heard it still more spoken of ?

A. Certainly ; a little more.

Q. Now, as far back as 1862, when he left the educational office, was or not his character very well spoken of ?

A. It was publicly known that he left the country for the reason I have mentioned.

By Mr. PIERREPONT :

Q. Did you know of St. Marie studying for the ministry in your church—for the priesthood ?

A. I did not know that.

Q. You belong to the Roman Catholic church ?

A. Yes, sir.

Q. Didn't you hear of it among the people up there that he was studying for the priesthood ?

A. No, sir.

Q. Didn't you know he was sent down here as a teacher in the church ?

A. I did not hear anything of that.

Q. Didn't you hear that discussed when you heard him discussed ?

A. No, sir.

Q. Did you hear why he came into the United States ?

(This question was answered by the witness, but the court subsequently directed the answer to be stricken out, as not being responsive to anything brought out on cross-examination. Mr. Merrick insisted that the answer was properly in, as the counsel for the prosecution had failed to object at the proper time. Mr. Pierrepont stated their attention was otherwise taken up at the moment, and, therefore, they did not hear the answer when given, or they certainly would have objected.)

By Mr. PIERREPONT :

Q. Did you hear yourself that St. Marie had betrayed Surratt in Rome ?

A. Yes, sir ; I saw it in the papers

Q. Did that affect your feelings any towards him ?

A. No, sir ; not at all.

Q. You thought it was right ?

A. I thought it was right that he had made a deposition.

Q. You thought it was right for St. Marie to do it?

A. O, no; I did not give any opinion on the matter then.

Q. Did the fact of which you have spoken excite any unpleasant feelings towards St. Marie?

A. I had no feelings at all against St. Marie.

Q. I ask you if his betraying Surratt in Rome excited in you any feelings against St. Marie?

A. I tell you I did not express any feeling.

Q. I asked you what you felt?

A. I felt that it was——

The subsequent portion of the witness's answer was given in French. Mr. Pierrepont insisted on having it in English. Mr. Bradley said it was evident the witness could not properly express himself in English, and he thought it highly proper that, with regard to this one answer at least, he should be allowed to speak through an interpreter.

Mr. PIERREPONT contended that, as the examination in chief had been conducted in English, he was entitled to have the witness respond in that tongue to such questions as he should put to him on cross-examination. If the question were so shaped as to be unintelligible to the witness, he would endeavor to so frame it that there should be no difficulty of that kind.

The question being repeated to the witness, he said:

I have no feeling against St. Marie.

Q. Did you, at any time, say anything against St. Marie connected with his betrayal of Surratt?

A. Yes, sir. I said only a few words, however.

By Mr. BRADLEY :

Q. Now state what you did say about St. Marie when you heard of the betrayal?

A. I cannot properly express in English and will state it in French.

Witness then gave the answer in French, which was interpreted by Colonel O'Beirne as follows :

"When I heard that St. Marie had made the deposition against Surratt, I said to the curate and others, that it was mean or unprincipled in him to have made that deposition."

LUDGAR LABELLE sworn and examined :

By Mr. BRADLEY :

Q. State where you reside?

A. In Montreal.

Q. State what your profession is?

A. Advocate.

Q. Are you in any public position?

A. Since four years past I have been city counsellor for Montreal.

Q. How long have you resided in Montreal?

A. I have always resided in Montreal. I was born there.

Q. Did you know in Montreal a man named H. B. St. Marie, who has been examined as a witness in this case?

A. Yes, sir.

Q. How long have you known him?

A. Since about eight years.

Q. Where was he residing while you knew him?

A. In Montreal.

Q. During what years, as well as you can recollect?

A. As well as I can recollect, I made his acquaintance in 1858 or 1859. I am not quite sure which.



Q. He continued to reside there how long after that ?

A. Almost three years after I formed his acquaintance—until 1862.

Q. During that time do you remember whether he had any employment or not ?

A. Yes, sir. He was employed from October, 1860, to August, 1862, in the education office in Montreal.

Q. State whether during that time you had opportunities to know the persons with whom he associated.

A. Perfectly. I have known him personally and very particularly. I was at the time editor of a small paper, next to the education office, and I had opportunities of seeing him nearly three or four times a week.

Q. During that time had you opportunities to learn and know his general character among those with whom he associated for truth and veracity ?

A. O, yes, sir ; perfectly well.

Q. Was it good or bad ?

A. In the beginning his character was not known as a bad one. I mean in 1858-'59.

Q. Before he left Montreal ?

A. Yes, sir. But when he was employed in the education office—

Mr. PIERREPONT. Are you speaking of his character for truth ?

WITNESS. I am speaking of his general character.

Mr. PIERREPONT. We do not want that.

The COURT. Speak of his general reputation for truth and veracity—that is, what other people say about him as being a man who will tell the truth, or who will tell a lie.

WITNESS. His character had become bad while he was in the education office.

The DISTRICT ATTORNEY. For truth ?

WITNESS. Yes, sir.

By Mr. BRADLEY :

Q. Among those with whom he associated ?

A. Yes, sir ; among the citizens of Montreal generally.

Q. State whether, from what people generally say of him, you would believe him on his oath ?

A. No, sir ; I could not believe him on his oath from his general character, and from his acts.

Cross-examined by Mr. PIERREPONT :

Q. You knew him intimately, did you ?

A. Not intimately ; but I had before many occasions to see him. I was not his friend. I do not like to pass for having been his friend.

Q. What did you mean then by saying that you knew him intimately ?

A. Not intimately. I have not used that word.

Q. What have you said ?

A. That I had known him personally, and that I had had many occasions to see him, but I did not know him intimately.

Q. When did you first know him ?

A. In 1858.

Q. Was his character good then ?

A. I could not say anything against him.

Mr. PIERREPONT. I mean for truth and veracity.

WITNESS. I understand you. I could not say anything against him during that time, for I had just commenced to know him.

Q. Did you know him in 1859 ?

A. Yes, sir.

Q. Was his character for truth in 1859 bad ?

A. I cannot say about that time exactly, but his character came to be considered as bad during the time he was employed in the education office.

Q. When?

A. In 1860; from 1860 to 1862.

Q. When did his character for truth become bad?

A. From 1860 to 1862.

Q. Have you seen him since?

A. Yes, sir; he came to Montreal for two or three days, and I saw him on the street.

Q. Did you know of his making a deposition in Rome by which Surratt was arrested?

A. I learned that by the papers.

Q. When did you learn that?

A. I cannot say as regards the time exactly.

Q. Was it soon after it happened?

A. Yes, sir.

Q. Did you talk about that?

A. Well, I talked about that as other persons have.

Q. Did you express yourself as against that—against St. Marie informing on Surratt in Rome?

A. I have no feeling against St. Marie.

Q. I asked you if you had expressed yourself on that subject?

A. I have given my opinion on the fact.

Q. Did you express any feeling on the subject?

A. I have answered that.

Q. Did you express any feeling against St. Marie on that account?

A. I have said that St. Marie, under the circumstances, was a low man to have done such a thing in consideration of a remuneration.

Q. Was that all you said?

A. Yes, sir.

Q. You felt so?

A. Yes, sir; that is my opinion about it.

Q. And you did not feel very kindly towards him on account of it, did you? You felt hostile towards him for doing that mean thing?

A. Not very hostile; I did not care for that man; I did not like to come in contact with him at all.

Q. You thought it was a wrong act, didn't you?

A. Not the act itself; I do not say that the act itself was a wrong act; but I say that it was low to do such a thing for the consideration of money.

Q. And you do not think that any one but a low man would tell on Surratt in Rome?

(No response.)

Q. Was your feeling that none but a low man would inform, as St. Marie informed, on Surratt?

A. No, no

Mr. BRADLEY. That is hardly a fair question.

By the DISTRICT ATTORNEY:

Q. Will you state the first time that you ever heard St. Marie's reputation for truth discussed by any persons in Montreal?

A. The first time was some months before he entered into the education office. I had heard in public that he had been obliged to leave the People's Bank, in Montreal, for something wrong.

Q. You say you are an advocate. Have not you been told by the court that you must confine yourself to his reputation for truth? Did you ever hear any person say that he was a liar, and that he would not tell the truth?

A. Many.

Q. When was the first time you heard it said that he was a liar, and that he would not tell the truth, or words to that effect?

A. I have answered that before, I think, but I will repeat. It was when he was employed in the education office that his character became very bad. I have heard many persons say that it was not possible to believe that man.

Q. Who were they?

A. It was about five years ago, and I did not take notice of the fact at the time, because I did not know that I would be obliged to appear in Washington about his case.

Q. You recollect what was said, and yet you cannot recollect the persons who said it?

A. Certainly; it is a very different thing. I recollect the fact that not only one or two persons, but a large number of persons, knew St. Marie as a man whom they could not believe; but it is very difficult, after five years, to remember the names of the persons.

Q. Can you state the names of any of the persons that you heard say, before the arrest of Surratt, that he was not a man to be believed?

A. I can; in the first place I can name myself.

Q. Who else?

A. I cannot mention the names; it was the general opinion in Montreal; it is perfectly easy to have a hundred witnesses to swear to that fact.

JOSEPH DU TILLEY sworn and examined.

(This witness being unable to speak English at all, his examination was conducted through Colonel James R. O'Beirne, previously sworn as interpreter.)

By Mr. BRADLEY:

Q. Where do you reside?

A. West Shefford, Canada.

Q. How long have you resided there?

A. Several years.

Q. Do you know Dr. McMillan, who has been examined as a witness in this case?

A. Yes, sir.

Q. Did you at any time reside near where Dr. McMillan lived?

A. Eight miles from there.

Q. Do you know the people with whom he associated?

A. No, sir.

Q. Where did Dr. McMillan live at the time you knew him in 1862?

A. Frost village.

Q. Do you know the people at Frost village?

A. No, sir.

Q. Do you know where Waterloo is?

A. O, yes, sir; very well.

Q. How far from there?

A. Eight miles.

Q. Did Dr. McMillan live at Waterloo at any time?

A. O, yes, sir.

Q. How long did Dr. McMillan live at Waterloo?

A. To my knowledge, almost a year.

Q. In what year?

A. 1864.

Q. Do you know the people at Waterloo?

A. Very little.

Q. Do you know the Canadian people who are acquainted with Dr. McMillan?

A. O, yes, sir.

Q. Many, or few?

A. A great many.

Q. Have you ever heard them speak of Dr. McMillan's character for truth?

A. Yes, sir.

Q. What kind of a character did they generally give him for truth—good or bad?

A. Very little.

Q. Do you mean to say that you have heard the people speak very little of him, or what do you mean?

A. I mean to say that the people have spoken very little of him.

Q. Do you know his general reputation among the people for truth?

A. Yes, sir.

Q. What is that character for truth, good or bad?

(Objected to by the district attorney, as the witness had not shown that he possessed sufficient knowledge to enable him to speak of his general reputation for truth and veracity.)

The COURT. Have you often heard the people in the neighborhood where Dr. McMillan resided speak about his character for truth and veracity?

A. A great deal.

By Mr. BRADLEY :

Q. Now I will ask you what is said of his general character for truth—is it good or bad?

A. It is bad.

Q. Have you ever heard his oath called in question in a court of justice?

(Objected to by Mr. Pierrepont. Objection sustained; and question ruled out.)

Q. State whether, from what people say generally of him, you would believe him on his oath?

A. No, sir; I would not.

Cross-examination by Mr. PIERREPONT :

Q. What is your occupation?

A. I do some things at Reynolds's gallery at Waterloo.

Q. What is your present occupation?

A. I am a farmer.

Q. Do you know a priest by the name of Boucher?

A. Yes, sir.

Q. Is he the same one about whom Dr. McMillan spoke in his testimony?

A. I think he is.

Q. Have you been a servant of that priest, Boucher?

A. No, sir.

Q. Have you been in his employ?

A. No, sir.

Q. Who spoke to you first about this case?

A. Mr. Nagle.

Q. Did the priest Boucher say anything about it?

A. Yes, sir.

Q. Did the priest Boucher say anything to you about Dr. McMillan?

A. No, sir.

Q. Did the priest Boucher say anything about a quarrel between him and Dr. McMillan about a debt of 1864?

A. Yes, sir.

Q. Did not you bring the money from the priest, Boucher, to Charles S. Martin at Waterloo?



- A. No, sir; I gave it to McMillan myself.
- Q. Do you know Charles S. Martin, of Waterloo?
- A. I do not think I do.
- Q. Have you talked with the priest, Boucher, about Dr. McMillan?
- A. Sometimes.
- Q. How lately?
- A. I have not spoken of Dr. McMillan for a month.
- Q. Did he speak to you of Dr. McMillan about a month ago?
- A. Yes, sir.
- Q. Did he say anything to you against McMillan?
- A. No, sir.
- Q. Did you say in the presence of Charles S. Martin that you would, whenever you had a chance, do Dr. McMillan what damage you could?
- A. No, sir.
- Q. Did he say anything against Dr. McMillan, or anything he would do against him?
- A. No, sir.
- Q. Are you hostile or unfriendly to Dr. McMillan?
- A. I am friendly; I have no reason to be an enemy.
- Q. Where were you in 1864?
- A. At Shefford.
- Q. What was your occupation in 1864?
- A. I was engaged in cultivating a farm.
- Q. Have you at any time been in the service of this priest, Boucher?
- A. No, sir.
- Q. Did you ever live in the house with him?
- A. Yes, sir.
- Q. When?
- A. In 1864. I was there three months boarding with the priest.
- Q. Did you do any work to pay for your board?
- A. Yes, sir. I did not work for the curate, but for myself.
- Q. Did you do anything for the priest to pay for your board?
- A. Yes, sir; sometimes.
- Q. What did you do?
- A. Take him to different places in a carriage.
- Q. In whose carriage?
- A. In my own.
- Q. What business were you then doing?
- A. I cultivated a farm.
- Q. How much of a farm?
- A. About fifty acres.
- Q. What rent did you pay?
- A. Sixty dollars.
- Q. When did you first go to live in the priest's house?
- A. In the year 1864.
- Q. What time in the year?
- A. At the end of April or the commencement of May.
- Q. When did you leave it?
- A. In August.
- Q. When did you go back to the house of the priest again?
- A. I returned in the month of January.
- Q. How long did you stay?
- A. I believe I remained there two months and a half.
- Q. When did you next return there?
- A. Every winter.
- Q. Were you there in the winters of 1865, '66, and '67?

A. Yes, sir.

Q. Did you talk with the priest about Dr. McMillan within the last month?

A. Once.

Q. Have you talked with the priest Boucher about McMillan since McMillan came here to testify?

A. Yes, sir; once.

Re-examined by Mr. BRADLEY:

Q. You have been asked about a quarrel between Boucher and McMillan. Do you know what that was about?

A. The priest has never spoken to me about it. When McMillan practiced chicanery with Boucher I was there; but I do not know the cause, as the curate put him outside.

Q. When was that?

A. 1866.

Q. State whether the money that you took to Dr. McMillan was after this quarrel about which you have been asked.

(Objected to by Mr. Pierrepont, as not being responsive to anything brought out on cross-examination.

Objection sustained.)

At 12.45 p. m. the court took a recess for half an hour.

On reassembling,

Mr. BRADLEY stated that the defence had five witnesses *en route* to Washington, who had been expected last night. They had evidently missed the railroad connections. They were material to the defence, and had they reached here the defence would have been able to close to-day. Mr. B. stated that the defence had used every diligence to obtain their presence, and were in receipt of telegrams to the effect that they were on the way. They would be here without doubt this evening or to-morrow morning, when the defence would be able to close the case.

Mr. CARRINGTON said that under the circumstances, as it was alleged the evidence proposed to be offered was material to the defence, it would be improper in the government to interpose any objection to an adjournment at this time. It was understood that they would close to-morrow morning with the testimony of those witnesses.

At 1.55 p. m. the court took a recess until to-morrow morning at 10 o'clock.

FRIDAY, July 19, 1867.

The court met at 10 o'clock a. m.

Mr. BRADLEY stated that of three witnesses from abroad who were expected to-day, two, instead of being here, had forwarded certified copies of the railroad time-tables, in reference to which they were subpoenaed—which time-tables, counsel for the prosecution having assented, he offered in evidence. Mr. Bradley stated that, by these time-tables, it appeared that in April, 1865, the first passenger train of cars left Albany at 7 o'clock in the morning, and arrived at Syracuse at 1 20 p. m., making five hours and twenty minutes from Albany to Syracuse via New York Central railroad; that the train left Syracuse at 1.30 p. m., arriving at Canandaigua at 4.52 p. m.

Mr. MERRICK proposed, also, to place in evidence a copy of Appleton's Railway Guide for March, 1865.

Mr. PIERREPONT said he had no objection to Appleton's Railway Guide for April going in evidence as Appleton's Railway Guide, for what it is worth. He objected to the Guide for March going in evidence as tending to prove what was the time for April.

Mr. MERRICK said he had not been able to find a copy for April, but hoped to do so.

Mr. MERRICK desired to call the attention of the court to an authority in 12 Howard United States Supreme Court reports in support of the application on the part of the defence to admit the Canandaigua register, and referred to the case of *Gaines vs. Relf*. He (Mr. Merrick) had remarked when the matter was under discussion that a letter was evidence of the time and place at which it was written. The court had then indicated that that was not his view of the law, and he now desired to present this authoritative decision upon the subject.

The COURT remarked that he presumed the letter in the case referred to was accompanied by an envelope having a postmark on it, or that it contained some internal evidence that it was written at the time and place.

Mr. MERRICK said there was no reference in the report to the letter being postmarked. The decision referred to 1st Philip's Evidence by Cowan, pp. 189, 190. His (Mr. Merrick's) edition was a later one and he did not find the reference, but the reference to it seemed to be so explicit as to make it conclusive upon the point.

Mr. BRADLEY said that the handwriting having been verified and the date were the points relied on in that case.

Mr. BRADLEY read from the report of the case referred to more at length to establish the view taken by Mr. Merrick.

Mr. PIERREPONT admitted that letters upon family matters were admitted in evidence as going to show what feelings existed between the parties.

Mr. BRADLEY replied that in the case referred to the letter was admitted not only for that purpose, but as evidence of the time and place at which it was written.

The COURT suggested that the defence should proceed with the examination of their witnesses and allow this matter to come up at some other time.

Mr. BRADLEY said they desired particularly that Father Boucher should be present for examination; that he left Montreal three days ago, and he (Mr. Bradley) had not heard of him since. He supposed he would certainly have been here to-day. He would also state that since yesterday they had succeeded in discovering a witness residing in the city of New York, for whom they had been looking for months—a gentleman who was at the Brainard Hotel, Elmira, on the 14th and 15th of April, 1865, and there saw the prisoner at the bar. They had telegraphed immediately to him, and requested him to respond by telegraph whether he would be here. The testimony of a large number of the witnesses summoned for the defence had been excluded under the rulings of the court, and they had been discharged. With that statement he left the matter with the court.

The COURT inquired whether there were any objections on the other side to granting further time for the witnesses on the part of the defence to be here.

Mr. PIERREPONT said they left it entirely in the hands of the court.

Mr. MERRICK remarked that whatever time was necessary might as well be occupied to day in disposing of the motion made by them some weeks since to strike out the testimony in relation to Jacob Thompson; in regard to the declarations of McMillan of the alleged statements of the prisoner of shooting Union soldiers, killing a telegraph operator, and of a fight that occurred with some gunboat on the Potomac river; also, in relation to the North Carolina cipher letter. The prosecution having failed to connect this testimony with the conspiracy, and it having only been admitted on that condition, it was now proper that it should be stricken out. The court had suggested on a former occasion that he preferred to reserve his decision until the testimony was all in. The testimony now to be submitted must be confined strictly to rebutting evidence already presented; no evidence which could have been presented in chief could now be admitted.

Mr. PIERREPONT did not so understand the rule of evidence; for instance, the prosecution had the right to show, and did for various purposes, although

not obliged to do so, the presence of the prisoner in Washington. The other side had undertaken to show that the prisoner was present in Canandaigua or Elmira on the 14th day of April. It would now be rebutting evidence for the prosecution to show that he was not in Elmira on the 14th of April. He offered that illustration to show the incorrectness of the rule of evidence stated by counsel on the other side.

Mr. MERRICK argued further in support of his view of the rule of evidence referred to, and in opposition to the suggestion of the counsel for the prosecution, that it was not necessary for the government to prove the presence of the prisoner on the day of the assassination. That law was well settled, he thought, by some fifteen English decisions, and by the case of Knapp, in Massachusetts, in which Mr. Webster had laid down the principle, extending it, he said, as far as it could possibly be extended, that a co-conspirator, in order to be charged as a principal, must be within such distance that he could render material aid in the consummation of the act, or render the party who struck the blow, fresh from the deed, assistance in his escape. The same rule also was laid down by Chief Justice Marshall in the case of Burr.

The COURT decided to hold these questions over for future consideration.

RICHARD SUTTON sworn and examined.

By Mr. BRADLEY :

Q. State, if you please, whether you have had a large experience in reading and examining handwriting ?

A. Very large.

Q. Have you examined the letters which I exhibited to you just now ?

Mr. PIERREPONT inquired what letters.

Mr. BRADLEY replied, letters in evidence, and admitted on both sides to be the original handwriting of John H. Surratt.

A. I have.

Q. Have you compared the handwriting with that of the envelope and enclosure I now hand you ? (Letter signed Tony, addressed to George A. Atzerodt, heretofore placed in evidence.)

A. I have.

Q. Is that written by the same hand who wrote the others or not ?

A. I think not.

Q. Now state, if you please, if you have also compared the handwriting of two original telegrams by Booth, heretofore placed in evidence, and addressed to O'Laughlin, with the handwriting of the letter, also in evidence, known as the Charles Selby letter ?

A. I have.

Q. Have you carefully compared them ?

A. I have.

Q. In your judgment are they written by the same person ?

A. They are not.

Cross-examined by Mr. PIERREPONT :

Q. Do you know in whose handwriting these telegrams are ?

A. I do not. I was informed.

Q. You do not know the handwriting ?

A. No, sir.

Q. Do you think this Charles Selby letter is in a natural hand ?

A. No, sir.

Q. You think it is disguised ?

A. Yes, sir.

Q. Do you know who disguised it ?

A. No, sir.



Q. You are not an expert, are you ?

A. I do not profess to be.

By Mr. BRADLEY :

Q. Yet you have had a very large experience in reading and comparing handwriting ?

A. Yes, sir ; very large.

By Mr. PIERREPONT :

Q. Now take the letter already shown you in the original handwriting of Surratt, and take this card (card heretofore placed in evidence admitted to be in the handwriting of the prisoner) and say whether you think it is in the same handwriting ?

Mr. BRADLEY (to Mr. PIERREPONT) Which side do you show ?

Mr. PIERREPONT. Either side. (To witness :) Do you think it is the same handwriting ?

A. I could not undertake to say that it is.

Q. Do you believe that card is not in the same handwriting as the letter ?

A. I shall have to examine them a little more carefully to speak with accuracy.

Q. Well, examine them ; they do not look much alike, do they ?

A. No, sir ; they do not.

Q. Do you think they are in the same handwriting ?

A. I would not undertake to say, for this reason : I have seen letters written by the same person, admitted to be written by the same person, in no respect alike in the appearance of the handwriting.

Mr. PIERREPONT moved that the testimony of this witness be stricken out. It was conceded that the card and the letter were in the same handwriting. The witness admitted that he was not an expert.

Mr. MERRICK said, that although he admitted he was not an expert, his statement was that he had had a large experience in examining handwriting.

The COURT remarked that perhaps it would be better to examine the witness as to whether he has had his attention directed to the difference in the handwriting of persons so as to be able to determine their identity or otherwise by comparison.

Mr. PIERREPONT. Very well ; I will put this question :

Q. Have you had your attention directed to the difference in the handwriting of persons, so as to be able to determine from comparison their identity or otherwise ?

A. No, sir ; I have not.

By the COURT :

Q. Have you made it your study to compare handwritings with a view of ascertaining whether different papers were written by the same person ?

A. No, sir ; I have not. I can explain, if the court desires it, what my experience has been.

The COURT. Very well ; explain what your experience has been.

WITNESS. My experience has been the reception of contributions written by all sorts of people, learned and unlearned, and in the writing of people employed in my office, as well as in the reception of letters for publication or otherwise, extending through a period of forty years.

By Mr. PIERREPONT :

Q. Your business has been rather that of deciphering handwriting than of comparing handwriting ?

A. Yes, sir.

By the COURT :

Q. Have you ever had your attention directed to this branch of chirography ? Have you ever made it your study to ascertain by comparison whether the signature of a letter or any paper or writing was genuine or forgery ?

A. No, sir.

Q. Nothing of that sort ?

A. No, sir ; I have not.

Mr. BRADLEY read note 1 to section 440, 1 Greenleaf on Evidence, to show that the knowledge of the witness as an expert came within the rule.

The COURT remarked that to enable a person to testify as an expert in handwriting, he must have had some considerable study and experience in that specialty, such as bank officers and other business men have in detecting spurious from genuine handwritings. A person merely engaged in literary pursuits, or in the more learned professions, if he had not had his attention directed to the matter of a comparison of hands, of course could not testify as an expert.

The testimony of this witness was directed to be stricken out.

Mr. BRADLEY suggested that, as he expected to examine only the two witnesses he had referred to for the defence, the prosecution now proceed with their rebutting evidence, and the defence be allowed to examine these two witnesses should they make their appearance within a given time.

The DISTRICT ATTORNEY replied that the counsel for defence had rejected a similar proposition at the close of the evidence for the prosecution, and the prosecution were now disposed to insist upon the same rule : that the other side must complete their case before they would enter upon the examination of other witnesses.

After further conversation the court determined to give the defence until to-morrow night to close their case.

And thereupon the court took a recess until to-morrow morning at 10 o'clock.

SATURDAY, July 20, 1867.

The court met at ten o'clock a. m.

AUGUSTUS BISSELL, physician—residence New York city—sworn and examined.

By Mr. BRADLEY :

Q. State, if you please, whether you were in Elmira on the 14th of April, 1865.

A. I was.

Q. Were you at the Brainard House there ?

A. I was.

Q. State whether you saw the prisoner at the bar at that time. (The prisoner stood up.)

A. I did.

Q. Have you any means of fixing the precise date ?

A. I have.

Q. State to the court and jury, if you please, how you fix it.

A. I left Owego, thirty-six miles east of Elmira, on the night express from New York, which got to Elmira in the morning a little before daylight at that time—the night of the 13th and morning of the 14th—in search of a man.

Q. State who the man was, and the circumstances which fixed it in your memory.

A. The man was a brakeman upon the New York and Erie railroad. I had a suit against the New York and Erie railway for damages for an injury sustained by me from which I am still suffering. I went to Elmira in pursuit of him to ascertain his whereabouts.

Q. Was there any particular reason why you observed the prisoner? State whether you were on crutches at that time.

A. I was on crutches at that time. I stopped at a little house. I cannot recall the name. Names are the worst things for me to remember in the world. I can remember faces.

Q. You did not stay at the Brainard House?

A. I did not. I stopped at a little house on the street that runs from the east end of the depot, south or southwest, on the south side of the street, where I had been in the habit of stopping. It was so near morning that I went up and lay down on a lounge in the sitting-room or parlor until breakfast time. I ate my breakfast and went out in quest of this man. I ascertained that he was not in Elmira. While out I went to a third party whom I had been directed to by letter from the town of Deposit, I think, to find him. After going and doing my business I called at the Brainard House. I thought I would take a 'bus to the depot and take the train back to Owego.

Q. State if you had any conversation with the prisoner at that time?

A. As I went in he passed me. I noticed his dress as he passed me. I went into the reading-room or office there and sat down. He came in from the bar-room or office, or reading-room, to the room I was in. He passed up and down and kept looking at me.

Q. Did you have any conversation with him?

A. I did. After he had passed up and down for a time he came and sat down on a chair or settee about one seat from me.

Q. Did you have such a conversation as to enable you to recall his manner and voice in speaking?

A. Yes, sir; I suspected him.

Q. You can say why you observed him particularly.

A. My counsel had told me——

Mr. PIERREPONT. You need not tell what your counsel said.

WITNESS. Well, I suspected he was looking after me on the part of the railroad company, and therefore I observed him more closely.

Mr. BRADLEY said he now proposed to give that conversation; it did not relate to this subject, but would show it made an impression on the mind of this witness.

Mr. PIERREPONT said he had no objection whatever; he thought the witness had better give the whole of it.

Q. Now state all the facts.

A. He wanted to know if I had been to the war. I didn't give him any satisfaction. I did not have a great deal of conversation with him. I wished to avoid it myself.

Q. Referring to your lameness, he asked if you had been to the war?

A. Yes, sir.

Q. And then you had a brief conversation with him?

A. Yes, I had a little conversation with him. I merely spoke with him to see if my suspicions were correct; to satisfy myself; to see if he would attempt to draw me out, or anything of the kind. I wanted to satisfy myself whether he was a spotter of the Erie Railroad Company.

Q. What enables you to fix the 14th of April?

A. I returned that same day to Owego. I got there on the arrival of the express at Owego. I think it was a little past nine. I went immediately to my attorney's office in Owego, Judge Munger, to see if there had been any communication from my attorney in New York, Mr. Wetmore. He was not in; had not come down from dinner. I went on down street and met a gentleman I was acquainted with residing in Pennsylvania. We went to an oyster saloon and took some oysters together. When I came out of that saloon and came back I met a boy with a telegram for me from my wife, informing me that my child

was very sick. I took the first train in which I could leave Owego, and went to Great Bend that night.

Q. Did your child die?

A. My child died before I got home. I got home the night of the 14th and morning of the 15th of April. I fix the date by that circumstance.

Cross-examined by Mr. PIERREPONT:

Q. Did you have any pay for giving this testimony, or any promise of any?

A. No, sir; not any.

Q. When did you first tell these gentlemen what you knew—when did you first come here?

A. I came here this morning.

Q. When did you first have notice you were wanted?

A. Yesterday afternoon.

Q. How did you know they knew anything about it?

A. I do not know. I have asked Mr. Bradley how it was.

Q. Did you find out?

A. He will not give me any satisfactory answer. He said he had been looking for some time for a man on crutches.

Q. Then you could not find out?

A. I could not. I suspected.

Q. When did you tell anybody of this?

A. On last Monday or Tuesday as I was passing through Warren street, New York city, while passing the office of Cassidy & Covell, grain merchants—

Q. My question is, when did you first tell of this?

A. It was last Monday or Tuesday, in the office of Mr. Cassidy.

Q. Did you not understand my question before?

A. Certainly; I was telling you how.

Q. I did not ask you how, I asked you when you first told of it; you answer last Monday or Tuesday. That was the first time, was it?

A. That was the first time, and I will tell you how it came up the first time.

Mr. PIERREPONT. I have not asked you that yet; you will have enough to answer, before I get through, without volunteering.

Mr. BRADLEY objected to any such observations to a witness.

Mr. PIERREPONT replied that the witness must not volunteer answers to questions he had not asked.

The COURT cautioned the witness to answer the questions put, and he would have an opportunity afterwards to explain, if necessary.

Q. Now tell us where you live in New York?

A. At No. 218 West 22d street.

Q. What is your business?

A. Physician.

Q. Won't you give me your first and full name?

A. Augustus Bissell.

Q. How long have you lived there?

A. I have lived there since the 1st day of May last.

Q. Where did you live before that?

A. In New York city.

Q. Where?

A. I was boarding.

Q. Where?

A. I was boarding a part of the time, and a part of the time we had rooms on 8th avenue.

Q. You went there the first of May; where did you board last April?

A. I was sleeping in a room at 223 West 23d street.

Q. Whose house?



A. In the rear of a drug store. The room I occupied was an office.

Q. Whose house?

A. It is the firm of Schneider & Co.

Q. Did you rent it of them?

A. Yes.

Q. What were you doing last April?

A. My office was there; my wife had gone to her father's in Pennsylvania. I slept in there and took my meals at saloons and around.

Q. How long did you sleep there?

A. I slept there from about the first of April until the first of May.

Q. Then you slept there a month?

A. Yes.

Q. Where did you stay in March?

A. In March we kept house at 401 8th avenue.

Q. Whose house?

A. I don't recollect the firm's name; I had a floor.

Q. You recollect whom you hired it of?

A. He was a German.

Q. What was his name?

A. I think Cohen.

Q. Didn't you have a lease?

A. No; I hired it monthly.

Q. How many rooms did you have?

A. Four or five rooms.

Q. Can't you give the name of the man you hired it of?

A. I did—Cohen & Co.

Q. How long did you hire these rooms of this German?

A. From along in the winter or fall until I moved away. They wanted to overhaul their building, and I left sooner than I otherwise should.

Q. I am not asking what they wanted. I am asking you about time. You say you left there last March?

A. About the 1st of April.

Q. When did you go there?

A. I went there in November or December.

Q. It was one or the other?

A. Yes.

Q. What did you pay a month?

A. Twenty dollars or twenty-five dollars a month for the floor.

Q. Did you have an office there?

A. No, sir.

Q. Where did you have an office?

A. No. 203 West 23d street.

Q. There was where you slept?

A. Yes.

Q. What business did you do?

A. I was a physician.

Q. Will you tell me some people who know you in New York as a physician?

A. Yes, sir; Michael Phillips.

Q. Where does he live?

A. He boards at 18 West 22d street. I can mention Charles F. Wetmore.

Q. Where does he live?

A. He lives—I forget his number—in Clinton Place.

Q. Have you any other patient in New York?

A. I am not doing a large amount of practice.

Q. What are you doing?

A. I do a little office practice, and I have some outside business which I am connected with now.

Q. What do you call outside business?

A. Well, I am engaged, for one thing, with Andrew M. Rankin, formerly of Chambersburg.

Q. I do not care who he is, I want to know what you are doing?

A. I am engaged with him in developing some patent rights which he has.

Q. What are they—about doctors?

A. No.

Q. Anything to do with doctoring?

A. Yes.

Q. What?

A. They are disinfectant, and may be termed hygienic.

Q. Do you know Aaron Stone in New York?

A. No, sir.

Q. Has it anything to do with his disinfectant business?

A. No, sir.

Q. What are you doing in that business, that outside business?

A. We are developing it.

Q. What do you mean by that?

A. Getting it ready to get it upon the market.

Q. Have you got it upon the market yet?

A. We have got one patent upon the market.

Q. What one patent?

A. It is a patent chamber-pot.

Q. With the exception of your patent chamber-pot, tell us what outside business you had?

A. Well, sir, I am about bringing out a patent urinal and a water-closet seat.

Q. That is the next outside business you have been in?

A. Yes, sir.

Q. How long have you been studying these subjects?

A. They are patented by a gentleman by the name of Andrew M. Rankin.

Q. How long have you been studying the subject of these patents?

A. I have been with him about a year.

Q. Have you made anything out of these?

A. Well, I got some little money out of it.

Q. Have you sold any patents?

A. We have made an arrangement with the Trenton Pottery Company by which they are to manufacture them and pay us a royalty upon the patent chamber-pot.

Q. Have you got any out of that?

A. Yes.

Q. How much?

A. Really I do not know now.

Q. So little you could not tell?

A. No answer.

Mr. BRADLEY. Did I understand you to say it was so little you could not tell?

A. I did not say that. I could tell by figuring it up.

Q. Well, tell.

A. Two or three thousand dollars.

Q. Have you got two or three thousand dollars for this patent?

A. Mr. Rankin and I have.

Q. How much have you received?

A. I have received one-half of it.

Q. Have you received \$1,000 from it?

A. I think I have.

Q. Tell us where you lived before you lived in this German's rooms last March?

A. I was sleeping in my office from May before up to last fall, except a short time when I was in the country.

Q. Did your wife sleep in the same office?

A. No, sir; she was in the country, at her father's.

Q. Where was that?

A. Near Orwell, Bradford County, Pa.

A. Is she up there now?

A. She is in that neighborhood now.

Q. She does not live with you?

A. Yes, sir; she is up there for the summer.

Q. When did she live with you?

A. Always; she never separated from me.

Q. When did you and she lodge in the same room?

A. During the month of March, and from the time we occupied this floor.

Q. What time was that?

A. I told you from November or December.

Q. During the last summer she was not there?

A. During the summer she was not there.

Q. Was she there during the winter?

A. She was there at 401 up to the time she went into the country.

Q. When did she go into the country?

A. The 1st of April.

Q. Where were you before November of last year?

A. I was lodging in my office, and taking my meals out.

Q. Where was your wife then?

A. She was at her father's in Pennsylvania.

Mr. BRADLEY objected that the witness had already answered these questions.

Q. Where were you last July?

A. I was in New York city.

Q. Was your wife there?

A. No, sir.

Q. Where were you last May a year ago?

A. In New York city.

Q. Was your wife there?

A. She went into the country in May.

Q. Where were you in the month of April a year ago?

A. At 339 Fourth avenue.

Q. That is another place?

A. Yes, sir.

Q. Whose house did you live in then?

A. We first went to keeping house then in New York—in the house of Peyton C. Campbell.

Q. Did you hire the house?

A. Yes, sir; he has a store there; this was over the store; we boarded him and his wife.

Q. What rent did you pay?

A. I boarded him and his wife for the house rent.

Q. You lived there and boarded them?

A. Yes.

Q. How long?

A. Well, from the fall until May.

Q. What time in the fall?

A. I think from along in the middle of October to the 1st of November; I was there all winter, any way.

Q. Did you have your doctor's office there ?

A. No ; I didn't get settled in doing any business.

Q. What business did you do ?

A. I was lame, and unable to do any business at all.

Q. Before you came to 339 Fourth avenue, where were you ?

A. I was in New York city.

Mr. PIERREPONT. Won't you turn a look towards the jury ?

Mr. BRADLEY. And let them see your face.

Mr. PIERREPONT. The counsel is right ; I want them to see his face ; we both agree. (To witness :) Now, where in New York were you living ?

A. I was boarding, before I went there to keep house, at 1160 Broadway.

Q. Did you go from 1160 Broadway to 339 Fourth avenue ?

A. I think we did.

Q. When did you leave 1160 Broadway ?

A. I think it was in November, '65.

Q. Don't you remember whether you did go from 1160 Broadway to 339 Fourth avenue ?

A. It strikes me I hired rooms for myself and wife on Twenty-seventh street for a week after she came from the country, until we found this place.

Q. Then you don't think you went from 1160 there ?

A. I don't think I went directly there ; I hired rooms.

Q. Where ?

A. On Twenty-seventh street ; the number I don't remember.

Q. Do you remember between what streets it was ?

A. It was between Broadway and Sixth avenue.

Q. Which side of Twenty-seventh street ?

A. It was on the north side.

Q. Don't you know whose house you went to ?

A. The lady's name was Boyd who kept the house. I hired two rooms of her.

Q. Where were the rooms ?

A. They were situated on the second floor—bed-room and sitting-room.

Q. Do you remember her first name ?

A. I do not.

Q. Do you remember what you paid her for the rooms ?

A. I think I paid her twelve or fourteen dollars a week.

Q. How long did you stay there ?

A. I think a couple of weeks.

(At this point Christian G. Schneider, one of the jurors, was taken from the court-room ill, and the court thereupon took a recess until afternoon.)

#### AFTERNOON SESSION.

On re-assembling at 12.30 p. m., Mr. Bohrer, one of the jurors, stated to the court that Mr. Schneider was unable to walk, and could not come into court.

Judge FISHER said that the juror could be brought in on a lounge, and recline upon it until the testimony of the witness, Dr. Bissell, was concluded.

The suggestion of the court was adopted, and Mr. S. brought in, looking very much indisposed, and stated, in reply to a question from the judge, that he felt very well while reclining, but was unable to sit up.

Dr. BISSELL again took the stand and his cross-examination was resumed by Mr. Pierrepont.

Q. Were you ever a notary public ?

A. No, sir.

Q. Were you ever a commissioner of deeds ?

A. No, sir.

Q. Did you ever have anything to do with getting up any papers about the claims on the government ?



A. No, sir.

Q. In no way ?

A. No, sir.

Q. No kind of claim ?

A. No kind.

Q. Do you know this gentleman sitting here ? (Colonel Foster.)

A. I never saw him as I know of until to-day.

Q. Where were you between the months of September and November, 1865 ?

A. 1160 Broadway.

Q. How long were you there ?

A. I think I was there some time along in July or August—boarded there.

Q. In 1865 ?

A. Yes, sir.

Q. What rooms did you have at 1160 ?

A. I had a bed-room and I boarded in the house.

Q. Who did you board with ?

A. I boarded with Hiram Faulkner at the house from about the 1st of July or August until the 1st of September. I would not be positive about the dates, however, but it was somewhere along there.

Q. Where did you go after the 1st of September ?

A. I then boarded with Augustus Bissell.

Q. Who was he ?

A. Myself. (Laughter.)

Q. Where ?

A. 1160 Broadway.

Q. Did you keep boarding-house there ?

A. Yes, sir, or no, sir, just as you have a mind to have it.

Mr. PIERREPONT. I have no mind about it.

WITNESS. I will tell you just how it was. A gentleman by the name of McMahon and myself bought out Patrick Kilduff, 1160 Broadway, for one Hiram Faulkner.

Q. Bought out what ?

A. A small hotel, restaurant, and drinking place.

Q. Did you continue to keep the small hotel, restaurant, and drinking place ?

A. He kept it until Mr. McMahon became dissatisfied, and said : " We are going to lose what money we advanced Mr. Faulkner, and we must get rid of him."

Q. Were you a partner in it with McMahon ?

A. We were partners together in buying it for him, and giving him a chance to pay for it as he went along.

Mr. BRADLEY. That is, you and McMahon advanced the money for Faulkner ?

A. Yes, sir. We found, however, that we were going to lose all we invested, and finally McMahon said, " We must get rid of him, and take the place and dispose of it."

Q. How long did you keep this restaurant and drinking place at 1160 ?

A. I think that Mr. Faulkner was in there some five or six weeks. He was not getting money enough to pay the rent.

Q. How much money did you put into it ?

A. Some \$3,000.

Q. Did you pay the money ?

A. Yes, sir.

Q. What became of that ?

A. I purchased Mr. McMahon's interest of him, and took hold of it myself. I kept it until I took in one Luther D. Eaton as a partner with me. We were together some two or three weeks, when he wanted a friend of his, I think John G. Beal, Everett House, to buy out the remaining half.

- Q. Did you sell it ?
- A. Yes, sir.
- Q. Did you while you kept it yourself keep your doctor's shop, also ?
- A. No, sir. I was not attending to doctoring at that time. I was on crutches, and it was all I could do to get about.
- Q. When did you first become a doctor ?
- A. A number of years ago.
- Q. What year ?
- A. About 1851 or 1852.
- Q. At what college were you educated ?
- A. Castleton, Vermont.
- Q. Are you from there ?
- A. I am from Litchfield, Connecticut. I took lectures in New York on Crosby street.
- Q. At what college were you educated ?
- A. I never went through any literary college. I only took my medical lectures, and graduated there.
- Q. Where did you take the first medical lecture ?
- A. New York city.
- Q. Of whom ?
- A. Of the College Physicians and Surgeons.
- Q. When ?
- A. In 1851.
- Q. Did you take your degree there ?
- A. No, sir.
- Q. What kind of business did you follow in New York when you called yourself a doctor, or had your office as doctor ? Were you following any particular kind of business ?
- A. No, sir ; I was not following any specialty. If a person came to me and wanted me to prescribe, I would do so.
- Q. You did not prescribe for any peculiar class of diseases ?
- A. No, sir.
- Q. Nor follow any peculiar business ?
- A. No, sir ; I have made that a secondary matter.
- Q. What a secondary matter ?
- A. The business of a physician.
- Q. What did you make your principal business ?
- A. I have been in the habit of speculating, more or less, in one thing and another—in anything at which I could make a dollar legitimately.
- Q. Whatever you could make a dollar at legitimately you went into ?
- A. Yes, sir ; it would make no difference what it was.
- Q. And this doctoring was a mere side amusement ?
- A. I merely put my name up.
- Q. When you were keeping the restaurant and drinking place did you have your name up as a doctor ?
- A. No, sir.
- Q. Did you doctor any of your customers then ? [Laughter.]
- A. I do not know that I did.
- Q. They did not apply to you to be doctored ?
- A. Not at all.
- Q. They applied to you for drink ?
- A. I never pretended to go behind the bar. I do not think I ever set out a glass of liquor for any one.
- Q. Did you set out anything for them to eat ?
- A. Certainly ; my men did.
- Q. Then doctoring is not exactly in your line ?

A. Not exactly.

Q. Well, now, we will come down a little further. Won't you tell us where you were in June, 1865?

A. I was in New York city.

Q. What doing?

A. I was boarding at No. 79 West Seventeenth street.

Q. Who did you board with?

A. With a lady by the name of Payne.

Q. Did your wife board with you there?

A. Yes, sir.

Q. Had you children there?

A. The only child I had living was with me there.

Q. Is the child living now?

A. Yes, sir.

Q. That child was with you there, was it?

A. Yes, sir.

Q. At Mrs. Payne's?

A. Yes, sir.

Q. How long did you board there?

A. I boarded there from five to six weeks.

Q. Where did you board in the month of May?

A. I was in Owego.

Q. Where did you board in Owego in May, 1865?

A. I think at the Tioga House, J. J. Horton.

Q. When did you go there in May?

A. I was off and on. I was looking up witnesses, and making preparations for the trial of my suit against the Erie railroad. I made it my headquarters when I went there, and at Elmira I stopped at this little hotel.

Mr. PIERREPONT. I am not now talking about Elmira. I will come to that after a while. In order that we may know definitely, won't you tell the jury when you left New York in the month of May?

A. I had not gone to New York in the month of May.

Q. When did you first go to New York?

A. In the month of June.

Q. What time in June?

A. I cannot state the time exactly.

Q. The first time you ever went to New York to stay was in the month of June, 1865?

A. Yes, sir.

Q. And you went to 79 West Seventeenth street?

A. Yes, sir; at Mrs. Rachel A. Payne's.

Q. Did you ever go to New York to stay before that?

A. I have been there, and staid three or four weeks at a time.

Q. With your family?

A. No, sir.

Q. This was in June. Where were you in the last part of May, 1865?

A. I was either in Elmira, Owego, or Montrose, Pennsylvania.

Q. As they are pretty well scattered, won't you tell us which you were at?

A. My wife was at her brother's.

Mr. PIERREPONT. I am not asking you about your wife.

WITNESS. Well, sir, I was back and forth. I was working up my case against the Erie Railroad Company.

Q. I am now asking you if you can tell the jury where you were the last week in May, 1865?

A. I have answered the question. I told you I was back and forth between those places looking up witnesses.

- Q. On the last day of May, 1865, in which of those places were you ?
- A. I cannot tell exactly which place I was in the last day, for there is nothing that has fixed it definitely on my memory.
- Q. Where were you on the Wednesday of the last week ?
- A. I might have been at the residence of my brother-in-law in Jessup township.
- Q. I only ask you your best recollection of where you were.
- A. My best recollection is that I was at Owego.
- Q. On Wednesday, or in the middle of the last week ?
- A. I was there for two weeks.
- Mr. PIERREPONT. I am not asking you about two weeks. I am asking your best recollection as to where you were on Wednesday the last week in May, and you say Owego, as I understand you. That is so, is it ?
- A. Yes, sir ; I think it was.
- Q. When did you first go to Owego ?
- A. Some time in the month of February, I think.
- Q. What time in February did you first go to Owego ?
- A. I think it was about the first.
- Q. To what house did you go ?
- A. The Tioga House.
- Q. Did you register your name ?
- A. I presume I did. I do not know whether I did or not. I was well acquainted with—
- Q. What is your best memory as to whether you registered your name on the first of February at the Tioga House ?
- A. I think I did.
- Q. How long did you stay at the Tioga House ?
- A. I was there four or five weeks, off and on.
- Q. From the first of February ?
- A. Yes, sir. I was not there all the while ; I made my headquarters there.
- Q. Where were you on the first day of March, 1865 ?
- A. At Owego, I think.
- Q. At the same house ?
- A. At the same house.
- Q. Where were you on the 14th of March, 1865 ?
- A. I am mistaken. I was at Towanda, Bradford county, Pennsylvania, from about the 1st to the 14th of March. I went up to Owego and staid there while ; then went to Towanda and staid there a while ; and then back to Owego.
- Q. From the 1st to the middle of March where were you ?
- A. From the 1st to the last of March I was at the Eagle Hotel in Towanda.
- Q. Where is that ?
- A. Bradford county, Pennsylvania.
- Q. Was your name registered there ?
- A. Yes, sir.
- Q. Did you leave there during the month of March ?
- A. I think I did ; the last of March or the 1st of April.
- Q. Where did you go ?
- A. To Owego.
- Q. What time did you leave there ?
- A. I cannot tell you the day.
- Q. Cannot you tell pretty nearly ?
- A. No, sir ; I have nothing to impress it on my memory.
- Q. Can you tell whether it was the 2d, 3d, or 4th of March ?
- A. No, sir ; I have nothing particular to impress it upon my memory.
- Q. The first week of March ?



A. It might have been.

Q. What is your best memory?

A. I have nothing to impress it upon my memory.

Q. I ask you what your best memory is as to whether it was the first week of March?

A. It might have been.

Q. It might have been any time. I ask you, what is your best memory?

A. I will answer "yes," if that is satisfactory.

Mr. PIERREPONT. Anything that is the truth will be satisfactory.

WITNESS. I do not choose to state anything but what is the truth.

Q. Your answer is "yes," it was the first week of March?

A. Yes, sir; to the best of my recollection.

Q. Did you register your name there then?

A. Yes, sir.

Q. Can you tell me when you left after you registered your name there?

A. I was there for two or three weeks.

Q. Then you left within two or three weeks?

A. Yes, sir; to the best of my recollection.

Mr. PIERREPONT. That would bring it somewhere near the 20th—perhaps a little later. What is your best memory that you left about the 20th?

A. I left, I think, between the last of March and the first of April.

Q. Where did you go?

A. I went from Towanda to Owego.

Q. When did you reach Owego?

A. I won't be sure whether it was upon the last days of March or the first few days in April.

Q. Which ever it was, did you register your name?

A. Yes, sir.

Q. At what hotel?

A. At the Tioga House in Owego. I told you that three or four times.

Mr. PIERREPONT. No; you didn't tell me on the last of March before.

Q. How long did you stay at the Tioga House after you registered your name there about the first of April?

A. I staid there until I got a telegram from my wife, with one or two exceptions, when I went to Binghamton and Deposit. I once went to Binghamton, and on two separate occasions went past Binghamton to Deposit; then went back to Owego. From Owego went to Elmira, and from Elmira back to Owego, and while there, on the 14th of April, got a telegram informing me of the sickness of my child. I got home on the 15th and found it dead.

Mr. PIERREPONT. Did my question perplex you any, or did you understand it? I asked you, when you first left the Tioga House after you registered your name on the 1st of April?

A. I think that I first left temporarily to go to Elmira. My board was going right on the same; I paid it by the week. I think the first time I left there was to go to Deposit.

Q. When was it you went to Deposit?

A. Some time in April.

Q. What time?

A. I cannot give you the date.

Q. Can you give about the date?

A. I cannot. It was soon after being in Owego.

Q. Can you tell how many days?

A. It might have been two, it might have been three, it might have been four, and it might have been five.

Mr. PIERREPONT. It might have been a thousand.

Mr. BRADLEY. A thousand before the 14th of April?

Mr. PIERREPONT. Any number that have passed since.

Q. Can you tell us your best memory as to how many days it was ?

A. It might have been four or five days.

Mr. PIERREPONT. If you will stop one minute and not answer any more as to what might have been.

WITNESS. That is my best memory.

Mr. PIERREPONT. Anything is possible that might have been.

WITNESS. It might not have been but two.

Q. Your best memory is how many days ?

A. My best memory is that it might have been four or five days, and then, again, it might not have been but two.

Q. Is your best memory that it was but two ?

A. No, sir ; I have given it as near as I can.

Q. My question is, "What is your best memory ?"

A. I have given it to you as nearly as I can.

Q. Won't you tell those gentlemen whether you wish them to think your best memory is two, or your best memory is five ?

A. It might have been four or five days. I will put it at that.

Q. That is your best memory ?

A. Yes, sir.

Q. Where did you go to ?

A. To Deposit.

Q. Where in Deposit ?

A. I went to find—

Mr. PIERREPONT. I did not ask you what you went for, but where you went ?

A. I went to the house of a Methodist minister, up two or three miles beyond Port Deposit. I stopped long enough to eat my dinner.

Q. Did you enter your name on the register at the hotel in Deposit ?

A. I cannot say that I did.

Q. What hotel did you stop at ?

A. At the "Aquaco."

Q. What day ?

A. I cannot tell the day of the week.

Q. Did you stop there over night ?

A. No, sir.

Q. And you don't know whether you registered your name or not ?

A. I do not.

Q. Then you went to the Methodist minister's

A. Yes, sir.

Q. How far was that from Deposit ?

A. I do not know exactly, but I should think some two or three miles.

Q. Which way from Deposit—north or west ?

A. West, I think—rather in a northwesterly direction.

Q. What was his name ?

A. Howard.

Q. Did you find him ?

A. Not at home.

Q. You did not see him ?

A. No, sir.

Q. Did you see anybody at his house ?

A. I saw his wife, and I think two daughters.

Q. Do you know their names ?

A. I do not know their given names.

Q. How long did you stay there ?

A. About fifteen minutes.

Q. Where then did you go ?

A. I went out and got into the vehicle in which I went to the house and rode back to Deposit.

Q. When you got back to Deposit, what did you do ?

A. I asked the livery-stable man how much he charged for taking me up. I paid him for it. That was the next thing I did.

Q. When did you do that ?

A. I did it when I got out of the buggy—I think it was a buggy, it might have been a cutter—and went into the bar-room.

Q. Which do you think it was, a buggy or a cutter ?

A. I could not say, but I think it was a cutter.

Q. What time of day was it when you paid him ?

A. Just before dinner.

Q. About what time of day was dinner ? You know they dine at different times in different places.

A. Yes, sir ; but about twelve o'clock they dine in the country.

Q. After that where did you go ?

A. I got on the cars and drove directly back to Owego, to the Tioga House.

Q. When did you go back there ?

A. In the evening.

Q. What part of the evening ?

A. In the fore part of the evening ; it might have been six or seven o'clock.

Q. Can you tell us what day of the week that was ?

A. I cannot.

Q. Can you tell us what day of the month it was ?

A. I cannot, for I did not notice. I had nothing to impress it on my memory.

Q. Can you tell us pretty near ?

A. I could not, as I had nothing to impress it on my memory.

Q. Where did you next go ?

A. To Binghamton.

Q. When did you go to Binghamton ?

A. It was a day or two after—I think two days after I went to Deposit.

Q. When you got to Binghamton where did you go ?

A. To the Mercer House.

Q. Did you enter your name there ?

A. I do not think I did, for I did not stop there long enough to have anything. I merely attended to my business and returned the next train.

Q. Did you stop at the hotel ?

A. I walked into the hotel. I might have got something to drink there, a cigar, or something of that kind.

Q. What is your best memory ? I did not ask what you might have done.

A. I have no recollection. I am almost confident that I did not eat nor register my name there.

Q. How far is Binghamton from Owego ?

A. I think the distance by railroad is twenty-two miles.

Q. What time did you get to Binghamton that day ?

A. I think I went down in the fore part of the day—in the morning.

Q. What time did you come back ?

A. I think I came back on the first train that runs west.

Q. When was that ?

A. My memory is from twelve to one o'clock.

Q. Of the same day ?

A. Yes, sir.

Q. Then you came back to Owego ?

A. Yes, sir.

Q. When did you next leave Owego ?

A. I next left Owego the night of the thirteenth or the morning of the fourteenth to go to Elmira.

Q. Of April?

A. Yes, sir.

Q. Which was it?

A. I do not recollect whether it was after midnight or before when I got into the cars. My impression is that it was after midnight of the morning of the fourteenth.

Q. When you left this hotel at Owego?

A. Yes, sir. As I only intended to go to Elmira temporarily I did not settle my bill at the hotel.

MR. PIERREPONT. I am not asking you whether you settled your bill or not. I am not suing you.

MR. BRADLEY. No; only prosecuting.

MR. PIERREPONT. The hotel people will attend to that. I presume it is paid by this time.

WITNESS. Yes, sir; the bills are all paid.

Q. Was it on the evening of the thirteenth that you left there?

A. My best impression is that it was after midnight that I left.

Q. Then it was the morning of the fourteenth?

A. Yes, sir.

Q. Did you take the train?

A. Yes, sir.

Q. What train did you take?

A. The night train from New York. It is my impression that I took the train about two o'clock.

Q. At night?

A. Two o'clock a. m.

Q. How far is Owego from Elmira?

A. Thirty-six miles.

Q. When did you get to Elmira?

A. I got there before daylight in the morning. I did not look at the clock, and therefore cannot tell you the exact time that I got there.

Q. Had you a trunk with you?

A. No, sir.

Q. Anything with you?

A. No, sir; only the clothes I had on my back, and the crutches that I walked with.

Q. When you left the train, where did you go?

A. I went to this little hotel on a street that runs——

Q. What is the name of the little hotel?

A. I do not recollect the name of it.

Q. Who kept it?

A. I cannot say what the man's name was that kept it.

Q. Did you find anybody up when you got there at that early hour?

A. Yes, sir.

Q. Did you go to bed?

A. No, sir; I laid upon a lounge in the parlor, with a buffalo-skin over me.

Q. When you got there, did you get anything to eat?

A. I ate my breakfast there.

Q. Did you take a room?

A. No, sir.

Q. Did you enter your name on the register?

A. I might, and I might not; I do not think I did.

Q. I ask what is your best recollection?

A. I do not think I did.



Q. Had they a register ?

A. I believe they had.

Q. Did you see it ?

A. I am not positive, but I think they had a register.

Q. Why did you not register your name ?

A. When I got there the man was starting a fire in the bar-room, and I went in. I knew him.

Q. What was his name ?

A. I knew him by sight, but I did not know his name. I had been there prior to this time.

Q. Don't you know his name now ?

A. I do not. There are some names that come to me that I recollect.

Q. Where did you know him ?

A. I knew him there. I had been there prior.

Q. Had you ever known his name ?

A. I do not know that I had.

Q. Have you ever known it since ?

A. I do not think I have seen the man since.

Q. Have you ever heard his name since ?

A. I do not think I have. I knew him by casually being there.

Q. That somebody whose name you never learned was making fire ?

A. Yes, sir.

Q. What did you do when you got in there ?

A. I went up stairs and laid on a lounge until breakfast time. I then got up and ate breakfast.

Q. Did anybody eat breakfast with you ?

A. Yes, sir ; there was a table full.

Q. Anybody you knew ?

A. No one but parties whom I had seen there when stopping there before.

Q. Was there anybody there that you knew of ?

A. I think there was a gentleman there of the same name as my own.

Q. Did you see him there ?

A. I would not be positive whether I saw him or not.

Q. Did you talk with him ?

A. I cannot say ; I was busy.

Q. You were busy eating at breakfast, were you not ?

A. I was busy on my other matters.

Mr. PIERREPONT. I am not talking about other matters. I have got you now at breakfast. There is where you saw these people.

WITNESS. Yes, sir ; I saw people at the table.

Q. Did you talk with them ?

A. I very rarely say anything to any one when I am eating ; I generally eat and attend to my own business.

Q. You did not say anything to them ?

A. Perhaps I did, and perhaps I did not.

Q. Have you any memory of speaking to anybody ; and if so, who was it ?

A. I have no recollection now ; I presume that I spoke to some of them—merely passing the time of day.

Q. Do you remember what time you ate ?

A. In the morning.

Q. What time in the morning ?

A. I do not know.

Q. You say you did not go to bed there ?

A. No, sir ; only laid down on a lounge.

Q. You did not have any room there, did you ?

A. No, sir.

Q. Won't you tell us when the Erie train reached there that day?

A. I think it was a little before daylight in the morning, if my memory serves me right.

Q. About what time?

A. I do not know as I could tell what time; my impression is it was just before daylight.

Q. You think that is so.

A. Yes, sir; a little past.

Q. Did it reach there at the usual hour?

A. I do not know. The trains had been irregular.

Q. Do you know how they were on that day?

A. I could not state.

Q. Did you go on a train that day—an Erie train?

A. Yes, sir; I went on an Erie train.

Q. When?

A. I think it was about three o'clock in the morning; I would not be positive as to the precise hour.

Q. Did you go on the Erie train any other way that day?

A. I went back to Owego on the train that is called, I think, the day express.

Q. Did you go back on the Erie train that day?

A. I did, to Owego.

Q. What time did you go on the Erie train to Owego?

A. If my memory serves me right, about noon. It might have been a little before or a little after noon.

Q. Which is your best memory?

A. I think in the neighborhood of 12 o'clock.

Q. On the 14th?

A. Yes, sir.

Q. There is no other train but the Erie train that went from Elmira to Owego, was there?

A. I think there was.

Q. What other one?

A. I think there was a train run down in the morning; run from Elmira east.

Q. At what time?

A. I could not say as to the time.

Q. But the one you went on was about 12 o'clock?

A. Yes, sir. It might have been later.

Q. Was it an express train?

A. I think it was. That is my recollection now.

Q. You have stated that when you went into this little hotel, the name of which you could not remember, you went up-stairs?

A. Yes, sir.

Q. Where did you go from up-stairs?

A. I went up out of the bar-room into the hotel right up-stairs.

Q. When you got up-stairs you went into a room?

A. I went into a parlor and laid upon a lounge.

Q. Was there any fire in the parlor?

A. No, sir.

Q. Was there anybody else in it?

A. No, I think not.

Q. Did you enter your name in any way at that house on any receipt or in any other way?

A. I do not know that I did.

Q. Did you take a receipt for what you had?

A. No, sir. I am confident I did not do that.

Q. Can you tell us about what time you got your breakfast ?

A. I think it was about 7 or 7½.

Q. How long were you at breakfast ?

A. Not a great while. It don't generally take me a great while to eat.

Q. After you got through breakfast what did you next do ?

A. I went to a livery stable to find this young man.

Q. What livery stable ?

A. I think it is near Haight's Hotel ?

Q. What is the name of it ?

A. I do not know the name of it. I had the names of the parties on paper at the time.

Q. But you haven't it now ?

A. No, sir.

Q. Can't you tell us who kept it ?

A. No, sir.

Q. Can't you tell us who you saw there ?

A. I think I saw one of the men.

Q. What was his name ?

A. I cannot tell his name. They were strangers to me. I was not personally acquainted with many men in Elmira.

Q. Were you personally acquainted with any man you saw there that day at the livery stable ?

A. No, sir.

Q. You can't give the name of one you saw there ?

A. No, sir.

Q. You didn't see the one you were searching for ?

A. No, sir.

Q. Did you hire any horse there ?

A. No, sir.

Q. Did you pay any money there for anything ?

A. Nothing but for my breakfast.

Q. I mean at the livery stable. Had you no service done you there ?

A. No, sir.

Q. When you got through with the livery stable, which resulted in no success, where did you next go ?

A. I cannot tell exactly where I went.

Q. But your memory is very definite about that day ?

A. I was in at the Brainard House for one place.

Q. Where did you go from the livery stable ?

A. I think I went round to the Chemung House.

Q. Who did you see there ?

A. I saw parties there, but I cannot tell who they were. I do not know that I knew them.

Q. Can't you tell one ?

A. I saw at one time I was there——

Q. I am asking you about the Chemung House at this time, not some other time.

A. I cannot say whether it was this time or prior that I saw a man there by the name of Drake, who was attending bar.

Q. What is your best memory as to whether it was this time that you saw Drake there attending bar ?

A. I cannot say whether it was at this time or at a time prior.

Q. Did you see anybody else at the Chemung ?

A. I do not know that I did that I know of.

Q. Did you go into the Chemung ?

A. Yes, sir.

Q. What did you do when you got there ?

A. I presume——

Q. I do not ask you to presume, but to state what you did.

A. I do not know.

Q. Did you stand up or sit down ?

A. When I got tired of walking I almost always slipped in somewhere and sat down.

Q. Did you get tired after breakfast and slip in and sit down ?

A. I presume likely.

Q. What is your best memory about it ?

A. My memory is that I did. I think I did go in there and sit down a few minutes.

Q. Did you get anything to drink ?

A. I do not know as I did.

Q. Did you talk with anybody in the Chemung ?

A. I do not know as I did ; and then again I might have talked with half a dozen.

Q. What is your memory ?

A. I have no recollection on the subject.

Q. Where did you sit ?

A. I sat on a chair, if anywhere ; in what part of the building I cannot state.

Q. Could you not have sat on a sofa ?

A. I might have, if there had been one in the room.

Q. Was there ?

A. I am not satisfied as to whether there was or not.

Q. How long did you stay there ?

A. I might have staid there five minutes, and then again I might have staid there half an hour.

Q. What is your best memory as to how long you staid ?

A. I cannot tell now.

Q. What did you go there for ?

A. I had nothing else to do. If I were waiting here for the train to start back to New York, I might drop into a half dozen places in this city.

Q. I am not asking what you would do here ; I ask you what you went into the Chemung House for.

A. I do not know that I had any motive in going in there more than merely to rest myself.

Q. Can you say whether you did go in or not ?

A. I am not positive that I did go in.

Q. Will you tell us where you next went ?

A. I was around on Water street.

Q. At what place ?

A. I passed up the street, and was looking around.

Q. What did you see ?

A. I passed up as far as the Brainard House.

Q. Did you see anything when you looked around, or anybody ?

A. No one particularly.

Q. Anybody that you ever saw before ?

A. I might and I might not.

Q. Did you ever see anybody since ?

A. I do not know that I did.

Q. Where did you next go ?

A. I went next to the Brainard House.

Q. Did you go to the Brainard House next after you went to Water street ?

WITNESS. That is on Water street.

Mr. PIERREPONT. It is, eh ?



WITNESS. I think that is the name of the street, but I would not be positive as to that.

Q. Did you go to the Brainard House?

A. I did.

Q. Won't you tell us who then kept the Brainard House?

A. I am not positive whether Bartlett kept it or not; I do not think he did.

Q. I am not asking you who you do not think kept it; I ask you who you think did keep it. Don't you know who kept it?

A. No, sir, I do not.

Q. You went into it?

A. Yes, sir.

Q. What did you go in for; for the same reason that you went into the Chemung?

A. I thought I would go in and sit down and wait until the stage went up to the depot, when I would get in and ride up. That was my impression when I went in there.

Q. What time did you go in there?

A. It might have been 9 o'clock, and it might have been ten; and then again it might have been half past ten.

Q. What is your best memory about the time?

A. I cannot tell.

Q. You have no memory about it?

A. I have no recollection about it.

Q. I thought you said on your direct examination that your memory was remarkably good?

A. Yes, sir, it is as to faces.

Q. If it is good as to faces, it is good as to everything you see, isn't it?

WITNESS. Whatever I see?

Mr. PIERREPONT. Yes, sir.

WITNESS. I might see a horse going along, and forget three weeks afterwards that I ever saw such a horse, unless I paid particular attention to it.

Q. Is it good of all things you see or only faces?

A. If I see a horse, cow or an ox, and I pay particular attention, I will recollect it.

Q. You would recollect the horse, the cow and the ox?

A. Yes, sir; if I had paid particular attention to it.

Q. If you went into a house you would recollect it wouldn't you?

A. I could not state, unless I paid particular attention, or had something to charge my mind with it.

Q. If you went into the Brainard House and sat there, you would have a distinct recollection of it, wouldn't you?

A. Certainly; and I have that recollection of going there.

Q. (Handing witness a sheet of white paper.) Won't you take this sheet of paper and draw the first floor of the Brainard house?

Mr. MERRICK. Do you know how to draw?

WITNESS. I am not an artist, (laughter;) I never painted a picture or made a drawing.

Mr. PIERREPONT. We are not so particular about the colors in this case; I merely want the outlines; I do not care about the proportions being exact at all.

Mr. MERRICK objected. The witness on the stand might be required to state in language anything that was a legitimate matter of inquiry, but when a witness states he cannot draw, he did not think it right for counsel to insist upon his drawing a house.

The COURT inquired of the witness whether he could make a draught of the house referred to, and the witness responded in the negative. The court ruled that counsel could not insist upon his doing so,

By Mr. PIERREPONT :

Q. Can you draw the entrance?

A. No, sir.

Q. Can you tell which side of the street it is on?

A. I call it the north side.

Q. As I understand it, the reason why you are not willing to draw this house is because you cannot?

A. Yes, sir.

Q. Perhaps you can tell us something about it, as you say your memory is very distinct on such subjects. Which way were you going when you entered the house?

A. I was going directly towards the house. (Laughter.)

Q. Were you crossing the street?

A. I was upon the sidewalk upon the same side as the house.

Q. Did you go up steps to get in?

A. I do not know whether there is one step, two steps, or three steps.

Q. Were there any?

A. I am not positive that there was a step to the house or not.

Q. What is your best memory about it? Were there high steps or low steps, one step or two steps, or none at all?

A. I could not say.

Q. Were there stone steps?

A. I could not say.

Q. As you entered, was the sill of stone or wood?

A. I could not say, for I paid no attention to it.

Q. Was there a platform upon the side made of wood?

A. I could not say.

Q. Was there a platform there made of stone?

A. I could not say.

Q. Did it run in right level?

A. I could not say.

Q. Was there a high stoop up of stone?

A. I could not say.

Q. When you got in, what was on your right-hand?

A. I do not know.

Q. What was on your left-hand?

A. I do not know.

Q. What was in front?

A. I do not know.

Q. Was it a double house or a single one?

A. I do not know.

Q. But you went into a reading-room and got into intimate conversation with his prisoner?

A. Yes, sir; I went in and sat down in a chair.

Q. Where was it, on the right or left hand?

A. I cannot say whether it was upon my right or left as I entered.

Q. Was it either?

A. I cannot say as to that.

Q. Was there a reading-room on the right-hand?

A. I cannot say.

Q. On the left-hand?

A. I cannot say as to that.

Q. It was the first story you went into when you went into that room?

A. I think it was, but I am not positive.

Q. Was it in the second?

A. I think it was on the first.

Q. Can you tell whether on the right-hand or the left?

A. I cannot.

Q. Can you tell whether it was on either?

A. I cannot.

Q. Were there any newspapers in it?

A. I do not know whether there were or not.

Q. Was there a library in it?

A. I do not know whether there was or not.

Q. Was there a settee in it?

A. I think I sat upon a settee.

Q. Were there chairs in the room?

A. Either settees or chairs.

Q. Which?

A. I cannot tell which. I paid but very little attention.

Q. You know you have a very distinct memory of things. Now, as you recall that Brainard House, can you tell whether, when you went into that reading-room, Surratt was on the left-hand or in front?

A. No, sir; I cannot.

Q. Where was the desk?

A. I have no distinct recollection as to where that was.

Q. Did you see a billiard table in there?

A. Possibly I might.

Q. What is your best memory?

A. I do not recollect of seeing one, though I might have seen half a dozen.

Q. Did you see a telegraphic machine there?

A. I do not know that I did. I have no recollection.

Q. Was there a carpet on the reading room?

A. I do not know.

Q. Was there a table in it?

A. I do not know.

Q. Was there a man in it?

A. Yes, sir.

Q. Tell us who the man was.

A. That man (pointing to the prisoner) came in there, and there were three or four others.

Q. Is there any doubt about that?

A. No, sir; not in my mind.

Q. Did he come in alone?

A. He did.

Q. How long had you been in when he came in?

A. I saw him first upon the sidewalk going into the house.

Q. How long had you been in when he came into the room?

A. I had been in there, I should think, some fifteen or twenty minutes, before he came into the room.

Q. When he came in, was there anybody else in the reading-room beside yourself?

A. I think there were some other gentlemen sitting there.

Q. What were they doing?

A. I cannot tell. I was paying no particular attention to them.

Q. Were not they reading?

A. They might have been.

Q. Cannot you bring back which side it was, or anything of the kind?

A. I cannot.

Q. Was the room papered?

A. I cannot say.

Q. Can you tell what color it was?

A. I cannot. I cannot distinguish colors.

Q. I cannot see, then, how your sight is so good to remember.

A. I can tell white from black; but when you come down to these fancy colors, I cannot tell anything about them.

Q. Can you distinguish white from black?

A. Yes, sir; I can distinguish between white, black, blue, red, and green; but I cannot when you come down to fancy colors.

Q. Don't you think that defect in your sight rather perplexes your memory of facts?

A. Not at all of faces.

Q. Then it would not make any difference—pale, red, sallow, dark or light, pink of the finest blush of a maid would be all the same, would it?

A. It would not affect that sight at all.

Q. Your memory of faces being very perfect, give us the face of one of the other men who were there?

A. I had nothing to call my attention to the other men.

Q. How many were there?

A. I do not know. There might have been one and there might have been a half dozen. I would not swear that there was another person in the room.

Q. But you could swear to this one?

A. Yes, sir; because I had my attention called to that man; and in this way, when he came in and walked up and down the room, I noticed his peculiar dress; that was one thing. Then he shortly after coming in turned and looked directly at me, and came and sat perhaps one seat from me.

Q. Did he seem to take pains to come near you?

A. I thought he did.

Q. You thought he was spotting you?

A. Yes, sir; that is what called my attention to him. I felt that he was after me.

Q. You had quite a talk with him, hadn't you?

A. I didn't have much conversation with him.

Q. Won't you tell the jury what you said to him?

A. I made a commonplace remark with regard to the weather.

Q. What did you say of the weather?

A. I cannot say what I said of the weather—something about it.

Q. What did you next say?

A. He asked me a question.

Q. What?

A. If I had been to the war.

Q. What did you tell him?

A. I replied that I had not.

Q. What was your next question?

A. He says: "I see you are lame. How did you come by that lameness? That was in corroboration of the idea I had formed of the man from his watching me.

Q. What next did he say?

A. I gave him an evasive answer.

Q. What did you say?

A. He partly followed it up.

Q. What did you say?

A. I did not make much reply.

Q. I ask you what you said. I do not ask you what you did not do.

A. I cannot state the precise language.

Q. Can you state the substance?

A. The substance of it was with regard to how I had received my injury.

Q. What did you say?



A. I evaded the question and did not give him any direct or satisfactory answer.

Q. Did he ask you any more questions?

A. Yes, sir; he asked me where I resided; if I resided in Elmira.

Q. What did you tell him?

A. I told him no.

Q. What else did he ask you?

A. I replied that I resided in Pennsylvania; that was my answer to him.

Q. What did he say to that?

A. He didn't seem to be very communicative. I thought he was getting round to get me on another tack. I then got up, left him, and walked up to Haight's Hotel.

Q. My question is as to what he said, not at to what you thought. What did he say further?

A. He asked me where I resided; I told him in Pennsylvania. He made some other remark; what it was I cannot say.

Q. Can you tell any other remark you made?

A. No, sir; I got up. I made up my mind——

Mr. PIERREPONT. Wait one minute. We have not got you up from there at present.

Q. What did you say to him in reply to his last remark?

A. I cannot state what I said. I did not communicate much to him.

Q. Can you state anything more than you have stated?

A. No, sir.

Q. Did he say anything more to you than you have stated?

A. But little conversation passed between us.

Q. Did he say anything more to you?

A. There might have been a little more conversation, and there might not. I cannot state whether there was any more.

Q. Who got up first?

A. I got up and left, and went to Haight's Hotel.

Q. When you got up and left, did he get up?

A. I do not think he did.

Q. Did you ever see him any more.

A. Never again until I saw him to-day.

Q. When you got to Haight's Hotel, what did you do?

A. I stopped there a few moments.

Q. What did you see at Haight's Hotel?

A. It is so long ago, I cannot say. I saw some people in and about there; who they were I do not know. I am not acquainted with many people in Elmira.

Q. Did you see anybody there that you ever saw before?

A. I do not know that I did.

Q. Tell us what you did after you left Haight's Hotel.

A. I was watching for the arrival of a train. I think I asked some one in the office about what time the train went east.

Q. What did they tell you?

A. They told me what time the train went east, and seeing that I had a little spare time, I thought I would call upon a person whom I knew—a Dutchman who kept a little hotel round near the depot.

Q. Did you go there?

A. Yes, sir.

Q. What is his name?

A. His name is George ——, now you have got me. I will be able to think of it in a little while. I knew him in Pennsylvania.

Q. After you left the Brainard House you went to this other hotel, and then you went round to the Dutch hotel?

A. Yes, sir.

Q. Where else did you go to?

A. I remained there until I got ready to go and take the train.

Q. Did you go and take the train?

A. I did.

Q. You said you were waiting for the omnibus at the Brainard House; what would you change your mind and walk to the depot?

A. I did not wait at the Brainard House simply because I thought that man was after me. I thought he was one of the men in the employ of the Erie Railroad Company, and was working up testimony in behalf of the company against me, and was trying to draw out what he could from me.

Q. That is the reason you left him?

A. Yes, sir. My counsel, Judge Munger, of Owego, and C. F. Wetmore, of New York, had advised me not to talk with any one upon the subject; to say nothing to any one as to how, when, or by what I was hurt, except to my friends, those that I knew perfectly well.

Q. What do you mean by being hurt?

A. I received an injury on the Erie railroad, between Lackawaxen and Shohola, on the 28th of December, 1863.

Q. State whether you have read this trial as it has been going on.

A. I read a part of it, on the part of the people. I did not read it carefully. I merely picked up a paper and glanced at it; I have not been interested in it at all.

Q. When did you first read it?

A. I cannot tell when I first noticed it. I do not think that I saw the opening of the case at all.

Q. Did you read any of the opening evidence?

A. I do not know that I did.

Q. Have you read any of it as published in the newspapers?

A. I do not know that I have. Yes, I have read some of the opening evidence. I read a portion of—what do you call him's testimony.

Mr. PIERREPONT. Tell us what the testimony was about and we will give you the name.

WITNESS. (After brief reflection:) Weichmann—that is the name. I glanced at his testimony. I have noticed the testimony also of one or two others. I did not read it. The first that attracted my attention particularly was the testimony of Stewart, and the other witnesses from Elmira.

Q. After you left Elmira about 12 o'clock that day, at what time did you reach Owego?

A. It was in the afternoon. I cannot state the hour.

Q. Are the Chemung and the Brainard House on the same street?

A. No, sir.

Q. On what street is the Brainard?

A. The Brainard, I think, is on Water street.

Q. In what street is the Chemung?

A. I forget the name of the street. There is another hotel on the street, nearly opposite.

Q. Is it on the same or on a different block?

A. I could not be positive, but it strikes me the block runs clear round.

Q. When did you see this man who is a prisoner here, after you saw him at the time of this conversation?

A. This morning.

Q. You recognized him in a moment, didn't you?

A. Yes, sir; I recognized him the moment the door was opened.

Q. In here?

A. No, sir.

Q. Where was it ?

A. In the jail.

Q. Was he dressed as he is now ?

A. He was not dressed at all then.

Q. Was he dressed as he is now, or dressed in some different costume ?

A. He was in a different costume.

Q. Why then do you say he was not dressed at all ?

A. If I see you with a sack or a dressing-gown on, I would not call you dressed.

Q. Was he dressed in the jail in the same way that you saw him dressed at the Brainard House ?

A. Partially, but a different colored suit.

Q. In what respect partially ?

A. In the sack that he had on.

Q. It was of the same cut, was it not ?

A. No, sir.

Q. How was it partially the same ?

A. It had a belt that fastened around him ; but it was of a little different style.

Q. What was the difference ?

A. There was a difference about the neck, and there was a difference on the plaiting.

Q. You noticed particularly about the neck ?

A. Yes, sir.

Q. And you remember that very distinctly ?

A. Yes, sir.

Q. Then you remember just what the plaiting was there ?

A. I remember that it was plaited, but not so distinctly that I can describe it. I know it was different from what this is.

Q. You say that you describe this plaiting that you saw two years and more ago ?

A. No, sir ; I cannot.

Q. What omnibus were you going to take when you went to the Brainard House ?

A. I was going to take the Brainard House omnibus up.

Q. Was there one ?

A. I have always seen one there. I did not make any inquiry whether there was one or not.

Q. Didn't you ask when you went in ?

A. No, sir.

Q. Did you see one ?

A. I did not see one standing there.

Q. How far was the Brainard House from the depot ?

A. I think from a quarter to a half mile.

Q. One is twice as far as the other—which ?

A. I could not tell the exact distance.

Q. You finally walked it ?

A. Yes, sir. I had plenty of time and I walked it.

Q. When you went there did you think you had plenty of time ?

A. Yes, sir ; I did. I had nothing in particular to do, and I thought I might as well walk in there and lounge around as not, and perhaps get my dinner if I had time.

Q. Did you get your dinner ?

A. No, sir. I went round to this place that I spoke of and took some oysters. I mean at this Dutchman's, George Steupler's.

Q. Did he see you there that day ?

A. Yes, sir. I talked with him.

Q. Do you know where he is?

A. I do not.

Q. You spoke of being at the Brainard House before this time when you took breakfast?

A. Yes, sir. I was there three or four days.

Q. When?

A. I was there in the fall.

Q. Of the same year?

A. I was there in January.

Q. Of the same year?

A. Yes, sir.

Mr. BRADLEY. You mean the fall previous to January?

A. Yes, sir.

Q. And you were there in January?

A. Yes, sir.

Q. And you staid there several days?

A. No, sir; three or four days.

Q. In the fall, did you stay three or four days?

A. I think I only staid one day in the fall.

Q. In January?

A. I think I staid three or four days there at one time, and I think it was in January.

Q. Did you enter your name then?

A. Yes, sir.

Q. And you cannot remember the name of the hotel?

A. No, sir; nor who kept it.

By Mr. BRADLEY:

Q. Did you ever receive anything for your testimony in this case?

A. I have received nothing.

Q. Or have you had any intimation that you would receive anything?

A. Nothing at all, other than my expenses.

Q. What was the first intimation you had that you would be required here?

A. A telegram from you.

Q. When was that?

A. I received it, I think, about 1 or quarter past 1 o'clock.

Q. Had you determined not to come?

A. Yes, sir.

Q. Were you visited in the afternoon by a gentleman residing in New York?

A. I was visited by a gentleman who said that he was in business in New York, between 5 and 6 o'clock.

Q. State when and where it was that you spoke of your knowledge of Surratt's being in Elmira at that time.

A. It was at the office of Cassidy & Covell, on New Orleans street.

Q. When was that?

A. I think it was Tuesday.

Q. Do you remember what you said on the subject?

A. Cassidy called me into his office, saying that he wanted to see me, and I then spoke to him about it.

Q. You can state whether your attention was called to this matter in any way.

A. O, yes, sir; he called my attention to the Surratt trial.

Q. That is the first time you had spoken of it?

A. That is the first time to my knowledge that I had spoken of it; there were two or three in there; I remarked that I had read the testimony of those men.

Q. Which men?



A. The men from Elmira. I said it called to my mind the circumstance of seeing him there, and I told him how I could fix the date as the 14th.

Q. Did you at any time when you saw him in Elmira know it was Surratt, John Harrison, or who it was?

A. I did not know what his name was; I hadn't any idea whether it was John Surratt, John Harrison, Richard Roe, or John Doe.

Q. Do you recollect of giving any description to those persons of the person you saw there?

A. I did.

Q. The next thing you knew of was a telegram from me?

A. Yes, sir; and I was surprised at it when I got it.

Q. You were asked as to the dress he wore this morning; you say it was of the same kind exactly as the other; but that it was of a different color. What was the color of the dress which he had on at Elmira?

A. It was a gray.

Q. State whether you observed anything about his hat or cap.

A. He wore a round-top slouch hat.

Q. Did you observe anything about his moustache or imperial?

A. It was as long as it is now, but covered more of his chin. His moustache was not as long, but looked like first growth, mere "furs."

Q. Do you remember whether he had anything in his hand or not; and if so, what?

A. I have no positive recollection; my impression is that he had a stick or walking-cane; but I am not positive as to that.

Q. When you saw him this morning, did he have any cap or hat on?

A. He did not.

Q. Was any part of his costume that you observed of the same color that he had in Elmira?

A. Not at all.

Q. State whether you recognized him at once?

A. As quick as the door was opened I remarked to Mr. Bradley that he was the man; that I did not want to see anything further of him. I described him to Mr. Bradley and told him that I did not want to go to the jail to see him.

Q. When I proposed to go over to the jail to see him, did not you request that you might first be permitted to see him in the crowd.

(Objected to by Mr. Pierrepont, on the ground that no conversation of the kind could be given. Objection sustained.)

By Mr. PIERREPONT:

Q. When did you say you first got the telegram?

A. I think it was yesterday, a little past 1 o'clock.

Q. Were you greatly surprised at it?

A. Yes, sir.

Q. What surprised you?

A. That I should have a telegram to come here.

Q. Why did that surprise you?

A. I could not imagine who had informed of what I had said regarding it.

Q. Didn't you imagine that your evidence would be of great importance to the defence if you had seen him in Elmira on the 14th?

A. I was not positive as to the man. I said it answered the description of the man I saw, and if I could see that man I could tell.

Q. I ask you if you did not think it would be of great importance to the defence if you had seen him in Elmira?

A. No; I did not think anything material about that.

Q. You did not think it would be?

A. I paid no attention to it. I merely came to the conclusion that I was not coming.

Q. What made you conclude that you were not coming ?

A. I did not want to have my name mixed up in the matter, one way or the other.

Q. Somebody, you say, came to see you ?

A. Yes, sir.

Q. How did they change your mind on this subject when you were so firm and determined not to come ?

A. He said this : If you do not go, I shall proceed to Washington immediately and lay your statement before his counsel, and the only effect will be to delay the court until a subpoena can be gotten out and served upon you here.

Q. Who said this ?

A. Mr. James W. McCullough.

Q. Where did he come from ?

A. He told me his place was 35 Broadway.

Q. That changed your mind and caused you to come ?

A. Yes, sir.

Q. And when you went to the jail you recognized him immediately ?

A. Yes, sir ; immediately.

Q. Did you know when you said that, that that was of any importance in this case ?

A. I supposed it was.

Q. Did you suppose so before you left New York ?

A. I supposed that if I recognized him as the man I saw in Elmira with that particular blouse on it would be important to him. If I supposed I saw him, and then on seeing him here failed to recognize him as the man, it would be equally as important to the prosecution.

Q. How did you think it would be important for the prosecution if you did not recognize him ?

A. For the simple reason that it would be contradictory of what others had stated with regard to his being the man.

Q. Had you heard of anybody seeing him at the Brainard House ?

A. I told you I had read the testimony of those men from Elmira.

Q. Did you read any such thing in their testimony as their having seen him where you say you saw him ?

A. No, sir ; I do not think I did see anything said relative to his being at the Brainard House.

Q. Are you sure now ?

A. Yes, sir.

Q. Tell us, inasmuch as you did not see anything about his being at the Brainard House, why you thought it would be equally important to the government if you did not recognize him as the man you saw at the Brainard House.

A. It would simply establish this, that my mind being impressed as to the man from the fact that I thought he was in the interest of the railroad company and looking after me, I would be quite as likely to recognize him as those gentlemen from Elmira would, and I said that to Mr. Bradley. I added, " If he is not the man I shall say it, and then I shall be frank enough to inform the counsel on the other side. Therefore, I remarked, the better plan would be to let me go home, or let me pick him out here in the crowd."

Q. Did you think we could have used you ?

A. Yes, sir.

Q. Did you tell Mr. Bradley this in New York ?

A. I told Mr. Bradley this in his office, I should think about eight or nine o'clock in the morning.

Q. That was not any reason why you did not come here ?

A. No, sir ; I came on here solely on the earnest solicitation of Mr. McCullough.

Q. You at first determined not to come on ?

A. Yes, sir.

By Mr. MERRICK :

Q. You said you supposed the government could use you to recognize this as not being the man. Have not you read in the testimony of these Elmira witnesses that they had described the particular dress of a man whom they saw in Elmira on that day ?

A. I swore to that three or four times over.

Q. And if you saw that this man whom you had seen in the same dress was not the man you had seen before, it would put two men in that same dress in Elmira that day ?

A. Yes, sir.

By Mr. PIERREPONT :

Q. This James W. McCullough, of whom you have spoken, do you know who he is ?

A. I do not. I never saw him before.

JOHN C. BARTLETT sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside ?

A. In Washington.

Q. Where and how were you employed in the months of March, April and May, 1865 ?

A. Driving stage for John Thompson from here to "T B" and back.

Q. Did you make double trips down and back the same day ?

A. Yes, sir.

Q. You went down in the morning and came back in the afternoon.

A. Yes, sir. I left here at eight o'clock in the morning, and generally got in here between five and six in the evening.

Q. That is when the roads were tolerable you got in between five and six o'clock, and sometimes later.

A. Sometimes later.

Q. During the month of April, 1865, were there any pickets on that road beyond Good Hope ?

A. No, sir.

Q. You went down in the morning and returned in the evening ?

A. Yes, sir; between five and six o'clock.

Q. There were no pickets in the middle of April below Good Hope ?

A. No, sir.

By Mr. PIERREPONT :

Q. How do you know there were no pickets ?

A. None sent there. I did not see any.

Q. All you mean is that you did not see any ?

A. I did not see any pickets on the road at all after I left the bridge.

Q. On the 14th of April did you pass over the road ?

A. I did.

Q. At what time ?

A. I left here about 8 o'clock in the morning.

Q. Where did you go ?

A. To T B.

Q. When did you return ?

A. I returned that evening between five and six o'clock.

Q. After that were there any pickets set ?

A. There were after that.

By Mr. BRADLEY :

Q. You mean that there were the next day ?

A. Yes, sir.

Q. Were there any that night ?

A. Not when I came in.

Q. You did not see any ?

A. No, sir ; only at the bridge.

Q. Whether there were any set after you passed that night you do not know ?

A. No, sir.

By Mr. PIERREPONT :

Q. You had nothing to do with the setting of any pickets ?

A. No, sir.

By Mr. BRADLEY :

Q. If there had been cavalry pickets on that road between Surrattsville and Good Hope at 5 o'clock on the afternoon of the 14th, would you have seen them ?

A. I think I should.

Q. Which side did you take in the late contest ?

A. I was always a Union man.

Q. You are a northern man ?

A. Yes, sir. I was born and brought up in New York.

Q. And your sympathies were always for the United States against the rebels ?

A. Yes, sir.

Mr. BRADLEY stated that it had been industriously circulated that he had offered the witness Hobart \$1,500 to induce him to testify to a different state of facts than he had sworn to. He presumed Mr. Hobart would deny it. Where he (the speaker) was known it was unnecessary to make a denial, but where he was not known it would have its influence. So far as he was personally concerned, he was indifferent about it, but he called attention to the fact to show the course of a portion of the newspaper press of this city, in bearing down upon the defence in the trial of this case. He should feel degraded if he should go into the newspapers to deny such a charge for himself, but he thought it but just to make this public denial.

Mr. PIERREPONT said he did not know what reply to make to the remarks of Mr. Bradley, except to say that such publication had not been instigated or brought about in any manner by the prosecution.

Mr. BRADLEY did not mean to intimate that such was the case.

The COURT asked what paper in this city had published such articles ?

Mr. BRADLEY. I have not read the articles, but half a dozen persons in this city have called my attention to articles in the *Chronicle* of the purport I have indicated.

The COURT said he did not know what he could do, or what authority he had to make any order in such a case. He had no authority to suppress articles in the newspapers.

Mr. BRADLEY called Isaac H. Surratt, who was sworn, and testified that his brother, the prisoner at the bar, is twenty-three years of age. He was born April 13, 1844.

Mr. BRADLEY now moved that a recess be taken until 6 o'clock p. m., to give the defence time to obtain the testimony of a witness who had not yet arrived, but would be here at 6 o'clock by the train.

Mr. SCHNEIDER, the sick juror, was questioned as to his condition, and re-



plied that he thought if he could go to the hotel and lie down till 6 o'clock, he would be able to come back at that hour and hear the testimony of the witness who was expected.

Accordingly, at 2.40 p. m., the court took a recess until 6 o'clock.

The court reassembled at 6 o'clock.

Mr. BRADLEY, Jr., said, for the purpose of hurrying the arrival of Rev. Father Boucher, he had gone to Baltimore, expecting to meet the witness, but he failed to arrive. Yesterday he (Mr. Bradley) received a telegram, announcing that the witness had left Montreal yesterday morning. He was due here this afternoon, but may possibly have missed the connection at different points.

Mr. MERRICK said the witness might arrive by Monday; and if that were so, he hoped the defence would be allowed to examine the witness on Monday, or at such time as he should arrive.

Mr. CARRINGTON said the prosecution did not feel disposed to go on with their rebutting testimony until all the testimony for the defence was in.

Mr. BRADLEY suggested that the time for the defence to examine the witness might be limited until Tuesday or Wednesday next.

Mr. CARRINGTON said it would be remembered that he had been pressed very hard to go on with the trial, and now that it was commenced he did not desire to allow the rebutting testimony to go on till they knew the case of the defence as developed by the testimony. It was a matter for the discretion of the court whether further time would be allowed.

Mr. BRADLEY said he had expected to close the case on Wednesday, and it was their misfortune, and not their fault, that the witness had not arrived. He had stated to the prosecution what he expected to prove, and if they chose to admit it, then there would be no further difficulty.

JOHN J. REEVES sworn and examined.

By Mr. BRADLEY :

Q. When you were examined the other day you said you could not give certain dates without reference to your books. Have you those books now?

A. I have.

Q. Please turn to them and tell us what they are.

(Mr. Pierrepont objected to the witness reading the entry. He might refresh his memory by looking at it if he saw proper.)

Q. You can state, after looking at the entry, what it was John Harrison got, and when.

A. He got a Garibaldi of cloth. I measured him on the 7th day of April, and delivered it on Monday, the 9th.

The COURT. The 9th would be Sunday.

WITNESS. It is Monday, the 9th, in my books.

By Mr. PIERREPONT :

Q. Did you make any suit for him after that?

A. No, sir.

Mr. CARRINGTON said he thought the government could close the rebutting testimony in two days, and he therefore hoped that the defence would be compelled to close.

Mr. BRADLEY said that there was no doubt that the defence would have further proof after the government's rebuttal. It was probable that the defence would then desire to submit the case without argument. He was ready now to do so.

Mr. PIERREPONT said they would talk about that when all the testimony was in.

It was finally agreed that the court should now adjourn, with the understand-

ing that if Father Boucher arrived he should be examined on Monday; but that in case of his non-arrival, the prosecution should put in the rebutting testimony, and the case of the defence should be considered closed.

The court then adjourned until Monday.

MONDAY, *July 22, 1867.*

The court was opened at 10 o'clock.

As soon as court was opened, Mr. Merrick stated that Mr. Edward F. Queen, who was ill last week when summoned, was now in court, and he asked that he be examined. The examination would occupy but a few moments.

Mr. PIERREPONT said he would not object if the examination would be brief.

Mr. MERRICK said it would.

Mr. Queen was called, but failed to respond.

Mr. MERRICK said they would proceed with the examination of another witness, Reverend Mr. Boucher, and perhaps by the time his examination was concluded, Mr. Queen would be in attendance.

Reverend CHARLES BOUCHER sworn and examined.

By Mr. BRADLEY :

Q. State where you reside.

A. I reside in the parish of St. Hiliare, Canada. I am rector of that parish.

Q. You are a priest of the Catholic church?

A. Yes, sir.

Q. Where were you residing in April, 1865?

A. In the parish of St. Liboire.

Q. Look at the prisoner at the bar, and see if you recognize him?

A. Yes, sir.

Q. State whether you saw him in the month of April, 1865.

A. Yes, sir.

Q. Where?

A. The first time I saw him was in my place in St. Liboire.

Q. Do you recollect at or about what date it was?

A. It was about the 22d of April, 1865. I think it was on the evening of that day.

Q. Was he in company with any one when you first saw him?

A. Yes, sir.

Q. Who was it?

A. Mr. Joseph F. Du Tilly who brought him to my place.

Q. Was any one else with him?

A. No, sir.

Q. Is that the same Mr. Du Tilly who was examined as a witness in this case?

A. Yes, sir.

Q. State how long he continued at your house.

A. He remained with me about three months—perhaps a little over.

Q. Where did he go after that?

A. To Montreal.

Q. Did you see him from time to time after that, until he left for Europe?

A. Yes, sir.

Q. How frequently?

A. Sometimes twice, and sometimes three times a week.

Q. Always as often as twice a week?

A. Yes, sir.

Q. And sometimes three times?

A. Yes, sir.

Q. You say you saw him until he left for Europe?

A. Yes, sir.

Q. During that time do you know whether or not he received any information from the United States as to the condition of his mother?

(Objected to by Mr. Pierrepont, on the ground of its being hearsay evidence.)

Mr. BRADLEY said it had been made the burden of the opening in this case, and repeated twice subsequently in incidental arguments, that the prisoner fled, abandoning his mother, thus proving himself a coward. He wanted to show the fact that he did not know what the condition of his mother was; that he had not the means or opportunities to learn what was passing in the United States, but that the facts were concealed from him. He proposed further to show by this witness what occurred when he was informed of the condition of his mother.

Mr. PIERREPONT remarked that the statement of the counsel made it quite clear that the evidence could not be admitted.

The COURT said it would certainly be violating the rule respecting hearsay evidence to admit it.

Mr. WILSON took occasion to say that there was no such remark in the opening address as had been intimated by Mr. Bradley. In that address there was no reference whatever made to the prisoner's mother.

Mr. BRADLEY said in that perhaps he was mistaken, but such a remark had undoubtedly fallen from the counsel for the prosecution during the progress of the trial, once from Judge Pierrepont and once from Mr. Carrington.

Mr. MERRICK said he remembered very distinctly the remark made by the district attorney at the time he asked him for his authority.

The DISTRICT ATTORNEY said it was possible he did make such a remark.

Mr. MERRICK submitted that such a statement having been made by counsel, they had now the right to rebut the same in order to relieve the prisoner from the danger of any prejudice which might be created thereby.

Mr. PIERREPONT inquired whether the counsel would allow the government to introduce testimony to rebut all they had said in the case.

Mr. MERRICK replied that they had not the slightest objection to the government introducing testimony to rebut anything they had said on their side.

The COURT remarked that he had.

Mr. MERRICK said he was speaking of the offer of the counsel. The court of course might interpose to prevent an acceptance of the proposition. So far as they were concerned, however, they were perfectly willing that everything which would tend to throw light on the case should go to the jury.

The COURT said he never knew it to be held that the fact of a counsel making a statement in argument authorized proof to be brought to show that that statement was incorrect; neither had he ever heard of proof being brought to wipe out prejudices which it was feared might be created in the mind of the jury.

The offer was overruled. Exception reserved.

Mr. MERRICK then proposed to show that when he did learn of his mother's peril he insisted upon returning, but was restrained from doing so.

(Objected to. Offer overruled and exception reserved.)

Q. Be good enough to state what was the condition of the health of the prisoner from the time he reached your house until he left for Europe.

(Objected to by Mr. Pierrepont on the ground that they had given no evidence on the subject.)

The COURT ruled that evidence might be given regarding his health.

The question being repeated to the witness, he answered as follows:

A. He was in very poor health; he had fever and ague. The first time he remained at my house he had a disease once or twice a week, and the rest of the time he remained in Canada he had it every other day. We used to call it the "chills." His health was very poor. He remained in bed whole days at a time. At such times he could hardly move. He was very pale and weak. Sometimes I was apprehensive that he might not live.



Q. He was greatly reduced by his illness ?

A. Yes, sir.

Q. State whether you know a witness examined in this case named Dr. Louis

J. McMillan.

A. Yes, sir.

Q. When and where did you know him ?

A. I knew him in the township of Shefford.

Q. When was that ?

A. I was there five years.

Q. At what time was he there ?

A. It must have been about 1860 when I became acquainted with him, 1860 or 1861. I am not sure whether it was six or seven years.

Q. Did you know him afterwards in 1864 ?

A. O, yes, sir. I lived in Shefford then. He was my parishioner.

Q. State, if you please, whether you had opportunities to know his general character among those with whom he associated as a man of truth and veracity.

A. I had opportunities of knowing him.

Q. Did you know how he was generally esteemed among such in regard to truth and veracity ?

A. Yes, sir.

Q. Was his character for truth good or bad ?

A. As well as I can say, I do not think his character was very good.

Q. Was it good or bad ?

A. Bad.

Q. Mr. Du Tilly was asked on his cross-examination whether you ever had any quarrel with him or not.

A. We had a certain contestation.

Q. Was that in relation to any money transaction ?

A. No, sir.

Q. Did you owe him any money ?

A. Yes, sir.

Q. How much ?

A. Five dollars.

Q. Did you pay him ?

A. Yes, sir.

Q. Have you a receipt ?

A. Yes, sir.

Q. Was he or not, prior to the time you had the quarrel with him, your parishioner ?

A. Yes, sir.

Q. Had you or not had conversations with him on the subject-matter that gave rise to that quarrel ?

A. Yes, sir.

Mr. BRADLEY. I propose now, if your honor please, to give in evidence the cause of that quarrel, which has been brought out on the other side.

Mr. PIERREPONT. We have no objection if your honor will allow Dr. McMillan to be called in reply.

The COURT. Of course.

Mr. BRADLEY. To that they have an undoubted right.

Q. Will you state what was the cause of that quarrel—what preceded it ?

A. I must confess that I feel a little reluctance to speaking of it. It was reported to me—

Mr. PIERREPONT. Don't state what was reported to you.

Mr. BRADLEY. If you told him what had been reported to you, state it.

WITNESS. You want to know what I stated to him when we had our conversation, I suppose ?



A. Yes, sir.

WITNESS. I spoke to him about a principle that I disliked. It was on account of abortion. He argued the point with me, contending that it was not against good morals. I tried to convince him that it was. We did not get very far that time. I met him in a house where we were both called on sick calls. He was called for his medical attendance, and I was called for my spiritual advice. That is all I can state of that conversation.

Q. When you had the quarrel what passed?

A. After the first conversation loud complaints came to me, and I thought I would advise Dr. McMillan not to practice that any more among my people. He happened to pass my house, and I had my servant man call him in. To begin the conversation with him, I spoke about the money matter—the \$5—and then I spoke about the main point.

Q. What did you say about the \$5 to Dr. McMillan?

A. I said that I had been delaying the payment to him because he had subscribed towards the building of a church in Waterloo.

Q. How much?

A. I can't say exactly, but I think from \$5 to \$10. I was owing him \$5, and I thought I would keep that towards the subscription, because it was made payable to me. He looked to be very much excited on the point. I said to him at that time that I would like to advise him not to practice abortion nor to argue the point before the people; that it would be a great scandal. He then made an insulting reply, and I took hold of him by the collar and put him out. I wanted to protest publicly—

Mr. PIERREPONT. Never mind what you wanted to do. You must confine yourself to what you said to him.

A. I could not say any more when he was out.

Q. You spoke of having your servant call him in. Was Mr. Du Tilly, who was examined as a witness here, ever your servant, or employed by you?

A. He was employed by me sometimes, but he never was my servant. He had horses, and sometimes used to drive my carriage—drive me around. I had a horse of my own, and he took me out.

Q. State whether you have any hostile feelings towards Dr. McMillan now in consequence of that quarrel, or from any other cause.

A. No, sir; I never had any spite against him.

Q. I have asked you as to his general reputation among those with whom he is known for truth and veracity. Would you or not, from that general reputation, believe him on his oath in a matter in which he was interested?

A. No, sir; I would not.

Cross-examination.

Q. Do you know this gentleman sitting here at my right? (Dr. Erskine.)

A. Yes, sir.

Q. Has he been your physician?

A. Yes, sir.

Q. Did you see him in Canada?

A. Yes, sir.

Q. Did you talk with him?

A. Yes, sir.

Q. Was he present when you had the quarrel with McMillan?

A. I do not remember having seen him then.

Q. Don't you remember whether he was or not?

A. No, sir.

Q. Can't you tell the jury whether he was present or was not present?

A. I do not recollect distinctly; but since I have come to reflect upon it, it strikes me that there was somebody in the wagon outside.

Q. Does it strike you that that somebody was your family physician, this gentleman sitting at my right, (Dr. Erskine?)

A. He was called several times to my house.

Q. Does it strike you that this is the gentleman?

A. I take him to be Dr. Erskine.

Mr. PIERREPONT. Yes, sir; it is Dr. Erskine.

Q. Was this gentleman, Dr. Erskine, there at the time of this trial?

A. I cannot say.

Q. You say it strikes you somebody was; who does it strike you it was, if it was not Dr. Erskine?

A. My whole attention was brought on Dr. McMillan.

Q. Was your whole attention brought upon the one who was with him?

A. Yes, sir.

Q. Who does it strike you was with him?

A. I cannot tell.

Q. Does it strike you that this gentleman was, or was not?

A. I cannot tell.

Q. What is your best memory, as you recall the scene, as to whether this gentleman was the somebody who you say it strikes you was out there?

A. I cannot tell.

Q. Can't you tell us whether he was the one or not?

A. No, sir.

Q. Will you state where this conversation that you speak of with Dr. McMillan occurred?

A. It was in my house.

Q. Did any one else hear that conversation?

A. There was nobody present in the parlor but Dr. McMillan and myself when the conversation or the quarrel took place.

Q. Won't you tell exactly what that conversation was?

A. It was very short; I have just given it.

Q. You have stated it all?

A. Yes, sir.

Q. Won't you tell us when it was?

A. As well as I can remember, it was in the month of June.

Q. Of what year?

A. 1866.

Q. When did you next see Dr. McMillan after this?

A. It is very difficult for me to answer, because he was a physician, and he used to attend to sick persons all around in the township of Shefford, and I left there after a while.

Q. Had he a bad character as a man of truth where he was attending as a physician?

A. Yes, sir, among my people.

Q. Tell me who you heard speak of his bad character?

A. It was his general reputation.

Q. Who did you hear speak of it?

A. Well, I can mention some names; for instance, a Frenchman by the name of Potvin.

Q. Can you tell me any other?

A. A Scotchman by the name of Christopher McRae.

Q. Did he say he was a man of bad character for truth?

A. I remember very well that he said he would not believe him.

Q. When?

A. I think it was in the year 1864.

Q. What is McRae's business?

A. He is a tailor.

Q. Where does he live?

A. In West Shefford.

Q. Did he live there in 1864?

A. Yes, sir.

Q. Can you give me some other name?

A. You are going very far if you are going to get me to name the whole parish; I had some eight or nine hundred parishioners under my charge.

Q. Did you hear the eight or nine hundred parishioners say so?

A. It would be very hard to tell.

Q. Can you mention any other than those you have already named?

A. I can name you one more who comes to my mind.

Q. Who is he?

A. Daniel Magill.

Q. Where does he live?

A. West Shefford.

Q. What was his business?

A. He is a farmer.

Q. Does he live there now?

A. I think he does.

Q. Can you tell any other?

A. Not at present.

Q. Was this Dr. Erskine your family physician before Dr. McMillan was?

A. I never said Dr. McMillan was my family physician.

Q. Was Dr. McMillan your physician?

A. He was called once because there was no other physician to be found in Waterloo.

Q. Was Dr. Erskine your physician before that?

A. As well as I can tell, he was.

Q. Was he after that?

A. I cannot tell.

Q. You cannot tell whether he has been since?

A. No, sir.

Q. You know him pretty well?

A. O, yes, sir; I have met him frequently.

Q. Did Dr. McMillan visit a great many people in your parish as a physician?

A. I saw him pass by several times, and to my knowledge he was called to attend some sick persons around my place.

Q. Wont you tell us when you first went to that place in your official or professional capacity?

A. I will have been a year in St. Hiliare next fall. We are removed generally in the fall. Then I was two years in St. Liboire, and five years in Shefford.

Q. When did you leave Shefford?

A. I left Shefford in 1864.

Q. At what time in the year?

A. In the fall.

Q. How long do you say you had been there?

A. Five years.

Q. Was it there that you saw Dr. McMillan for the first time?

A. Yes, sir.

Q. How long did you know him in Shefford?

A. The first year I was not much acquainted with the people, and so I could not say.

Q. How long did you know Dr. McMillan in Shefford?

A. I certainly knew him for four years.

Q. Did he bear a bad character for truth during those years?

A. I will not say as regards the beginning, because I was not much acquainted with him, nor with the rest of the people.

Q. When did you first hear of his bearing a bad character for truth ?

A. About the year 1862 or 1863, I think. I cannot say positively.

Q. Did his reputation grow worse or better as he staid there ?

A. It is not very easy to calculate by the thermometer on that point.

Q. You did not hear it, you say, until 1863 ; after 1863 did his reputation seem to grow worse or better as he staid ?

A. It was not, certainly, for the better.

Q. When did you leave ?

A. In the autumn of 1864.

Q. Why did you leave ?

A. I was removed by my bishop.

Q. Do you know why you were removed by your bishop ?

A. I was removed to a better position.

Q. Did you hear of any complaint being made to your bishop against you ?

A. Yes, sir.

Q. Didn't the bishop talk to you about it ?

A. Not to lay any censure on me.

Q. Didn't he conclude you had better go somewhere else ?

A. No, sir.

Q. Did he put you somewhere else ?

A. Yes, sir ; after I had asked for it.

Q. Then you concluded you had better go somewhere else ?

A. Yes, sir ; on account of my health.

Q. When did you have this interview with the bishop ? Was it after this quarrel with Dr. McMillan or before ?

A. I was five years in Shefford, and I had been for four years asking to be removed.

Q. This conversation with the bishop, that you have spoken of, was that after you had the quarrel with Dr. McMillan, or was it before ?

A. A great many times before I asked the bishop to be removed, as well as a great many times after.

Q. You said that Dr. McMillan insulted you ?

A. Yes, sir.

Q. Where was that ?

A. In my house.

Q. Was this gentleman, Dr. Erskine, present then ?

A. I cannot recollect.

Q. Can you recollect whether he was or was not ?

A. To my knowledge, he was not ; I remember of having been insulted but once in my house by Dr. McMillan.

Q. Were you insulted by him anywhere but in your house ?

A. I do not remember having been insulted by him anywhere else.

Q. Will you tell us what the insult was ?

A. Yes, sir ; I can remember some of the words that he passed. He called me a blackguard. I thought that was showing very little respect for the cloth.

MR. PIERREPONT. Never mind what you thought ; tell us what he said.

WITNESS. He mumbled out some other things.

Q. What else did he say ?

A. I do not remember.

Q. Did he do anything to insult you ?

A. When I took him by the collar he tried to resist a little ; but we were near the door, and so I gave him a push out.

Q. I ask if he did anything to insult besides making use of the words you have mentioned ?

A. He called me a liar on the subject that we were speaking of.

Q. Did he call you anything else ?



A. I do not remember.

Q. Did you have any conversation with Dr. McMillan in the presence of Dr. Erskine, in the office at Waterloo?

A. I do not remember at all.

Q. Were you in Dr. Erskine's office at Waterloo before the quarrel?

A. I cannot say; I remember that I was once in his office.

Q. Was that before the quarrel?

A. I cannot say.

Q. Did you have any conversation with Dr. Erskine?

A. I spoke to him, being in his office.

Q. Did you have any conversation with Dr. McMillan in the presence of Dr. Erskine?

A. I do not remember.

Q. I will direct your attention particularly to the time. Did you have any conversation with Dr. McMillan in the office and in the presence of Dr. Erskine, at Waterloo, in relation to Dr. McMillan's subscription to the church?

A. I do not remember.

Q. Do you remember anything that was said? Will that help to recall it?

A. I do not remember of anything in particular.

Q. Do you remember of, at any place, having a conversation with these two gentlemen, or with Dr. McMillan when the other was present, in relation to Dr. McMillan's subscription to the church?

A. No, sir.

Q. Did Dr. McMillan, at Waterloo, in Dr. Erskine's office, speak to you about the money you owed him?

A. I do not remember.

Q. Did he speak to you about the money for the church?

WITNESS. Who?

Mr. PIERREPONT. Dr. McMillan.

Mr. BRADLEY. In Dr. Erskine's office?

WITNESS. I do not remember.

Q. Did Dr. McMillan at that time tell you that the committee of the church refused to intrust the money to you?

A. I do not remember that.

Q. Did not he give you that as a reason why you must pay him instead of it being turned on the subscription, in the presence of Dr. Erskine, in that office at Waterloo?

A. I do not remember.

Q. You went from Shefford to St. Liboire?

A. Yes, sir.

Q. How long did you stay at St. Liboire?

A. Two years.

Q. When did you leave St. Liboire?

A. Last fall.

Q. Where did you first see the prisoner?

A. In St. Liboire.

Q. At what time? Give us the day of the week, if you can?

A. I think it was on Wednesday evening.

Q. And that was the first time you ever saw him?

A. Yes, sir.

Q. Who came there with you?

A. Joseph F. Du Tilly.

Q. Did he come afoot, horseback, or in a carriage?

A. It was in the evening, and I was in bed; therefore I could not say. I heard them say, however, that they came in a cart.

Q. What time in the evening did they reach your house?

A. At 9 or 10 o'clock.

Q. You say you heard them as they came in; what kind of a cart was it?

A. I was in bed and did not see the cart.

Q. When he came in was he in disguise?

A. No, sir.

Q. Was his hair dyed; was it of a different color from what it is now, its natural color?

A. No, sir.

Q. Do you know where he came from?

Mr. BRADLEY. Of your own knowledge.

WITNESS. Not then.

Q. Do you know now?

The COURT. Speak from your own personal knowledge, or from what the prisoner said.

Q. Did the prisoner tell you where he came from?

A. Yes, sir; from Montreal.

Q. How long did he stay with you?

A. About three months; perhaps a little over.

Q. By what road did he come to your place?

A. I cannot say.

Q. He did not come by the railroad?

A. Not to my place. They said they came in a cart.

Q. How far was your place from Montreal?

A. I think about forty-five miles.

Q. Is it a thinly or thickly settled place?

A. It is a newly settled place.

Q. Did they tell you who he was when he came?

A. No, sir.

Q. Didn't they give some name?

A. Yes, sir.

Q. What name?

A. Charles Armstrong.

Q. Did they tell you what Charles Armstrong had come to you in the night for?

A. I was told that he was coming to the country on account of his health, and because of being compromised in the American war.

Mr. PIERREPONT. I did not ask you what you were told. I asked you if you knew—if they at the time told you why he came to your house at night?

A. I knew it then, because they had written to me before sending him to my place.

Q. Did you know that he was one of those who were accused of being in a conspiracy to murder the President?

A. No, sir.

Q. Didn't you hear that?

A. Not then.

Q. When did you?

A. I saw it by the papers.

Q. How long after he had been with you did you see it in the papers that John H. Surratt was accused as one of the conspirators?

A. About ten or twelve days.

Q. Had you any suspicion then that this man with you, Charles Armstrong, was Surratt?

(Mr. Pierrepont objecting to the answer given by the witness as not responsive to the question, and asking that it might be stricken from the record, the court so ordered.)

Q. Had you any suspicion that the man who came there that night was John H. Surratt?

WITNESS. When ?

Mr. PIERREPONT. At any time while he was with you.

WITNESS. Not before he told me.

Q. When did you first suspect that he was John H. Surratt ?

A. About ten or twelve days after his arrival at my place.

Q. Did you in early May ?

A. By that time, or the last of April.

Q. By the first of May or the last of April you believed he was John H. Surratt, did you ?

A. A little after the first of May.

Q. How long after he came there before he went out of the house ?

A. Three months.

Q. Did he go out of the house at all ?

A. Yes, sir.

Q. Did anybody come to see him at the house ?

A. Yes, sir.

Q. His friends ?

A. Yes, sir.

Q. Did people that you didn't know come to see him ?

A. Yes, sir.

Q. How many came to see him ?

A. Only once four or five came.

Q. When ?

A. I know it was in the course of the summer ; I cannot state the date.

Q. Did any of the St. Albans' raiders come there to see him ?

Objected to by Mr. Merrick as irrelevant.

(Mr. PIERREPONT said it was proper to show the connection of this witness with the conspiracy. If he concealed a man he knew to be charged with the conspiracy to murder Mr. Lincoln, it was proper to show it, and to sift the witness thoroughly. It was proper to show his relation to the parties in the late rebellion.)

Mr. BRADLEY did not see how an answer to the question about the St. Albans' raiders could throw any light upon the case. The whole question was as to whether the visit of the St. Albans' raiders showed the temper or disposition of the witness ?

The COURT said he could not see that the visit of the St. Albans' raiders was pertinent, and therefore sustained the objection. Counsel might inquire of the witness as to who these parties were, if he knew them.)

A. Some of the names were English names.

Q. Did you know the persons ?

A. I knew one.

Q. Who was that ?

A. Father La Pierre.

Q. Do you know where he came from ?

A. Yes, sir.

Q. Where ?

A. Montreal.

Q. Did you know any other one that came along with him ?

A. Yes, sir ; I had seen some of them in Montreal.

Q. Do you know their names ?

A. One name strikes me.

Q. What name strikes you ?

A. The name of Lachey.

Q. Did they come more than once ?

A. But once.

Q. How long did they stay ?

A. Three or four days—about three days.

Q. When did they come ?

A. I cannot say exactly.

Mr. BRADLEY. Do you mean they staid at your house ?

WITNESS. No, sir ; they boarded at a private house.

Q. How often did they come to your house during their stay ?

A. Several times during their stay.

Q. Did they all come together, or separately ?

A. They came together.

Q. Did they always come together ?

A. I cannot say exactly, because they were employed hunting.

Q. Did he hunt with them, or did he keep concealed ?

A. He went hunting with them.

Q. How many times did he go hunting with them ?

A. Once.

Q. Did they come to see him more than once a day while they staid in the illage ?

A. I should think they did.

Q. Did they dine with him and you at the house ?

A. Yes, sir ; in the boarding-house.

Q. Did you go hunting with them ?

A. Yes, sir.

Q. Did you go every time ?

A. No, sir.

Q. They sometimes went alone, and sometimes you were with them ?

A. I remember on one occasion I did not go in the morning before breakfast.

Q. Did he go hunting with anybody else ?

A. I do not remember.

Q. Did he go out with anybody else, or did you keep him concealed ?

A. I kept him in my house.

Q. Did he go out at all with anybody else except yourself ?

A. He went one evening to take a ride.

Q. Who did he go to take a ride with ?

A. Joseph F. Du Tilly.

Q. Did he go to ride with anybody else ?

A. I do not remember.

Q. Did he ever walk out in the evening ?

A. Yes, sir.

Q. Did he ever walk out in the day time ?

A. Yes, sir.

Q. Did he go to church ?

A. Yes, sir.

Q. Did he take his meals with you ?

A. He did one week.

Q. When he went to church did he go in his natural dress, or in a disguised  
ess ?

A. In his common dress.

Q. Did he sit in the pew ?

A. Yes, sir.

Q. Did you see him in the church ?

A. Yes, sir.

Q. Did other people see him ?

A. It was not during service.

Q. Was there anybody else in the church ?

A. I do not remember.

Q. How long was he in the church ?



A. From a quarter to half an hour.

Q. After you found out that he was gazetted in the papers as one of the murderers and conspirators, you let it be known to the authorities, I take it, didn't you? Didn't you communicate it to the authorities of the United States as soon as you found out he was the one?

A. No, sir.

Q. Didn't you tell it?

A. No, sir.

Q. Did you try to conceal it?

A. I did not speak of it.

Q. Did you try to conceal it?

Mr. BRADLEY. From whom?

Mr. PIERREPONT. From everybody.

Mr. BRADLEY. Conceal what?

Mr. PIERREPONT. Conceal the fact that this man was staying in his house.

WITNESS. I never spoke of it.

Mr. PIERREPONT. I say, did you try to conceal it?

A. I do not remember.

Q. Don't you know whether you tried to conceal it or not?

A. If you don't speak of a thing is it concealing it?

Q. My question is whether you tried to conceal it?

A. He was in my house.

Q. Did you try to conceal him there?

A. He remained in my house without any outside communications, except such as I have related.

Q. I ask you if you tried to conceal him in that house?

WITNESS. I do not understand your question.

Mr. PIERREPONT. Don't you understand what concealment means? Did you take the means of concealing him in your house?

A. My house was visited by my parishioners every day.

Q. Did they see him?

A. No, sir. Some of them did when he went out hunting.

Q. Did they frequently see him?

A. No, sir.

Q. Did you let your parishioners know that you were keeping in your house a person published as one of the President's assassins?

A. Not to my knowledge.

Q. How came you to come here to testify?

A. I came of my own accord.

Q. You had no subpoena?

A. I had one to-day.

Q. You had not any in coming into the United States?

A. No, sir.

Q. Had you any safe conduct?

Mr. BRADLEY. Safe conduct in time of peace?

Mr. PIERREPONT. Any safe conduct from the government of the United States?

A. No, sir.

Q. No paper of any kind?

WITNESS. From the government?

Mr. PIERREPONT. Yes, sir; from any officer of this government.

A. No, sir.

Q. How often did he go hunting while he staid with you?

A. He went frequently during a week.

Q. How long was he gone?

A. When he went in the morning, it was a part of the forenoon. He then came for his dinner and again went in the afternoon.

Q. What was he hunting?

A. Birds.

Q. Did he walk or ride?

A. Walked.

Q. Did he always walk?

A. Yes, sir.

Q. Did he always hunt alone?

A. I do not remember.

Q. Did sometimes other people hunt with him?

A. Yes, sir.

Q. Can you tell any of those who hunted with him?

A. Joseph F. Du'Lilly.

Q. Any others?

A. The party that came to visit him went with him.

Q. The names of that party you do not know?

A. I gave you the names of those I knew.

Q. Did any other party beside this party of which you have spoken come here?

A. No, sir.

Q. Did any other individual come there to see him while he was at your house?

A. Nobody.

Q. Did he go out to see anybody?

A. He went out to go to Montreal when he left my house.

Q. While he was staying in your house did he go out to meet people, or did he keep concealed?

A. Not to my knowledge.

Q. Did he go out?

A. As I told you just now.

Q. How often did he go out to hunt?

A. I never counted the number of times.

Q. How many times would you think?

A. It would be very hard to tell.

Q. Was it a good many times or a few?

A. During a week he went twice in one day. The next day he could not go because he was sick in bed. He had this fever and ague which prostrated him, and he could not move. Neither could he go the day after. It was only on the third day that he was enabled to go.

Q. Did he go the other weeks?

A. No, sir.

Q. Can you state the number of times that he hunted?

A. No, sir.

Q. Because so many or so few—which?

A. I never counted them.

Q. He was not so sick, then, that he could not hunt?

A. He looked to be very weak.

Q. The day he hunted he was not so sick that he could not hunt?

A. No, sir.

Q. The next day he hunted he was in the same state he was the first day he hunted, was he not?

A. He hunted only on the third day.

Q. Could he hunt the sixth day?

A. I could not tell.

Q. What sort of chills was it you said he had?

A. Fever and ague, as I hear it is called here. We do not call it so in French. Mr. MERRICK. What do you call it in French?

A. *Fièvres tremblantes*.

Q. What physician attended him during all this time that he lived with you?

A. No physician at all.

Q. Won't you give us the day of the week that he left your place to go away from you?

A. I cannot.

Q. Will you give us the day of the month?

A. I cannot.

Q. Will you give us the month?

A. Yes, sir.

Q. What month?

A. In July,—the latter part of July.

Q. Where did he go?

A. To Montreal.

Q. How often did you see him after he went to Montreal?

A. I used to see him about twice a week.

Q. Did he come to see you?

A. No, sir.

Q. Did you go to see him?

A. Yes, sir.

Q. What time in the day did you go to see him once or twice a week?

A. In the day-time.

Q. What time of day?

A. Sometimes I started in the 5 o'clock train and passed through St. Liboire and at other times about past eleven.

Q. Where did you use to see him?

A. In a private house in Montreal.

Q. Whose house?

(Objected to by Mr. Merrick. Objection overruled.)

A. Father La Pierre's father's house.

Q. What was Father La Pierre's father's business?

A. Selling boots and shoes.

Q. What was his father's Christian name?

A. I do not know.

Q. Is his other name La Pierre?

A. Yes, sir.

Q. Where does he sell shoes?

A. In the city of Montreal.

Q. What street and number, if you know?

A. I think it is St. Paul street.

Q. Do you know the number?

A. No, sir.

Q. Where was his house?

A. I think it was on Old Cemetery street.

Q. Do you know the number of that?

A. No, sir.

Q. Is that a public or a quiet street?

A. A quiet street.

Q. What day of the week did you use to go to this house?

A. I generally went on Mondays.

Q. What other days?

A. Thursdays.

Q. In what room in this La Pierre house where the boots were sold did you see him?

A. He was not in the shop.

Q. You said you saw him in the house of La Pierre who sold boots and shoes—in his dwelling-house, as I understood you I now ask you in what room in that dwelling-house did you see the prisoner?

A. In a room in the second story, as we call it in Canada.

Q. Front or rear?

A. The rear room.

Q. Did you always see him in the same room?

A. No, sir.

Q. Where else did you see him?

A. I saw him down stairs also.

Q. Whereabouts down stairs?

A. In the dining room.

Q. Did you ever dine with him there?

A. Yes, sir.

Q. Did you ever see him in the street there?

WITNESS. In Montreal?

COUNSEL. Yes, sir.

WITNESS. No, sir.

Q. Where is Cemetery street in relation to the bishop's palace at Montreal?

A. Very near.

Q. It is behind the palace, is it not?

A. Behind, and quite near.

Q. Is it a narrow street?

A. Yes, sir; of the common breadth. It is not a very large street, but it is of a very good width.

Q. Did you meet anybody at this house besides the prisoner?

A. Yes, sir.

Q. Who?

A. I saw strangers and visitors there from Quebec.

Q. Did you know their names?

A. No, sir.

Q. Did you see them often?

A. I remember one instance.

Q. How many?

A. Three—a lady with her daughters.

Q. Did you continue to visit him?

A. Every week, until he took the steamer for Europe.

Q. Did you see him every week at this house after he went there, or before he left for Europe?

A. I think I did. I do not remember of having missed a week.

Q. Did you see him twice every week?

A. I think I did.

Q. How long did you stay when you went there to visit?

A. Generally, I would stay over night.

Q. Did you sleep at this house?

A. Sometimes.

Q. Generally did?

A. Yes, sir.

Q. Did you always sleep at this house?

A. No, sir.

Q. Did Father La Pierre go with you to see him at his house?

A. Yes, sir.

Q. Always?

A. Not always.

Q. This was in July when you went there, as I understand you?

A. Yes, sir.



- Q. Did you see him when he left in the middle of September to go to Europe?
- A. Yes, sir.
- Q. Where did you first see him on that day?
- A. At this house.
- Q. Where did you go?
- A. As far as Quebec.
- Q. Did you see him to the steamer?
- A. Yes, sir.
- Q. Did you undertake to get upon the steamer Peruvian?
- A. I did not get on the vessel.
- Q. Did you try to get on?
- A. No, sir.
- Q. Didn't you attempt to go up the gangway and Dr. McMillan order an officer not to let you go?
- A. No, sir; I do not remember that.
- Q. Are you sure about that?
- A. Yes, sir.
- Q. Didn't Dr. McMillan order the officer to stop you as you were going up the gang plank?
- A. No, sir.
- Q. Didn't you see Dr. McMillan there?
- A. Yes, sir.
- Q. You went on the boat that took you to the ship, didn't you?
- A. Yes, sir.
- Q. Didn't Father La Pierre go up the gang plank?
- A. I think he did.
- Q. On to the Peruvian?
- A. Yes, sir.
- Q. Why didn't you?
- A. Because I didn't want to.
- Q. Was there anybody else that told you they did not want to have you?
- A. No, sir.
- Q. Then you parted with the prisoner on the deck before he took the Peruvian?
- A. Yes, sir.
- Q. On a small steamer?
- A. Yes, sir.
- Q. Do you know the room that he went down in on your small steamer?
- A. No, sir.
- Q. Were you in it?
- A. No, sir. We were all together.
- Q. Did you see him in a room there?
- A. No, sir.
- Q. Where did you see him?
- A. With all the rest of the passengers.
- Q. On the steamboat that took you from Montreal to Quebec where did you see the prisoner?
- A. I saw him in the cabin.
- Q. In a room?
- A. Yes, sir.
- Q. What room?
- A. I cannot tell.
- Q. Do you know the number of it?
- A. No, sir.
- Q. Who was with you in the room besides the prisoner?
- A. Father La Pierre.

Q. Anybody else ?

A. Some young French-Canadian boys ; young men ; I do not know their names.

Q. Anybody else ?

A. I cannot think of any.

Q. Did you come out of the room before you reached the Peruvian ?

WITNESS. From the steamer that took us from Montreal to Quebec do you mean ?

Mr. PIERREPONT. Yes, sir.

WITNESS. Yes, sir.

Q. Where was he when you saw him before the boat left ?

A. At the house where he left.

Q. How did he go from the La Pierre house to the boat ?

A. In a carriage.

Q. Who went with him ?

A. I went with him.

Q. Anybody else ?

A. Father La Pierre.

Q. Anybody else ?

A. I think there was another.

Q. Don't you know his name ?

A. No, sir.

Q. Did you know his name then ?

A. I cannot recollect. If I could recollect now who he was perhaps I could tell his name.

Q. Did you know who he was at that time ?

A. I am not sure as to whether there was another person with us.

Q. What is your best memory as to whether there was or not ?

A. I am more positive to say there was not.

Q. Was this carriage an open or a close one ?

A. Open. There was a top over it, but the sides were open.

Q. You went openly, didn't you ?

A. Yes, sir.

Q. And when you got to the steamer what did you do ?

A. We remained with the rest of the passengers.

Q. Where did Surratt go ?

A. He remained on the deck awhile and then went into the cabin.

Q. What did he do when he got into the cabin ?

A. He spoke.

Q. Did he go into a room, or into the cabin ?

A. We call them cabins ; I suppose you call them rooms.

Q. He went into one of these rooms ?

A. Yes, sir.

Q. How soon after he came on to the boat did he go into that room ?

A. I cannot say.

Q. Was it one minute or two ?

A. O, more than that.

Q. How many minutes ?

A. I cannot tell.

Q. Had he any disguises of any kind when he was on the boat ?

A. I did not see any except his hair, which was dyed.

Q. Was his moustache dyed ?

A. I do not recollect whether he had a moustache or not.

Q. Did he wear spectacles ?

A. Yes, sir.

Q. That was a disguise, was it not ? Did he have any other disguise ?

A. Not to my knowledge.

Q. Did he have his hair dyed while he was with you ?

A. I do not remember.

Q. Don't you remember whether he had or not ?

A. No, sir.

Q. When did you first discover that his hair was dyed ?

A. In Montreal.

Q. When he was with Father La Pierre what color was it ?

A. Dark brown.

Q. Did you come out of the room, or cabin, and lock the door as you came out ?

A. No, sir.

Q. Did Father La Pierre lock it ?

A. I do not remember.

Q. Don't you remember that you came out and left Father La Pierre in the room ?

A. I cannot say positively, but I think I did.

Q. Did you see Dr. McMillan that day that you went on board the ship at Montreal ?

A. Yes, sir.

Q. Did you see him on this steamer that went from Montreal down to Quebec ?

A. No, sir.

Q. You did not see him talking with La Pierre ?

A. No, sir.

Q. Did you see anybody talking with La Pierre ?

A. Yes, sir.

Q. Anybody that you knew ?

A. No, sir.

Q. Won't you tell us how La Pierre was dressed at this time ; as a Canadian priest, or in the clothes of a civilian ?

A. He was dressed in the clothes of a civilian.

Q. Was it customary for priests to go in that way in Canada, as civilians ?

A. It is not customary.

Q. Do you know any reason for his going in that way ?

A. No, sir.

Q. How were you dressed ?

A. I was dressed in my clerical suit.

Q. The same as the clergy dress there ?

A. Yes, sir.

Q. But La Pierre was not ?

A. No, sir.

Q. Were you in Portland last summer ?

A. I passed through Portland.

Q. Did you stop there ?

A. No, sir.

Q. Were you at a watering place close by there ?

A. Yes, sir.

Q. A place called Cape Elizabeth ?

A. No, sir.

Q. Were you at any place near Portland last summer which was a sea watering place ?

A. Yes, sir.

Q. What was the name of it ?

A. Old Orchard Beach.

Q. How long did you stay there ?

A. About a week.

Q. What was the name of the house at which you staid ?

A. I do not remember.

Q. Was it the Ocean House ?

A. I do not remember the name at all.

Q. Who was there with you that you knew ?

A. Two of the priests.

Q. Who were they ?

A. Father Beauregard and Father Hevey.

Q. Did you state there that you were his son ?

Mr. MERRICK. Father Beauregard's son ?

Mr. PIERREPONT. Yes, sir.

WITNESS. That is rather a hard question.

Q. Did you state there at this house that you were his son ?

A. I do not remember.

Mr. BRADLEY. Do you mean his natural son ?

Mr. PIERREPONT. I mean exactly what I ask and nothing more.

Q. Did you register your real name ?

A. No, sir.

Q. What name did you register yourself as ?

A. Jary.

Q. Did you go there dressed as a priest ?

A. I went dressed as I am now.

Q. I ask you if you went there in a Canadian priest's dress ?

A. My answer is, not with the ordinary ecclesiastical suit we wear in Canada—not with the cassock. There is a little difference between the dress in the two countries, and Portland is in the United States.

Q. Did you wear the priest's dress of Canada last summer at this watering place ?

A. I was dressed as I am now ; you can judge for yourself.

Mr. PIERREPONT. I have never been in Canada. My question was simply as to whether at this watering place you did wear the Canadian priest's dress.

A. No, sir.

Q. You say you entered a false name on the register ?

A. Yes, sir.

Q. Did any difficulty occur there in which you were involved ?

A. Not any to my knowledge.

Q. Did you carry yourself or give yourself out there as a priest ?

A. No, sir.

Q. What did you call yourself there ?

A. Jary.

Mr. PIERREPONT : I mean in what character ? You say it was not that of a priest.

A. I did not say what I was.

Q. I ask you what you called yourself there in occupation last summer ?

A. If you want me to say what I thought they took me for I can tell you.

Q. What ?

A. They took me for a lawyer.

Q. Did you disabuse their mind of that ?

A. I did not say anything about it.

Q. You did not disabuse their minds of that impression ?

A. No, sir ; I thought that was honorable enough.

Q. Were you quite attentive to some young ladies there as a lawyer ?

A. No, sir ; I was polite to everybody, but nothing more than that.

Q. Nothing in particular ?

A. No, sir.

Q. Nothing that excited any talk ?



A. No, sir.

Q. But they thought you were a lawyer, didn't they?

A. So my companions, the other priests, said.

Q. You knew they thought so?

A. I thought that was their impression.

Q. You did not want them to think you were a priest, did you?

A. If they had asked me I would not have concealed the fact.

Q. You did not want them to think you were a priest?

A. No, sir. When I first started from my place——

Q. You were not ashamed of your calling?

A. O, no, sir.

Q. Why were you not willing that they should think you a priest?

A. I was not unwilling; if they had asked me, I would have told them the truth.

Q. Then you were not unwilling?

A. No, sir; I was not unwilling to be known as a priest.

Q. Why then, did you allow it to pass that you were a lawyer?

A. I did not say anything.

Re-examined by Mr. BRADLEY:

Q. When you went to this watering place near Portland, had you any apprehension that you might be troubled if it were known that you, Father Boucher, had had connection with the escape of Surratt; and was that the reason why you assumed the name of Jary?

A. Yes, sir.

Q. I understand you to say that you did not represent yourself as being the son of Father Beauregard?

A. No, sir.

Q. There are instances, I suppose, of persons going into the church after marriage and who have sons? Ordinarily, however, Catholic priests, I believe, have no sons?

A. No, sir, not generally.

Q. You were asked if you reported to the United States the fact that Surratt was at your house, after you knew he was compromised in this conspiracy; state the reason why you did not.

Mr. PIERREPONT. You needn't give the reason.

Mr. BRADLEY. He can explain.

Mr. PIERREPONT. He cannot explain if it runs into a certain order of explanation.

Mr. BRADLEY. We must first hear the explanation before we can know what order of explanation it is.

The COURT said he regarded it as a proper question.

Mr. BRADLEY. I will repeat the question: Why did you not when you found the person at your house was Surratt, report him to the United States?

A. Because I believed him innocent.

Q. Was that from information received from him or others?

(Objected to by Mr. Pierrepont. Question overruled.)

Q. You were asked at what time you suspected these parties. I ask you now to state what gave rise to your suspicions that this man claiming to be Armstrong was Surratt?

A. Because of the absence of Surratt from the United States, and the mystery connected with his stay at my place.

Q. How did you ascertain that it was Surratt?

A. He told me himself.

Q. What did he say about it?

(Objected to by Mr. Pierrepont on the ground that conversations of that character could not be given in evidence. Question overruled.)

Q. After you found it was Surratt, state whether or not you, or any others, prevented him from coming to the United States.

(Objected to by Mr. Pierrepoint on the ground that nothing in regard to that matter had been brought out in cross-examination. Question overruled.)

Q. You have stated that you learned from him that he was Surratt. State whether or not the public papers, which also led you to that belief, were or not kept from him.

(Objected to by Mr. Pierrepoint on the ground that nothing had been asked the witness on that subject on cross-examination. Question overruled. Exceptions reserved.)

Q. You were asked about a conversation between yourself and Dr. McMillan, and inquired of as to whether he didn't refuse to let you pay over that five dollars because the parishioners were not willing that you should receive the funds. Did you or not collect the funds of that church?

A. A very large portion of them.

Q. Was it or not publicly known that you were collecting funds for the building of that church?

The question being objected to by Mr. Pierrepoint, it was modified as follows :

Q. Did the trustees know that you were collecting for it?

A. Yes, sir.

Q. Did any objection ever come from them to you?

A. No, sir, not from them, but from myself. I was too much overcharged with work. I had two missions to attend to.

Q. In your interviews with the bishop in regard to your removal to another parish, nothing was said to you of any complaints of your conduct as curate?

A. No, sir.

Q. It was your own voluntary movement?

A. Yes, sir; I had been asking for four years to be removed.

Q. On account of your health?

A. Yes, sir.

Mr. Queen was again called, but did not answer.

Mr. CARRINGTON said the prosecution was ready to proceed with the rebuttal.

Mr. BRADLEY, Sr., said another witness had arrived, and he asked the privilege of examining him.

Mr. CARRINGTON reminded the Court that the agreement on Saturday was that only one witness was to be examined this morning.

Mr. Scott, the witness referred to, was called, but did not answer.

Judge FISHER directed the prosecution to proceed with the rebutting testimony.

Mr. MERRICK said that before the counsel for the prosecution proceeded to make rebutting testimony, he desired to call the attention of the court to the motion made some time since to strike out the testimony relative to Jacob Thompson, and to the revelations stated by the witness McMillan to have been made by the prisoner in relation to shooting Union prisoners, killing a telegraph operator, and to a fight on the Potomac with a gunboat, and he now desired to add what he then omitted to mention, also the testimony in relation to the attempted assassination of the Secretary of State, and the evidence in regard to Atzerodt at the Kirkwood House.

Mr. PIERREPOINT said the time for all this was after all the testimony in the case was in.

Mr. MERRICK suggested that all the testimony which could be used to establish the connection promised was now in. Nothing could now be adduced in evidence except what was strictly in rebuttal. It would very much simplify the preparation of counsel for summing up, if they could know in advance precisely what testimony would go to the jury.

The COURT directed the prosecution to proceed with the rebutting evidence.

Mr. MERRICK inquired whether the court would then hear the sur-rebutting evidence before deciding on this motion.

The COURT stated that he would decide the question after the evidence was all in.

The court then took a recess for half an hour.

AFTERNOON SESSION.

Mr. BRADLEY said he understood, during the examination of the witness Father Boucher, this morning, that the question of the admission in evidence of the Canandaigua register was still open. If that was the fact, he desired that the question might be passed upon by the court.

Mr. MERRICK remarked that, after the authority furnished the other day in 12th Howard, he understood the court to take the matter under advisement, and he, Mr. Merrick, supposed the evidence of the witness examined this morning supplied a link which would bring that register within the ruling of the court under which it could be admitted.

Mr. PIERREPONT said he had supposed that question had been settled, if for no other reason, from the fact that the book itself did not show whether the entry referred to was under the date of the 16th or the 15th.

Mr. MERRICK replied that that was a question for examination and for argument before the jury. The question of law for the court to determine was whether the register could be admitted in evidence. The question raised by the counsel, and the question as to the weight it was entitled to, were questions for the jury to decide.

The COURT decided that, before the Canandaigua register could be admissible to go before the jury, there must be preliminary proof showing that some person appeared there in Canandaigua, at the time specified, and registered his name as John Harrison, and the register might then go before the jury, but not otherwise.

Mr. BRADLEY desired to be understood, after the evidence given this morning, that he now made a formal offer of the register in evidence.

The DISTRICT ATTORNEY objected. The objection was sustained. Exception to ruling reserved by counsel for the defence.

GEORGE W. STRAYER sworn and examined.

By Mr. PIERREPONT :

Q. What was your business in the month of April, 1865 ?

A. I was engineer on the Northern Central railway.

By the COURT :

Q. Is that the road which runs from Baltimore to Harrisburg ?

A. Yes.

By Mr. PIERREPONT :

Q. State whether on the 13th of April, 1865, you were in Elmira ?

A. Yes, sir ; I was there in the morning.

Q. What time did you leave there ?

A. I could not tell you exactly the time. I was 25 miles south of there at about half past eleven. I suppose I left there about ten or half past.

Q. You left Elmira. Was that a special train ?

A. Yes, sir ; the second section of the mail.

Q. Where did you run to ?

A. To Williamsport.

Q. Williamsport lies directly to the south of Elmira, does it not ? (Exhibiting a large map of that section of country.)

A. Yes, sir.

Q. What is the distance between Elmira and Williamsport ?

A. Seventy-eight miles.

Q. Did you meet any other conductor on the way ?

A. I met the mail north.

Q. Who was the conductor ?

A. Mr. Rogers.

Q. Is he here now ?

A. He is in the city, in some place.

Q. Where did you meet him—at what point ?

A. At Troy.

Q. Is Troy between Elmira and Williamsport ?

A. Yes, sir ; 25 miles south of Elmira.

Q. What river is there at or near Williamsport ?

A. The Susquehanna—West Branch.

Q. Is there a bridge over it at that point ?

A. No, sir ; there was not at that time.

Q. What time did you get to Troy ?

A. About half past eleven was the time. We either had to get there at that time or lay back.

Q. Did you get there, or lay back ?

A. I got there.

Q. When did you go on to Williamsport ?

A. Immediately after.

Q. What time did you get to Elmira ?

A. Somewhere about two o'clock. I was close to the other train. The other train was ahead of me.

Q. Can you tell exactly the hour when the two trains got there ?

A. It was between the hours of one and two o'clock that I got to Williamsport.

Q. Did you go no further than Williamsport ?

A. No.

Q. You took passengers ?

A. I was the second section mail. The first train took the mail and the passengers.

Q. Do you know a ferryman at Williamsport who was ferrying there at that time ?

A. Yes.

Q. What was his name ?

A. There are two ; one's name is Bligh, and the other has a funny name ; I cannot remember it.

Q. Was it Drohan ?

A. Yes, sir ; some such name.

Q. Are you still in the employ of the railroad company as engineer ?

A. Yes, sir.

Cross-examined by Mr. BRADLEY :

Q. You at that time run regularly under the direction and control of the general superintendent ?

A. We were always under the direction of the general superintendent.

Q. Did you at that time run upon your time table ?

A. No, sir ; we did not have any time table ; this was an extra train—the second section mail.

Q. What do you mean by second section ?

A. An extra following the regular train. The regular train had a time table.

Q. Was there any record kept of the time of your departure and arrival ?

A. There ought to have been.

Q. Whose duty was it to make that record ?



A. The telegraph man generally kept, and the man who has charge of starting the trains also was required to keep, a record of the time.

Q. He had a record of the time you arrived?

A. He ought to have it.

Q. Was there anything different that morning from any other morning?

A. Nothing more than this extra train.

Q. How often did that extra train run?

A. Whenever they send one out; I could not tell.

Q. How many trains left Elmira that morning?

A. There was the regular, and this extra that I know of.

Q. How many leave there regularly?

A. There was a passenger train and a freight train which left at that time. They were the only regular trains.

Q. What time did they leave?

A. The regular passenger train left at eight o'clock, and the time for the freight train to leave was eight o'clock five minutes.

Q. Where did you overtake the freight train?

A. I do not remember where I did.

Q. Do you remember that you did overtake it?

A. I think we did.

Q. Have you any recollection of it?

A. No; I cannot recollect; but we did overtake it some place along the road.

Q. Do you remember the fact that you did overtake it before you got to Troy?

A. No; I think it was at Troy—I will not be positive.

Q. Did you pass the freight train?

A. When I overtook it I passed it.

Q. Where did you meet the passenger train going north? Was it at Troy?

A. Yes, sir.

Q. At what time did that leave Williamsport?

A. The same time we left Elmira—at 8 o'clock. That was the time for leaving if it did not leave late.

Q. You met them half way?

A. No; about one-third of the way; about 25 miles from Elmira

Q. You started at ten or half past ten, and run 25 miles, when your train met the passenger train going north which left Williamsport at eight o'clock, as I understand?

A. Yes, sir.

Q. And you met it between one and two o'clock?

A. No, sir; I arrived at Williamsport between one and two o'clock.

Q. Have you the time table with you?

A. No, sir; I have not.

Q. Did you overtake the eight o'clock train from Elmira?

A. I think not on the road.

Q. Nor until you got to Williamsport?

A. No, sir.

Q. How long did the passengers have to lie over at Williamsport before they left on the train going south?

A. The regular train time for leaving was at 9.32 p. m.; I believe that was the time. I did not run below Williamsport.

Q. So that when you got into Williamsport between one and two o'clock, your passengers going south had to lie over until 9.32 for the regular passenger train?

A. Yes, sir.

Q. You do not know of any other train leaving before?

A. I do not know because I do not belong there. I don't know anything about the Philadelphia and Erie road.

Q. That would be 9.32 on the evening of the 13th ?

A. Yes.

Q. How did you fix this day of the 13th ?

A. Because I know we run north on the 12th and south on the 13th.

Q. Did you run a regular extra train ?

A. No, sir ; I started from Williamsport on the morning of the 10th with the regular train ; went back to Williamsport on the 11th with the regular passenger train ; then started on the 12th with a special train and came back on the 13th with a special train.

Q. Have you no memorandum or any report by which you can fix it with certainty that you run on those days ?

A. I know it is the way I ran after we got the road fixed.

Q. When was the road fixed ?

A. We commenced running on the 10th, after the flood.

Q. And on the 10th you went to Elmira, came down on the 11th, went up on the special train on the 12th, and returned on the special train on the 13th ?

A. Yes, sir ; the 12th was my day to lie over, but they sent me out on the extra train.

Q. What is the regular time between Elmira and Williamsport ?

A. I have run it in less than three hours. At that time the schedule time was five hours and some minutes. The road was in very bad condition, and they run slow.

Q. What part of the road was in bad condition ?

A. Between Ralston and Williamsport.

Q. How far is Ralston from Williamsport ?

A. Twenty-five miles.

Q. Do you cross any streams between Ralston and Williamsport ?

A. Twenty ; that is, we cross one stream eighteen times, and also cross two other streams.

Q. And these bridges had all been carried away just before ?

A. Four of them had been carried off entirely.

Q. And several others injured and had to be repaired ?

A. Yes.

Q. So that you had to run slowly across there ?

A. Yes, sir.

Q. And so that the time between Elmira and Williamsport was extended to five hours ?

A. Yes.

Q. What was the next train that left Elmira after you left ?

A. There was no train that left there until the next morning ; that is, no time table for any train to leave.

Q. Do you recollect any extra train after you left before eight o'clock next morning ?

A. I don't recollect any.

Q. Do you know how long it takes to run from Williamsport to Harrisburg ?

A. No, sir ; I do not.

Q. Have you not travelled the road often ?

A. I have travelled it six or eight times.

Q. Cannot you approximate the time ?

A. I suppose about five hours. I don't know.

Q. Did you go down to Harrisburg that spring ?

A. No, sir.

Q. It now takes about five hours, as I understand you, and how much the road was then interrupted between Sunbury and Williamsport you do not know ?

A. No, sir ; I do not know how it was below Williamsport. I never crossed the ferry.

Q. You do not know how long it takes to run from Harrisburg to Washington?

A. No, sir.

Q. Did you take passengers from Elmira that day or not?

A. I do not remember. I was not in the caboose that was attached to the train. There was no one on the engine. They were not allowed to ride there.

Q. When you stopped to take in water, did you not know whether there were passengers?

A. I did not know. I did not take notice.

Q. Who was the conductor?

A. I do not remember. We have run these trains without a conductor.

Q. Who has charge then?

A. I took charge when there was no conductor.

Q. Who went through to collect tickets?

A. There were no tickets sold for that train; at least I do not think there were.

Q. According to the best of your recollection, there were no passengers on that train?

A. I don't know. I was on the engine. There were none there.

Q. If there had been no conductor would you have collected the tickets?

A. No, sir.

Q. Who would?

A. Whoever was back in the caboose. It was not my business on the engine to look after passengers. I am not hired for that.

Q. I understand that. What I want to know is, if there was no conductor, who had charge and took the tickets.

A. No tickets were sold for that train.

Q. I understand that you went up on the 12th and came down on the 13th. Were there or not any passengers on your train on the 13th?

A. I did not see any.

By Mr. MERRICK :

Q. You say you had a caboose on the train; tell us what that is?

A. It is like a freight car. It was a soldiers' car and we used it as a caboose on these trains.

Q. What was that train run for?

A. It was to take Mr. Dubarry, the superintendent of the road.

Q. To take him where?

A. To Elmira

Q. What was the train run from Elmira to Williamsport for?

A. I suppose to take him back again.

Q. Don't you know it was against the rules to carry passengers on the freight trains?

A. No, sir; that was not the rule on that road.

By Mr. BRADLEY :

Q. If I understand you right you run up on the 12th with Mr. Dubarry to take him up to Elmira. Was there a conductor on that train?

A. I do not remember.

Q. Do you say you brought him back on the 13th?

A. I suppose I did.

Q. How many cars did you have?

A. I believe only one.

Q. Was it an open car or closed?

A. There were two square windows on each side; otherwise it is like a freight car.

Q. If there had been any passengers on that train would you have known it?

A. I might have known if I had gone back and looked into the cars. There were none on the engine.

Q. Did not you get off the engine at Williamsport?

A. I probably did.

Q. Did you see Mr. Dubarry?

A. I do not remember now. I suppose he was back in the caboose. I don't remember seeing him.

Q. Would you have known it if there had been any passengers come down with Mr. Dubarry? Could they have come without your knowledge of that fact?

A. They could.

Q. They could if they had been concealed, I suppose?

A. Yes.

Q. Could they go without Mr. Dubarry knowing it?

A. I don't think they could without his knowing it. There was no car but that one.

By Mr. PIERREPONT :

Q. You have been asked whether freight trains were allowed to carry passengers at that time. Were not the orders that all trains should take passengers?

A. We always allowed passengers on all trains.

By Mr. BRADLEY :

Q. Do you now?

A. Yes, sir, we do now.

By Mr. PIERREPONT :

Q. Do you know anything about the trains between Williamsport and Sunbury, as to their time of running?

A. I do not know anything about the trains this side of Williamsport.

By Mr. BRADLEY :

Q. When did you go back again to Elmira?

A. On the 14th, on the regular mail.

Q. And you came down on the 15th?

A. Yes, sir, on the 15th.

Q. At what time did you leave Williamsport?

A. At eight o'clock in the morning.

Q. Did you leave at eight o'clock on the morning of the 14th?

A. Yes.

Q. At what time did the next train leave?

A. The next passenger train would leave the next morning.

Q. At what time did the freight train leave that morning?

A. It left at 8.5, I suppose. I got out of sight before it left.

Q. If there had been any other train would it have gone from the same depot in Elmira?

A. Yes; there is but one depot there.

Q. Did any train come into Elmira on that day except the freight train and the one you ran?

A. I did not see any.

JOSEPH C. ROGERS sworn and examined.

By Mr. PIERREPONT :

Q. State your business?

A. I am a grocer.

Q. What was your business in April, 1865?



A. Conductor of railroad trains.

Q. On what road?

A. The Northern Central, Elmira division.

Q. Between what points were you running on the 13th of April, 1865?

A. From Williamsport to Elmira.

Q. Will you state at what time you left Williamsport for Elmira?

A. At eight a. m. was our time; I do not remember whether I left promptly on time, but very close to it.

Q. Do you know Mr. Strayer?

A. Yes, sir.

Q. Did you meet him going south?

A. I did.

Q. At what point?

A. Troy.

Q. At what time did you meet him?

A. At 11.35.

Z. B. GLINES sworn and examined.

By Mr. PIERREPONT:

Q. In April, 1865, had you anything to do with the ferry across the Susquehanna at Williamsport?

A. I had.

Q. Please tell the jury what it was you had to do with it?

A. I was put on there to collect fare from all passengers who were transferred.

Q. Who run the boat?

A. Mr. Drohan.

Q. What is his first name?

A. I cannot say. He went by the name of Gunboat.

Q. Is his first name Maurice?

A. I do not know.

Q. What kind of a ferry was this?

A. A rope ferry.

Q. The rope was stretched across the ferry?

A. Yes, sir; and run by the force of the current.

Q. How quick was it crossed at that time—the middle of April, 1865?

A. We always run it in from three to five minutes.

Q. Do you know whether a train was there on the 13th of April, 1865?

A. The train was there every day I was there.

Q. When was that?

A. I was there every day during that month with the exception of two days the first of the month.

Q. With that exception you were there every day?

A. Every day.

Q. Do you know of any construction trains at that time running down from Williamsport to Sunbury?

A. I know that there were two construction trains on the road between Williamsport and Sunbury.

Q. Why were two running at that time?

A. We always have one between Williamsport and Sunbury. The road was very badly washed at that time.

Q. That was the reason for having two?

A. Yes, sir; we were hauling bridge timber, repairing bridges, &c.

Cross-examined by Mr. BRADLEY:

Q. You say you were there certainly on the 13th of April?

A. Yes.

Q. On the 12th ?

A. Yes.

Q. Do you recollect Mr. Strayer going up with a car on the 12th ?

A. I know nothing of it ; I was not connected with that road ; I was on the Philadelphia and Erie road.

Q. You were at the ferry ?

A. Yes.

Q. Do you recollect Mr. Strayer crossing the ferry ?

A. No, sir ; he only came to Williamsport.

Q. Mr. Strayer's train had to cross the ferry, had it not ?

A. Yes, sir. You cross the river before you arrive at Williamsport.

Q. How far this side of Williamsport ?

A. About three quarters of a mile.

Q. You live in the town of Williamsport ?

A. I do.

Q. Do you remember Mr. Dubarry being there and going to Elmira about that time ?

A. I do not.

Q. How far does the Philadelphia and Erie road with which you were connected extend ?

A. The division I am on extends from Sunbury to Renova.

Q. How near Williamsport is Renova ?

A. Fifty-three miles west of Williamsport.

Q. Were not you down on that line every day almost between Sunbury and Renova ?

A. I have been below Williamsport, not above.

Q. In April, 1865, where were you occupied ?

A. Up to the 20th I took my regular train.

Q. Were you conductor all the time ?

A. Yes, sir.

Q. At what time did the southern train leave Williamsport on the 13th of April ?

A. If it left on time, it left at 9.32 at night.

Q. Then, if passengers arrived from Williamsport between one and two o'clock, they must have waited until 9.32 ?

A. Yes, sir.

Q. Do you recollect whether there was a sleeping car that came out from Elmira on the Erie road ?

A. I think there was no sleeping car west of Williamsport ; I think it was below, running to Baltimore.

Q. Was there not a sleeping car in April, 1865, in which passengers took berths at Williamsport to go through to Baltimore ?

A. Not at Williamsport ; they might at the other side of the bridge.

Q. Do you know what time the cars leaving Williamsport at 9.30 arrive at Harrisburg ?

A. No, sir ; I cannot say.

Q. What time does it reach Philadelphia ?

A. I can only tell you the time to Sunbury ; that is as far as I know the time.

Q. What time do they arrive at Sunbury ?

A. At 12 minutes after 10.

Q. On the 14th of April did cars reach Sunbury at that time ?

A. They were running there regularly after the 10th from Sunbury to Williamsport.

Q. Do you know the time from Williamsport to Harrisburg ?

A. I do not.

By Mr. PIERREPONT :

Q. You have been asked whether the trains were running regularly ; I understand you to say they did. And I also desire to know what were the orders to take passengers on all trains ?

(Question objected to by Mr. Bradley, as not in response to anything drawn out of cross-examination. Objection sustained.)

Mr. PIERREPONT then said he would recall the witness for the prosecution, which he did, and again put the question.

A. We had orders to allow passengers to ride on all trains on the Philadelphia and Erie road.

Q. Was there any reason given for the order ?

(Question objected to by Mr. Bradley as improper.)

Q. Was the order obeyed ?

A. I presume so.

By Mr. BRADLEY :

Q. Do you know anything about it ? Do you say you were running a train ?

A. I run one train between Watsonstown and Williamsport.

Q. Where is Watsonstown ?

A. Twenty-three miles from Williamsport.

By Mr. PIERREPONT :

Q. Tell the distance between Williamsport and Sunbury ?

A. Forty miles.

Q. The two construction trains which you stated were running at that time had not been running at any particular hours, had they ?

A. No, sir.

Q. They run at all hours ?

A. Yes.

Q. How soon could a construction train run between Williamsport and Sunbury ?

Mr. BRADLEY. Did they run right through from Williamsport to Sunbury ?

A. They had no regular time.

Q. Did they not stop ?

A. They stopped wherever they chose.

Q. They run at any points, did they not, on the road, wherever they were required, for supplying the needs of the road ?

A. Yes ; these construction trains were for that purpose.

By Mr. PIERREPONT :

Q. Now, tell where the construction trains went to.

A. They had the right of way, between the points named, to run wherever they pleased on the road, keeping out of the way of the regular trains.

Q. What was the principal point between Williamsport and Sunbury ?

A. Watsonstown was the division.

Q. How long would it take a construction train to run over that road if it went directly through ?

A. If they went directly through they could run it in about two hours, or an hour and forty-five minutes.

MORRIS DROHAN sworn and examined.

By Mr. PIERREPONT :

Q. On the 13th, 14th, and 15th of April, 1865, had you anything to do with the ferry across the Susquehanna at Williamsport ?

A. Yes, sir ; I ran it.

Q. Do you remember a special train coming in from Elmira on the 13th, or of anybody coming up to be ferried over ?

A. I do not remember anything about a special train. I remember a man coming to be ferried over.

(His examination objected to by Mr. Bradley. Objection over-ruled.)

Q. State what occurred and what you were doing when this man came.

A. I was on the other side of the ferry—on the Williamsport side.

Q. Was that the same side as Elmira?

A. Yes; it is the same side on which the Elmira train comes in.

Q. Now, tell us what you were doing.

A. I was coiling up my rope, when the man came to me and asked me to ferry him across to this side. I asked him if he would pay if I would ferry him over, and he said yes.

Q. Was there anything that called your attention to him?

A. Yes.

Q. How was he dressed?

A. He had a peculiar coat on.

(His examination objected to by Mr. Bradley. Objection over-ruled.)

Q. Did the man say anything about ferrying?

A. He said he wanted to go to the other side.

Q. Did he say when he wanted to go to the other side?

A. Not to my knowledge.

Q. What did he say in relation to his desire for quickness?

A. He said he wanted to go to the other side—

Mr. BRADLEY insisted that the witness should give a narrative, and not be interrupted with questions at every sentence.

Q. I asked you to state what the man said.

A. I have said he asked me to ferry him across to the other side. I told him the charge would be fifty cents. In the middle of the river I generally made it a rule to stop the ferry to get my pay, when the party had not a ticket of the company. He gave me a dollar bill, and I had no change, and I kept the dollar bill; he said that I might have it.

Q. Have you seen that man since?

A. I have.

Q. Is that the man? (pointing to prisoner, who stood up.)

A. To the best of my belief, that is the man.

Cross-examined by Mr. BRADLEY:

Q. Who brought you here?

A. The authority of the government.

Q. Who came after you?

A. I don't know the gentleman.

Q. A young man or old man?

A. A middle-aged man.

Q. Do you see him in court?

A. Yes; that is the gentleman (pointing to Colonel Montgomery.)

Mr. BRADLEY (to witness.) You may go; get down from that stand; I don't want anything more of you.

Mr. PIERREPONT remarked that the counsel might have other witnesses he would want to have go before he was through.

CHAS. J. HEPBURN sworn and examined.

By Mr. PIERREPONT:

Q. What is your business?

A. Train-master of the Warren and Franklin railroad.

Q. What was your business in April, 1865?

A. I was acting superintendent of the eastern division of the Philadelphia and Erie railroad.



Q. Where was the division of which you were superintendent ?

A. It ran from Sunbury to Renova.

Q. Did you know anything at that time about the road between Sunbury and Williamsport ?

A. Yes.

Q. Tell the jury what was its condition on the 13th of April, 1865.

A. It was in good order, except that we had to ferry at Williamsport.

Q. How many construction trains were running ?

A. Two between Williamsport and Sunbury.

Q. They did not run, as I understand it, at regular hours ?

A. No, sir ; they had the right of the road to work from morning till evening, keeping out of the way of the regular trains.

Q. Do you know whether they had orders to take passengers ?

A. They had orders to carry passengers through to any point they run to.

Q. They obeyed the orders, of course ?

A. Yes, sir.

Q. Can you tell the jury, if the construction train left Williamsport ferry at half-past twelve o'clock, at what time it would reach Sunbury if it went directly through ?

(Question objected to by Mr. Bradley. It had not yet been in evidence that any train run that day. The court said the time might be proved first.)

A. The running time for a passenger train was an hour and forty minutes. The gravel train, with an ordinary load, would run it in a little over two hours.

Mr. BRADLEY. From Williamsport to Sunbury ?

A. Yes ; that is, to the other side of the bridge.

Q. Do you mean the regular time was an hour and forty minutes ?

A. Yes ; an hour and forty or fifty minutes.

Q. That was the time on the 13th of April, 1865 ?

A. Yes, on the 13th. Before the 10th it was longer.

By Mr. PIERREPONT :

Q. Why was it longer before the 10th ?

A. The road was being washed ; the bridge was down at Montgomery, so that we had to transfer there.

Q. Now tell the jury what trains left Sunbury on the afternoon of the 13th. Was there a train which left at 4.25 in the afternoon from Sunbury towards Harrisburg ?

A. There was a train leaving Sunbury that was not on our road, and I could not tell you the time.

Q. Who gave the orders in respect to carrying passengers on the construction trains ?

A. I gave the orders, or they were given by me to the clerks and they ordered it.

Q. Would passengers frequently come through in that way ?

A. The conductors remitted money every day, or return tickets.

By Mr. BRADLEY :

Q. Through passengers ?

A. We did not require them to say whether the passengers were from or to ; they just turned over the money in bulk, so much that day.

Q. You mean to say there was no construction train left Williamsport on the afternoon of the 13th of April at half-past one o'clock ?

A. I cannot say whether there was or not.

Q. Did they, or not, start out in the morning to supply the work of the road, going from point to point as they were required ?

A. Yes, sir ; the bridge of Williamsport was being repaired, and the gravel train was run to and from the bridge.

Q. I understand you to say the train runs from Williamsport out to the bridge and back again?

A. No; from the bridge east.

Q. How far does it run?

A. It runs from Watsonstown. There was another run from Watsonstown.

Q. Was there any train meeting these gravel trains at Watsonstown?

A. No, sir; each had its orders to work on its own end of the road.

Q. The train went from Watsonstown to the bridge, as I understand it, and back again, as occasion required it?

A. Yes, sir.

Q. There was no time for starting, arrival, or anything else; they were merely required to keep out of the way of the passenger trains?

A. Yes, sir; the train east at that time was hauling wood from Watsonstown to Sunbury.

Q. Was that on the 13th of April?

A. Yes.

Q. What was it on the 14th?

A. I do not remember; I could tell by looking at the book.

Q. What on the 12th?

A. I do not remember; I could tell by looking at the book.

Q. How can you remember for the 13th?

A. I looked at the book.

Q. At what time did the train start from Watsonstown?

A. I do not know that.

Q. What time did it leave Sunbury?

A. It would start out in the morning from Sunbury and return at night.

Q. How long did it take to run to Watsonstown?

A. A little over an hour.

Q. How long did it take to load up the wood?

A. That would depend upon how many cars they had.

Q. And you have nothing to say as to what time it returned at night?

A. Nothing at all.

By Mr. PIERREPONT:

Q. These trains, I understand you, left every morning at that time?

A. Yes; every morning.

By Mr. BRADLEY:

Q. At what time did they get back?

A. I do not know.

Q. At what time did they start to return?

A. I do not know.

Q. How long did it take them to run back?

A. I do not know.

Q. Can you tell whether they got back before night?

A. Yes, sir; before night.

Q. You do not know at what time before night?

A. No, sir.

GEORGE W. HAMBRIGHT sworn and examined.

By Mr. PIERREPONT:

Q. What was your business in the month of April, 1865?

A. I was passenger conductor on the Northern Central railroad, between Sunbury and Baltimore.

Q. Take these books now shown you and state what they are.

A. They are records kept by freight conductors of trains run.

Q. Are they originals?

A. Yes.

By Mr. BRADLEY :

Q. Do you know they are originals?

A. They are the only kind of books used.

Mr. BRADLEY. I object; that will not do.

The COURT said he thought the witness seemed to know nothing about them.

Mr. PIERRPONT said he would at least endeavor to satisfy himself if he was allowed to go on.

Mr. BRADLEY objected, the witness having said he knew nothing about it.

The COURT said he had not proceeded far enough to know whether the witness did or not.

Mr. PIERRPONT said he had brought witness on the stand, and he proposed to examine him. (To witness :) Now, will you tell whether at that time the train left Sunbury on the 13th—the afternoon train?

(Question objected to by Mr. Bradley.)

Q. What time did the train leave Sunbury for Baltimore on the afternoon of the 13th?

A. At 4.30.

Q. At what time did it arrive in Baltimore?

A. I think about 3.50.

Cross-examined by Mr. BRADLEY :

Q. State, if you please, what train you refer to.

A. The freight train.

Q. You say the train left at 4.30. At what time did any train get in at Sunbury from Williamsport on the afternoon of the 13th?

A. I could not tell.

Q. How do you know the freight train left at 4.30?

A. By this record.

Q. The record will not do; you run the passenger train, did you not?

A. Yes, sir.

Q. Then you have no personal knowledge of the fact you state, except with regard to the freight train?

A. No, sir.

Mr. BRADLEY asked that this evidence might be stricken out.

The COURT said it must be unless witness spoke from personal knowledge.

Mr. BRADLEY objected to witness refreshing his memory by the books he had in his possession, and asked the witness whether he had any control over the records.

The witness replied in the negative.

By Mr. PIERRPONT :

Q. Will you tell us how the records are made?

A. Our conductors—freight, passenger, and otherwise—keep a monthly record of the trains they run—the time they leave, and the time they arrive.

By Mr. BRADLEY :

Q. What knowledge have you of that fact?

A. My own personal knowledge.

Q. Each conductor keeps his own record?

A. Yes, sir.

Q. Do you mean that each one conductor has shown you his record?

A. No, sir.

By Mr. PIERREPONT :

Q. Will you tell us in what way the records of trains at that time were made up ?

A. By the train conductors themselves.

Q. In what way? Explain it.

A. He has a book similar to these books, and in it he enters the number of cars and his engine, the names of the engineer, fireman, brakeman, his flagman, and states the time of leaving, and also enters on his book, as a record, the time of leaving each telegraph point. Such a record is also kept at the terminus of each division of the road.

Q. Then there are two such records kept, each of which is a check upon the other ?

A. Yes, sir.

Q. Where are they kept ?

A. At the general superintendent's office at Harrisburg; they are forwarded there every month.

Q. Where did you get these books ?

A. From the general superintendent's office.

Q. When did you get them ?

A. A week ago.

Q. When you spoke of the time of leaving Sunbury at 4 30, and reaching Baltimore at 3.50, from what do you derive your knowledge ?

(Question objected to by Mr. Bradley, witness having stated that he had no personal knowledge, and no knowledge, except from hearsay, of these records.)

Mr. PIERREPONT insisted that records were evidence, if he chose to use them for that purpose.

The COURT said that evidence must be adduced showing the genuineness of the records before the witness could testify from them.

By Mr. PIERREPONT :

Q. What knowledge have you about that ?

A. I have this knowledge: that it is the only record that has ever been kept on this road since the general superintendent, now in charge, has been there; the only kind of records kept there for freight or passenger trains.

Q. Who gave these records to you ?

A. I got them from the general superintendent's office at Harrisburg.

Q. From him, or from his office ?

A. From his office.

By Mr. BRADLEY :

Q. Did he give them to you ?

A. No, sir.

By Mr. PIERREPONT :

Q. Do you know at what time the train left Sunbury, of your own knowledge ?

A. No, sir.

Q. Then your knowledge is derived from the records filed in the office ?

(Mr. Pierrepont offered these records filed in the office, as evidence of the running-time on that day.)

The COURT said he must first ascertain whether the witness knew them to be original records.

Q. Look at them and tell what you know about them ?

A. In regard to the handwriting, I do not know anything about them. The records are the original records in the office.

Mr. BRADLEY. If the witness does not know the handwriting, how can he know they are the records ?



By Mr. MERRICK :

Q. So far as it appears on that book, might it not be a copy as well as the original?

A. It might; but I think it is the original.

Mr. BRADLEY insisted on the testimony of this witness, relating to the time of running the trains referred to, being stricken out.

The COURT so directed.

DANIEL R. P. BIGLEY sworn and examined.

By Mr. PIERREPONT :

Q. What was your business in April, 1865?

A. I was a detective officer.

Q. Were you one of those employed by the government to go in pursuit of Surratt?

A. Yes.

Q. Was Weichman arrested by you?

(Question objected to by Mr. Bradley as not rebutting.)

Q. Was Weichman arrested by any one of your squad, Clarvoe, McDevitt, &c.?

A. Not that I know of.

Q. Were they with you?

A. They were.

Q. On duty?

A. Yes, sir.

Q. Was Weichman likewise one of these special officers detailed by the government for that purpose?

A. He went with us.

(This examination objected to by Mr. Bradley, as not rebutting in its nature.)

Mr. PIERREPONT replied that it was rebutting proof.

Mr. BRADLEY said that defence did not show that Bigley knew anything about the arrest.

The COURT said, then it was not rebutting testimony.

Q. When were you employed to go with Clarvoe and McDevitt?

A. We went the day following the assassination.

Q. Did they arrest Weichman after that?

(Question objected to by Mr. Bradley. Weichman was arrested before that.)

Mr. MERRICK remarked that the question of Weichman's arrest was gone into by them, although immaterial in itself, without objection by the other side. It was not a matter that could be gone into as rebuttal in this way.

The COURT said, the evidence having been put in on the part of the defence, they could not now take advantage of it; still the proof must be confined to the time and place mentioned by the witnesses, Clarvoe and McDevitt.

Q. Did you hear the evidence of Clarvoe and McDevitt about the arrest of Weichman?

A. I heard that of Clarvoe; I did not that of McDevitt.

Q. Will you state whether the time and place given by them was correct?

(Question objected to Mr. Merrick. The testimony of Clarvoe, on which the witness was being questioned, must be pointed out.)

Mr. PIERREPONT. Very well. While the assistant district attorney is finding it, we will go on with another subject.

Q. Did you go with Hollahan to St. Albans?

A. I went with Hollahan, Weichman, and McDevitt.

Q. At what time did you get to St. Albans?

A. We got there on the 20th.

Q. Did Hollahan tell you anything about this handkerchief?

A. Not at that time.

Q. Tell what he did tell you when he first spoke on the subject of that handkerchief?

(The question objected to by Mr. Merrick, unless the evidence intended to contradict was pointed out. Mr. Pierrepont read from the evidence of the witness Holahan as follows: "Q. Did you tell Bigley you lost that handkerchief at St. Albans? A. No, sir.")

Q. Now, I ask you whether he did tell you he lost that handkerchief at St. Albans?

A. He did.

Q. When did he tell you he lost it at St. Albans?

A. I think it was on the 25th or 26th of April, in the American consul's office at Montreal.

Q. Was that in reply to any information that came in?

A. It was.

Q. What was it?

A. We were informed that there was a handkerchief found—

Mr. BRADLEY said it was no matter what it was in reply to. He objected to the evidence.

Q. State whether you went on with him to the station at Burlington.

A. I did.

Q. Where did you go then?

(Mr. BRADLEY again insisted that the evidence it was intended should be contradicted should be pointed out. Mr. Pierrepont read from the testimony of Holahan, as follows: "Yes, sir; I was waked up by the watchman of the hotel. We then went to the depot; the train was late; I laid down on a settee there until the train started.")

Q. Did you go with him there?

A. Yes, sir.

Q. Did he lie down there on the settee?

A. I did not see him.

Q. Did he lie down on a settee in your presence?

A. No.

Q. You would have seen him if he had lain down?

A. I think I would.

Q. Were you with him all the time until the train started?

A. I was with him, McDevitt, and Weichmann.

Q. Did you have to wait long for the train?

A. No, sir.

Q. Did you go direct into the train?

A. We did.

Q. Then there was not any sleeping or lying down?

A. I think there was not.

Cross-examined by Mr. BRADLEY:

Q. You say he did not lie down?

A. No, sir.

Q. Did you know he had a handkerchief with him of John Surratt's at that time?

A. No, sir; I did not.

Q. You did not know anything about it?

A. No, sir. My first intimation of that handkerchief was as I have stated.

Q. Do you know whether he had a greatcoat on or not?

A. I think he had.

Q. Do you know what he did with that greatcoat at the depot?

A. I do not.

Q. Did you take any particular notice of him at the depot?

A. I did not.

Q. Are you quite sure you did not have to wait for some time at the depot before the cars started ?

A. My impression is we did five or ten minutes.

Q. You have no recollection of being longer than that ?

A. No, sir.

Q. Who went from the hotel to the depot with you ?

A. I think Holahan went with me and Weichmann with McDevitt.

Q. You cannot tell whether he had his greatcoat on or not ?

A. I do not recollect whether he had his greatcoat on or not.

Q. Do you recollect whether he carried it on his arm ?

A. I think he must have had it on his arm, or under his arm. I think I carried mine that way.

Q. At what time did you start for the Burlington depot ?

A. It was early in the morning ; I don't recollect the exact time ; between five and six o'clock, I judge.

Q. Not earlier than that ?

A. It may have been earlier.

Q. At what time were you called ?

A. I don't recollect. I did not notice the time ; we were called very early to take the early train from Burlington to St. Albans.

Q. Who was present when he spoke of the loss of the handkerchief ?

A. The loss of the handkerchief was mentioned, either by the American consul, Potter, or his secretary, I do not recollect which ; they were both in the room ; I am not certain. Clarvoe, Kelley, Weichmann, myself, and Holahan were in that office ; it was right opposite the Ottawa Hotel.

Q. What was said about the handkerchief ?

A. Either the secretary or the American consul stated there had been a handkerchief found at St. Albans. I asked by whom. The reply was, by one of Baker's detectives. I immediately said, this is a very fine thing—one of Baker's detectives piping on us. Holahan said that he had lost it at St. Albans.

Q. Did not Holahan state, in reply to a remark of the secretary, that Baker's detective had picked up the handkerchief at Burlington ?

A. The information was that it was found at St. Albans.

Q. That is your recollection ?

A. Yes, sir.

Q. You are not aware that the handkerchief was found at Burlington by a man by the name of Blinn and given to one of Baker's detectives of the name of Gurnett ?

A. Not until this trial.

Q. You thought the handkerchief had been found at St. Albans ?

A. That was the opinion I had about it.

Q. You are sure you understood him to say he lost it at St. Albans ?

A. He did say it. That was our report to the major of police at New York.

Q. That was what you understood him at the time ?

A. Yes ; I understood Holahan to say that he lost this handkerchief at St. Albans.

Q. Did, or did not, the consul say that the handkerchief had been picked up at St. Albans, and then didn't Holahan say, "I lost the handkerchief" ?

A. Holahan said he lost the handkerchief at St. Albans, and the secretary also said the handkerchief was found at St. Albans by one of Baker's detectives.

By Mr. MERRICK :

Q. When was this conversation ?

A. It was, I judge, the 25th or 26th of April.

Q. Was the report made from Montreal by you of the loss of the handkerchief ?

A. No, sir; not that I am aware of.

Q. Do you know where Gurnett lives?

A. I do not know him.

By Mr. BRADLEY:

Q. You did not know then of a man at Burlington giving a handkerchief marked with Surratt's name to Gurnett, one of Baker's detectives, on the 25th or 26th of April?

A. I did not. My opinion was as I have stated. I did not know who the party was that found it, or anything else in respect to it.

Q. I understand that what the secretary said was that it had been picked up at St. Albans, as you understood him; and that you understood Hollahan to say that he had lost it at St. Albans. Did he say when or how he had lost it?

A. He did not to me; he said he had lost it at St. Albans.

Q. Did he say he had lost it at the depot at St. Albans?

A. No, sir; I do not recollect his saying at the depot.

Q. Did he get out at the depot at St. Albans?

A. I believe he did.

Q. You did not understand whether the handkerchief was picked up at the depot at St. Albans, or where it was picked up?

A. No, sir.

Q. Did you understand the consul that the handkerchief was picked up at the depot?

A. It might have been stated so; I don't recollect.

Q. Refresh your memory, and see if he did not say so to you.

A. I think, upon reflection, he did say it was lost at the depot at St. Albans.

I know we got out there.

Q. Now, then, what enables you to state with so much confidence that Hollahan did not lie down at the depot in Burlington?

A. Because when we were waked up to go to the train and went to the depot we did not remain there long after we got there. We may have remained probably five minutes or ten minutes, I do not think longer than that, before the train started.

Q. Do you recollect whether you kept your eye on Holahan, or did he move about?

A. No, sir; I did not keep my eye on any one.

Q. Could he not have lain down and put his great coat under his head without your having known it?

A. I do not recollect anything of the kind.

Q. Could he not have done it without your knowing it?

A. My impression about it at this time is that we did not even go into the depot. The train stood on a side track, and we went out there and waited. That is my recollection.

Q. At what time did you reach St. Albans?

A. On the 20th.

Q. At what time of the day?

A. I do not recollect. It was in the morning, I think.

Q. Did you stop on the road between Burlington and St. Albans?

A. Not for any time; not to remain. We may have stopped at the stations.

Q. Did you get out of the cars at those places you stopped at?

A. We may have done so. I do not recollect whether we did or not. Some of the party may.

Q. Do you recollect Holahan's going out to buy anything at Burlington?

A. Yes.

Q. Did he buy a shirt?

A. I think he bought a shirt, and perhaps a neck-tie. I was with him.

Q. At what time did you get to Burlington?



- A. We got to Burlington, I judge, about seven or eight o'clock, on the 19th.
- Q. Where did you put up?
- A. I think it was a place called the American House, if I am not mistaken.
- Q. You entered false names there?
- A. We did.
- Q. At what time did you go to bed?
- A. Between ten and eleven o'clock, I judge.
- Q. Did you occupy the same room, all of you?
- A. There were some with me. I do not recollect whether we had one room or two.
- Q. How many were in the room with you?
- A. There may have been one.
- Q. Do you know who that was?
- A. No, sir. We may have all occupied one room. I do not recollect.
- Q. Who entered the names?
- A. I think I entered the names, if I am not mistaken.
- Q. What is your recollection about it?
- A. I know I wrote my own *alias*. I do not know whether I entered those of the others or not. I know I entered my own.
- Q. Did you get supper after you got there?
- A. I think we did. My impression is we got supper there.
- Q. Do you remember whether it was dark when you were called in the morning?
- A. It was early dawn. I do not recollect whether it was daylight.
- Q. Whether it was daylight or not, do you remember whether it was dark?
- A. I do not.
- Q. How far was it from the depot to the hotel where you stopped?
- A. I do not recollect the distance. It was not a very great distance.
- Q. More than one block, or two or three blocks?
- A. I should judge about two blocks.
- Q. Were the lamps lighted?
- A. I do not recollect.
- Q. Can you recollect whether it was quite dark or not?
- A. I know it was very early in the morning. It may have been probably four o'clock. I do not recollect.
- Q. You have no recollection whether it was dark or not?
- A. No, sir.
- Q. How did you reach Burlington, by steamboat or rail?
- A. By rail.
- Q. No sleeping car?
- A. No, sir; we had no sleeping car going.
- Q. You are quite sure about that?
- A. I think so, sir.
- Q. You did not take a sleeping car after you left Burlington?
- A. No, sir.
- Q. Where did you breakfast that day?
- A. I think we got something to eat at St. Albans.
- Q. Did you breakfast there?
- A. We ate at the depot there?
- Q. So far as you recollect, do you remember when you got to Montreal?
- A. It was about half past two o'clock, or it may have been later. I do not recollect the exact time.
- Q. Might it not have been earlier?
- A. It might have been twelve or half past twelve.
- Q. Was it not earlier than that?

A. No, I do not think it was. I know that after we arrived at Montreal we got dinner at the Ottawa Hotel.

Q. Now, cannot you fix with greater certainty the date on which the loss of his handkerchief was first mentioned to you?

A. The first intimation I had of the handkerchief was after the arrival of the detectives, Clarvoe and Kelly. I think it was on the 26th day of April.

A. C. RICHARDS, superintendent of Metropolitan Police, sworn and examined.

By Mr. PIERREPONT :

Q. Do you know Mr. Hollahan?

A. I do.

Q. Did you have any conversation with him about this handkerchief?

A. I had a conversation with Hollahan, Weichmann, Bigley, and Clarvoe, when we returned from Montreal to New York.

Q. Did Hollahan make any official report to you as an officer, on his return from Montreal?

(Question objected to by Mr. Bradley as not rebutting. Objection sustained.)

The COURT stated that after to-day he would continue the sessions until four o'clock.

A recess was then taken until to-morrow at ten o'clock a. m.

TUESDAY, July 23, 1867.

The Court was opened at ten o'clock.

Mr. PIERREPONT said, at this stage of the case, that he wanted to offer in evidence the paper spoken of the other day by General Eckert. The paper was not in Booth's handwriting, but from the inquiries that had been made about it, he thought it proper that it should be offered in evidence.

(The letter referred to is the one purporting to have been written by Booth to Dr. Stewart, enclosing an amount of money. The offer was accepted, the defence desiring to show that two letters had been offered as originals, they being in different handwriting, both purporting to have been written on leaves torn from Booth's diary.)

The COURT ordered attachments to issue for the apprehension of E. W. Casell and T. J. Osborne, conductors on the Northern Central railroad, who had refused to obey the summons of the court.

EZRA B. WESTFALL sworn and examined.

By Mr. PIERREPONT :

Q. What was your business in April, 1865?

A. Trainmaster on the Philadelphia and Erie railroad.

Q. Where were you stationed?

A. At Williamsport, and about there.

Q. Do you remember anything that occurred on the 13th day of April, the day prior to the day on which the President was assassinated?

A. I do.

Q. Where were you?

A. I was at Williamsport.

Q. What were you doing at Williamsport?

A. I was there as my business called me there at other times. I was assisting in transferring passengers over the ferry.

Q. At Williamsport, how far from the ferry is the depot where the trains coming from Elmira stop?

A. About three-quarters of a mile.

Q. Were you at the depot that morning?

A. I was there when the trains arrived from Elmira that day.

Q. Tell the jury what trains did arrive from Elmira.

A. There were two trains that arrived between twelve and two.

Q. Were you there when the eight o'clock train leaving Elmira arrived?

A. Yes, sir.

Q. What time did it arrive?

A. Between the hours I have named. I could not tell the exact minute.

Q. One of them was the eight o'clock train from Elmira?

A. Yes, sir.

Q. Were you there when the special train arrived at 12.30?

A. Yes, sir.

Q. Will you state what occurred after the arrival of that train?

A. A man came to me who was very anxious to get through. He asked some questions with regard to the train. He inquired what would be the probable chances of getting over the line. I took him to be either a rebel spy or a government detective. I cut him off very short; did not give him much satisfaction, because I thought it was none of his business as to how we run our trains at that time.

Q. Do you know which way he went?

A. I could not say as to which way he went.

Q. Did you know the ferryman?

A. Yes, sir.

Q. Did you see the ferryman afterwards?

A. Yes, sir; I saw him that evening.

Q. Did you have any conversation with the ferryman that evening?

(Objected to by Mr. Bradley. Withdrawn.)

Q. When did you next see the ferryman, after you had the conversation with the man that you saw after the arrival of the special train?

(Objected to by Mr. Bradley. Objection overruled. Exception reserved.)

A. That evening about half past six o'clock.

Q. About what time was it that this man had the conversation with you in relation to making these inquiries about your trains?

A. I should judge between twelve and two. I could not fix the time precisely.

Q. Have you seen anybody since that looks like him?

A. I cannot say that I have seen any person that I could swear to positively.

Mr. PIERREPONT. I did not ask you as to whether you had seen any person whom you could swear to positively as being the one. I ask you if you have since seen anybody that looks like him.

The COURT. Ask him if he has seen anybody since that he believes to be the man.

Q. Have you seen anybody since that you believe to be the man?

A. Yes, sir, I have.

Q. Do you see him now?

A. Yes, sir.

Q. Do you know the prisoner?

A. The prisoner is the man; that is my impression.

Q. Will you tell us when you left Williamsport that day?

WITNESS. Going in which direction?

Mr. PIERREPONT. In any direction.

Q. After this conversation, did you stay in Williamsport?

A. Yes, sir; I remained in Williamsport, after transferring the passengers north, until about nine o'clock.

Q. Did this man that you saw ever come back again to you?

A. Not as I remember.

Q. You did not see him?

A. I did not see him after this conversation of which I have spoken.

Q. Do you know of any construction trains on the 13th going to Sunbury?

A. Yes, sir; there were three trains working between Williamsport bridge and Sunbury on that day—one switching and two construction trains.

Q. Where were they running?

A. One of them was running between Montoursville and Watsontown, and the other between Watsonville and Sunbury; the switching train was running between Williamsport bridge and Montoursville.

Q. And these places that you have mentioned form the whole connection between the ferry and Sunbury?

A. Yes, sir.

Q. Do you know whether they were ordered to take passengers?

A. Yes, sir; they were at that time, because the road had been obstructed. We gave the men orders to carry persons going from one point to another.

Q. Will you tell about the speed at which these construction trains were running?

A. They were running at a very rapid speed at that time.

Q. Tell the jury why that was.

A. Because, as a general thing, when we wanted anything we would go in a good bit of a hurry for it, and in getting things for the bridge it was very necessary to lose as little time as possible.

Q. How were they running then compared with the passenger train in speed?

A. I should judge they would make about the same time.

Q. Will you state whether the runners of those trains had any authority to take extra fare for extra speed?

A. They did not have.

Q. What do you know about it?

(This question was answered by the witness, but it appearing on further examination that he based his answer on what others had said and not from actual knowledge, it was ordered to be stricken from the record.)

Cross-examined by Mr. BRADLEY:

Q. Was there any connection in those supply or construction trains running regularly between Williamsport and Sunbury?

A. They could connect.

Mr. BRADLEY. I did not ask you if they could or not; I ask you what was done on that day and other days as a rule. Was there any connection between them?

A. They did different things just as the work would require them to do.

Q. What did they do on the 13th of April?

A. I do not know as I can remember particularly what they did on that day.

Q. Do you know what trains went out on that day from Williamsport to Sunbury? I mean the 13th of April.

A. No train started from Williamsport on that day.

Q. No construction train?

A. No, sir; not from Williamsport. There were three regular trains. The first train left at six o'clock, the second at half-past eight, and the third at half-past nine.

Q. What irregular trains can you recollect of there being on the 13th of April?

A. There were none except the gravel and the switch engine trains working.

Q. What time did they leave the bridge?

A. The gravel train did not leave the bridge.

Q. Where did it leave?

A. Montoursville, three miles beyond the bridge.

Q. What train left the bridge?

A. The switch engine running through.

Q. What time did it leave?



A. An extra passenger engine plying backwards and forwards.

Q. What time did the switch engine leave ?

A. I could not fix the time exactly, but in the morning.

Q. Leave more than once a day ?

A. Yes, sir.

Q. How often ?

A. I could not fix that to a certainty. They run backwards and forwards.

Q. How far ?

A. To Montoursville.

Q. From the bridge ?

A. Yes, sir.

Q. They were on the 13th, you say, running backwards and forwards at intervals all day ?

A. Yes, sir.

Q. What train left Montoursville for Watsontown ?

A. The gravel trains.

Q. What other trains ?

A. None except the freight.

Q. At what rate of speed did the gravel train run ?

A. They are allowed to run at the rate of twenty miles an hour.

Q. I ask you what they did on the 13th of April ?

A. I could not say as to the time they made.

Q. Do you know in point of fact that any gravel train did run through from Montoursville to Watsontown and back again that day ?

A. I know that they were working between those points on that day. I know they went from Montoursville to Watsontown and back ; could not say positively about that.

Q. Have you any memorandum or any means by which you can ascertain ?

A. No, sir.

Q. Can you state that there was any supply train, or construction train, or gravel train from Montoursville to Watsontown that day ?

A. Yes, sir.

Q. Are you sure of it ?

A. Yes, sir ; there were trains working between those points on that day.

Q. Are you sure they went to Watsontown ?

A. Yes, sir.

Q. Did they go directly through, or part of the way and back again ?

A. That is something I could not answer.

Q. How do you know they went to Watsontown ?

A. That is where they were working that day—between those points.

Q. Where did they stay over night ?

A. At Montoursville.

Q. And they went down to Watsontown ?

A. Yes, sir.

Q. At what time did they return to Montoursville ?

A. Between five and six o'clock in the evening.

Q. How far is it from Montoursville to Watsontown ?

A. About twenty miles.

Q. What time did they leave Montoursville for Watsontown ?

A. They started from Montoursville to work. I could not say what time.

Q. Did any construction train leave Montoursville after two o'clock on the 13th of April ?

A. I could not say that it did.

Q. To the best of your knowledge and recollection, did any train leave Montoursville after two o'clock on the 13th of April, to go to Watsontown ?

A. I could not answer, because I was not with the train all the time.

Q. How do you know it went to Watsontown ?

A. From the fact that they had work to do between these points.

Q. Is that any reason why they should go clear to Watsontown?

A. Yes, sir.

Q. Is that your only reason for thinking they did go all the way?

A. Yes, sir.

Q. Then you have no knowledge of the fact that they went to Watsontown?

A. No actual knowledge, from the fact that they did not keep any record.

Q. Why should they go to Watsontown if they did not have any call for work that distance?

A. They had to go for water.

Q. Was there no water between Montoursville and Watsontown?

A. Not at that time. There has since been erected a station about four miles west of Watsontown.

Q. When was that station erected?

A. I cannot give the exact date.

Q. The month, or the year?

A. I could not give that exactly. I do not think it was in operation at that time. There was a tank there, but no water.

Q. Wasn't there a tank there as far back as 1865?

A. I say there was a tank there, but no water.

Q. Was not the water put in while they were repairing that part of the road?

A. I cannot say as to that.

Q. Was not the water put in while they were repairing the road between unbury and Williamsport?

A. I cannot answer positively.

Q. Can you recollect how long afterwards it was put in?

A. I could not give the date.

Q. You say it was that summer—two years ago this summer?

A. I could not say, because it was something with which I was not much connected.

Q. Can you say it was not more than two years ago this summer?

A. I could not fix the date at all.

Q. Go back to the running of those trains. You say the construction train left Montoursville in the morning, but at what time you do not know?

A. It left there between six and seven o'clock.

Q. Did you ever, in your experience, know it to leave Montoursville after two o'clock, or go back before four or five o'clock in the evening?

A. I do not know from the fact of being there.

Q. At any time did you ever know that train to leave Montoursville in the afternoon?

A. Not that particular train. I have known trains to leave there almost at any hour.

Mr. BRADLEY. I am speaking now of the switch or construction train. I will ask you again: Can you fix any time, within your memory, when the construction train left Montoursville in the afternoon, at that time, or any time?

A. Yes, sir, I can.

Q. Now we will go back and fix the time. When was it, in your recollection?

A. It is an every day occurrence now for the gravel train to do that.

Mr. BRADLEY. I am not speaking about now; but about the time of repairing that road while these construction trains were running.

A. I could not fix any day.

Q. Can you recollect the time while those repairs were being made when the train run out and came back to Montoursville, and went out in the afternoon?

A. I cannot fix the date.

Q. Can you tell how far that train had to run before it discharged its first load on the 13th of April.

A. I cannot.

Q. If it went to Watsonville would it return in time to load up and go out again before 2 o'clock?

A. Yes, sir.

Q. See if you can recollect an instance while making these repairs, in which the construction train run out of Montoursville to Watsonville and back again before 2 o'clock; and then again in the afternoon?

A. I cannot remember as I was not with the train all the time.

Q. Where did you first see the prisoner at the bar after you came here?

A. Sitting about where he is now.

Q. Who pointed him out to you?

A. I do not remember.

Q. Who summoned you here?

A. Mr. Montgomery, I believe.

Q. Is he the same Montgomery who was examined on the conspiracy trials?

A. I do not know; I never saw him until he came up there.

Q. When did he summon you?

A. I think Thursday night week.

Q. Did he tell you what he wanted?

A. Not particularly.

Q. Did he call your attention to the running of those trains?

A. He asked me what I was doing about that time.

Q. Is that all?

A. Whether I could not remember some instances.

Q. Instances of what?

A. That happened.

Q. Any particular instances?

A. I do not know as he called anything particular to my attention; any more than in regard to what happened about that time.

Q. Did he ask what happened on the 13th of April?

A. I think he did.

Q. Did he tell you anything about a man passing there on the 13th of April?

A. I think he did.

Q. Did he tell you what sort of a man he was?

A. Yes, sir.

Q. Did he tell you about what time he was supposed to have got to Williamsport?

A. He may have done so in the course of the conversation.

Q. Did he tell you what train he was supposed to have arrived at Williamsport in?

A. Yes, sir.

Q. Did he describe to you what sort of a man he was?

A. I do not know as he gave me a description.

Q. Did he say anything about his clothing?

A. Yes, sir, I think he did say something about his dress.

Q. Did he say anything about his getting across the ferry?

A. Not when he came there first.

Q. Did he when he came there the second time?

A. I cannot say positively as to that. He might have mentioned something about his crossing the ferry in the course of the conversation.

Q. Did he have a photograph of the man?

A. No, sir, not that I ever saw.

Q. Have you yourself been engaged in serving summons for witnesses in this case?

A. I have served two.

Q. Who got you to serve them?

A. That gentleman there, (General Foster.)

Q. You have been away since you came here?

A. Yes, sir; my family was sick and by that means I got the opportunity of going home to remain over Sunday.

Q. Your family was sick, and you went off to serve summons?

A. He gave me the summons, thinking I might get home in that way.

Q. Were they of persons in your immediate neighborhood?

A. No, sir. I served one in Baltimore, and one at Snyder's station, on the Northern Central railroad.

Q. Was that on your way home?

A. Yes, sir.

Q. Those were all you summoned?

A. Yes, sir.

Q. Did you tell those witnesses what case they were wanted on?

A. Yes, sir.

Q. Did you tell them what they were expected to prove?

A. I merely told them they were wanted in connection with the movements of the trains. I did not explain to them because, I had not the time.

Q. You said nothing about any man?

A. No, sir.

Q. What had Colonel Foster to do with getting you off?

A. I do not know. I had been very anxious all last week to get off.

Q. Had you at all thought, after that 13th of April, that that man was in a hurry to get across the river, until Mr. Montgomery came for you?

A. I had a conversation with the gentleman afterwards.

Q. How long?

A. That is, the same evening or the next morning—I could not say exactly.

Q. Hadn't it all passed out of your mind?

A. Yes, sir; I venture to say it had.

Q. When you were here the first time, or the second time, were any notes made of what you would testify to.

A. I could not say as to that. I thought Mr. Wilson might have done so, but I could not say.

Q. Anybody else?

A. Not that I know of.

Q. Colonel Foster didn't do it?

A. No, sir.

LEWIS J. A. McMILLAN recalled and examined.

By Mr. PIERREPONT:

Q. State whether you had any quarrel with Mr. Boucher.

A. I had.

Q. Will you state what it was, when it was, and where it was?

A. In the summer of 1864 we had in Canada a general election. Mr. Boucher advocated the cause of one of the candidates in Canada, and I the other. During the election I met Mr. Boucher twice. Mr. Boucher was attending to two different churches—one in West Shefford and the other in North Shefford. On the occasion of meeting him at West Shefford, I being in his house, run out by the back door and went in front of the church and dispersed the people there to go away.

Mr. BRADLEY hoped the witness would at once come to the matter of the quarrel.

WITNESS. Well, I will say, that from that day I did not see Mr. Boucher for about six or eight weeks. He was owing me some money, and it had been due for a year or more. I wrote to Mr. Boucher and enclosed my bill; he never answered it. I wrote the second time; and then he came down to my office, and



there in the presence of Dr. Erskine, who was then my partner, asked me what I had written such letters to him for. I told him I had written the letters because he was owing me and I thought it was time he should pay.

(The witness was requested to come at once to the time of the quarrel.)

WITNESS. Well, on the day referred to, I was passing Father Boucher's house. His hired man came to the road and hailed me, asking me to come in.

Q. Was anybody with you?

A. There was another gentleman with me. I got out of my carriage and walked into Mr. Boucher's house. He showed me the way into the parlor, and closed the door. He then says, "You are a very nice man to send me such a person as you did yesterday," referring to a bailiff that I had sent to him the day previous. Says I, "Mr. Boucher, I served you as you deserved to be served." He then said, "You are a scoundrel and a blackguard." I says, "You are a gentleman," and took my hat to go out. As I was going from the door he tried to slam it against me. I then turned round and slapped him across the face. That is the quarrel.

Q. Will you tell us whether anything was said about abortion, or any such subject in any mode, shape, or form, or manner, by him or you?

A. I never heard Mr. Boucher in all my life speak the word abortion to me in any way whatever.

Q. Did you to him?

A. I never did.

Q. In order that there may be no mistake, I will ask you if any other word was used that indicated it, either French, English, German, or Spanish, or any other?

A. I understand the French language perfectly, and Mr. Boucher never spoke to me in the French language, or in any other language, any word pertaining to it in the slightest degree.

Q. What do you say of the statement he has made here regarding such conversation?

A. That it is an utter falsehood.

Cross-examined by Mr. BRADLEY :

Q. You say you were riding by Father Boucher's when his servant called you in. Who was riding with you?

A. A gentleman by the name of Edwin Camp.

Q. It was not Dr. Erskine?

A. It was not.

Q. Were you here when Father Boucher was cross-examined?

A. Yes, sir.

Q. Did you not suggest to counsel —

A. Not that question.

Q. Did you suggest to him to press Mr. Boucher with regard to the question as to whether there was not somebody present at the time of that quarrel?

A. I did not.

Q. You were here the other day when Mr. Du Tilly was examined?

A. I was not.

Q. I will ask you whether you furnished the counsel with interrogatories to Du Tilly about the money he claimed?

A. Yes, sir.

Q. What amount did you mention?

A. Ten dollars.

Q. Not \$1500?

A. No, sir. I said nothing of \$1500.

Q. How much did he owe you?

A. Ten dollars.

Q. Had you made a subscription to the church ?

A. I had.

Q. At the time of this trouble between you and Father Boucher had you paid up that subscription ?

A. I had not.

Q. Did Father Boucher propose to pay the church, and to pay you the difference ?

A. He did.

Q. Do you recollect whether he paid that money for you ?

A. He did not. The money was paid, but it was paid to me by the bailiff, Charles S. Martin. I don't know who paid the bailiff.

Q. Did you give any receipt for it ?

A. The bailiff did.

Q. Did you give any receipt for it ?

A. I did not, because he was acting for me.

Q. Do you recollect when it was paid ?

A. I do not, but I believe some time in September—on a Monday in September.

Q. Do you remember the year when it was paid ?

A. In 1864.

Q. The month ?

A. I believe in September or August.

Q. Do me the favor to look at this paper, (handing witness a slip of paper,) and see whether that is your signature.

A. Yes, sir ; that is my signature.

Mr. BRADLEY proceeded to read the paper, but the district attorney objected. The objection was subsequently withdrawn, and the paper read as follows :

“WATERLOO, *June* 20, 1864.

“Received of Rev. Charles Boucher \$5, in full of all accounts up to this date.

“L. J. A. McMILLAN.”

WITNESS. That is one of my receipts. It is not for the whole. He was owing me \$10.

Q. How much did he pay you ?

A. Mr. Martin received \$10. I visited Mr. Boucher himself once, and his sister twice.

Q. What year ?

A. I believe that the first visit I made to Mr. Boucher was in 1863, and to his sister in the spring of 1864. This bill was for the visit I made to Mr. Boucher himself. I called again twice afterwards in the spring of 1864 on his sister. The other bill in September was for those two calls that I made in the spring of 1864 to his sister.

Q. Then it was not due a year ?

A. No ; of course not. That \$10 was not due a year ; the previous bill was.

Q. So that now I understand you to say that you visited his sister in the spring of 1864, and you issued a writ against him in the fall—September, 1864 ?

A. I did not issue a writ. I put the bill in the hands of a bailiff for collection.

Q. In September, 1864 ?

A. Yes, sir.

Q. Was it paid then ?

A. It was paid after I threatened to sue.

Q. Then it was not due a year ?

A. No, sir.

Q. You say now, distinctly and positively, that you had another bill against him for \$10 for other services rendered after this?

A. Yes, sir.

Q. Why didn't you render your account against him for the whole amount when you rendered it in June?

A. Because at that time Mr. Boucher paid me that amount, and we were on very good terms together.

Q. Why didn't you render that bill at that time?

A. I did not ask him for the money. He just paid me that amount, saying he would give me that for the present.

Q. Why did you give him a receipt in full for all accounts?

A. I believe that those visits to his sister were made after the giving of this receipt.

Q. Then they could not have been in the spring of 1864?

A. Spring is until June or July.

Q. Then if these services were rendered in the spring of 1864 and the spring ends the 1st of June, and the money was not paid till the 20th of June, 1864, the visits could not have been made after that time?

A. I believe that spring lasts until the 21st of June.

Q. Then you think that the visits paid to the sister were after the 21st of June, 1864?

A. They may have been.

Q. At first you were under the impression that they were made a year before?

A. No, sir; I was not under the impression that I had attended his sister a year previous to that. I spoke about himself—the visit that I had made to him personally.

Q. Didn't you state to the court and jury that that money had been due more than a year, and that you had written to him about it, and had had a meeting in your office?

A. It was either in August or September.

Q. Didn't you say July or August?

A. No, sir; I said August or September.

Q. Your memory is quite as distinct about the nature of that account as about anything else, about its being an account for attendance on his sister?

A. Yes, sir.

Q. At first you didn't tell the jury that it was an account for services rendered his sister?

A. I spoke of it in a general way as an account, because the account against his sister was to be paid by him. His sister was living with him, and he paid whatever expenses she incurred.

Q. When was she living with him?

A. In the summer of 1863-'64 I saw her there.

Q. Can you tell us how long you attended before you put that claim into the hands of the bailiff?

A. It was some months—some two or three months, perhaps. If I had my books here I could state positively.

Q. We are talking about memory now.

A. Very well. I say it was about two, three, or four months.

Q. What time was it when you had this quarrel at Father Boucher's house?

A. It was, I believe, the latter part of August or the beginning of September.

Q. You had then put the claim in the hands of the bailiff?

A. Yes, sir; the bailiff had been to Father Boucher's house the day previous.

Q. Then the visits that you speak of were rendered after the 20th of June, and about the last of August or about the first of September you put the account in the hands of the bailiff; and yet the visits were rendered some three or four months before you put the account in the hands of the bailiff?

A. I may be mistaken ; it may have been only two months.

Q. What is your memory about it now ?

A. My memory is that I attended his sister during the spring or summer of 1864 ; as regards the exact time, I could not state positively without reference to my books.

Q. I ask you to state, to the best of your memory, when those visits were made to the sister ?

A. It was in the spring or summer of 1864.

Q. But after the 20th of June, I understand it ?

A. Yes, sir ; it may have been after the 20th of June.

Q. Your impression is, spring continues until the 21st of June ?

A. Yes, sir ; I believe it is so stated.

Q. How did you fall into that mistake of saying that the money had been due for more than a year ?

A. I had forgotten altogether about the receipt I had given.

Q. The production of the receipt refreshes your memory ?

A. Certainly.

Q. If you visited his sister after the date of that receipt, it must have been some time late in June or July you made the visits ?

A. Yes, sir.

Q. Had you had any quarrel with Father Boucher before that time ?

WITNESS. Before what time ?

Mr. BRADLEY. Before you paid those visits to his sister ?

A. Not at all.

Q. Then the first difference between you was after you had paid these visits to his sister ?

A. Yes, sir.

Q. How long after ?

A. I could not say exactly. I know it was after the general election that we had during that summer. I believe the elections were in August, and it was after those elections that the quarrel took place.

Q. You had some dispute before that time ?

A. I had not.

Q. During the election ?

A. No, sir. I never had any dispute with Mr. Boucher but once.

Q. Doctor, tax your memory, if you please, about that election, and tell us when the election was held ?

A. The election was, I believe, held in the beginning of August. I am not very positive.

Q. What election was it ?

A. It was a general election for the whole province of Lower Canada.

Q. Was not that held in the month of June ?

A. I do not think it was ; it may have been. I am not very positive about it.

Q. Recollect, if you please, whether that election was not held in the month of June ?

A. The election in Canada is not held at the same time.

Q. The election in the district where you were residing, was not that held in June ?

A. It may have been, but I do not think it was.

Q. Do you remember when the returns for the election were to be made ?

A. I do not know.

Q. Did you take an active part in the election ?

A. I did.

Q. And you cannot tell whether it was in June, July, or August ?

A. I say that it was in the summer of 1864. I do not recollect exactly. I know it was very hot weather at the time, and that is what makes me believe it was in August.



Q. Have you any hot weather in June in that country ?

A. Yes, sir; but our warmest is generally in August.

Q. Now we come down to the time of the quarrel—can you fix within a week, two weeks, or three weeks, when that quarrel occurred ?

A. No, sir. All I can say is that it was some five or six weeks after the election; perhaps three, four, or five weeks. It was on a Saturday. I was passing in front of Mr. Boucher's office, and this man called me in.

Q. Were you one of Mr. Boucher's parishioners ?

A. I was not.

Q. Did you belong to that church ?

A. I never attended his church.

Q. Do you belong to the Catholic church ?

A. Yes, sir.

Q. Was there any other church in that parish ?

A. There was.

Q. Besides his ?

A. O, no; Mr. Boucher attended to two churches; one was in West Shefford, where he resided; and then he had a mission at North Shefford.

Q. In what parish were you residing ?

A. I was residing in the township of Shefford, the same township in which Mr. Boucher lived.

Q. But you did not attend church all the time you were there ?

A. Not his church.

Q. What church did you attend ?

A. I went to the Episcopal church.

Q. How long were you there ?

A. I was in the township of Shefford from the spring of 1863; I believe I went there in March, and left in October, 1864.

Q. You left there, then, shortly after this quarrel ?

A. Yes, sir.

Q. Where did you go then ?

A. To sea.

Q. That is, in one of those steamers ?

A. Yes, sir.

Q. In the steamer running from Quebec to Liverpool ?

A. Yes, sir.

Q. Did you ever reside in Montreal ?

A. Only when I studied medicine.

Q. You were, then, from the spring of 1863 to the fall of 1864 in the parish of Boucher ?

A. It is not considered a parish at all; in the township.

Q. Did not you reside in the parish of West Shefford at all? Did not the parish extend all over the township ?

A. I believe it was canonically divided into two parishes; Mr. Boucher can explain that better than I can.

Q. Did you reside at Waterloo ?

A. I did.

Q. Was not that in one of those parishes ?

A. Not at that time.

Q. Not in the spring of 1864 ?

A. No, sir. Since, they have built a church there.

Q. You have spoken of them being canonically divided; were they not civilly, also ?

A. Not that I am aware of.

Q. Your memory is now quite distinct as to what took place at the time of this quarrel ?

A. Yes, sir; I wasn't in the house more than two minutes.

Q. Is it any more distinct about that than as regards the time when you visited his sick sister after the 20th of June?

A. Yes, sir; far more so, because what he did then is enough to make me remember.

Q. You remember very well your slapping him in the face?

A. Yes, sir.

Q. Was that at the parlor door or the front door?

A. At the front door.

Q. Did he follow you to the front door?

A. He did.

Q. What happened there?

A. He tried to slam the door on me, and I just turned round and slapped him in the face.

Q. Did you then get into your carriage and drive off?

A. I did.

Q. You are positive that in that conversation nothing was said such as he has represented here as to the cause of the quarrel?

A. No, he never did.

Q. And you never had, previous to that time, had any conversation with him on that subject?

A. I never had.

Q. Were your associations there principally with the English or the French population?

A. I associated with both.

Q. Do they intermingle a great deal, or live very much separate?

A. There is not much communication between them.

JOHN ERSKINE sworn and examined.

By Mr. PIERREPONT:

Q. What is your occupation?

A. I am a physician and surgeon in Waterloo, Canada East.

Q. How long have you lived in Canada East?

A. I was born there, and I have lived there ever since.

Q. Do you know Lewis J. A. McMillan, who has been examined as a witness in this case?

A. I do.

Q. Do you know his reputation for truth among the people with whom he associates?

A. I did during the time he was at Waterloo. I have known him for nine years. I knew him in Montreal, and I knew him in Waterloo.

Q. Before he went to sea on the steamer, did you know his character?

A. I did, perfectly well.

Q. Will you state whether it was good or bad?

A. It was perfectly good.

Q. Did you ever hear of any better character?

A. I never heard of a person who had really a better character than he had.

Mr. BRADLEY. He refers to his general character.

Mr. PIERREPONT. I speak of his character for truth.

The COURT. Confine yourself, doctor, to his reputation among those who knew him for telling the truth.

WITNESS. Well, sir, I never heard it questioned.

By Mr. BRADLEY:

Q. You never heard it spoken of?

A. I never heard it spoken of. His character for veracity was always considered perfectly good.

Q. Did you ever hear anybody express any opinion about his being a man of truth and veracity ?

A. No, sir, I never did. His veracity was never called in question.

Mr. PIERREPONT said he had not yet turned the witness over to the counsel on the other side, but he would only put one additional question, and then do so :

Q. What was his reputation for truth and veracity ?

A. It was perfectly good.

Cross-examined by Mr. BRADLEY :

Q. Did you ever hear anybody speak of his character for truth and veracity ?

A. I will explain what I have said. I mean that his character was above reproach.

Q. I ask you whether you ever heard anybody talk of his character as a man of truth ?

A. No, sir; I do not think I ever heard it called in question.

Q. Did you ever hear anybody talking about him as telling "whoppers," inventing stories, or anything of that sort.

A. No, sir.

Q. You never heard his character for truth discussed ?

A. No, sir.

By Mr. PIERREPONT :

Q. Were you present in your office, and did you hear a conversation between Dr. McMillan and Mr. Boucher there about a subscription made by Dr. McMillan.

(Objected to by Mr. Merrick as irrelevant. Objection sustained by the court, on the ground of being collateral.)

ERNEST RACICOT sworn and examined.

By Mr. PIERREPONT :

Q. Where do you reside ?

A. At Swedesburg.

Q. Where is that ?

A. In Canada East.

Q. What is your occupation ?

A. Barrister, or advocate as the office is called in Canada.

Q. Do you know Dr. McMillan ?

A. I do.

Q. How long have you known him ?

A. O, I have known him for about fifteen years, I think, at different times.

Q. Do you know Dr. McMillan's reputation for truth and veracity among the people with whom he associates and among whom he dwells ?

A. Yes, sir.

Q. Is it good or bad ?

A. It is good. I have never heard anything against it, and I was in the same district that he was. I was in the county of Shefford, and in the county of Missisquoi.

Cross-examined by Mr. BRADLEY :

Q. How long did you reside in the same district with Dr. McMillan ?

A. I have resided in the district of Shefford since the fall of 1859, at Swedesburg.

Q. How far from Waterloo ?

A. About 19 or 20 miles ?

Q. Is there any rail between those two places ?

A. No, sir; not directly. The direct road is by carriage.

Q. How often were you at Waterloo?

A. I was there every term of the court.

Q. How often is that?

A. Three times a year; and then I went there several times besides.

Q. How long did Dr. McMillan reside at Waterloo?

A. I think he resided at Potten first; and then about 1853, I think, he came to Waterloo. I did not pay particular attention to the time of his coming there.

Q. How long did he stay at Waterloo?

A. Up to the time he went to sea.

Q. When was that?

A. I think it was in the fall of '64.

Q. During that time how often were you at Waterloo?

A. As I said before, every term of the court I went there; I went there just as I happened to have business. I would see him at Swedesburg very often.

Q. How long did the term of the court last?

A. Generally about two or three days each time.

Q. Did you see him attending court?

A. No, sir; I do not recollect that he had any business in court. He was practicing as a physician in the township.

Q. How often did you meet with him?

A. I could not tell the number of times, but I used to meet him very often.

Q. Two or three times a year, or less?

A. Yes, sir; I met him at other times too. I do not say I met him every time I went to Waterloo. Sometimes he would be away.

Q. Did you ever talk with anybody in Waterloo about him?

A. There were a great many persons there. Mr. Huntington spoke about him.

Q. Did he say anything about his truthfulness?

A. Well, in fact, his truthfulness was not once called in question. I never heard anybody say anything against his character one way or the other, except that he was called a good doctor. That is all I knew about it.

Q. He never attended you as a physician, did he?

A. No. When he came to Swedesburg, if I wanted any pills he would give me some. He was never my regular physician. In fact I never had any regular physician.

No cross-examination.

LEVI A. PERKINS sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In the township of Potten, Canada East.

Q. What is your occupation?

A. I am clerk of the commissioners' court and the courts of justice.

Q. Did you ever live in the village with Dr. McMillan?

A. I did.

Q. How long?

A. From the fall of 1860 till the spring of 1862. I would not be positive as to the time.

Q. Do you know the general character and reputation of Dr. McMillan as a man of truth among the people with whom he resides?

A. I do.

Q. State whether it is a good one or a bad one.

A. I never heard any one speak of his reputation as being bad. I have always heard him well spoken of.



Cross-examined by Mr. BRADLEY :

Q. How far is this village where you live from Waterloo ?

A. We call it twenty-eight miles.

Q. Is there any railroad running between ?

A. No, sir.

Q. How often were you in Waterloo ?

A. I have been there frequently. I could not say how often in Waterloo during the years 1863-'64. I could not tell how often, but I was there several times during the doctor's residence at Waterloo.

Q. Were you on any business connected with him ?

A. I do not know that I was. I think that I went there at one time on a visit.

Q. How long did you stay ?

A. I do not remember any business transaction ; still there might have been. I have had several business transactions with the doctor.

Q. During that time did you ever hear him spoken of at all ?

A. Yes, sir ; I heard several speak of him.

Q. I refer to his character ?

A. I might have heard people say he was doing very well ; that he was a good physician, or something of that kind.

Q. Was anything said about his character ?

A. I have heard a great many kinds of expressions.

Q. Can you recollect anybody whom you heard speak of the doctor ?

A. Yes, sir ; several.

Q. Who were they ?

A. Stevens, the cashier of the bank at Waterloo ; Luke Robinson, a merchant there.

Q. What did Stevens say about him ?

A. He said he was a fine man, a good doctor, and he hoped he would get on and continue to reside there.

Q. What did you hear Robinson say about him ; the same sort of thing ?

A. Yes, sir.

Q. Did you ever hear Reynolds, who keeps the hotel there, say anything about him ?

A. I do not think I ever did.

Q. Did you stop at the hotel kept by Reynolds ?

A. Yes, sir ; that is where I stopped when I was in Waterloo.

Q. You never heard him speak of him ?

A. I do not know that I ever did.

JOSEPH A. GUPPY sworn and examined.

By Mr. PIERREPONT :

Q. What was your position in April, 1865 ?

A. I was assistant superintendent of the Erie railroad.

Q. What is it now ?

A. The same.

Q. What time, on the morning of the 14th of April, 1865, did the train from Owego, going west to Elmira, leave ?

A. Two or three trains left that morning. The first passenger train left there at 4.38 a. m.

Q. On the morning of the 14th ?

A. Yes, sir.

Q. What time would it reach Elmira ?

A. 6.12.

Q. Do you know what time it did reach Elmira ?

A. From the original report made in my office at that time it was on time.

Q. It run through at 6.12?

A. Yes, sir.

Q. That was the first train?

A. Yes, sir.

Q. Passing back into the night of the 13th, what was the last before this 4.38?

WITNESS. I have a memorandum of it here. Do you refer to the passenger or freight train?

Mr. PIERREPONT. Passenger train.

A. It left Owego on the 13th at 9.45 p. m.

Q. When would that be due at Elmira?

A. It did reach there at 11.20 p. m.

Cross-examined by Mr. BRADLEY:

Q. Did any train arrive at Owego from Albany on the 14th? Was the Binghamton road open then?

A. Those trains would come in at Binghamton from Syracuse, not at Owego. I cannot tell you how the trains run on the Binghamton and Syracuse railroad at that time.

Q. I want to know at what time the trains reached Owego that came from Binghamton on the 13th?

A. The first one run at 4.40 a. m., on the 13th.

Q. When did that train leave Albany?

A. That is something I do not know.

Q. How long did it take to run from Owego to Albany?

A. I should think, to go round that way, it would take twenty-four hours. I do not know how the connections are made.

Q. But supposing they make all the connections running by way of Binghamton to Albany, what would be the time?

A. I should think they might do it in seventeen hours.

Q. What is the usual route from Albany to Owego?

A. I understand that that would be the usual route. It would depend upon how much of a hurry the person was in. He might figure it to go by way of Canandaigua quicker. It might be so. I do not know what the connections are there.

By Mr. MERRICK:

Q. Was there any train running from New York on the Erie road at that time?

A. Yes, sir.

Q. At what time did it leave New York?

A. There was one train that left at 7 in the morning; one at 10; one at 5 in the afternoon; one at 6 in the afternoon, and one at 8 in the afternoon.

Q. Did they go by Owego?

A. Yes, sir; all of them.

Q. How many hours from New York to Owego?

A. Some trains about nine; some fourteen.

Q. Take the afternoon trains on that road from New York; when was the first afternoon train?

A. Five o'clock.

Q. At what time would that be due in Owego?

A. At 4.33 the next morning.

Q. That would be nine hours and thirty minutes?

A. Yes, sir.

Q. That is the first train from Owego?

A. Yes, sir.

Q. How many hours from Owego to Elmira ?

A. About an hour and forty minutes.

By Mr. BRADLEY :

Q. I want the return trains from Elmira to Owego on the 14th ; the time they left Elmira, and the time they reached Owego ?

A. The first train on the 14th left Elmira at 12.35. That arrived at Owego at 2 o'clock.

Q. The next ?

A. The next one at 1.35. That arrived at Owego at three o'clock five minutes.

Q. The next ?

A. The next one left Elmira at 5 30 a. m. ; arrived at Owego 6.54. The next left Elmira at 7.45, and arrived at Owego at 9.45. The next left at 11.40, and arrived at Owego at 12.50 p. m.

Q. The next one ?

A. The next four minutes after 4 in the afternoon. That arrived at Owego at 6 o'clock.

ALMESAON FIELD sworn and examined.

By Mr. PIERREPONT :

Q. Where do you reside ?

A. In Elmira.

Q. How long have you lived there ?

A. Two years, and since the 1st of May.

Q. Were you there on the 13th, 14th, and 15th of April, 1865 ?

A. I was there, but not as a resident.

Q. What were you doing ?

A. Overhauling the furniture in the Brainard House.

Q. Did you purchase it ?

A. I did.

Q. Won't you describe the Brainard House as it was on the 14th of April, 1865 ?

(Objected to by Mr. Bradley. It was in regard to a collateral matter brought out by the government in the cross-examination of the witness Bissell, and therefore a general description of the premises could not be given. They must be bound by the answer of the witness in regard to it.)

The Court said counsel might give evidence regarding anything said by the witness Bissell with reference to his meeting the prisoner, or seeing him at this house, as that was a matter pertinent to the issue ; but not anything relative to what was said by the witness after he left the company of the prisoner, for that would be touching upon a collateral matter, with respect to which they were compelled to accept the answer of the witness.)

Mr. PIERREPONT. Describe, then, the reading-room, for he distinctly said he met him in the reading-room. Was there any reading-room there ?

A. Not what we call a reading-room.

Q. Won't you tell us what there was there ?

A. In the front of the office, as you enter the door, there is a room in which there are settees on both sides ; and there are newspapers and things of that sort lying on the lounges or settees, as they are called. On the right-hand there is a telegraph office, with five or six instruments in it.

Q. Is the telegraph office in the same room with the other room ?

A. Yes, sir. There is an arched doorway to get from one side of the telegraph office, which led right into a place where they washed. There was also what may be called a coat-room there.

Q. All in one room ?

A. Yes, sir.

Q. And in that room were the telegraph operators ?

A. Yes, sir.

Q. Were all the instruments in operation ?

A. They were running ; that is, they were making a noise. The main office of the city was in that room.

Q. The current was running all the time ?

A. Yes, sir ; almost all the time.

Mr. BRADLEY inquired if witness claimed to know anything about the electrical current.

Q. Do you know whether they made any noise ?

A. They did make a noise.

Q. Were you able to hear that without any scientific knowledge of the electrical current ?

A. Yes, sir ; it was within ten feet of my office.

Mr. PIERREPONT said he now proposed to show that the Haight House into which the witness Bissell had said he had gone, was entirely closed and locked ; that it had not been opened on that day, and that it was not for sometime afterwards.

(Objected to by Mr. Bradley as collateral. Objection sustained ; offer overruled.)

The DISTRICT ATTORNEY. Do I understand your honor to confine us to this room of the Brainard House, or may we not go further and show that he misdescribed the whole house.

The COURT said anything that was asked of the witness about other portions of the house was collateral, and they had to receive the answer of the witness.

Cross-examined by Mr. MERRICK.

Q. You say that the telegraphic apartment was within ten feet of your office ?

Mr. PIERREPONT. He didn't have the place then.

Q. Do you have it now ?

A. I have not. I only kept it a little while—a year and fourteen days.

Q. How far from where the telegraphic concern are the settees on both sides of the entrance as you go in ?

A. Perhaps twenty feet.

Q. That is the sitting room of the place ?

A. It is the main room ; upstairs is the sitting room or parlor.

Q. But for the ordinary purpose of casual passers, that is the room ?

A. Yes, sir.

By Mr. BRADLEY :

Q. You purchased out the Brainard House, and bargained for it at that time ?

A. Not the house, but the furniture of the house, and took a lease of it.

Q. What became of the register of the Brainard House ?

A. I cannot tell you.

Q. Wasn't it turned over to you ?

A. It was left in my office.

Q. What became of it afterward ?

A. I cannot tell you ; I never heard anything about it until I left the house ; until there was a search made for it, from a half dozen different sources. People came in and wanted to know where the register of such a date was, not naming any particular date ; they then came down to April, 1865 ; several persons came at different times ; a Mr. Robinson came ; Mr. Knapp, the marshal of our city, came ; Captain Dingley, of the army, and others, came.

Q. When you left the house did you leave the register there or take it away ?



A. I cannot tell you positively.

Q. Have you searched for it?

A. Every room, every wardrobe in the house, and every corner of the building, every place where it was thought possible for it to be.

Q. Do I understand you to say that this room where casual passers came in and sat down is a room which you enter from the street?

A. Yes, sir, and on both sides are settees.

Q. Is there any table in it?

A. Yes, sir, one long table.

Q. Settees or chairs?

A. I do not remember whether there were any chairs there or not; but I think not. I think the chairs were more in the telegraph office.

Q. Where is the telegraph office—on the right hand side as you go in?

A. There are two entrances; one on Water street.

Q. Where does the omnibus generally start from?

A. From Water street.

Q. So that a man waiting for the omnibus would naturally sit on the one side or the other of the room?

A. Yes, sir, if he did not go up stairs in the parlor; ladies went up stairs.

CHARLES H. BLINN recalled and examined.

By Mr. PIERREPONT:

Q. You have before testified to a man lying upon a settee, and to your picking up a handkerchief in that spot after he got up. What night of the week was that?

A. Monday night, the 17th.

(Mr. John T. Holahan was here requested to stand where he could be seen by the witness.)

Q. Tell the jury whether that is the man, (pointing to Mr. Holahan.)

A. That is not the man.

Q. Does he look like him at all?

A. I see not the faintest resemblance in any respect.

Q. You are sure it is not the man?

A. I am very positive.

Cross-examined by Mr. BRADLEY:

Q. You say you found that on Monday?

A. Yes, sir.

Q. Can you tell me when it was washed?

A. I cannot tell you. It was several days afterwards—two days, perhaps.

Q. Was there any member of your family sick at that time?

Mr. PIERREPONT objected, as it was not responsive to what had been asked by them.

Mr. BRADLEY said they had sent a special messenger for this witness, and he had not been able to get him here.

Mr. PIERREPONT said that had nothing to do with it.

Mr. BRADLEY said when the defence sent for Mr. Blinn he was injured by a fall from a horse, but he noticed the prosecution could get him here easy enough.

The COURT admitted the evidence as going to test the memory of the witness. The witness being directed to answer, said:

A. Not that I am aware of.

Q. Will you state when you gave that handkerchief out to wash?

A. I think two days after I found it. It might have been the next day.

Q. What did you do with it after that?

A. I kept it in my possession until it was taken from my possession, or called for.

Q. When was it taken from you ?

A. Tuesday, the 25th.

Q. By whom ?

A. I could not tell ; by a detective. I do not remember his name.

Q. Didn't you tell that detective that you found that handkerchief on Friday morning in the railroad depot ?

A. The detective asked me nothing about when I found it.

Q. Didn't you tell him that ?

A. Not that I remember.

Q. Didn't that detective see you before the 25th and talk with you about that handkerchief ?

A. I have no recollection about it—of his seeing me.

Q. Didn't he see you on the Saturday before you gave him that handkerchief ?

A. One of Colonel Gleason's force saw me, not one of Colonel Baker's detectives.

Mr. BRADLEY. I did not ask about Baker. What was the name of the detective that went back and forth to Springfield ?

A. I do not know his name. It was one of Colonel Gleason's detectives.

Q. He has been examined here as a witness ?

A. I think he has.

Q. Do you know him ?

A. I do not.

Q. Did you know him then ?

A. I did. I knew him by sight merely. I cannot recall his name now.

Q. Do you know whether he came on a train from the south or north, or on any train ?

A. He lived in Burlington at that time.

Q. Do you recollect of his going down there to Burlington and to Springfield and returning ?

A. I know nothing about it.

Q. Do you remember of his telling you so ?

A. I do not. I do not recollect anything of the kind.

Q. Were any of your relatives sick at that time ?

A. I had an uncle sick.

Q. Did he die ?

A. He did.

Q. Do you remember what day he died ?

A. I do not.

Q. Was your mother absent from home at the time of his death ?

A. Not that I am aware of. My uncle lived in the house next to me.

Q. When you gave her that handkerchief didn't she tell you she couldn't tend to it, because her brother was dying ? Can you tell whether that handkerchief was washed before or after his death ?

A. I cannot.

Q. Don't you know it was washed afterwards ?

A. I do not know whether it was before or afterwards.

Q. Where is your mother now ?

A. In Vermont.

Q. Why didn't she come, in answer to my summons ?

A. She is too old to travel. Besides she has not been summoned.

Q. Didn't I send you a summons for her ?

A. Not that I am aware of. You wrote me a letter telling me I should bring her along ; but that was not a summons.

Q. Was there more than one handkerchief ?

A. I do not remember. There was only one, I think, that I had.

Q. Only one that you picked up ?

A. That is all.

Q. What enables you to fix the time of the finding of that handkerchief as the night of the 17th ?

A. That was the first night the boats run.

Q. How do you know it ?

A. From the official documents in the office of transportation. The boat was late that night. It came into Burlington several hours behind time.

Q. Was the boat late no other nights ?

A. Not that I am aware of.

Q. State whether it was or not.

A. I cannot. I recollect it was late on Monday night. That is what makes me think it was the first boat.

Q. You do not recollect whether it was late Thursday night or Friday night ?

A. I do not.

Q. Was the name of this detective of whom you have spoken, Conger ?

A. No, sir.

Q. Was it George F. Chapin ?

A. That is his name. I knew his name, only it had escaped my memory.

Q. Were you living in Burlington at that time ?

A. I was.

Q. Were you living in Burlington when you gave up the handkerchief to the detective ?

A. I was.

Q. You didn't have to go out of town to get it ?

A. No, sir.

Q. Were you living at Winooski Falls ?

A. That is my post office address. That is on one side of the river, and Burlington on the other.

Q. Did this detective, Chapin, and one of Baker's detectives go to your place, about two miles from the city ?

A. Yes, sir.

Q. Then he did go, did he ?

A. It is outside of the city limits, but not out of Burlington.

Q. You were then living at Winooski Falls ?

A. I was living at Burlington, opposite the Winooski Falls, two miles out of the village, on the Winooski Falls road.

Q. What day do you fix that as ?

A. Tuesday, the 25th.

Q. How do you fix it ?

A. From a diary that I have at home, and which I looked into just before I came away.

Q. Did you find in that diary any entry as to the time when you found the handkerchief ?

A. I have no account of finding the handkerchief in the diary at all.

Q. Did you find any note of the time, or the fact of leaving the handkerchief with your mother to be washed ?

A. No, sir. I found an entry in it something like this, under the head of Tuesday the 25th: "The detectives called this morning and asked for the Surratt handkerchief."

Q. There is nothing in your diary to show the day when the boats first run ?

A. No, sir.

Q. Nothing in your diary to show that two men or three men were in the depot at that time ?

A. I have a letter in my pocket to show the first day the boat run.

Mr. MERRICK. That is another matter. I want to know what minute you

have of it made by yourself, and not by any other person. Then you have nothing by which you can fix it by except your memory of the fact of your finding that handkerchief on the morning of the 18th ?

A. Yes, sir ; I have it also from a copy of the Burlington Times.

Q. Where is that ?

A. I have a letter from the editor of the paper stating that it is on file in this city in the district attorney's office.

Mr. BRADLEY desired to have the paper produced.

Mr. WILSON said he had no such paper.

Q. What is the date of that paper ?

A. I think it is the 19th.

Q. Then you rely upon that notice in the Burlington Times as enabling you to fix the date ?

A. Not so much upon that as upon my own memory.

Q. If there is any notice of the finding of the handkerchief in the Burlington Times during that week, that notice is right, isn't it ?

A. I could not say whether it is or not.

Q. Did you see the notice in the Burlington Times ?

A. I did not.

Q. Did you never see it ?

A. I might have seen it afterwards, not at that time.

Q. On the night of the 20th of April, or rather on the morning of the 20th of April, were you at the depot ?

A. I should presume to say I was, although I am not certain. There were several days about the time of my uncle's death that I was not on watch.

Q. What time did your uncle die ?

A. I do not remember the exact date. I think it was about the 21st, but I am not positive.

Q. Then if it was the 21st, it is possible you were not at the depot ?

A. I might have been, and I might not.

Q. You cannot fix positively the date of his death ?

A. No, sir.

Q. Hasn't your memory been refreshed since you were here ?

A. No, sir. I do not live at home, and have not seen my parents for several weeks.

Q. Have you not seen your mother since you were examined ?

A. Yes, sir. I saw her on my return home.

Q. If you have not seen her, how do you know she is too feeble to come on ?

A. I say her age will not allow her to come.

Q. How old is she ?

A. She is upwards of sixty.

Mr. BRADLEY, (facetiously.) So am I; and I am a young man.

Q. You have had no conversation with her on the subject of finding that handkerchief since you were examined here as a witness ?

A. I have not. I was only at home some five or ten minutes before taking the train to go where I reside.

Q. You have not seen her since then ?

A. I have not.

By a JUROR :

Q. Did you write a letter to the editor of the Burlington Times inquiring about the date ?

A. I did. I have the editor's answer in my pocket.

Q. Does the editor of the Times refresh your memory ?

A. Yes, sir ; by the letter which I have in my pocket.



By Mr. BRADLEY :

Q. Why did you write to the editor of the Burlington Times—to refresh your memory?

A. I wrote to him to ask him if he published an account of the finding of the handkerchief; and if so, what date.

By the COURT :

Q. When was that?

A. Something like two weeks since.

By Mr. BRADLEY :

Q. Was not there a copy of the Burlington Times in court when you were here last; and did you not see it in court?

A. I did not.

Q. Did you see it out of court?

A. I have not seen a copy of it in this city.

By the COURT :

Q. You were asked by a juror whether your memory was refreshed by this letter which you received from the Burlington Times. You stated your memory was refreshed by it?

A. I wrote the letter merely for my own gratification.

Q. Was the object of your writing to have your memory refreshed, or to see whether he concurred with you?

A. To see whether he concurred with me.

By Mr. MERRICK :

Q. Didn't you tell George Chapin that you picked up those things thinking they would do to wipe lanterns with; that while handling them you thought you had got two dirty pocket-handkerchiefs?

A. I have no recollection of ever telling him such a thing. I might have told him so, but I have no recollection of it.

Q. Don't you recollect that you found two pocket-handkerchiefs?

A. I do not recollect that I did.

Q. Do you recollect that you did not?

A. I do not. I may have found two, but I cannot remember of finding but one. I scarcely think I did find two.

Q. You are not willing to say positively that you did not?

A. I am not willing to say positively that I did or did not.

By a JUROR :

Q. How many handkerchiefs did you deliver to the detectives?

A. Never but one.

By Mr. MERRICK :

Q. Didn't you say to this detective that you found two pocket handkerchiefs, one of which was marked and the other was not?

A. I did not.

Q. Don't you recollect of telling him that your uncle died on Tuesday evening?

A. I do not.

Q. Don't you recollect that he did die on Tuesday evening?

A. I do not.

Q. Do you recollect that he died the night you found those handkerchiefs?

A. I am quite positive he did not die that night.

Q. Did he die before or after?

A. I think after. I think it was still later in the week, because it is my impression he was buried on Sunday.

Q. How long was your mother in attendance upon him ?

A. He lived next door. She might have run in there a dozen times a day.

Q. Did she live in Burlington ?

A. She did.

## AFTERNOON SESSION.

C. T. HOBART recalled and examined.

By Mr. PIERREPONT :

Q. State whether, since you were examined before, you saw Mr. Holahan in this city ?

A. I met Mr. Holahan about a fortnight since in Mr. Bradley's office.

Q. Was that after you testified here ?

A. Yes, sir ; it was since I testified.

Q. State what occurred between you and Mr. Holahan.

(Question objected to by Mr. Bradley. They might have had a fight for anything he knew ; he was not there. Question withdrawn for the present.)

Q. You have seen Mr. Holahan, then ; state whether he is the man who went on that car to St. Albans, about whom you testified before ?

A. I have no recollection of ever meeting Mr. Holahan, or ever seeing him before I saw him on that occasion.

Q. He is not the man who wanted to get along without the payment of his fare ?

A. No, sir.

Q. You are sure about that ?

A. I am confident of that.

Q. He does not look much like him ?

A. No, sir.

Cross-examination.

Mr. BRADLEY desired to ask the witness one or two questions relative to a matter personal to himself. It had been stated in the public papers that he had offered the witness a consideration to come here and testify in a certain way. He wished to ask the witness whether any such thing had ever passed between them.

WITNESS. Nothing of the kind. I knew nothing about that publication, and had nothing to do with it in any shape or manner. It was put into the papers without my consent or knowledge.

Q. Is it true—has it any foundation ?

A. There is no truth in it.

Q. No suggestion of that kind ever came from me ?

A. No, sir.

Q. The whole of it, then, is false ?

A. Yes, sir.

By Mr. MERRICK :

Q. And so far as all the counsel are concerned it is equally false ?

A. Yes, sir.

Mr. BRADLEY remarked that he had no objection to the witness stating what was said between them about money. It had, of course, no reference to any compensation, and if counsel did not object, witness might state it.

Mr. PIERREPONT said he knew nothing of what it meant.

Mr. BRADLEY said he thought the counsel did know what it meant ; that it had all been stated to him by the witness. He wished, however, the witness to state what the conversation was on that subject.

WITNESS. There was nothing said on that subject, except that money had been contributed, and that I was to get my pay out of the contributed money.

Q. Paid for what ?

A. My fee.

Q. Your actual expenses ?

A. Yes, sir.

Q. Was the amount stated that had been contributed ?

A. Yes ; \$1,000 or \$1,500.

Q. And out of that amount contributed the expenses had to be paid ?

A. Yes, sir.

By Mr. PIERREPONT :

Q. Was this in any connection with Mr. Holahan ?

A. No, sir.

Q. What was there about Mr. Holahan ?

Mr. MERRICK. About what ?

Mr. PIERREPONT. I mean about Holahan's stating he was the man who went with him.

(Question objected to by Mr. Bradley.)

Mr. PIERREPONT said he proposed to show what Holahan said in relation to his being present and attempting to personate Surratt.

Mr. MERRICK said if the counsel attempted to impute to Holahan any attempt to bribe the witness in this way, he had no objection to the question, but if it was merely to state a conversation between the witness and Holahan, it had nothing whatever to do with this case.

Mr. PIERREPONT said he imputed nothing of the sort, and never heard of it. What he did understand was, that Holahan attempted to make this witness say he was the man who travelled with witness and personated Surratt ; that he told the witness it was not Surratt who was with him on that occasion.

Mr. BRADLEY remarked that if Holahan ever told the witness he attempted to personate Surratt he did not know that he would object to his saying it.

Mr. MERRICK said the testimony, however, was entirely irrelevant.

The COURT so ruled and excluded the question.

Mr. MERRICK desired the witness to forward the time tables or certified copies of them for 1865 over the roads with which he was connected.

WITNESS said he believed that only one copy had been found ; that was in the office of the general superintendent of the Rutland and Burlington road. If he could procure another copy he would forward it, and otherwise would forward a certified copy.

LEWIS J. WEICHMAN recalled and examined.

By Mr. PIERREPONT :

Q. Do you know Mr. Holahan ?

A. I do, sir.

Q. Please state whether you were with Mr. Holahan at Burlington.

A. I was. We arrived in Burlington on the evening of the 19th of April, 1865, and left on the morning of the 20th. We arrived by cars.

Q. State whether you went to the station together.

A. On the morning of the 20th, McDevitt, Bigley, Holahan, and myself all left the hotel together, and went to the depot together. We took the cars from the track.

Q. Did he go in and lie down ?

A. It is my impression that he lay down in the cars.

Q. I ask if he went into the depot and lay down ?

A. I did not see him ; I do not think he did.

Q. Could he have done it without your seeing him ?

A. No, sir.

Q. Were the cars standing inside the depot or outside ?

A. It is my impression the cars were standing outside the depot on a side track.

Q. State whether you waited long there.

A. No, sir ; I should state that we went into the depot in the cars, but we did not go into the depot to take the cars.

Q. Did Holahan tell you anything about the loss of that handkerchief ?

Mr. MERRICK desired to be referred to the testimony of Holahan it was intended to contradict.

Mr. PIERREPONT read from the testimony of Holahan as follows : Q. "Did you know Weichman well, who was with you ? A. I knew him well. Q. Did you tell him you left it under your pillow at the hotel ?"

Q. Did he tell you he left it (the handkerchief) under his pillow at the hotel ?

A. He told me so during the conspiracy trial in 1865.

Mr. BRADLEY said that would not do. The time and place must be pointed out to which Holahan's attention was called.

Mr. PIERREPONT read further from the testimony of Holahan, and claimed the right of the witness to answer the question.

The COURT decided that the only place specified was Canada, and that the question must be confined to Canada.

Q. Did Holahan tell you in Canada that he left it under his pillow ?

A. No, sir ; he did not tell me in Canada.

JOSEPH WELLS, residence Elkton, Maryland, sworn and examined.

By Mr. PIERREPONT :

Q. Did you ever know a man by the name of Samuel F. Cameron ?

A. I did.

Q. Do his wife and children reside at Elkton ?

Mr. BRADLEY said they had nothing to do with his family and children.

Q. When did he leave there ?

A. He was there until 1861.

Q. Do his family reside there now ?

(Question objected to by Mr. Bradley.)

Mr. PIERREPONT said he supposed the residence of a man's family was his residence.

Mr. MERRICK. By no means.

(Question withdrawn.)

Q. Has he been there since 1861 ?

A. I have not seen him.

Q. What was his business there ?

(Question objected to by Mr. Bradley as immaterial.)

The COURT stated that the question had been answered by Cameron himself.

Mr. PIERREPONT said he had the right to ask this witness that question ; that he did not take any statement coming from the witness Cameron. He wanted to ascertain whether this was the same Cameron.

Mr. BRADLEY said that question could be asked this witness.

Mr. PIERREPONT said he had the right to ascertain from this witness what was Cameron's occupation.

The COURT said the occupation of the witness Cameron was called out upon the cross-examination, was irrelevant, and the prosecution were bound by his answer.

Mr. PIERREPONT said his object was not to contradict the witness, but merely to identify him. He would, however, ask another question.

Q. Did you see the man who testified here ?

A. No, sir.

Q. You do not know the man who testified here ; you did not see him, did you ?



A. No, sir; I was not here.

Q. I now ask you if you know a man by the name of Samuel F. Cameron?

A. I do a man by the name of Stephen F. Cameron.

Mr. BRADLEY said the counsel had already inquired and the witness had said that he knew a man by the name of Samuel F. Cameron.

Mr. PIERREPONT replied that made no difference; he now inquired about Stephen F. Cameron.

The COURT said it made no difference; counsel might inquire about Simon Cameron if they pleased.

Question repeated.

A. I do know Stephen F. Cameron.

Q. When did you know him?

A. I knew him in 1861.

Q. Do you know what his business was?

A. I can scarcely tell. He professed to be employed at a good many kinds of business. He professed to be some kind of a minister. He was a clerk a while for his father-in-law. His father-in-law was in the grain business.

Q. Do you know what sort of a reputation for truth and veracity he bore in that region?

(Question objected to by Mr. Bradley. That was not the form required; it must be his general reputation for truth and veracity among those with whom he associates.)

Mr. PIERREPONT said that was the substance of the question he put. He asked for the general reputation for truth and veracity of Cameron among the people there.)

A. It was not very reliable there.

Q. Was it good or bad?

A. His general reputation was not very good.

Cross-examined by Mr. BRADLEY:

Q. What do you mean by general reputation?

A. He was a man who would report things that people generally would not believe to be true.

Q. Was that his general reputation among those with whom he associated?

A. Yes, sir; it was his general reputation.

Q. Did you associate with him?

A. I was very well acquainted with him.

Q. Did you associate with him?

A. Yes, sir; I frequently met him.

Q. Did you associate with him in society?

A. No, sir; I do not know that I did.

Q. Did you ever visit his father-in-law?

A. I never visited there. I have been there at the house.

Q. What was the business in which you were engaged in 1861?

A. I was mail contractor, and kept a provision store in Elkton.

Q. How often were you thrown in association with Cameron?

A. I have met with him frequently.

Q. Who did you ever hear speak of him at that time?

A. I do not know that I can mention any particular one.

Q. He was then, you say, a sort of minister?

A. He professed to be. I do not know whether he was or not.

Q. Do you know whether he preached or not?

A. I never heard him preach. I have heard of his preaching outside. I do not think he ever preached in Elkton.

Q. He was a preacher, then, but his general reputation for truth was bad, and people would not believe what he said; was that your answer?

A. Yes; they would not as a general thing.

Q. You cannot recollect anybody who said that?

A. No, sir; I cannot cite any one now.

Q. Were your companions and associates his? Did you associate with the same people?

A. Yes, sir.

Q. Commonly associates, or would they occasionally get together?

A. Commonly associates.

Q. Did party politics run very high at that time?

A. Well, I don't know; there was, I suppose, a good deal of feeling both ways.

Q. You and Cameron were opposed to each other in party politics, were you not?

A. I do not know whether we were or not; sometimes he professed to be with me and sometimes against me. I could never tell where Cameron stood; sometimes he was in favor of the rebellion and sometimes he was a strong Union man.

Q. How long did you know him prior to 1861?

A. I do not know—I cannot recollect; I knew him all the time he was there.

Q. I understand you have not seen him since 1861?

A. Not to the best of my knowledge.

Q. Do you know how long he had lived there?

A. He lived in Elkton several years.

Q. When did this bad reputation begin?

A. I never knew it otherwise. I never heard anybody speak of him as a very reliable man.

Q. Who did you hear speak of him as not being a reliable man?

A. I cannot tell you; it was a general thing among the people in that neighborhood; that was his general reputation.

Q. That he was a common liar?

A. No, sir; I did not say that.

Q. What was it?

A. That he was a man they could not generally rely upon. If there was a report coming from Cameron there was no reliance to be placed upon it.

Q. If you could not generally rely upon it was he not a common liar?

A. I did not say so.

Q. Then he was no common liar?

A. I did not say that.

Q. I want to know what estimate you put upon him?

A. I said it was the general impression in the neighborhood that he could not be relied upon.

Q. That was all the time from when he first came there?

A. Yes, sir; ever since I knew him.

Q. You knew him for how many years before 1861?

A. Eight or ten years, I suppose.

Q. He married there?

A. Yes, sir.

Q. How long was he married before 1861?

A. I could not tell you exactly; I suppose eight or ten years.

Q. Was he married before he came there?

A. Before he came to Elkton; his father-in-law lived in the county.

Q. He came there with that reputation and had it all the time he was there?

A. I do not remember what it was exactly when he came there.

Q. But you do not remember the time when he did not have that bad reputation?

A. No, sir.

JAMES S. CRAWFORD, residence Elkton, Maryland, sworn and examined.

By Mr. PIERREPONT :

Q. How long have you resided at Elkton ?

A. Since the winter of 1865.

Q. What is your occupation now ?

A. I am clerk to the county commissioners.

Q. Do you know Stephen F. Cameron ?

A. I do.

Q. He married in that county, and his family live there now ?

A. Yes, sir.

Q. How many children has he ?

Mr. BRADLEY asked what the babies had to do with this question.

Mr. PIERREPONT thought they might have something to do with it, but would not press the question.

Q. When have you seen him last ?

A. Not since the summer or fall of 1861.

Q. Do you know what his character or reputation, among the people where he lived, was for truth and veracity ?

Mr. MERRICK. His general character.

Mr. PIERREPONT. Yes, his general character ?

A. I think I do.

Q. Was it a good one or bad one ?

A. He had the reputation of being very much given to exaggeration.

Q. As to his truth what was his reputation ? What did people generally say of him in that respect ?

(Question objected to by Mr. Merrick as having already been answered. Objection overruled.)

A. I think his reputation was that he was not truth-telling. I should suppose no man could be given to exaggeration and still be truth-telling.

Q. And he had not the reputation of being truth-telling ?

A. No, sir.

Cross-examined by Mr. MERRICK :

Q. I understand you to say that his reputation was that of a man given to exaggeration. Was that his general reputation ?

A. Yes, sir.

Q. He did not bear the reputation of being a common liar, did he ?

A. I never heard the term "liar" applied to him.

Q. Who have you heard say he was a man given to exaggeration ?

A. Well, sir, I have heard a great many persons speak of his habit of exaggeration.

Q. How long did you know him before 1861 ?

A. I think since 1858 or '59 ; I am not quite certain when my acquaintance with him commenced.

Q. When did you leave Elkton ?

A. I think some time in the fall of '61 ; I am not quite certain about it.

Q. What were your sympathies during the late war ?

A. My sympathies were on the side of the government, very decidedly.

Q. And his were on the other side ?

A. I cannot say where they were. We did not so understand it at one time.

Q. Were you not all very variable down there—first on one side and then on the other—from Creswell down ?

A. No, sir ; we were not.

Q. You never changed your opinions about it ?

A. Never ; I have not yet.

JAMES T. McCULLOUGH, lawyer, residence Elkton, Maryland, sworn and examined.

By Mr. PIERREPONT :

Q. How long have you known Stephen F. Cameron ?

A. I have known him since about the time he married his wife.

Q. Where did he marry her ?

A. In our county.

Q. When did you last see him in your town ?

A. Some time in the summer or fall of 1861.

Q. Before that time you knew him well, and knew his father-in-law and family well ?

A. I knew them all very well.

Q. Please state what was his general repute among the people in the neighborhood where he resided, if you know it.

A. I believe I know it. If I should have to say it was either good or bad, I should say it was bad.

Cross-examined by Mr. MERRICK :

Q. Did you associate with Cameron ?

A. Yes, sir.

Q. Did you move in the same circle with him ?

A. Yes, sir.

Q. Did your brother also associate with him ?

A. I have no brother. Hiram McCullough is not a brother of mine.

Q. Who did you hear say his reputation was bad ?

A. I do not know that I could tell. It has been spoken of a great deal lately since he testified.

Q. I mean at that time—1861—or prior to that ?

A. I suppose I gather up his reputation from what I have heard persons speak.

Q. State what persons you have heard speak.

A. I remember about the time the war commenced, before Cameron went away, Judge Price and I had a conversation about it. Sometime before he left Cameron had been to Baltimore and made a report there of matters in our county, which was published in the Baltimore South. It was the inference that I drew from Judge Price's remarks, in part, that went to make up the general reputation I speak of.

Q. You were discussing politics, were you not ?

A. He was telling me of something Cameron did over in Hertford, not particularly referring to politics. He was speaking of what was going on in Elkton, about how the soldiers had acted, and making representations about affairs there.

Q. It referred to national matters, did it not ?

A. No ; it only referred to the statements of Cameron of what had been done in our county. The statement he made I knew not to be correct ; it was an exaggeration.

Q. Those were times of considerable political excitement, were they not ?

A. There was a good deal.

Q. Were there not statements made on both sides, at that time, very much exaggerated ?

A. I suppose there were.

Q. Don't you know the fact ?

A. I do not know that I can refer to any particular statement.

Q. There was a great deal of feeling in Elkton, was there not ?

A. No more than in other parts of the country.

Q. But there was political excitement to an extent that divided the people socially, was there not ?



A. There was to a certain extent; not with myself personally; I have had associations all along among my own relations and my wife's relations on both sides.

Q. Still did it not have that effect?

A. It had some effect.

Q. Did it not have a very decided effect; did it not break up some of your own social relations?

A. It may have done so. I do not think of any just now.

Q. Did you not have some friendships cooled?

A. I may have had.

Q. If they were not entirely broken off, were they not materially cooled?

A. I suppose they were. Cameron was a very erratic man. I attributed his habit of exaggeration more to the character of his mind than anything else. I never considered him entirely a sane man, and he was so regarded by a great many persons.

Q. You attributed his character, then, to his mind, and not to his immorality?

A. Exactly.

Q. You did not regard him as morally corrupt in regard to truth?

A. I would not make it that strong.

Q. And upon the question of morals, therefore, you know nothing against him?

A. No, sir, I would not say that.

By Mr. PIERREPONT:

Q. You would not say what?

A. I would not rely upon his statements.

By Mr. MERRICK:

Q. I ask you again whether there was any reputation going to affect him as a moral man in regard to truth?

A. It may have been due to the character of his mind.

Q. There was no reputation in the community that would taint him with immorality as being a malicious liar?

A. O, no, I never said that.

JOHN TORBERT, residence Elkton, Maryland, sworn and examined.

By Mr. PIERREPONT:

Q. How long have you lived in Elkton?

A. The last time since the fall of 1863. I was born and raised there, lived there till 1859, and came back again in 1863.

Q. Did you know Stephen F. Cameron, who married there?

A. Yes, sir.

Q. You knew his wife's father and his family?

A. Yes, sir.

Q. When did you last see him there?

A. I last saw him in 1861.

Q. Do you know what kind of a general reputation he bore in that neighborhood as a man of truth and veracity?

A. He had a reputation of being a wild sort of a man. I could hardly say. I have heard his word doubted very frequently.

Q. Was his general reputation for truth good or bad?

A. I have heard a great deal said about the man. I do not know that I ever heard his reputation for truth discussed particularly.

Mr. MERRICK said that witness, after that statement, could not say anything further to impeach the character of Cameron.

Mr. PIERREPONT said he desired the witness to explain what he meant by that remark.

The COURT said he had a right to explain if it he wished.

WITNESS. I do not mean by that, that I never heard his character for truth and veracity discussed, but that I could not remember any particular instance when I heard it discussed.

Mr. PIERREPONT. I did not ask you for any instances; I asked you what his general reputation was.

Mr. BRADLEY. And the witness answered that he had never heard his character for truth discussed.

WITNESS. And I meant by that, I did not recollect who I had heard speak of it.

By the COURT :

Q. Have you heard his character generally spoken of by the people ?

A. I have by almost every one—spoken of in general as far back as 1858 or 1859.

By Mr. PIERREPONT :

Q. Will you tell us whether it was a good or a bad character for truth ?

A. He was generally considered a sort of crack-brained individual, a man about half crazy. Whether he was morally corrupt, I would not like to say.

Q. You thought he was crack-brained, and that it affected his character as to truth, or what turn did it take ?

The COURT said, the question was how he was considered among the people in respect to his truthfulness.

WITNESS. I will explain what I mean. The character of the man was such that if he related any wonderful circumstance, nobody would believe him, until they found out what was done.

Cross-examined by Mr. MERRICK :

Q. Who have you heard say that his reputation for truth was bad, and they would not believe him ?

A. I cannot say who I heard.

Q. You have heard it discussed ?

A. I have no doubt but what I have.

Q. I want to know the fact; do you recollect ever hearing it discussed ?

A. I do not recollect ever hearing it discussed.

Mr. MERRICK then moved that the testimony of this witness be stricken out.

The COURT said he would understand first what the witness meant by his answer.

WITNESS. What I meant to say was that I cannot name any man who I have heard say would not believe him.

By Mr. MERRICK :

Q. Did you hear his character generally talked about ?

A. Yes, sir.

Q. As far back as 1861 ?

A. Before 1861. I was not in Elkton in 1861—not after 1859.

Q. How old are you ?

A. Nearly twenty-seven.

Q. Then you were nineteen at that time ?

A. About that age.

Q. Did you associate with Cameron ?

A. O, yes; I met him almost every day while I was there, when he was in town.

Q. What were you doing at that time ?

A. My father was at that time in the mercantile business in town. I was with him.

Q. Is your father living now ?

A. Yes, sir.

Q. You say you cannot recollect any particular instance in which you heard his character for truth discussed ?

A. Not at that time.

Q. And you cannot recollect any individual, at that time, who you heard speak of it ?

A. I never thought of it—never thought of any particular man, and never troubled myself about it.

Q. I understand you to say he was spoken of as a crack-brained sort of fellow, who would exaggerate about anything he undertook to tell, particularly if it was something wonderful ?

A. That explains his reputation about as well as anything you could say.

Q. You never heard him spoken of as a morally corrupt man ?

A. No ; he had rather a religious turn of mind—belonged to the church.

Q. His character for truth was pretty good, except that he was crack-brained, &c. ?

A. Yes, sir ; that is it.

By a JUROR :

Q. From his reputation would you believe him on his oath ?

A. Not unless he was corroborated.

Mr. BRADLEY called attention to the fact that the counsel had not asked that question of any witness.

Mr. PIERREPONT said he had never asked that question of any witness in his life.

JOSEPH L. MAHON, residence Elkton, Maryland, sworn and examined.

By Mr. PIERREPONT :

Q. How long have you lived at Elkton ?

A. About thirty-two years.

Q. You were born there ?

A. Yes, sir.

Q. You know the people there well ?

A. Yes, sir.

Q. Do you know Stephen F. Cameron ?

A. Yes, sir.

Q. Do you know his family, his wife, and his children ?

A. Yes, sir.

Q. When did you last see him there ?

Mr. BRADLEY said he must interfere again ; these questions about wife, family and children, were not legitimate.

Mr. PIERREPONT insisted that the question was a proper one, and said he intended to put it to every witness. The question now, however, was, when did you last see him there ?

A. In 1861.

Q. Do you know what was said about him, and what was his general reputation for truth in that region ?

A. His general reputation was not very good.

Q. State whether it was good or bad.

A. It was rather bad.

Cross-examined by Mr. MERRICK :

Q. How long did you know him ?

A. I do not know. I suppose since he came to Elkton ; eight or ten years.

Q. When did he leave Elkton ?

A. I do not know. In the summer of 1861, I believe.

Q. Have you heard him generally discussed as a man of truth?

A. I have heard him frequently mentioned.

Q. What have you heard said about him?

A. That he was not a very reliable man.

Q. Was that the language used, or can't you recollect the language?

A. I do not know that it is the exact language; that was the meaning of it.

In speaking of anything that came from Cameron, people would say that he was not reliable.

Q. He was spoken of as an erratic man, given to exaggeration; was that his character?

A. That was his general character.

Q. Did he have the character of being a corrupt liar?

A. No; I do not know that he did. He was a sort of fanatic; a man of not perfectly sane mind.

Q. Does not one-half of Elkton think the other half of Elkton is not sane, now?

A. No, sir.

Q. Did they not in '61?

A. No, sir; I do not know that they did.

Q. Don't you think that was a very general opinion at that time?

A. No, sir.

Q. Was not party feeling running pretty high at that time?

A. Yes, sir.

Q. Pretty bitter?

A. At that time I think it was.

Q. Particularly there in Elkton?

A. Not more so there than in other parts of the State.

Q. Is it not still so?

A. Not to a very great extent.

Q. Did it not create division among people in social life?

A. Not to a very great extent.

Q. Did it not excite abuse and array one against another?

A. No, sir; not as a general thing.

Q. Did they do it as a particular thing?

A. There were cases of that kind.

Q. They said a great many bad things about each other?

A. In certain cases, I suppose they did.

Q. Were you on the same side with Cameron?

A. I do not know, indeed; I cannot answer that question.

Q. Why?

A. Because I never knew which side he was on.

Q. Did not you know which side he was on in 1861?

A. I knew after he went into the rebel army; I never knew before.

Q. When did he go into the rebel army?

A. In 1861.

Q. How often did you change from one side to the other before he went south?

A. I never changed.

Q. You always took the same side?

A. I always did.

JOHN B. REARDON, residence Elkton, Maryland, sworn and examined.

By Mr. PIERREPONT:

Q. How long have you lived in Elkton?

A. Since the 1st of December, '58.



Q. Have you ever known Stephen F. Cameron, a man who married in that town?

A. Yes; he married in the county.

Q. You knew the family?

A. Yes, sir.

Q. And have you heard people talk about him; have you heard his reputation among the people as a man of truth and veracity?

A. I have heard him spoken of.

Q. Was it good or bad?

(Question objected to by Mr. Bradley, the preliminary question not having been put in proper form.)

Q. Do you know what his general reputation for truth and veracity is in the region there?

A. It is very low.

Q. You know what it is?

A. Yes, sir.

Q. Will you state whether it is good or bad?

A. In regard to truth, exaggeration, or anything, it is not reliable.

Cross-examined by Mr. MERRICK:

Q. What business were you engaged in at that time?

A. Carriage-making.

Q. How long have you known Cameron?

A. From the time I moved to Elkton until the time I moved away.

Q. Did you associate with his associates and friends?

A. Nothing more than passing backward and forward in the street and meeting him in the street.

FRANK TITUS, residence Elkton, Maryland, sworn and examined.

By Mr. PIERREPONT:

Q. When did you go to Elkton to live?

A. About 1855.

Q. Do you know Stephen F. Cameron?

A. Yes, sir.

Q. Do you know when he went away?

A. I was not living in town when I heard he went away. I do not know.

Q. Do you know what was his reputation among the people living there for truth and veracity?

A. Yes, sir.

Q. State whether it was good or bad?

A. I think it was bad.

Cross-examined by Mr. MERRICK:

Q. What business were you engaged in?

A. At that time I was a student in the academy.

Q. How old are you?

A. Twenty-three.

Q. Then, twelve years ago you were eleven years old?

A. I think I was a little older than that; I was twenty-three last April. I lived in Elkton from 1857 or '58 until the early part of '61, and was attending school.

Q. And you undertake to say what was Cameron's general reputation in the neighborhood?

A. Yes; in that part of the neighborhood where I associated.

Q. How large a neighborhood did you associate with?

A. All around Elkton for a circuit, I suppose, of about two miles. I knew the people generally there from about 1858 till 1861.

Q. And associated with them generally ?

A. And associated with them generally ; yes, sir.

Q. And you heard Cameron talked about by them generally ?

A. I cannot say I have heard every person I met talk about him ; I have heard him spoken of.

Q. I want to know if you heard him spoken of generally by the persons you did meet ?

A. I heard him spoken of by a good many.

Q. At that time or lately ?

A. At that time. I would not undertake, at this distance of time, to state the names of the persons.

Q. Were you boarding or living there ?

A. My father lived in town a part of the time, and a part of the time he lived at a distance, and I came in every morning.

Q. You associated with the same people Cameron did ?

A. I do not know with whom he associated particularly ; that is, with whom he visited ; I would not undertake to say at what places he visited. He was at that time a clerk for his father-in-law in the grain and commission business.

Q. Was he anything else ?

A. Not to my knowledge.

Q. Did he keep house ?

A. At the time I knew him he lived with his father-in-law.

Q. Did you visit there ?

A. No, sir ; I did not.

Q. Did you visit at the same houses that he visited at that time ?

A. I do not know.

Q. When you say his reputation was bad, do you mean by it that he was a common liar ?

A. I do not know that it was to that effect ; it was that he was not a man of probity. He was hardly considered a sane man. He was not a man of strict truthfulness as regards telling facts.

Q. He exaggerated things, did he ? Was anything said to you of his being a wild, crack-brained fellow ?

A. Yes, sir ; I have heard that spoken of

MICHAEL McNAMARA, residence Capitol hill, Washington, sworn and examined.

By the DISTRICT ATTORNEY :

Q. Do you know a witness who was examined here by the name of John T. Tibbett ?

A. Yes, sir ; I have known him since the 5th of August, 1863.

Q. Where did he live when you knew him ?

A. He came to Camp Baker and enlisted in my regiment.

Q. You were captain ?

A. I was his lieutenant then. He served in my company all the time ; Co. B, 1st D. C. cavalry.

Q. How long was he in your company ?

A. Until the 26th of October, 1865.

Q. Then you had an opportunity of knowing his reputation for truth ?

A. I did.

Q. What was his reputation ?

A. Excellent.

Cross-examined by Mr. MERRICK :

Q. He had a reputation of being very smart, didn't he ?

A. No, sir, not very smart ; he was a sober, steady man.

Q. Did you ever hear his reputation for truth and veracity discussed ?

A. No, sir ; I never saw any occasion for it.

JOHN H. CLARK, residence on I street, between First and Second, Washington, D. C., sworn and examined.

By the DISTRICT ATTORNEY :

Q. How long have you resided here ?

A. Since my regiment was mustered out, in October, 1865.

Q. I see your arm is disabled ; what is the cause of that ?

A. A gun-shot wound.

Q. Where did you reside previous to your coming here ?

A. I was in the army five years before I came here.

Q. Where from ?

A. From the State of Wisconsin.

Q. State if you know one John T. Tibbett, a witness examined here

A. Yes, sir ; I have known him since the fall of 1863.

Q. Where did you form his acquaintance ; under what circumstances ?

A. In my regiment, the first District of Columbia cavalry.

Q. How long was he connected with the regiment ?

A. Until it was mustered out, in October, 1865.

Q. Were you his lieutenant ?

A. I was a lieutenant in the regiment, and for a time in the same company.

Q. Did you have an opportunity of knowing his general reputation among his fellow-soldiers and associates ?

A. I did.

Q. What was it ?

A. His reputation was very good ; I never heard any one question his truth and veracity in any way.

Cross-examined :

By Mr. BRADLEY :

Q. You never heard it called in question ?

A. I never did

Q. How long did you say you were in the service ?

A. Since 1858.

By Mr. MERRICK :

Q. Who was in command of that regiment ?

A. L. C. Baker was the colonel. Lieutenant Colonel Conger was generally in command.

JOHN A. CAMPBELL, residence on First street, corner of E south, Washington, sworn and examined.

By the DISTRICT ATTORNEY :

Q. How long have you lived in Washington ?

A. Since 1852.

Q. How are you now employed ?

A. As clerk in the Quartermaster General's office.

Q. Do you know John T. Tibbett, a witness who was examined here ?

A. Yes, sir. I became acquainted with him during the time I was in the regiment, and knew him from the fall of 1863 until the 4th of September, 1865.

Q. Did you belong to the same company he did ?

A. No, sir.

Q. What position had you in that regiment to which he belonged ?

A. I was sergeant major of the regiment.

Q. Do you know his reputation among his fellow-soldiers and associates for truth?

A. I never heard it questioned.

Q. Was that reputation good or bad?

A. His reputation was generally good.

Q. You never heard it questioned?

A. Never before this time.

JOHN E. LOWE sworn and examined.

By the DISTRICT ATTORNEY :

Q. State where you reside.

A. I reside on Fifth street west, between N and O, in this city.

Q. How long have you resided here?

A. Next October it will be six years.

Q. State how you are employed at this time?

A. At my trade, the tailoring business.

Q. I ask you if you know John T. Tibbett, who is examined as a witness on this trial?

A. I do know him.

Q. How long have you known him?

A. About eighteen years, to the best of my knowledge.

Q. State if you know his reputation among his associates and neighbors for truth and veracity?

A. When I lived there I never heard anything to the contrary.

By Mr. BRADLEY :

Q. When did you live there?

A. About six years ago, in Prince George county.

By Mr. PIERREPONT :

Q. Then I understand you to say that in the eighteen years you have known him you have never heard his reputation doubted?

A. No, sir.

Cross-examined by Mr. BRADLEY :

Q. Where did you know him?

A. In Prince George county.

Q. Where in that county?

A. At his father's house.

Q. Where is that?

A. It was then between Mr. Mariot's and the Horse Head, on the same road in this district.

Q. You know where Mr. Watson lived?

A. This was the other side of Mr. Watson's.

Q. Do you know where the Ormes lived?

A. They lived at the Horse Head six years ago, when I lived in Prince George.

Q. Where did you live?

A. I lived in Woodville, about five miles from Horse Head.

Q. How far from where Mr. Tibbett lived?

A. About the same distance.

Q. On what road?

A. On the mail road—on the general road from there to Washington.

Q. Does that go by Woodville and by the place where Tibbett lived?

A. Tibbett did not live exactly on the road. He lived to the right of the road going to Horse Head.



Q. What is Tibbett's business ?

A. He is a blacksmith.

Q. Did this young man work with him ?

A. He did at that time.

Q. And you say that in that neighborhood his reputation was always good for truth and veracity ?

A. I never heard the contrary ; never.

Q. Did you ever hear anybody talking about it ?

A. Never.

Q. Do you know when he left his father's ?

A. No, sir ; I do not.

Q. Did he leave before you went away, or since ?

A. I do not think he left before I went away ; but I cannot be positive about it.

Q. You never heard anybody speak about his truth-telling ?

A. No, sir ; I never did.

JOHN W. KELLEY sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. I reside in this city, at the corner of Twelfth and Maryland avenue. I have lived here about a year and a half.

Q. What is your occupation ?

A. I have been employed on the government monument grounds.

Q. You are the boss of the monument yard ?

A. I am one of the bosses ; yes, sir.

Q. State to the jury if you know John T. Tibbett, one of the witnesses here.

A. I have known him for about seven or eight months. He is employed at our place as a blacksmith.

Q. During these seven or eight months you have known him he has been in your employ as a blacksmith ?

A. Not all the time. A part of the time he was at the Fourteenth street park. I used to get my horses shod by him there.

Q. Do you know the persons with whom he is associated ?

A. I do not know that I do.

Q. Do you know what is his general reputation in that neighborhood for truth ?

(Question objected to by Mr. Bradley. The witness had already stated that he did not know Tibbett's associates. Objection overruled. The general reputation of the witness might be inquired into in the neighborhood where he lived, whether among persons with whom he had associated or not. The witness might have understood the question as applying to his intimate friends.)

A. I have heard him very well spoken of.

Q. In regard to his reputation for truth ?

A. No, sir.

Q. Did you ever hear his reputation for truth and veracity questioned ?

A. No, sir.

Q. But you heard him well spoken of and his reputation for truth never questioned ?

A. I never heard it questioned.

Cross-examined by Mr. MERRICK :

Q. How could you know his reputation for truth if you have never heard it spoken of ?

A. Only from what I have heard people say ; I have heard people speak well of him.

Q. About his truth ?

A. I do not know so much about that.

Q. You have known him for seven or eight months, and during that time you have never heard people talking about him as to his character for truth?

A. No, sir.

By the DISTRICT ATTORNEY :

Q. But you have never heard it questioned?

A. No, sir.

JAMES GIBSON, residence K street, between Seventh and Eighth streets, Washington, D. C., sworn and examined.

By the DISTRICT ATTORNEY :

Q. State your occupation.

A. Keeper of a restaurant.

Q. Do you know John T. Tibbett, who was examined as a witness?

A. I have known him for about eleven months.

Q. Do you know what his general reputation for truth among his neighbors is?

A. I never heard it discussed.

Q. You never heard it questioned?

A. No, sir.

Cross-examined by Mr. BRADLEY :

Q. Did you know anything about his reputation before he came up here, among his neighbors down in Prince George county?

A. I was never among his neighbors down there.

Q. Have you seen them or heard them talk about him?

A. I never heard them talk about him.

ROBERT MARTIN, residence, Uniontown, D. C., sworn and examined.

By the DISTRICT ATTORNEY :

Q. Did you know John T. Tibbett who has been examined here as a witness?

A. Yes; I have known him, I guess, about fifteen years.

Q. Did you live down in Prince George county?

A. Yes, sir; I lived down close by him.

Q. Did you know his father?

A. Yes, sir.

Q. Did you know him while he was at work with his father, blacksmithing?

A. Yes, sir.

Q. Do you know his reputation for truth among his neighbors?

A. I do not know anything about his reputation.

Q. You say you have known him for fifteen years. I ask you whether you have heard his reputation for truth questioned among his neighbors?

A. Only very latterly.

Q. When?

A. Within the last three or four months.

Q. Previous to this trial?

A. I never heard anything said about it until I read it in the papers since the trial.

DANIEL GARNER, residence, Prince George county, sworn and examined.

By the DISTRICT ATTORNEY :

Q. Do you know John T. Tibbett, a witness examined here?

A. Yes, sir; I have known him ever since he was a child.

Q. How far did you live from his father's house ?

A. About four miles and a half.

Q. Do you know his reputation among his neighbors as a man of truth ?

A. I never heard it questioned.

Q. You are a farmer down there ?

A. I am a farmer and a constable ; I have been an officer down there for twenty-five years.

Cross-examined by Mr. BRADLEY :

Q. You say you are an officer in Prince George county. Have you not been indicted, tried, and convicted of malpractice in office ?

(Question objected to by the district attorney as improper. The court stated that it was optional for the witness to answer it or not as he pleased.)

WITNESS. I can get a recommendation in that county that I am the best officer that ever was in it.

Mr. BRADLEY. That is not answering my question.

WITNESS. Well, I will not answer it to please you.

The COURT stated this was not the proper evidence ; if the witness had been committed for crime or misdemeanor, the proper method of showing it was to bring the record in court.

Mr. BRADLEY said that was the proper course if it was intended to show that the witness was disqualified. That was not, however, his intention. The witness had declined to answer the question, as he had the right to do.

The WITNESS remarked that he declined to answer the question, but he was still an officer in the county.

REUBEN S. RICHARDS, residence Prince George county, sworn and examined.

By the DISTRICT ATTORNEY :

Q. How far from the house of Mr. Tibbett, the father of the witness who has been examined here, do you live ?

A. About eight miles, I suppose.

Q. What is your position there ?

A. I have been a justice of the peace ; I am not now.

Q. Did you know the witness, John T. Tibbett ; and if so, how long have you known him ?

A. Between five and six years.

Q. Where did you know him ?

A. At his father's house and in the neighborhood. I saw him frequently at different places.

Q. Do you know what his general reputation was in regard to truth ? and if so, state what it was, whether good or bad.

A. I never heard it called in question. I suppose——

Mr. BRADLEY. Never mind what you suppose.

WITNESS. Well, I am only talking of what I have heard.

Cross-examined by Mr. BRADLEY :

Q. How could people speak about him generally, if you never heard his reputation questioned ?

A. I will tell you how I know it. I am intimate in his father's family, and consequently I am in that neighborhood frequently, and have heard him spoken of with the rest of the family, and well spoken of as being a man of good character.

Q. Did you ever hear anybody talking about his character for truth ?

A. I never heard it questioned.

Q. Then you never heard it talked about?

A. I never heard him called in question as being a man of bad character.

JOHN L. KELLEY, residence Third and L streets, Washington, sworn and examined.

By the DISTRICT ATTORNEY :

Q. How long have you lived in this city?

A. Since 1862.

Q. Do you know John T. Tibbett, a witness on this trial?

A. Yes, sir.

Q. How long have you known him?

A. Since the summer of 1862.

Q. How did you form his acquaintance?

A. I am foreman of the United States horseshoeing shop, and I hired him.

Q. How long did you have him in your employment?

A. Two terms as a horseshoer. I do not remember the exact time.

Q. Do you know what his reputation for truth was among the persons with whom he associated? and if so, state whether it was good or bad.

A. It was good.

Cross-examined by Mr. BRADLEY :

Q. Did you ever hear anything said about his truth?

A. Not a word.

Q. You never had any occasion to inquire into his truth?

A. No, sir.

Q. When did he leave you?

A. On the 10th of February, 1863.

Q. Have you seen anything of him since?

A. I saw him about six months ago, and have seen him frequently since.

Q. How many times you do not know?

A. No, sir.

Q. You did not know anything about him before 1862?

A. No, sir.

EDMUND ROCKETT, residence Prince George county, sworn and examined.

By the DISTRICT ATTORNEY :

Q. How old are you?

A. I was born in 1791.

Q. You know this young man Tibbett?

A. Yes, I know him very well. I knew him before he knew himself.

Q. How near do you live to his father's?

A. Within about two or three miles. I have been a regular visitor at the house and of the family all the time.

Q. Do you know his general reputation among his neighbors and associates for truth?

A. Yes, sir; he bears as good a character for his raising as any other young man in the settlement.

Cross-examined by Mr. BRADLEY :

Q. How long have you lived there?

A. Upwards of fifty years.

Q. You were not born there?

A. No, sir.

Q. You say you know the elder Tibbett?



A. Yes, sir; a good pious old man, and as good a citizen as we have in that county.

Q. Do you know William J. Watson?

A. Yes, sir.

Q. Where does he live?

A. In the neighborhood of the Tibbetts.

Q. Is he intimate with the family?

(Question objected to by Mr. Pierrepont, and withdrawn.)

Q. Do you know the neighbors that visited at Mr. Tibbett's?

(Question objected to by Mr. Pierrepont, and objection sustained.)

WITNESS. A man who has to work for his living and daily bread does not want any visitors.

Q. Is that a pretty thickly settled neighborhood down there?

A. Reasonably. It is thickly settled, I believe, according to the soil of the land.

Q. How near to the Tibbetts did you live?

A. About two or three miles.

Q. Which way—towards the Horse Head, or this way?

A. A part of the time I have lived near Horse Head, and since then a little further up toward Brandywine.

Q. You know everybody in that neighborhood?

A. Yes, I do.

Q. You knew this young man before he knew himself?

A. Yes, I did. I perhaps took him in my arms and danced him about. I came very often to his father to get blacksmithing done. Was very fond of children.

Q. And during all that time you never heard a word against him?

A. No, sir. He was a man of good character—a good moral citizen.

Q. And a truthful man?

A. Yes, sir. No one in that county ever said anything to the contrary.

Q. You never heard any one in the neighborhood say anything against him?

A. I never did, unless it was some secesh who was prejudiced against him.

Q. Was Mr. Watson secesh?

A. No, sir; he is not. Mr. Watson does not say anything against him.

WILLIAM LLOYD, carpenter, residence National Monument grounds, Washington, sworn and examined.

By the DISTRICT ATTORNEY:

Q. Do you know this man Tibbett?

A. Yes, sir; I have known him for three months and ten days.

Q. How did you form his acquaintance?

A. By his being employed there in the same place with me.

Q. During your acquaintance have you had any opportunity to find out as to his reputation for truth? And if so, state whether it is good or bad.

A. It is good.

Cross-examined by Mr. BRADLEY:

Q. You have known him for three months and have not heard anything against his character for truth?

A. Not till I saw it in the paper.

Q. You speak of what other people said about it, or what you know?

A. Other people spoke very well of his character.

Q. It has been nearly six weeks since he has been examined here as a witness; how many times have you heard him spoken of?

A. They said it was false. I have heard them say that.

JOSEPH COLCLAZER, residence S<sup>1</sup> street, between Sixth and Seventh streets, Washington, sworn and examined.

By the DISTRICT ATTORNEY :

Q. How long have you known John T. Tibbett?

A. I have known him personally since January last.

Q. How did you form his acquaintance?

A. By working in government shop blacksmithing with him.

Q. Did you have an opportunity of forming some knowledge of his reputation for truth among his associates? If so, state whether it was good or bad.

A. I think I have in general noticed such things among persons, and I think his reputation for truth is excellent.

Cross-examined by Mr. BRADLEY :

Q. Then you have heard it talked about?

A. There was no question about it.

Q. But you say it was excellent; have you not heard it spoken about?

A. Nothing at all.

Q. What makes you think it is excellent?

A. I never heard a word spoken against him in my life.

Q. And therefore you think his character is excellent?

A. I do.

JOHN OGDEN, residence corner of Seventeenth and E streets, Washington, sworn and examined.

By the DISTRICT ATTORNEY :

Q. How long have you resided in Washington?

A. About five years.

Q. What is your occupation?

A. I am a blacksmith. At the present time I am a watchman in the Quartermaster General's department.

Q. You know John T. Tibbett?

A. Yes; I have known him since about the 1st of January. He was working for me in the same business.

Q. State whether his reputation for truth is good or bad, if you know.

A. I never heard anything against him by any man. He always performed his duty. His conduct was always good so far as I saw.

Q. Did you ever hear it questioned?

A. Never before I saw it in the papers in connection with this trial.

EUGENE BOWEN, mounted messenger of Colonel Bell, Washington city, sworn and examined.

By the DISTRICT ATTORNEY :

Q. Were you a soldier?

A. Yes, I have been.

Q. You lost an arm in the service?

A. I believe so.

Q. Do you know this young man Tibbett?

A. I have known him about eight months. I have seen him occasionally at the Fourteenth street park, where I used to go to get horses shod, and since he came in our department I have been pretty intimate with him.

Q. How has he been employed in your department?

A. As a blacksmith.

Q. Did you have an opportunity to form a knowledge of his reputation for truth among his associates? If so, state whether it is good or bad.

A. I never knew an honest man who will doubt his word.  
The court took a recess until tomorrow at 10 o'clock a. m.

WEDNESDAY, July 24, 1867.

The court was opened at 10 o'clock.

FRANCIS C. SPEIGHT sworn and examined.

By Mr. PIERREPONT :

Q. State where you live.

A. In the city of New York.

Q. What is your position there ?

A. I am a captain in the Metropolitan Police department.

Q. Of what department ?

A. Of the 29th precinct.

Q. How long have you been there ?

A. It was thirteen years the 17th of this month since I first became connected with the department. I have been connected with the department ever since, with the exception of three years. I have been in my present position about fourteen years.

Q. Have you heard of a man who calls himself Dr. Augustus Bissell ?

A. I know a man called Dr. Bissell. I do not know about the "Augustus."

Q. The one who testified here, do you know where he lives ?

A. He keeps a drug store, I believe, at the corner of Twenty-third street and Seventh avenue.

Q. Has he been at other places also in New York ?

A. Yes, sir.

Q. What business has he been following in New York ?

A. He bought a place of a man by the name of Eaton, in Broadway.

Q. What was that place ?

A. A public house.

Q. Restaurant and eating-house ?

A. Yes, sir.

Q. And he attended that ?

A. He did not attend that himself. He was staying about there. It was understood that he furnished the money to buy it.

Q. How long was he there ?

A. I really do not know. He must have been there seven or eight months, maybe more.

Q. Do you know anything about his character and reputation for truth among the people there with whom he lived ?

A. I have heard him spoken of as a man of very bad reputation.

Q. For what ?

A. For veracity ; as a mysterious sort of a man that nobody knew much about. I have had him pointed out.

Mr. BRADLEY objected to the witness speaking of Dr. Bissell's general character.

The COURT admonished the witness to confine himself to his character for truth and veracity.

Q. What is his character for truth and veracity—good or bad ?

A. Bad.

Cross-examined by Mr. BRADLEY :

Q. Who did you ever hear speak of it ?

A. Several.

Q. Who for one ?

A. Mr. Campbell, a jeweller on Fourth avenue.

Q. What is his first name?

A. I cannot really tell.

Q. What is the number of his place?

A. 339, I think.

Q. Who else?

A. I have heard a man by the name of Gleason speak of it.

Q. Where is he?

A. He is a policeman in New York under my command.

Q. When did you hear him speak of him?

A. O, well, a half a dozen times within the last two or three months.

Q. How long have you known this Dr. Bissell that you speak of?

A. About two years.

Q. And that is all you can recollect he has been engaged in? At one time you say he furnished the money to purchase out Eaton, on Broadway, and that now he is keeping a drug store at the corner of Twenty-third street and Seventh avenue?

A. I understand he is.

Q. You know nothing about that fact?

A. Not for a certainty; I never was in his store; but he has told me so.

Q. How long has he been keeping that drug store?

A. I do not know, but it cannot be a great while, because he told me he was going to keep one on the corner of Twenty-third and Sixth avenue, and I find now it is occupied as a furniture store, and not as a drug store. He told me that he had leased it.

Q. Do you know about his purchasing out the restaurant of Eaton?

A. Nothing more than that I was told so by Mr. Eaton, and that he was sitting about there seeming to have control.

Q. When was that?

A. It was about a year ago.

Q. Have you read any of the evidence he gave in this case?

A. I have.

Q. When was your attention called to the evidence he had given?

A. I have read all the evidence over very carefully, and when I came to read his evidence I recollected him.

Q. Did you communicate to the authorities here, or somebody come for you?

A. I wrote to Mr. Pierrepont on last Sunday, but I was waited upon on Tuesday morning and subpoenaed. They could not have known anything of that letter, because though written on Sunday it was not mailed until Monday. I do not know whether Mr. Pierrepont ever received the letter or not.

Mr. PIERREPONT stated that he had received the letter, but the witness was sent for before it reached here.

Q. That is the only communication you had prior to being summoned?

A. I received a telegraphic despatch at my house at 12 o'clock on Monday night, and Tuesday forenoon I was subpoenaed.

Q. You say you have heard his character for truth spoken of?

A. Yes, sir.

Q. When?

A. I have heard it several times within the last month or six weeks.

Q. You have heard his character for truth spoken of?

A. I have.

Q. Who did you hear speak of his character for truth?

A. I have heard Mr. Campbell.

Q. Who else?

A. Mr. Gleason.

Q. His character for truth?



A. Yes, sir.

Q. How did the question as to his truth arise between these men; were they complaining of his dealings between them or not?

A. They were talking about his connection with the bank at Hoboken.

Q. Campbell and Gleason?

A. Yes, sir.

Q. Did they then talk about his truth?

A. Yes, sir.

Q. I do not want any conversation between them; I only want to know the fact whether they talked about his truth or not.

A. They did.

Q. That was how long ago?

A. Within the last two months.

Q. Do you know where he came from to New York?

A. I do not.

Q. Do you know where the Waverly is in New York?

A. I know there is such a place.

Q. You don't know where it is?

A. I do not know as I do.

Q. You have stated his general reputation for truth and veracity is bad?

A. Yes, sir.

Q. Do you know who spoke of it except these two men?

A. I do not recollect so as to be able to call to my mind at present.

Q. Do you know any of his companions, or people with whom he associated in New York?

A. I do not know. They say he associated with Chris. Hogan.

Q. I asked you if you knew with whom he associates?

A. That is one of the men that I have heard he was intimate with. I have never seen them together.

Q. Do you know the persons with whom he associates in New York? is my question.

A. I have seen him associate with a great many men that I did not know personally. I do not know any of his particular associates.

Q. Do you know the firm of Cassidy & Covell?

A. No, sir.

Q. You do not know any such firm in Warren street, New York?

A. No, sir; I cannot call them to my mind at present, at any rate.

Q. Does your district extend to Warren street?

A. No, sir.

Q. When did he tell you that he kept a drug store on the corner of Twenty-third street and Seventh avenue?

A. I should think it was about two weeks ago, to the best of my recollection.

Q. When you first saw him to know him was he lame or not?

A. He was lame.

Q. Was he or not on crutches?

A. He was on crutches.

Q. Was he engaged in any other business?

A. No, sir.

By Mr. PIERREPONT. You have been asked about a conversation that you had in relation to this man's character for truth, and you said it was in connection with something said about a bank in Hoboken. Give us the whole conversation.

Mr. BRADLEY said in his examination he had not asked for the whole conversation, but had expressly confined his inquiry to what was said in regard to his truth. However, he was perfectly willing that the whole should be stated.

Mr. PIERREPONT. Please state all that was said.

WITNESS. The conversation was to the effect that Dr. Bissell had been imprisoned in reference to some certificates of deposit on a bogus bank, and he had turned State's evidence?

Mr. BRADLEY. Is that all the conversation? We want the whole.

WITNESS. And the parties that were talking about him said they would not believe him under oath. That was Dr. Campbell.

Mr. BRADLEY. That is all?

WITNESS. Yes, sir.

PATRICK KILDUFF sworn and examined.

By Mr. PIERREPONT :

Q. Where do you live?

A. No. 948 Broadway, New York.

Q. How long have you lived in New York?

A. Since '58. I suppose I have been living there altogether twenty-eight years.

Q. Do you know Dr. Bissell?

A. Yes, sir.

Q. Tell the jury how long you have known him.

A. Two years.

Q. Have you had any business transactions with him?

A. Yes, sir.

Q. Did you know anything about an eating-house that he had to do with?

A. Yes, sir.

Q. Do you know what his reputation is among the people with whom he lives for truth and veracity?

A. Yes, sir.

Q. Is it a reputation that is good or bad?

A. Bad.

Cross-examined by Mr. BRADLEY :

Q. What do you mean by bad reputation for truth?

A. I do not consider that he is a man of honor. I would not believe him under oath.

Q. Is he an habitual liar?

A. I would not believe him under oath.

Mr. BRADLEY. I did not ask what you would believe. Do you mean to say his reputation is that of a common liar?

A. Yes, sir; if it is to his interest.

Q. I want to know what his general reputation is as to his telling the truth. Is he a common liar?

A. Yes, sir.

Q. How many people do you know that know him?

A. I know five or six, or six or eight, or eight or ten. I cannot remember their names.

Q. And among this five or six, six or eight, or eight or ten, who have you ever heard speak of his general reputation for truth?

A. Mr. Campbell, Mr. Eaton, Mr. Hiram Faulkner, and a gentleman at the Everett House, whose name I cannot call. They said they would not believe him on his oath.

Q. Give us the others.

A. I cannot give you the others, for I have never charged my memory with them.

Q. Where does Faulkner live?

A. The last place I knew him to live was in Canal street.

Q. What was he doing?

A. Keeping a public house, the last time I heard of him. I had been off some year or so, and returned to New York.

Q. What is your business ?

A. Keeping a public house.

Q. Where ?

A. 948 Broadway, New York.

Q. Who came after you ?

A. I do not know the gentleman's name. I was subpoenaed.

Q. Were you acquainted with Dr. Bissell ?

A. Yes, sir ; I have had two years' acquaintance with him.

Q. How came they to find out that you knew anything about it ?

A. I do not know, except seeing my number, 1160 Broadway, the house I kept in New York. It was through that I got into it. I do not know any other way. Some gentlemen came there and subpoenaed me ; that is all I know about it.

Q. You did not tell anybody ?

A. No, sir.

Q. You read his evidence in the paper ?

A. It was read to me by my son.

Q. And then you spoke of it ?

A. No, sir ; I may, perhaps, have made a casual remark to him or to my wife. That is all.

Q. You do not know how it was found out that you knew about it ?

(Mr. PIERREPONT said unless the court regarded the examination on this point a pertinent one, he would have to object. He had not done so heretofore, because he was disposed to allow counsel the widest range ; but he must now interpose, in order to prevent an unnecessary consumption of time. This witness had already answered fully on the subject, and he must object to its going further.)

The COURT remarked that he had before taken occasion to observe that he thought such questions were irrelevant and improper ; but as counsel did not object, he did not feel disposed to interfere. As objection had now been made, however, he would have to rule the question out. Exception reserved.)

Q. Where does Eaton live ?

A. The last time I saw him was four weeks ago. He was not then doing anything.

JOSEPH B. STEWART recalled and examined.

By Mr. PIERREPONT :

Q. You have been examined before, I believe ?

A. Yes, sir.

Q. You then stated that you followed Booth out from the theatre on the night of the murder ?

A. Yes, sir.

Q. What was the condition of the moon when you followed him out of the theatre, and the condition of the night as to its being cloudy ?

Mr. BRADLEY objected on the ground that this subject had all been gone into by the prosecution on the examination in chief, and that the defence had answered it.

Mr. PIERREPONT said that if they had given any evidence with regard to the condition of the night of the 14th of April as to its being cloudy or not, they certainly were not entitled to give it now, but he did not understand that any such evidence had been given by them ; such had been given by the defence.

Mr. BRADLEY said they did not object to the latter part of the question as regards the condition of the night in respect to clearness. He was not sure that they had given evidence in regard to that in their examination in chief, but he was sure that they had with regard to the condition of the moon.

By Mr. PIERREPONT :

Q. Will you state the condition of the night as to its brightness?

A. The first thing I observed in opening the door was the condition of the night. My attention went directly to that to see what I could perceive outside. I was looking for the person who had just gone out. I recollect distinctly the way it appeared to me. Looking upward I saw the sky was lighting up; I saw that it was lighter above than it was below. In raising my eye from the ground upward, I could see Mr. Booth's head; and I could distinctly see the knife in his hand as he crossed the alley-way.

Mr. BRADLEY. What was the condition of the night is the question, as I understand it.

WITNESS. I am trying to give the reasons of my observations. It was light enough to see distinctly the person on the horse, see his arm, see the movements of his hands, and see his working at the rein. The distance from him to me was some fifteen feet—

Q. What was the condition of the night as to its clearness at that time?

A. At that time the night had the appearance of a moon giving light. It was rising. It was not very high, but afforded light sufficient to see as I have described.

Q. After that did you go about the streets?

A. After that, I returned to the theatre and took my family, and the company with us, and went out and walked from the theatre home, not being able to find my carriage. In walking from the theatre home it was light enough to see at a considerable distance a person going and coming; and to distinguish the size of persons, larger or smaller. It increased in light as I got up. When I reached home I left my family at the door and started at once to go down to Mr. Stanton's. I live the second door from 13th on K street, and Mr. Stanton lives a little more than half way of the block on K, between 13th and 14th. In crossing 13th street, coming to the corner of Franklin square, I could distinctly see persons in front of Mr. Stanton's house, so much so that I did not cross over the street, but walked down opposite, being satisfied of the fact that they were recognized there; that there was nothing improper there. In compliance with a promise I had made to some police officers, I then walked down to the police headquarters. In going there I walked pretty much the same route as I took in going home. I recollect distinctly that it was light enough to see people moving. I could distinctly see the appearance of persons who passed me on the opposite side of the street. I remained in the neighborhood of the police office until the gentleman in charge there said I need not remain any longer; that he would take my statement the next day. I was in front of the police office most of the time, and I had no difficulty in seeing persons on the street in which the office was, down as far as Pennsylvania avenue, as well as those up 10th street in the neighborhood of the theatre. It was not a decidedly clear night. There was a haze; but it was a moonlight night, and there was sufficient light to see persons at the distances and under the circumstances I have described.

Cross-examined by Mr. BRADLEY :

Q. Were the lamps lit that night?

A. There was gas in the early part of the night.

Q. Was the gas lighted at that time?

A. I do not think it was, but that would not make any —

Mr. BRADLEY. Never mind reasoning I am talking about memory now.

Q. Was the gas in the streets lighted at the time of the assassination?



A. I believe it was at that time, but my impression is that when I returned from my house there was no gas.

Q. Was there not a lamp in front of Mr. Stanton's house, and was not there a bright light burning there that night?

A. There was a light there, but it was not very bright.

Q. Was not the burner larger than those of the ordinary street lamps—one of Mr. Stanton's own?

A. I am not sure but it was.

Q. Then the people you saw at Mr. Stanton's, you saw by that gas-light?

A. When I got directly opposite Mr. Stanton's I could see the people distinctly.

Q. When you got down to Mr. Lindley's house, on the corner of Thirteenth and K—

WITNESS. I was on the opposite side.

Q. Was not there a lamp burning at the corner of Thirteenth and K?

A. I do not think there was.

Q. Was not there a lamp burning on Franklin square, between Thirteenth and Fourteenth streets?

A. I would not tax my memory to say there was.

Q. Were you in the shade of those trees?

A. I walked down under the shade of those trees.

Q. And from there you could distinctly see the persons collected in front of Mr. Stanton's?

A. Yes, sir.

Q. As you returned to the police headquarters was not there a strong light in front of the building?

A. There was.

Q. Do you recollect whether there was not a gas-light all the way down the street from that house to the avenue, and from the avenue to the police headquarters?

A. I do not believe there was; if there was, it was not sufficient to attract my attention, or to afford light as against that of the moon.

Q. You think the moon was so bright at that time that the gas-lights in the street would not have much effect?

A. That it would not be necessary to distinguish a person at some distance.

Q. State whether or not the moonlight was so bright at that time that the power of the gas-lights was in some measure diminished.

A. That would have been the case had the lights been burning; but it was my impression that the lights were not generally burning on the street on my return.

Q. Do you know at what time the moon rose that night?

A. I would not have known but for the condition of things; I looked to see that night; I never look now to see.

Q. Do you know at what time the moon rose that night?

A. I do know that the moon was rising at twenty minutes to ten, and was up sufficient to give light. My position was inside of these walls, in the rear of the building, and the light up was much greater than that below.

Q. Do you say there was no light thrown from the theatre out into that alley?

A. No, sir; none that would be of any service to you at all.

Q. No upper light?

A. No, sir.

Q. Do you know whether there is a window in the back part of the theatre?

A. On returning to the theatre, after I had followed Mr. Booth some distance, I could see there was a light from the window, but it was not very strong; it did not reflect back in that way.

Q. You saw lights in the window in the back part of the theatre. Didn't

that light light up the upper part of the area at the place where you went? That light was high up in the theatre.

A. Yes, sir.

Q. A light passing out of that would illuminate some distance, when there would be a deep shadow near the theatre?

A. It would contribute to increase the light.

Q. You cannot tell, then, the effect had in lighting up the retreating horse-man?

A. It would have some assistance.

Q. Did you take time to reflect then what kind of light it was that you saw when you looked up?

A. That was the impression made upon me at the time, from the close observation I made of the night.

Q. When you went back to the police office what was the condition of the night?

A. The condition of the night as I returned to the police office was lighter. I sat up until 1 o'clock, and about that hour it commenced getting considerably darker.

Q. I understand you to say the atmosphere was hazy?

A. There was a heavy, humid atmosphere.

Q. Do you recollect at all the condition of the clouds—how far the heavens were overspread with clouds?

A. I do not recollect of noticing anything of that sort. There was an intervening haze, but it was not a heavy cloud.

Q. Do you recollect of seeing any stars that night?

A. No, sir.

Q. Have you any idea how high the moon was up at 11 o'clock?

A. That would be about the time I returned to police headquarters. I would say that the moon was then an hour high.

Mr. BRADLEY. That don't give us much idea of the condition of the moon. That would depend on where it rose.

A. I do not know the astronomical range or mode of expression, and therefore cannot say more. The moon was plainly visible. It was up sufficiently high to begin to reflect a considerable light upon the earth. Of course it was not as clear as it would have been in the absence of such a haze as overshadowed it.

Q. Did you make any memorandum of the condition of the moon that night?

A. I had no occasion to make a memorandum, but I have a very strong recollection in my mind.

Major A. C. RICHARDS, superintendent of Metropolitan Police, recalled.

By Mr. PIERREPONT:

Q. Can you state whether, subsequent to the 14th, between the 14th and the 16th, Mr. Weichmann was arrested?

A. Not to my knowledge.

Q. Would you have known it, if he had been arrested?

A. I ought to have known it.

Q. Why ought you to have known it?

A. The records of the office would show it.

Q. Is there any such thing in the records?

A. I have not examined particularly with reference to that. I can do so.

Q. Have you them there?

A. Yes, sir.

Q. Will you examine them, if you please?

A. (After examination.) These records were kept by a Mr. Newell, a detailed

officer, now Lieutenant Newell. They are in his handwriting. There is no record of that name on the 15th.

Q. Is there on the 16th?

A. None on the 16th.

Cross-examined by Mr. BRADLEY:

Q. Did you see Mr. Weichmann at your office on the 15th or 16th?

A. I had a conversation with him in my office on the morning of the 15th.

Q. Then, on the 15th or 16th, did you understand from Mr. McDevitt or any one else that he was in charge, and would have to stay there in the office?

A. I can state all the circumstances connected with it. When I came to my office in the morning, probably a little before 9 o'clock or after, I had occasion to pass out and return again. I found Weichmann in my private office in the second story; I think by himself at the time. In a short while Mr. McDevitt, the detective officer, came in and introduced me to him, (Weichmann.) Either at that time, or immediately after, we had a conversation as to the propriety of putting him under arrest. The result of our conversation was that we had better not inform him that he was under arrest, but that we wanted to use him to pursue the suspected assassins of the President. We did not intend that he should escape from our custody. He was not informed, to my knowledge.

By Mr. MERRICK:

Q. You had him in charge?

A. Yes, sir; but not to his knowledge. It was our intention to hold him as a witness, for the reason that certain other parties were monopolizing all the information, and we wanted to hold him, as we thought we had not been treated altogether proper.

By Mr. BRADLEY:

Q. Were you at the examination at the arsenal?

A. I was not examined there.

Q. Were you there when he was examined?

A. I did not hear any of his examination on the stand.

Q. You have read his examination?

A. I have not. I may have glanced over it, but never particularly. I have never read the evidence given on the assassination trials.

Q. You do not know whether he swore on that occasion that he was put in charge there or not?

A. I do not know that anybody has sworn that he was arrested.

Q. Was he notified that he would have to stay at your office?

A. One night after he had returned from down the country—I think Monday or Tuesday—he said something about going somewhere to stay. We persuaded him to remain there and sleep in my office. We did not order him to do so; did not tell him he must do so, but persuaded him to; and finally he concluded it was best to do as we suggested.

Q. He was not told that he could not go home?

A. Not to my knowledge.

Q. Who was there with you?

A. I think Mr. McDevitt was there almost all the time.

Q. Who else?

A. I have no recollection of any other person.

By Mr. MERRICK:

Q. What persuasion did you use?

A. I do not know. I think we stated to him that some of Baker's detectives might get hold of him. I think that was it.

Q. Did he sleep on the floor that night?

A. I think he did. I did not see him lie down.

Q. You did not stay there?

A. No, sir.

MICHAEL MITCHELL sworn and examined.

By Mr. PIERREPONT :

Q. Where do you reside?

A. In Waterloo, Canada.

Q. How long have you resided in Waterloo, Canada?

A. Since 1847.

Q. What is your occupation?

A. Land surveyor and civil engineer.

Q. Do you know the general repute of Dr. McMillan for truth in that region?

A. I do.

Q. State whether it is good or bad?

A. It is good.

Q. Did you ever know any better?

A. Not in our county.

(No cross-examination.)

THOMAS BRAWSART sworn and examined.

By Mr. PIERREPONT :

Q. Where do you reside?

A. Waterloo, Canada.

Q. How long have you resided in Waterloo, Canada?

A. Twenty-four years next month.

Q. What is your occupation there?

A. Notary public.

Q. What is a notary public there? It is different, I believe, from what it is in the United States?

A. Yes, sir; there is some difference. We hold a commission under the government. Our business is to make deeds and settle estates; and a good many other things, too.

Q. Do you know Dr. McMillan?

A. Yes, sir; I have known him since I lived there.

Q. Do you know what his repute there is as a man of truth?

A. Yes, sir.

Q. What is it?

A. Very good.

Q. Did you ever hear of any better one?

A. No, sir.

(No cross-examination.)

EDMUND FRECHETT sworn and examined.

By Mr. PIERREPONT :

Q. Where do you reside?

A. In Montreal, Canada. I was born there.

Q. What is your business?

A. I am a notary.

Q. Do you know St. Marie?

A. Yes, sir.

Q. How long have you known him?

A. About twelve years.

Q. Do you know his reputation among the people with whom he lived?



A. I have not seen him since a few years.

Q. Did you know his reputation when he lived there ?

A. It was good when he lived there.

Q. For truth, you speak of?

A. Yes, sir.

Cross-examined by Mr. BRADLEY :

Q. When did he live there ?

A. I think in '62; but I am not positive about the time.

Q. What was he doing before he left ?

A. He was employed in the educational department.

Q. Has he been back since 1862 to reside ?

A. I have seen him but once since last year. I met him on the street.

Q. Was his reputation good in 1862, when he left and after he left Montreal, for truth ?

A. Yes, sir.

Q. Did you ever hear it spoken of ?

A. I never heard anything against him for truth.

Q. You do not know, then, whether or not people talked about him when he went away, and after he went away ?

A. No, sir. I met him but once afterwards.

Mr. BRADLEY. I did not speak of your meeting him, but what the people in Montreal said about his character for truth and veracity after he went away in 1862 ?

A. They said nothing. I did not hear anything said against his veracity afterwards.

Q. Did you hear anything said about him at all ?

A. They said he had left the department for the States, taking away with him a certain sum of money, but that the money had been refunded; that he had sent back a portion, and that the balance was paid by his father.

Q. When was that ?

A. It was a month or two afterwards when I heard that.

By Mr. MERRICK :

Q. Do you know that the balance was paid ?

A. I cannot say. I heard it was paid.

Q. Do you know it yourself ?

A. No, sir.

ALEXIS BURNETTE sworn and examined.

By Mr. PIERREPONT :

Q. Where do you reside ?

A. In Montreal.

Q. You are a lawyer, I believe ?

A. Yes, sir.

Q. Do you know a Mr. Nagle, from your country, a lawyer ?

A. I do.

Q. Do you see him in the room ?

A. I saw him a short time ago here.

Q. Did you know St. Marie ?

A. I did.

Q. Do you know what his character for truth and veracity was in the region where he lived—in Montreal ?

A. From 1853 up to the time he left Montreal I knew him all the time. Both his character and his general reputation then for truth was very good, up to the time he left Montreal.

Q. What is the reputation of Mr. Nagle for truth and veracity ?

A. I believe it is good. I know Mr. Nagle intimately, and from what I know of him I know it to be good.

Mr. PIERREPONT. I speak of repute—of what people say of him ?

A. His reputation is good. I have heard some parties say something against him, but I took that to be from enemies.

Q. Have you had conversations with him about this case ?

A. We had some conversations about this trial. He told me he had received a certain sum of money, which I believe to be \$500.

Q. \$500 in gold ?

A. In gold, I believe it was said.

Cross-examined by Mr. BRADLEY :

Q. Did he tell you what it was for ?

A. I understood it to be for his services in the case.

Q. Did he not add to it his expenses and the expenses of the witnesses who came here ?

A. There was nothing said about any witnesses who came here. He stated to me that he would come here, and of course this was to cover these expenses also. I do not remember that the expenses of other witnesses was mentioned.

Q. When did you have that conversation with him ?

A. We have had several conversations during the past four or five weeks.

Q. In those conversations he told you he had received \$500 to cover his services and expenses ?

A. Yes, sir ; I understood it to be for his services, fees, and expenses.

By Mr. MERRICK :

Q. You say St. Marie's general reputation was good up to the time he left Montreal. What did people say about him for telling truths or falsehoods after he left ?

A. I understood his reputation after he left, on that point, was as good as before ; that is, I never heard anybody say that he told an untruth.

Q. Did you ever hear anybody say that he lied ?

A. No, sir.

Q. On that point you understood his reputation to be good ?

A. Yes, sir ; on that point.

FRANCIS REESIDE sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. No. 610 Seventh street, Island.

Q. How long have you resided in this city ?

A. Sixteen years.

Q. What business are you engaged in ?

A. I am a bricklayer.

Q. State if you know William E. Cleaver, a witness who was examined here.

A. I do.

Q. State how long you have known him.

A. About ten or twelve years.

Q. State if you know his reputation in this community for truth ; and if so, state whether it is good or bad.

A. His reputation was never doubted before the case into which he got of late.

Q. Previous to that had you ever heard anything against his reputation for truth ?

A. Never before that.

Q. Was his reputation for truth good or bad ?

A. Good.

Cross-examined by Mr. MERRICK :

Q. You say you never heard anything against him in regard to his character for truth before that ?

A. No, sir.

By Mr. PIERREPONT :

Q. That didn't involve his character for truth at all, did it ?

A. Not in my opinion.

Q. Did you hear then anything against his character for truth ?

A. No, sir.

By Mr. BRADLEY :

Q. Didn't that case against him give rise to a great deal of discussion about his general character for truth and everything else ?

A. Not for truth.

CHARLES KIMBALL sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. In Washington.

Q. What part of Washington ?

A. The Island.

Q. What has been your business ?

A. Keeping stable.

Q. You are pretty well acquainted in the city, of course ?

A. Yes, sir.

Q. State if you knew William E. Cleaver, a witness who was examined here ; and if so, how long.

A. I have known him ten or twelve years, I reckon.

Q. You know persons who do know him ?

A. Yes, sir, I presume I do ; he had a large circle of acquaintances, as a man in his profession naturally would.

Q. He was a veterinary surgeon ?

A. Yes, sir.

Q. State if you know his reputation in this community for truth and veracity ; and if so, whether it has been good or bad.

A. I never heard it questioned much since the trial.

The DISTRICT ATTORNEY. I mean before his trial. Since his trial have you ever heard his reputation for truth questioned ?

A. No, sir.

HENRY GASS sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. Corner of Eighth and D streets, in this city.

Q. How long have you lived here ?

A. All my life, I believe.

Q. What is your business ?

A. I am a confectioner.

Q. State to the jury if you know William E. Cleaver, a witness examined here ; and if so, how long you have known him.

A. For about ten or eleven years, I guess.

Q. State whether you know his reputation for truth and veracity in the community; and if so, state whether it is good or bad.

A. As long as I have known him I have never known anything against him, only this late trial.

Q. After the trial of which you speak did you hear anything about his reputation for truth?

A. No, sir; I never heard anything in regard to his truth or anything of that kind.

Q. Was his reputation good or bad?

A. It was good before the trial.

Cross-examined by Mr. BRADLEY:

Q. Didn't you say that you had never heard anything about it?

A. No, sir; not before his arrest.

Q. I understand you to say that you have known him for ten or eleven years, and that his reputation for truth was good?

A. Yes, sir; before that, as far as I know.

Q. You never heard anybody say anything against him?

A. No, sir.

Q. Where does Cleaver live?

A. He lived at one time on Virginia avenue, near Tenth. At another time he lived on Seventh street, between D and E; that is where he has been living lately.

Q. Do you know when he was inspector of horses down at Giesboro'?

A. Yes, sir; I knew him at that time.

Q. Do you know when it was?

A. I know that he was inspector of horses there, but I do not remember the date.

Q. During that time, did you see and know him?

A. I do not recollect whether I saw him at that time or not.

Q. Did you ever hear anything about his truth and veracity, with regard to inspecting horses down there?

A. No, sir.

Q. You never heard anything about his passing horses through down there?

A. No, sir.

ROBERT PYWELL sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. 412 D street, in this city.

Q. How long have you been living here?

A. Since 1843.

Q. What is your business?

A. Keeping livery stable.

Q. State if you know William E. Cleaver, who has been examined as a witness in this case.

A. Yes, sir.

Q. How long have you known him?

A. Fifteen or sixteen years.

Q. Do you know his reputation and veracity among the people with whom he associates?

A. Yes, sir.

Q. What is that reputation?

A. I never heard it questioned until lately.

Q. State whether it was good or bad.

A. I always thought it was good.



Cross-examined by Mr. BRADLEY :

Q. He is an Englishman, is he not ?

A. Yes, sir.

Q. You are, also ?

A. Yes, sir.

Q. You are his bail in this criminal case ?

A. Yes, sir.

Q. Is there any understanding that Cleaver is to be benefited in that case by working in this case ? Have you learned it from him ?

(The District Attorney said he felt it to be his duty to object to the question, not that he was afraid of the effect of the response, but he did not want these collateral issues brought in. If the court thought it was proper, why, he had nothing further to say. The Court said he could not see that it was a proper question. He would therefore rule it out. Exception reserved.)

C. V. HESS recalled.

Mr. PIERREPONT requested the prisoner to stand up in such a position that the jury might see him, and then asked Mr. Hess to stand by his side. He said he desired to have the jury see the two men together. The prisoner did as requested, as also did Mr. Hess. [Mr. Hess is a young man of rather a dark complexion, with black hair and moustache. The prisoner, who is somewhat taller, is of a much lighter complexion, with rather sandy-colored hair, moustache and goatee.]

By Mr. BRADLEY :

Q. How high are you, Mr. Hess ?

A. Five feet seven inches.

Mr. BRADLEY. The prisoner is six feet, I believe.

JOHN W. COOMBS SWORN and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. On Seventh street east, near the navy yard.

Q. How long have you been living in this city ?

A. These last thirty-eight years.

Q. What is your business ?

A. My business is Metropolitan Police detective.

Q. How long have you been connected with the Metropolitan Police ?

A. For the last seven or eight years.

Q. Are you pretty well acquainted in the city ?

A. Yes, sir.

Q. State if you know William E. Cleaver, a witness examined in this case.

A. I have known him about seven or eight years.

Q. State if you know his reputation in this community for truth.

A. I do.

Q. Is it good or bad ?

A. I never heard anything said of Mr. Cleaver until the case which you know about.

Q. Had you ever heard anything against his character for truth ?

A. I have had him summoned in several cases as a witness in regard to stolen horses, and I never heard him objected to.

Q. Then is his reputation for truth good ?

A. I never heard it doubted.

Q. Have you had occasion to know the persons with whom he associated ?

A. Yes, sir.

Cross-examined by Mr. BRADLEY :

Q. You never heard it said, "Send for Cleaver, and he will swear them through," when the subject of those horse cases came up ?

A. No, sir ; I never did.

JOHN F. KELLY sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. In this city.

Q. What part of the city ?

A. I live on G street between First street west and North Capitol street.

Q. How long have you been living in the city ?

A. I was born here.

Q. What is your occupation ?

A. I am a lieutenant of the Metropolitan Police force.

Q. How long have you been connected with the Metropolitan Police force ?

A. Nearly six years.

Q. How long have you been lieutenant ?

A. About five months.

Q. You are well acquainted in the city, of course ?

A. Yes, sir.

Q. State if you know Wm. E. Cleaver, who has been examined here as a witness.

A. Yes, sir.

Q. How long have you known him ?

A. I suppose three or four years—probably more.

Q. Have you known persons with whom he associated ?

A. Yes, sir.

Q. State if you know his general reputation for truth and veracity in this community.

A. Yes, sir.

Q. State whether it is good or bad.

A. I have never heard it doubted.

Q. Is it good ?

A. I cannot say otherwise.

JAMES KALLAHER sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. No. 22 Missouri avenue.

Q. In this city ?

A. Yes, sir.

Q. How long have you been living here ?

A. Since 1836.

Q. What is your business ?

A. I have been in the livery business.

Q. Are you still in it ?

A. Yes, sir.

Q. Do you know William E. Cleaver, who was examined here as a witness ?

A. I have had him employed for many years.

Q. Was he ever a partner of yours ?

A. No, sir.

Q. How many years have you known him altogether ?

A. I suppose fifteen or sixteen years.

Q. Are you well acquainted with the persons with whom he associated in his community ?

A. Yes, sir; only in that line of business, however.

Q. State whether you know his reputation for truth and veracity.

A. Yes, sir.

Q. Was it good or bad?

A. It is very bad at present, but not heretofore.

Q. For truth?

A. Yes, sir. In every shape you can name.

Q. Did you know him previous to this trial?

A. I did.

Q. What was his reputation previous to this trial?

A. Very good.

Q. After the trial did you hear his character for truth or for some other quality questioned?

A. Yes, sir; frequently in a day.

Q. You never heard it in the sixteen years you knew him before?

A. No, sir.

Cross-examined by Mr. BRADLEY:

Q. You had no occasion before that time to call his character in question?

A. No, sir.

Q. You do not know of his being inspector of horses at Giesboro'?

A. No, sir. I never had any dealings with him except in his capacity as horse doctor.

Mrs. SARAH R. KIMBALL sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. In Washington.

Q. In what part of the city do you live?

A. On Twelfth street.

Q. How long have you lived in this city?

A. Since 1864.

Q. Do you know a colored woman by the name of Susan Jackson, examined as a witness here?

A. I do.

Q. How long have you known her?

A. Two years.

Q. Was she ever in your employment for a part of the two years?

A. The larger part.

Q. State if you know her general reputation for truth and veracity.

A. I do.

Q. State whether it is good or bad.

A. I never heard anything against her. I know nothing; but always considered——

Mr. BRADLEY. Never mind, madam, about that.

Q. You never heard her reputation questioned?

A. I always considered her reliable.

Q. You say you had known her for two years. I ask you if, during that time, you knew her reputation for truth?

A. It is good as far as I know.

Mr. MERRICK said he would, at this point, submit whether or not, unless there had been evidence given on the side of the defence directly to impeach the general character of a witness, the government had the right to give rebutting evidence of general character. He thought that, unless the party assailing the witness had given evidence of the general bad character of the witness, in order

to destroy the effect of the testimony, the party offering the witness had no right to give evidence of general good character.

The DISTRICT ATTORNEY called the attention of the court to the fact that a witness had been introduced and examined for the purpose of contradicting Susan Ann Jackson, and discrediting her before the jury. He could furnish the court with authorities showing that where an effort had been made to discredit a witness either by direct evidence, as to his or her general reputation for truth, or by seeking to contradict, the party offering the witness thus sought to be discredited might by way of rebuttal offer evidence of the general reputation of the witness for truth and veracity. He then read from Greenleaf, section 406, as follows :

“Where evidence of contradictory statements by a witness, or of other particular facts, is offered by way of impeaching his veracity, his general character for truth being thus in some sort put in issue, it has been deemed reasonable to admit general evidence that he is a man of strict integrity and scrupulous in regard for truth.”

He remarked that Greenleaf had referred to the case of *Rex vs. Clark*, 2 Story, 241, and other authorities, as sustaining this view.

Mr. BRADLEY observed that the court would find, on examination of the cases referred to by Greenleaf, that they did not sustain the principle therein laid down. He conceded that there were one or two authorities that recognized such a rule, but the uniform practice in Maryland, and in this District, had been the other way.

Mr. PIERREPONT said the rule was, that where the character of a witness was attacked in any way, evidence could be introduced to sustain that character; and the courts had held that where a witness was brought to say that a particular witness had given a different statement of the same transaction at another time, that that was an attack upon the veracity of a witness, and that consequently evidence of the good character of that witness might be given in evidence.

The COURT said this reasoning appeared to him to be sound. A witness was asked upon cross-examination to specify the place where, and time when, he or she had said thus and so to a particular person. Then a witness was brought to disprove what the other had said. This all went to the jury; and as the minds of different men were differently affected, one juror might be disposed to discredit the witness because he thought his or her memory was indistinct or confused with regard to the subject-matter testified to. The other jurors, and probably the majority of them, as also the majority of men, might be disposed to say, if that witness after having had a fair opportunity, all the circumstances being called to his or her mind, had said that which had been utterly and absolutely contradicted by another witness, why it must be the first witness who was not the truthful person; at all events, it would in the minds of some, if not of most people, affect the character of the witness, and, therefore, he thought that the evidence was admissible.

Exception reserved.

Mr. BRADLEY said they did not desire to cross-examine the witness, and she might retire.

Mrs. KEZIA WHEELER sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. In Washington.

Q. In what part of the city ?

A. Northeast corner of Twelfth and G streets.

Q. How long have you resided there ?

A. Three months the first of August.



Q. How long have you been living in the city ?

A. Three years.

Q. Did you know one Susan Ann Jackson, a colored woman, examined in this case ?

A. I do.

Q. How long have you known her ?

A. Two years.

Q. Was she in your employment ?

A. She was in the employment of my sister, Mrs. Kimball. I resided in her family.

Q. Do you know her general reputation for truth and veracity ?

A. I do.

Q. State whether it was good or bad.

A. Very good.

No cross-examination.

MISS KATE KIMBALL sworn and examined.

By the DISTRICT ATTORNEY.

Q. Where do you reside ?

A. On the corner of Twelfth and G streets.

Q. In this city ?

A. Yes, sir.

Q. How long have you lived there ?

A. Since 1864.

Q. Do you know Susan Ann Jackson, a colored woman, who was examined here as a witness.

A. Yes, sir.

Q. How long have you known her ?

A. For about two years.

Q. Did you know her general reputation for truth and veracity ?

A. I do.

Q. What is it ?

A. It is good.

No cross-examination.

SAMUEL L. JACKSON (colored) sworn and examined.

By ASSISTANT DISTRICT ATTORNEY :

Q. Is Susan Ann Jackson, who was examined here the other day, your wife ?

A. Yes, sir.

Q. When were you married to her ?

A. About a fortnight after the President was killed. That is as near as I can get at it.

Q. Were you at Mrs. Surratt's house after the President was killed ?

A. Yes, sir.

Q. When did you go there ?

A. Monday night.

Q. The Monday night after the President was killed ?

A. Yes, sir.

Q. How long did you stay there ?

A. I staid there all night.

Q. How long after that night ?

A. I staid there up to Wednesday morning ; then I took my leave.

Q. Then you were there Monday and Tuesday night ?

A. Yes, sir ; Captain Smith gave me my leave on Wednesday morning.

Q. State why you went there on Monday night, and why you staid until Wednesday morning.

(Objected to by Mr. Bradley. Mr. Wilson stated that his object was to show that the witness was at this house under compulsion. Mr. Bradley said it would make no difference whether he was or not. The Court was of the opinion that it might. Mr. Wilson said he desired to show that he was under arrest, and that for that reason he was there every moment of time, which was a very material point in view of what they desired to prove by him. The Court overruled the objection and allowed the question to be put.)

The question being repeated to the witness, he said: I was there under arrest.

Q. State where you were during that time.

A. I was in the basement part of the time, and then at another portion of the time I was taken up to the second story.

Q. Do you know Eliza Hawkins?

A. I saw her there.

Q. Did you see her on that Monday or Tuesday?

A. She came there Tuesday morning.

Q. At what time?

A. Tolerably early.

Q. Did you see her when she was here in court the other day?

A. I was not here.

Q. Do you know her to be the one who testified here the other day?

A. I heard her; I did not see her.

Q. What was her first name?

A. I heard her name was Eliza. She said that day that she had lived with Mrs. Surratt.

Q. What time in the morning did she come there?

A. To the best of my recollection between eight and nine; I do not think it was any later than that. It may have been seven o'clock. I did not take particular notice.

Q. At what time did she go away?

A. She never went away until Captain Smith gave her permission to leave Captain Sheetz's office.

Q. What time did she go away from the house?

A. She, my wife, and myself were all taken down to Captain Sheetz's office on Tuesday night.

Q. At what time?

A. I guess between ten and eleven; may-be later.

Q. Were you not in the room with Eliza and Susan (whom you afterwards took to be your wife) all the time Eliza was there?

A. I was; my wife and myself were the last who came away. She left before we did. I went there on Monday night, and was kept there under arrest until Wednesday morning.

Q. Did you hear any conversation while you were there between Eliza and Susan about John H. Surratt?

A. I heard very little conversation. What I heard was about Mrs. Surratt.

Q. Did you hear anything said about John?

A. There was not anything said in my presence about John. I staid there two nights in the same room with the women. We were down in the lower basement. We rested there. There was a guard placed at the door and nobody was allowed to go out or come in.

Q. Did you hear Susan say to Eliza that when she came there Mr. Surratt was there, and Mrs. Surratt asked her if he didn't look very much like her daughter?

A. I did not hear her say that.

Q. Did she say that to Eliza?

A. No, indeed, sir; not that I heard.

Q. Did Susan say to Eliza that she had not seen him since that night, and that it was about two weeks before that?

A. No, sir.

Q. Did she say to Eliza that when she, Susan, went into where Surratt was to take a pot of tea, that he was there two weeks before?

A. No, sir.

Cross-examined by Mr. BRADLEY:

Q. Did you hear all the talking that went on between Susan and Eliza, all the time you were there?

A. Yes, sir.

Q. You were not out of the room at all, all that time?

A. No, sir; I staid in there during the time she staid in there. I was in the kitchen, and there is where she came.

Q. Who came with her?

A. Another woman.

Q. Who was that other woman?

A. I did not know her.

Q. Did she stay too?

A. To the best of my memory she did. All who were in the house they kept there.

Q. Do you say that other woman who came with her staid there all the time?

A. Pretty much all the time.

Q. Were you present all the time that these three women were there, and heard all the conversation?

A. I was there all the time.

Q. And you heard all they said?

A. I heard all that passed in my presence.

Q. Were you with them all the time, day and night.

A. I was.

Q. Were you up stairs?

A. I staid down stairs.

Q. Did you go up stairs?

A. No, sir.

Q. Didn't you go up to the second story?

A. All went up there together. That is, on Monday night, but she did not go.

Q. As I understand you, you say you did not go out of that house from Monday evening to Wednesday morning?

A. I went out on Tuesday night down to Captain Sheetz's office.

Q. Who took you down there?

A. The whole party were taken down. That is the only night she was taken down there. My wife and I were taken down there twice—once Monday night and once Tuesday night.

Q. Then you were taken down there once before Eliza came?

A. Yes, sir.

Q. The next day you did not go out of the house at all.

A. No, sir; I did not go outside of the door except as I told you when I went to Captain Sheetz's office.

Q. Then you heard all the conversation?

A. Yes, sir.

Q. What did they talk about?

A. She was telling how Mrs. Surratt had treated her. She said she treated her pretty good. The guards were inside quizzing us as to what kind of a woman she was.

Q. That remark she made to the guard?

A. Yes, sir; she told it to all of us. The guards were in there for the purpose of keeping watch at the door.

Q. Do you say these women didn't go up to the second story Tuesday night?

A. I do.

Q. During all this time did you have anything to eat?

A. O, yes, sir.

Q. Have any water?

A. Yes, sir.

Q. Who got the water?

A. My wife gave me the water. The water, I believe, is in the house. At any rate, I got it there.

Q. You did not go out to get it?

A. I did not go out to get anything.

Q. You heard every word that passed between these two women?

A. Yes, sir; there was not anything said more than I have spoken of.

Q. These three women sat there all day without talking? (Laughter.)

A. There was not any talk passed more than I have stated.

Q. Did anybody go to sleep?

A. My wife was working. She cooked for these soldiers.

Q. Was she cooking all day?

A. She was cooking the best part of the time. When she was not cooking she was ironing Mrs. Surratt's things.

Q. Did they go into the dining-room at all?

A. No, sir; they never left. My wife might have been called by an officer to come up stairs to get something; she would then come right back again.

Q. She would come back again and go to working?

A. Yes, sir; she was working the whole time she was staying there.

Q. What time did she go down to Captain Sheetz's office Tuesday night?

A. We went sooner than we did on Monday night. Monday night it was quite late.

Q. Who went with you?

A. I went down. We all went together. The officers went down with us.

Q. And you heard all the conversation then?

A. All that passed.

Q. So that from early morning of Tuesday until you went down to Captain Sheetz's office, you do not remember any conversation that passed at all, except—

A. No, sir; nothing in particular, except what I have stated.

Q. Do you recollect anything else?

A. No, sir; nothing more than common talk.

Q. You didn't hear John Surratt's name mentioned at all?

A. I did not hear her mention his name that day.

Q. Neither Eliza nor Susan?

A. No, sir; not that day.

Q. Did Eliza have dinner there?

A. I can't remember of seeing her eat there.

Q. You do not think she ate any dinner?

A. I can't remember, though she might have taken something. She was "scared" as bad as I was on Monday night. My "scare" was all over then.

Q. Was there any other woman there when you went there on Monday night?

A. No other but my present wife. We were the only two there that night, except—

Q. And the woman there the next day came with Rachel?

A. Yes, sir.

Q. You do not know who she was?

A. No, sir; that was the first I had ever seen of her. I would not know Rachel now. I have only seen her once since, in the night, out of doors.



By a JUROR :

Q. Where was the wood or coal kept ?

A. It would seem like it was kept somewhere in the back yard.

Q. Who went out to get that ?

A. My wife always made the fire. She kept the fire up that day.

By MR. BRADLEY :

Q. How did you find out that woman's name ?

A. I would not know the name, and did not know it when it was first called. I heard she was here, but I did not know her name. On Tuesday night she was called Eliza, but I had forgotten the name as much as I would that of any stranger.

Q. Who, then, called her Eliza at the house ?

A. That is her name by which she was introduced to me.

Q. Who introduced her ?

A. She introduced herself to me as Eliza.

Q. That is the way you knew what her name was ?

A. I knew what her name was, but I would not have thought to mention it in the court-house, there are so many people of that name.

Q. You recollect her name was Eliza ?

A. Yes, sir ; at least she called herself so then.

The court here took a recess for half an hour.

#### AFTERNOON SESSION.

ALPHONSO DONN, residence Washington, sworn and examined.

By the DISTRICT ATTORNEY :

Q. How long have you lived here ?

A. I was born here.

Q. What is your occupation at present ?

A. I am doorkeeper at the Executive mansion.

Q. How long have you been employed there ?

A. To the best of my knowledge I think about four years.

Q. What was your business previous to that ?

A. I was a policeman of the Metropolitan Police.

Q. How long were you connected with the Metropolitan Police ?

A. About three years.

Q. Do you know John Lee, a witness who has been examined here ?

A. I know him ; yes, sir, I have known him about three or four years. He was then a detective.

Q. Did you have opportunities for seeing him frequently ?

A. I have been in his company.

Q. Do you know the persons with whom he associates ?

A. Well, he associates with a great many persons, a great many at the house. He came to the President's house very often, and called on the President very often.

Q. I ask you if you know of his general reputation for truth and veracity. If so, state whether it is good or bad.

A. Good, to my best knowledge ; I think it is very good. I have never known anything to the contrary.

Cross-examined by MR. BRADLEY :

Q. He was a magistrate, and acting police justice at one time, was he not ?

A. He was appointed as justice of the peace ; I do not remember how long back.

Q. Did you know him when he was one of Baker's detectives ?

A. I have known pretty much all of Baker's detectives.

Q. Did you know him when he was under Provost Marshal O'Beirne ?

A. I think I did.

Q. What opportunities did you have of knowing his character among these people with whom he associated ?

A. I only know him to the best of my knowledge from what I have seen of him. I have never known any person speak any harm against him.

GEORGE W. THEAKER, residence Georgetown, D. C., sworn, and examined.

By the DISTRICT ATTORNEY :

Q. How long have you lived in Georgetown ?

A. I was born and raised there.

Q. What is your occupation ?

A. A restaurant keeper.

Q. You are pretty well acquainted in Georgetown ?

A. Yes.

Q. I ask you if you know John Lee, a witness examined in this case ?

A. Yes ; to the best of my knowledge I have known him three years.

Q. In what capacity was he acting the first time you knew him ?

A. The first place I knew him as a detective, and afterwards as a justice of the peace.

Q. I ask you if you know his general reputation for truth and veracity ; and if so, state whether it was good or bad ?

A. I never knew anything bad about him ; he always treated me as a gentleman.

Q. What did the people say about him ?

A. I never heard anybody say anything against him before this trial.

Q. From what you know of his general reputation, would you hesitate to believe him on his oath ?

A. I would not hesitate at all.

Cross-examined by Mr. BRADLEY :

Q. Where was he a detective ?

A. Here in Washington.

Q. Where were you carrying on the restaurant business ?

A. In Georgetown.

Q. Was he a detective then ?

A. Yes, sir.

Q. You say you never heard anything against him before this trial. Did you ever hear anything in relation to his truth about putting horses through ?

A. No, sir ; I did not.

Q. Anything about passing horses for the government ?

A. I never heard anything of it before this trial.

Q. What opportunities had you for knowing anything about him ?

A. I associated with him once in a while.

Q. That is, where you met him ?

A. Yes, sir ; I met him at Butler's several times. The first time I got acquainted with him was in Washington.

JOHN REEFE, residence Washington, sworn and examined.

By the DISTRICT ATTORNEY :

Q. How long have you lived here ?

A. Pretty nearly seven years.

Q. What has been your business ?

A. I keep a butcher market on Sixth street.

Q. Do you know Wm. Cleaver, a witness who was examined on this trial?

A. Yes, I know him.

Q. How long have you known him?

A. The last two or three years.

Q. Do you know his reputation for truth and veracity; and if so, state whether it was good or bad?

A. I do not know that I know him that far.

Q. You do not know anything about his reputation?

A. No, sir.

CHAS. H. MERRELL, residence 378 Eighth street, Washington, D. C., sworn and examined.

By the DISTRICT ATTORNEY:

Q. How long have you lived in Washington?

A. About fifteen years.

Q. What is your business?

A. I follow the water, and have done so heretofore; I am following it at present; I follow the canal and river both.

Q. Do you know Wm. Cleaver, a witness who has been examined here?

A. I do; I have known him about twelve years.

Q. I ask you if you know what his reputation is for truth and veracity; and if so, state whether it is good or bad.

A. I have never heard anything against him until this trial.

Q. He is a veterinary surgeon in this city, and you know the persons with whom he associates?

A. Yes, sir; I have seen him, and been in his company.

GEORGE F. WALDER, residence Waverly, N. Y., sworn and examined.

By Mr. PIERREPONT:

Q. How long have you lived at Waverly?

A. About thirty years.

Q. Do you know Dr. Bissell?

A. I have known him in Waverly, part of the time, for eight years.

Q. What was he doing in Waverly?

A. He came there as a physician in the summer of 1858.

Q. How long did he stay there?

A. I should think about two years.

Q. Tell the jury what reputation as a man of truth and veracity he acquired there generally. Do you know?

A. He was there two years then, and has also been there since.

By the COURT. The question is, whether you are acquainted with his general reputation for truth and veracity?

A. Yes.

By Mr. PIERREPONT:

Q. Will you tell the jury whether it was good or bad?

A. It was bad.

Q. It was very bad, was it not?

A. I should say so.

Cross-examined by Mr. BRADLEY:

Q. When you speak of general reputation what do you mean by it?

A. I mean general repute; what was commonly said about him.

Q. Do you know anything of his suit against the Erie Railroad Company?

A. No, sir.

Q. Were you in any manner concerned in it?

A. No, sir.

(Question objected to by Mr. Pierrepont. Objection overruled, the question being a proper question on cross-examination to show the temper and disposition of the witness.)

Q. In the course of the two years he was there, you say he acquired a general bad reputation for truth?

A. Yes, sir.

Q. That is, he was reputed to be a common liar?

A. Yes, sir.

Q. Would you believe him if he stated any fact about a matter he had no interest in at all, and that he would tell the truth?

A. Yes; I would believe he could under some circumstances where he was not interested.

Q. Then it was where he was interested he had a bad reputation for truth?

A. I think he had but little regard for truth any way.

Q. But would you believe him in ordinary things?

A. Not generally; no, sir.

Q. Was his reputation such, for instance, if he told you your horse was down in a ditch, would you go and look him up?

A. I should question it somewhat.

Q. If you were down street walking in the direction of your home and you should meet him and he should tell you your house was on fire, would you move along any faster?

A. I probably should.

Q. When you say his reputation was bad for telling the truth, that he was a common liar, do you mean to say that he is not received and accredited, and that you would not believe him on oath?

A. Yes, sir; that is what I mean.

Q. What business are you engaged in?

A. I am a druggist.

Q. Did he deal at your shop?

A. He did.

Q. Did you have any quarrel with him?

A. No, sir.

Q. Any quarrel or disagreement?

A. No, sir.

Q. Where is Waverly?

A. Waverly is on the New York and Erie railroad, 250 miles west of New York.

Q. How far from Owego?

A. Eighteen miles.

VINCENT M. CORYELL—residence, Waverly, N. Y.—sworn and examined.

By Mr. PIERREPONT:

Q. How long have you lived in Waverly?

A. About eighteen years.

Q. Do you know Dr. Bissell, who lived there?

A. Yes, sir.

Q. Do you know the reputation he got there among the people as a man of truth and veracity—what they generally said about him?

A. Yes, sir; I think I can state.

Q. Will you tell the jury whether it was good or bad?

A. His reputation was bad for truth and veracity.



By the DISTRICT ATTORNEY :

Q. State what business you are in.

A. I am at present a superannuated preacher of the Methodist Episcopal church.

Q. You are a minister of the gospel ?

A. Yes, sir.

CHESTER T. BLISS—residence, Waverly, N. Y.—sworn and examined.

By Mr. PIERREPONT :

Q. State how long you have lived in Waverly, and what is your occupation ?

A. I have lived there something more than two years, and practice medicine.

Q. Do you know anything about Dr. Bissell, who lived there ?

A. I formed Dr. Bissell's acquaintance some three years ago.

Q. Do you know the reputation he acquired for truth and veracity—his general reputation ?

A. I have frequently heard him spoken of, and in no other way than to discredit his word.

Q. Was his reputation good or bad ?

A. I should think it was bad.

Q. Was it very bad ?

A. I should think it was very bad.

WM. MANNERS—residence, Waverly—sworn and examined.

By Mr. PIERREPONT :

Q. State your occupation and how long you have lived at Waverly.

A. I have lived there something like seventeen years. I carry on the grocery and bacon business.

Q. Do you know Dr. Bissell, who lived there ?

A. I believe I do, sir.

Q. Do you know the general reputation he acquired among the people for truth and veracity—what was said of him ?

A. I never heard much good of him.

Q. Did you hear much bad about him ?

A. A great deal.

Q. Did you ever hear anything else about him ?

A. No, sir.

Q. What was his general repute—good or bad ?

A. It was bad.

JAMES J. REEVES—residence, Waverly—sworn and examined.

By Mr. PIERREPONT :

Q. State your occupation and how long you have lived at Waverly.

A. I have lived there about eighteen years. I am a hardware merchant.

Q. Do you know Dr. Bissell, who lived there some time ?

A. Yes ; I was acquainted with him.

Q. Do you know what kind of a reputation for truth and veracity he acquired generally there among the people ?

A. It was not good.

Q. Was it bad ?

A. Yes, sir ; it was bad.

## SUR REBUTTING EVIDENCE.

Mr. BRADLEY said that, with the consent of the counsel for the prosecution, while they were waiting for other witnesses to come in he would proceed to examine certain witnesses for the defence who were in attendance.

GEORGE R. HOWARD—residence Elkton, Maryland—sworn and examined.

By Mr. BRADLEY :

Q. State how long you have resided at Elkton.

A. With partial exceptions I have lived in the neighborhood for about forty-five years.

Q. During the late war, state whether you took active part, and on which side ?

A. I was a very ardent friend of the Union, and contributed what I could in the way of influence and efforts towards maintaining the Union.

Q. Did you go into the military service ?

A. Yes, sir. I raised a regiment in 1862, under the second call of the President, and took it into active service. I remained with them until February, 1863, when ill-health compelled me to resign.

Q. State if you please whether you know Stephen F. Cameron, a witness who was examined in this case.

A. Yes, sir; I know him. I am unable to say how many years I have known him—half a dozen, probably. The last I saw or knew of him was in 1861.

Q. State if you had opportunities to know what his general reputation was for truth and veracity in the neighborhood where he lived.

A. I knew him well; frequently met with him and conversed with him.

Q. You mingled in the same society with him ?

A. Pretty much; yes.

Q. Then you had an opportunity of knowing the general estimation in which he was held for truth and veracity among those with whom he associated ?

A. I think my opportunities were about as good as those usually had by the people of that place.

Q. State, if you please, whether his general reputation was good or bad.

A. I never heard anything said against his veracity. He was considered an eccentric sort of man; very energetic in what he undertook. He was considered rather erratic, and people did not always agree with him, and he was severely censured for some things.

Q. But as to his veracity you never heard it called in question ?

A. I never did.

Q. Would you have any hesitation from that general reputation in believing him under oath ?

A. None whatever.

DANIEL BRATTON, residence Elkton, Maryland, sworn and examined.

By Mr. BRADLEY :

Q. State your occupation, and how long you have resided in Elkton.

A. I have resided there between twenty-seven and twenty-eight years. I have been a merchant formerly, and am now a real estate agent. I buy and sell real estate.

Q. Do you know Stephen F. Cameron, a witness in this case, who formerly lived at Elkton ?

A. Yes, sir.

Q. Had you opportunities of learning the general estimation in which he was held among his fellow-citizens as a man of truth and veracity ?

A. I think I had. I did business with him when he was in business there selling grain. I saw him and conversed with him very frequently.

Q. You knew the people down there well, I suppose?

A. I am acquainted with most of the people down there.

Q. State whether his reputation for truth and veracity was good or bad.

A. I never heard it called in question until I heard it in connection with this trial. I never heard his name mentioned in connection with his reputation for truth and veracity.

Q. Would you believe him on oath without any hesitation?

A. I would, without the slightest.

ELY COSGROVE, residence Cecil county, Maryland, sworn and examined.

By Mr. BRADLEY :

Q. State whether you are frequently in Elkton, and know the people there

A. I am. I resided there from 1861 to 1866, and prior to 1861 I resided there. I am now near Port Deposit, about fifteen miles from Elkton. I am frequently in Elkton.

Q. Do you know Stephen F. Cameron?

A. I had a slight acquaintance with him.

Q. Do you know his general reputation in society as a man of truth?

A. I know nothing particular in reference to his character; I am very little acquainted with him.

Q. I do not ask for particulars, but what the people said about him as to his truth and veracity.

A. I have heard but very little of Mr. Cameron.

Q. Were you sheriff of Cecil county?

A. I was elected in 1861, and remained in office until 1863.

JOHN PARTRIDGE, residence Elkton, Maryland, sworn and examined.

By Mr. BRADLEY :

Q. State your occupation, and how long you have lived in Elkton.

A. Since 1837. I deal in grain and guano.

Q. During that time have you known Stephen F. Cameron?

A. Very well.

Q. Do you know the estimation in which he was generally held among the people down there as to truth and veracity?

A. I never heard his truth and veracity doubted.

Q. Would you have any hesitation in believing him on oath?

A. None whatever.

Cross-examined by Mr. PIERREPONT.

Q. Are you connected with him in business?

A. I was connected with him in business.

Q. How?

A. In the grain and guano business.

Q. Did he marry your daughter?

A. No, sir.

Q. You are in the same house with him?

A. Yes, sir.

Q. Have you seen him since 1861?

A. No, sir.

Q. Was his wife there?

A. Yes, sir.

Mr. BRADLEY moved that the answer to the last question be stricken out; and he hoped, as counsel had put similar questions several times previously, it would not be repeated.

The COURT ordered the answer to be stricken out.

R. G. REESE, residence Elkton, Maryland, sworn and examined.

By Mr. BRADLEY :

Q. How long have you lived in Elkton ?

A. About twenty years, I think.

Q. Do you know Stephen F. Cameron ?

A. Yes, sir.

Q. Have you had opportunities of knowing in what estimation he was held among his fellow-townsmen ?

A. Yes, sir. I knew him very well during his residence there.

Q. Do you know as to the estimation in which he was held for truth and veracity ?

A. I never heard it doubted. He was an eccentric man, but I never heard his reputation for truth doubted.

Q. Would you have any hesitation in believing him on oath ?

A. None at all.

Cross-examined by Mr. PIERREPONT :

Q. Did you take the same side with him in the late war ?

A. I suppose I took a different side.

Q. Which side was that ?

A. I do not think I was considered a sympathizer with the South, and I do not think I was, except to a certain extent ; I thought the war was wrong. I did not believe it would eventuate in perpetuating the Union.

WM. G. PURNELL, residence Elkton, Maryland, sworn and examined.

By Mr. MERRICK :

Q. How long have you lived in Elkton ?

A. 17 years.

Q. What have you been engaged in for the last four or five years ?

A. I have been in the army part of the time, and part of the time in the mail service.

Q. What rank did you hold in the army ?

A. I enlisted a private, and was discharged a captain of infantry.

Q. You are now in the mail service of the United States ?

A. Yes, sir.

Q. Do you know Stephen F. Cameron ?

A. Yes, sir.

Q. Did you have any opportunity of forming an opinion as to the general estimate in which he was held among the men with whom he associated ?

A. Yes, sir.

Q. Did you associate with the same people he did ?

A. I do not know that I did. I associated with him a great deal.

Q. You knew the same persons he knew ?

A. I did ; yes, sir.

Q. What was his general character as a man of truth and veracity ?

A. I have no knowledge.

Q. What did other folks say of him ?

A. I have no knowledge of what other folks said.

Q. Did you ever hear his reputation called in question ?

A. I have never heard it called in question.

Mr. MERRICK. From what other folks said of him you would believe him on his oath ?

Mr. PIERREPONT remarked witness had first said he did not know whether other folks said anything about him.



Q. From his general reputation for truth would you believe him on oath ?

A. Certainly I would.

THOMAS DRENNEN, residence Elkton, Maryland, sworn and examined.

By Mr. MERRICK :

Q. State your occupation and how long you have lived in Elkton.

A. I have lived there for the last three years. I am a merchant.

Q. Did you know Stephen F. Cameron there ?

A. I knew Mr. Cameron very well, and formerly did business with him often.

Q. Do you know the people with whom he associated ?

A. Yes, sir ; I associated with the same people he did. I have been to parties and danced with him.

Q. Had you opportunities of knowing the estimation in which he was generally held as a man of veracity ?

A. I had.

Q. Was his character for truth good or bad ?

A. Good.

Q. You would have no hesitation in believing him on oath ?

A. None at all.

Cross-examined by Mr. PIERREPONT :

Q. You danced with him, did you ?

A. I did frequently.

Q. Was he a clergyman ?

A. Not at that time.

Q. When did he become a clergyman ?

A. I cannot say when.

Q. He danced during all the time you knew him ?

A. He did dance when we met at a party.

By Mr. BRADLEY :

Q. You did not say he was a clergyman ?

A. I did not.

By Mr. PIERREPONT :

Q. You did not know the fact that he was a clergyman when he danced ?

A. I was not aware he was a clergyman. I was aware that he danced, and that he danced with me. His reputation was, I believe, as good as any man's in Elkton for truth. As a business man he was a little off-handed at times, like some other men.

JOHN R. HOGG—residence Cecil county, Maryland—sworn and examined.

By Mr. MERRICK :

Q. State your occupation and how long you have resided in Cecil county ?

A. I have lived there about forty-five years. I am a railroad man, and have been for the last thirty years.

Q. Did you know Stephen F. Cameron, a witness who has been examined in this case ?

A. I did.

Q. Did you have opportunities for knowing his general reputation for truth and veracity ?

A. I knew him very well, and I know generally with whom he associated every day.

Q. What was his general character as a man of truth and veracity ?

A. Very good ; he was looked on as a very strict churchman.

Q. From his general character would you have any hesitation in believing him on his oath?

A. O, no, sir.

Cross-examined by Mr. PIERREPONT :

Q. When you said he was looked on as a very strict churchman, what did you mean by that?

A. At one time he thought the church was too old for the society, and he went around and got a subscription, and he assisted the ladies in getting up a fair to build a new church, and that church goes by the name of Cameron's church to this day. I always speak of it in that way.

Q. There was nothing erratic or singular about him?

A. Nothing, except that he would do whatever he undertook to do with more energy than most people.

Q. Was he a clergyman?

A. I never heard him preach. I have heard that he preached. I have heard him pray.

Q. Do you know where he went?

A. I have heard that he went down south.

Q. Joined the southern confederacy?

A. I heard that.

Q. When did you last see him?

A. I have not seen him since 1861.

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#### REBUTTING EVIDENCE.

Mr. PIERREPONT said that the prosecution would have been able to close its rebutting evidence to-day but for the failure of men connected with a certain railroad to respond to the subpoenas of the court. From some influence (he did not know what) parties connected with the railroad seemed to have placed every impediment in the way of obtaining information. He had, however, one or two witnesses upon other points, and would proceed to examine them.

Mr. MERRICK. What railroad does the gentleman refer to?

Mr. PIERREPONT replied, the railroad between Baltimore and Suubury.

ALFRED G. HATFIELD—residence, Washington—sworn and examined.

By the DISTRICT ATTORNEY :

Q. State how long you have lived in Washington.

A. I have been a clerk in the Treasury Department here for about two years. I formerly lived in Philadelphia.

Q. State to the jury whether you knew John Lee who was a witness on this trial.

A. I have known John Lee about fifteen years. I knew him here, and before that in Philadelphia.

Q. In what capacity did you know him in Philadelphia?

A. He was a constable there—an officer.

Q. Did you know personally with whom he associated in Philadelphia?

A. He associated with a great many in his business relations.

Q. I ask whether you know his reputation for truth and veracity; and if so, state whether good or bad.

A. I never heard it questioned. I think that he had a great deal of business with influential men, and I never heard it called in question until during this trial.

Q. Then you would say his reputation was good?

A. It was good.

Cross-examined by Mr. BRADLEY :

Q. Do you recollect of his having been indicted and convicted at any time ?  
(Question objected to by the District Attorney, as having nothing to do with the character of the witness for truth, and Mr. Bradley said it might involve an indictment and conviction for perjury. Objection sustained by the court. The reputation of the witness Lee could not be proved in that way. The question might be asked of this witness whether he had heard Lee's character for truth and veracity discussed.)

Q. Have you ever heard his character for truth discussed in Philadelphia ?

A. No, sir.

Q. Did you live in his neighborhood ?

A. I have been frequently with him. I kept a drug store at the time, and he used to come there very frequently.

Q. How long ago was that ?

A. It was in 1851 or 1852 when I first became acquainted with him.

Q. How long did he continue to live in Philadelphia ?

A. I think eight or nine years I remember being with him and meeting him occasionally.

Q. He must have lived there, then, until about 1860 or 1861 ?

A. Yes, sir; and I saw him after he came on here to Washington.

WILLIAM HARKNESS—residence, Washington—sworn and examined.

By Mr. PIERREPONT :

Q. Where did you live and what was your occupation on the 14th day of April, 1865 ?

A. I was boarding in Washington at that time, and had an office in the Naval Observatory.

Q. Were you making observations of the weather ?

A. No, sir, I was not; I was making observations of the stars during that night.

Q. Will you state the condition of the sky between the hours of nine and twelve o'clock that night ?

A. From nine until twenty minutes past eleven I can state. After that I can only state from the observations that were made. During that time the weather was tolerably clear—not perfectly clear. There were some clouds floating, but it was clear enough to observe very small stars.

Q. Do you know about when the moon rose that night ?

A. I made a memorandum of that. It rose about twenty minutes before nine.

Q. That was Good Friday. Can you tell how near the full it was ?

A. The moon was full on the 10th, at nineteen minutes past eleven p. m.

Q. Look at the observation you made at 9.45.

A. I have an observation at 9.43, and another at 9.49.

Q. What was it at 9.43 ?

A. The star I observed was a very small star, not visible to the naked eye, and could not be seen except through a very clear atmosphere.

Q. What was your next observation ?

A. At 9.49; that was a star also not visible to the naked eye, Vesta, one of the asteroids.

Q. You could see the asteroids, then ?

A. At the place where that star was it must have been clear or I could not have seen it.

Q. How was it at eleven o'clock ?

A. At eleven o'clock exactly I observed another star, also invisible to the naked eye.

Q. That proved what ?

A. That where the star was it was clear.

Q. At 11.18 what observation did you take?

A. That was my last observation that night; it was a double star; at the time I observed it there must have been a light cloud floating over; that was a star that required a good telescope to see it, and is altogether invisible to the naked eye.

By the COURT:

State again at what time the moon rose on the night of the 14th.

A. The moon rose on the night of the 14th at twenty minutes before nine o'clock.

Q. What is the difference in the time of the rising of the moon from one night to another?

A. The question is too general; the difference varies very largely.

Cross examined by Mr. BRADLEY:

Q. You have the memorandum of the time the moon rose?

A. No, sir; no memorandum made at the time. My statement of the time the moon rose does not depend upon my personal knowledge. I took it from the Nautical Almanac.

Q. When did you make your memorandum of the time the moon rose that night?

A. I only made that memorandum to-day.

Q. Were you superintendent of observations at the Observatory at that time?

A. At the Observatory we had three instruments. I had charge of one instrument. Each observer has charge of his own.

Q. Did you report to anybody?

A. No, sir; I did not report to anybody.

Q. Do you not report your observations?

A. There has been no officer in charge of the Observatory. Each observer is supposed to have charge of his own instrument. The observations are, of course, drawn off and published.

Q. Were the original minutes made by you when this report was made out?

A. Yes, sir.

Q. Was Professor Eastman employed that night?

A. I do not know. I do not remember.

Q. State to the court and jury in what part of the heavens these stars were which you have referred that night.

A. They were on the meridian. If you want to know what altitude, I should have to look to the observations. The last one I observed was nearly on the zenith.

Q. That was the double star. Where was Vesta?

A. I see by looking at the book that it was on the meridian, twenty-two degrees south of the zenith.

Q. At what time did you observe Vesta?

A. At nine o'clock forty-nine minutes.

Q. And the double star when?

A. At eleven o'clock seventeen minutes.

Q. Were these the only observations you made?

A. I made observations at 9.54, 10.2, 10.45, and at 11. All these observations were on the meridian.

Q. And all south?

A. All south except the last one; it was about ten minutes north of the meridian.

Q. Your observation was at the time they passed the meridian?

A. Yes, sir.



Q. Now, do you recollect at all the condition of any other portion of the heavens, whether there were clouds or not?

A. No, sir. I could not make any such statement as that.

Q. Do you recollect whether the moon was obscured after she rose?

A. It could not have been obscured altogether; there were floating clouds.

Q. That is, floating clouds were on the meridian?

A. Yes, sir. I do not know that I ever found floating clouds confined to the meridian.

Q. Might not the whole western hemisphere have been clear, and the eastern covered with clouds?

A. It might possibly have been.

Q. You cannot say whether it was or not?

A. No, sir. I do not pretend to say.

Q. Why did you cease taking observations shortly after eleven?

A. Because it got so cloudy I could not get on with my work.

Q. State, if you please, whether it was a clear or a hazy night.

A. According to the best of my recollection at the time, I stopped work about twenty minutes past eleven. The sky was covered more or less with clouds, and looked somewhat hazy. It was not a foggy night; you might say it was hazy.

Q. Was it very moist?

A. My recollection is, it was rather a damp night.

Q. You have no recollection about clouds nearer the horizon?

A. I think that I could see enough to continue my observations prior to about twenty minutes past eleven.

Q. Have these notes given you any information, except as to whether there were clouds on the meridian?

A. That is all.

By Mr. PIERREPONT:

Q. You may tell us something about the time. We do not understand sidereal time.

A. The time I gave you was mean time.

Q. Was that the time you gave as about the time of the rising of the moon on the 14th April?

A. The time of the rising of the moon I got, as I stated, from the Nautical Almanac. It might have been twenty minutes before nine; it might have varied five minutes one way or the other.

Q. Have you any means of telling which way the wind blew?

A. No, sir. I could get it from the meteorological register. I have no other means of telling.

Q. Which way was the moon in relation to these stars you have mentioned?

A. The moon was east of the meridian; did not come to the meridian yet.

By Mr. BRADLEY:

Q. Do you recollect at all the ascension of the moon that night?

A. The moon was pretty far south; its highest point did not exceed forty degrees altitude.

Q. Did it get higher than thirty-six?

A. It would be somewhere in that neighborhood. It was pretty well south that night.

## SUR-REBUTTING EVIDENCE.

HIRAM McCULLOUGH, residence Elkton, Maryland, sworn and examined.

By Mr. MERRICK :

Q. How long have you lived at Elkton ?

A. Since 1831.

Q. You are a member of Congress from that district ?

A. Yes.

Q. State whether or not you know Stephen F. Cameron.

A. Yes, sir ; I have known him since the fall of 1855, or the winter of 1856.

Q. State whether you have had an opportunity of knowing what his general reputation for truth and veracity is in Elkton.

A. I have, I think, as good as any one who lives in town.

Q. State whether his general reputation for truth and veracity was good or bad.

A. It was good when he left there. He has not been in Elkton since 1861. He went south in 1861, I believe.

Q. Would you have any hesitation in believing him on oath ?

A. None whatever.

CHARLES ELLIS, physician, residence Elkton, Maryland, sworn and examined.

By Mr. MERRICK :

Q. You have been in the service of the United States ?

A. I have been in the army as surgeon.

Q. Did you know Stephen F. Cameron when he lived in Elkton ?

A. I did.

Q. Have you had opportunities of forming an opinion in regard to his general reputation for truth and veracity ?

A. O, yes ; I knew him very intimately. He was with me constantly.

Q. Did you associate with the same people that he did ?

A. I did.

Q. What was his general reputation for truth and veracity—good or bad ?

A. Good.

Q. From that general reputation you would have no hesitation in believing him on oath ?

A. None whatever.

Q. He lived in Elkton in 1861, did he not ?

A. I believe he did.

Q. Do you know where he went ?

A. I believe he went south. I saw him in the south afterwards.

Q. At what time did you meet him ?

A. Shortly after the battle of Gaines' Mill.

Q. After the battle of Coal Harbor ?

A. Yes, sir.

Q. Were you taken prisoner on that battle-field ?

A. Yes.

Q. Did you meet Cameron ?

A. I met him the day after.

Q. State what was his manner and treatment of you and Union prisoners. (Question objected to and withdrawn.)

JAMES R. BROWN—residence, Elkton, Maryland—sworn and examined.

By Mr. MERRICK :

Q. Have you held, or do you hold, any office in that county now ?

A. I hold a magistrate's office in Elkton.

Q. Do you know Stephen F. Cameron, who was a witness in this case?

A. Yes.

Q. How long have you known him?

A. I do not recollect how long; during the whole time he lived there. I do not recollect the time.

Q. Several years before he went away?

A. O, yes, sir.

Q. Did you have an opportunity for forming an opinion in regard to his truth and veracity in that community?

A. I never heard it questioned until within the last ten days or two weeks.

Q. Would you have any hesitation, from your knowledge of his general reputation, of believing him on oath?

A. So far as I know him, I would not.

AARON G. TATE—residence, Elkton, Maryland—sworn and examined.

By Mr. MERRICK:

Q. Do you know Stephen F. Cameron?

A. I do; I knew him for about two years.

Q. Did you have opportunities of forming an opinion in regard to his general character for truth and veracity?

A. Yes.

Q. State his general character—whether it was good or bad.

A. It was good.

Q. Would you have any hesitation, from that general reputation, in believing him on oath?

A. Not the slightest.

JOSEPH B. CANTWELL—residence, Elkton, Maryland—sworn and examined.

By Mr. MERRICK:

Q. How long have you resided in Elkton?

A. Fifty-one years.

Q. That is as long as you have lived any way, is it not?

A. Just about.

Q. Did you know Stephen F. Cameron, who lived at Elkton?

A. Very well.

Q. Did you have opportunities for ascertaining his general reputation in regard to truth and veracity?

A. I have transacted business with him.

Q. Did you know the same people he did?

A. Yes.

Q. Did you associate with the same people and mingle with the same persons?

A. Yes.

Q. State whether his general character and reputation for truth was good or bad?

A. It was good, as a general thing.

Q. Would you have any hesitation, from what you know of his general character, to believe him on oath?

A. Not the slightest.

Q. Some question has been raised here about sympathies during the war. What were your sympathies?

A. I was a Union man during the war.

Q. Out and out?

A. Out and out.

DAVID SCOTT—residence, Elkton, Maryland—sworn and examined.

By Mr. MERRICK :

Q. Did you know Stephen F. Cameron, a witness who was examined in this case?

A. Yes, sir.

Q. How long did you know him?

A. I think since 1856 or 1857.

Q. Did you have opportunities of forming an opinion in regard to his general reputation for truth, and veracity?

A. I have had.

Q. Did you associate with the same people he did?

A. Yes, sir.

Q. State to the jury whether that reputation was good or bad?

A. I think it was good.

Q. Would you have any hesitation, from that general reputation, in believing him on oath?

A. Not the slightest.

Cross-examined by Mr. PIERREPONT :

Q. When did Cameron first come to Elkton to live?

A. I am not certain. I think it was in 1855 or 1856.

Q. Do you know where he came from?

A. I am not certain. I think from New York.

Q. Do you know what he did when he came there?

A. He went into the grain business with his father-in-law.

Q. What else did he do? Do you know of any other business?

A. I think he studied for a minister at Elkton and in New York.

Q. Was he carrying on business at the same time?

A. No, sir.

Q. Did you ever hear any talk about the character of the man, as to his truth? Did you ever hear it discussed before this trial?

A. I do not know that I have heard it discussed.

Q. Was there anything peculiar about him, in any way, connected with his mode of stating facts?

A. Well, perhaps there was some slight peculiarity. Cameron was a man rather fond of excitement and change. That was about the only peculiarity I know of him.

JOHN M. MILLER—residence, Elkton, Maryland—sworn and examined.

By Mr. MERRICK :

Q. How long have you lived in Elkton?

A. Since 1856.

Q. Did you know Stephen F. Cameron, a witness who was examined in this case?

A. Yes, for several years.

Q. Did you have opportunities in regard to forming an opinion of his truth and veracity?

A. I have had.

Q. Did you associate with the same people he did?

A. Yes, sir.

Q. State to the jury what was his general character for truth and veracity—was it good or bad?

A. So far as I know anything about it, it was good.

Q. Would you have any hesitation, from that general character, to believe him on oath?

A. Not the slightest.



Q. What were your sympathies during the war?

A. I was a Union man from the outset. I separated from the old democratic party on that occasion, and was a Union man throughout the war.

Q. I am very glad you are a Union man; but I hope you will not separate altogether from the old party.

A. I am still a Union man, supporting President Johnson in supporting the Union.

Cross-examined by Mr. PIERREPONT:

Q. What was Cameron doing after he came to Elkton?

A. I don't know that he was engaged in anything in particular, except for a short time with his father-in-law in the grain business. I do not know what he was doing the rest of the time.

Q. Did you ever hear his character discussed; whether there were any peculiar characteristics?

A. He is an eccentric person.

Q. Did you ever hear him spoken of as a man given to exaggeration?

A. I don't know that I ever did. He had an active mind. He seemed to be a man who was very fond of roving about. I knew of no other peculiarity. He did not seem to be a man disposed to settle down in any particular business.

Q. He roved away from there in 1861, did he not?

A. I believe he did in 1861.

Q. And he has not roved back?

A. No, sir; he has never come back.

JAMES W. GROOME—residence, Elkton, Maryland—sworn and examined.

By Mr. MERRICK:

Q. How long have you resided in Elkton?

A. I never resided elsewhere, except when away at school and on temporary business.

Q. Your father lived there in 1860, and the year before?

A. He lived there in 1866, and for forty years before.

Q. Did you know Stephen F. Cameron, a witness in this case?

A. I did.

Q. Had you an opportunity of forming an opinion in regard to the general estimate in which he was held as a man of truth and veracity?

A. I lived in the same town with him, and associated with the same people he did. I often heard him talked about, and never heard his veracity questioned in the least; hence I should say his general reputation for truth was good.

Q. From that general reputation would you have any hesitation in believing him on oath?

A. From that general reputation I would not have the least.

Q. You are a member of the State constitutional convention in Maryland, I believe.

A. I am.

Cross-examined by Mr. PIERREPONT:

Q. You say you have heard Cameron talked about often; you have heard him pretty freely discussed, haven't you?

A. I have heard him criticised in no very amiable spirit, but never in reference to his truth; that question I never heard raised.

Q. When did he go there?

A. I judge about 1855 or '56. The earliest date I can fix is the spring of 1857.

Q. What did he do?

A. He was a grain merchant at that time.

Q. What else did he do ?

A. He had no other active business, I think. He was, as was stated just now, a very versatile genius; very fond of dancing, attending parties, and of being active in all the arrangements for them.

Q. You mean social parties ?

A. Social parties.

Q. You mean, a genius in things of that kind ?

A. Yes, sir, in things of that kind.

Q. He was active in all these ?

A. Yes, sir, at that time.

Q. How long did he stay there ?

A. From the time he came until 1861 or '62. I would not be positive as to the time he went away.

Q. You have not seen him since ?

A. Never since.

By Mr. BRADLEY :

Q. You were asked about his engaging in dancing parties; do you know anything of his studying divinity ?

A. I know he studied divinity; I have heard him preach. I know the fact that he was a deacon in the Episcopal church.

Q. Did he at that time engage in dances ?

A. No, sir; he went to the other extreme.

By Mr. PIERREPONT :

Q. The changes from one extreme to the other were very sudden, were they not ?

A. I think they were.

SAMUEL B. FORD—residence, Elkton, Maryland—sworn and examined :

By Mr. MERRICK :

Q. How long have you lived in Elkton ?

A. Since 1850.

Q. Do you know Stephen F. Cameron, who has been a witness in this case ?

A. Yes, sir; I know him.

Q. Did you have opportunities for forming an opinion in regard to the general estimate in which he was held as a man of truth and veracity ?

A. I think so, sir.

Q. Did you associate with the same people he did, mix in the same society, and meet him in social life ?

A. Yes, sir.

Q. State whether his reputation was good or bad as a man of veracity ?

A. I think it was good.

Q. From that general reputation would you have any hesitation in believing him on oath ?

A. No, sir; I would not.

Cross-examined by Mr. PIERREPONT :

Q. Did you hear him talked about and discussed a good deal in your region ?

A. Sometimes he would be talked about.

Q. From the way people talked about him, did you think him a very reliable, truthful man ?

A. Yes, sir; I never saw anything about Mr. Cameron but what was truthful.

Q. I am now speaking of the discussions about him ?

A. Well, that is the character he bore.

Q. Were they discussing him on the subject of truth-telling?

A. I do not know that I ever heard him discussed on that subject.

Q. Do you know when he went away?

A. I know about the time he went away.

Q. Do you know what sent him away?

A. I do not.

Q. Nothing brought him back?

A. He has not been back.

REUBEN D. JAMAR—residence, Elkton, Maryland—sworn and examined :

By Mr. MERRICK :

Q. How long have you lived in Elkton?

A. All my life.

Q. Do you know Stephen F. Cameron, a witness in this case?

A. I do.

Q. Have you had opportunities of forming an opinion of the general estimate in which he was held by the people with whom he associated in that region?

A. I had.

Q. Did you associate with the same people and mix in the same society he did?

A. I think I did.

Q. State what his general character was for truth and veracity?

A. I think it was good.

Q. From his general character as a man of truth and veracity, would you have any hesitation in believing him on oath?

A. Not the least.

Q. There has been some question raised here in regard to the sympathies of men; where were your sympathies during the war?

A. They were entirely with the Union.

Q. You were a Union man decidedly?

A. Decidedly.

Cross-examined by Mr. PIERREPONT :

Q. Did you hear him discussed?

A. I never heard a word about him; I never heard his character discussed in any way.

Q. You heard none of his traits or peculiarities spoken of?

A. No, sir; when a party was to be gotten up, Mr. Cameron could do it better than any man in the county.

By Mr. BRADLEY :

Q. Do you know anything of his studying for the ministry?

A. I don't know much about that.

Q. When you speak of his getting up parties, &c., do you refer to the early part of your acquaintance with him?

A. Yes, sir; I may judge of his character from the character of the people who associated with him. They would not associate with him if it was not so.

By Mr. PIERREPONT :

Q. And that capacity for getting up these things continued as long as you were acquainted with him?

A. Yes, sir; occasionally.

R. G. REESE recalled and examined.

By Mr. BRADLEY :

Q. While you resided in Elkton you were a member of the Episcopal church ?

A. Yes, sir.

Q. Did Mr. Cameron take deacon's orders while he was there ?

A. Yes, sir.

Q. After that did you ever see him engaging in anything that was improper ?  
(Objected to, and question not insisted on.)

PERRY SITZENBERG—residence, Elkton—sworn and examined.

By Mr. MERRICK :

Q. How long have you lived in Elkton ?

A. Since the spring of 1853.

Q. Did you know Stephen F. Cameron ?

A. I did know him while he lived there.

Q. Have you had opportunities for forming an opinion of the general estimate in which he was held among the people there as a man of truth and veracity ?

A. During all the time he was there I saw him every day more or less.

Q. Did you associate with the same people he did, and mix in the same society ?

A. To some extent.

Q. What was his character for truth and veracity ?

A. I never heard anything about it until since this trial.

Q. From the general reputation he acquired, would you have any hesitation in believing him on oath ?

A. None whatever.

Cross-examined by Mr. PIERREPONT :

Q. Did you and he visit together ?

A. Yes, sir.

Q. Was he married ?

A. He was said to be.

Q. When was he married ?

A. I don't know.

Q. Do you know whether his family are living there ?

(Objected to by Mr. Merrick, and question not insisted on.)

The Court took a recess until to-morrow at 10 a. m.

THURSDAY, July 25, 1867.

The court was opened at 10 o'clock.

ARTEMUS STEVENS sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where do you reside ?

A. In Lennoxville, Canada.

Q. How long have you been residing there ?

A. Ever since I was born.

Q. What is your occupation ?

A. I am a farmer.

Q. State if you know this gentleman sitting here. (Dr. McMillan.)

A. I do.

Q. Where did you form his acquaintance ?

A. At Lennoxville.



Q. How long have you known him ?

A. For over seven years.

Q. Did you know persons with whom he associated ?

A. I did.

Q. Did you know him in Lennoxville ?

A. I did.

Q. How was he employed in Lennoxville ?

A. He was there as a practicing physician.

Q. I will ask you if you know his general reputation in that community for truth and veracity ?

A. I do.

Q. State whether it is good or bad.

A. As far as I know it is good.

Professor WILLIAM HARKNESS recalled.

By the DISTRICT ATTORNEY :

Q. You have already been examined before the jury ?

A. Yes, sir.

Q. State if you made any mistake in your testimony which you desire to correct ?

A. I merely want to make a statement. There was a confusion in my mind with regard to the sidereal time when giving the time of the rising of the moon. In mean time, the moon actually rose at one minute four seconds past 10 o'clock; at that time the upper edge of the moon would come above the horizon. The mistake arose through the data I took in making the calculation.

Q. What was the sidereal time of the rising of the moon ?

A. I cannot tell exactly; but it would be about one hour and thirty-two minutes later.

By Mr. MERRICK :

Q. Didn't the moon, in point of fact, rise ten minutes past 10, mean time ?

A. No, sir; in point of fact it rose one minute and four seconds past 10.

By the DISTRICT ATTORNEY :

Q. At five minutes past 10 how many diameters would it be above the horizon.

A. I have not made the calculation. I can give you a rough idea. The moon would be about above the horizon at five minutes past 10, and it would rise in its own diameter in about three minutes, so that it would be about three diameters, or something like that, above the horizon at that time.

JOSEPH R. DU BARRY recalled.

By Mr. PIERREPONT :

Q. You were called and sworn by the defence before, were you not ?

A. Yes, sir.

Q. Have you the same records with you now that you had then ?

A. Yes, sir.

Q. Won't you tell the jury what railroad connection there was between Sunbury and the city of Washington on the 13th and 14th of April, 1865. What were the modes of getting to Washington ?

A. By the Northern Central railroad, which runs from Sunbury to Baltimore.

Q. And there is another road connecting with Philadelphia and New York ?

A. We cross the Pennsylvania railroad at Marysville, which leads to Philadelphia.

Q. Then is not there the Catawissa? Do you go from Sunbury through Pottsville?

A. There are coal roads leading in that direction.

Q. And from Pottsville where?

A. The Reading railroad leads from Pottsville to Philadelphia.

Q. Is there a Catawissa road?

A. I know there is such a road.

Q. Where does that strike?

A. At Milton, on the Philadelphia and Erie road.

Q. And where is Milton?

A. About 12 miles west of Sunbury.

Q. From Harrisburg how many roads are there to Philadelphia?

A. There is the Pennsylvania railroad line, and the road extending from Harrisburg to Reading, and the Reading road thence to Philadelphia.

Q. On which side of Philadelphia does the New York train strike the Reading?

A. I can only speak of that from general knowledge. It crosses the branch of the Reading railroad north of Philadelphia.

Q. Does it take the branch and go round the city?

A. The New York trains pass over what is called a connecting railroad around the city of Philadelphia.

By Mr. BRADLEY:

Q. Was that particular road in existence in 1865?

WITNESS. It was not.

Mr. BRADLEY. Then don't speak of it.

By Mr. PIERREPONT:

Q. Was the Bloomsburg road then in existence?

A. I know of a road called the Lackawanna and Bloomsburg road.

Q. Where does that strike your road?

A. That leaves the Philadelphia and Erie road at Northumberland, two miles west or northwest from Sunbury.

Q. And does that connect with Philadelphia?

A. I speak from general knowledge. I have never been to Philadelphia over that route.

Q. They cross the Catawissa railroad, and in that way connect?

A. It crosses that road on the Philadelphia route. There is a connection between the routes at that point.

Q. Have you any means of knowing whether a special train ran on the 13th of April, 1865, from Elmira to Williamsport?

A. I can only testify in regard to trains by referring to my records.

Q. Have you the records?

A. I have the records of that date.

Q. Have you any records that show that fact?

A. The record of the 13th of April, 1865, shows that there were two passenger trains, called "the first and second mail trains," running between Elmira and Williamsport.

Q. Will you state when they left?

A. The record says, "time."

Q. What is the time?

A. From my recollection it was 8 o'clock in the morning.

Q. What was the next?

A. There were two freight trains, called "local freights."

By Mr. BRADLEY:

Q. They did not both leave at eight?

A. They are specified as leaving on "time." The first and second mail trains left on "time."

Q. What is the time?

A. The schedule time of leaving Elmira is about 8 o'clock.

Q. Both of them?

A. Yes, sir; by the record here.

Q. Do you know whether there was a special train?

A. There were two passenger trains, called "the first and second mails," that left that day, running on the same schedule.

Q. Do you know anything about the special train?

A. No, sir.

I would at this point like to correct some evidence that I gave when I was on the stand before. The question was asked me as to whether I was in Elmira on the 13th. I answered, "No, sir." Since that time I have sent for the telegraphic despatches of that date, and I find that I promised to be in Elmira at that time; and I believe I was in Elmira on the 12th and 13th.

Q. But you do not remember?

A. I cannot fix it by any circumstance.

Q. Will you come down to Sunbury? Will you tell us when the freight train left Sunbury on the afternoon of the 13th of April, 1865?

A. At 4.30 p. m., by the record.

Q. Will you tell us when the passenger train left on the same day?

A. A passenger train left Sunbury, by the record, at 12.13 on the night of the 13th and morning of the 14th.

Q. When did that reach Baltimore?

A. From the record, at 7.25.

Q. On the morning of the 14th?

A. Yes, sir.

Cross-examined by Mr. BRADLEY:

Q. I understand you to say that you do not recollect being in Elmira; but from telegrams you see that you stated you would be in Elmira on the 12th and 13th. Have you any recollection of, in April, 1865, coming from Elmira to Williamsport, in a special engine—in what is called a "caboose."

A. I can fasten it by no circumstance.

Q. Has no memorandum been made of such a transaction?

A. I kept no diary of my own.

Q. Would not the running of the engine special train appear somewhere on the books?

A. Yes, sir.

Q. Have you or not diligently searched for it?

A. I have the records of the trains at that time.

Q. Have you or not diligently searched to see if there was a train that went up on the 12th and came down on the 13th?

A. Yes, sir.

Q. Do you find any such record?

A. Yes, sir. I find that an extra train, as it is called, went up on the 12th, leaving Williamsport in the morning.

Q. At what time?

A. By the record, 10 o'clock a. m.

Q. When did it return?

A. By referring to the record of the 13th I find that there was a second section of a mail train south.

Q. That you have mentioned at about 8 o'clock. Was there any special train on that day?

A. I have no record of such a train.

Q. Your records ought to show that there was a special train running on that day from Elmira to Williamsport?

A. Yes, sir.

Q. I will ask you further. Did you ever see the prisoner at the bar on that route?

A. I never saw him before.

Q. Is it possible he could have come from Elmira to Williamsport on the 13th without your seeing him?

A. It is possible. I do not know that I would have noticed him if there were many on the train.

Q. Not the passenger train. Supposing you to have run the special train with the caboose back from Elmira with yourself alone in it, would it have been possible? Was there any place of concealment?

Mr. PIERREPONT objected, on the ground that the question assumed a fact as proven which was not. He denied that there was any testimony to the effect that the witness came over the route in question in a caboose, or anything of the kind.

The COURT said that if his memory served him aright Strayer had stated that he run a special train from Williamsport to Elmira on the 12th of April, 1865, and that he returned with that train with one—it might be two—car attached, and that he thought, but he did not know, as he did not see him, that Du Barry was brought down on this special train. Mr. Bradley, as he understood it, now wished to ascertain whether Du Barry was on that train, and then if he was on it, whether it was possible for somebody else to have been on it without his knowledge.

The objection was overruled.

Q. Could any one have come from Elmira to Williamsport in that single car without your knowing it?

A. I think not. I cannot recall the circumstances.

Q. You are distinct in your memory that you never saw the prisoner at the bar until you saw him here?

A. I am very decided in my opinion that I never saw him before.

Mr. PIERREPONT desired to know if the court admitted what had just been stated as evidence, when the witness had said that he had no memory of ever having been on that train. Not having any such memory, could they ask him a supposititious case, of what might have happened if he was on it, when he had no memory on the subject?

The COURT said it was a matter which was in doubt. Neither the witness himself nor Mr. Strayer, who testified the other day, was able to state positively whether he (Mr. Du Barry) came down on the train or not. He thought, therefore, he might properly be inquired of as to whether, if he did come in the train, it was possible for somebody else to come along and he not know it.

The examination was resumed by Mr. Bradley, as follows:

Q. What is the most direct and expeditious route from Sunbury to Washington?

A. I believe it to be by the way of the Northern Central railroad to Baltimore.

Q. And thence to Washington?

A. Yes, sir.

Q. Do you know of any other route which could bring a party through within, say, four hours' difference in time?

A. I have no data from which to answer that question. I have no schedule. I can answer it from general knowledge.

Q. I speak of general knowledge, such as you have been giving to the prosecution; from your general knowledge of the railway system in the State of Pennsylvania, and the immediate connections with the great central artery



can you or not state whether the route you have just named is not the shortest route by at least four hours ?

Objected to by Mr. Pierrepont. The witness should be restricted to his own personal knowledge on the subject.

Mr. BRADLEY desired to know if when the witness had been asked by the government as to his knowledge of particular routes, they could not pursue that inquiry.

The COURT said they could pursue that general knowledge so far as it has been inquired into on the other side.

Q. From the same sources of knowledge of which you have spoken of the road from Sunbury to Philadelphia over the Pennsylvania road, can you state whether a passenger leaving Sunbury by that route would reach Washington as soon as he could by the Northern Central road ?

(Objected to by Mr. Pierrepont as not responsive to the examination-in-chief. Objection sustained. Exception reserved.)

By Mr. MERRICK :

Q. What time did you say the passenger train leaving Sunbury at 12.15 that night would reach Baltimore ?

A. About 7.25 a. m.

Q. Is there any other route from Sunbury to Baltimore by which a passenger leaving Sunbury at 12 o'clock and 30 minutes at night could reach Baltimore at 7.30 in the morning ?

(Objected to by Mr. Pierrepont unless the witness could speak from his own personal knowledge.)

Q. Can you answer the question from your personal knowledge ?

WITNESS. I have no record of those routes.

Q. Independent of any record, have you any personal knowledge of their running in 1865. You have certainly sometimes travelled from Sunbury to Philadelphia, surely ?

A. I do not know as I ever went to Philadelphia in 1865. I do not recollect that I did.

Q. Have you sufficient personal knowledge to enable you to answer to the satisfaction of your own conscience ?

A. I know it takes about four hours to go from Harrisburg to Philadelphia. That is about the running time of those trains.

Q. From Philadelphia to Baltimore, how long does it take ?

A. I have passed over that route but twice for several years past, and that was in coming to this place.

Q. From Harrisburg to Baltimore what was the time you gave us ?

WITNESS. On the Northern Central railroad ?

Mr. MERRICK. Yes, sir.

WITNESS. About four hours.

Q. It takes the same time then to go from Harrisburg to Philadelphia that it does to go from Harrisburg to Baltimore ?

A. No, sir.

By Mr. BRADLEY :

Q. You gave us the time when the passenger trains left Sunbury for Harrisburg ; can you give us the time when the freight trains left Sunbury for Harrisburg on the night of the 13th and 14th ?

A. On the 13th the freight train left at 4.30 p. m.

Q. When did that get into Harrisburg ?

A. Those trains do not run to Harrisburg ; they go to Marysville.

Q. Was there any close connection between Marysville and Harrisburg ?

WITNESS. There is a freight train.

Mr. BRADLEY. Freight train is what I mean.

WITNESS. I do not recollect their freight schedules at that time.

Q. Have you any means of showing at what time persons coming by that freight train reached Harrisburg?

A. By tracing the trains out I can fix it.

Q. How far is Marysville from there?

A. Eight miles. They are on opposite sides of the river.

Q. What time would the train arrive in Marysville?

A. The record of the time of the schedule is 9.20 p. m.

Q. What was the next train that day?

A. That was the last freight train that left Sunbury on that day.

Q. The next train was the passenger train at 12.13?

A. Yes, sir.

Q. Midnight?

A. Yes, sir.

Q. When did that train arrive in Harrisburg?

A. I have no notice of the time of arrival. I have the leaving time, which was 3.30 in the morning.

Q. Between 9.20 p. m. and 3.30 a. m., what trains left Harrisburg south?

A. There were no trains left Harrisburg. Our freight trains don't run to Harrisburg.

Q. No trains left Harrisburg after 9.20 p. m., until 3.30 a. m.?

A. No, sir.

Q. That train leaving at 3.30 arrived at Baltimore when?

A. 7.25.

Q. There was then no means furnished by your railroad to reach Baltimore before 7.25 in the morning, to a passenger leaving Sunbury at any time after 4 o'clock the day before?

A. No, sir.

Q. What time did the train leave Harrisburg for Philadelphia on the afternoon of the 13th of April?

A. I have no schedule of that road to enable me to answer the question.

Q. Can you from memory state what time it left?

A. I would not like to testify in regard to schedule from memory.

Q. You say that the Pennsylvania road and your road intersect at Marysville. That is eight miles, I believe you stated, above Harrisburg.

A. We cross the Pennsylvania road at Marysville.

Q. Then a passenger coming down the river from Marysville would have to go to Harrisburg and wait for the train running from Harrisburg to Philadelphia?

A. On some trains he would and others not. Some of the trains would run to Bridgeport and then cross the bridge to Harrisburg, as we do now with some of our trains.

Q. Is there any connection between the Northern Central and the Catawissa road?

A. No direct connection. They start twelve miles from the terminus of our road.

GEORGE S. KOONTZ recalled.

By Mr. PIERREPONT:

Q. Tell us what is your occupation?

A. I am general agent of the Baltimore and Ohio railroad.

Q. Tell me the time of the arrival of the trains in Baltimore on the 14th of April, 1865?

A. I do not know.

Q. Tell me at what time the first train left on the 14th?

A. At 4.20 a. m., and reached Washington at 5.45 a. m.

Q. When did the next leave?

A. 5.30 a. m.

Q. When did that arrive ?

A. 7.20.

Q. When did the next leave ?

A. 7 a. m.

Q. When did that arrive in Washington ?

A. 8.43 a. m.

Q. When did the next train leave ?

A. 8.50 a. m.

Q. When did that arrive ?

A. At 10.25 a. m.

Q. When was the next ?

A. 9.40 a. m.

Q. When did that arrive ?

A. 11.30 a. m.

Q. When was the next ?

A. 4.25 p. m.

Q. When did that arrive ?

A. 5.50 p. m.

Q. Will you turn to the 15th and tell us when the train left Washington in the morning ?

A. The first train left at 6.15 a. m.

Q. When did it reach Baltimore ?

A. 10.15 a. m.

Q. When did it leave Baltimore ?

A. I do not know.

Q. When was the next ?

A. 7.30.

Q. Was that train detained ?

A. Yes, sir ; it was detained at the Relay House by order of General Tyler.

Q. How long ?

A. I cannot tell, except by referring to the time-table.

Q. Was it not detained several hours ?

A. Yes, sir.

Mr. MERRICK. Refer to your time-table—you have it before you.

Mr. PIERREPONT. Yes ; if you have any means by which you can ascertain you can avail yourself of such.

A. That train was due at Baltimore at 8 a. m. ; it reached there at 10.15 ; it was two hours and fifteen minutes late.

Q. When do you say was the first train due in Baltimore ?

A. At 8 a. m.

Q. The second train you state was delayed. How long was it delayed ?

A. The second train left Washington at 7.30 a. m., and reached Baltimore about 2.40 p. m.

Q. How long was that detained ?

A. That train was due at Baltimore at 8.55 a. m.

Q. And didn't get there until what time in the afternoon ?

A. 2.40 ; it was detained at the Relay House by order of General Tyler.

Q. When was the next train ?

A. That left at 8.15, and reached Baltimore at 2.50 ; that was due at Baltimore at 10 a. m.

Q. Now the next ?

A. The next left at 11, and reached Baltimore at 3.05 p. m.

Q. You have no knowledge yourself of the leaving of those trains for Philadelphia and New York ?

A. No, sir.

Cross-examination by Mr. BRADLEY :

Q. Are these the same trains as those to which you referred as having been thoroughly searched and guarded when they left here ?

A. Yes, sir.

Q. Each train, you yourself assisting in that search ?

A. Yes, sir.

Q. Detectives and soldiers both went along ?

A. Yes, sir.

Q. Between Washington and Baltimore ?

A. Yes, sir.

CHARLES F. WETMORE sworn and examined.

By Mr. PIERREPONT :

Q. State where you reside.

A. 18 Clinton Place, New York city.

Q. Do you know Dr. Bissell, who testified here ?

A. I do.

Q. Are you the gentleman referred to as the person conducting a suit for him against the Erie railroad ?

A. Yes, sir.

Q. How long have you known him ?

A. Since 1863.

Q. Has he ever been your physician ?

A. Never.

Q. Have you any letters or memoranda with you that you brought from New York that tend to fix dates ?

A. I have some letters, or had some, which I handed to General Foster.

Q. Were they letters that you wrote ?

A. Yes, sir.

Q. You can tell the jury whether on the 14th of April Dr. Bissell was in Elmira hunting up witnesses for this suit ?

A. I think not.

Q. Why ?

A. My reason is, that on yesterday (having been subpoenaed the night before,) I went to the office of Mr. Eaton, who was the counsel opposed to me in that case.

Q. Of the Erie railroad ?

A. Yes, sir. After some conversation Mr. Eaton presented to me these letters, which I wrote to him on the 11th, 12th, and 13th of April, 1865, and also 26th and 27th.

Q. Have you examined them ?

A. I have.

Q. Do they refresh your memory with regard to any fact ?

A. They do not exactly refresh my memory, but they confirm me in my impressions that during this time Dr. Bissell was in my office, and also of the fact that Dr. Eaton came there to see him.

Q. What date was that ?

A. I cannot fix the date that Mr. Eaton was there. On the 11th, 12th, and 13th of April, 1865, I wrote to Mr. Eaton, and he presented those letters to me, and which confirmed me in the impression that Dr. Bissell was at that time in my office, and endeavoring to settle the Erie railroad suit.

Q. Did you settle it ?

A. Yes, sir.

Q. State whether you know the Doctor's character among the people for truth and veracity.

A. I have heard the character of Dr. Bissell very much canvassed.



Q. What did you find that to be—good or bad?

Mr. BRADLEY. State what was his general reputation.

A. I must say that his general reputation was bad.

Q. Was it very bad?

A. Yes, sir; it was.

Cross-examined by Mr. BRADLEY:

Q. In settling that suit was Dr. Bissell satisfied about it?

A. Yes, sir.

Q. Has there ever been any disagreement between you and him about it?

A. Not the slightest.

Q. He never complained?

A. Never to me. He always said he was satisfied.

Q. When was it settled?

A. It was settled on the sixth day of June, 1865; and he got his money on the sixth, which was five thousand, the company paying me my costs. That was a part of the terms of settlement.

Q. You say you have heard his character very much canvassed, and that his general character for truth is bad?

A. Yes, sir.

Q. When did you hear that subject discussed?

A. I first heard that subject discussed in 1864, or the early part of 1865; about the time this suit was in the process of settlement.

Q. Did that discussion grow, to a great extent, out of the suit?

A. With regard to those two witnesses it did. They came to me voluntarily. Subsequently it did not.

Q. What two witnesses?

A. They were the chief witnesses in this railroad case.

Q. And this canvassing of his character grew out of this controversy with the Erie railroad?

A. No, sir; only with regard to these two witnesses, who were witnesses for Dr. Bissell.

Q. Were they railroad employés.

A. No, sir; they were witnesses for Doctor Bissell in that suit against the road. They came to see me about it.

Q. You heard his reputation generally discussed?

A. Yes, sir.

Q. And that was a discussion as to his truth and veracity?

A. Yes, sir.

Q. Where did he reside at that time?

A. He resided when he first came to me, in Waverley, New York, and subsequently in New York city.

Q. Do you know whether he was or not in April, 1865, actively engaged in getting up testimony in that case?

A. I do not think he was, and my reason for so thinking is, that we were about settling the case.

Q. You did not settle it until June?

A. No, sir.

Q. You think two months before that he was not preparing for the case?

A. I think not, for the reason that he had all the witnesses provided and prepared in 1863-'4.

Q. Have you any recollection of telling him not to converse freely about his case with anybody.

A. I always told him that.

Q. Your inference from your letter is that he was in New York on the 11th, 12th, and 13th of April?

A. That is my impression.

Q. Have you any recollection that he was there on the 14th or 15th?

A. I have an impression that he was there on the 15th, and that is what gave me—

Q. Is there anything in your memory to show he was there on the 14th?  
A. Nothing more than the fact that I was writing these letters to Mr. Eaton for the purpose of getting this case settled.

Q. Do you know what time the Erie train then left New York?

A. I do not.

Q. Have you known anything of him since the settlement of that suit?

A. O yes, sir.

By Mr. PIERREPONT:

Q. You have been asked as to whether you parted with good feelings. When did he last call to see you?

A. Last Sunday morning he called to see me at my house in 18 Clinton Place; and yesterday he called at my office at one o'clock.

WILLIAM ELMER SWORN and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In New York.

Q. Do you know Dr. Bissell?

A. I do.

Q. Do you know his general reputation, among the people who know him, for truth?

A. I know what they say of him.

Q. Is his reputation, from what they say of him, good or bad?

A. Bad.

Q. What degree of bad?

A. They talk very badly about him.

Cross-examined by Mr. BRADLEY:

Q. Do they talk about his being a common liar?

A. Have heard such talk.

Q. That is commonly and generally said about him?

A. I do not know about the "generally." I have heard several—

Q. I want to know what is generally said?

A. So far as I have heard his character spoken of for truth it is bad. I have heard, perhaps, a dozen or more speak of him.

Q. When?

A. Within the last two years. I do not know exactly the number.

By Mr. PIERREPONT:

Q. Did you ever hear but one opinion about him?

A. No, sir.

GEORGE W. McMAHON sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. Communipau, New Jersey.

Q. Where did you live formerly?

A. In New York city.

Q. What were you doing in New York city?

A. I was a cattle broker.

- Q. And what other occupation had you ?  
 A. I had a saloon with Dr. Bissell at 1160 Broadway.  
 Q. Dr. Bissell and you had it together ?  
 A. Yes, sir ; and also Mr. Hiram Faulkner.  
 Q. Do you know the Doctor pretty well ?  
 A. I do.  
 Q. You were in business with him ?  
 A. I was.  
 Q. Do you know what kind of a character he acquired generally ?  
 A. Bad.  
 Q. Did you ever hear of any worse ?  
 A. No, sir.

FRANCIS H. ARCHAMBEAU sworn and examined.

- Q. Where do you reside ?  
 A. In Montreal, Canada.  
 Q. How long have you lived in Montreal ?  
 A. Since about eight or nine years.  
 Q. What is your occupation ?  
 A. I am an advocate.  
 Q. Did you know Mr. Nagle, the one who testified against Dr. McMillan ?  
 A. Yes, sir.  
 Q. Do you see him in court ?  
 A. Yes, sir.  
 Q. Did you have any conversation with him about his relation to this case ?  
 A. I had a private conversation with Mr. Nagle. I do not know that I am bound to state here what he told me under those circumstances. I would not like to do it.

Mr. BRADLEY said they were perfectly willing, as was also Mr. Nagle.

WITNESS. Well, if Mr. Nagle is willing, I will state it. I met Mr. Nagle the same morning of the day that he left Montreal to come here. He told me that he was coming here as a witness. He remarked that he intended to bring on with him quite a number of witnesses, and that he had a certain amount of money for his costs and the costs of the other witnesses.

Q. How much ?

A. I understood at the time that he first received a draft, I think, for a thousand or two thousand dollars, and the amount not being sufficient, he got another one to cover the expense of bringing on the witnesses.

Q. Do you know St. Marie ?

A. I do. He was studying law with my brother and myself at the same time.

Q. Do you know his reputation, as a man of truth, among those with whom he lived ?

A. I never knew anything wrong against St. Marie.

Q. You know his reputation ?

A. His reputation was always good.

By Mr. BRADLEY :

Q. You say you know Mr. Nagle very well ?

A. Pretty well.

Q. What is his reputation for truth ?

The DISTRICT ATTORNEY. We have not asked any thing about Mr. Nagle's reputation.

ASSISTANT DISTRICT ATTORNEY. We waive any objection ; you can ask the question if you desire.

Mr. BRADLEY. Never mind, gentlemen, you objected ; that's enough.

T. J. LOGAN sworn and examined.

By Mr. PIERREPONT :

Q. You are a member of the Washington bar ?

A. Yes, sir.

Q. Did any circumstances happen on the night of the assassination of the President that led you to observe the moon at its rising ?

A. Yes, sir.

Q. State what the condition of the night was as to its being bright or otherwise, between the hours of 10 and 11.

A. I did not notice the condition of the moon very particularly, but the condition of the night I did. About 10 o'clock I noticed the moon rising.

Mr. PIERREPONT, good-humoredly. I guess that is right.

WITNESS. Previous to that I noticed the weather very particularly.

Q. How was it ?

A. Remarkably clear.

Q. How was it after an hour ?

A. About an hour after the moon rose it was exceedingly clear, though I was not up at that time.

Cross-examined by Mr. BRADLEY :

Q. Did you see the man in the moon ? [Laughter.]

A. No, I did not. I did not know there was a man there, Mr. Bradley.

Q. Was it a full moon ?

A. No, sir, not full.

Q. How far from it ?

A. About two days after full moon.

Q. Could you see the lights and shadows in the moon, if there is not a man there ?

A. I did not come here to be quizzed about nonsense ; I do not think there is a man in it.

Mr. BRADLEY. I think all this matter about the moon is nonsense. It seems to be mere moonshine.

WITNESS. It seems to be your policy to make moonshine out of this whole matter.

Mr. BRADLEY explained to the witness that he meant no disrespect, but had said what he had in a good-humored sort of a way, to show how he viewed all the evidence on that subject.

WILLIAM H. BRAYTON sworn and examined.

Q. Where do you reside ?

A. In New York.

Q. Do you know Dr. Bissell ?

A. I do.

Q. How long have you known him ?

A. A little over a year.

Q. Have you been thrown among people with whom he associates ?

A. I have.

Q. Do you know his general reputation for truth among them ?

A. I have heard that question a great deal spoken of.

Q. What is his character for truth, good or bad ?

A. Very bad, so far as I have heard.

Q. What is your business ?

A. Produce commission merchant.

Q. Where do you live ?

A. 263 West Fortieth street.



Q. In what way have you known Bissell? Have you been connected with him in business?

A. I have had business transactions with him, and my brother was a partner of his in the drug business for a short time; or, I would say, a partner of his wife.

Q. Within a year past.

A. Yes, sir.

Q. You have heard him considerably spoken of?

A. Yes, sir.

Q. And always bad?

A. Yes, sir.

C. A. TINKER sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation in 1865, and what is it now?

A. Telegrapher.

Q. In this city?

A. Yes, sir.

Q. State whether on the 13th, 14th, 15th, and 16th of April, 1865, there was telegraphic communication between Elmira and Washington.

A. There was.

Cross-examined by Mr. BRADLEY:

Q. Have you seen any telegram?

A. Yes, sir.

Q. You know that communication was open?

A. Yes, sir.

Q. What office are you in?

A. In the War Department.

Q. Was that in common use?

A. Yes, sir; we had been working the wires just as they are worked by the commercial companies.

Q. Would a telegram sent to me come to the War Department.

A. No, sir; it would come to the office down town.

Q. All despatches for the government officers came directly from Elmira to the War Department, but not private business?

A. No, sir.

MOREL MAREAN sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation in 1865, and what is it now?

A. I was a telegraph operator at that time and am now.

Q. In what office were you a telegraph operator in April, 1865?

A. In the general office of the American company.

Q. Will you state whether on the 13th, 14th, and 15th, along there, in April, 1865, there was telegraphic communication between Elmira and Washington by telegraph?

A. There was.

By Mr. BRADLEY:

Q. Are the records still preserved.

A. Yes, sir.

JOHN GEORGE sworn and examined.

By Mr. PIERREPONT.

Q. What was your occupation on the morning of the 14th of April, 1865?

A. I was through baggage master between Washington and New York.

Q. When did you leave Washington?

A. I left Washington on Saturday morning the 15th.

Q. At what hour.

A. At 7.30.

Q. Where were you delayed?

A. At the Relay.

Q. How long?

A. That I am not able to state exactly, but we arrived in Baltimore at 2.40.

Q. When did you leave?

A. We left the President's street depot at 6.40.

Q. Do you recollect when you reached New York?

A. About 5 o'clock. It might have been a few minutes after.

Q. Sunday morning?

A. Yes, sir.

Q. How long behind time were you?

A. It might have been a few minutes.

Q. What time should you have been in New York?

A. At 5½ in the evening.

Q. There was a difference then of twelve hours; you were twelve hours late;

A. Yes, sir.

Mr. BRADLEY said he did not understand what this testimony was to rebut; and unless it was made to appear it was to rebut something they had offered, he would move to strike it out.

Mr. PIERREPONT said it would tend to show Surratt was not in Elmira on the 14th, if Dr. Bissell did say so.

Mr. BRADLEY said that if Dr. Bissell was the most unmitigated liar on earth this testimony was not rebuttal. It could not show that Surratt was not in Elmira on April 14th.

Mr. PIERREPONT said that he never heard that it was to be assumed that an alibi had been attempted to be proven; but when an alibi was attempted it was proper to prove that he was not at the place set up. There was a legal right to prove anything that went to contradict the alibi set up.

Mr. BRADLEY said he desired to read some authorities on the subject, and, while the books were being procured, the court at 12.15 took a recess until 12.45.

Upon reassembling,

Mr. MERRICK moved to strike out the testimony just given by the witness John George, as also the testimony in regard to the telegrams, as such was not in reply to any part of the case made by the defence. In support of the motion, he said that as he understood it, this, and a good deal more evidence that had been given, was not in rebuttal, but was in regard to matters about which the government could have given testimony in the first instance, and was therefore cumulative and corroborative. As to the proof with regard to whether the various telegraph offices were in operation or not, he knew nothing that the defence had given in evidence to which it was a reply. It could not well be in reply to anything except evidence relating to telegrams, and they had given no proof whatever in reference to such. If it was intended as preliminary evidence to support McMillan's testimony, which was to the effect that Surratt had telegraphed Booth from Elmira, it was not competent, for it should have been given in the examination in chief, and a part of the case in chief, being corroborative of the fact proved by the government themselves, or rather attempted to be proved, for he was not willing to acknowledge that what Dr. McMillan said was by any manner of means proved. They further attempted to show the time of the running of the trains from here to New York. What in the evidence of the defence did that rebut? What had the defence proved in regard to the running of these trains? Not one word. As the counsel intimated, and the intimation

conforms to his (Mr. Merrick's) conjecture, it was their purpose to show that Surratt was at some time or other on that part of the road between this city and Montreal. If that was their purpose, then, again, would he say that it was not in reply and even if in one aspect it should appear to be, in another it was cumulative and corroborative, because they had attempted in their examination in chief to put him on the other end of that same route. Could the government in making out their case attempt, as they first said in their opening, they would, follow the prisoner from the place of the commission of the alleged offence to the place of his refuge; take him up at the route nearest the place of his refuge and attempt to prove his presence on that route, and then, after having got through with their testimony in chief, come down to the other end of the route and attempt to prove him at that point. When the case was opened the counsel for the prosecution stated that they would follow the prisoner from Washington city to his place of refuge, and from there across the ocean, through France and Italy to Egypt. They did in their proof attempt to follow him from Italy to Egypt. They proved him to be in Italy; they first attempted to prove him to be in Canada, and then attempted to prove him to be on the route in the United States from New York to Montreal. Having done that, could they leave the other part of the route from Washington to New York untouched until they came to their rebutting proof? He submitted that that question was too plain for argument.

But they said that the defence had proved an alibi; and that having proved an alibi—having proved that the prisoner was in a certain place at a certain time—they might in rebuttal of that prove that he was in any other place at that time. There were two answers to that. In the first place, in their opening they stated that they anticipated an alibi; and that they intended to introduce proof to meet the anticipated proof, by showing where he was. In the second place, where an alibi was proved by a prisoner charged with the commission of a crime, it was not in rebuttal to that alibi to prove that the prisoner was at the place at the time the crime was alleged to have been committed, or was anywhere else at the time of the alleged crime. It was not in reply, for the reason that the proof that he was in the place where the crime was committed at the time of its commission was essential to the proof of his guilt. Unless he was present when the crime was committed, he could not have committed the crime, whether it be murder or larceny. If it were a crime which it was necessary that a man should commit himself either by actual or constructive presence, the proof of guilt or constructive presence was essential proof in chief to establish the charge alleged in the indictment. Counsel for the prosecution felt and recognized this principle, for they had spent much time and much labor with bad instruments in attempting to prove that the prisoner was here. But they might say that even although they could not prove he was at the place of the crime, because his presence at such place, being essential in order to establish his guilt, must be given in the testimony in chief; yet, they might prove him anywhere else than where the defence proved him, because that would disprove the alibi. He would answer, that that would also disprove their case, and they could not disprove their own case. They might say they could not prove he was in Washington, because that proof was incumbent upon them in chief, but the defence having proved he was in Elmira, they could prove that he was in New York, which rebutted the proof of the defence that he was in Elmira. Therefore it was legitimate in rebuttal, but, unfortunately for them, it was also legitimately in defeat of the fact that he was here; whether he was in Elmira, New York, or elsewhere, at the time of the commission of this offence, he was in a position where he could not have participated, and where there could be no verdict of guilty on this indictment by any possible rule of law; whether the defence proved it or the government proved it, if the fact was proved it stood, and the acquittal followed



as an essential consequence. Mr. Merrick then cited the case of *Rex vs. Hilditch*, in 5th Carrington and Paine, in support of the views he had advanced; and also a decision of the late Judge Crawford, of the criminal court of the District of Columbia.

Mr. PIERREPONT said he did not intend to spend a great deal of time in arguing the general propositions of this case until the evidence was closed, as it was only when the evidence was in that they knew on what they were arguing. He had observed that there had been an attempt on the part of the defence from the commencement to draw them into a general discussion—at least it seemed so to him. He would repeat that it appeared to him that the only fit time for that was when the evidence was all in. For that reason he would confine himself to the question before the court, to wit: whether this evidence of the baggage-master was properly in. The counsel held that no evidence could be now given by the government which tended to confirm the original case. If he laid that down as a broad and universal proposition, and undertook to cite any English authority in support of it, he would only say in reply that there was no such thing in law, in reason, or common sense. It would indeed be a very nice proposition of law to be presented in a court of justice, that if the government had evidence which was otherwise legitimate, it would not be legitimate if it tended to confirm the original case.

There was always a great deal of evidence in rebuttal which did tend to confirm the original case, and to say that no such evidence, if otherwise legitimate, could come in for the reason stated, would be simply nonsensical.

There might be evidence offered in rebuttal which was illegitimate and which tended to confirm the original case. That evidence, of course, could not properly be received, but the question always was whether the evidence offered was legitimate evidence in rebuttal. The test of that, however, was whether it tended to confirm the original case. It might have a tendency in that direction and it might not, but the fact that it did had no bearing upon it one way or the other.

His learned friend had spoken of the time as though this affair were all confined to one single day. He stated that the government had proposed and did offer evidence to the effect that on the 14th, Surratt was in Washington, and now they could not offer any evidence to show that he was anywhere else on the 15th and 16th, for the reason, as he understood him, that they had offered evidence that he was in Washington on the 14th. He did not understand that proposition, and he did not believe his learned friend would hold to it as a sound one when he came to reflect upon it. The government had not offered any evidence in rebuttal to show that he was in Washington on the 14th, and did not propose to offer any. They had already abundance of proof on that point. The defence had undertaken to show that the prisoner was in Elmira on the 15th, and they were proposing to show that he was somewhere else on the 15th. They had never claimed that he was in Washington on the 15th. Their purpose in introducing this testimony was to show that he was not in Elmira on the 15th. Very swiftly after the evidence was in and after it was shown by this witness that this train was delayed, did the learned counsel see the bearing of it. His learned friend, (Mr. Bradley,) who had been talking to them quite eloquently before in relation to imaginary chains, began to discover that the iron chain was ready to close its links; and then he was startled. He would find those links would close, and that that chain would bind the prisoner from the hour he left Elmira until he came to Washington, and tie him again in Montreal, Burlington, and St. Albans. That is what the counsel was trying to get rid of. He never feared the imaginary chain, but he did not wish the links of this iron chain to close around the prisoner.

He would submit to the court that anything that tended to show that the prisoner was not in Elmira on the 15th, that was legitimate in itself was to be



considered as rebutting evidence, and proper to be given. The question as to whether it did or not tend to confirm the original case of the government had nothing whatever to do with it.

A word with regard to the telegrams. The counsel had repeatedly, since the commencement of the case, risen and insisted that the government must prove the prisoner to have been in Washington at the time of the commission of the crime. He had throughout treated this case as though it were the ordinary case of a few men who got together and murdered a farmer down here in the country for the purpose of stealing fifty dollars out of his chest. He fancied that when this case came to be presented and argued, the counsel would find it something widely different. The defence had undertaken to prove that this prisoner was in Elmira on the 13th, and, as they tried to show, was there for some purpose connected with rebel prisoners there confined; not only there on the 13th, where he in fact was, but there on the 14th, when he was not. If he (Mr. Pierrepont) did not demonstrate, when he came to review the evidence in the case as now in, not only that he was not in Elmira, but that he was in the city of Washington on the 14th, and nowhere else, he would pledge himself never to try another case as long as he lived.

Mr. BRADLEY said he would take that pledge.

The defence had offered evidence for the purpose of showing that he was in Elmira. Suppose he was there. Concede for the moment the fact that he was in Elmira; that he was one of the conspirators engaged in overthrowing this government, and in the fell pursuit of that plan; that he was in Elmira for the purpose of trying to release the Union prisoners, and as a part of the same damned scheme to enthrone treason and spread murder and anarchy over this land; could not they show the fact that he could communicate by telegraph between Elmira and Washington? That is what he offered that evidence for, and it was legitimate evidence.

The DISTRICT ATTORNEY said he was not prepared to conceive the proposition of law that offering to prove a relevant fact during the examination in chief precludes the proving of the fact, by way of rebutting testimony. He conceded the fact he was not permitted by rebutting testimony to offer a fact in evidence essential to the case, and which, therefore, should have been offered during the examination in chief. If the prosecution offered in evidence a fact relevant, but not essential, they might offer rebutting testimony, if necessary, to meet the case made by the defence. It was assumed by the learned counsel for the prisoner that it was essential to the prosecution to prove the presence of the prisoner in Washington on the 14th, when the murder was committed. That question he did not propose now to discuss. It was true the government did, as he understood, show conclusively, by thirteen witnesses, that the prisoner was present in the city of Washington on the 13th. Whether that was essential was an entirely different thing. That it was relevant and most important, a material fact, tending to show the co-operation of the prisoner in this conspiracy, with which he had been previously connected, and which resulted in the death of the President, there could be no question. His honor would observe that it was not now proposed to give any evidence in fact relating to what occurred on the 14th of April, 1865. The testimony offered was referring to what occurred subsequent to the assassination. The defence had offered evidence tending to show that the prisoner was in Elmira on the 15th of April, and had endeavored to show that, conceding, as the government did, he was there on the 13th, it was impossible for him to be here on the 14th, and impossible that he could have escaped from the city of Washington on the 15th. Surely, if it was essential to the prosecution, which he did not admit, to prove the presence of the prisoner in Washington on the 14th, it was no part of their original case to show where he was on the 15th, and evidence on that point in rebuttal was now proper.

Mr. BRADLEY, sr., said he had listened with great respect to what fell from

his learned brothers on the other side, as he always did, in hopes of ascertaining what it was they were after. The government assumed to show that the prisoner at the bar was in Washington on the 14th of April, 1865. How far they had given any credible evidence sustaining that position was a question for the jury, and which he did not then mean to discuss. They undertook to show that he fled on the 15th. That was evidence in chief.

Mr. PIERREPONT said yes, but not essential.

Mr. BRADLEY remarked that the question was whether it was to become essential afterwards. They had attempted to show that he was here on the 14th participating in this transaction; that he fled on the 15th. They had offered evidence to show that he was in Montreal on the 18th; that he was at the Burlington depot on the night of the 17th, or morning of the 18th. The prosecution had therefore given in chief testimony of the very facts they now offered to prove. In reply to that the defence had offered testimony to show that, in point of fact, all this story was false; that the prisoner was not here on the night of the 14th; that he was, in point of fact, in Elmira on the night of the 14th; that he had not fled on the 15th; that he was in Elmira on the 15th. The learned counsel (Mr. Pierrepont) had said that the prisoner was there on a bad mission; and now upon the trial of the man for an alleged murder, he was to be put upon his trial, not for that, but for a conspiracy to overthrow the government. The proposition was a monstrous one, that shocked our sense of right and justice. The prisoner was there on trial for murder, or not on trial at all. When the government comes into this court seeking to take the life of a man upon false pretences, it was time for every honest man to speak out.

When the government had attempted to show in chief that the prisoner left here on the 15th, they had exhausted their proof; and they were bound now by every consideration of justice, by every rule of evidence, by everything which can bind a government to put the citizen on his guard against false accusations, to introduce their evidence in chief, and not to wait to introduce it in rebuttal of evidence offered by the defence to meet the case made in chief.

Mr. Bradley referred to the case already cited by Mr. Merrick, in which Judge Grier said it was infamous to renege, holding a trump back in their own hands in order to take the trick; and if it was so infamous at cards, how much more infamous must it be when used to take away the life of a man. He would have nothing to say in defence of the prisoner if he believed he was guilty; he would not touch him; would not look at him; would not speak for him or open his mouth in his defence. But he had no idea of having his life sacrificed because of imputed guilt. Counsel undertook to say that the prisoner was at Elmira in regard to rebel prisoners there, and what he was there for. The defence had endeavored to show, they had offered to show, how he came to be there, how long he was there, and what he did while he was there. At the instance of the prosecution all that evidence had been ruled out. And now was it for them to make that a handle of an accusation against him? Counsel had referred to the effort of his colleague (Mr. Merrick) to bring about a general battle, while Mr. Pierrepont was engaged in polite skirmishing. At the opening of this case the prisoner was denounced beforehand as the chief man in the assassination; and they denounced as a coward a defenceless man tied in chains, like a little boy pointing at a caged lion, and saying, "Roar away." Counsel had referred contemptuously to the remark of his colleague, Mr. Merrick, about the "magic chain," and to "the chain of iron." He then told counsel that he would have to forge more links, and counsel had so far failed to do it. Mr. Bradley remarked that if he was warm in what he said, he had a right to be so; he had a man's life in his hands not proved to be guilty, and he thought, by admission of counsel here, not guilty. When the counsel admitted that the prisoner was in Elmira on the 13th, he removed the tomahawk and scalping-knives and gave the prisoner a shield for his defence. He did not

mean that the blood of an innocent man should rest on his hands for want of a bold, animated defence.

Looking further into the question, Mr. Bradley asked whether the gentleman made the proposition by any authority. What was the proposition? It was so plain that every intelligent mind, not darkened by prejudice so strong as to shut out truth and reason, could not fail to see it. The government had offered proof that Surratt left here on the morning of the 15th, and they could not deny it. And now, when that proposition had been repelled by the defence, they seek to fortify themselves by some other evidence. What was the evidence now sought to be introduced, and which was objected to? First, that there was telegraphic communication between Elmira and Washington at that time. Had not the government offered evidence in chief upon that point by the revelations of McMillan, that Surratt had told him he had telegraphed Booth from Elmira?

The ASSISTANT DISTRICT ATTORNEY. To New York.

Mr. BRADLEY. To New York. But where is the telegraph operator? Where are the records of the office? What was the object of undertaking to show now that the telegraph was in operation from Elmira here? What evidence was it to rebut? The learned counsel did not inform him what it was to rebut. And he now called upon any one of the three gentlemen, counsel for the prosecution, or any one of their coadjutors, to state what evidence had been offered which was to be rebutted by proof that the telegraph was open at that time. He waited while the testimony was being given in, supposing it was to be followed by some fact to connect it with this case; that was the reason he did not object at that time.

The learned counsel had remarked that the defence insisted that they must prove the prisoner in Washington on the 14th. Suppose they did insist on that; had it anything to do with the evidence they adopted? They had insisted in argument; but could evidence be brought to rebut the argument when no evidence had been offered on that point which could be rebutted? The question had been decided over and over again that rebutting evidence must be as to some new fact brought out in the defence, and which evidence would not have been evidence in chief.

Mr. PIERREPONT. It might or it might not be.

Mr. BRADLEY repeated that it could not be offered as rebutting evidence, if it could have been evidence in chief. There was no distinction between evidence in chief and rebutting evidence upon the ground taken by the counsel. The test must be, was that evidence admissible as evidence in chief, or was it contradictory of the defence set up?

Mr. PIERREPONT said it might be both.

Mr. BRADLEY. Not both, so far as the authority goes, and so far as any reason he had heard for it, less. The counsel had spoken of the prisoner as attempting to overturn the government. Was this a trial for treason? He agreed that it was a great crime that had been committed, a monstrous crime—that nothing but a madman could have committed it. But was it treason? If it was, then the prisoner should be indicted for treason, and tried by the laws governing treason not by the laws governing cases of homicide. If it was not treason, but a case of murder of a most aggravated character, he still asked what this telegraph communication had to do with it in reply to any evidence brought by the defence. The learned counsel admitted that the prisoner was certainly here on the 13th and asserted that he was in the city of Washington on the 14th. He conceded that the prisoner was in Elmira on the 13th, and was there as a conspirator engaged in trying to overthrow this government, and set the rebel prisoners free—engaged in treason and rebellion. Counsel had offered to demonstrate from what had already been shown in this case that the prisoner was here on the 14th. But he (Mr. Bradley) challenged him to it. He proposed to close



the case here, and now, without surrebuttal proof, and challenge the counsel for the prosecution to show the iron chain which linked the prisoner here in the city of Washington, and that he came here from Elmira. He defied him in the strongest terms that tongue could utter. He defied human ingenuity to weld a chain out of the proof they had that would bring the prisoner from Elmira to this city on the morning of the 14th of April. He defied them to weld the chain that could prove him here at all on the 14th of April, unless there had been some new discoveries in arithmetic. He defied human ingenuity to bring that man from Elmira here after ten o'clock, after eight o'clock, after two o'clock, or any hour on the 13th, from Elmira. And he defied them to show by their evidence that he could have been in Elmira in time and have taken any of the trains they had spoken of. They had started him at three o'clock from Montreal, and he defied them to forge any chain which would bring the prisoner to Elmira by ten o'clock or half-past ten o'clock on the morning of the 13th, or before eight o'clock in the evening at the earliest hour. But what had the telegraph to do with all this? Was the telegraph to be used to forge that chain? Counsel had remarked that no reason nor law authorized the conclusion he sought to draw. He wanted to know upon what reason, sense, or law this telegraph was to be used unless it was to be shown that the prisoner came here upon the telegraph, for they could get him here no other way.

Mr. Bradley referred in support of his position to the King against Hilditch and others, 5th Carrington and Payne, 299; and the case of the King against Stimpson, 2d Carrington and Payne, 415, and the case of the United States against Hanway, 3d Wallace, jr., page 159, and the case of the United States against Gardiner, 3d Crawford's Opinions, page 62.

Mr. PIERREPONT said the witnesses by whom what he offered to prove was expected to be sustained were not here, but would be here from New York on the morning train. As the counsel, however, had challenged the prosecution to close the case here, they accepted the challenge.

Mr. BRADLEY remarked, then the case was closed, to which Mr. Pierrepont assented.

Mr. JOSEPH H. BRADLEY, Jr., said he desired at this point to make a statement before the court, not in evidence, but in reference to what he deemed as a most unjustifiable and most unprofessional imputation made upon Mr. S. B. Nagle. Gentlemen were well aware that he (Mr. Bradley) went to Canada for the purpose of procuring witnesses in this case, and he now stated to the court in the presence of the gentlemen, and trusted they would recollect it here, that he found it necessary to employ aid there for the purpose of discharging the duty devolving upon him in this business. He consulted for that purpose a gentleman of high standing and reputation in the community, Mr. S. B. Nagle, and found that he was an important witness in the case; that he was a professional man; that he was a person qualified in every respect to serve his purpose, namely, to procure the attendance of the witnesses from Canada. These witnesses, having no interest in this matter, required to be paid in advance for their attendance fees at this court, and that they should be paid in gold, the only currency recognized in that province. And not only their attendance fees but their personal expenses he made a necessary provision for by depositing with a broker in Montreal the money that he supposed would be necessary to start them on their mission to Washington, and he had supplied from time to time such funds as he was advised were necessary for that purpose. His honor was well aware of the great loss in changing currency into gold. Since then he had recognized the drafts that had been made upon him for the amount necessary for this purpose. Under these circumstances he trusted that the character of a gentleman coming from a foreign country would not be impugned as it had been by the counsel for the government.



Mr. BRADLEY, Sr., remarked that these funds did not come out of the contributions referred to, but in great part out of the pockets of the counsel themselves.

Mr. MERRICK said he was sorry to confirm that fact.

Mr. BRADLEY, Sr., proposed that the case now be given to the jury without argument on the other side.

The COURT inquired what was to be done with the question pending with relation to the admissibility of evidence.

Mr. MERRICK also called attention to several other motions in relation to other evidence which were still pending.

Mr. BRADLEY said he was willing to withdraw all these motions, and allow all the evidence referred to to go before the jury, if the case was now to be given to them without argument.

The DISTRICT ATTORNEY, while desirous himself to be relieved from the necessity of arguing the case, said that he would not be doing justice to the jury or discharging his duty to the government if he allowed a case of this importance to go to the jury without argument.

Mr. MERRICK inquired what was the rule in relation to the number of speeches. He understood it to be that not more than two speeches on a side was to be allowed.

The DISTRICT ATTORNEY said that had been the rule.

Mr. MERRICK then inquired whether, if after the opening argument on the part of the prosecution, the defence should decline to reply, that would be an end of the argument, and the case then be sent to the jury.

The COURT said the general rule was that the prosecution had the opening and the close.

Mr. BRADLEY remarked that if the defence made no argument the opening argument on the part of the government would be the opening and the close.

Mr. PIERREPONT said the difficulty about that was, that the District Attorney and himself had made a division of the case in preparation to present it to the jury, and that it would hardly be practicable for one counsel to go through the whole of it.

Mr. BRADLEY said it would be exceedingly unfair to the defence if only a part of the case was to be presented in opening.

Mr. MERRICK added that, if such were to be the practice, the defence would have the right to close.

Mr. PIERREPONT thought no such law as that was ever heard of; counsel for the government might reserve all the case until the close, if they saw fit.

The COURT said, in relation to the evidence which had just been argued by the counsel, if the case was to be considered as closed, it was perhaps immaterial whether any decision was given upon it or not, as no evidence had so far been offered to connect it with the case. If, however, a decision was required, as the question presented was of great importance, he would take time to consider it, and give his decision to-morrow morning.

Mr. BRADLEY asked what was the decision of the court in reference to the other question raised as to the number of speeches to be made in summing up. The counsel upon the other side had virtually failed to accept the challenge by insisting upon argument.

The COURT said, then the case was not closed. He understood the challenge to have been made to close the testimony on both sides without any other condition.

Mr. PIERREPONT said he certainly so accepted it.

Mr. BRADLEY replied that his proposition was a distinct one to close the evidence, and allow Mr. Pierrepont to make out his case, reserving a reply if deemed necessary, but not to include four speeches.

After further discussion, the court directed the counsel for the prosecution to proceed with their evidence.

W. M. ROBERTS sworn and examined.

By Mr. PIERREPONT :

Q. Were you in Elmira in the month of May or June last ?

A. In June I was.

Q. About what time in June last were you there ?

A. I got to Elmira on the 1st of June.

Q. Did you see Joseph Carroll at the hotel there ?

A. Yes, sir.

Q. Did you have a conversation with him in reference to the prisoner ?

Mr. MERRICK asked that the testimony proposed to contradict should be designated.

Q. Did you go with Mr. Knapp, the deputy marshal, to the store in which Mr. Carroll was engaged ?

A. I went with Mr. John Knapp, the city marshal, to the store, where I saw him at work.

Q. Did you tell Deputy Marshal Knapp that the man who came into the store was, in your opinion, a tailor ?

(Question objected to and withdrawn.)

Q. Will you state whether you were present there with Mr. Knapp ?

(Question objected to. Objection sustained.)

Q. Now state what he said on that occasion in your hearing.

(Question objected to by Mr. Bradley, and withdrawn.)

Q. Did he say it was on the 13th or 14th ?

A. He did not mention any date.

Q. Now state what he did say ?

(Question objected to by Mr. Bradley, and withdrawn.)

Q. What did he say as to dates ?

(Question objected to and withdrawn.)

Q. Did he tell you whether it was on the 13th ?

A. He was not talking to me ; he was talking to Mr. Knapp.

Q. Did he say that to Mr. Knapp in your presence ?

A. I did not hear anything about the 13th mentioned.

Q. Did he say whether he could give the dates or not ?

(Question objected to by Mr. Merrick and withdrawn.)

Q. Did he say he could not identify the prisoner ?

A. There was no conversation of the kind.

Q. Did he state these two dates—the 13th and 14th ?

(Question objected to as having been answered. Objection overruled. The witness could be asked categorically as to the two dates. While he had spoken of them together, he had not named them separately.)

Q. Did he say that he saw him on the 13th or 14th ?

A. He said that Mr. Ufford was in New York ; that was the way he got at it.

Q. My question is, did he say the 13th or 14th ; that he saw him on those days ?

A. When Mr. Knapp asked him about it, he got it out in this way—

Q. My question is, did he say he saw him on the 13th or 14th ?

A. I do not think he made use of any date.

JOHN WALKER BROWNING, clerk in the office of the commissary of prisoners, sworn and examined.

By Mr. PIERREPONT :

Q. Do you know whether, as late as the 14th of April, 1865, any confederate prisoners were left at Elmira ?

(Question objected to by Mr. Merrick. The court had already ruled upon

that description of evidence. Objection sustained. The evidence of General Lee had been rejected at the instance of the prosecution, and the prosecution could not now, of course, introduce evidence upon the same subject )

Mr. PIERREPONT said his offer was to show that 5,025 rebel prisoners were confined at Elmira on the 14th and 15th of April, 1865. He understood the court to rule it out.

MARGARET A. FITHIAN—residence, corner of Tenth and C streets, Washington, D. C.—sworn and examined.

By the DISTRICT ATTORNEY :

Q. Did you formerly reside in the city of Philadelphia ?

A. Yes, sir.

Q. What was your former husband's name ?

A. Alderman Joseph Sherman.

Q. I ask you if you knew John Lee in Philadelphia, and whether, as an officer, your husband transacted business with him ?

A. Yes, sir.

Q. Do you know his reputation among the people there for truth and veracity ? if so, state whether it was good or bad.

A. I knew his reputation as an officer with my husband.

(The COURT explained that the general reputation was what was called for.)

A. It was good at the time he was an officer under my husband.

JOHN E. HATFIELD—residence 339 Tenth street, Washington, D. C.—sworn and examined.

By the DISTRICT ATTORNEY :

Q. How long have you lived in Washington ?

A. Since 1863.

Q. What is your occupation ?

A. I am doing nothing now.

Q. Did you formerly live in Philadelphia ?

A. Yes, sir ; for a number of years.

Q. Did you know John Lee, a witness who was examined here in this case ?

A. Yes.

Q. How long did you know him ?

A. About seventeen or eighteen years.

Q. Did you know his general reputation among the people there for truth and veracity ?

A. To my knowledge I have never heard it questioned.

Cross-examined by Mr. BRADLEY :

Q. Did you know him when he was here as one of Baker's detectives ?

A. I met with him frequently.

Q. Did you know the officers and men with whom he associated—officers under Colonel O'Beirne ?

A. I have seen him I know with some detectives. I do not know their names.

WILLIAM PARKER, clerk in the Treasury department—residence, corner of Seventh and F streets, Washington, D. C.—sworn and examined.

By the DISTRICT ATTORNEY :

Q. Where did you formerly reside ?

A. In Philadelphia.

Q. Did you know John Lee, a witness who was examined in this trial, who was formerly a magistrate in Philadelphia ?

A. Yes, sir, I did.

Q. Did you know his reputation among the people there for truth and veracity? If so, state whether it was good or bad?

A. I never heard it questioned.

Q. How long have you known him?

A. Since I was a little boy.

Cross-examined by Mr. BRADLEY :

Q. Did you know him when he was one of Baker's detectives and under Colonel O'Beirne in this city?

A. No, sir; I do not know that I did.

WILLIAM F. PARKER, residence—Philadelphia—sworn and examined.

By the DISTRICT ATTORNEY :

Q. What is your business?

A. I was in public business twenty odd years at the corner of Sixth and Chestnut streets. I kept a restaurant.

Q. State whether you knew John Lee, a witness who was examined here.

A. I knew him as an officer in Philadelphia when I was in public business.

Q. How long?

A. The number of years I cannot tell—the exact number.

Q. Did you know his reputation for truth and veracity there?

A. I never heard it questioned.

Cross-examined by Mr. BRADLEY :

Q. Did you know him when he was a detective officer in the service, here at Washington?

A. No, sir.

The court took a recess until to-morrow at 10 o'clock a. m.

FRIDAY, July 26, 1867.

The court met at 10 o'clock a. m.

The COURT. Before we took a recess yesterday, witnesses were examined by the counsel for the prosecution to prove, in reply to the testimony offered by the defence, that the telegraph line between Washington and Elmira, New York, was in good working order, and that communications were passed to and fro between these two points on the 12th, 13th, 14th and 15th of April, 1865, and witnesses were also examined who testified as to the running of the trains between Washington and New York on the 15th and 16th of April, 1865. After the evidence had been given by the witnesses, the counsel for the defence moved that it be stricken out, upon the ground that it was not responsive to the testimony offered by the defence to establish an alibi on the part of the prisoner. In support of their motion, the counsel for the prisoner contend that the rule by which evidence offered in reply is to be admitted or rejected is that no evidence which might have been addressed originally in support or confirmation of the charge laid in the indictment can be received by the court as evidence in reply, and that the only evidence which can be given in reply is that which goes to cut down the case on the part of the defence, without being in any way confirmatory of the case on the part of the prosecution. In support of that proposition, that King against Hilditch and others, 5th Carrington and Payne, 299, and the case of the King against Stimpson, 2d Carrington and Payne, 415, and the case of the United States against Hanway, 3d Wallace jr., 139; and the case of the United States against Gardiner, 3d Crawford's Opinions, page 62, were relied upon.

These are all *nisi prius* cases; the first is the case of the King against Stimpson, decided by Baron Garron, on the trial of an indictment for larceny, when the case for the crown had settled solely on the fact of recent possession of the stolen articles by the prisoner, who, by way of defence, called a witness



who proved that he had bought the property from a third person. In reply to this testimony for the defence, the counsel for the crown called said third person to prove not only that the witness did not buy the property of him, but that he saw the prisoner steal it. Baron Garron held that this last evidence was only admissible so far as it went to destroy the case set up on the part of the prisoner; that is to say, that the witness for the crown could only be allowed to testify that the prisoner did not buy the property of him, and could not be allowed to testify that he saw the prisoner steal it, because the latter evidence would be a confirmation of the original case, and that it was only allowable to give in reply evidence which goes to cut down the defence, without being a confirmation of the original case. The case of the King against Hilditch and others was decided by Justice Taunton upon the authority of the case of the King against Stimpson. As I said before, these are mere *nisi prius* decisions, and, able and learned as Baron Garron and Justice Taunton may have been, I undertake to say they are utterly without reason to support them. They are both summarily disposed of by Mr. Phillips, in his "Treatise on Evidence," (page 410,) in which, speaking of Baron Garron's decision, he says, "The stealing of the goods by the prisoner would be strong evidence that he did not buy them." So it may be remarked of the case decided by Justice Taunton, that the evidence offered in reply to the evidence of an alibi set up by the prisoner in that case, although it showed a confirmation of the original case, was certainly proof that the prisoners were not where the alibi attempted to place them.

I think that a moment's reflection will show that both these decisions, hurriedly made as they were, without argument or consideration, are inconsistent with sound reason, common sense and good policy. Certainly no person who has ever attempted the duties of a prosecuting attorney can fail to appreciate the unreasonableness of these decisions. It is utterly impossible for the prosecution before the trial to know the whereabouts of the accused for days or weeks before the commission of the act charged against him, or to anticipate the various contrivances which may be resorted to by way of defence; and it is unjust, as well as unwise in policy, to require that the prosecution should meet all these defensive contrivances, and have witnesses in attendance, at great expense, for that purpose, or for the purpose of proving the whereabouts of the prisoner for days together, in order to make out his original case, or else be deprived of his evidence in reply.

Let us take the case decided by Baron Garron as an example. The prosecution then having found the property in the recent possession of the prisoner, had a right, by the rules of law, to presume that he had stolen it, and had a right there to rest his case, and, in the absence of defensive proof, to demand a verdict of conviction. As theft is an offence almost always committed with the greatest secrecy, he might have summoned the entire vicinage without being able to find a witness who saw the act of larceny, and to say that when the prisoner had undertaken to show that he had bought the property of a third person, that that third person could not testify that he saw the prisoner steal the property, is a refinement of charitable construction wholly inconsistent with good sense and sound policy.

The decision of Justice Taunton is even more unreasonable. Then the prisoners were indicted for robbery committed in a particular locality. They attempted an alibi at such a distance from the place where the robbery was alleged to have been committed as to make it impossible for them to have been present there. Justice Taunton decides that the prosecution could not prove them to have been near the place of robbery, because that would tend to prove that they committed the robbery, by proving that they were near enough to have done it, thus driving the prosecution to admit the alibi and abandon the case, or disprove the particular alibi offered in defence, by showing them to have been at a place still further away from the scene of the robbery than the

attempted alibi, and thus making for the prisoners even a better defence than they made for themselves. In this case it was no part of the original case for the crown to show where the prisoners were at any other time than that at which the act of robbery was committed. The crown was not obliged, and it would have been improper that it should have attempted to go into the history of the prisoners one hour before the commission of the act.

The case in 2d Wallace, jr., is altogether different. There the government cut its case in two by proving the act committed by Hanney, which they alleged to be treason, and withholding the evidence of pre-concert on his part in proving their original case, and offered this evidence of pre-concert only by way of reply to the defendant's evidence, and Judges Grier and Kane rightly decided that the proof was inadmissible. The true rule on this subject may be inferred from the brief but sensible opinion of Judge Kane, who says: "The two elements of the crime are the act and the pre-concert. It is for the prosecution to make out both; and by making evidence of pre-concert they fail in their original case. The evidence which is now offered is merely to prove that pre-concert; it was an indispensable element of the original case. It seems to me, therefore, that it cannot be introduced as rebutting evidence."

In the case cited from Judge Crawford's Opinions, all that was decided there was that testimony introduced in reply should conform strictly to the defence, and meet what it had advanced; and he cites with favor the rule laid down by Phillips, that the evidence in reply must bear directly or indirectly upon the subject-matter of the defence, and ought not to consist of new matter unconnected with the defence, and not tending to control or dispute it. In my opinion, any evidence may be given in reply which tends to disprove the matter set up in defence, and which it was not necessary to have proved in making out the original case.

In the case which we are now trying it was not necessary to prove that the prisoner at the bar was ever in New York city, or elsewhere than in Washington; it was not necessary to prove that he came here from Elmira on the 13th or 14th. It was sufficient for the original case to prove that he was here participating in the deed of murder, and unnecessary to trace his history further, either in the past or future. When it is attempted to show that he was at Elmira or some other place in the State of New York at such a time as would have made it impossible for him to be present here at the time of the murder, common sense would certainly dictate to men of but ordinary intelligence and reflection that to prove him on the cars coming in this direction at such a time as would place him here on the night of the murder, is directly responsive to the matter set up in defence.

I shall, therefore, not strike out the evidence given as to the running of the trains between here and New York, as delivered yesterday, unless the counsel for the prosecution shall have failed in some way to connect the prisoner with one of those trains.

The testimony respecting the telegraphic communication between Elmira and Washington, whereby it was possible for the conspirators to communicate with the prisoner, stands upon the same footing, and will be stricken out if the prosecution shall fail to connect the prisoner with the conspiracy by that instrumentality.

Mr. BRADLEY remarked that he did not object to the evidence offered showing the means of railroad communication between Elmira and Washington. His only objection was to the evidence relating to telegraphic communication.

The COURT said he understood him to have objected to that.

Mr. BRADLEY desired an exception to be noted to the ruling of the court.

FRANKLIN FRASER, attorney at law, residence Montrose, Pa., sworn and examined.

By Mr. PIERREPONT :

Q. Have you been prosecuting attorney at Montrose ?

A. I have, sir.

Q. How long have you lived there ?

A. It is my native place.

Q. Do you know Dr. Bissell ?

A. I have very little personal acquaintance with him.

Q. Do you know his general reputation for truth and veracity ?

A. I know his reputation about Montrose for truth and veracity from 1856 about to 1862.

Q. From 1856 to 1862 or 1863 what was his reputation for truth and veracity about Montrose ?

A. It was bad.

Q. Was it very bad ?

A. He was not considered worthy of belief.

G. B. ELDRDRED, prothonotary of the court, residence Montrose, Pa., sworn and examined.

By Mr. PIERREPONT ;

Q. Do you know Dr. Augustus Bissell, who was examined here as a witness ?

A. I know Dr. Augustus Bissell.

Q. Do you know what his reputation in your region is as a man of truth ?

A. While he was living there for some five or six years in that vicinity I knew it.

Q. During that five or six years was his reputation good or bad ?

A. It was bad.

Q. Was it very bad ?

A. I think it was.

GORDON Z. DIMOCK, physician, residence Montrose, Pa., sworn and examined.

By Mr. PIERREPONT :

Q. Do you know Dr. Augustus Bissell ?

A. I knew him for five or six years, when he lived there.

Q. Will you tell us whether his reputation for truth and veracity was good or bad ?

A. It was a bad one.

C. CUSHMAN, cabinet-maker, residence Montrose, Pa., sworn and examined.

By Mr. PIERREPONT :

Q. How long have you lived in Montrose ?

A. Forty-four years.

Q. Do you know the reputation of Dr. Augustus Bissell during the five or six years he lived in your place for truth ?

A. Yes, sir.

Q. What was it—good or bad ?

A. It was bad.

Q. Was it very bad ?

A. Yes, sir.

J. W. COBB, physician, residence Montrose, Pa., sworn and examined.

By Mr. PIERREPONT :

Q. Do you know the reputation of Dr. Bissell, who formerly lived in Montrose, Pa., for truth and veracity ? If so, state whether it was good or bad.

A. It was bad.

Q. What degree of bad ?

A. Very bad for truth and veracity.

A. D. BUTTERFIELD, merchant, residence Montrose, Pa., sworn and examined.

By Mr. PIERREPONT :

Q. How long have you lived in Montrose ?

A. I was born there.

Q. Do you know the reputation there of Dr. Augustus Bissell ?

A. I do.

Q. Will you tell us whether it was good or bad ?

A. It was a bad one.

Q. Was it very bad ?

A. It was.

J. R. FLETCHER, livery stable keeper, residence Montrose, Pa., sworn and examined.

By Mr. PIERREPONT :

Q. How long have you lived in Montrose ?

A. Nine months.

Q. Do you know anything about the reputation of Dr. Augustus Bissell for truth there ?

A. I don't know much about it at Montrose. I knew him formerly, when he resided in Bradford county.

Q. Whereabouts ?

A. At Leraysville, Pike township.

Q. Were you raised there ?

A. Yes, sir.

Q. What reputation did he have for truth when he lived there ?

A. He had a very bad one.

Q. Was it very bad ?

A. It was very bad.

Cross-examined by Mr. BRADLEY :

Q. He had a pretty bad reputation, you say, for truth and veracity ? How long ago was that ?

A. When I first became acquainted with him ; it was in 1860.

Q. Did he live there then ?

A. Yes, sir ; I think he lived there in 1860 and 1861. He came there from Waverly, New York.

Q. He did not live in Montrose, then, from 1856 to 1862 ?

A. I think not ; never knew he lived in Montrose ; never saw him in Montrose.

Q. How long did he live at Leraysville ?

A. I think his family lived there about three years ; he was there only a bare of the time.

Mr. PIERREPONT proposed to place in evidence the Statutes at Large for 1865.

Mr. BRADLEY objected.

The COURT remarked that the court and jury could take judicial cognizance of any of the laws of the United States, and for that purpose they could be referred to in the arguments.

Mr. PIERREPONT said, that what he desired was to place in evidence the order withdrawing the offer for reward for the arrest of John H. Surratt, to be found on page 778, 13th volume of the United States Statutes at Large, Appendix No. 5. It was an order from the War department withdrawing the reward.



Mr. BRADLEY said that could not be evidence; it was not part of the statute at all.

The COURT said, that as the order was printed with the official copy of the Statutes at Large, under the direction of the State department, he would allow it to be read in evidence.

Mr. PIERREPONT then read as follows :

(No. 5.)

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,  
Washington, November 24, 1865.

[General Orders No 164.]

*Ordered, That—*

1. All persons claiming reward for the apprehension of John Wilkes Booth, Lewis Payne, S. A. Atzerodt, and David E. Herold, and Jefferson Davis, or either of them, are noticed to file their claims, and their proofs, with the Adjutant General, for final adjudication by the special commission appointed to award and determine upon the validity of such claims, before the first day of January next, after which time no claims will be received.

2. The rewards offered for the arrest of Jacob Thompson, Beverley Tucker, George N. Saunders, William S. Cleary, and John H. Surratt, are revoked.

By order of the President of the United States :

E. D. TOWNSEND,  
*Assistant Adjutant General.*

GEORGE GREEN, constable, residence Waverly, New York, sworn and examined.

By Mr. PIERREPONT :

Q. Have you known Dr. Augustus Bissell ?

A. I have.

Q. Have you had any conversation with him ?

A. I have had.

Q. Have you had conversation with him about the murder of Lincoln ?

A. I have had.

Q. Do you know what his reputation in that region is for truth ?

A. It is considered very bad.

Q. State what personal conversation you have had with him in relation to his feelings about Mr. Lincoln.

(Objected to by Mr. Bradley, and the question not insisted on.)

The DISTRICT ATTORNEY said, that several witnesses for the prosecution were on their way here, but not now in attendance on the court. He proposed, therefore, now to close the case on the part of the prosecution, reserving their right to make an application to the court to examine these witnesses at any time before the summing up if they should arrive here.

Mr. BRADLEY remarked that they were taken by surprise at the prosecution closing its case now. After the decision of the court admitting the evidence offered yesterday, he supposed the entire day would be consumed in the examination of witnesses for the prosecution. He desired now an opportunity for consultation with his colleagues as to the course they would pursue.

The court thereupon took a recess for half an hour.

#### AFTERNOON SESSION.

On the reassembling of the court, Mr. BRADLEY said that the defence would be able to proceed with the examination of several witnesses, and that others called to sustain the character of Dr. Bissell would not be here before eight

o'clock to-morrow. He proposed therefore to examine those who were here, and to spend the remainder of the day in the discussion of the various motions to strike out testimony.

ALVA JARVIS, residence Waverly, New York, sworn and examined.

By Mr. BRADLEY :

Q. How long have you resided in Waverly ?

A. About 23 years.

Q. Do you hold, or have you lately held, any official position ?

A. I held the office of justice of the peace there, and other offices, for a number of terms.

Q. Are you generally acquainted with the inhabitants in Waverly ?

A. Very well, sir.

Q. Do you know Dr. Augustus Bissell ?

A. I do.

Q. How long have you known him ?

A. I knew him a year or two before he went there. I have known him ever since. Have known him 25 years, at least.

Q. Have you had opportunities of learning the estimation in which he is held by the people of that neighborhood as a man of truth and veracity ?

A. I have had opportunities.

Q. State what his general reputation is among these people as a man of truth and veracity ?

A. His general reputation as a man of truth and veracity among most of the respectable part of the inhabitants is good as far as I have ever known—at least among a portion and perhaps a majority of the respectable portion of them.

Q. Would you have any hesitation on that general reputation in believing him on his oath ?

A. I should not. I have had a great deal of dealing with him. I occupied an office in his building, and had an opportunity of knowing perhaps as well as any man in Waverly what his reputation is.

Cross-examined by Mr. PIERREPONT :

Q. Did you know the witnesses that were here the other day to testify from Waverly ?

A. I did.

Q. Were they a respectable portion of your citizens ?

A. Generally, they were men of strong prejudices.

Q. Did I understand you to say a majority of the respectable portion of your people spoke well of him ?

A. I do, sir.

Q. Was what they generally said of him to speak well of him ?

A. I never heard anything said against Dr. Bissell's character until this trial commenced.

Q. Before this did they speak well of his character generally ?

A. Generally ; there were a few individuals who were a little down on him.

Q. You say you knew the people who came here Do you know any more respectable people in Waverly than they are ?

A. I do not know that I do. I know as good and as respectable.

Q. You have known him for twenty-five years. Where did you first know him ?

A. I first became acquainted with him at his father's place, Litchfield county, Connecticut.

Q. What was he doing ?

A. He was then young and lived with his father.

Q. What was he doing twenty-five years ago ?

A. I don't know that he was doing anything more than living with his father, who was a large farmer. I happened there in that town while attending to a matter of business.

Q. Where did you next know him ?

A. I next knew him in Waverly.

Q. That was about ten years ago ?

A. Yes, sir.

Q. What was he doing in Waverly ?

A. He came there as a physician.

Q. Did he stay there as a physician.

A. He did for three or four years, I think.

Q. What then did he do ?

A. He purchased a building and went into the saloon business.

Q. Kept an eating-house and drinking-house. He kept ale ?

A. Yes, sir.

Q. Did you ever go into his place while he was there ?

A. Yes, sir.

Q. Frequently ?

A. I had an office in his building.

Q. In the building where he kept his saloon—his eating and drinking place ?

A. In the same building. There was a partition between his rooms and mine.

Q. You were a justice of the peace in that building ?

A. Yes, sir, I was ; I am not now.

Q. Do you know why he quit being a doctor and went into the eating and drinking saloon business ?

A. As I understood, he thought it would be a good thing to purchase that building and go into that business. He said he did not intend to follow it for a life, but he was going into it to start it, &c.

Q. How long did he keep at it, starting it ?

A. I should think probably two years, or so.

Q. After he got it started what did he do ?

A. He rented it and left Waverly very soon after that.

Q. Do you know where he went to ?

A. He went to Pennsylvania, and was there a short time—with his friends there, as I understand.

Q. Did he ever return to his business of doctoring ?

A. Not at Waverly.

Q. You said these people who testified here the other day were prejudiced, did you not ?

A. I think they are.

Q. What do you mean by that ?

A. Religious prejudice.

Q. Do you mean they are religious ?

A. No, sir. They had a little difficulty with Bissell in a Methodist church, and it created a prejudice between them.

Q. Did he bear a good repute among them for truth ?

A. I do not know but he did ; I do not know anything to the contrary.

Q. Did you ever hear them talk about him as a man of truth ?

A. I never did—those who were here.

Q. Did you ever hear people generally discuss about him as a man of truth ?

A. I never heard them say that he was not a man of truth until lately.

Q. Did he bear a good character as a man of truth—the same as ordinary men of good character did ? Do you mean to say that ?

A. I do.

Q. When you speak of prejudices, you mean religious, not political ?

A. I have not alluded to politics at all.

Q. In this late war did you take any side ?

A. No, sir.

Q. You did not take the side of the Union, did you ?

A. If you will give me my own way I will tell you how I was ?

Q. That is exactly what I want ?

A. I never saw the day I wished the rebels to succeed ; that I have said frequently.

Q. Did you ever see the day you wished the Union army to succeed ?

A. Certainly, sir.

Q. Did you favor that side ?

A. I favored it as far as I had anything to do with it.

Q. Did you not have anything to do with it while living there in Waverly ?

A. I was the means of getting a good many recruits.

Q. Then you took that side, in favor of the war ?

A. I did not take sides against it at all.

Q. Did you take sides in favor of it ?

A. If either way.

Q. Were you understood to be on that side ?

By Mr. BRADLEY :

Q. What side ?

A. The republican side.

Q. You were decidedly a democrat, were you ?

A. I have been always a democrat.

By Mr. PIERREPONT :

Q. I have not yet asked you anything about your politics. I want to know now if you ever heard of Dr. Bissell's being indicted.

(Question objected to by Mr. Bradley ; objection sustained.)

Q. Were you at Rochester at a trial ?

A. No, sir.

Q. Did you hear that Dr. Bissell was a party to a trial there ?

A. I heard that he was at Buffalo.

Q. Did not you hear his character for truth discussed after that trial ?

A. I did not know they had a trial about truth.

Q. Did not you hear his character for truth discussed after that ?

A. I did by a good many.

Q. Did you hear them speak well of him for truth after this trial ?

A. I did ; a good many ; perhaps fifteen or twenty.

Q. Did you hear his character well spoken of ?

A. I did by some.

Q. Who did you hear speak well of him ?

(Witness mentioned several names.)

Q. Are they among your respectable citizens ?

A. They are.

Q. Did you ever hear other parties speak ill of him after the trial ?

A. I did.

Q. Were they your respectable citizens ?

A. Some were, and some were not.

Q. Were they generally your respectable citizens ?

A. Some of them were.

Q. Were they as respectable as those you heard speak well of him ?

A. Some were, and some were not.



G. B. PENELL—residence, vicinity of Waverly, New York—sworn and examined.

By Mr. BRADLEY :

Q. How long have you resided in that vicinity ?

A. For the last thirty-odd years.

Q. While residing there, did you know Dr. Augustus Bissell ?

A. I have known him.

Q. Did he reside at Waverly ?

A. Yes, sir.

Q. Had you means and opportunities of knowing what the general opinion of the people was as to his truth and veracity ?

A. I had some. I was intimately acquainted with him for some two years time.

Q. Did you know the people generally of the village of Waverly ?

A. Generally I did. There were a great many I did not know.

Q. What was his reputation in that vicinity for truth and veracity ?

A. I heard nothing bad about him until lately.

Q. When you say until lately, how short a time do you mean ?

A. Since this trial commenced, or since the trial at Buffalo.

Q. Then the subject was discussed ?

A. The subject was discussed.

Q. Now, from his general character, would you believe him on his oath ?

A. I would.

Q. You speak of a trial at Buffalo ; was that the Erie railroad trial ?

A. I think it was. I only know of it by hearsay.

Q. How long ago was that ?

A. Only a few weeks ago. Since then I have heard it discussed by some men who went there to testify they would not believe him on oath.

Cross-examined by Mr. PIERREPONT :

Q. Who did you hear say they would not believe him on oath ?

(Objected to, and question not insisted on.)

Q. Do you know what that trial was about of which you have spoken ?

A. I would not like to say.

Q. Did you hear that it was a trial in which medicine was concerned, and that he turned State's evidence ?

A. I did not.

(This examination objected to by Mr. Bradley as improper)

The COURT said that anything in relation to the trial would not be evidence. The witness might say what people said about his truth in connection with the trial.

Q. What did they say in connection with that trial about his being a man of truth ? Did they say they would not believe him on oath ?

A. I could not say that they did.

Q. Did you hear his character for truth discussed ?

A. I would not like to say I did much.

Q. Have you some ?

A. As I said before, I heard it said —.

Mr. BRADLEY. You need not say what you heard said.

By Mr. PIERREPONT :

Q. State what that conversation was that he was inquiring about.

(Question objected to by Mr. Bradley.)

The COURT ruled that any discussion on the subject was proper to be given.

A. All that I ever heard said was in connection with that trial afterwards.

Q. What was it ?

A. I cannot say that there was anything, only that men had gone there to swear they would not believe him. I would not like to say that I heard it discussed a great deal.

Q. What was your business ?

A. I am a farmer. I live about  $1\frac{1}{2}$  miles from Waverly. I once resided nearer the village.

Q. How often are you now in Waverly ?

A. I am almost every day.

Q. What was Dr. Bissell doing when he was there ?

A. He was a practicing physician. I should think that he did not do a great deal of business ; but he did some. \*

Q. He practiced as a doctor and kept a beer saloon at the same time ?

A. Yes, sir.

Q. Do you know whether his saloon had anything to do with his practice ?

(Objected to, and question not insisted on.)

Q. Had he a good character for truth ?

A. I think so ; I was intimately acquainted with him.

Q. Do you know what other folks said about him ?

A. I never heard anything against him as a man of truth. He had some very strong political enemies.

Q. What politics did they have ?

(Question objected to, and not insisted on.)

Q. What do you mean by strong political enemies ?

A. Different in politics.

Q. How different in politics ?

(Question objected to by Mr. Merrick, and objection sustained.)

Q. Do you know on what side he was in the war ?

(Question objected to by Mr. Bradley, and objection sustained.)

Q. Did you ever hear many people talk about him ?

A. I have heard him talked about as much as any man.

Q. Did you hear his truth talked about much ?

A. Not a great deal ; I do not know that I did any.

Q. Do you wish to tell these gentlemen that he bears among your people as good a character as ordinary good men do ?

A. For truth I think he does.

NELSON F. PENNY, residence Waverly, New York, sworn and examined.

By Mr. BRADLEY :

Q. How long have you lived in Waverly ?

A. Six years last April.

Q. Did you know Dr. Augustus Bissell there ?

A. I knew him when I was there.

Q. Had you opportunities of knowing how he was held among the people of that place as a man of truth and veracity ?

A. I had the same opportunities with him that I had with the rest of our village folks.

Q. Was that general reputation as to truth and veracity good or bad ?

A. I never heard the character of Dr. Bissell canvassed for truth and veracity in my life while he was there. I never heard his reputation called in question as a man of truth and veracity at that time.

Q. From your knowledge of his general reputation, would you believe him on his oath ?

A. I would just as soon as I would any man in the village.

Cross-examined by Mr. PIERREPONT :

Q. What is your business ?

A. I am in no business at present. I have been living in the village, and for

a time kept a meat market. Since then, some part of the time, I have been in a drug store; and since I came out of the drug store I have been in no particular business.

Q. Had you any connection with Dr. Bissell in business?

A. While I kept market Dr. Bissell used to deal with me some. I had no other business connection with him, I think.

Q. When you sold meat he used to buy sometimes?

A. Sometimes; yes, sir.

Q. Do you know what business he did there?

A. When the doctor first came there he practiced medicine, I think.

Q. What do you think he did next?

A. He had a little grocery, and, I think, a little beer saloon attached to it.

Q. What do you mean by a grocery—do you mean eating and drinking house?

A. No, sir; that was not it. He kept some little teas and sugars; sold toys, candy, nuts, &c., and this beer saloon was attached.

Q. Was there any eating there?

A. There may have been; not that I know of. I was in very seldom.

Q. At the time he was keeping this beer saloon, did you hear him talked of?

A. No more than I did any of the other neighbors.

Q. Have you heard him talked of within the last year as a man of truth?

A. Not till within a very few days; not to exceed four days.

Q. You did not hear anything about him at the time of the Buffalo trial, did you?

A. I was away at that time.

Q. And you never have heard anything said about him as a man of truth?

A. Not until within a day or two, or until very lately.

Q. You did not hear other people talking about him, one way or the other, heretofore?

A. No, sir; I never heard Dr. Bissell's character called in question.

Q. Did you know the gentlemen who came here to testify from your place?

A. I know a number of gentlemen who, I understood, had been here to testify.

Q. Do you know what kind of characters they have?

A. I know they are men of fair reputation among our citizens.

By Mr. BRADLEY:

Q. Do you know of prejudices existing against Dr. Bissell, in connection with a church or otherwise?

A. I do not know that they have had any quarrel with him. They may have had, or may not. I do not know anything about it.

C. M. NOBLE, physician, residence Waverly, New York, sworn and examined.

By Mr. BRADLEY:

Q. How long have you been residing in Waverly?

A. It is about fourteen years since I first came to the village. I have been there and near there for the last eighteen years.

Q. During that time, did you know Dr. Augustus Bissell?

A. I first knew him about seven years ago.

Q. How long did that acquaintance continue—from that forth?

A. Yes, sir; I have been personally acquainted with him for about five years, when he went to New York. I am acquainted with him by reputation all the time until now, but not personally.

Q. While he was residing in Waverly, had you opportunities to know the reputation in which he was held by the people there as to truth and veracity?

A. I think I had.

Q. Was it good or bad ?

A. As good as any man in the place, and I had myself as extensive an acquaintance as any man in Waverly, both in the village and out.

Q. Did you ever attend him as a physician ?

A. I have been called in counsel with him in cases, and have attended him myself as a physician frequently.

Q. Now state, from the general reputation he bore there, whether you would believe him on his oath.

A. I would have no hesitation in believing him on his oath in the least. I never heard anything against him.

Cross-examined by Mr. PIERREPONT :

Q. What have you been doing in Waverly in the time you have lived there ?

A. Practicing medicine.

Q. Have you ever been indicted ?

A. Not that I am aware of.

Q. Have you been arrested for any crime or charge ?

A. I know nothing of it.

Q. You know whether you have or not ?

A. I have not.

Q. Has there not been a charge against you there of engaging in a particular kind of practice ?

A. No, sir, never.

Q. What is your first name ?

A. Carlton Monroc.

Q. And you have lived there some fourteen years ?

A. Yes, sir.

Q. And have known Dr. Bissell some seven years ?

A. Yes, sir.

Q. And you say there has been no charge against you there of producing an abortion ?

A. Never.

Q. Nor anywhere ?

A. No, sir.

Q. What was Dr. Bissell doing when you knew him ?

A. Practicing medicine when he first came there as a physician. He came well recommended.

Q. How long did he practice ?

A. He practiced, more or less, all the time he was there, though his practice was not large and was interrupted somewhat by other business.

Q. What business ?

A. He kept a grocery and saloon.

Q. And his grocery and saloon rather interrupted his business as doctor ?

A. Yes, sir.

Q. Were you in partnership with him ?

A. I was not.

Q. You were not engaged in any business with him ?

A. Never.

Q. Do you practice medicine now ?

A. I do.

Q. Will you tell us when he left there ?

A. I do not know as I can tell exactly. I think between two and three years ago.

Q. Do you know where he went to ?

A. He went at first to some place in the northern part of Pennsylvania after that to New York.



Q. I noticed that you said you have doctored him a good many times.

A. No, sir; I said I had been in counsel with him a good many times.

Q. Didn't you say you had doctored him a good many times?

A. No, I did not mean to be understood so. I was called as a physician to see his family and to see him personally, and a good many times called in counsel with him.

Q. Where were you called in counsel with him?

A. In different places.

Q. In what place?

A. In Waverly.

Q. What case?

A. In a case of diphtheria.

Q. Whose house was it? I want you to name the time.

A. I don't know but I would have to refer to my books to find out that. I can remember two or three cases.

Q. Tell those.

A. One was in a family named Gutchess. I have been called several times. I cannot tell the names now.

Q. Can't you name any?

A. Yes; the widow Gutchess. She is now dead.

Q. Can't you tell us some living persons?

A. Yes, the family of William Curran.

Q. Is he alive?

A. He is.

Q. What business does he do?

A. I think he is not living in Waverly now.

Mr. BRADLEY said he must interpose an objection. He did not know where this cross-examination was to stop.

The COURT said he supposed the cross-examination was for the purpose of testing the memory of the witness.

Mr. PIERREPONT replied yes, and as to the character of the party.

Q. Now tell us where Curran is?

A. On reflection I rather think the man lives in Waverly; that he belongs to one of the hotels or livery stables.

Q. That was a case in his family?

A. Yes; a case of diphtheria—his child.

Q. A son or daughter?

A. I could not tell. It was some years ago.

Q. How old was the child?

A. I could not tell. It was several years ago.

Q. Tell us some other cases where you got into consultation with Dr. Bissell.

A. John Gutchess. I think he is alive, though he does not live in Waverly now.

Q. Does anybody live in Waverly on whom you had these consultations?

A. I think there are a good many. I could not tell the names without my diary or my book to refer to.

Q. Was this when he kept the beer saloon, that you were called in consultation with him?

A. One of them was.

Q. Was it in the beer saloon that you were called?

A. No, sir.

Q. This John Gutchess, was he in the beer saloon when you were called in consultation?

A. No, sir. I think he came to my house with Dr. Bissell.

Q. It was a case of consultation, then, when they could walk about?

A. O yes; the young man had been out of health for a long time.

Q. Was he keeping a beer saloon then ?

A. I do not know but the young man has died since of the consumption. I rather think he has.

Q. Can you give any case where you were called in consultation when he kept the beer saloon ?

A. It was while he kept the beer saloon that Professor Hamilton of Bellevue hospital came out to see him after he had had an accident on the railroad.

Q. I am now talking of your being in counsel with him as a physician.

A. I do not know now that I can mention any more cases without reference to my books.

Q. You do not know whether they are alive or dead ?

A. I think there are some alive.

Q. After that consultation ?

Mr. BRADLEY thought it was wrong for counsel to insult the witness, a gentleman as respectable as the counsel himself.

Mr. PIERREPONT remarked that he did not know what the counsel was talking about.

Mr. BRADLEY said, then the gentleman was very ignorant ; he was talking about insulting a witness on the stand.

Mr. PIERREPONT said he had asked the witness a proper question. If it was not proper he could apply to the court and his honor would rule it out. He submitted whether he was to be interrupted in that way.

The COURT said he did not see that the question asked was an improper one.

Mr. BRADLEY remarked that he had no right to insult a witness on the stand who was under his protection.

Mr. PIERREPONT said the witness was under the protection of court.

Mr. BRADLEY remarked that the Court, when he said he saw no impropriety in the question, probably did not observe the tone and manner of the counsel.

Mr. MERRICK added that the question was whether the man was alive after that consultation, and the inference was that the consultation between these physicians was enough to kill him or any other man. He wished to know if this was not an insult.

Mr. PIERREPONT replied that if the witness was a good doctor the question did not imply any such thing.

The COURT directed counsel to proceed with the examination of the witness.

Q. State, if you can, any other person in reference to whom you were called in consultation with Dr. Bissell while he kept the saloon.

A. I do not know as I can name any other without reference to my diary.

Q. Can you tell why he quit the business of doctoring and went to keeping a beer saloon ?

Mr. MERRICK. I object.

Mr. PIERREPONT, (continuing the question.) Had it anything to do with his bad character for truth ?

A. No, sir ; I do not think it had. There were a good many of us in a small village, and he did not have the same advantage the rest of us did in the length of time he was there. He could not get, therefore, as much practice as the rest of us, and thought it would be profitable to go into this business.

Q. It had nothing to do with his bad character ?

A. I do not think it had.

Q. Will you tell this jury whether, in your opinion, his character is a good one or a bad character for truth ?

A. I could not say it was not good. I have always considered it good.

Q. I am speaking of his general reputation ?

A. His reputation was discussed, and men came here to say it was bad.

Q. Then his character was questioned ?

A. I think it is by some men in our place.

Q. Do you know the men who came here as witnesses from your place?

A. I do.

Q. Are they men of good character?

A. They are.

By Mr. MERRICK:

Q. You would not hesitate to believe Dr. Bissell on oath?

A. I would not. I would believe him as soon as I would the men that came here.

Mr. BRADLEY stated that he had received intelligence of nine witnesses on their way here from Elmira, New York. They could not be here until this evening, and perhaps not until morning.

The COURT inquired whether they were witnesses to give testimony in relation to the character of Dr. Bissell.

Mr. BRADLEY replied all except one, who was in relation to the character of another witness. He proposed, therefore, to occupy the remainder of the day in the discussion of the motions he had heretofore made to strike out testimony.

Mr. PIERREPONT remarked that as the evidence was now substantially all in, this was the proper time to consider these questions.

The COURT remarked that as no further testimony would be taken to-day the jury, if they desired, might return to their hotel.

The jury thereupon left the room.

Mr. BRADLEY stated that motions had been made to strike out the testimony, first, in regard to the attempt to assassinate Mr. Seward. Second, relating to Jacob Thompson. Third, the statement of McMillan as to what Surratt said in relation to the shooting of Union prisoners, the hanging of the telegraph operator, and the affair with the gunboat. Fourth, relating to telegraphic communication between Elmira and Washington, the 13th, 14th, and 15th of April. Fifth, relating to transportation of passengers from this city to New York on the 15th of April. Sixth, the Newbern, North Carolina, letter, signed "No. 5." Seventh, relating to Atzerodt at the Kirkwood House.

Mr. BRADLEY said it was, perhaps, not necessary to discuss this evidence at all, except to state his view of the propositions of law, and to submit to the court how far this evidence is applicable to it. They understood that this was an indictment for murder, not for conspiracy, nor for a conspiracy to murder, and that, therefore, the evidence must tend to show either that the party charged committed the act himself, or participated in the commission of it, or was rendering aid or assistance, or was at such convenient distance that he could have rendered aid and assistance. If that was the law governing this case, then no portion of this evidence could be admissible, for it was wholly immaterial whether some other parties committed an assault upon Mr. Seward. The prisoner was not indicted for that, and it did not throw any light upon the fatal assault made upon the President.

In relation to the testimony in regard to Thompson there was not a particle of proof in the case connecting Thompson, directly or indirectly, with Surratt. And so in regard to Atzerodt in the transaction at the Kirkwood House. If there was any preparation to kill, no overt act was committed upon the then Vice-President, no attempt made to execute any crime. And if there had been it was a totally distinct and separate offence, having no connection with the offence the prisoner has been charged with.

So in regard to the other items of evidence to which he had adverted, there was nothing to show that they had any relation to the offence with which this party was charged. The two items of evidence offered yesterday were merely general theories or generalities, without any application to a single fact touching the prisoner at the bar. Having stated these general facts, he would be glad to



hear from the counsel on the other side what they had to say in opposition to striking out this testimony.

Mr. PIERREPONT remarked that this was the proper place and the proper time for the discussion of these propositions. They had always been quite willing and ready to discuss them whenever the evidence was all in, and they had diligently opposed argument on the subject until the evidence was in, because it would be impossible to tell what the evidence would be bearing upon them.

It must have attracted the attention of the court that the counsel on the other side had been repeatedly speaking about this as a trial for murder and talking of what it was absolutely necessary to prove under this indictment, and what could not be proved. They had endeavored to treat it as though it were an ordinary attempt of two persons who had combined together for the purpose of killing some man in his house to rob him. If he was not wholly mistaken in the law governing this case, the indictment under which this case was being tried was as widely different from that as any two things could be; lifted as far above it as the difference between the killing of a person in a street brawl and the killing of a king on his throne. He thought there would not be success in any attempt to belittle this case down to an ordinary felony.

What was it for which this prisoner stands arraigned under this indictment of three or four counts? A combination, a conspiracy was formed, as all well knew, for the purpose of the overthrow of the government of the United States, for the purpose of throwing this country, by the destruction of its government, into anarchy and confusion, of aiding traitors and enemies of this country to trample down the government, destroy the country, and to murder its chief for the purpose of destroying and murdering the government. In carrying out that conspiracy combinations were made, and plans were laid between the cities of Washington, Richmond, New York, and various places in Canada. A conspiracy was formed by quite a number of different persons for the purpose of perpetrating one of the greatest crimes ever known in the civilized world. In carrying out that conspiracy it became the necessity to take the life of the President of the United States. And to take the life of the Secretary of State was also a part of this felonious, damnable scheme against civilization, against humanity. It was to try one of these conspirators engaged in this great crime in the perpetration of which they committed murder, that we were now here for. For illustration, suppose a man went to the house of Mr. Alexander, one of these jurymen not now in the room, and there could therefore be no indelicacy in alluding to him, to rob him of his money, supposing that Mr. Alexander was at the time in Baltimore, but finding him there, killed him and committed the robbery. He had no purpose to kill Mr. Alexander; Mr. Alexander was the last man he wished to see there; and yet would the counsel say he did not commit murder? Suppose in this city and District his honor's horse was stolen, and just outside the District line a man stood ready to receive the horse. That man is brought into court, and the learned counsel in defending him say the man indicted for horse-stealing was not in the District—he was outside in Maryland, and could not be tried for horse-stealing in Washington. You then go to Maryland to have him indicted, and they tell you there was no horse stolen in Maryland, and you cannot therefore indict him there. The man then is all right, and standing over the line, seeing his honor or any other gentleman of eminence and position passing near by, shoots across the line at thirty yards and kills him. He was outside the District line, and yet did not any lawyer know that he could be tried here for murder and hung, or for horse-stealing and imprisoned?

The motion of counsel was in the first place to strike out the evidence in relation to the attempted assassination of Mr. Seward, on the ground that it had nothing to do with this case. It was not claimed that Surratt assassinated Seward; it was not claimed that Surratt went into the house and plunged the



knife into the neck of Mr. Seward and broke the skull of Mr. Frederick Seward; it was not claimed that Surratt cut to pieces the servants and other inmates of that house, nor that it was Surratt whose presence and acts caused the terror through which Miss Fanny Seward died shortly after, or caused the shock in consequence of which the wife of Mr. Seward had since died; yet all that was a part of the evidence in this case. It was a part of the conspiracy and scheme in which this man was engaged that Secretary Seward should be assassinated. It was in carrying out that scheme that the signal whistle was blown, that Surratt called the time, and that a man started up H street towards the house of Mr. Seward. That was as much a part of the scheme as shooting Mr. Lincoln was by Booth when he came out of that drinking place, having fortified himself with the brandy he took.

Counsel also moved to strike out the evidence relating to the confession of the prisoner, stated by McMillan, of the murder of Union prisoners. Was there any principle of law on which such evidence could be stricken out under any circumstances? That confession must be given in whole; a part of it could not be stricken out.

Suppose, instead of his stating that he, together with this woman had in cold blood murdered and left to rot on the roadside these helpless Union prisoners, who had then come, as he stated, from a swamp and were nearly starved, he had said that these poor fellows, coming sick and weak, and wearied from the swamps, and struggling to get home to the father, the mother, or the wife, his feelings towards them grew so tender that he gave them food, gave them drink, and helped them on their way; would not the defence insist that that should be left in, and could he successfully move to strike it out?

No. They were entitled to all that told for them. They were entitled to the whole, and the government was entitled to the whole. A confession relative to the same general subject must all be given in evidence, and not a part. It was not for the prisoner to say, "I will select from the words which I uttered that which I desire to have remain, and you shall take that part, and only that. The part that tells against me shall all be taken out, and only that part in my favor be left." There was nothing better settled, said Mr. Pierrepont, than that with regard to a confession of this kind the whole must be given. When a murder or any other great crime was committed, it was not expected that it would be done by all those who were engaged in it, in a very open manner. Great crimes were not committed in that way. They were generally committed in secrecy, and, as a rule, the fell purpose was never known until it was afterwards developed by facts and by circumstances. After the murder had been committed we undertook to find out who did the deed; and one of the first things inquired into with this view was the motive which instigated it, and the feelings of the party charged with the offence towards the murdered man. If it was ascertained that between these two neighbors the feelings were hostile, bitter, and relentless; that they were of long standing, or of recent origin, as the case might be, those facts were always pertinent to be proved as tending to show, perhaps, whether or not the man charged with the murder was properly suspected. Now, what was the great object of the crime in this case? It was the murder of Mr. Lincoln, with the design of overthrowing this government, and the assassination of the Secretary of State, for that same purpose. In order to ascertain who were engaged in this conspiracy, and who in the murder committed in the carrying out of the conspiracy, it was proper that the feelings of the parties towards the thing against which they were conspiring should be given in evidence. What was it as shown in this case? Here was a man living under the shadow of the Capitol, the arm of the government protecting him, and his mother and sister boarding the clerks of a department of the government, deriving their supplies therefrom; and yet he (the prisoner) goes off when we

are in the midst of a war and of peril, and does all he can to bring about its destruction; and this he tells himself. Was his confession in this respect not evidence going to show what were his feelings towards the government, towards that thing against which he had conspired, and in the carrying out of which the murder was done? Could anything be more proper and more pertinent to be given in evidence than his own statements, going to show his feelings towards the government and those who were engaged in its support? Under no principle of law could it be ruled out, even if it were separate and independent; but it was not.

He would next come to the question regarding "Jacob Thompson." The government had shown Jacob Thompson's relation to the enemies of this government. They had shown that by General Grant; they had shown his position in Montreal; they had shown that Surratt went there with a large sum of money, and from his own statement that he went there from Benjamin and Davis, in the confederacy, and with regard to this there was no attempt at denial. They had shown that he, without any means of his own, without his mother possessing any, as the defence had themselves shown, was using and handling large sums of money and carrying it, together with certain despatches, between the enemies of this country and the friends of our enemies in Montreal. All this tended to show the relations which he bore, the feelings which he entertained, the practices in which he was engaged, and the business in which he was employed, and went to prove his hostility towards that thing against which he and the others conspired, and in the carrying out of which conspiracy was committed this most foul and brutal murder. Under no possible circumstances could such evidence be stricken out. It came in as a part of the case; it came in to show the animus and the feeling. The court must be well aware that this principle had long since been established even in the most ordinary case of fraud.

Mr. PIERREPONT then cited the case of Houghtaling and several others as establishing the rule that where a man had even committed a fraud the party making the complaint had the right to show that he had committed fraud upon another man other than himself before that; that he had committed frauds after that, and that he had committed fraud on totally different subjects, and at totally different times, the only question being whether they were somewhere in the vicinity. The reason of the rule was this: It was said that although there was no proof that Mr. Houghtaling was cheated out of his goods, yet it showed the *quo animo*, (which was the language of the law on the subject,) and was to be admitted in evidence for the purpose of raising the presumption, or showing that that was the mind with which the fraud was committed. If such evidence was submitted in a civil suit, how much more should it be allowed in a criminal case?

He would now proceed to consider the next point—that with reference to the telegraphic communications between the city of Washington and the city of Elmira, on the 12th, 13th, 14th, and 15th of April, 1865. When the prosecution were proceeding with their case they did not give that in evidence. They could not give it in evidence. There was no reason for giving it in evidence. There was no more reason for giving in evidence the fact that there was telegraphic communication between Elmira and the city of Washington than there was to show that there was telegraphic communication between the city of Washington and other places. Possibly it might have been admitted in evidence, but he would have had some difficulty if the court had asked him why he offered it, in stating his reason. The reason was now, however, quite apparent. The defence had undertaken to prove by Dr. Bissell that he was in Elmira on the 14th of April. Dr. Bissell had sworn to it; there was no doubt about that, and he swore to it strongly and positively. So positive was he that immediately on seeing the prisoner he told Mr. Bradley that he did not want to look at him

any longer; he was perfectly satisfied. No doubt he was. I guess he was equally satisfied before he left New York, and before he saw him. But he swore to that fact. It stood in the case that Dr. Bissell had sworn that he saw him there at that time. Hence, under the legal views which he entertained of this case, and which he trusted would be entertained by the Court, as they seemed to be well laid down in the books, it might become a matter of some importance to show upon the record the fact that there was easy and rapid communication between Elmira and Washington. If there were no truth in it, if there were no evidence whatever of that, then it would not be. But there was evidence of a man swearing to such a fact. He did not suppose anybody believed it, but still it stood in the case; it stood as a part of the record sworn to positively by Dr. Bissell. Suppose, if he were there on that day, it could be shown on the other side that there were between Elmira and the city of Washington such insurmountable barriers as to render any communication either by railroad or otherwise, impossible; would it not be a significant fact, going to show that there could have been no communication that would have at all involved him? No objection was made at the time this evidence was offered. It seemed to be an after-thought of counsel. It was only after several other witnesses had been examined on other subjects that any motion was made to strike it out; only, he supposed, after they had discovered what might be the object of it. He would now state that that evidence had been introduced for the purpose of showing that there was easy and rapid intercommunication between the places named, so that if anybody should believe the statement of Dr. Bissell that Surratt was there, that fact would not relieve him of the charge of being engaged in the conspiracy; for a person, with the means of communication which then existed by mail and by telegraph, might perform his part of the conspiracy just as well at Elmira as in the city of Washington. It might have been a part of this conspiracy, out of which grew the murder of Abraham Lincoln and the assassination of Secretary Seward, to have a party stationed at that place for the purpose of trying to create confusion by the release of rebel prisoners and by burning the city, or to have him stationed anywhere on the borders for the purpose of giving information with a view of covering the escape of the other conspirators. He might have been there for the purpose of performing his part in the great drama of this terrible crime, but wherever he was performing it he was as culpable as though he had pulled the trigger that blew the brains out of the head of Abraham Lincoln. No one familiar with law would controvert this principle.

He would now come to what took place at the Kirkwood House, and the doings of Atzerodt. Atzerodt had been proved here to have been one of the conspirators in this great crime. He had received his punishment, and passed to his long account. He was believed by the country, and he was proved by a competent tribunal, to have been engaged in the conspiracy. Every act, saying, and doing, and circumstance connected with his act, was proper evidence relating to the other conspirators.

It seemed as if some new light must have fallen upon his learned friend since the commencement of the trial of this cause. They had been trying this case now for nearly two months, and had been from day to day giving in evidence the statements of the conspirators. They having proved the conspiracy, and proved it in a way that nobody could have any doubt about it, and having joined Surratt tight and firm in that conspiracy, proved him to be the very man who put the arms in the place, the very man who hid those things with which Booth fled, the very man in whose house the conspiracy was couched, the very man from whose house these men issued when they went to the commission of the crimes, the very man who was in front of the theatre on that night, the very man who was engaged in putting the bar up (and which testimony had not been attempted to be impeached) to keep out any rush on the part of persons who



should come to the relief of the murdered person. All that being proved as part of the conspiracy, yet the defence held that the acts and doings of Atzerodt, who was proved to be one of the conspirators, could not be given in evidence. He thought that proposition did not need much debate.

He now came to the Duell letter. The court would remember that when that letter was introduced they stated that they expected to prove in whose handwriting it was. It related to this subject, was pertinent to it, and would have been a very important item of evidence if they could have proved the handwriting, but this they had failed to do. The expert whom they had brought on the stand had not turned out to be the one who had compared that writing, and the other one they could not get. Having been unable to prove the handwriting, he would now say to the court, with the same frankness that he had tried to have characterize his action from the beginning of the case, that he did not think it proper it should remain in, and therefore acquiesced in its being stricken out. He would state in this connection that he had never in any instance, where he knew it, ever asked the court to make a ruling that he had not believed to be law, and had never asked the court to exclude evidence when he did not believe it should be excluded. He would here take occasion to say that during the progress of this trial he had had in this court taunts, reproaches, and contumely thrown upon himself and on his associates in every way, and indirectly on the court, because the court's rulings had chimed in with the law, and because he was not offering evidence which he knew to be illegal. In God's name why should not the court have ruled with him, when he had never asked for a ruling which ought not to have been granted? He had kept himself as strictly as he could (from the knowledge he could gain) within the strictest rules of law; and should he be reproached because the rulings had generally been as he had asked them, when he had been so careful to ask nothing wrong?

He would briefly refer to the last item—that of the transportation. The court perhaps did not at first see the object for which that evidence was introduced. They had not completed the proof in this respect, but if the case was continued until the next day they would then do so if the court permitted them. Whether they completed it or not, however, was not a matter, so far as related to the evidence, of the smallest moment. He submitted that it was perfectly proper to show what train left Baltimore and went to New York the next morning after the murder. They had shown that that train left, but that it was detained, and that it did not reach there until twelve hours after its time. It was an important fact to be shown. That being a substantive fact that they had proved, they had a right to show that the train ran, and that it might have carried Surratt. They were not bound to show that it had carried him. They had proved early in the case the trains that went from New York and the boat that left White Hall. When they came to put that with the time of the running of this train, which had been detained for twelve hours, the court would see that it was brought right in connection with White Hall, and sent that boat to Burlington, where Joseph L. Lyons and this prisoner, Surratt, slept together on that settee that night, and lost the pocket-handkerchief. It was a part of the evidence of transportation in this case to show what trains then ran, and although they had not put him in that train, yet they had the right to show that there was a train in which he could have been put.

The DISTRICT ATTORNEY said he would confine himself to the proposition whether the testimony asked to be stricken out was relevant. He contended that in every indictment for murder it was competent to show that the prisoner was prompted by malice; and all the acts and sayings of the prisoner could be given in evidence to prove that malice. If, while moving to the commission of a crime, a prisoner gave evidence of general malice, it was always admissible in evidence. It was charged and maintained that this was a conspiracy to kill



and murder, and it was proper to show that the prisoner was a member of that conspiracy, and therefore every declaration of his, or of those with whom he cooperated, tending to show express malice, was evidence before the jury. The theory of the prosecution was that the conspiracy was a great artificial person, and that it assumed individuality in the eye of the law. Having proved the existence of the conspiracy and the object of it, and having shown the connection of the prisoner with that conspiracy, the conclusion could not be escaped that the murder of Mr. Lincoln and the attempted murder of Mr. Seward were both part of the same nefarious scheme; and no one ever heard of a court excluding any part of one general transaction. If this conspiracy was to kill the President, the law implied malice, and the declarations showing express malice were competent to be offered in evidence, and every act might be shown which would show the state of the mind of the conspirators. In a charge of murder, acts of cruelty and cowardice might be shown to indicate express malice, for cruelty and barbarity were the strongest evidences of express malice; and if it were proven that the prisoner, acting as an emissary of the confederate government, shot down unarmed Union soldiers while travelling between Washington and Richmond, it was admissible to show cruelty during the existence of the conspiracy. In regard to the Duell letter he agreed with his colleague, that the proper connection had not been made, and that therefore it should be stricken out. While he would do all in his power to bring the murderer to justice, he would have him tried fairly, and would not offer any evidence to prejudice the case of the prisoner.

In conclusion he contended that Surratt's presence here was not necessary to make him amenable to the charge of murder. If he was proven to be connected with the conspiracy, that was all that was necessary. But out of abundant caution the prosecution had brought Surratt directly to Washington, and it would be shown to the satisfaction of the court and jury that he was here. The defence had attempted to show that Surratt was in Elmira on the 15th of April, and the prosecution had shown by the railroad connections that it was a physical impossibility for the prisoner to be in Elmira on the 15th.

Mr. MERRICK said he should be very brief in his reply to counsel on the other side. Unless he was altogether in error in reference to the law, the questions were too plain for argument. The learned counsel on the other side (Mr. Pierrepont) had assumed an air of great frankness in acquiescing in the court's striking from the record a letter that was found floating upon the waters of North Carolina. He confessed that he was somewhat amused at the self-complacent gratification which he expressed when he reflected upon the humane and considerate course he represented himself as having pursued throughout this case, and the extraordinary consideration that he manifested for the court in never asking any other decision than what he knew to be law. He would not question his sincerity in that; but he was free to confess that the rulings of the court had been more widely at variance with his ideas of law than in any case it had ever been his good fortune to try. Some of them, he thought, had been injurious to the prisoner's interest, but that was not for him to comment upon, for he submitted with the most passive acquiescence to whatever the court decided. It had been, however, gratifying to him to know that the court had time and again shrunk from and set his face with commendable judicial firmness against rulings which the counsel had called upon him to make.

The learned counsel had stated that the defence regarded this case as a case of simple murder—as the murder of a man in his house for the purpose of getting his property. He was right. They did regard it as a case of murder. It was a case of murder, and nothing else. They had to get their information as to what it was from the record. The counsel had said it was a case as widely different from an ordinary case as the killing of the king upon his throne, or the pope at high mass. His learned brother must descend from the lofty height

he would tread and come into the ordinary ways of criminal justice. In America there was no king, no pope. To kill a king was treason; to shoot at a king was treason; to compass his life was treason; to combine for the destruction of the American government, and in attempts to overturn the government, to kill the President, was a part of treason; but in the criminal law he was a man. He knew that these ideas of royalty had dazzled the visions and shaken the minds of some of our people of later days, but he did hope that they might never come to be practically incorporated ideas in our American policy; and that at all events they would be kept away from its criminal jurisprudence, when the weak and helpless were on trial for their lives. If the government meant to charge the prisoner with treason, they should have indicted him for treason. Had they indicted him for treason, he would have had certain rights and privileges which under an indictment for murder he had not. He would then have had a right by law to a list of the witnesses against him—a right which his counsel had asked in this case, but which had been denied, the court holding that a party on trial for murder was not entitled to such. They had asked it in the name of charity, but the request was like the wailing of the dove amidst the tempest of the hurricane. The government would not give them a list, because they preferred that the defence should see them as strangers, knowing full well that they would then strike them, if they knew them; but he thanked God they had had time afterwards to strike them. They had laid at the feet of the attorneys a mass of the most corrupt battalion that was ever summoned to support a cause in a criminal court. Again, he would say, if the government meant to charge the prisoner with treason, let them indict him for treason. He would then under such an indictment have another right—a right by law—to be acquitted unless they had two witnesses to some overt act of treason. On an indictment for murder but one witness was needed. Would the counsel under the pretence of an indictment for murder claim a conviction for treason? Would he for the government, claim under indictment this benefit of a conviction of treason, and deny them the privileges which under an indictment for treason they would have? Had the government of the United States descended so low that it would seek to consummate a judicial murder by fraud upon its words? Such an idea was never contemplated by the learned district attorney when he framed this indictment. He, habituated to walk the ways of criminal jurisprudence, as lawyers ordinarily understood them, had framed an indictment for murder, and for nothing else. But a new enlightenment had come from the north to break in upon him, and to change this indictment, and darken it with the haze of treason. In the indictment on which the prisoner was being tried, the name of Abraham Lincoln appeared alone, unaccompanied with any prefix designating his official position. Did they ask him if he regarded it as the murder of a single man? He did. And why? Because the record, which was the only notice to the prisoner of what the indictment was, told him he was indicted for the murder of Abraham Lincoln. Who was Abraham Lincoln? All the record showed was, that he was a man in the king's peace; a man in the peace of the law. The government did not pretend to show in their indictment that he held any high official position by virtue of which the killing of him as an individual attached additional enormity to the crime of the killing. The government told him that he was an individual whom he had slain, against the laws of his country. Why, then, should they seek to travel out of the record? Did the government think they needed all this outside material to garnish up a failing case? Then let them deal justly, deal according to the spirit of this great government, and let the bond go free. He would appeal to the district attorney to rise to the full measure of the dignity of his office and maintain that, rather than seek the small and vain gratification of a verdict.

His learned friend on the other side had said they were now trying one of

the conspirators for being engaged in this great crime ; and were trying him for murder as a part of that scheme. In the name of God, what law was that ? Where was the indictment for his conspiracy ? He was indicted for murder, not for conspiracy. Conspiracy to murder was one crime, and murder was another ; treason was a third, and conspiracy to commit treason a fourth. They were all separate and isolated offences, each having its characteristic marks, and well understood in the law. Would the counsel tell him that under an indictment for murder he was there being tried for a conspiracy against what he had called "the nation's life ?" If they meant to try him for anything else other than murder, let them give him an indictment, that he might know the offence and conform to the law. Referring to the Constitution of the United States, he said he hoped his brothers respected him. (Laughter.) He knew that much had been said of political sentiments in reference to that Constitution, and for some of those whose political sentiments had been sneered at here, and for himself, who felt somewhat like them, he would say that none respected the Constitution more. As for himself, he would dye every word of that Constitution in his heart's best blood. He never had seen the day when he would not have done it, whether that blood was drawn by a dagger pointing from the North or from the South. The words of the Constitution were :

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

Had they informed the prisoner of the nature and cause of the accusation ? In the record he was told that it was for murder ; in the argument he was told that it was for treason, conspiracy—compassing treason, compassing murder.

The first count in the indictment was against Surratt for having killed with his own hand ; the second against Surratt and Booth for having killed ; and the third and fourth against them all for having killed ; but the indictment throughout was for murder and nothing but murder. If his learned brethren representing this great government were simply seeking the vindication of society against one charged with a violation of its laws, he trusted they would do the government the credit and themselves the honor of not passing beyond the accusation, nor straining the principles of law that apply to the case.

The learned counsel on the other side, with regard to the testimony applicable to Seward, having shown the court that this was simply an indictment for murder, had said with great pathetic feeling, "Could they not show that Payne in his attack on Mr. Seward so shocked Mrs. Seward that she fell dead, and that death followed in her track soon after in the person of her daughter ; and that all this was part of this conspiracy ;" and thus the prisoner was to be charged with it ? He answered, no. The question was, "Is he guilty of the murder of Abraham Lincoln ?" These gentlemen had no right to put in the record that which was calculated to stir up men's hearts, and by the fumes of feeling obscure the operation of judgment. The twelve men who sat in the jury box were to come out from the atmosphere of feeling as though they had passed from the atmosphere of the world, and to look at simply the facts presented, and determine from the facts as to whether the man committed the act with which he was charged. Why was the evidence regarding the attempted assassination of Mr. Seward introduced ? Why was all this dramatic effect of bringing that family upon the stand ? For no other purpose than of operating upon the feelings of men and reeking from their hearts that grief for the dead which would aid the perpetration of another murder.

The United States should stand the impersonation of that image of justice



chiselled by the artist, with its eyes blindfolded, holding the sword in one hand and the scales in the other, and looking neither to the right nor to the left, and hearing nothing but the fact which would guide it in the direction of justice, and treading the pathway without seeing, impelled only by the internal voice of truth. Yet all this had been introduced to cover the case and prejudice the mind of the jury and the public. It had nothing to do with it. Where was the connection? The prisoner was charged with the murder of Mr. Lincoln. It was attempted to show that there was a conspiracy to murder Lincoln—no conspiracy, as far as he had heard of, to murder Mr. Seward; no charge in the indictment of such a conspiracy. Said the counsel, everything that was done by the conspirators could be given in evidence. The counsel knew that was not law. What was done in pursuance of the conspiracy was evidence, but what was done by the conspirators outside of the conspiracy was not evidence.

With regard to the alleged confession of the prisoner as to having murdered certain Union soldiers, the counsel on the other side claimed that it should stand, as it went to show the feeling of the party. Feeling towards whom? he would ask. Feeling toward Mr. Lincoln? What had the shooting of Union soldiers down in Virginia to do with showing that? Was every man who got into a quarrel with a Union soldier showing his feelings towards the President of the United States?

The counsel seemed unable to rid his mind of the idea that we were living in a royal government; unable to rid himself of the idea that the whole army was only part of the *personnel* of the President, and that the President was here, in free America, the Lord's anointed, from whom ointment drops went forth over the entire army, and he who should touch the simplest soldier touched the lofty head. But that was not so. If they could show the feeling of the party accused to the party murdered, let them show it, but not by indirection, and his feeling as to other parties. The district attorney had taken up the idea and gone beyond what he supposed he would go. He said he could show that the heart was generally wicked; that the party was possessed with the devil and this in order to prove malice. He could do no such thing. Malice in law meant wilfulness. A jury sitting in a criminal case were not like a jury sitting in a civil one, where a party sued for damages for libel, slander, or assault and battery, and where the jury might give vindictive damages because of the intensity of the malice. In a criminal case they simply found a verdict of guilty or not guilty. Malice, in criminal law, meant wilfulness, intention. The criminal law drew no distinction, but the civil law did.

After further treating of this principle, he said that, even admitting the view of counsel to be correct, they would have to show that the killing of the Union soldiers was a part of the conspiracy; and would they seriously contend that it was—that it was agreed on among them? He thought not. He therefore, for the reasons stated, did not see how the evidence could have anything to do with the case. While he gave counsel credit for sincerity in all they said, he found it very difficult to bring his mind to the conviction that they believed this evidence was competent when they insisted it should go in. But counsel said they must take all of the confession. True, all the confession in the same conversation; that was law. McMillan made his statement, as the court would observe on looking at the record, of what the prisoner said to him, and then when counsel pressed him as to other conversations spread over the whole voyage, he put this out as something that he knew would help to damn the character of the prisoner at the bar, or excite prejudice against him. The counsel had said, if it was anything favorable, the defence would insist on it; if anything unfavorable, they would not desire it. All he had to say in reply was, that he would insist on the free confession of all who had testified in the case, if he could get it. He would like to have had the privilege of putting in whatever this poor boy's butchered mother said, but he had not. When he offered what she said,



counsel on the other side said, "No, you cannot prove that. We can prove what she said that will benefit the state, but you shall not throw the mantle of a mother's declarations over the child standing in the prisoner's dock." Had he been allowed, he would have proved her declarations—proved them when tottering from the dungeon to the scaffold, with the world behind her, and nothing in the front but that God before whom she was shortly to appear, and before whom she solemnly asseverated that she was innocent of the crime for which she was being killed. When he objected to his proving that, counsel did not then think of the principle that he talked of now. He (Mr. Merrick) thought he ought to have been allowed to prove it; not by law, he admitted, for he presumed the court would rule it out if objected to; but he did think that this great government of the United States, with twenty-five or thirty millions of people, and the mightiest power in the world, arraigning one poor boy for a violation of its laws, might have allowed to fall from heaven the last declaration from the lips of his mother that it had sacrificed. He did think they might have allowed him to prove it, and let the jury say what they thought of it.

Next, as to the telegraphic communication between Elmira and Washington. Counsel had said they wanted to prove this communication as open between the two places, because the prisoner might have from Elmira been acting in furtherance of the conspiracy by means of the telegraph. His learned brethren had been enlightened in regard to another principle of law. They had been enlightened on a point of possibility and probability. When he had offered the Canandaigua register with the name of the prisoner on it, under the date of April 15, 1865, proved his handwriting, and showed that he had been out of the country for the whole time, except when he was in prison, counsel said, "O, no; that won't do; he made that evidence for himself." "Yes," said he; "but, gentlemen, here is the register, and here is his handwriting under that date, and he might have written it at that time, and, therefore, it ought to go to the jury as a circumstance." They, however, said, "O, no; he could not have written it on that day." Now, they changed their minds, and wanted to show that there was telegraphic communication, and that Surratt might have telegraphed over the line to Booth, in Washington—might have been there doing something in furtherance of the conspiracy. The objection to that was two-fold. First, that it was too remote; and, secondly, he could not have been doing anything in Elmira which would justify the jury in finding a verdict of guilty.

Next as to the Kirkwood House. That rested upon the same principle as the evidence with regard to the attempted assassination of Secretary Seward. There was no conspiracy to kill Mr. Johnson charged; the allegation was an attempt upon his life, which was a very speculative thing at best. The learned counsel had stated that he had been convicted by a competent tribunal. He did think that his learned brother had rid himself of some of those ideas that seemed to weigh with such perilous power upon the judgment of a portion of our people. He did not expect to hear the learned gentlemen utter in a court of justice, after the decision in the case of Milligan, the sentiment that Atzerodt was tried by a competent tribunal. He respected the members of that tribunal, but there were grave errors committed about that time; grave errors that history would record, and at the commission of which good men trembled for the future of our liberty more than they did when "the life of the nation was assailed by the death of the President."

But our courts, the last bulwark of freedom, the great immovable, unshaken pillar of the republic, stood firm when every other part trembled in the storm. Our Supreme Court stood firm as against that error, and had pronounced the supremacy of civil over military law. That military commission would go down to history branded as an illegal convocation of men exercising no authority upon

the lives of their fellow-citizens. The fact that Atzerodt was convicted before that commission could have no weight in showing that he was, or was not, a member of this conspiracy, if a conspiracy there was. But what he did had nothing to do with the prisoner at the bar; had nothing to do with the alleged conspiracy in the indictment to murder Abraham Lincoln. Said the counsel, Atzerodt was at his mother's house, and went from there to murder the Vice-President; went from the house of Mrs. Surratt, who was even then, while having it the rendezvous of these traitors, boarding some of the clerks of the federal government; boarding the patriotic Weichmann. God save the mark! (Laughter.) He could not bring himself to discuss this proposition. What logic was there in it? What was in it to satisfy the court that Atzerodt was connected with Surratt in the attempted murder of Johnson? Said the counsel, the rendezvous of the conspirators was Mrs. Surratt's; they went forth from there upon their devilish work; that Mrs. Surratt, while she nurtured, also boarded them,—also boarded a Union clerk. He would show what manner of union clerk this boarder was; he would say no more concerning him, for when this trial was over, he thought he would leave this court-room with the profound pity of every kind heart.

Letter No. 5 counsel had withdrawn, and, of course, there was no necessity for his saying anything regarding that. The transportation from Washington to New York the learned counsel said should be proved, because Surratt was at the other end of the line, and they could show that he could have got over to this end and reached the point where they proved him to be, and at the time stated; as he had stated, for the question had been up before, they had no right to divide their case and prove him to be at one end of the route in their examination in chief, and leave the proof that he was at the other end for the rebuttal; they should have traced him along the entire line in the first instance. It was fairly in reply to nothing the defence had proved.

Mr. Merrick said he thought he had considered all the points presented; he had not reflected upon what he should say at all, having designed to submit the motion to the court without argument. What he had said had been drawn forth by his learned brothers for the prosecution. He would take occasion to say at this point, that he hoped that some of the kindness and fairness which his learned brothers on the other side represented they felt and entertained, would not only hereafter in this case be felt and entertained, but be manifested. He did hope that the United States government would not bow its proud and dignified head to the humiliation of attempting to trick a prisoner out of his life.

The COURT reserved its decision, and a recess was taken until to-morrow (Saturday) morning at ten o'clock.

SATURDAY, July 27, 1867.

The court was opened at 10 o'clock.

Mr. BRADLEY said he was sorry to inform the court that some witnesses as to Dr. Bissell's character were on the way, but had not arrived here. He did not know what sort of an application to make for a further indulgence, but he hoped the court would exercise such discretionary power as to enable the defence to have the benefit of this testimony. It was essential not only to the case itself, but to the character of the witness, who had been so terribly assailed, as it could be shown that Dr. Bissell's character was not one that could be so easily impeached. There was also a witness on the way who would testify to Dr. Bissell's presence in Elmira on April 14.

The DISTRICT ATTORNEY said he understood that the case was to be held open only until this morning, and he hoped the agreement would be enforced.

Mr. BRADLEY said nine witnesses were on their way from New York and from Owego and other places, and some of these gentlemen were of the highest respectability.

Mr. PIERREPONT said it was understood yesterday that the case was to be kept open only to allow witnesses to be examined as to character. He doubted whether this was a matter of much importance, as the whole question at last was whether the jury would believe the witness under oath; not whether a witness's neighbor would believe him under oath.

The DISTRICT ATTORNEY thought it would be an undue exercise of judicial discretion to allow the case to be reopened for this purpose. The prosecution have witnesses now in attendance against Dr. Bissell's character, but they would not ask to have the case reopened.

The COURT said he thought he had been very indulgent to both sides in this case. If he had exercised his discretion otherwise than he had done, the case would probably have been over before this. Last week he had granted some three or four days' indulgence to the counsel for the defence, and this week had extended the same indulgence to counsel for the prosecution. Two days previous a proposition had been made by the counsel for the defence to close the case at that time, and that proposition was accepted by the counsel on the other side; but owing to a misunderstanding regarding the argument the proposition was withdrawn. This misunderstanding regarding the argument was the only reason the arrangement was not carried out. Under those circumstances he did not think any prejudice would be done to his case one way or the other, if he should now refuse to grant further indulgence. A day's indulgence had been granted in order that these witnesses, who, as counsel stated, were merely as to the character of a witness, might be here and testify. They had not come, and now a further indulgence was asked. He had already accommodated counsel on either side, in this respect, at great expense to the government, and at the expense of the comfort and interest of the jury, and he therefore could not accede to the request made, but must decide the case to be now closed, so far as the evidence was concerned.

He then said that with regard to the motion to strike out certain testimony in the case, which motion was argued the previous day, he was now ready to make known the conclusion at which he had arrived. Seven items of evidence had been objected to: first, that in relation to the attack upon Secretary Seward; second, that relating to Jacob Thompson; third, that relating to the shooting of Union soldiers and the gunboat fight, as testified to by McMillan; fourth, the evidence given yesterday in relation to telegraphic communication; fifth, the evidence in relation to the running of trains on April 15, 1865; sixth, the letter known as the Duell letter, picked up in the waters of North Carolina; and seventh, all the evidence relating to Atzerodt at the Kirkwood House.

The first item of evidence relating to the attack made by Payne upon Secretary Seward, and the last, relating to Atzerodt's doings at the Kirkwood House, he should allow to stand, upon the ground that there was evidence in the cause to show that the attack upon Secretary Seward and the preparations for an attack upon Vice-President Johnson were embraced in one and the same scheme and plot.

With regard to the second item, the evidence relative to Jacob Thompson, he would say that he had looked over the printed evidence, though perhaps not as carefully as he might have done, and he could find nothing in it which connected Jacob Thompson with the conspiracy, or with the prisoner at the bar with regard to the conspiracy. He would therefore rule that item out.

The third was relative to the shooting of Union soldiers on the railroad by the prisoner and others, as testified to in the evidence of Dr. McMillan, where he gives what he says was the confession of Surratt as made to him. In looking over the testimony of Dr. McMillan it was impossible to tell whether this was said in the same conversation wherein he made other confessions more pertinent to the case, or not. They were bound to take it just as they found it in the testimony. On the ground, therefore, that it was impossible to separate it



from the other and say it was given in at a different time, by way of another confession, he thought the evidence ought to be allowed to stand; and also upon the further ground that there was evidence in the cause tending to prove that there was a conspiracy, a plot, a scheme, or a concerted plan of action, by whatever name they might choose to denominate it, not only to take the life of the President, but the other head officers of the government. It was a plot against the United States government, and the shooting of United States soldiers might tend to prove the motive or the malice the individual who shot them bore towards the government.

As regarded the fourth item, relating to the evidence between Elmira and Washington, he did not see anything in the evidence of the defence which would call for this evidence by way of rebuttal, and therefore, he would direct that that be stricken out; and the evidence relating to the transportation of passengers which was given in on Thursday, would be stricken out on the same ground.

The letter known as "No. 5," picked up in a river in North Carolina, it was admitted by the counsel for the prosecution ought to be stricken out, and he so ruled.

Mr. BRADLEY reserved an exception to the ruling of the court in so far as said ruling allowed to stand the certain items of testimony named.

After some conversation in relation to the signing of the exceptions by the court, Judge FISHER said the counsel should now proceed with their arguments to the jury.

Mr. MERRICK asked the court to rule upon the question submitted by him relative to the speeches, and whether, if the defence declined to speak, one speech by the prosecution would not close the case.

Mr. PIERREPONT said this was no ordinary case, and he intimated that no restriction should be placed upon counsel in addressing the jury.

Judge FISHER said this was a most voluminous case, and even if the defence did not wish to address the jury, he thought he could not restrict the prosecution to but one speech.

Mr. CARRINGTON contended that this case was one of too much magnitude to be permitted to be thrown upon the court and jury without argument.

Mr. BRADLEY submitted that if the prosecution proposed to divide the labor the defence should be advised of that division in justice to the prisoner. He would suggest, therefore, that the prosecution officers make their speeches first, and let the defence reply, and the one or both of the counsel for the prosecution could reply. He did not know what announcement had been made, but he believed the prosecuting attorney had always closed the case except, in one instance—the Gardner case.

Mr. CARRINGTON said he had given way to the counsel in the Vanderwerken case, and he received a severe excoriation for it from Mr. Carlisle.

Mr. BRADLEY said he deserved the excoriation, and would always deserve it if he resigned his rights as prosecuting attorney to his associate counsel.

Mr. PIERREPONT contended that the defence had no right to close in any case. It was a matter for the discretion of the court. He had been asked to close the case by the district attorney, and he had agreed to do so, and would now speak unless the court said he could not do so, in the event of the defence declining to speak.

Judge FISHER said it was best to proceed in the usual way, and he directed the prosecution to proceed with the argument to the jury.

#### ARGUMENT OF THE DISTRICT ATTORNEY.

The DISTRICT ATTORNEY then rose and spoke as follows :

May it please the court, and you, gentlemen of the jury I have reason to regret the state of my health in view of the task before me, but I shall notwithstanding, endeavor to do my duty. Permit me at the threshold, as the official



organ and representative of this government, not in the way of flattery, but in the integrity and sincerity of my heart. to return you my sincere and cordial acknowledgments for the becoming manner in which you have generally borne yourselves during this long, tedious, and painful investigation. Your courteous, benignant, and solemn bearing is a proper and eloquent rebuke to the spirit of levity which, I regret to say, has sometimes pervaded the audience; and is alike worthy of imitation, and of the highest commendation. I am not surprised that the learned counsel for the prisoner should offer to submit this case without argument, for error is easily exposed, while truth loses nothing from discussion. It was, I think, the advice of an old and experienced lawyer, to "submit a bad case, but argue a good one." The principle is embodied in that familiar and commonplace effusion of the poet:

"Truth crushed to earth will rise again—  
The eternal years of God are hers;  
But error, wounded, writhes in pain,  
And dies amid her worshippers."

Their hope was, gentlemen of the jury, and their only hope, that in groping through this labyrinth of evidence without the guidance of court or counsel, you might find something like a reasonable doubt. But a simple analysis of the testimony is all that is necessary to expose the fallacies of the defence, and to establish the guilt of the prisoner at the bar so clearly that he who runs may read.

Before proceeding to the argument I shall be pardoned, I trust, for offering a word of explanation. It has been, as already intimated, the custom in this District for the United States attorney to close the discussion in every case where the government is interested. But to this rule of practice there are notable exceptions. In the celebrated case of the United States *vs.* Gardner, my friend and venerable predecessor in office, Philip R. Fendall, esq., accorded the privilege of making the concluding address to the Hon. Henry May, with whom he was associated on that occasion. In the case of the United States *vs.* Gilbert Vanderwerken, in which I was opposed by the ablest counsel at the bar, I yielded the post of honor and responsibility to Walter Davidge, esq, a gentleman eminent for learning and ability in his profession; and I understand from his honor who presides over this tribunal with so much courtesy and dignity, that when he was attorney general of the commonwealth of Delaware, he paid this compliment to a gentleman older than himself, when he invited him to assist him in the discharge of his official duty. I make these remarks in regard to a question of professional etiquette and propriety, about which gentlemen of the profession entertain a difference of opinion, because, so long as I occupy my present official position, I desire to avoid everything which might excite or appear to deserve an expression of disapprobation from this honorable court, or my brethren at the bar. The distinguished gentleman, who is my senior in years, and who has been specially employed by the government to aid in this important prosecution, will, gentlemen of the jury, deliver the concluding argument to you. I now bespeak for him that kind and respectful attention which the importance of the case demands, and to which he is eminently entitled in view of his high personal and professional character. If I err, you will see from the remarks which I have already made that I err in good company, and on the side of professional modesty and courtesy. The learned gentleman who opened the case on the part of the prisoner remarked, in the course of his address, that they had just exhibited some feeling of indignation in view of certain facts which he disclosed, and of which he assumed we had no personal knowledge. If anything has occurred in the course of this investigation to excite a feeling of honest indignation, we have no objection to a proper and reasonable exhibition of it. It is the privilege and it is often the solemn, the painful duty of counsel to assail

boldly, and to denounce the character and conduct of witnesses. But no honorable gentleman should take advantage of his position at the bar to do injustice to an individual who happens to be in the unfortunate attitude of a witness upon the stand. I make no such accusation against the learned gentleman. It is a question which addresses itself to his own judgment, conscience, and honor, and every lawyer should be his own judge of his professional duty.

Mr. BRADLEY, sr. To what do you refer? I do not understand you.

Mr. BRADLEY, jr. Nor I either.

The DISTRICT ATTORNEY. Well, I will explain afterwards. I am speaking of the reference made to the witnesses by Mr. Bradley, jr., in his opening address. By a parity of reasoning, gentlemen, and upon the same principle, it is the privilege and often the duty of the prosecuting officer to denounce the parties indicted and arraigned for high crimes and misdemeanors, but it would be improper for counsel to treat such matters as personal, and to indulge in personal or offensive remarks to each other, for reasons too obvious to mention. Entertaining these sentiments, I shall endeavor on this occasion, as I hope to do on all occasions, to meet the learned counsel in kind and courteous, but open, bold, and manly argument. I shall endeavor to present this case in a spirit of justice and fairness to the accused, but I shall speak of this traitor, murderer, and assassin, his associates in crime, and the rebel spy who comes here to shield him from the consequences of his crime, as they deserve. I cannot regard this cruel, miserable murderer and assassin as a representative man of the South; as an embodiment and impersonation of southern honor and southern chivalry; and if an attempt should be made by smiles, by innuendoes, or, as Hamlet says, "by any other such ambiguous giving out," to present him to the imagination of this jury as an embodiment and impersonation of southern honor and chivalry, I call upon you to spurn it as an insult to every honest man, born and reared upon southern soil. Southern men do not justify assassination and cold-blooded, deliberate, cruel murder. I am aware that I address southern men, with southern sympathies. I say this in no offensive sense. (A brief pause.) *Loyal* men, men true to the laws and the Constitution of our common country: What honorable man, north, south, east, or west, will proclaim to the civilized world that he justifies, palliates, sympathizes with a traitor, a spy, and an assassin, who shed, as I shall show you, innocent blood for money? What honorable confederate officer or soldier, and there were some there, as I am free to admit, for I thank God that I do not cherish in my heart a sectional sentiment. I would not abuse a northern man before a southern audience, nor would I abuse a southern man before a northern audience. I ask the question, what honorable confederate officer or soldier has taken that stand to shield this assassin from the consequences of his crime? A spy, fresh from Morgan's band of murderers, horse-thieves, and guerillas, with unblushing effrontery, has alone come here to represent to an American jury and an American audience that this is a man to be treated as a lion and a hero. Give me a jury of honorable confederate soldiers, give me a jury of young rebels, with arms in their hands, who entered into this fierce and cruel war, under the delusion that they were doing God's service, many of them honest and honorable men, misled by wicked, designing and ambitious politicians, and let me tell the sad story of this cruel, cruel murder, and they would hang this wretch as high as Old John Brown, or Haman. Born, gentlemen of the jury, on the soil of the Old Dominion, I am endeared to her by the strongest, tenderest, and holiest ties that could entwine around a human heart. There lie entombed the bones of my ancestors, and of my own honored father, who carried to his grave the terrible yet honorable wounds he received while fighting, not for a section, but for this whole country. Feebly endeavoring to imitate the example, and to follow his precept, during the cruel war that swept over the face of our country, I was true to the federal cause; not because I loved Virginia less, but this Union more; because

I honestly believed that the true honor and interest of my native State were involved in the preservation and perpetuation of the federal Union. I never found that I injured myself in the estimation of a northern gentleman or lady by boldly avowing my personal affection for the people of my native State. I differed from them upon principle; but with regard to this all honorable men can agree, that the murder and the assassination of any man, whether he be President or a feeble, unpretending American citizen, sitting by the side of his wife, is a crime which deserves the anathemas and the indignation of every man who has a heart to love and a soul to feel for the honor of his country. Who are the men—of course I make no allusion to counsel—who sympathize with this prisoner and his horrid crime? The original secessionists, the persons who filled this land with widows and with orphans, who stirred up strife among brethren, and whose coward hearts quailed in the hour of battle and of danger. Perhaps party spirit may pervade this audience—I trust not—but I call upon you, gentlemen, to exorcise the infernal spirit from the halls of justice; preserve the integrity and purity of the judicial ermine, and wipe this deep and damning stain from the escutcheon of your country.

I beg your pardon, gentlemen, for having detained you thus long with these prefatory remarks. To you I know that words of admonition are unnecessary. You fully understand and appreciate, I have no doubt, all the issues submitted to you for your decision. The scene before us is as solemn as the grave. You behold in the person of the prisoner at the bar a dying man. He has forfeited his life to society by a deed of blood and horror almost unprecedented in the annals of ancient or of modern history. The voice of reason and of public justice alike demand this satisfaction to an outraged and violated law. We must be cruel only to be kind. We must punish the guilty only to protect the innocent. You have been subjected to a searching examination by one of the honorable judges who presides at this tribunal, and in response to the interrogatories submitted to you, you have sworn to decide this case according to the evidence, appealing to the searcher of all hearts to test the sincerity and integrity of that impressive and solemn adjuration. I was struck with the language and manner of one of your number when the question was put to him. I know him, and have known him long. He said, "I will decide this case according to the law and the evidence." These are the very words. And let me say here that it is a matter of mutual congratulation that a jury has been selected agreeable to both parties; the representatives of the wealth, the intelligence, and the commercial and business character of this community; gentlemen against whose character, as has been already intimated, there cannot be a whisper of suspicion. I would trust you with my life and my honor; and I will trust you with the honor of my country. But did you not make a mistake? You never read a law book in your life. How then can you decide according to the law? Yet that is your oath. Take care; not for a world would you violate that solemn obligation. How are you to decide according to the law, never having made law your study. The national legislature has wisely provided against that difficulty. A gentleman learned in the law, who has given days and nights, months and years to the investigation of this abstruse and complicated science, distinguished for his morality, as every judge should be—for his responsibilities are equal to those of a minister of the gospel who proclaims the glad tidings of salvation—under the solemn obligation of an official oath, tells you what the law is. You look to him exclusively, for the responsibility rests entirely with him. He enunciates and elucidates the principles of law by which this case is to be tried and decided. A juror who swears to decide according the law, and departs but a hair's breadth from the instructions of the court, and decides according to his own abstract notions of right and wrong—pardon me for saying so, I do it in no offensive sense—commits the awful and Heaven daring crime of perjury. The judge who wil-



fully misrepresents the law commits the same crime. The juror who departs from the instruction of the judge—pardon me for repeating, gentlemen—commits the same awful and Heaven-daring crime. If I should wilfully misrepresent the law for the purpose of misleading the judge, I would commit a great sin in the sight of God and my country; but I am liable to err, and it is for the judge to determine the mooted questions between us; your province being simply to ascertain whether the facts which he declares essential to the conviction of the prisoner appear in the evidence. If they do, you will render a verdict responsive to the spirit of those instructions, leaving the consequences to Him who knows the end from the beginning, and orders all things aright.

Now, I undertake to show—mark me, for I make the statement fully sensible of all the obligations that attach to my official position—I undertake to show that every fact which this judge will and must say, if he decides according to the law, is essential to the conviction of the prisoner, has been established by evidence, clear, conclusive, crushing, overwhelming. I undertake to show that every link has been forged by as honest licks as the blacksmith forges a chain, to bind the prisoner at the bar to the body of the atrocious crime charged in this indictment. Every privilege has been accorded to the prisoner, which the benignant spirit of our institutions, sanctioned by the wisdom and experience of ages, accords to every party charged with the commission of crime. He has had a jury mutually selected by us, to which there can be no objection. He has been defended by eminent counsel, and with a zeal, eloquence and ability alike creditable to their country and to the honorable profession which they dignify and adorn. We have, then, gentlemen of the jury, every assurance that you will discharge the high and solemn duty which devolves upon you with intelligence, firmness, and fidelity.

Before proceeding to the discussion of the several propositions of law and questions of fact involved in this discussion, although I am aware that I shall be wearying you, I shall be pardoned, I trust, for making a few additional preliminary observations. Do you remember the feelings which inspired your hearts when the telegraphic wires first whispered the glad tidings that the national cause had triumphed over that cruel and causeless attempt at the nation's life; when you realized the fact that peace, sweet, gentle peace, had returned once more to take up its abode in our beloved and bleeding country? Do you remember how your bosoms heaved and swelled with emotions of patriotic pride and pleasure as the booming cannon proclaimed the gratitude of a brave, generous, loyal, and devoted people? Do you remember the prospects, so bright and joyous, so full of life, light, and hope, as the war clouds were seen passing away to the shades of eternal night, and the rainbow of peace appeared to our delighted vision, spanning the whole political horizon? Oh, do you remember the feelings which seemed to possess your very souls as your wife and children bowed with you around the family altar to offer the incense of praise and adoration to the God of our fathers and our God, for his great deliverance? for it has been truly said, that "it was the Lord's doing, and it was marvellous in our eyes."

In that hour of the nation's jubilee, when a song of triumph seemed to rise from the great heart of the American people to Heaven, tell me, gentlemen of the jury, did you not feel your heart instinctively turned and warmed towards that great and good man who had been mainly instrumental, in the hands of the Almighty, for the salvation of your country? I do not ask what your feelings for him previously may have been. I know that he was the object of special hatred and malice to the enemies of your country. I know that no words of denunciation and abuse were too opprobrious to be heaped upon his devoted head; but, to indulge a familiar paraphrase, "all his feelings seemed to lean on mercy's side." Hear him give expression to the feelings of his heart, in those



memorable words, so familiar to the public ear, and which ought to be inscribed in letters of gold on the portals of your national Capitol, "With malice towards none, with charity for all, let us with firmness pursue the right, as God gives us to see the right." "This Duncan was so clear in his great office, and bore his faculties so meek, that his virtues seemed to plead like angels, trumpet-tongued, against the deep damnation of his taking off." He needs no eulogium to embalm his memory in the hearts of his countrymen. There it will remain green and fresh forever and forever. I speak to men who, perhaps, may have differed from him politically. You knew him personally. The name of Abraham Lincoln will be remembered by the world, in the strong and expressive language of another, "while liberty is a blessing, and tyranny a curse." Behold that tall, familiar figure. I know to whom I speak. The time was when it created in your mind a feeling of political hostility, and perhaps of personal enmity, for you considered him the representative of a hostile party; but you gradually learned to respect, then to honor, and at last to love the kind, gentle, and generous soul it represented. Tell me, did you ever have any transactions with him? Was he not kind, gentle, patient, forbearing, and charitable? It was a standing order, if I have been correctly informed, that wherever he was, or however employed, he was always to be seen where a question of life or death was concerned. However this may be, he thinks proper to exercise the privilege of the humblest citizen in the community, in company with his own wife. And, Almighty God! has it come to this, that an American citizen cannot feel safe while he walks, or sits, or sleeps by the side of his own wife? In the sacred presence of woman—and be it said to our eternal credit, that no nation is more courteous and more honorable in their treatment of the fairer sex than the American people—in her company, with a few invited friends, for the purpose of getting a little recreation from his labors, he goes to a place of public entertainment, in the very midst of the national metropolis, and almost within sight of the presidential mansion. He is unconscious of the slightest design upon his life. What and whom has he to fear? He is received with acclamations by his assembled countrymen, in the language of the witness, Major Rathbone, with "vociferous cheers." He is escorted to a private box specially prepared for him, decorated and adorned with the American flag, the emblem alike of freedom and protection. There he is. The American Union has survived the shock of contending armies, and "the untold dangers of treason, rebellion, and privy conspiracy"—borrowed words, and familiar in the history of the church. There he stands upon the very summit of human prosperity, dignity, grandeur, and glory. His enemies are at his mercy and under his feet. But, mark you, no word of bitterness escapes his lips.

Tell me, if you can, of an unkind, ungenerous, or uncharitable sentiment he has ever expressed. If I have been correctly informed, he remembers that the hour of victory was the hour of magnanimity. At that time his heart was overflowing with sympathy and love, not only for those misguided men who rushed madly into the rebellion in obedience to the orders of their commanders, whom they did not understand, regardless because unconscious of their great crime and its consequences; but even for those cruel and bloody traitors who raised their parricidal arms against the government which had never harmed, but which had ever sheltered and protected them. Of him I might say, as was said of another distinguished public character, under somewhat similar circumstances, "O, what an elevation! but alas, alas, what a fall!" Our joy is suddenly turned into deepest sorrow. The emblem of freedom which recently floated so proudly over land and sea is draped with the emblems of mourning, and a nation in tears follow their beloved and honored chief to a patriot's and a martyr's grave. Gentlemen of the jury, shall I review the horrid details of this cruel and bloody tragedy? It is daguerreotypied upon your minds and memories. Perhaps even now, like some horrible panorama, it

is passing before your imaginations. Like Sergeant Dye, it may have disturbed your thoughts by day, and your dreams by night. See him, seated as I have already described. At that very hour the assassin is stealing upon him, and the instrument of death is aimed at that noble head which had guided the ship of state through the storm of civil war to the haven of permanent and honorable peace. As I have heard a somewhat similar scene described, "you see the flash, you hear the report of a single pistol, and the disembodied, immortal spirit of Abraham Lincoln stands before the Judge of all the earth." We can follow him no more, gentlemen of the jury, it is said, with our mortal vision. But may we not, without impiety, indulge the hope that the eye of faith can follow the great patriot and philanthropist to the bosom of the blessed Saviour? For his mission upon earth was a mission of mercy. He left the realms of glory in part to burst the bondsman's chains and to set the captive free. Gentlemen of the jury, where are the men and the woman who committed this awful and Heaven-daring crime? I do not ask who fired the fatal shot; I do not ask who conceived; I do not ask who matured; but where are the men and the woman, however remotely connected with this crime, as a witness has strongly said, "against society and against civilization?" The Satan of this infernal conspiracy has gone to hell, there to atone in penal fires forever and forever for his horrid crime. But the Beelzebub still lives and moves upon the face of this green earth, as the dramatist says, "to mock the name of man." In John H. Surratt, the prisoner at the bar, you behold the Beelzebub of this infernal conspiracy. Second he may be in rank and power, but none the less in hatred, malice, and revenge, and to those red and bloody demons lurking in every wicked, base, depraved heart, and prompting to the commission of those crimes which shock and outrage human nature. He was false to his country, while professing allegiance to its laws and institutions, and false to his government while enjoying its favor and protection. Not one of these misguided young men, who, in the honest belief that they were doing God's service, armed themselves like gallant soldiers to fight in what they believed to be a righteous cause. False to the mother who bore him, and whom he deserted in the hour of danger and of distress. The gallows upon which she expired should have been his throne. There he might have palliated or irradiated, with some show of gallantry and parental affection, the horrid crime he had committed. But false to every sentiment of truth, of honor, and of patriotism, he seeks to save his wretched life in the plains of Italy, or the sands of Egypt. But the avenger of God pursues and overtakes him. This doubly injured and insulted government stretches its long and strong arm across the ocean which rolled between him and the home he had dishonored, and he is here to-day before an honest jury of his country to pay the demands of an outraged and a violated law. I arraign him as the murderer and the assassin of Abraham Lincoln; for when John Wilkes Booth fired the fatal shot, where were the other conspirators, including the prisoner at the bar? It matters not where they were. However, a good deal has been said about that, and this question will be hereafter more fully discussed. Every man was at his place performing his part toward the execution of their common bloody purpose. This conspiracy may have been an infant at first, and gradually assumed the proportions of a giant, stretching its long and strong arms from the lakes to the Gulf, and from ocean to ocean. One may have been standing, as I have heard it strongly expressed, in the Arctic circle, another in the prairies of the west, and another in the ever-glades of Florida. In legal contemplation it was one great artificial person animated by the same spirit, and moving towards the same end. Every conspirator was a member. The act of one was the act of all. If this be so, as I shall hereafter discuss, by the law of God and of nations, every man connected with it is equally guilty of this horrid crime, which filled the great heart of Christendom with horror.

Now, permit me, gentlemen of the jury, to proceed more in detail to the argu-

ment of the propositions of law and questions of fact involved in this investigation. I undertake, first, to satisfy his honor that the legal consequence of the facts which I assume to be proved, is the guilt of the prisoner at the bar. Secondly, I shall undertake to satisfy you, gentlemen of the jury, that the facts which I assume in my argument to the court have been proved beyond all rational and reasonable doubt. If I succeed in maintaining these two propositions I am entitled to a verdict of conviction. This being the order of my argument, I submit to your honor the following propositions of law :

1st. If the jury believe from the whole evidence that Abraham Lincoln received a wound from a pistol fired by John Wilkes Booth, in the city of Washington, on or about the time named in the indictment, which resulted in his death, in pursuance of a conspiracy to murder or assassinate said Lincoln, of which conspiracy the prisoner was a member, and that the prisoner was at the place and performed the part assigned him toward the execution of the common design, they should find him guilty as indicted, no matter what distance may have separated the conspirators, or how far apart they may have been at the time the wound was inflicted as aforesaid.

2d. If the jury believe that the object of said conspiracy was to abduct the said Lincoln, the President of the United States, with a general resolution on the part of the conspirators to resist all who might oppose them in the execution of their common design, and that while engaged in said unlawful conspiracy, one of the conspirators, without the knowledge and contrary to the wishes of the other conspirators, and the informal plan and purpose of said conspiracy, killed the President as aforesaid, the jury should find the prisoner guilty as indicted.

3d. If the jury believe from the evidence that, at the time President Lincoln was killed as aforesaid, the prisoner was either actively or constructively present, encouraging, aiding, abetting and maintaining the principal murderer, they should find him guilty as indicted, although he was neither an ear nor an eye witness to the transaction, (leaving it open for the court to explain constructive presence ; for we contend that he was constructively present, no matter how far off he was) at the place, and keeping the post assigned him, where and in the manner the conspirators supposed he would be most effective.

4th. If the jury believe from the evidence that President Lincoln was killed as aforesaid, in pursuance of said conspiracy, of which the prisoner was a member, he being either actually or constructively present at the time, it is a legal presumption that such presence was with a view to render aid, and it lies in the prisoner to rebut such presumption by showing that he was there for a purpose unconnected with the conspiracy.

5th. That the defence of alibi being an affirmative defence, the burden of proof rests upon the defendant to establish it to the satisfaction of the jury by a preponderance of the evidence.

The facts to be submitted to the jury would be as follows :

1st. Does it appear from the evidence that the assault charged in the indictment was made in the manner and about the time there stated, and within the jurisdiction of the honorable court ?

2d. Does it appear from the evidence that the wound which the deceased received, as charged in the indictment, caused his death ?

3d. Does it appear from the evidence that the assault and death were the result of a conspiracy of which the prisoner at the bar was a member ?

4th. What was the original character, plan, and purpose of the conspiracy ?

5th. If it be true that the prisoner was a member of this conspiracy, what part did he perform in the general plan ?

6th. Where was the prisoner, in point of fact, at the time the assault charged in the indictment was made ? Was he in a foreign commonwealth, or was he in the city of Washington, D. C. ?



7th. Has not the prisoner at the bar confessed his guilt expressly and by implication?

Before listening to the arguments of the points, the court, at 11.15, took a recess for half an hour.

AFTERNOON SESSION.

The DISTRICT ATTORNEY resuming, said: When the court took a recess, if your honor please, I had stated a proposition of law and questions of fact which I proposed to discuss to the jury. I will now, following the order of my argument, proceed to consider separately the questions of law which I have submitted for the consideration of the court.

In regard to the first proposition of law, I will remark that it can be maintained both from principle and authority, assuming for the purposes of argument that the prisoner was a member of this unlawful criminal conspiracy which resulted in the death of the deceased as charged in the indictment, and which I may safely assume—for it is proved beyond all question, as I shall hereafter show, I think, to the satisfaction of the jury—it follows that he is either an accessory before the fact or an accessory after the fact—a conspirator merely, or a principal. It matters not whether he was a principal in the first or second degree, for practically there is no difference between the two, both, in the event of conviction by the jury, being liable to the same sentence. I assume, for the purposes of the argument, that I can satisfy this jury that he is not only not entirely guiltless or entirely disconnected with this criminal conspiracy. Now, then, was he an accessory before the fact. Judging from the intimation which the counsel who addressed you yesterday afternoon, (I allude to Mr. Merrick,) with his usual eloquence and ability, shadowed forth, if guilty at all, the prisoner at the bar was an accessory before the fact. He then very clearly and fairly drew a distinction between a principal and an accessory before the fact. Now, your honor, I put this question: Was he an accessory before the fact? What is an accessory before the fact? I refer your honor to the definition in Wharton's Law Dictionary. An accessory before the fact is defined by Wharton as one who, being absent at the time of the commission of the felony, advised and counselled another to commit the crime.

Absence is necessary to make him an accessory. If he be present he becomes a principal; whether he be constructively or actually present is immaterial. If he be there or actively or constructively present, he is an accessory before the fact, or principal in the second degree. I refer your honor on this subject to Bishop's Criminal Law, first volume, where this degree of criminality is very accurately defined; and where he has elucidated the difference between the different grades of offences. It is a subject so familiar with your honor that I think it is unnecessary for me to proceed with any argument to satisfy the court that the prisoner could not be an accessory before the fact.

Your honor will observe from the distinction to which I have referred, that an accessory before the fact is one who contributes his will towards the execution of the criminal design, but does not act at the time the crime is committed; he does not act in aid of the principal of the first degree. I grant you—for I desire to be perfectly fair—that an accessory before the fact, who at the time counsels or commands the commission of the act, may furnish arms to the principal in the first degree for the commission of the offence. But the distinction is this: An accessory before the fact is one who merely contributes his will at the time the deed is conceived, and has advised, or counselled, or commanded. But if, in addition to contributing his will, he does some overt act in aid of the principal felon at the time the felony is committed, then he ceases to be an accessory before the fact, and for this reason, because he not only contributes his will, but he contributes both will and act at the time the crime is committed.



And that is all the difference between an accessory before the fact and principal in the second degree. Your honor understands it; it is unnecessary for me to refer to any authority upon that point. It is clear that if he had performed some part in the commission of the offence at the time it was committed by the principal in the first degree, he would be either an accessory before or after the fact. Now, then, is he merely a conspirator? My learned friend, (Mr. Merrick,) in his argument, your honor, yesterday afternoon very properly said that conspiracy is one offence, and murder another. To conspire to commit a felony is a misdemeanor. And where the party conspires to commit either treason, felony, or anything else, and confines himself to the mere conception of the crime and combination to aid it, I concede that under our law he is merely a conspirator and has only committed a misdemeanor.

The offence your honor will observe, is complete when the conspiracy is formed, and every one who engages in it is a conspirator, and is guilty of a misdemeanor. But if in addition to engaging in a conspiracy to commit felony, the conspirator performs some act towards the commission of the felony, continuing a member of the conspiracy until the felony is committed, he is a felon. When the felony is committed the misdemeanor is merged in the felony. From that time the conspirator changes his character of conspirator for that of a felon. The line of demarcation between the two degrees is very definite. So long as the individual confines himself to the act of conspiracy to commit a felony, as my learned friend (Mr. Merrick) very truly and ably argued, he is guilty only of misdemeanor. But when he goes a step further and does some act towards the commission of the felony at the time the felony is actually committed by one of the co-conspirators he ceases to be a mere conspirator and becomes a felon.

Perhaps I am repeating, but in an argument of this kind it is pardonable. The conspiracy being merged in the felony by the commission of the felony, the character of conspirator is lost in that of the murderer, when a murder is committed by any member of the conspiracy, while the accused is a member of it and continues to perform his part towards the execution of the common design.

The argument, if your honor pleases, is not only sound and reasonable, but I submit, I hope with becoming modesty, to be able to show that it is philosophic, that it is conformable certainly to all the analogies of the law.

It may be stated as a general proposition, that the rules of law applicable to civil cases are equally applicable to criminal cases. Now, in the application of civil justice, you might without hesitation declare every member of an association formed for any purpose, each man bound by the acts of his partners within the scope of the partnership. Although it seemed to excite the indignation and a burst of eloquent denunciation from my learned friend (Mr. Merrick) yesterday afternoon, yet, I assert that by a parity of reasoning, where a number of persons forming an association conspire and combine together to commit the act of murder, the act of each towards the execution of the common design is the act of all. The foundation stone on which the argument rests is the principle embodied in that familiar maxim, *qui facit per alium, facit per se*; which, I maintain, upon principal and upon authority, applies equally to the criminal and civil laws. Now, I am aware it may be contented that in order to constitute the party a principal in the second degree, it must appear that he not only aided and abetted the principal in the first degree, but that he was also present, either actively or constructively at the time the felony was committed. I concede the whole question, for it resolves itself into this: What does the law imply by this expression of "constructive presence?" My learned friend (Mr. Merrick) yesterday afternoon gave his views in reference to the meaning of these words. It is proper for me to state in a spirit of candor that we differ *toto celo*. And I think I can satisfy your honor before I am through that the counsel is in error. I can satisfy the court that constructive presence is not to be understood in the limited and exclusive sense in which he

has interpreted it in his able argument to the court. Now, then, what does the law imply by these words constructive presence? I maintain that when a conspiracy is formed to commit murder or any other felony, and murder is actually committed by one of the conspirators, every other conspirator who has co-operated—and mark, if your honor pleases, that is a question of fact for the jury—who is co-operating in the conspiracy and acting his part in the general plan at the time the felony is committed, is in legal contemplation constructively present, no matter where he was at the time the murder or felony was committed. The question is not where the conspirator was at the time of the murder which it had been the object of the conspirator to commit. But the material question, and, if your honor please, the only material question is—first, was he a member of the conspiracy? and, second, did he perform his part in the general plan? For if the accused was a member of the conspiracy and performed his part in the general plan it could make no manner of difference, so far as guilt is concerned, how far distant he may have been from the other conspirators at the time the felony was committed. As was suggested by me, the distance between the accused and the other conspirators might be important as a question of fact to aid the jury in ascertaining whether he was a member of the conspiracy; but if in point of fact it appears he was a member of the conspiracy acting a part, it matters not as a question of law where he was at the time the murder was committed.

Suppose, if your honor please, I give you an illustration. If in the judgment of the conspirators he could render more aid at some point a thousand miles from the city of Washington than he could here, upon that hypothesis would he not be a member? They know—the conspirators who contemplate the commission of a great offence—where each conspirator can be most useful, and if they place one in New York and another in New Orleans, does this arrangement and this disposition of their own forces, as they believe to the best advantage, relieve them, or any of them, from their liability to the law of the land? Certainly, sir, in this time, when railroads and the telegraph have annihilated space and time, this principle, as I shall maintain, settled by the highest judicial tribunal, in an opinion rendered by the most eminent judge in the land, acquires additional force. The conspiracy, as I have already argued, was a great artificial person, of which each conspirator was a member, and the act of each one was the act of all. The act of Booth was the act of all the conspirators, including the prisoner at the bar. The crime, then, which he committed was committed in the city of Washington, in legal contemplation, and within the jurisdiction of this honorable court.

Now, if your honor please, giving you generally my views, I will refer you to a few authorities. I said I could maintain the principle of law both upon reason and upon authority. I am sure the learned counsel whom I have the honor to oppose will not charge me with presumption in saying that I think I have satisfied the court, upon reason and philosophy, that the argument is sound. I have only now to refer your honor, in confirmation of the views I have submitted, to some of the authorities. The first elementary book to which I shall call your attention is Bishop on the Criminal Law, third edition, first volume, section 601, on the question of the distinction between a principal in the second degree and accessory before the fact, on which there has been a great deal of law-learning exhausted. This eminent author says:

“When there is one who sustains the ordinary relation of principal—that is, one who did personally the act in his own presence—no other individual will be also a principal by reason of having aided and abetted him in the thing done, unless he were sufficiently near to render, if necessary, some personal assistance. If the will of such other individual contributed to the act, the test to determine whether the law deems him a principal rather than an accessory is, whether he was so near, or otherwise so situated, as to make his personal help, if required, to any degree available.”

The principle here enunciated, if your honor please, is this: If he is otherwise so situated; if he is in a condition to render assistance towards the commission of the offence to any degree, however minute, he is not an accessory before the fact, but a principal in the second degree. This very clearly recognizes, and distinctly enunciates as a principle, that the distinction between the two classes of offences—an accessory before the fact and a principal—is this: did he merely contribute his will, or did he, in addition to the contribution of his will, do some act, or was he so situated that he could do some act, towards the commission of the offence committed by the principal in the first degree, “otherwise so situated?” If, then, according to this familiar author, he could in the city of New York, in the city of New Orleans, or elsewhere in the United States, by telegraphic communication or otherwise, render any aid, however remote, towards the commission of the offence contemplated by the conspiracy, he continuing a member of this conspiracy until it culminated in the crime of murder, he is a principal in the first degree.

Now, if your honor please, I refer you to Wharton’s Criminal Law; in the edition I have, page 67; in another edition, page 127. He says:

“All those who assemble themselves together with an intent even to commit a trespass, the execution whereof causes a felony to be committed, and continue together, abetting one another, till they have actually put their design into execution, and also all those who are present when felony is committed, and abet the doing of it, are principals in felony. So if several persons come to a house with intent to commit an affray, and one be killed while the rest are engaged in riotous or illegal proceedings, though they are dispersed in different rooms, all will be principals in the murder. And where persons combine to stand by one another in a breach of the peace, with a general resolution to resist all opposers, and in the execution of their design a murder is committed, all of the company are equally principals in the murder, though at the time of the fact some of them were at such a distance as to be out of view. Thus when a number of persons combine to seize with force and violence a vessel, and run away with her, and, if necessary, to kill any person who should oppose them in the design, and murder ensues, all concerned are principals in such murder. So, to use the language of an able judge, where divers persons resolve generally to resist all officers in the commission of a breach of the peace, and to execute it in such a manner as naturally tends to raise tumults and affrays, and in doing so happen to kill a man, they are all guilty of murder; for they who unlawfully engage in such bold disturbances of the public peace, in opposition to and in defiance of the justice of the nation, must at their peril abide the result of their actions. Malice, in such a killing, is implied by the law in all who were engaged in the unlawful enterprise; whether the deceased fell by the hand of the accused in particular, or otherwise, is immaterial. All are responsible for the acts of each, if done in pursuance and furtherance of the common design. This doctrine may seem hard and severe, but has been found necessary to prevent riotous combinations committing murder with impunity; for where such illegal associates are numerous it would scarcely be practicable to establish the identity of the individual actually guilty of the homicide. Where, however, a homicide is committed by one or more of a body unlawfully associated, from causes having no connection with the common object, the responsibility for such homicide attaches exclusively to its actual perpetrators.

“If, as it was laid down in another case, during a scene of unlawful violence an innocent third person is slain who had no connection with the combatants on either side, nor any participation in their unlawful doings, such a homicide would be murder, at common law, in all the parties engaged in the affray. It would be a homicide, the consequence of an unlawful act, and all participants in such an act are alike responsible for its consequences. If the law should be called upon to detect the particular agents by whom such a slaying has been perpe-



trated, in a general combat of this kind, it would perpetually defeat justice, and give immunity to guilt. Suppose, for instance, a fight with fire-arms between two bodies of enraged men should take place in a public street, and from a simultaneous fire, innocent persons, their wives or children, in their houses, should be killed by some of the missiles discharged, shall the violators of the public peace, whose unlawful acts have produced the death of the unoffending, escape, because from the manner and time of the fire it is impossible to tell from what quarter the instrument of death is propelled? Certainly not. The law declares to such outlaws, you are equally involved in all the consequences of your assault on the public peace and safety. Is there any hardship in this principle? Does not a just regard to the general safety demand its strict application? If men are so reckless of the lives of the innocent as to engage in a conflict with fire-arms in the public highway of a thickly populated city, are they to have the benefit of impracticable niceties, in order to their indemnity from the consequences of their own conduct?

“The distinction between principals in the first and second degree, it has been said, is a distinction without a difference; and, therefore, it need not be made in indictments.”

Now, what is the principle? Shall I go on here and restate it to your honor? Where a number of persons engage in a riotous or dangerous conspiracy to the public peace and safety, and death ensues by the hand of one, his act in legal contemplation is the act of all, although the other conspirators were neither ear nor eye witnesses at the time the crime was committed. If that be true, that is the limitation—and there is no better authority than this; if that be true, the distance that separates them is entirely immaterial as a question of law. The principle here is, that in the case I have supposed, if they neither saw nor heard, nor ever contemplated the commission of the offence, they are all guilty; and one being a mile absent from the scene does not render him irresponsible for the consequences of the act of the conspirators. Two miles does not alter the principle, and a hundred or a thousand miles will not alter it. Why? I have only to answer in the language of this author: Public safety demands that the men who engage in dangerous riots or conspiracies shall be responsible for the acts of all the other co-conspirators, although not ear or eye witnesses of the transaction. Now, if that be sound law, does not it apply to this case? A conspiracy is formed here, as my colleague has eloquently said, to strike at the nation's life by striking down its federal head and representative—a conspiracy from which the not only probable but almost inevitable consequence is murder, riot, violence, and bloodshed. In such a conspiracy, this learned author says: “Every man proved to be in it, whether an ear or eye witness or not, wherever he may be, is equally guilty with the man who struck the fatal blow, or fired the fatal shot.” That is the language of this author, and it would be strange if the law were otherwise. Let me put a hypothetical case to your honor. A number of persons conspire together to enter the house of his honor, the judge, or of the humble person, the district attorney, who may be unfortunate enough to give offence, although I try never to do so. We both have friends, and the result of such a conspiracy, in all human probability, is murder. For would my friends allow me—would your honor's friends allow your honor to be abducted from your house by violence without resenting it? The probable consequence of such a conspiracy I say, therefore, is murder; and whoever is connected with such a conspiracy, the probable consequence of which is as I have stated, is guilty, wherever he was, for I maintain that the degree of distance is immaterial, having settled the principle that it is not necessary for him to be either an ear or eye witness. Now, if that be so in regard to a private individual, I hope, for the honor of the American nation and our criminal jurisprudence, that no other principle will govern or be enunciated by an American judge when a conspiracy is formed, in the language of this author, of a most dangerous kind, to murder



(imagination revolts at the contemplation of so horrible a crime) the federal head and representative of the American nation; to strike the nation's heart by murdering the President of this great republic. What is it? A dangerous conspiracy, as this author says, the probable consequence of which is the taking of human life, and I trust in God, while we have men with hearts who love their country, and hands to defend it, if the law is inadequate to protect the representative of the American nation, defence may be made by appealing to arms. But the law does protect the representative of the nation against such a dangerous conspiracy. I do not want any better authority than Wharton; but I will give your honor a little more. My friend, Mr. Merrick, has talked about the old English common law. I believe we have made some progress in criminal jurisprudence, as we have in all other things; but I will take him on his own ground, and suppose the law to be then as now. I refer your honor now to Hale's Pleas to the Crown, vol. 1, p. 439. And I may say that we do not intend to mislead your honor; but we do intend to satisfy you that the principles we assert are supported by abundant authority:

"Therefore it remains to be inquired as to who shall be said to be present; second, who shall be said to be abetting, aiding, and assisting to the felony. First, as to the first, if divers persons go to make an affray, &c., and are of the same party, and go into some house, and are in several rooms of the same house, and one be killed in one of the rooms, those that are of that party, and that came for that purpose, though in other rooms of the same house, shall be said to be present."

There is an enunciation of the principle, and, I trust, a sufficient answer to my friend. But I will go a little further:

"The Lord Dacre and divers others came to steal deer in a park," (a very inconsiderable offence in comparison with the one we are now considering,) "of one Peltham Rayden. One of the company killed a keeper in the park, the Lord Dacre and the rest of the company being in other parts of the park. It was ruled that it was murder in them all, and they died for it."

Why, they may be miles away; and if one mile, where is the limitation? A hundred or a thousand miles makes no difference. The case rests upon this principle to which I have invited the attention of your honor—that where men enter into a dangerous conspiracy and continue to co-operate until a crime is committed, the public safety requires that every man should be held responsible for the act committed by his co-conspirators, irrespective of their original purpose, or of the distance which may separate them at the time the felony was committed. If that be the principle of the old English law in regard to the case there stated, *a fortiori* does it apply to the case at bar. Shall I fortify this principle by reference to further elementary authorities? I have others at hand. But as my strength may probably be exhausted before I will be able to conclude, I will come down to the Supreme Court of the United States, whose decisions are authoritative upon this court, and are the law of the land. First, if your honor please, I refer to 2d Peters's Reports of the Supreme Court of the United States, page 363. I will not read the syllabus; your honor will consult that at your leisure. I will only state the principle. The court says:

"The objection to the evidence of Davis is so fully answered and repelled by this court in the case of the United States *vs.* Gooding, 12 Wheaton, 468, that it seems necessary only to refer to that decision. That was a criminal prosecution against the owner of a vessel under the slave-trade act of Congress, and an objection was taken by his counsel to evidence of the acts and declarations of the master of the vessel, who was proved to have been appointed to that office by the defendant, with an authority to make the fitments for the vessel.

"The principle asserted in the decision of that point and applied to the case was, that whatever an agent does or says, in reference to the business in which he is at the time employed, and within the scope of his authority, is done or

said by the principal, and may be proved as well in a criminal as a civil case, in like manner as if the evidence applied personally to the principal."

Your honor sees the distinction. The principle is this: If I employ an agent for legal purposes, and while in the prosecution of my business he commits a crime, I am irresponsible. It is his act, not mine, for the law does not presume, though he is in my employment, that I authorized him to commit a crime. But if I employ an agent in an unlawful enterprise and he violates the law, his act is a retrospective act, a retrospective operation to the time when he was employed by me. I am responsible for the consequences of which I am the original cause, having employed him for an unlawful purpose. If in the prosecution of this unlawful enterprise he commits murder or any other crime, his act is mine. That is the principle *qui facit per alium facit per se*. Mark, if your honor please, the principal employs him for an unlawful purpose. Now apply it to this case. Every conspirator is the agent of his co-conspirator. Some one conceives this atrocious crime from which we turn with horror. Booth, more gallant than others, if I may apply such a term to an assassin and a murderer, undertakes to fire the fatal shot. The prisoner, in response to an order from him, comes from the city of Montreal to Washington, co-operating in this conspiracy until the murder is committed. Each one was the agent of all, the original purpose being unlawful. The Supreme Court of the United States declares that in the perpetration of the crime, the act of the agent is the act of the principal, and the act of every conspirator, then, is the act of every other. But that is not all. Permit me now to refer to Wheaton, which is directly to the point, and after I have given your honor the decision of the Supreme Court of the United States upon a principle so clear, I think my task has been discharged. I refer your honor now to 12 Wheaton's Supreme Court of the United States, page 468, and again omitting the syllabus of the case, I read from the decision. It is the case of the United States against Gooding—a criminal case, in which he was charged with violating the slave act. The principle was fairly enunciated by the highest legal tribunal in the land, that the principal having employed his agent for an unlawful purpose, every act which he committed, even in a foreign commonwealth, was the act of the principal, although safely ensconced in the bosom of his family in the city, perhaps, of New York, and safe from danger, though trading in the blood, hopes, and happiness of human beings.

"It is to be observed that, as preliminary to this testimony, evidence had been offered to prove that Gooding was owner of the vessel; that he lived at Baltimore, where she was fitted out, and that he appointed Hill master, and gave him authority to make the fitments for the voyage, and paid the bills therefor; that certain equipments were put on board peculiarly adapted for the slave trade, and that Gooding had made declarations that the vessel had been engaged in the slave trade, and had made him a good voyage. The foundation of the authority of the master, the nature of the fitments, and the object and accomplishment of the voyage being thus laid, the testimony of Captain Coit was offered as confirmatory of the proof, and properly admissible against the defendant. It was objected to, and now stands upon the objection before us. The argument is that the testimony is not admissible, because in criminal cases the declarations of the master of the vessel are not evidence to charge the owner with offence, and that the doctrine of the binding effect of such declarations by known agents is, and ought to be, confined to civil cases. We cannot yield to the force of the argument. In general the rules of evidence in criminal and civil cases are the same."

Well did my eminent colleague, who of course is more familiar with the law than I am, state that proposition upon which we rely, and which is the great central legal truth involved in this discussion, that whatever an agent does within the scope of his authority binds his principal, and is deemed his act.

I read again from the same decision: "Whatever the agent does within the

scope of his authority, binds his principal and is deemed his act." It must, indeed, be shown that the agent has the authority, and that the act is within its scope; but these being conceded or proved, either by the course of business or by express authorization, the same conclusion arises, in point of law, in both cases. Nor is there any authority for confining the rule to civil cases. On the contrary, it is the known and familiar principle of criminal jurisprudence, that he who commands or procures a crime to be done, if it is done, is guilty of the crime, and the act is his act. This is so true that even the agent may be innocent when the procurer or principal may be convicted of guilt, as in the case of infants or idiots employed to administer poison. The proof of the command or procurement may be direct or indirect, positive or circumstantial; but this is matter for the consideration of the jury, and not of legal competency. So, in cases of conspiracy and riot, when once the conspiracy or combination is established, the act of one conspirator in the prosecution of the enterprise is considered the act of all, and is evidence against all. Each is deemed to consent to, or command, what is done by any other in furtherance of the common object. Upon the facts of the present case, the master was just as much a guilty principal as the owner, and just as much within the purview of the act, by the illegal fitment.

The evidence here offered was not the mere declarations of the master upon other occasions totally disconnected with the objects of the voyage. These declarations were connected with acts in furtherance of the objects of the voyage, and within the general scope of his authority as conductor of the enterprise. He had an implied authority to hire a crew, and do other things necessary for the voyage. The testimony went to establish that he endeavored to engage Captain Coit to go as mate for the voyage then in progress, and his declarations were all made with reference to that object, and as persuasives to the undertaking. They were, therefore, in the strictest sense, a part of the *res gestae*, the necessary explanations attending the attempt to hire.

Your honor will observe that the principle to which I have already invited your attention implies that the agent was employed for an unlawful purpose. If he is employed for a legal purpose, then the principle does not apply. But if, in the prosecution of this unlawful purpose, the agent a thousand miles away does anything towards the consummation of the act, it is, in legal contemplation, the act of the principal.

Now, having given your honor elementary authority, and decisions of the Supreme Court of the United States, I beg further to show that this principle has been distinctly enunciated by that most eminent jurist, for whom I have heard your honor express the highest respect for, and whom, of course, I cannot do otherwise, having been taught to admire and revere him from my early infancy. I allude to the decisions of that eminent jurist, and good christian man, Chief Justice Marshall.

Mr. MERRICK. In the Burr case?

The DISTRICT ATTORNEY. In the Burr case.

Mr. MERRICK. I will take that law.

The DISTRICT ATTORNEY. You shall have it. I know that you did allude to it, but we interpret that eminent jurist differently.

I submit, if your honor please, that the same principle is maintained by the Supreme Court of the United States in the case of Bolman and Swartwout, reported in 4 Cranch, by Chief Justice Marshall, and referred to in the same case of the Burr trial; and I submit that you cannot avoid the conclusion I have announced, when you come to closely examine the opinion of that jurist. I read now from the report of the trial of Aaron Burr, by a member of this bar, Mr. J. J. Coombs, page 357: "It may be safely asserted that no decision in this country, having the weight of judicial authority, has gone a single step beyond the proposition laid down in the opinion of the Supreme Court, per Marshall,



C. J., in the case of Bollman and Swartwout. And that proposition, as interpreted by the same eminent jurist in Burr's case, is in substance this: That when war is actually levied by an 'assemblage of men' in a 'posture of war,' for a treasonable object, any one who, being leagued in the general conspiracy, performs any overt act, constituting a 'part' in such fact of levying war, however remote from the scene of action, or however minute that part, is guilty as a principal traitor." The principle is, that when war is actually levied by an assemblage of men in a posture of war, for a treasonable object, any one who, being leagued in the general conspiracy, performs any overt act constituting a part in such act of levying war, however remote from the scene of action, or however minute that part, is guilty as a principal traitor. Now observe, if your honor please, the principle here enunciated is, that where a party is conspiring to commit the crime of treason, the accused is guilty if two facts are proven: first, that he was leagued in the conspiracy; and, second, that he performed some overt act in pursuance of the common design. In that case, the act of each conspirator, in pursuance of the common design, is the act of all, no matter what distance may have separated them. Now, I contend that this principle equally applies, whether the conspiracy be to commit the crime of treason, or the crime of murder. I boldly assert that proposition, and I think that I can demonstrate it to the satisfaction of the court. I am aware of the answer that may be made to this proposition; it was anticipated by my eloquent, learned friend in his discussion to the court yesterday afternoon. I am aware that it may be said that in the crime of treason there are no accessories before the fact, but that all are present. Here is my answer: I grant that by the common law there was reason in this distinction; but I maintain that in this country the reason of this distinction no longer exists, and the reason ceasing, the law ceases. By the common law the crime of treason consisted in compassing or imagining the king's death, as very clearly elucidated by the learned counsel yesterday. I would refer your honor (but will not take time to read) to 4 Blackstone, 54, side page 77. By the Constitution of the United States, the crime of treason consists in levying war against the United States, and adhering to its enemies, giving them aid and comfort. The difference, if your honor please, is this—and doubtless your honor anticipates it—at English law, to will the king's death was treason. Not so in this country. By the Constitution of the United States there must be something more in addition to the act of the will; there must be some overt act to constitute the crime of treason. Now, if the overt act is treason, the crime must be committed within the jurisdiction of the court, and under all the circumstances necessary to render any other felonious act an indictable offence by the judicial tribunal before which it is considered. If the overt act is essential to the crime of treason, the presence, either actually or constructively, of the person who commits the overt act, is equally essential. In other words, if actual or constructive presence is actually necessary to render a party a principal in the second degree to the crime of murder, the same actual or constructive presence is necessary to render the party guilty of the crime of treason, because in either case, by the law of this land, it is equally necessary that there should be an overt act, and that it shall have been committed within the jurisdiction of the court. Judge Marshall expressly declares in the Burr trial, that a party to a treasonable conspiracy, who performs any part in the general plan, however minute or however remote from the scene of action, is constructively present. While in conversation with a gentleman learned in the law, he suggested this point to me, since which I have considered and elaborated it, and it seems to me the argument is complete. Again, if your honor please, I may be permitted here to respond to the very eloquent burst of my learned friend yesterday afternoon, and I do not say it in the way of flattery or any spirit of sarcasm, when I say it was very forcibly and very handsomely presented to the court. He demands to know if this man was indicted for treason. My eminent colleague replies that he is



indicted for murder, with a hue of treason. Sir, it is an indictment for murder, and I meet the issue prompt. But treason is an element in this case properly to be considered by the court in interpreting the law, and by the jury in estimating the degree of crime committed; in asserting whether there is that express malice which is a distinguishing feature of murder as the highest degree of crime or manslaughter. I maintain, if your honor please, that there was a treasonable conspiracy, and, if your honor will mark my argument, you will see that I am dealing fairly, and not with any feeling of prejudice. I contend there was a treasonable conspiracy of which the prisoner was a member. That he conspired with others to commit the crime of treason; to give aid and comfort to the enemy in time of war treacherously, while enjoying the favor and protection of this government—giving aid and comfort to the enemies of the country, conspiring not only the death of our beloved and honored President, but of the commander-in-chief of the army. Engaged in a treasonable conspiracy, and while endeavoring to commit treason, he misses his original aim and commits the crime of murder. Having committed the lesser crime, and being indicted for the lesser crime, I can give evidence of the higher crime—first, to aid your honor in the interpretation of the law applicable to the case; and, secondly, that it may aid the jury in determining the guilt of the offence committed by the prisoner at the bar. If, then, he was engaged in a treasonable conspiracy—and there can be no doubt of it—if he was indicted for treason he would be convicted for treason. For I boldly affirm as an American lawyer, proud of our country and our institutions, that when war is levied against the federal government, either by foreign enemies or domestic foes, the man who strikes at the commander of the American army is a traitor, and deserves a traitor's doom. He was a traitor engaged in a treasonable conspiracy. If so, it is conclusive upon this question, because Judge Marshall has decided that where there was a treasonable conspiracy, the conspirator, however remote from the scene of action, is guilty of the offence, and is constructively present within the jurisdiction of this court. And being constructively present within the jurisdiction of this court, and being indicted for murder, although you add to that the crime of misdemeanor, or any other crime, this court, or any other tribunal in the land, will regard him as constructively present, will deal with him as present, and will punish him according to the degree of the crime charged in the indictment, and proved against him.

Mr. MERRICK. Will it interrupt the course of your argument if you permit me to ask you a question just here?

The DISTRICT ATTORNEY. I prefer not.

Under such circumstances, the court would tell the jury, as a matter of law, that, if you believe this was a conspiracy to murder the President of the United States, and he was connected with it, he is constructively present. The questions of fact submitted to you are not whether he was actually here, but, first, whether he was a member of this conspiracy; and, secondly, whether the object of this conspiracy was to murder or to do any act of personal violence to the President of the United States, then commander-in-chief of the American army.

I will dismiss the first proposition of law, if your honor please, upon the argument and authorities which I have submitted. I come now to my second proposition, which is as follows: If the jury believe that the object of said conspiracy was to abduct the said Lincoln, then President of the United States, with a general resolution on the part of the conspirators to resist all who might oppose them in the execution of the common design, and that while engaged in said unlawful conspiracy, one of the conspirators, without the knowledge and contrary to the wishes of the other conspirators, and the original plan and purpose of said conspiracy, killed the President as aforesaid, the jury should find the prisoner guilty as indicted. In addition to the authorities to which I have already referred your honor upon this point, I would refer to 1 Russell, p. 28. In fact, I hardly think it necessary to refer to any authority, because it is an

elementary principle, and one which is clearly stated in the reference I have already given in Wharton. The principle is this: If an individual violates the law of the land in a manner indicating a reckless disregard of his obligations to society, and takes life, he is guilty of murder, though it was not his present purpose. Upon the principle that a man shall not be permitted to apportion his own wrong, it is sound, not only in law, but in philosophy and religion. He is responsible for the probable consequences of his own unlawful act. By way of illustration, if a man engages in the violation of the law, intending to do an injury to any person, it is a misdemeanor—it is *malum in se*; and if he undesignedly take human life, he is guilty of murder. I have discussed that proposition heretofore with your honor, and you are probably familiar with it. If he engages in the violation of the law in a reckless manner, showing a disregard of the conditions of society, and undesignedly takes human life, he is guilty of murder; or, if he engages in an unlawful enterprise and commits *malum in se*, and undesignedly takes human life, he is guilty of murder. And what is true with regard to an individual is equally true with regard to an association of individuals animated by a common spirit, or moving towards the same end. It is carrying out that fundamental principle of law and of sound ethics, that a man shall not be permitted to apportion his own wrong. He shall not violate the law, and if it results more disastrously than he contemplated, say, "I am irresponsible for the consequences of my wrongful act, because I did not intend it should extend as far as it did." Therefore, if a number of persons conspire together to engage in an unlawful act, and, while thus engaged, one takes life, his act is equally the act of every one co-operating in the conspiracy at the time the act or crime was committed, though not originally intended. This might be illustrated in a variety of ways. I refer to Wharton again. Suppose there is a dangerous riot; that a number of persons assemble together for the purpose of violating the law in some comparatively unimportant matter—for the purpose of resisting, for instance, what they conceive to be an oppressive law, or for the purpose of doing an injury or personal violence to some individual, and while thus engaged in this riotous act, the probable consequence of which would be violence or bloodshed, one of them commits murder, or takes human life, contrary to their original purpose; that act is the act of all, and it is murder or manslaughter, according to the circumstances of aggravation or extenuation in the commission of the act.

To illustrate further, suppose a number of persons should conspire to go to the house of one of the gentlemen before me, and by violence carry him away, I care not where; it is a dangerous riot—it is a dangerous conspiracy. The natural and probable consequence is a disturbance of the public peace, for no man, even a peaceable and quiet man like myself, would allow, without resistance, a body of men to come to his house and take him away from his wife and children. I would resist it to the death, and would be justified by the laws of God and man in so doing; and if my life should be taken, where is the honest jury that would not avenge this injury upon one, even of the humblest citizens, by wreaking the vengeance of the law upon the head of every man engaged in such an unlawful enterprise; *a fortiori*, where a number of men engage in an enterprise in the midst of war, when brother is armed against brother, when men are on their knees praying to Almighty God for peace, at such a time, when men combine to go to the house of the President of the United States and by force abduct him and carry him to his enemies, (though many of them in the south learned to love and honor him, and indignantly resent this insult,) by violence, to do him this injury and offer him this insult, the natural consequence of which is bloodshed, if human life is taken every man involved in that dangerous conspiracy, upon the principle which I have asserted, though it was not part of the original plan, is guilty of murder. For, although I am not addicted to boasting, and am neither a quarrelsome nor a fighting man, yet while I had

a heart to beat, while I had an arm to strike, if a dozen men armed attempted by violence to take Abraham Lincoln from his position in the United States to the enemies of his country in the south, I would fight them to the death, and the inevitable consequences would be murder, bloodshed, and death. I know of no better illustration of this principle than is to be found in the Bible, which is the foundation of all law—shall a man be permitted to “scatter arrows, fire-brands, and death,” and then say, “I am in sport;” shall he offer insult, indignity, and violence to the honored head and representative of the American nation, and when his life is taken, be permitted to say, Oh, I didn't intend that. The law fixes the intent, and stamps upon his brow the mark of Cain. “Oh, I am not guilty of murder; my object was comparatively an innocent one; I only intended to insult, assault, kidnap, abduct, and imprison the President of the United States and turn him over kindly and gently to the tender mercies of traitors and rebels in arms, who were waging a fierce and cruel war against the nation's life, whose hearts were filled with malice and whose hands were reeking with innocent blood. I only intended to insult the American nation. I struck at the nation's heart, but missed my aim and only killed a man. I aimed at the highest crime known to the laws of God and man, treason, but only killed a poor old man as he sat by the side of his wife, (as my friend Mr. Bradley said, and I regret that he said it;) it is no worse to kill him than the commonest individual, in the sight of God.” Surely my friend did not intend to re-echo the infamous sentiment of Anna Surratt that it was no worse to kill Abraham Lincoln than any negro in the Union army. I shall not eulogize him. It is enough to say that he was the constitutionally elected President of the greatest nation upon the face of the habitable globe, and a blow aimed at him was a blow aimed at me, at you, and at every man who has a heart to love his country. Kindly but respectfully I dissent from the sentiment of my friend—indignantly do I repudiate the imputation upon the man whose memory should be dear and whose character should be sacred to every American citizen. “Oh, no; I aimed at the highest crime, but I committed a common, lower crime. I am a lion, a hero, an impersonation of the lost cause, an embodiment of southern honor and southern chivalry.” Why, sir, the rebel dead who fought, as I honestly believe, under a delusion, believing that they were doing God service, (for I knew some of them; they were my friends and associates in early life, and tears of blood could I weep over their graves,) if such a wretch should be held up as a representative of their cause, and they made to justify murder and assassination, their bodies would turn in their untimely and bloody graves. I repeat, give me honest confederate soldiers, with arms in their hands, and they would indignantly scorn and spurn the idea that this wretch was the representative of the cause for which they had sacrificed their dearest hopes and their best and most beloved friends.

“Oh, no, sir, I only intended.” That is the argument, if there is any argument in response to this proposition. “I only intended to strike terror into the armies of the Union by depriving them of their beloved, their trusted, and honored commander-in-chief. I only intended to disorganize society and to destroy forever the last hope of freedom that cheered and animated the civilized world, and while engaged in these comparatively innocent plans and purposes, I, unfortunately, for the act of my associate was my act, killed the President. It was a slight mistake, and that is my apology. But it makes very little difference, for it was nobody but Abraham Lincoln, and my sister says it was no more to kill him than any negro in the Union army. I do not regret it; I am rather proud of it. I intend to serve Andrew Johnson as Abraham Lincoln was served—I boast of it to French Canadians and Englishmen, who are the avowed enemies of my country.” As St. Paul says, he is one of those sinners who glory in their shame. Would not this, if your honor please, be a libel, a mocking libel, upon the administration of criminal justice in this country?



I can anticipate the answer that may be given. Perhaps it may be said that this argument would apply to all who were engaged in the rebellion. Not at all. First, he was no belligerent, with the rights of a belligerent; and second, he was engaged in a conspiracy whose purpose was not merely against the government, but personal violence against an individual. There is a difference between treason and traitors. Some of the best men that ever lived may be called traitors. Honest men have committed great sins. I can readily imagine a young man living at the south, educated by preachers and politicians—and I regret to say that while I have the highest veneration for the ministry, some of the most bloodthirsty men were preachers—I can understand how a young man, living in the south, would be persuaded by them and by eminent statesmen to whom he had looked up from his infancy, and whom his father had taught him to revere as the apostles of his country, that it was his duty to go and sacrifice his life in a wicked cause. But how a man with one sentiment of honor, living here, his mother, his sister, and himself, and all held dear, under the protecting ægis of the government, having vowed allegiance to it, should yet become the hireling of its enemies, and consent to murder its federal head and representative for money, is beyond my conception. This jury understand the difference between “treason” and “traitor”—they have discussed it, as they have the right to discuss politics and to denounce the conduct of politicians on both sides, as much as they choose. Every honorable man knows by intuition how honorable it is for a man to desert his friend while professing friendship. If my friend offend me, like a man of true honor, I go to him and say to him, face to face, “you have done me wrong,” but when I go pretending to be his friend and secretly become his enemy, every honest man, and certainly every honest woman, (for a woman would understand me by intuition,) would scout me as a felon. The man, who in his heart believes this government had done him as I had said a wrong, might unlawfully avow himself a rebel and believe himself doing God service, but for him to profess allegiance to this government, live under it, and then treacherously endeavor to ruin it and to murder its representative, is a crime—in my judgment, an unspeakable atrocity, which can be measured only by the all-searching eye of Him before whom we must all appear to render an account of the deeds done here in the body.

If your honor please, I now dismiss the second prayer. The third is, if the jury believe from the evidence that at the time President Lincoln was killed as aforesaid, the prisoner was either actually or constructively present, encouraging, aiding, abetting, and maintaining the principal murderer, they should find him guilty as indicted, although he was neither an ear nor an eye witness to the transaction. (Leaving it open for the court to explain constructive presence, we contend that he was constructively present; no matter how far off, he was at the place and performing the part assigned him, where and in the manner the conspirators supposed he would be most effective.)

The object of this prayer, if your honor please, is simply to invoke from the court an interpretation of constructive presence in a more restricted sense than that in which we have just considered it. Surely if he was a member of this conspiracy, and was in the city of Washington at the time the murder was committed, he was constructively present. I have already asked your honor to decide that he was constructively present if he was a member of the conspiracy performing his part, however far he may have been from the scene of the murder; *a fortiori*, no one will doubt that if he was in the city of Washington he was not only constructively, but actually present. I state that proposition to your honor and will not argue it.

I now come to the fourth proposition of law, which is, if the jury believe from the evidence that President Lincoln was killed as aforesaid, in pursuance of said conspiracy, of which the prisoner was a member, he being actually or constructively present at the time, it is a legal presumption that such presence



was with a view to render aid, and it lies on the prisoner to rebut said presumption by showing that he was there for a purpose unconnected with the conspiracy.

Your honor will observe that the point in that prayer is in reference to the burden of proof. We have proved the actual presence of the prisoner in the city of Washington on the 14th of April. If I prove that the conspirator is present at the time that the felony which is the object of the conspiracy is committed, my task is done. It is unnecessary for me to show that he committed a single act. The law presumes that he is there for the purpose of co-operating with his fellow-conspirators, and further presumes that he performs his part. And it shifts the burden of proof upon the prisoner to explain his presence. Your honor understands it. I may remark that I argued that proposition before Judge Wylie, and he had no hesitation in deciding it as I requested. And it is settled beyond all controversy in the case reported in 9 Pickering, 426, of *The Commonwealth vs. Knapp*, a case with which your honor is familiar, and which has already been referred to. I refer now, for the sake of convenience, to a note in Roscoe's *Criminal Evidence*, 213, where the principle is distinctly enunciated. The note contains a quotation from 9 Pickering, and states the principle so clearly and so fully that I deem it unnecessary to produce the reported case, with which, I doubt not, your honor and the learned counsel are entirely familiar. The note is this :

"(1.) The abettor must be in a situation actually to render aid, not merely where the perpetrator supposed he might.

"Proof of a prior conspiracy is not *legal presumption* of having aided, but only evidence.

"But if a conspiracy be proved, and a presence in a situation to render aid, it is a *legal presumption* that such presence was with a view to render aid, and it lies on the party to rebut it by showing that he was there for a purpose unconnected with the conspiracy."—(*Commonwealth, 5 Knapp; 9 Pick., 496.*)

Assuming, then, if your honor please, that the prisoner at the bar was a principal in this conspiracy, of which I submit there can be no doubt; assuming that he was in the city of Washington, of which I shall assume there can be no doubt, it being proved, as I shall show hereafter to the jury, by thirteen witnesses; and if the court grants the construction which I ask as my fifth proposition of law, that the burden of proof to establish an alibi is by the preponderance of evidence—and they having introduced only three witnesses to our thirteen, I assume, beyond the probabilities of successful contradiction, that he was in the city of Washington on the 14th of April, 1865; assuming these facts, then, to be proven, I repeat, my task is done. The testimony of Sergeant Dye, which I may have occasion hereafter to explain, would be entirely unnecessary, for it is unnecessary for me to show that he raised his hand or opened his mouth. It is a legal presumption which is concluded in the absence of satisfactory evidence, showing that he was here for a purpose unconnected with the conspiracy; that he was here for the purpose of performing his part towards the execution of a common design. And why? The reason is obvious; your honor will anticipate it. It may be illustrated in this way: If a man starts a dangerous machine for a wicked and wanton purpose, he is responsible for all the injury done during its progress. He is presumed to do it for a wicked purpose. He is responsible, and the court holds him to that responsibility until he proves by affirmative testimony to the satisfaction of an honest jury that he has done all in his power to check its onward dangerous progress. The application of the illustration to this case is obvious.

Mr. MERRICK remarked that, as the learned district attorney seemed to be fatigued, he would, with his permission, ask the court now to take a recess until Monday morning, and then allow the argument to be finished.

The DISTRICT ATTORNEY. Thanking the gentleman for his courtesy, I will

first complete my argument upon questions of law, and then gladly yield for that purpose.

I now apply the illustration to this particular case. If a man engages in a conspiracy such as I have endeavored feebly to describe, and such as I think I can show by an analysis of the evidence presented in this case, if he is present in the city of Washington at the time the alleged murder was committed in pursuance of that conspiracy, the law presumes that he is here performing his part towards the common design, and shifts the burden of proof on him to show that he was here for a purpose entirely disconnected with the conspiracy. How is that to be shown? By affirmative, satisfactory, complete evidence that, experiencing genuine repentance and conversion, he has retired from the conspiracy and discharged himself from all obligations for their acts. And in this case we expect to show that there was no such evidence. That admirable compendium of authority which comprises my religious creed says that repentance is turning from sin "with full purpose of and endeavor after new obedience," manifested by confession and faith. There is no such evidence that this man turned from the conspiracy. There is no genuine repentance without confession; they are twin sisters, going hand in hand; together joined in the believer's heart, they accompany him through his whole life until they are lost in the full blaze of eternal reality. He never repented—he never confessed, except when across the ocean and safe from danger, as he fondly supposed, and then he gloried—that is no confession—he gloried in his achievements in crime. He boasted that he had been instrumental in the murder of the President of the United States, and had brought anguish to the heart of every loyal American citizen.

I have now, if your honor please, completed what I desired to say in regard to these propositions of law, and with your honor's permission I will suspend my remarks, and on Monday proceed to argue the questions of fact which I have enumerated, and which in my judgment are essential propositions for the consideration of this jury.

The court thereupon took a recess until Monday at 10 o'clock a. m.

MONDAY, *July 29*, 1867.

The court was opened at 10 o'clock.

The DISTRICT ATTORNEY, resuming his argument commenced on Saturday, said:

May it please the Court and you gentlemen of the jury: I regret exceedingly that it was not your privilege, gentlemen, to spend a peaceful and a quiet Sabbath in the bosom of your families; but I feel assured that there is no one of those whom I now have the honor of addressing who entertains any feeling of resentment towards the counsel for the government for insisting upon the argument of the various questions of law and fact involved in this investigation. Indeed it appears to me, upon reflection, that it would have been not only a base desertion of duty, but would have been cruel and unjust to you, if we had devolved upon this jury the exclusive responsibility of deciding questions of such magnitude as are involved in this case, without the assistance of court or counsel. In no spirit of presumption do I undertake to give you the little assistance in my power, but acting, like yourselves, under the solemn sanction of an oath, and feeling the obligation resting upon me thereby, I could not conscientiously consent to leave the entire duty to be discharged by you without giving you the benefit of all the aid in my power. It seems to me that the moral sense of the community would have been shocked—and from what I know of you personally, I am satisfied that you yourselves would have been disappointed—if we had submitted this case without invoking the instruction of the court upon the questions of law, or aiding you in the examination and interpretation of the testimony which has been introduced within your hearing, both on the part of the prosecution and the prisoner.

Having completed my argument upon the propositions of law as I understand them, and submitted such to his honor for his decision, I now proceed to discuss the questions of fact which in my judgment are submitted to you for your decision. First, does it appear from the evidence that the assault charged in the indictment was made in the manner and about the time there stated, and within the jurisdiction of this honorable court? In regard to this question, gentlemen of the jury, I have very little to say. I have already endeavored feebly to portray that scene at Ford's theatre on the night of the 14th of April, 1865, and which I fancy is indelibly impressed upon your minds and memories. The principal assassin, John Wilkes Booth, on entering Ford's theatre on the fatal night of the 14th of April, 1865, unsuspected by any one, (for it was a night of universal rejoicing and of national jubilee,) makes his way without opposition through the crowd, places his hand upon the bolt, and without difficulty opens the door of the box where sat the President of the United States with some friends; which door, if you believe the testimony of the honorable Judge Olin and the other witnesses, had been prepared for his easy access, and for the more certain execution of his fell and cruel purpose. He enters the box, levels the instrument of death and pours its murderous contents into the head of the representative of the American republic. Without a murmur or a groan your dying President in a few brief hours passes from time to eternity. Without a word of warning, or without opportunity to breathe a prayer for the salvation of his soul—for the very best of us, even those whose hearts are altars, from which the incense of praise, adoration, and supplication continually arise to Heaven, feel that they cannot appear before the Infinitely Holy One without the robe of that imputed righteousness of Him who died that they might live—he bows his head and dies as he had lived, without a word expressive of hatred, malice, or revenge towards his bitterest enemies. The sad tidings are borne upon the telegraphic wires to the remotest portion of the civilized world. Strong men are bowed down with grief, and the mother instinctively presses to her bosom her darling infant child, impresses a mother's kiss upon its brow, and implores the protection of Heaven. When did such a thing ever occur before?

Why should I harrow up your feelings in portraying a scene which, as American citizens and Christians, you can never forget? It has been graphically described by Colonel Joseph B. Stewart, of our own city. If he had been successful in his effort to seize the murderer, and had once got him within his herculean grasp, he never would have stained the soil of my native State with his accursed blood. Making his escape, he insults the memory of the dead and the living by exclaiming "*Sic semper tyrannis!*" a motto conceived by the noblest men who ever lived, and one which nerved their arms and cheered their hearts in the holiest cause that ever warmed the heart or nerved the arm of the patriot soldier. This terrible scene has been described to you, gentlemen of the jury, by Major Rathbone, and by many other witnesses, whose testimony is familiar to you, and which it will be unnecessary for me to recapitulate. Nor do I think it necessary that I should detain you in the discussion of the second question submitted to you for your decision. I have only to refer you to the testimony of Dr. Barnes, Surgeon General of the United States, who testifies that the wound inflicted under the circumstances which I have detailed resulted in the death of the deceased, as charged in this indictment. You have seen the instrument of death, the flattened bullet, and the fragments of skull—all that remains of him whom, I say boldly, you learned to love. Why should I detain this jury with the discussion of self-evident propositions? If I had the eloquence of Daniel Webster, or William C. Preston, I could not portray more forcibly and eloquently than the witnesses have the horrid circumstances attending this cruel and bloody tragedy.

I now come to the third proposition. I know you will listen to me, gentle-



men of the jury. My voice is feeble, my health is poor, and I will therefore have to speak slowly and deliberately, but I know whom I have the honor to address. I know you personally. So does my friend, Mr. Bradley. We both trust you. You will hear me for my cause, and be silent that you may hear and understand. I come, then, to the third proposition. Does it appear from the evidence that the assault and death were the result of a conspiracy of which the prisoner at the bar was a member? That is the great question. If I show you, gentlemen of the jury, that this assault and murder was the result of a conspiracy—it matters not whether to murder or to do any other personal violence—and the prisoner at the bar was a member of that conspiracy, my task is done; he is guilty of murder. Almighty God forbid that the day shall ever come when an American or an English judge, to whom we look for our precedents and our rules of practice, should decide that it was not a case of murder. Let me ask, then, "What is conspiracy?" I hold in my hand a work of unquestioned authority, and with the permission of the court I will read an extract from it on this subject. I read from section 389, III Greenleaf:

"A conspiracy may be described in general terms as a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means. It is not essential that the act intended to be done should be punishable by indictment, for, if it be designed to destroy the man's reputation by verbal slander, or to seduce a female to elope," &c.

You will observe then, gentlemen of the jury, that a conspiracy is a concert or combination of action between two or more persons to commit an unlawful act, or to commit a lawful act by unlawful means. If, then, you believe from the whole evidence that the prisoner at the bar conspired with others—mark you, not that he was a member of the conspiracy when it originated, but if, at any time during the existence of the conspiracy, he combined or co-operated with others to commit an unlawful act, and the unlawful act is committed, he is responsible for the consequence. If, then, you believe from the whole evidence that the prisoner at the bar, in connection with others, conspired or combined, either to murder, or to abduct, or to do other violence to my friend, Mr. Barr. or Mr. Bohrer, (jurors,) or to the President of the United States, Abraham Lincoln, and while co-operating in that conspiracy, performing his part in aid of the common purpose, human life is taken, he is guilty of murder. And where would be our safety, where would be the safety of your wives and children, if the law were otherwise? Now apply that principle to the facts of this case. The first scene of this bloody tragedy is laid on Pennsylvania avenue, in the month of April, 1864. Can it be so? Strange as it may seem, yet in this Christian age and in this Christian community, where, however we may differ, we profess to worship the Prince of Peace as the only true, living God—here in the metropolis of the nation, on Pennsylvania avenue, in April, 1864, three men are heard in private, mysterious conversation. They are discussing a plan for the murder of Abraham Lincoln, President of the United States. One suggests as the instrument of death a telescopic rifle. "Oh, no," says another, "we might kill his wife and child." His heart was touched with pity. O, ye gentle savage! In this remark he was illustrating what the great poet has said of the load, that though ugly and venomous, it yet had a jewel in its head. "No," replies the other; "we will rid this country of husband, father, wife, and child, if necessary to the execution of our purpose." Perhaps he may have alluded to poor little "Tad," whom you have seen here as a witness upon the stand, and who is associated in our memory with his murdered father. You have felt the unexpressible tenderness of a father's love. You know how that kind old man loved his youngest child. "We will murder all, if necessary to the execution of our bloody purpose," exclaims one. Do you doubt it, gentlemen of the jury? This does not depend upon the testimony of any imported witness, or



even on that of a northern man or woman, but upon the testimony of a lady born and bred in your own city—Mrs. McClermont, an unimpeached and unimpeachable witness, against whose testimony there could not be a breath of suspicion. With the artless simplicity of innocence and truth she tells the simple story. What do you see? In April, 1864, malice hissing; hot murder conceived and contemplated against the President of the United States. And who constituted that party? One, John Wilkes Booth. Who was he? The intimate friend and associate of the prisoner at the bar, and the pet of Mary E. Surratt. Another one of the party, John Atzerodt, the “pet” of the ladies at No. 541, for they gave him the *sobriquet* of “Port Tobacco.” The third, Herold, who, when escaping from his work of death, in order to refresh himself, drank the whiskey provided by Mary E. Surratt, at the same time arming himself with weapons prepared and concealed for him by the prisoner at the bar. I am not now treading upon any disputed ground. Oh, gentlemen of the jury, do not let us trifle with the most solemn things that can engage the human heart. You know what I state to be true. If there is any faith in human testimony, you must know that this conspiracy was conceived as far back as April, 1864 and that it was a year old at least before this bloody deed was committed. Where was the second scene in this horrible tragedy? It was laid in the city of New York, on Second avenue, illustrating the truth of what I said in my exordium, (as Mr. Bradley was kind enough to designate my opening remarks,) that this conspiracy extended from State to State, and, as we expect to show you, from ocean to ocean. A lady is riding in the cars with her daughter. You have seen her. She is married to a Canadian and living in Canada, and therefore not expected to have any special interest in the honor of the American republic. Casually passing along in a Third avenue car in company with her child, she sees two men who attract her attention. They are disguised; they are armed. The subject of the conversation is the contemplated murder of the President of the United States.

Mr. PIERREPOINT. Then just re-elected?

The DISTRICT ATTORNEY. Yes, sir, just re-elected.

The letters fall by one of those mysterious providences which, we know from history, if not from experience, so often happen to lead to the detection of the guilty; and which forcibly illustrate the truth of what is so beautifully expressed by the great poet of nature, “Murder, though it hath no tongue, speaks with most miraculous organs.” She picks up these letters. She carries them to Winfield Scott, a man whom you knew, and whom you loved; a man whom I was taught to revere, for he was a friend of my father. He says they are all important, and carries them to the authorities. Gentlemen, I will at this point read you these letters. They are as follows:

DEAR LOUIS: The time has at last come that we have all so wished for, and upon you everything depends. As it was decided before you left, we were to cast lots. Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback. Abe must die, and now.

You can choose your weapons. The cup, the knife, the bullet. The cup failed us once, and might again. Johnson, who will give you this, has been like an enraged demon since the meeting, because it has not fallen upon him to rid the world of the monster. He says the blood of his gray-haired father and his noble brother call upon him for revenge, and revenge he will have; if he cannot wreak it upon the fountain-head, he will upon some of the blood-thirsty generals. Butler would suit him. As our plans were all concocted and well arranged, we separated, and as I am writing—on my way to Detroit—I will only say that all rests upon you. You know where to find your friends. Your disguises are so perfect and complete that, without one knew your face, no po-

lice telegraphic despatch would catch you. The English gentleman, Harcourt, must not act hastily.

Remember, he has ten days. Strike for your home, strike for your country; bide your time, but strike sure. Get introduced; congratulate him, listen to his stories—not many more will the brute tell to earthly friends. Do anything but fail, and meet us at the appointed place within the fortnight. Enclose this note, together with one of poor Leenea. I will give the reasons for this when we meet. Return by Johnson. I wish I could go to you, but duty calls me to the west; you will probably hear from me in Washington. Sanders is doing us no good in Canada.

Believe me, your brother, in love,

CHARLES SELBY.

ST. LOUIS, *October 21, 1864.*

DEAREST HUSBAND: Why do you not come home? You left me for ten days only, and you have now been from home more than two weeks. In that long time only sent me one short note—a few cold words—and a check for money, which I did not require. What has come over you? Have you forgotten your wife and child? Baby calls for papa until my heart aches. We are so lonely without you.

I have written to you again and again, and, as a last resource, yesterday wrote to Charles, begging him to see you and tell you to come home. I am so ill, not able to leave my room; if I was I would go to you wherever you were, if in this world. Mamma says I must not write any more, as I am too weak. Louis, darling, do not stay away any longer from your heart-broken wife.

LEENEA.

Gentlemen of the jury, you heard this lady express the opinion when the photograph of Booth was shown to her, that he was one of the parties. But for the purpose of my argument I care not who it was. The point I am discussing before you, who have intelligence sufficient to comprehend it, is the existence of this conspiracy, its character, plan, and purpose. What was it? By solemn vows these conspirators mutually pledged themselves to murder Abraham Lincoln, with either the pistol, the dagger, or the cup. Do you remember in this connection the testimony of the druggist, that Herold at that very time was the clerk of an apothecary who furnished medicines to the President of the United States? "If the dagger or the pistol doesn't serve your turn, resort to the poisonous weapon, the cup" is the language of one of the conspirators. Murder was their object, and they were regardless of the means which were employed for the consummation of their bloody end. His wife, with woman's instinct, feeling that her husband—Lewis Payne—was engaged in an unlawful and bloody purpose, appeals to him by his plighted vows at the altar, by the love he owed their child, to turn, leave his wicked companions and to be true to his country and his government which protected them and their infant child. But he was deaf to this appeal. Bent upon his murderous purpose, urged on, as I shall show you, by a power which a young man, perhaps of a fanatical turn of mind, is incapable of resisting, he goes on until this murder, which fills the land with tears and with mourning, is consummated. Is it necessary, gentlemen, that I should go further to prove the evidence of this conspiracy? I could rest it upon the concurrent testimony of these two ladies alone. But that is not all. Let us leave the city of New York; let us return to the metropolis of this great nation, where the spires of temples rise to Him who came to preach peace and good will upon earth. Here I ask you to come and pay a visit to 541 H street, the third scene in this bloody tragedy. I know not to what use that house is now devoted; but if I had my way I would formally consecrate it to the Goddess Cloacina, for it could not be devoted to a more appropriate Deity. Visit

that place, gentlemen, and what do we see? The first man, or figure, that strikes the eye, is Lewis Payne, with his Herculean frame, the Moloch of this infernal conspiracy, whom Milton describes as the fiercest and strongest spirit that fought in heaven. Who is the next? Atzerodt, the Belial of this horrid conspiracy, of whom Milton writes:

“Belial, in act more graceful and humane;  
A fairer person lost not Heaven; he seemed  
For dignity composed and high exploit;  
But all was false and hollow; though his tongue  
Dropped manna, and could make the worse appear  
The better reason, to perplex and crash  
Maturest counsels, for his thoughts were low;  
To vice industrious, but to nobler deeds  
Timorous and slothful; yet he pleased the ear,  
And with persuasive accent thus began.”

I do not know whether this is an accurate description of Samuel Atzerodt, but, judging from the evidence, he was the “pet” of the ladies at No. 541; so much so that they gave him the *sobriquet* of “Port Tobacco.” Who next? There was Howell, the blockade-runner, who lived in habitual violation of the law. I would call him “Mammon,” for he seemed to have no higher aspiration than whiskey and money. Who next? There sits old Satan, high above the rest, “in shape and gesture proudly eminent.” Close by his side is Beelzebub, of whom Milton says—

“Which when Beelzebub perceived, than whom,  
Satan except, none higher sat, with grave  
Aspect he rose, and in his rising seemed  
A pillar of state; deep on his front engraven  
Deliberation sat and public care.”

Who next do you see? O, that it were not so, that an American woman should be found in such company, giving her countenance and support to the cruel and bloody purposes of this infernal conspiracy. But there she is. Yes, there is Mrs. Slater. I know no infernal deity whom she could properly personate; for it has been truly said that hell has no fury like that of a depraved and wicked woman. I hope I will not be understood by these remarks as casting any reflection upon the fairer sex, for I yield to no living man in admiration for true female character. Gentle, virtuous, pious woman is the most beautiful object in all creation; but when she yields herself to the devil, she becomes, of all objects, the most offensive and revolting. I have heard it said that the sweetest and fairest flower that blooms in the prairies of the west, when it begins to fade, emits the most fetid and offensive odor; and so with woman—when she casts aside her womanly nature and enters into a hell-inspired plot, she is, of all objects, the most offensive and disgusting, the depth of degradation being in proportion to the immense elevation from which she falls. Now, I appeal to every one before me, has the vocabulary of the English language words adequate to express the indignation of an honest and patriotic man against this wicked woman, who, for her amusement, requested the prisoner at the bar to shoot down, in cold blood, unarmed Union soldiers while they were returning to their families and their homes from rebel dungeons, and while, perhaps, with their pinched and attenuated forms and quivering lips they earnestly implored mercy. Gentlemen, it is a gratifying truth, which has been frequently illustrated during this cruel civil war, that the gallant soldier will with his own hand cure the wounds which he inflicts from a sense of duty. A brave man's heart melts with pity when he sees his bitterest foe under his feet and completely at his mercy. But here is a woman and a man murdering, in cold blood, unarmed Union soldiers. I care not, however, whether they be Union or rebel soldiers, the crime is just as shocking and heinous. They were men in distress,



and appealing to his clemency. That alone should have deterred him. Had he been a courageous, honorable man, instead of shooting he would have afforded them protection and relief, whether friend or foe. But what is the next scene, in this horrible tragedy? You will observe that the question to which I have just invited your attention depends upon the testimony of Miss Honora Fitzpatrick. Do you doubt her? She is a native of your city; the daughter of Mr. James Fitzpatrick, a gentleman of the highest character, and personally known, perhaps, to all of you. Ah, gentlemen, you cannot doubt any fact which I have presented and elaborated thus far in the course of my argument.

I come to the fourth scene. It is laid at Ford's theatre. There you see the prisoner at the bar in company with an unsuspecting young lady, who, doubtless, had her father's permission, and who was unconscious of the company with which she was associated in the innocent pastime of witnessing a dramatic performance. John Wilkes Booth enters. As he does not address himself to the lady, neither does he converse with any of the company where they are seated, but calls the prisoner aside and holds a private conversation with him. What was it? No ear heard it but that ear which hears every sound. You know what it was, however, for you have learned what passed at previous interviews of this private character, as well as at subsequent ones. Need I say to you then that that conversation was regarding the proposed murder of Abraham Lincoln, then President of these United States. But let us pass on to the fifth scene. And just here allow me to remark—and I am sure his honor, as well as my learned colleague, will agree with me—that a jury may infer from the circumstances attending the murder alone the existence of a conspiracy. On the night of the 14th of April, 1865, I have these parties at Ford's theatre, the scene of this awful tragedy; the prisoner at the bar is there calling the time. I know there is some conflict of testimony in regard to this, and I shall notice that hereafter. I assume that he was there doing this very thing; but whether he was or not is immaterial to the issue, for I have shown that he had then formed his connection with the conspiracy which was in full blast. John Wilkes Booth enters the theatre and fires the fatal shot, as I have already described, when a whistle sounds. Have you seen that whistle? Perhaps you have, and perhaps you have not. A whistle producing a similar sound is found at the house of the murderess, Mary E. Surratt. At that signal Lewis Payne, in another quarter of the city, invades the sacred precinct of the family circle, and forces his way by the agonized wife and astounded daughter, and raising his murderous arm strikes at the faithful nurse who was making a gallant defence for his loved and suffering master. In consequence of the anxiety and fatigue occasioned by this attack, the mother and the daughter soon go, almost hand in hand, to an untimely grave. The assassin enters the sick chamber; he strikes with the fury of a demon at the emaciated form of a feeble and attenuated old man. I care not what your feelings for him may have been in consequence of difference of views on political subjects, he was a man, an old man in his own house, which by the laws of England and America is a man's castle; there in the sacred presence of his wife and daughter the murderer strikes wildly, madly, only prevented by the efforts of the faithful nurse from taking the life of his weak, unresisting victim. By a miraculous interposition of Providence, however, the venerable Secretary recovers from the blows thus inflicted, and is spared to his country and his race. The assassin escapes. Where does he go? To the arms of Mary E. Surratt, the mother of the prisoner at the bar. He goes to the general rendezvous, whence they had all issued upon their common mission. Gentlemen of the jury, tell me, have I not by these three links, and by the testimony of Colonel Morgan and Captain Wermerskirch, unimpeached and unimpeachable, proven the existence of this conspiracy, and the connection of the prisoner at the bar with it? You will observe I have not as yet alluded to the testimony of Weichmann. Without his testimony



the case is complete. Without his testimony, a jury of honest rebels with arms in their hands would decide the existence of this conspiracy and the prisoner's connection with it. But I come to his testimony. What right have you to discard it? I do not address ignorant men—and while I mean no disrespect to any class of my fellow-citizens, I know that ignorant men are carried away by their prejudices; but educated, intelligent, honest men—I hope I will be allowed to say that much without being accused of flattery—are not in a matter of this kind to be influenced by prejudices. I remind you of your oath: “I will decide according to the law and the evidence.” You have no right, gentlemen—and I say this within the hearing of his honor, and subject to his correction if I am wrong—you have no right to discard the testimony of a witness, unless, first, it appear upon cross-examination and by his deportment on the stand he is unworthy of your belief; second, unless his general reputation for truth and veracity has been successfully assailed; and third, unless it is proved clearly to your satisfaction that he has made different statements in regard to the prominent material facts of the transaction to which he testifies on different occasions; fourth, unless a different state of material facts is proved by other witnesses. Now apply that test to Louis J. Weichmann. First, gentlemen of the jury, reasoning from the intimation of Mr. Merrick in his argument to the court, it will be attempted to prove to you that Louis J. Weichmann was an accomplice. I indignantly repel it. I do so in justice to this young man, whose character is as dear to him as yours to you, or mine to me, and surely a father cannot bequeath to his son a richer legacy than a pure and unsullied reputation. Wealth and vain honor sink into insignificance in comparison with it. Weichmann an accomplice? It has been said, and truly said, that it was fortunate for the United States that a Union clerk, now a Union officer in the employ of the government, endorsed by the first men in this country, happened at that time to be boarding at the house of Mrs. Mary E. Surratt. Not intending to be hyperbolic, among all these infernal spirits—for where was ever such a set of spirits before collected this side of hell?—among the faithless to the government, faithful only he.

If Weichmann had been a co-conspirator, two things are irresistible. First, that John Surratt would have made him a confidant. He would have taken him to that sociable at Gautier's saloon, and, as suggested by my colleague, (Mr. Pierrepont,) to Baltimore. He would not have held these mysterious private conversations with Booth, Herold, and Azerodt, which not he, but Miss Honora Fitzpatrick, swears to. Why don't you at once see, gentlemen of the jury, that if Weichmann had been a liar, how easy it would have been for him to have sworn, “I saw the prisoner here on the 14th of April, 1865?” But he did not see him, and for the simple reason that the prisoner took care not to let him see him. But—and will Mr. Weichmann pardon me; I mean no disrespect to him—let us suppose he was an accomplice. My theology, my hope, my comfort, and my consolation is that, if I repent, turn and confess, my sins will be blotted out. Without that hope, “we would be,” as St. Paul says, “of all men most miserable.” After the culmination of this conspiracy, Louis J. Weichmann met the officers face to face. He told them all he knew. He went with them in pursuit of the prisoner, and, like a true American citizen, he comes here, although they were once schoolmates, and testifies against him; “not because he loved Caesar less”—pardon the comparison—“but Rome more.” But is that all? Do you not remember that during these mysterious interviews between the conspirators, which were witnessed by Louis J. Weichmann, that he went and remonstrated with Mrs. Surratt, when she replied, “John is with this party,” or words to that effect, “and Booth is crazy upon one subject.” What she further said I shall have occasion hereafter to speak of, but now I ask you this question—and that is the best test of a witness's veracity—has he been contradicted in regard to any prominent and material fact in this entire transaction. I have the

honor to speak in the presence of ministers of the Gospel, and we are told by the most celebrated theologians that the best evidence of Scripture truth is substantial concurrence with circumstantial variety. None of the evangelists agree in all the immaterial events of our Saviour's sojourn and history upon earth—(I make the allusion in no spirit of irreverence or levity;) but all agree in regard to the prominent facts in the history of the Saviour of the world. This very discrepancy in immaterial matters is held to be the strongest and most conclusive evidence of Scripture truth, for the reason that, where a number of persons agree in regard to immaterial matters, the conclusion is irresistible that they colluded together for the purpose of deception. But where they agree in regard to prominent matters, and differ in regard to "immaterialities," if I may so express myself, the conclusion is irresistible that they never conferred together, and that each one details the impression made upon his own mind at the time it occurred. I will illustrate it. Mr. Ball and I are walking down the street together. We see a fight. I give my statement of it, and he gives his. We agree in regard to the prominent facts, but we differ in regard to the immaterial circumstances connected with it. And did you ever see two men give the same account of a fist fight that occurred within their personal observation? Never in your life. This is a homely and familiar, but a truthful illustration. Now, I say that Louis J. Weichmann has not been contradicted, and I defy the gentlemen to point to one single fact of any prominence or importance with regard to which he has been.

Let us briefly review his testimony. Before doing so, however, I beg to call your honor's attention to what Greenleaf says on the subject of an accomplice. I read from section 282, 1 Greenleaf:

"There is one class of persons, *apparently accomplices*, to whom the rule requiring corroborating evidence does not apply, namely, persons who have entered into communication with conspirators, but either afterwards repenting, or having originally determined to frustrate the enterprise, have subsequently disclosed the conspiracy to the public authorities, under whose direction they continue to act with their guilty confederates until the matter can be so far advanced and matured as to insure their conviction and punishment. The early disclosure is considered as binding the party to his duty; although a great degree of objection or disfavor may attach to him for the part he has acted as an informer, or on other accounts, yet his case is not treated as the case of an accomplice."

Your honor will observe, as will you also, gentlemen, that there are two principles here enunciated. First, if the man is an accomplice and repents during the existence of the conspiracy and gives information, that exonerates him from all liability—

Mr. BRADLEY. Do I understand you that if Mr. Weichmann testified about this conspiracy before it culminated—

The DISTRICT ATTORNEY. I contend that he had nothing to do with the conspiracy, but testified just as soon as he knew anything about it. Of course if he was a member of the conspiracy, knew what was going on, and didn't confess until after the object of the conspiracy was consummated, his day of probation had passed, and it was too late to make it then so that it would avail him. It would then be like the death-bed repentance of the sinner, or rather like the spirit repenting after it had passed from this earth into eternity.

Again, gentlemen of the jury, may I say that the defence have most signally failed in their attempt to show that he had been arrested, for it seems to me that McDevitt—I do not intend to say anything against him, for he is a very good officer, but in the excitement of the moment—informally arrested Weichmann, as he should have arrested every one at the house of Mrs. Surratt. Just so soon as my little boy came into my room on the morning of the 15th, and with tears in his eyes told me that the President was dead, I being a peace officer at once

went down and examined into the evidence, and I know parties were arrested upon mere suspicion. At that time every honest man's heart was in his mouth. He was doing all he could to search out these offenders against society and civilization. But after Weichmann was arrested by McDevitt he went to the headquarters of the police, and at the mere request of Major Richards he remained there all night, manifesting no disposition to escape, and indicating no evidence of guilt.

Let me review briefly the testimony of Weichmann, for my purpose is to show you that he is corroborated in regard to every prominent matter in this entire transaction, from its inception to its consummation. I could not help being somewhat amused at the cross-examination of this witness by Mr. Bradley, sir., whose ability, not only in the management of a cause, his eloquence in pleading it, and the learning which he displays in arguments before the court, but his great ability in the cross-examination of a witness. But I appeal to you as honest men, did not Louis J. Weichmann bear himself up manfully in that trying ordeal? Mr. Bradley looked daggers at him, but without any effect to deter. The old gentleman found himself foiled for once, as I think I can satisfy you, in discrediting this young man. I of course do not impute to Mr. Bradley any such uncharitable purpose as seeking to do it unfairly, for he would scorn to do that, but we all make mistakes in the heat of battle at the bar. I repeat, Weichmann came from the fiery furnace well tried. I do not want to eulogize him too much, and say that he was pure gold, but this I can say, that he has been corroborated by the witnesses examined both on behalf of the prosecution and the prisoner.

After this digression, gentlemen of the jury, permit me to review his testimony. The first fact to which he testifies is the great central truth established by a host of witnesses, among others, by Miss Honora Fitzpatrick, that sweet and innocent girl, whom they themselves have credited by making her their own witness. I shall show you that she was mistaken in regard to one point; it is not very material however. I know she contradicts Weichmann in regard to immaterial points, but she confirms him with regard to all material matters, and the testimony of such a lady as she is is sufficient for me. I do not want anything more, for when a good, pious, innocent girl or woman comes upon that stand and testifies to a fact it is just as good to me almost as a declaration from the Bible itself. I repeat that she confirms him in regard to the great central fact, that 541 was the rendezvous of these conspirators. Now, when I place conspirators together, when I show the act which they threatened and committed, what more do you desire? In regard to this fact Louis J. Weichmann is confirmed. Secondly, he testifies to the intimate relations between the prisoner and the other conspirators. Who contradicts him with reference to that? He says he saw Louis Payne and John H. Surratt fencing with bowie knives, and armed with revolvers, with spurs, and with all the artillery of war. Who denies it? These dumb witnesses, that speak with most miraculous organs—aye, in thunder tones—confirm the truth of his testimony upon this point. In the third place, gentlemen, he testifies to the mysterious meetings and conversations, and to the ciphers and geographical projections, when, doubtless, devising their future plan of operations, at the National Hotel in this city.

In the fourth place he testifies to the interview at the theatre between Booth and the prisoner a few weeks previous to the assassination. Who contradicts him? Miss Honora Fitzpatrick confirms him, testifying to substantially the same thing.

Fifthly. He testifies to the interview between the prisoner and Payne, when they entertained themselves by fencing with bowie knives, and at the same time exhibiting revolvers and spurs. In this connection I will read from page 377 of the record:

“Q. You were in your room up stairs?”

“A. Yes, sir. I said, ‘It is.’ He then looked at me, and immediately ob-



served, 'I would like to talk privately to Mr. Surratt.' I then got up and went out of the room, as any gentleman would have done. The following day, the 15th March, on returning to my room from my work, I found a false moustache on my table. Not thinking much about it, I threw it into a toilet box that was there. From the appearance of things around my room I knew John Surratt was at home. I then went up into the back attic, and just as I opened the door I saw Surratt and Payne seated on the bed, surrounded by spurs, bowie knives, and revolvers. They instantly threw out their hands as if they would like to conceal them. When they saw it was me they regained their equanimity.

"Q. Where did those things lie?"

"A. They were on the bed.

"Q. State what those things were.

"A. Eight spurs—bran new spurs—and two revolvers.

"Q. How were they as to being new?"

"A. I do not now remember whether the revolvers were new or not. There were two revolvers, however, and two bowie knives. When I went down to dinner, I walked into the parlor and told Mrs. Surratt that I had seen John and Payne fencing with those things here, and added, 'Mrs. Surratt, I do not like this.'"

Now, gentlemen, bear that circumstance in mind, in connection with the others to which I have invited your attention. I ask who contradicts him in that?

Again, I would call your attention to the sociable at Gautier's. It seems they did not desire Weichmann's company either there or at the theatre. I will simply refer to page 378, in this connection, without reading it.

I now refer you to a written declaration, which speaks for itself. As to how much this tells, gentlemen, against the prisoner, it is not my purpose now to speak, because you will have to read this by the light of the surrounding circumstances. He (Mr. C.) then read as follows:

[“Received, Washington, March —, 1865, — o'clock.]

“NEW YORK, *March 23, 1865.*

“To — WICKMAN, Esq., 541 *H Street* :

“Tell John to telegraph number and street at once.

“J. BOOTH.”

“Mr. BRADLEY. I object to the introduction of the evidence, because there is no sort of proof that J. Wilkes Booth wrote the telegram. This copy cannot be any evidence of that fact.

“Mr. PIERREPONT. This is the one received.

“The COURT. It cannot be any evidence, unless connected in some way.

“Mr. PIERREPONT. It will be connected in a few seconds, sir.

“Mr. BRADLEY. That is what I am waiting for.

“Q. What did you do when you got this telegram?”

“A. There were two things about the telegram that struck my attention. My first name was omitted, and my last name was not spelt correctly. It was spelt ‘Wickman.’ I knew of no party in New York who could send me a telegram. I had no acquaintance there. I opened the envelope, and I saw it was from Booth. I did not know why he should address me a telegram. I showed it to several of the clerks in the office, and I took the telegram home that day and showed it to Surratt.”

This mysterious communication proves nothing of itself, but is of momentous importance, as you know, when read by the light of the surrounding circumstances, and the other written communications, to which I shall hereafter invite your attention.

In this communication Weichmann's first name is not given, and the last name of the prisoner is omitted. He does not state to Weichmann what he wants



with "John." It is very brief, but it is very plain and very comprehensive. After receiving this telegram, Weichmann speaks to Surratt regarding it. What does he say?

"Q. What did he say?"

"A. I told him I thought it was intended for him. I asked him what number and street were meant. The telegram reads, 'Telegraph number and street at once.' He says, 'Don't be so damned inquisitive.'"

You will observe, gentlemen, these two facts: that when Weichmann informs the prisoner of this mysterious telegram which he had received from Booth, although specially requested at that time by Weichmann, his personal friend and the friend of his mother, to tell him the object and the meaning of this communication, he refuses to tell him anything about it, but says, in reply, "Don't be so damned inquisitive." He then parts company with him, goes off, and what is the next fact? I ask your attention to what follows. It explains this telegram. It shows that Booth was communicating with the prisoner in reference to Louis Payne; that they were preparing quarters where he could be concealed until their plans were consummated, and he could aid in the execution of their bloody purpose.

"A. That same evening he asked me to walk down the street with him. We went as far as Tenth and F, when he met a Miss Anna Ward. He then walked back from Tenth and F streets to Ninth and F streets with me, and went into the Herndon House and called for Mrs. Murray."

Now, gentlemen of the jury, what do these facts prove? Let me recapitulate. John Wilkes Booth, in the city of New York, telegraphs to the prisoner at the bar, in Washington, to prepare a room for a certain mysterious person whose name he does not disclose to his room-mate and bosom friend; but that person, a man imported, I believe, from Florida, Lewis Payne. Coming events cast their shadows before them. Booth, in New York, telegraphs to his tool to prepare a room where he may conceal one of their instruments. He is concealed. When he leaves it he either goes to Mrs. Surratt's, or to enter upon his bloody errand, to the house of Secretary Seward, where he endeavors to strike the fatal blow. In all this I speak from the record. I appeal to the evidence. I refer to Mrs. Surratt's visit to the Herndon House. Weichmann, ignorant of what was going on, asks who the party was at the Herndon House. Atzerodt tells him, for he is a foolish fellow, who does the rough work, notwithstanding he was a pet among the ladies. Atzerodt makes the fact known to Weichmann, and Mrs. Surratt reproves him for doing so, thereby confessing, in vindication of Weichmann's character, that he (Weichmann) was not a safe person in whom to confide the secret of conspiracy. Weichmann swears that Atzerodt told him it was Payne; and is he not confirmed? Miss Honora Fitzpatrick says that, on returning from church in company with the old lady and others, she requested that the young ladies should remain outside, upon the street, while she stepped into the Herndon House. Mrs. Murray, the proprietress of that hotel, testifies that she never knew Mrs. Surratt, or any member of the family. Why did Mrs. Surratt go there? Was it not to see the man whom her son had concealed there in obedience to the order of the chief assassin, John Wilkes Booth? Putting all these facts together, how can you escape the conclusion that it was what Mr. Greenleaf describes such to be, a concerted action of many men bent upon an unlawful—aye, a cruel and murderous purpose? Am I not right about this? Let me read from the record:

"Q. Did you go with her to church at any time, and returning, stop anywhere?"

"A. Yes, sir; after the 27th. I do not remember the particular evening Anna Surratt, Miss Jenkins, Miss Fitzpatrick, Mrs. Surratt, and I had been to St. Patrick's church, on the corner of Tenth and F streets.

"Q. What occurred in returning?"

"A. On returning she stopped at the Herndon House, at the corner of Ninth and F streets. She went into the Herndon House, and said that she was going in there to see Payne.

"Q. Mrs Surratt said that?

"A. Yes, sir.

"Q. Tell what occurred.

"A. She did go, and she came out.

"Q. How long was she in there?

"A. Perhaps twenty minutes.

"Q. Did you see her when she came out?

"A. Yes, sir.

"Q. Where were you waiting?

"A. We walked down Ninth street to E—the party did—and down E to Tenth; and then returned to the corner of Ninth and F, and met Mrs. Surratt just as she was coming out of the Herndon House.

"Q. Did she join you?

"A. Yes, sir; and went home with us.

"Q. To her house?

"A. Yes, sir.

"Q. Did she say anything to you?

"A. No, sir."

Now, I ask you if he is not confirmed by Miss Honora Fitzpatrick. It is true that she did not know Payne; and she did not know for what purpose Mrs. Surratt went into this house; but she testifies to the fact that she went there; and Mrs. Murray testifies to the fact that she was not acquainted with any member of the family. Is not this confirmation strong as proof of Holy Writ?

In the next place, you find that Weichmann testifies to the fact that Atzerodt and Payne were at the Herndon House. I might, in this connection, refer to pages 385, 386 of the record.

Again, on the 3d of April he testifies to the interview with Surratt. I refer to page 387. That was the last time he saw him, until he recognized him in this court upon trial for his life.

On the 5th of April he saw Booth at Mrs. Surratt's house. He testifies to having seen those war maps, which indicate that they had prepared themselves with all the paraphernalia necessary to the execution of their cruel and bloody purpose, and with regard to this he is not contradicted.

On the 11th of April he drives Mrs. Surratt, at her request, to the village of Surrattsville. Who contradicts him? Is he not confirmed? He says that as the old lady left the house she brought down a little package, requesting him to be very careful lest he might break it; that it was Booth's. They go to Surrattsville and places certain things in the custody of John M. Lloyd, upon whose testimony I shall hereafter dilate more fully. This little package turns out to be a field glass; and after the dead body of Booth is transferred from the State of Virginia to the city of Washington, and recognized by Dr. May, who had performed a surgical operation upon him in the course of his lifetime, this very field glass which Weichmann testifies Mrs. Surratt carried to Surrattsville is found and traced to his possession. In the next place he testifies to the departure of the prisoner at the bar, and Mrs. Slater, for the southern confederacy, where he expected to receive a clerkship. It does not clearly appear from the record whether for himself or for Mrs. Slater. Is Weichmann contradicted in regard to that? No, but, on the contrary, confirmed by their own witness, Mr. David C. Barry. The very man whom they had brought here to contradict him confirms him. He says that he had a son in the rebel army whom he desired to see, and under whose auspices does he attempt to secure an interview with the confederate authorities? The first man to whom he applies is the prisoner at the bar. In com-

pany with him he goes down to Elizabeth City, I believe it was, thus showing he had communication with the two authorities. Showing, as Weichmann testifies, that he and Mrs. Slater were combined, as he was with Booth, not only to murder the federal head and representative of the American republic, but to strike at the heart of the American nation itself. It is true, there are some little immaterial discrepancies as to who broke the buggy, how it was broken, and who mended it, as also regarding the relative positions of the parties at the time, and with reference to the particular dates when certain things occurred, but these discrepancies are only with regard to immaterial matters. I put this question to you, gentlemen. Answer me, as honest men, determined to do justice. I appeal to that golden rule of morality, "Do unto others as you would have them do unto you." You may at sometime be a witness on this stand. Is there a man upon this jury who could not be contradicted as to dates, and the relative position of parties at the time a certain transaction occurred?

Now, gentlemen, we come to another fact to which Weichmann testifies. He says that Mrs. Surratt, in a state of excitement, asked him to pray for her intentions. Did Mrs. Surratt say that to him or not? Has he lied? It is an awful thing to charge a man with the Heaven-daring crime of perjury. Do it, if you believe it, however. If Weichmann has testified to that, he has testified either truthfully or falsely. It is a matter that he could not forget. This thing of conscience, that silent monitor which whispers in the human heart, and will, when this poor body is mouldering in the grave, live with us through the endless ages of eternity, is a most mysterious agent, and seemed to greatly trouble Mrs. Surratt on this occasion. I think I have read, in the celebrated novel of Kenilworth, by that great poet, writer, philosopher, and philologist, Sir Walter Scott, that the wicked Varney, the most corrupt man that ever lived, either in reality or in romance, after he had murdered a man, stole his purse. He had gone but a few steps when conscience pricked him. He returned and laid the purse of gold by the body of his murdered victim, and remarked, "It only illustrates how mysterious are the workings of conscience." Although Mrs. Surratt, as I intend to show, was bent on murder, yet in conscience was greatly exercised. I know, gentlemen, your feelings on that subject. One of your number expressed his; but I am willing to trust him. But I will say further, it doesn't matter whether Mrs. Surratt was guilty or not. That is not the question now. It is as to whether *he* is guilty. However, I shall have something to say about Mrs. Surratt, and I shall endeavor to deal justly with her, and in a spirit of charity. Although cherishing murder in her heart, she felt the necessity of Divine assistance.

It is not strange that men and women sometimes look to God when they are about to commit a crime, especially if done in a spirit of fanaticism; and that is the most charitable construction that can be placed on the attack of these parties. I believe she did invoke the prayers of her friends, when she realized the awful crime which her co-conspirators were about to commit, or perhaps had actually committed. Who contradicts her? Miss Honora Fitzpatrick is brought here for that purpose. What does this young lady say? "I did not hear it." God forbid that I should charge this young lady with testifying untruly. My friend suggests to me that Mrs. Surratt was walking up and down the room at the time. The testimony of Miss Fitzpatrick is negative against affirmative testimony. Whoever heard of contradicting a witness in that way? Suppose one of you should swear to a fact, and I should come into a court of justice and swear that I did not see or did not hear it; who is to be believed? Is not the man who testifies affirmatively.

Mr. Greenleaf, in his excellent treatise on evidence, illustrates this principle in this very familiar and homely way: I am sitting in this room. I swear that I heard the clock strike. Five witnesses come upon the stand and swear that they did not hear it strike. If you regard me as an honest man you must be-



lieve me. And why? Because affirmative is better than negative testimony, and is to be given the preference.

I now refer to the telegrams :

“NEW YORK, *March 13, 1864.*

“MR. McLAUGHLIN, *57 North Exeter street, Baltimore, Md :*

“Don't you fear to neglect your business. You had better come at once.

“J. BOOTH.”

“MR. PEIRREPONT explained that the telegram was written on a printed blank marked 1864, but on the back of it was an indorsement, 1865, and he had no doubt 1865 was the proper date. To witness : Now look at this telegram (another telegram exhibited) and state in whose handwriting it is.

“WITNESS. That is Booth's handwriting.

“MR. PIERREPONT, after making the same explanation as to date being 1865 instead of 1864, read and placed in evidence the following telegram :

“NEW YORK, *March 27, 1864.*

“MR. McLAUGHLIN, *No. 57 North Exeter street, Baltimore, Md. :*

“Get word to Sam to come on. With or without him, Wednesday morning we sell—that day sure—don't fail.

“J. WILKES BOOTH.”

“SURRETTSVILLE, MD., *April 14, 1864.*

“SIR : I have this day received a letter from Mr. Calvert intimating that either you or your friends have represented to him that I am not willing to settle with you for the land. You know that I am ready and have been waiting for the last two years, and now if you do not come within the next ten days I will settle with Mr. Calvert and bring suit against you immediately. Mr. Calvert will give you a deed on receiving payment.

“M. E. SURRETT,

“*Administratrix of J. H. Surratt.*

“MR. JOHN NOTHEY.”

“SURRETTSVILLE, *November 12, 1864.*

“DEAR AL. : Sorry I could not get up ; will be up on Sunday. Hope you are getting along well. How are times—all the pretty girls? My most pious regards to the latter ; as for the former, I care not a continental d—n. Have you been to the fair ; if so, what have we now? I'm interested in the bedstead. How's Kennedy? Tight, as usual, I suppose. Opened his office I hear. Fifty to one 'tis a failure. Am very happy I do not belong to the firm. Been busy all the week taking care of and securing the crops. Next Tuesday and the jig's up. Goodby Surrattsville. Goodby God-forsaken country. Old Abe, the good old soul, may the devil take pity on him.

“JOHN H. SURRETT.

“LOUIS J. WEICHMANN, Esq ,

“*Washington City, D. C.*”

Now, gentlemen, let me briefly recapitulate, as I understand it, the facts disclosed by these communications to which your attention has been invited. First, you see that John Wilkes Booth is in communication with McLaughlin. In the next place he leaves a card at the door for the prisoner, telling him to “get leave.” What does that mean? It is in evidence before you that the prisoner at the bar was at that time in the employ of the Adams Express Company, where an honorable career was opened to him. He urged his proprietor to give him permission to leave for a short time, which he declined to do. His mother urges



it, and the honest man who needed the assistance of a young, able-bodied gentleman in the transaction of his business, and saw that it was against the interest of the prisoner at the bar to retire, remonstrated, but he takes "French leave." Why? The chief, the man at whose command he had concealed Lewis Payne, the man with whom he acted in the murder of the President and the attempted murder of the Secretary of State, had left a card with the direction on it of "Don't mind your business; get leave." He leaves, and Weichmann is confirmed. He embarks in this unlawful enterprise. Hand in hand, and with one heart, they go through this bloody business until it is consummated in the murder of the President of the United States. Gentlemen of the jury, have I not established to your satisfaction the third point in my argument? Have I not proved an unlawful conspiracy between John Wilkes Booth, Lewis Payne, and John H. Surratt? Of the others I shall not speak as yet.

Having proved the conspiracy and the prisoner's connection with it, I come now to my fourth point, to wit: What part did the prisoner act in this conspiracy? Permit me to say, however, that it matters not what part he acted, for under the decision of Chief Justice Marshall, if at all connected with the conspiracy, and he acted his part, however minute, he is guilty of the whole. Out of abundant caution, however, I propose to argue the fourth point.

Mr. Carrington referred to a remark of Mr. Bradley that it was improper, under the circumstances, to denounce the prisoner in such violent language as had been used. He said he would only say in reply that he would not use his power to insult or hurt the feelings of the prisoner by unnecessary allusions, but it was his business to denounce crime, and he would say that any man who would coolly shoot down a citizen by the side of his wife was a coward. All cruel men were cowards, and if McMillan's testimony was true, the man who would shoot down unarmed soldiers was a coward, and he could find no other name wherewith to designate what his opinion was of the prisoner.

At this point the court took a recess for half an hour.

#### AFTERNOON SESSION.

The district attorney resuming, said: If your honor please, and gentlemen of the jury, when we took a recess I had arrived at the fourth point. With the permission of the court I crave your indulgence, before proceeding to the discussion of that proposition, to ask your attention to a question which, though not essential to this case, may be considered by you, in view of the manner in which it has been treated, as one of considerable importance. The learned counsel for the prisoner, who opened the defence, spoke of Mrs. Mary E. Surratt, the mother of the prisoner at the bar, as a murdered woman. And Mr. Merrick, in his address to the court yesterday afternoon, in speaking of the same person, called her a butchered woman. Permit me now, gentlemen of the jury, to ask you a single question by way of illustrating the unjust imputation cast upon the honest gentlemen who had charge of the solemn and important duty of trying those prisoners charged with being in this conspiracy to murder the President of the United States. Suppose that you have rendered a verdict of guilty against the prisoner at the bar—as I think you will do when you come to understand the clear and conclusive crushing and overwhelming evidence against him—and a lawyer should rise in his place, before this honorable court, and denounce you as a set of murderers. Suppose that, carried away by the ability and eloquence of the learned counsel of the prisoner at the bar, touching their theories which they honestly entertain, and which they will present to you, you should acquit the prisoner of the horrible crime charged against him in this indictment, and I should rise in my place and denounce you as a set of perjurers, what a feeling of honest indignation would it excite in your bosoms. This is purely hypothetical, for I am sure that neither of the honorable counsel for the prisoner

would make such an accusation. And I think I may safely say, before a Washington jury and a Washington audience, that I should be incapable of casting such an imputation on a jury of my countrymen. Yet, if not expressed by implication the learned counsel for the prisoner has charged those honorable men with the crime of murder. In obedience to an order of the Executive, for which they were in no way responsible, neither understanding nor pretending to understand the principle of law by which that tribunal was organized of officers of the army of the United States; yet, as I say, in obedience to the order of the general Executive Magistrate of the nation, under the solemn obligation of an oath, they undertook the most awful duty which could perhaps devolve upon human beings. After a calm and an impartial and intelligent consideration of all the facts adduced in evidence before them, they pronounced Mary E. Surratt guilty of murder.

Mr. BRADLEY said he was not aware there was any such evidence in this case, showing any such sentence, or any such execution of it:

The DISTRICT ATTORNEY replied, this was strictly in response to the allusions made by the counsel for the prisoner.

Mr. BRADLEY remarked that what had been said by the counsel for the defence was to the court, and not in any address to the jury.

The DISTRICT ATTORNEY. Well, I do most kindly but most respectfully and emphatically repudiate the unjust imputation that Mary E. Surratt has been murdered, as was alleged by one of the counsel, and butchered as alleged by another. Where is the evidence to justify it? If they have a right to make this accusation, have we not a right to repel it? For what purpose was it introduced before this jury? Is it to appeal to your prejudices? I make no such accusation against the gentlemen; they charge it home upon us when they say a murdered and butchered woman. I deny it; and I undertake to prove to the contrary——

Mr. BRADLEY, interrupting, said he supposed this threw the whole subject open for discussion.

The DISTRICT ATTORNEY said that it had been introduced by the learned gentlemen on the other side.

Mr. BRADLEY replied that he was not aware what evidence there was on which this question could be discussed. But if it was understood that the whole subject was open, and that the counsel for the prisoner could not be interrupted in their discussion of it, he was satisfied.

The DISTRICT ATTORNEY. Then why make the allusion in the first instance? Who cast the first stone in the presence of this jury? I regret that it should have been necessary for an American woman to be executed by the judgment of an American tribunal. That verdict has been rendered by an American tribunal, and the consequence of it was the execution of an American woman. I know the character of the American people. I know that imagination revolts at the execution of one of the tender sex. But when the daughter of Herodias murdered John the Baptist, she deserved death. When Lucrezia Borgia darkened the history of her country by her horrid crimes, she deserved death. And when Mary E. Surratt murdered Abraham Lincoln, the great moral hero of the age in which he lived, the patriot and philanthropist of the nineteenth century, she deserved death. There is no man who has a heart more capable of love for woman than myself. But when she unsexes herself, when she conceives, when she encourages, when she urges on, and is instrumental in committing, the crime of murder, she places herself beyond the pale of protection. The best wife who ever lived, according to Milton, our great mother Eve is thus represented as speaking to her husband:

“What thou biddest,  
Unargued I obey; so God ordains:  
God is thy law, thou mine.”

I believe in submission on the part of woman; submission to her God, to the laws of her country, and her husband. But when a woman opens her house to murderers and conspirators; infuses the poison of her own malice into their hearts, and urges them to the crime of murder and treason, I say boldly as an American officer, public safety, public duty, requires that an example be made of her conduct. Murder! gentlemen of the jury. Who composed that military commission? There are no better men than you are, but you will not be offended with me if I say they are as good men as you are, or I, or any of us.

Here is a list of them: Major General David Hunter, Major General Lewis Wallace, Brevet Major General August V. Kautz, Brevet Major General Robert S. Foster, Brigadier General Albion P. Howe, Brigadier General T. M. Harris, Brevet Brigadier General James E. Ekin, Brevet Colonel C. H. Tompkins, Lieutenant Colonel David R. Clendennin, Brigadier General J. Holt, judge advocate general, John E. Bingham, special judge advocate, Brevet Colonel H. L. Burnet, special judge advocate.

I say, gentlemen of the jury, that they are good men, holding commissions under the government of the United States, and they are presumed to be honorable men. The law declares that every private citizen, and every public officer who is a servant of the American people, is presumed to be honorable until the contrary is proved. Your officers, your men, your representatives in the American army, in an accusation which will travel upon the telegraph wires perhaps to the four quarters of the world, have been denounced, if not expressly by implication, as murderers and butchers who took the life of an innocent woman. If so, when you come to try them and you believe it, say it, but it is not the question submitted to you now. She may be innocent, and the prisoner at the bar may be guilty, the subject was introduced collaterally by the learned counsel, for what purpose I know not, except for effect. Before you brand these gentlemen with the character of murderers, see that you have relevant grounds to act upon. Take care, or you may be in the same situation; I have not charged it, and I do not think that my friends would, upon reflection, charge men who are placed in such a solemn obligation with such a direliction of duty. It has been said that this has been pronounced in the Supreme Court of the United States an illegal tribunal. What has that to do with the action of these officers? What has that to do with your action? What pertinency can it have to the issues now submitted to you for your decision? But, gentlemen of the jury, let us first consider the character of this crime, and then I will consider briefly the connection of Mrs. Surratt with it. I do not desire to say much about her; she is gone to her grave, her spirit has passed before her eternal Judge. Do you remember some four years ago, in passing down Pennsylvania avenue, you might have seen a little wagon drawn by a single white horse, and a small squad of soldiers marching with arms reversed, the shrill scream of the fife and the melancholy music of the muffled drum; they are bearing some soldier who has fallen in his country's cause to his long, silent home, there to sleep until aroused by the last trump louder than the bugle blast of war. Come with me in imagination to New England and see that mother weeping over the untimely, bloody grave of perhaps her only boy; go to the sunny south, that bright and beautiful land where the flowers bloom, now marred with gory graves, once the seat of loyalty and religion; now where horror sits plumed. Who caused it? Was it these gallant boys who met each other with arms in their hands and now weep in common over the graves of the fallen, and meet each other like brothers? No! no. They were the wicked women and men who stirred up the strife among brothers, and urged them to war, to murder, and assassination. Of all this, gentlemen of the jury, there can be no doubt; you know it, you feel it. We are one people. I indorse the sentiment of the immortal Daniel Webster: "I know no south, no north, no east, no west; I know but the country, the whole country, and nothing but the country." I love this country, from the smallest pebbles that glitter upon the ocean's



shore, to the old pine tree that wears its solitary form upon the mountain's barren breast; we are one in a common ancestry, and a common renown; we ought to be one in feeling, in sentiment, and in affection. I say it is these wicked women and men who are responsible for the untold horrors that thrilled your hearts, and filled this land with widows and orphans.

Now, gentlemen of the jury, let us review the connection of Mrs. Mary E. Surratt with this assassination. I feel the delicacy of the ground upon which I stand. I know the situation. I know that you dislike to consider this question which has been forced upon you. I do not want to do it; my duty is to prosecute the prisoner, but one of the counsel has said that she was murdered, and another that she was butchered, and it therefore becomes my duty to trace her connection with this crime, and then leave it to you to say whether she was guilty (though not relevant to this case) of the crime for which she suffered. First, I will call your attention to a fact to which we have already adverted: that her house, 541, was the rendezvous for these conspirators. Now, gentlemen, will you pause for a moment, and let me ask you how you can reconcile it with innocence? You remember the law, that it is not how much the party did, but whether she had anything to do with it. Can you, I say, reconcile it with innocence that this woman's house should have been the rendezvous of John Wilkes Booth, Lewis Payne, Atzerodt, Harold, and John H. Surratt? Would you not know by intuition; would not you know by their conversation; would not your judgment and your hearts tell you who they were and what they contemplated? That is the great central truth, which I defy the learned counsel for the defence successfully to assail. Secondly: Who furnished the arms with which the bloody deed was done? When Macbeth murdered the sleeping Duncan, he placed the blood-besmeared dagger by the side of the sleeping grooms, that his royal friends arising from their slumbers, seeing these blood-besmeared daggers by the side of the sleeping grooms, will fix the crime upon them and never suspect me. The woman who furnishes the arms; the woman who puts an arm into the hand of her lover, her son, her brother, or her husband, and urges him on to the deed, by the law of God and man, is equally guilty with the one who with his own hand perpetrates the crime. According to the testimony of John M. Lloyd this is shown. Do you believe him, or disbelieve him? My friend, Mr. Bradley, who opened this case, said he was a common drunkard; but mark you, he was an attendant and friend of Mrs. Surratt.

Mr. BRADLEY. Who says so?

The DISTRICT ATTORNEY. I will show who says it, if my friend will only strew a little cool patience upon his hot distemper.

Mr. BRADLEY. I will try and allow the boil to break.

The DISTRICT ATTORNEY. I will prove it. When I was examining that witness, and proposed to ask him certain questions in reference to Mrs. Mary E. Surratt, he said, "Mr. Carrington," for he knew me personally, "I don't wish to speak about Mrs. Surratt, for she is not on trial." I said, "Go on, Mr. Lloyd." He declined. I applied to the court, and the court said that it was his duty to answer. He saw her continually. He lived in her house; he drank her liquor. Why, this evidence shows that John Surratt, Herold, and John M. Lloyd played cards and drank together. You all know what Robert Burns says in his celebrated poem of Tam O'Shaunter, in speaking of Tam O'Shaunter's friend:

"Tam loved him like a brither,  
For they'd been drunk for weeks together."

But, says the friend and companion of the prisoner at the bar—the confiding and confidential agent of his mother, unwilling to testify against her when put on the solemn sanction of an oath, but when required to do so he speaks out—he says certain arms were furnished him by the prisoner at the bar; that he



concealed them, the prisoner showing him where they could be safely concealed; he protesting at the time against it, protesting that it might get him into some personal difficulty. The mother knew of the transaction, for on the 14th of April we have Lloyd's own testimony that she asked him where those shooting-irons were, and said they might soon be needed, or words to that effect. But, gentlemen, I am going too fast, for I do not desire to speak to confuse you. I say, first, that her house is the rendezvous; and that, secondly, she furnishes arms, or knows of their being furnished. On the night of the 14th of April, Booth and Herold returned, and are leaving the city of Washington in flight for their lives. Booth had broken his leg as he sprang from the private box of the President of the United States to the stage upon which the actors were performing. Herold was his companion. Fatigued and jaded, they needed a little refreshment, and they came here to get it. At Surrattsville they called for whiskey from the agent and friend of the prisoner and his mother, and drank it out of the very bottle which she herself had left in the custody of Lloyd, stating to him at the time that it would soon be called for. She gives them a home, gives them arms, gives them whiskey, not to nerve but to refresh them after the commission of their horrid crime. But Booth, in making his escape, needs something more than whiskey and arms. It is necessary that he should secrete himself as he travelled through the country, and that he should see persons approaching him from an immense distance he needs a field glass, and has it delivered to him by the friend and agent of Mrs. Surratt. She herself left it there on that very day for that purpose. Is that all? Booth is captured; he is shot; an arm is taken, if not from his dying grasp, from near his person. It is brought into this court and identified as the very arm which had been provided for him by the prisoner at the bar, under the circumstances to which I have just referred. Is that all? That is enough. O, gentlemen, I may have something more to say about this spirit of sickly, mawkish sentimentality, as it is called. Is not that enough? That is not all. Mrs. Surratt goes to her home; the officers of justice, by a sort of intuition, find their way to 541. While they are there, an individual in the disguise of an honest workman, who made a living, one would suppose, by the sweat of his brow, makes his appearance. It excites suspicion, and he is arrested. He turns out to be Lewis Payne, the very man who had been quartered at Mrs. Murray's house—the honest Irish lady, who, when she received him, was entirely unconscious of his true character, but who was imposed upon by the conjoined efforts of Booth, Surratt, and Mrs. Mary E. Surratt, which would prove her at least an accessory after the fact. Taken altogether it proves she was engaged in the conspiracy. When he is arrested—and he says he came there for the purpose of digging a ditch, for which purpose he had been employed by the lady of the house—she is asked: "Do you know this man?" There is no disguise in that; that depends on evidence which is irrefragable, which cannot be assailed successfully. She raises her hands to heaven and exclaims, "I do not know him." How often has this court held that falsehood is one of the darkest badges of guilt? She denied all knowledge of the man who fled to her for her protection; whom she had quartered in the city; by whom she had in part executed the cruel, bloody purpose of this infernal conspiracy. Put these facts together, gentlemen of the jury, and how can you avoid the conclusion that she knew of this conspiracy and acted some part in it? The law is, that if she acted any part, however minute, she was guilty. Now, let me observe that I have not so far referred to the testimony of Weichmann. But when you consider these facts in connection with his testimony, and her solemn admission with it, you see the criminals stand confessed. O, that it were not so! How can you start an attack on the honorable men who condemned her? I care not how it was; she was proved, by evidence so conclusive, to be connected with the crime which Mr. Bradley in his argument has characterized and in strong and eloquent terms denounced. I would

not undertake to say that the jury did err in convicting Mrs. Surratt under such circumstances. Gentlemen, I do not speak disrespectfully of woman; you are like myself, probably, old married men. A woman's weapon is her tongue. Charlotte Corday, it is true, with her own hand inflicted the death-blow upon the fierce and bloody Marat. Jael, with her own hand, struck down Sisera, who was an enemy to the chosen people of Jehovah. Helen Mar assumed the dress and wielded the sword of a knight, that she might fight by the side of the man she loved, but who was proof against her wiles. But these are exceptions to the general rule. Her tongue, that sword of fire, is the weapon with which she sows the seeds of bloodshed, and violence, and discord. With her tongue did she stimulate these young men to crimes of blood and horror. Do you realize, gentlemen of the jury, the responsibility resting upon you? Here we are in the presence of gentlemen and ladies, perhaps of little boys and girls. You are educating public sentiment. I heard that remark made—and it impressed itself upon me—by a venerable old gentleman upon a case somewhat similar to the present. I call upon you as conservators of the public peace, as Christian men, to say to woman, Keep your proper place; submit to the laws of God and of your country; train your children to love their country as they do their God. But if you dare to raise your arm, to unsex yourself and engage in a conspiracy against the nation's life and the nation's honor, to make a widow of one of your own sex, to strike down the father and husband in the presence of his wife and child, I call upon this honest jury of my countrymen to spurn that spirit of mawkish sentimentality. Who would allow a crime like this to go unrebuked, and a great criminal like this to go unwhipped of justice? Vindicate the laws of your country; maintain the integrity of the judicial ermine.

I dismiss this subject, gentlemen of the jury, for, you understand it, I have nothing to do particularly with Mrs. Surratt. I am trying this case, and before proceeding to this point I thought it proper to call your attention to these facts. Upon this point I shall be very brief, for if you listened to my argument before the court and comprehended it, as I am sure you did if you paid attention, you will have recollected that it is immaterial whether the object of this conspiracy was murder or personal violence to the President of the United States. If the learned counsel for the prisoner should undertake to argue before you that there was a conspiracy to abduct the President, of which the prisoner was a member, but never intended to kill him, it is entirely immaterial; for I repeat, when a man engages in an unlawful and dangerous enterprise of this kind, and human life is taken, the law of the land holds him responsible for the consequences, of which he was the unlawful original cause. I do not know how I can illustrate this better than in this way: If a number of parties set out to go to your house, and by personal violence to take you from the presence of your wife and children, and you resist it, the natural consequences would be bloodshed; and if the parties who engaged in such unlawful purpose, the result of previous conspiracy, if death is the consequence, are all guilty of murder.

Mr. MERRICK. Will my learned friend permit me to interrupt him for the purpose of understanding, which I really do not, the point he makes? Do you mean to say to the jury that if there was a conspiracy for the prosecution of one purpose, the design of which was the accomplishment of one purpose, and the conspirators, some of them, entered upon another and a different purpose, all the original conspirators are guilty? Or do you mean to say that all the conspirators who conspired for one purpose are responsible for whatever may have been done in the prosecution of the original design of the conspiracy? To illustrate it: You have several times in your argument referred to a conspiracy to abduct and a conspiracy to kill. Now suppose there was an original conspiracy to abduct, and no effort was made to accomplish the abduction, but some of the conspirators change that original design to a conspiracy to kill, and the killing was in consequence of that agreement to kill, not as an incident in the abduction, do you think

that the original conspirators to the plan of abduction are responsible for the killing?

The DISTRICT ATTORNEY. I understand you perfectly, and an answer to your question would only involve a repetition of my argument.

Mr. MERRICK. Not at all; I merely desire to understand your argument. We do not comprehend it.

The DISTRICT ATTORNEY. I will then restate very briefly my argument. It is this: That if the original plan of the conspiracy was to abduct the President of the United States, or to do him any personal violence, and the prisoner was a member of that conspiracy co-operating with them; and if, while co-operating with them, the plan to abduct is abandoned, and murder was committed, he was equally guilty with them in the murder.

Mr. MERRICK. Then I understand you the killing must be in the attempt to abduct. I think I understand you.

The DISTRICT ATTORNEY. I don't think you do understand it exactly.

Mr. BRADLEY. If we understand you aright, you give up the whole case.

The DISTRICT ATTORNEY. I hope, gentlemen of the jury, you understand what I am saying. The gentleman says the killing must be in an attempt to abduct. You understand my argument, that if there was a conspiracy to do any personal violence whatever, and during the existence of that conspiracy, the prisoner at the bar being a member of that conspiracy, the attempt is made by any of the conspirators to do him any personal violence and he is killed in consequence, they are all equally guilty. I understand the proposition of law on the part of the gentlemen on the other side, but I don't agree with them.

I now go, gentlemen of the jury, to the fifth point in my case, which, as I have already intimated, is in my judgment an immaterial point; for if I am right in the view of the law which I have taken, I might safely rest the case upon the points I have already submitted to your consideration. But it is my duty in preparing every criminal case to present every point that arises in order that I may have the opinion of the court and of the jury upon it. My opinion is worth nothing except as advisory. Upon matters of law the opinion by which you are bound is that of the court, and it is your opinion of the facts which are important in the determination of the case. Therefore it is my duty to prove all the points, if I can, by fair and honorable means. And though in my judgment it was unnecessary to prove that the prisoner at the time was present actually in the city of Washington on the 14th of April, 1865, yet we have offered evidence upon that point, and I think established it beyond controversy. You will observe that it is not for us to prove how he got here. It is not for us to prove how he got away. If it was necessary to prove this point at all, all that would be incumbent upon us would be to fix him here, and that shifts the burden of proof on the opposite side and devolves upon them the burden of showing that it was impossible for him to get here, and impossible for him to get away. I have fixed him here by thirteen witnesses. Mark that, gentlemen. I have fixed the prisoner at the bar in the city of Washington on the 14th of April, 1865, by thirteen witnesses. And before I proceed to discuss this testimony let us see if we did not trace him here. On the 12th of April, 1865, he was in Montreal at the St. Lawrence Hotel. Mr. Sangster, clerk of that hotel, says that he left at 3.30 for the New York train. This you cannot doubt. Dr. McMillan testifies to his admission that this was in response to a letter from Booth that it was necessary for them to change their plan of operations, and that he should come on to the city of Washington; thereby admitting that he was at that time a member of the conspiracy. By the concurrent testimony of Sangster and McMillan he leaves Montreal April 12 at 3.30, in obedience to a summons from his chief for the purpose of changing his plan of operations: if previously to abduct, now to murder; because the result has a retrospective effect, and shows what was the plan of operations which they then contemplated. According to the testimony



of St. Marie he left the city of Washington on the 15th of April; according to the testimony of Maurice Drohan, having left Montreal, as stated, on the 12th. On the 13th he is seen at the ferry near the city of Williamsport. I could not help being struck with the manner of Mr. Bradley when this witness was put upon the stand. It was a piece of acting which would have done credit to Edwin Forrest. Why, says he, "Go; I don't want to ask you a single word." You recollect it. You recollect that honest Irishman. I am of Irish descent myself, and you know that while Irishmen will drink whiskey and fight, an Irishman is bound not to tell a lie. What right have you to doubt his testimony? Who contradicts him? If they had dared to assail his reputation they would have made the attempt. Did Mr. Bradley dare to cross-examine him?

Mr. BRADLEY, (sarcastically.) No, I did not.

The DISTRICT ATTORNEY. Has he contradicted him? On the contrary, gentlemen. I do not want to excite levity, for it is too solemn. But you will recollect that this witness is confirmed by the train-master, who said that a man came to him very anxious, and inquired when the trains would run between the city of New York and to Washington. He supposed that the man inquiring was a rebel spy, or confederate soldier, and did not wish to give him any satisfaction; so he put him off. He believed that the prisoner at the bar was that man; that I understand to have been his testimony. I do not want to mistake it. I grant that he did not identify him positively; but he said that he looked like the man; that he believed him to be the man. Very well. One witness identifies him positively, and another says he looks like him. Now, gentlemen, let me recapitulate. Sangster starts him; Drohan sees him on the way; another witness expresses a belief that he saw him. Other witnesses prove that the trains were then running from Elmira, where he is conceded to have been on the 13th, and where he admits to Dr. McMillan that he was. They prove that special trains, construction trains, and gravel trains were running between Elmira and Williamsport, from Williamsport to Sunbury, and trains from Sunbury to Baltimore, and from Baltimore to Washington. One witness starts him, one sees him, and hosts of witnesses show he could get here. St. Marie swears to the admission that he was here, and left the next day. Now, have we not got him here pretty well?

Ah, gentlemen, neither the declamation and the powerful eloquence of my friend, Merrick, nor the powerful logic of my old friend, Mr. Bradley, the Ajax of the bar, can get over such evidence as this. I appeal to the facts. We have him here, then, and, as I have said, we have thirteen witnesses who saw him here.

Mr. BRADLEY inquired in what time he could come here from Elmira?

The DISTRICT ATTORNEY. I do not recollect about that; I have shown that he did come here, and we have thirteen witnesses who saw him here. Let us see who they are: David C. Reed, Susan Ann Jackson, Vanderpool, Cleaver; Wood, the barber; Rhodes, the hen-pecked husband, (I believe he is understood to belong to that eminently respectable class of our fellow-citizens called hen-pecked husbands, and I do not think it is anything to his discredit.) There are, then, St. Marie, Sergeant Dye, Grillo, John Lee, Heaton, Coleman, Cooper. Here, gentlemen, are thirteen witnesses, who place him in the city of Washington; eight positively, and five to the best of their knowledge and belief; and, as my friend Mr. Pierrepont suggests, at different places and at different hours, and the testimony of no one is inconsistent with that of the others. There has been an attempt to attack several of these witnesses. As I have before stated, my learned friends had the right to attack the witnesses, if they conceived it to be their duty to do so, and to discredit them before this jury: but before you discredit them, you must see that they are successfully attacked. The first witness upon the list is David C. Reed. Now, my friend Mr. Bradley, jr., in his opening address, was guilty of an inconsistency in his statement of the character of this



witness, and I will satisfy him of it before I am through. In that speech he charged that David C. Reed was a notorious gambler.

Mr. BRADLEY, Jr. Isn't he?

The DISTRICT ATTORNEY. Are not the jury sworn to decide this case according to the evidence? Where is the witness who has dared to assail the reputation of David C. Reed for veracity? a man known in this country, and in this city—an honest man, and a truthful man. Do you suppose with a man who has lived twenty or thirty years in the city of Washington, who comes from the State of Virginia, who used to drive a stage there between two prominent points, who has a family here, a wife and children, if they could have attacked him, they would not have attempted to do it?

Mr. Merrick, in his speech the other day, said we had laid a mass of corruption at the feet of the court and jury. Gentlemen, if they could have done so successfully, why did they not attack Reed?

Mr. BRADLEY remarked they could have done it successfully.

The DISTRICT ATTORNEY. You did not do it.

Mr. MERRICK. No, and we had good reasons for it.

The DISTRICT ATTORNEY. You did not do it, and I have the right to infer that it was because you could not do it. The rule of law is, *expressio unius est exclusio alterius*; you have brought no witness here to assail his character, and I have the right to conclude that if you could have assailed it, you would have done it. David C. Reed, therefore, stands before this jury unimpeached and unimpeachable; and if this honest jury disbelieve him, and treat him as a perjurer, what guarantee have you for your character when placed under similar circumstances? Suppose the learned counsel here, in a case in which you were a witness, should get up and make the same accusation against you, and without bringing a witness to the stand, ask the jury to discredit your testimony, what safety would there be for any man's character? What does Reed swear to? You cannot disbelieve him. Why, gentlemen of the jury, it was a distressing sight. Did not you see that tall, brawny man when he took the stand, almost broken down with emotion? My colleague noticed it, and remarked it to me. His voice was tremulous with emotion. He had known that prisoner from youth. He had known his father. He had no earthly motive to testify against him. He was not a northern man, filled with prejudice against him, but a man in your own city, born upon southern soil—a man, I believe loyal to the cause of the Union—a man against whom, as a witness, not a breath of suspicion can be raised. He says he knew the boy's father; that he knew the prisoner from his boyhood; and he swears positively that he saw him here on the 14th of April, 1865.

Mr. BRADLEY. O, no.

The DISTRICT ATTORNEY. Did he not swear positively? Let us look at the testimony.

Mr. BRADLEY. The jury can judge of that.

The DISTRICT ATTORNEY. That there may be no misunderstanding on that point, I will ask my colleague to read the testimony of this witness.

Mr. PIERREPONT read from the testimony of David C. Reed as follows:

"Q. In what city do you live?

"A. In Washington city.

"Q. How many years have you lived here?

"A. About thirty years.

"Q. Do you know the prisoner at the bar by sight? (Prisoner made to stand up.)

"A. I do.

"Q. How long have you known him by sight?

"A. Since quite a boy.

"Q. Since you or he was quite a boy?

“A. Since he was quite a boy.

“Q. Were you in the city of Washington on the day of the murder of the President?

“A. I was.

“Q. Did you see the prisoner at the bar on that day in Washington?

“A. I think I did.

“Q. Where did you see him?

“A. I saw him on Pennsylvania avenue, just below the National Hotel. I was standing, as he passed, just in front of where Mr. Steer keeps the sewing-machine store.

“Q. Which way was he going?

“A. From towards the Capitol.

“Q. About what time of the day of the 14th was it?

“A. It was about half past two, as near as I can recollect—between two and half past two.

“Q. Had you a nodding acquaintance with him at all?

“A. I had; I knew him, and I suppose he knew me. There was no intimate acquaintance at all. I recognized him when I met him.

“Q. As he passed did you recognize him, or he you?

(“Question objected to by Mr. Bradley as leading.)

“Q. As he passed, state what occurred.

“A. There was a recognition; whether it was by him or me first, I am unable to say.

“Q. State whether it was by both.

“A. I could not state positively whether I nodded first or he did; we both nodded.

“Q. Will you state whether there was anything about his dress or equipments on that occasion which attracted your attention?

“A. There was.

“Q. Will you tell the jury what it was?

“A. What attracted me more particularly was his dress rather than his face. I remarked his clothing very particularly.

“Q. What was there about him that attracted your attention?

“A. The appearance of the suit he wore—very genteel; something like country-manufactured goods, but got up in a very elegant style, the coat, vest, and pantaloons.

“Q. Was there any reason why you noticed his clothes? If so, state it to the jury.

“A. I cannot say there was anything particular except his appearance, so remarkably genteel. I was rather struck with his appearance.

“Q. State whether he was on foot or on horseback.

“A. He was on foot.

“Q. What was there on his feet?

(“Question objected to by Mr. Bradley as leading.

“Objection overruled.)

“A. I suppose he had boots or shoes. As he passed from me I turned and looked at his feet. He had on a new pair of brass spurs.

“Q. Now describe these spurs.

“A. They were plain, common brass spurs; nothing very particular about them except the rowel.

“Q. What was there about the rowel?

“A. The rowel was very large and very blue; they evidently were brand new.

“Q. What was upon his head?

“A. He had on a felt hat. It was not one of these very low-crowned hats; it had a rather wide brim—a sort of drab-color felt hat.

“Q. State whether the brim was a stiff or limber one.

“A. It was a stiff-brimmed hat.

“Q. Which way did he go after passing you ?

“A. He was passing up the avenue towards the Metropolitan Hotel from where I was standing.

“Q. State whether his gait was rapid or slow.

“A. It was not very rapid; an ordinary pace in walking; nothing very hasty.”

Now, gentlemen, if this is not the most positive and conclusive recognition of the prisoner, then I cannot understand the English language. I would give more credit to testimony stated in this way than I would to a man who swore positively that he saw him without being able to describe his dress and appearance. According to the testimony of David C. Reed, at that hour of the day the prisoner appeared on Pennsylvania avenue booted and spurred and prepared for action. Gentlemen, the responsibility is with you. That is the testimony of one of the witnesses, and I shall show you hereafter that there is not a scintilla of evidence contradicting it. Dispose of it as you please; whatever disposition you make of it, I shall be satisfied. My duty and desire is simply as an honest man to aid you, as I am required to do, in the discharge of the obligations resting upon you.

The second witness is Susan Ann Jackson. She identifies him positively; she states not only that she saw him, but that she heard his mother say “that is my son.” This witness cannot be mistaken. It is for you to say whether she has committed the crime of perjury. If you think she has, say so. There has been no attack upon her general reputation for veracity by witnesses speaking directly to that point. We have introduced several ladies with whom she lived, and who have given her a high character. And in this city, where servants are so insubordinate, when a mistress of a household comes forward and testifies to the general character of a woman having such a face as this girl has, I should be disposed to give credence to her statements. They have attempted to contradict her by one Eliza Hawkins, I grant you, but Eliza Hawkins has been contradicted on the other hand by Samuel Jackson, the husband of Susan Jackson. Well, I am not prepared to say that her husband would swear to a lie to confirm his wife. I would not like to be tempted to swear to save my wife’s life. A man might commit perjury to save the life of his wife, but I do not think he would commit that crime merely to confirm the statement of his wife. Eliza Hawkins attempts to contradict her by stating certain conversations. I have endeavored to illustrate to you that this is the most uncertain way in the world in which to contradict a witness, and this man swears that he was in the room and heard no such conversation. I grant you that it is negative rather than affirmative testimony; but it is for you to say, when the witness swears positively to a fact about which she could not be mistaken and about which, if she has not testified truly, she has committed the crime of perjury, whether you will reject her testimony because another witness comes forward and attempts to contradict her by repeating a certain conversation.

The third witness is Vanderpool; and after the remark of my friend Mr. Bradley, jr., in reference to his examination, I must attack him a little in a friendly way. In his opening address, after denouncing Vanderpool, he pointed his finger at *me* and said, “This gentleman did not contradict it when he made a statement somewhat inconsistent with the truth.” From the personal relations existing between us, I can hardly suppose the gentleman would charge me with allowing a man to state in my presence what I knew to be a falsehood, without correcting him.

Mr. BRADLEY, Jr. You did allow him to state a falsehood, that you knew to be a falsehood, and did not correct him.

The DISTRICT ATTORNEY. Let us see if he did. I will show you that the gentleman does great injustice to the witness, and great injustice to me. He asks Vanderpool whether he had been summoned to the city of Washington.



It never occurred to me that the question was asked for the purpose of contradicting him. I never thought of such a thing until the counsel uttered this remark. Vanderpool said he had never been summoned, but that he had come voluntarily; that he knew of this matter, and, as he explained on cross-examination, his conscience hurt him, and he thought it his duty to come here and make the explanation. He wrote a letter to me and informed me of what he knew, and I sent a telegram to him to come on and he would be paid. He did come on; and now, I submit to you, gentlemen of the jury, and to the candor of the gentleman, whether, if he had intended to contradict him, he should not have asked him if he did not receive a telegram from me? Then, the witness would have been put on his guard, and if he had contradicted it I should have corrected him. I scorn the imputation that I would allow a man to state a falsehood upon the stand and I not correct him.

Now, let me ask, by whom is the reputation of this witness for veracity assailed? He told you he came from the city of New York. It was conceded by Mr. Bradley, in his opening remarks, that he belonged to one of the most respectable families in that great commercial emporium. It seems his father was personally known to my eminent colleague, (Mr. Pierrepont;) that he was in the office of an eminent attorney in that city. There was every opportunity to assail him, but no effort was made to do it. And how do they attempt to contradict him? They attempt to show that he was mistaken in the kind of tables he describes; that he said they were round tables, when, in fact, they were square tables, where he attended this bacchanalian exhibition on the 14th of April. You remember that he, being a stranger, did not attempt to fix the place, and upon examination we find that both in Teutonia Hall and in Winter Garden round tables were used, and that at both those places they had music and that girls danced in the afternoon occasionally.

Now, gentlemen, do you suppose a man who had been a captain in the army of the United States, a man who had been a lawyer by education, a merchant, an honest mechanic, or any business man who had been associating with gentlemen, who has an honest father and I suppose a pious mother—for an honest man is apt to have a pious wife—a young man in the morning of life, with all his hopes and prospects before him, would volunteer to come on here from the city of New York, before this honorable judge and before this honest jury, in presence of the district attorney, before a gentleman from his own city, and before such counsel as Mr. Bradley and Mr. Merrick, who could expose him, and dare to tell a falsehood about a matter in reference to which he could be so easily contradicted? Gentlemen of the jury, are not you as sure as that you are now living, from the testimony of Vanderpool, that the prisoner at the bar was in this city on the 14th of April? No, I will not say that; for you might be mistaken. But is it not powerful testimony, fixing the prisoner at the bar in Washington on the 14th of April, in company with John Wilkes Booth, in a music saloon, stimulating himself with liquor preparatory to the perpetration of the great crime which they had so long cherished in their hearts, and which was now almost ready for consummation?

Who is the next witness? William E. Cleaver. Now, I intend to express to this jury no opinion which I do not honestly entertain. I intend to express to you my honest conviction, and then I shall have discharged my duty to God and man, and the responsibility lies at your door. I say frankly that I would not convict any living man upon the uncorroborated testimony of William E. Cleaver. I do not wish to do him injustice, and perhaps I may be wrong in this. Some of you, perhaps, heard my denunciations against him. But, gentlemen of the jury, it is my duty, when I understand a bad man knows a fact, to put him before you, and it is for you to say whether you will believe him or not. He may have had a motive to swear falsely, but my friend will not charge that I gave him any. But when a bad man swears to a fact and is corroborated,



the court and jury have a right to it, and the prosecuting attorney is false to his duty if he excludes it from their consideration. Remember that it was brought out on cross-examination that it was through that perjurer Sanford Conover, to whom he told confidentially what he knew, that the fact of his knowledge came to our information. It did not come directly from him, for I would hold no communication with such a person; you know that. But, gentlemen, his testimony is before you; treat it as you please; strike him from the record if you think proper; but if he is confirmed, and testifies under circumstances that are corroborated by other witnesses, can you do it? That is for you to settle, not for me.

I was somewhat amused at the witnesses brought here to assail his reputation for truth and veracity. Who were they? Bill Horner, a quack, a modern Esculapius, who has invented a medicine by which he is killing the good people of the city of Washington. Harry Middleton and John C. Cook are the others. Harry Middleton, a man who has coined money upon the tears of widows and orphans; who has spent his life in dealing out liquid fire in a little restaurant or groggery, in the city of Washington, if I am not mistaken. Cook is a neighbor of mine, and I do not intend to say anything against him; I do not intend to allude to his business, for that is an exciting subject. He is a very clever sort of man, a very nice man, but he is a horse trader, and they are the very last men to be called on, ordinarily, to prove the character of any one for truth and veracity. But I dismiss Cleaver, and leave him in your hands.

Who is the fifth witness? Wood, the barber. I do not know whether he is a white man or a colored man.

Mr. BRADLEY. He is a good witness.

The DISTRICT ATTORNEY. Thank you, Mr. Bradley; that is the kindest thing I have heard yet. Then the honorable gentleman cannot himself resist the force of his testimony.

Mr. BRADLEY said he had remarked that he was a good witness, ironically. He had testified to seeing the prisoner between eight and ten in the morning, when the counsel for the prosecution admitted he could not possibly have reached here.

The DISTRICT ATTORNEY. Then I was too fast; I differ with the gentleman, but it is not worth while for us to argue that question now. It is an honest difference between honest men, and we are now appealing to honest men to settle it between us. Can this man Wood be mistaken? I ask my colleague to read from his testimony.

Mr. PIERREPONT read as follows from the evidence of Charles H. M. Wood:

Q. What is your business?

A. I am a barber by trade.

Q. Have you been a barber in the city of Washington for some time?

A. Yes, sir; ever since I have been in the city.

Q. How many years?

A. Since December, 1862.

Q. Where was your barber shop in April, 1865?

A. I came here on a Saturday, about the first of September, 1862, and I engaged to go to work at Messrs. Booker & Stewart's barber shop, on E street, near Grover's theatre, next to the old Union building.

Q. In this city?

A. Yes, sir.

Q. Are you working at the same shop now?

A. No, sir; I now have a barber shop under the Ebbitt House, near Fourteenth street. I am now in business for myself.

Q. Did you know Booth by sight before the assassination?

A. Very well, sir.

Q. Did you ever cut his hair?

A. I have, frequently.

Q. Did you ever shave him ?

A. I have.

Q. You knew him well ?

A. Very well, sir.

(The prisoner at the bar was here requested to stand up, which he did.)

Q. Have you ever seen that man (pointing to the prisoner at the bar) before ?

A. I have.

Q. On the morning of the assassination did you see him ?

A. Yes, sir.

Q. Where did you see him ?

A. I saw him at Mr. Booker's barber shop.

Q. What did you do to him ?

A. I shaved him and dressed his hair.

Q. Will you tell us who came into the shop with him, if anybody ?

A. Mr. Booth came in, there were four persons who came together.

Q. Who were the four persons besides Booth and Surratt ?

A. A gentleman I take to be Mr. McLaughlin ; they called him " Mac," and from his appearance, I having seen the picture of Mr. McLaughlin, I should think it was him.

Q. Did he tell you where he had come from that morning—McLaughlin ?

A. They were speaking of Baltimore ; the conversation between them was in reference to some Baltimore—

Q. Between whom ?

A. Between Mr. Booth, Mr. McLaughlin and Mr. Surratt. The other gentleman that was with them had nothing to say ; he sat down nearly in the rear.

Q. Did you ever see the other man afterwards ?

A. I never saw either of the parties afterwards except this gentleman (the prisoner.)

Q. Who was the other man ; do you know ?

A. I did not know him.

Q. You may describe the man.

A. He was a short, thick-set man, with a full round head ; he had on dark clothes, which we generally term rebel clothes, and a black slouched hat.

Q. Did you cut Booth's hair that morning ?

A. I did ; I trimmed his hair round and dressed it.

Q. Won't you tell the jury what occurred between Booth and Surratt while you were trimming Booth's hair ?

A. There was nothing particular that occurred.

Q. What was said ?

A. While I was waiting on Mr. Booth, Mr. Surratt was sitting just in the rear of me ; the thick-set man was sitting to the left of the looking-glass, just in the rear of my chair. The glass was next to the wall, and Mr. Surratt was on the right side of the glass, the other one on the left hand. There were not any words particularly that I remember said or interchanged ; but when I had got through waiting on Mr. Booth, he (Mr. Booth) got out of the chair and advanced towards the back part of the shop ; Mr. McLaughlin was in that direction doing something about the glass. Mr. Surratt took my chair immediately on Mr. Booth's getting out. During the time I was spreading my hair-gown over him, and making other preparations for shaving him, this other young man, rather tall, with dark hair—I think not black but dark brown hair—rather good looking, with a mustache, was figuring before the glass ; he had on a black frock-coat, and putting his hand in his pocket he took out two braids ; a black braid with curls he put on the back of his head, allowing the curls to hang down ; he then took the other braid and put it on the front ; it had curls

also, and they hung on the side. When he had done this he said, "John, how does that look?"

Q. Whom did he address as John?

A. I do not know whether it was Mr. Surratt or Booth, but in making the remark, he said "John." I turned round and said, "He would make a pretty good-looking woman, but he is rather tall." Says he, "Yes," in rather a jocular manner, laughing at the time. He seemed to look taller to me when he put on these curls than he did before, though I had not taken particular notice of him before that. This time Mr. Surratt said to me, "Give me a nice shave and clean me up nicely; I am going away in a day or two."

Q. Will you state, when he said "Clean me up nicely," what his condition was as to being clean or not?

A. He seemed to be a little dusty, as though he had been travelling some little distance and wanted a little cleaning and dressing up, as I am frequently called upon by gentlemen coming in after a short travel.

Q. Did he say anything to you about Booth?

A. Yes, sir.

Q. What was that?

A. He asked me if I noticed that scar on Booth's neck. Says I, "Yes." Says he, "They say that is a boil, but it is not a boil; it was a pistol-shot." I observed, "He must have gone a little too far to the front that time." This gentleman (Mr. Surratt) observed, "He like to have lost his head that time." I then went on and completed the shaving operation. I shaved him clean all round the face, with the exception of where his mustache was. He had a slight mustache at the time.

Q. What did you do with the hair?

A. After I was done shaving, I washed him off in the usual way, dressed his hair, and put on the usual tonics and pomade.

Q. Tell the jury about what time in the morning it was.

A. I think it was near about nine o'clock. I had had my breakfast.

Q. Where had you been that morning?

A. I had been up to Mr. Seward's, and had come down again.

Q. Where did you find Mr. Seward?

A. In his room, third story.

Q. Was he up or in bed?

A. He was up.

Q. Did you see any other gentlemen at Mr. Seward's that morning?

A. Yes, sir; I think I did.

Q. Whom did you see?

A. Mr. Stanton called. Mr. Seward was either on the bed, or on the chair by the bed, when I shaved him. I do not remember now exactly which.

Cross-examined by Mr. BRADLEY:

Q. Where did you commence to work after arriving in this city?

A. I commenced to work at Messrs. Booker & Stewart's, on E street.

Q. And continued to work there until you went to the Ebbitt House?

A. Yes, sir.

Q. You say this thing occurred at the shop of Messrs. Booker & Stewart, about nine o'clock in the morning?

A. I think it was about nine o'clock.

Q. And you had been up to Mr. Seward's and shaved him?

A. Yes, sir, and returned.

Q. Mr. Stanton was there?

A. Yes, sir.

Q. Who else was in the shop at the time, do you remember?

A. There were several hands at work there at the time.



Q. What sort of a looking man was McLaughlin?

A. The gentleman I have taken to be McLaughlin—they called him “Mac” in referring to him—was a man quite as tall as Mr. Surratt, I think near about the height of Mr. Surratt and Booth. They were all three nearly about one height. Perhaps he might have been a little the tallest.

Q. Was he a fine-looking man?

A. Yes, sir; he was what I would term a very handsome man.

Q. Do you remember his hair at all?

A. It was very dark brown. I do not think it was black.

Q. Had he any beard on his face?

A. He had a mustache on, and, if I mistake not, an imperial; but I am not so sure about that. I am certain he had a mustache. I took more particular notice of his hair and his size. He had on a black frock-coat. I think he had a black silk hat, and light pantaloons.

Q. Do you remember how Mr. Surratt was dressed?

A. He had on, I think, as near as my memory serves me, rather light clothes, but I did not take particular notice of his clothes. As soon as he got into my chair, I took up my hair-gown and spread it all over his clothes, so that you could hardly see anything except the tips of his pantaloons.

Q. You saw him while you were shaving Mr. Booth, did you not?

A. He came in with the rest of the party.

Q. Could not you distinguish him as well as you could distinguish McLaughlin and the other man?

A. If I had taken that much notice. I took more particular notice of his head and face.

Q. You had the same opportunity, however, to observe him as you had to observe Mr. McLaughlin?

A. As near as I can remember, the clothes he had on were rather light. I cannot remember the particular kind of clothes, whether woollen, linen, or cotton.

Q. Do you remember what sort of a hat he wore?

A. I did not take notice of his hat. Gentlemen generally come in there, take their seats on that side next the wall, and immediately hang their hats on the rack against the wall.

Q. You say he had no beard on his face?

A. No, sir; he had a slight mustache.

The DISTRICT ATTORNEY. Now, gentlemen of the jury, I think you will see from the testimony of this witness that he could not be mistaken. If he has testified untruly he has committed the crime of perjury. It is certain that he saw John Wilkes Booth, for he had that scar which has been identified, and no man could grease that head and rub and dress it and ever forget. And no man could see that face (pointing to the prisoner) and converse with him under such circumstances and forget it. It does seem to me that the testimony of this man is absolutely conclusive. No juror will believe he has committed the crime of perjury. No juror can believe that he is mistaken, in view of the detailed account which he has given of the interview between the prisoner at the bar, John H. Surratt, and himself on that occasion. And I do not think it necessary to detain you longer in reference to the testimony of this witness.

The sixth witness is Rhodes. There has been no attack upon his reputation for truth and veracity. I grant you that he is contradicted by a good many witnesses in regard to certain matters of fact, while he is confirmed, you will observe, by others. He is an honest man, gentlemen. But it is utterly impossible for me to go into the testimony of all these witnesses; I must leave something for the jury to do. I again assert that Rhodes is an honest man, and if he is contradicted at all, it is in reference to immaterial matters.

The next is St. Marie; and let me ask you who contradicts him? Certain



witnesses were brought here for the purpose of assailing his general reputation for truth and veracity. The first one is Nagle, whose person seems to be so sacred to my friend Mr. Bradley.

Mr. BRADLEY said he doubted whether Mr. Nagle said a word about St. Marie in his testimony.

The DISTRICT ATTORNEY. Then I am mistaken ; it is in reference to McMillan that Nagle testifies. There are, however, two or three witnesses who testify to the general reputation of St. Marie for truth and veracity ; but there are other witnesses who tell you that when he lived in Montreal they knew him well, and that he was a man of high character for truth and veracity, and that this imputation upon his honor arose from some little circumstance that occurred while he was in the Educational Board, as it is called. That, however, is not in evidence before you. It is in evidence before you that he made restitution, and who is there in this honest jury that will not believe a man because in his youth he may have committed a sin of which he has repented and made ample restitution ? What motive has he to swear away this man's life ? They were brother zouaves in the service of his Holiness the Pope. Why should he come here to falsely swear away his comrade's life ? The witnesses who have been brought here on the part of the government have triumphantly sustained his character before this jury.

At this point the court took a recess till to-morrow at 10 a. m.

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TUESDAY, July 30, 1867.

The court was opened at 10 o'clock.

The DISTRICT ATTORNEY, resuming his argument, said :

May it please your honor, and you, gentlemen of the jury : I hope, gentlemen, you all feel refreshed after your slumbers of the night, and will be able to bear patiently with me while I proceed still further to comment upon the testimony which has been given. I will be brief as I possibly can consistently with my sense of duty to the public.

On yesterday afternoon I was discussing the point of the personal presence of the prisoner at the bar in the city of Washington on the 14th of April, 1865, and there having been a general assault upon most of the witnesses who were examined on behalf of the prosecution in reference to that point, I felt it to be my duty to briefly consider *seriatim* the character of each witness that you might have my views generally in regard to the persons who had been brought here by the power of the government to testify in a case in which they could have no personal interest, and, in my judgment, no motive to swear away the life of the prisoner at the bar. The witness upon whose testimony I was commenting at the time the court adjourned was Sergeant Dye. Who is he, gentlemen of the jury ? It is in evidence before you that he was a soldier who had won honorable distinction in the service of his country, being promoted, I believe, from a private soldier to the rank of a non-commissioned officer. A young gentleman of rank and education, who receives a commission, perhaps, in consequence of his family connection and his position in society, is worthy of credit—and I would be the last one in the world to pluck a single laurel from his brow—but the young farmer boy or mechanic who enters as a private soldier and fights his way up to the rank of a non-commissioned officer, comes before an honest and discriminating jury of his country under most auspicious circumstances. Show me the private soldier who has been promoted to the rank of first sergeant, one of the most responsible positions in the line, and I am ready at once to give credence to his statements and to indorse his character. Where is the witness who has appeared to assail his general reputation for truth and veracity ? and I repeat, with reference to this

young gentleman, what I said yesterday afternoon, that judging from the vigorous assault made by the learned counsel for the prisoner upon all the witnesses introduced on behalf of the prosecution where they thought it could not be successfully met, and judging from the declamatory and inflammatory declaration of the able and eloquent counsel who addressed the court on Friday afternoon, "that he had stricken down a mass of corruption at the feet of the prosecution," we have reason to infer, gentlemen, that if there was a witness between heaven and earth who would have dared to assail the general reputation of Sergeant Dye for truth and veracity, he would have been placed upon that stand and required to speak within your hearing. No such witness having been produced, the natural conclusion is that his character is above suspicion—aye, far above the hope of successful assault. He stands before you, then, unimpeached and an unimpeachable witness. You saw the searching and trying cross-examination to which he was subjected by Mr. Merrick, and well did he earn the compliment which I afterwards heard paid him: "You must have been a brave soldier upon the field of battle, for you have borne yourself manfully under this most trying ordeal." Who denies that he is a man of nerve, of courage, and of truth? The great philosopher and philologist, Dr. Samuel Johnson has said that a man without courage is destitute of every other virtue. Yes, gentlemen, a man without courage is like a woman without chastity, and the converse of the proposition is equally true. Show me a courageous man, and I will point you to a truthful one. "Liar" and "coward" are synonymous terms. Gallantry and veracity are almost convertible terms. It is true that some intimation was made calculated to cast a cloud of suspicion upon the character of this young gentleman by the learned counsel for the prisoner; but is it necessary that I should remind this jury again and again, that the statements of counsel are not evidence, and that you are sworn to decide according to the law and the evidence? I might kindly and respectfully rebuke the learned counsel for the prisoner. What right had he where there was no evidence—and I mean no disrespect in saying it—to publish a libel against a brave and gallant soldier, who came here, in obedience to his country's call, to bear testimony against the man who had assailed his country's honor? We were prepared to show, had any attempt been made to assail him, that he is honest, brave, and truthful, and that he bears a reputation among his neighbors (where a man is always known best) worthy the exhibition which he made upon the witness stand. In the course of his examination, you will remember, gentlemen, that he said that he had seen the pale face of the prisoner at the bar in his dreams. Speaking to you as men of experience and practical wisdom; I ask you if it is not conformable to your own personal experience and observation, that where a transaction occurs calculated to make a deep and lasting impression upon the mind and memory, the image of it is represented, as it were, by a mirror in the silent watchings of the night? The young gentleman illustrated the principle most eloquently himself. He said he had dreamt of the girl who became his future wife. No man ever loved a woman without dreaming of her. No man ever loved his country without dreaming of some scene presented to his own observation where there was an assault made upon its honor, its dearest interests, and highest and holiest hopes. I had scarcely stepped out of the court-room, when a gallant Union soldier stepped up to me and illustrated it. He said: "During the battle in which I was engaged, a friend fell dead at my side. Often have I dreamt of that painful scene." Is it, then, strange that a young man who had tested his devotion to his country by risking for it all that a man has—his hopes, his interests, his life—should dream of a man who had endeavored to dishonor that country by murdering its head and representative? In my opinion, gentlemen of the jury, poets are often philosophers; and this very principle is illustrated by the celebrated poet Dryden:

"Glorious dreams stand ready to restore,  
And pleasing shapes of all you saw before."

The sentiment may be good, but I do not think the poetry is, (if I may be pardoned for undertaking to criticise the translator of Virgil and the contemporary of Pope.) The same sentiment is much more happily expressed, I think, by the great American journalist, wit, and satirist, Mr. G. D. Prentice:

“When Sleep’s calm wing is on my brow,  
And dreams of peace my spirit lull,  
Before me, like a misty star,  
That form floats dim and beautiful.”

I have seen the idea represented on canvas. A young soldier, far away from family and friends, is bivouacked for the night, perhaps upon the bloody field of battle. He is lulled to sleep by the melancholy music of the groans of the dying. Upon the wings of fancy he is transferred to his happy home. His wife and children come to him with words of tenderness and love. Suddenly, as he thinks, the stern reveille sounds the alarm to arms. He is aroused; but, alas! finds it all a dream.

I say that the very fact that Sergeant Dye dreamt of this scene—the very fact that he had the candor to acknowledge it—shows that it had made an impression upon his mind as well as upon his heart; and that he was now telling to an honest jury of his country the truth, the whole truth, and nothing but the truth. Shall I review his testimony, gentlemen of the jury? You all remember it. But it is important, and I will briefly recapitulate the principal points. On the night of the 14th of April he was in company with Sergeant Cooper, a friend and companion, and by whom he is confirmed, as I shall show. In this connection, I will observe, under the old Jewish law, when God himself established a theocratic form of government, under which he was not only the spiritual but the temporal head of His chosen people, it was provided that by two witnesses should a man be put to death. On the night in question, as Sergeant Dye is passing casually by Ford’s theatre, with Sergeant Cooper, when the attention of the latter is attracted by some one looking into the carriage of the President. Without going through with all the details, suffice it to say that he hears some one cry “Ten o’clock!” and ten minutes past. It was very well calculated to arrest his attention. The gaslight was burning. He needed not the light of the moon, for man, the agent of the Almighty on earth, had prepared the means of detection. He heard him cry a second and a third time. Just then the person who uttered that cry, or gave that command, was in such a position to the gaslights that his features could be distinctly recognized. “I saw him,” he says. “The face was indelibly impressed upon my mind and memory. I dreamt of him”—and then, assuming an air of indignant disdain that his veracity should be questioned by Mr. Merrick, he says: “That is the man.” “A few moments afterwards,” he said, “tidings was brought that the President of the United States had been murdered. On my way home I had a conversation with a lady. I met some policemen, interchanged a few words with them, returned to my camp, and communicated the sad intelligence to my commanding officer.” He, regarding him as a messenger of bad tidings, exclaimed in a moment of excitement, “You are a damned liar, for it can’t be so. The President of the United States is not murdered. I cannot, I won’t believe it.” This, gentlemen of the jury, is his plain and simple story. Do you believe it? There is not one man upon that jury who believes for a single moment that Sergeant Dye has committed the crime of perjury. As honest men, appreciating the value of human character, you will not stamp upon this young man’s brow that awful crime.

Now, I grant you, gentlemen of the jury, if he is contradicted, you have a right to say so. The burden of proof is on them to successfully contradict the witness. Have they done it? I shall meet them fairly. First, they introduce a Mrs. Lambert, of this city. Of that lady I shall not breathe an unkind or disrespectful word. But mark it, gentlemen, she speaks of a different hour. She is wrong as to time, and wrong as to place. Besides, in the language of



Holy Writ, "out of their own mouths do I condemn them." How do you reconcile the testimony of Mrs. Lambert with the testimony of that smoking Dutchman?—I do not say this disrespectfully, but because I do not recollect his name. It commences with a "K." He swears that he was sitting in front of his house, smoking his cigar. It took him half an hour to smoke it. He didn't retire until long after the point of time fixed by Sergeants Dye and Cooper as the time when they passed by the house of Mrs. Surratt; nor did he desist from the pleasure of smoking until he heard the voice of his wife up stairs, calling, "Old man, come to bed." This was a summons which no loyal husband dare disobey. [Laughter.] How do you reconcile the testimony of these two witnesses? The Dutchman swears that no conversation occurred. Mrs. Lambert swears that a conversation did occur. One cuts the throat of the other. I take it that they are both truthful, for I am not in the habit of assailing witnesses unless I feel forced to do so; but as they differ, the conclusion is that they are both mistaken. Just so clearly as two plus two are equal to four, these two witnesses, brought down to contradict Sergeant Dye, show that he has spoken the truth, and is not mistaken relative to the facts in regard to which he testifies; especially, gentlemen of the jury, when he is confirmed and corroborated, as I expect to show you, by a host of witnesses. But I hasten on. Now you will observe, gentlemen, that I have gone through with the testimony of eight witnesses, though in a very brief manner. And here, if you will pardon a common expression, I want you to "stick a pin." I want you to remember this in your retirement, that eight witnesses swear positively that they recognized the prisoner at the bar on the 14th day of April, 1865, in the city of Washington. I will repeat their names: David C. Reed, Susan Ann Jackson, Vanderpoel, Cleaver, Wood, Rhodes, St. Marie, Sergeant Dye. They are positive. There were three other witnesses who do not swear positively, but, as I understand their testimony, to the best of their knowledge and belief, which is quite as reliable when a number of them concur. Of those not positively identifying the prisoner is Scipiano Grillo, against whose reputation there has not been a breath of suspicion—a Roman by birth and an American by adoption. Shall I refer to his testimony? It is very, very strong, but not positive: "I believe that is the man." The next one is John Lee. Poor, poor man! All the thunder of their artillery was levelled against his devoted head, and yet he did not swear positively. Did you observe that poor Lee, when he took the stand, was extremely modest, and that all he said was: "I believe that is the man." Why this awful attack upon his character? Gentlemen thought it necessary. I do not complain, for they are the best judges of their professional duty. Who is John Lee? You have heard witnesses from the city of Philadelphia who knew him in younger and better days. You have seen old Mr. Hatfield and his son, and the other two gentlemen who knew him well—one of them, I believe, from boyhood. An officer faithful to his trust, enjoying the confidence and esteem of the good people in the City of Brotherly Love, he emigrates to Washington. He is made a justice of the peace. He is made chief detective in the metropolis of the nation, in time of war and great national excitement—in an office, as all will at once see, of great responsibility. How could he occupy that position at such a time without giving offence and making enemies? Perhaps some of you were arrested and put into the Old Capitol, as many good men were. I know nothing about John Lee particularly. He may be a bad man, but, mark you, the witnesses who testify against him are generally those who served with him as officers. Colonel O'Beirne, a most excellent and worthy gentleman, as we all know, testifies that he had heard his conduct harshly spoken of; but Colonel O'Beirne didn't say he wouldn't believe him on oath.

Now I put the question to you, gentlemen. You have got to settle this; it is not for me. I will ask you this question, and you can answer it for your-



selves when you go to your place of retirement: Do you think that any human being who recognizes the existence of a God, and a state of future rewards and punishments, would come all the way from the State of Mississippi, and after placing his hand upon this Bible, and appealing to the God of heaven to attest his sincerity and integrity, falsely swear away the life of an individual, who had never done him the slightest harm in the world? What earthly motive could John Lee have to falsely swear away this man's life? Brought from the State of Mississippi, from the bosom of his family and from his business, by the strong arm of the law, he comes here and gives his testimony. Will an honest jury stamp him with the crime of perjury? You know the value of human character. If you think, however, that he deserves to be so stamped, do it; but take care; beware how you do an act of gross injustice to an individual who happens to occupy that unfortunate and solemn position. I do not attempt to charge a single witness on the other side with perjury. I do not think I have ever done it in the course of my professional career here more than once or twice. But, gentlemen, I must hasten on. The next witness is Mr. Ramsell. You saw him. He does not testify positively. Indeed, his testimony is very indefinite and uncertain; but it is a fact to be considered by this jury, in connection with all the other circumstances in evidence before you. No one will say aught against him. Witness Mr. Healing. You saw him, gentlemen of the jury—a young officer here in one of the departments of the government, with a handsome, expressive face. To look at that man you would say that he was incapable of telling an untruth. He is put upon the stand, and Mr. Bradley doesn't even think proper to cross-examine him, for he is so good a judge of human nature that he saw at once this man was telling the truth, and if he could assail him at all, it would only be to satisfy the jury that he was mistaken. He is not positive, but I understood his testimony to be, nevertheless, strong, very strong. He believes the prisoner to be the same man he saw. That is just the way I would swear. I would be afraid to swear positively. I would swear to the best of my knowledge and belief, and let the jury determine from all the evidence; for you decide, gentlemen of the jury, as I shall hereafter show you, not upon possibilities, but upon probabilities. There is a great misapprehension about the criminal law on this subject. I know that jurors are under the idea that we must prove a case, beyond all possibility. That is not the law. I shall hereafter show you what the law is on that subject.

The next and last witness is Mr. Coleman. You saw him, gentlemen of the jury. He is a person evidently in a delicate state of health, but with a bright, expressive eye, and undoubtedly a most amiable, as he is a most intelligent and excellent, gentleman. Before expressing his opinion he requested that the prisoner might stand up. He then says: "I think that is the man." I have now gone through the list. Permit me at this point to ask you a few questions, and I will then dismiss this part of my subject. Eight witnesses swore positively, five to the best of their knowledge and belief, thirteen witnesses concurring in testifying to the presence of the prisoner in the city of Washington on the 14th of April, 1865, and as my friend Mr. Pierrepont suggests, each one at a different hour and at different places. Have all these witnesses lied? It is possible, but not probable. Are all these witnesses mistaken? It is possible, but not probable; and I repeat, you will decide upon probabilities and not upon possibilities. There is one other question that I will ask you. Let us concede for the purpose of the argument—and I beg pardon of the witnesses for doing so—that they are all corrupt. Do you remember the old maxim, "Fight the devil with fire?" Did you see Surratt on that day? Is there a gentleman of high position in society who did see him? Certainly not. He was an assassin, and therefore the companion of cutthroats and murderers. The men who saw him were honest men, but detectives, whose business it was to watch the character, and young men who would be seduced into music saloons where such characters would naturally resort. Fearing the light of open day. He would

not have dared to have shown himself to gentlemen in high positions in society. Reed happened to see him on the street as he passed by, disguised to some extent. Vanderpoel, a young and, it may be, dissipated fellow, going into a music saloon, the very place where such men would go under such circumstances, sees him drinking with the assassin, Booth. Now, gentlemen of the jury, I have proved, first, the existence of this conspiracy; secondly, the object of it, which was, if you believe the testimony of Mrs. McClermont, to murder, and which, original object the result showed, was persistently adhered to. The change in the plan of their operations, to which Booth alluded when he wrote to Surratt in the city of Montreal, was not from abduction to murder, but from the telescopic rifle to the cup, to the pistol, to the dagger. It was murder at first; it was murder in the interim; it was murder to the last. I argued out of abundant caution, that even if it were not so, if he continued a member of the conspiracy up to the time of the consummation of its purpose, he was guilty of murder, if the result was the violent death of the victim whom they had selected for the gratification of their malice. Having, then, shown him here, in addition to these facts, I next proceed to show you the part he did perform in this bloody tragedy, although it is not essential to the case, for, as I have told you, if he performed any part, however minute, he is guilty of the whole. I will now briefly recapitulate the testimony upon that point. It is, to some extent, a repetition of what I have already said in reference to the connection of Mrs. Surratt with this conspiracy. John H. Surratt had a home in the metropolis of the nation. I will not say that he is a coward, for that seems to be offensive. Constitutionally timid, he needed assistance. Booth was a drunkard, a vagabond, a desperado, but he had nerve and brute courage. Surratt furnished a rendezvous where these conspirators met to hold their bloody conferences. Booth appeared there to infuse his spirit into their bosoms. Surratt, afraid to strike the fatal blow with his own hand, furnished arms, and Booth used them. Surratt, judging from his own disposition that a stimulant was necessary, furnished whiskey; Booth and Herold drank it. Surratt furnished the rope; Surratt furnished a field-glass; Booth used it as he escaped for his life from the city of his crime. As Booth's body lay weltering in its blood, after his death, a weapon that was furnished him by Surratt is found in his possession. Tell me, *par nobile fratrum*, which of the two is the worst. My theology teaches that if a man refuses or neglects to follow in the ways of the Lord and goes to hell, he meets his just deserts; but the man who urges his brother on the downward road deserves a double damnation. I said that Surratt was the Beelzebub and that Booth was the Satan in this infernal conspiracy. Perhaps I owe the prisoner an apology; he may have been Satan, and Booth Beelzebub. With one heart, hand in hand they go through this bloody business. The difference between them was just the difference between a bold and bad man and a timid one, and that is all. To use a vulgar expression, Booth died game, like a true fanatic; but I do not extenuate his conduct on that account. He deserved to die felon's death. Vaulting ambition that overleaps itself and falls on the other side was his sin. His favorite sentiment, I have heard, was the one expressed by the great dramatist: "The youth who fired the Ephesian dome outlives in fame the pious fool who reared it." Surratt's sin was avarice, for he was a spy, as Booth was not. He was never in the service of the confederacy and handled gold as the price of his dishonor. Booth's last prayer—and I hope I shall be pardoned for the allusion, for anything of that sort always touches my heart—his last prayer was a prayer for a mother's blessing. His last words were, "Tell my mother I died for my country, and did what I believed to be best." "Poor, hunted down, can God forgive me? Perhaps He may, but man cannot." Surratt fled, and boasted to the enemies of his country that he had dishonored the land that gave him birth. Was not that enough? He had murdered the man who never harmed any human being, except in his country's cause, and only

then when he was forced to do it. But no! See the malice still in his heart. Hear him exclaim, "The day will come when, returning to my native shores with immunity, I will serve Andrew Johnson as Abraham Lincoln has been served. My hands are reeking with the blood of the federal representative of the American republic, but I am not satisfied. I will add the blood of the successor in office to that of my honored victim." If it be true, gentlemen of the jury, that his co-operation, however minute, in this conspiracy, is sufficient in legal contemplation to bind him to the body of the crime charged in this indictment, *a fortiori*, when these facts prove him their chief conspirator, does it not inflame your minds almost beyond the power of restraint? for I speak to men who can appreciate true honor and nobility of soul, and who have hearts to love their country, and spirits honest, fairly, mildly, but sternly to rebuke an insult against its dignity and its honor. But, gentlemen of the jury, I beg pardon for having detained you so long on this point. I come now to the last point. After considering that point I desire, with the permission of the court and of my colleagues, to review the defence, for there is a question of law there involved, maintained by the counsel for the prisoner which I desire briefly to notice.

Gentlemen of the jury, has not the prisoner at the bar confessed his guilt? That is something which all of us can understand. Confessions are of two kinds, verbal or expressed confessions, and implied confessions, arising from the conduct and deportment of the prisoner. Now, I undertake to satisfy you from the evidence in this case that both expressly and by implication the prisoner at the bar has confessed his guilt. In the language of Holy Writ, "out of his own mouth do I condemn him!" Come, then, gentlemen of the jury, and let us reason together. Confession in some sort or another is almost the irresistible and inevitable consequence of sin and guilt. The good man who has offended the laws of a benignant and merciful Deity, upon his knees confesses in secret and silent prayer. You all know this by experience. It is this alone which relieves the burdened conscience. The bad man who lives not in the fear of God, but rather in the fear of his fellow-man, who has committed some great crime against society at some unguarded moment, when he believes no man's ear hears the pulsations of his heart, and the secret whisperings of that mysterious agent, when no eye sees the contortions of his face, so expressive of the silent workings within, will confess little by little to his friends and to his companions, if for no other purpose than for relief. It comes out by degrees. God, who works in a mysterious way, and who has agents upon earth for the execution of His own high and holy purposes, employs the proper means. They are brought to light, and the criminal who has dared to defy the laws of his God and his country, stands, by his own declarations and conduct, confessed before his fellows. Gentlemen of the jury, has not the prisoner at the bar in words confessed his guilt? Permit me briefly to review the testimony upon that point: The first witness upon that subject is young Tibbetts, formerly a resident of Maryland, now usefully employed at his trade in Washington. He testifies that some time previous to the assassination he heard Mrs. Surratt say that she would give a thousand dollars to have Abraham Lincoln killed, and this declaration, you will remember, was made in the presence of the prisoner. In relating this testimony I am not appealing to your party prejudices, for I think every man who favored peace, every man who wished to stop bloodshed, every man who had a heart to love his race, desired, unless he was under some delusion, the preservation of the federal Union. In time of peace I have seen vessels of this republic bearing bread to the starving millions of the Old World. I have seen that which was a sight infinitely higher and holier still, the vessels of the young republic ploughing old ocean freighted with the bread of life to the heathen perishing in his blindness. In war, I have seen the gallant sons of America from the noble North, from the great and growing West, rallying to their country's call. I have seen the companions of my youth in the South, under a delusion, rallying gallantly



to a false cry, engaged in bloody contest with the children of those men whose fathers had fought side by side, and shoulder to shoulder, after the creation of this republic, which all good men then desired to preserve and to perpetuate. What, then, according to the testimony of the witness, was the field of the prisoner at the bar? "The leader of the northern army." That didn't mean a sectional army, gentlemen; for in "the federal army," there were southern as well as northern men. "The leader of this army ought to be in hell." At such a time—an hour of national jubilee, when every patriotic heart was swelling with gratitude and emotion—to give expression to such a sentiment, and in such coarse and wicked language, shows a heart, to use the strong and impressive language of the law, "regardless of social duty, and fatally bent on mischief." And at whom was this aimed? Was it at the President of the United States? It matters not. Perhaps it was at that gallant and noble man who was beloved North and South, East and West—that brave son of Ohio, General U. S. Grant, then lieutenant general of the federal army. I care not, for the purposes of my argument, to whom the allusion was made. Let it have been aimed at one or the other, it showed the same heart, the same malice, and gives color and character to the foul murder which was afterwards committed, and which he aided, maintained, and promoted. Now, gentlemen of the jury, do you believe young Tibbetts? I grant you that witnesses were brought here to assail his general reputation for veracity; but he proved a character of which any man might be justly proud. Their name was legion who came here in a spirit of honest indignation to maintain the character of this young and gallant soldier. Do you remember, among others, Mr. Rockett? I will never forget that face. Seventy-six winters have rolled over his head. He remembers when our fathers fought for this republic. He cannot harbor in his breast any feeling of sympathy for those who are our enemies, who sought to overturn this government. He saw, with emotions of pride and pleasure, the boy whom he had dandled on his knee in years of helpless infancy, leave his father's roof, dressed in his jacket of blue, to strike a blow for his country's cause. He knew the old man as a pious, faithful, honest citizen; and like father, like son. An honest father, who does his duty, is apt to have a son who will do him credit. Did not you see how the old man's eyes were suffused with tears as he indignantly exclaimed, "There was not a better boy. He served his country in its hour of need, and none but scoundrels would dare to cast an imputation upon his character." I want no more beautiful and eloquent tribute to the character of a young man. Ah, gentlemen of the jury, do you believe him? I brought him here to prove a fact, as my duty required me to do. He has proved it. Mark it. Surratt says: "I will give a thousand dollars to see Abraham Lincoln killed." "The leader of the army that was fighting for your homes deserves to be in hell." And why? Because he had done his duty. If that doesn't look like a confession when taken in connection with the other facts to which I shall hereafter invite your attention, then I do not know what a confession is. Who is the next witness on that point? Edward Smoot, a gentleman from the State of Maryland, no very willing witness, for it seems he had been either to the office of Mr. Merrick, or that gentleman had met him on the street, and told him that he was after him with a sharp stick. It is an awfully dangerous thing, and Mr. Merrick's threatening to get after him with such an instrument was calculated to intimidate the witness. But, nothing daunted, he takes the stand, for he is under oath, and I intend to make him tell the truth. He is testifying, mark you, against his old acquaintance and friend, and against his feelings, but what does he say? "I heard John Surratt remark, 'If the Yankees knew what I was doing they would stretch this neck of mine.'" Ah, we sometimes have premonitions of our future fate. God, for His own wise and mysterious purposes, often does poor suffering man this kindness. Yes, if they had known what he was doing they would have stretched his neck. Having done what he did, if the Yankees don't,



Washington men, men living in the city bearing the honored name of the Father of his Country, in vindication of law, of justice, and their country's dignity and honor, will do to him what he confessed he deserved to have done. God grant that the day may never come when such a crime, thus proved, thus confessed, shall be allowed by an American jury, who have moral courage enough to do their duty, to pass unrebuked. Who is the next witness upon this point? Dr. McMillan. And who is Dr. McMillan? A French Canadian; but he has Scotch blood in his veins, and, like Scotchmen, he is a man of principle and of courage, and has a tender feeling for the American republic. He is a man of education, of high social connection and intercourse. Who attacks him? One Mr. Nagle is brought here for the purpose of assailing his general reputation for truth and veracity. My friend Mr. Bradley, jr., intimated that it would be rather dangerous for us to attack Mr. Nagle. Notwithstanding this timely warning, however, I intend to attack him. But as I do not want any personal difficulty with my friends, I will endeavor, and I am vain enough to think I will succeed in satisfying him that he is wrong. No apprehension of personal difficulty can prevent me from doing my duty; not if you form a regiment of men. But I will satisfy him that he is wrong. Here I am, nearly all the year prosecuting cases. A witness is introduced by the counsel on the other side, and I think it my duty to attack him. If I think so, it is unnecessary for me to say to a Washington audience, or wherever I am known, that I am going to do it. The counsel on the other side rises, and states that he will make it a personal matter.

Mr. BRADLEY, JR. I never said or intimated such a thing.

The DISTRICT ATTORNEY. I am glad to know the gentleman disclaims it, for I hold that it is the duty of a lawyer to boldly assail the character of the witness when he thinks his duty requires it. How could lawyers undertake to make such attacks, which, under certain circumstances, are not only proper and legitimate, but necessary—a personal matter with themselves. I could not do it, for if I were to act on that principle I would have numerous fights at every term of the court, and the pay I get would not compensate me for anything of that kind.

Now, how in regard to that witness? I shall do him justice. He is a lawyer, and if he is a personal friend of Mr. Bradley's, and I formed his acquaintance, I should extend to him that kindness and courtesy which one gentleman would expect from another. But when he is a witness I shall strike him just so hard as I believe he deserves to be stricken. It is in evidence before you that he was employed as one of the counsel in this case. To this I can have no objection. It was perfectly right that the gentlemen should employ any person they thought proper. It is in evidence before you that he received a fee of \$500, and, according to the testimony of one witness, a thousand or two thousand dollars. To this there could be no objection. He had the right to charge whatever he pleased for his services, and counsel had the right—he being employed in the capacity he was—to pay him anything they saw proper. But this is what I object to, that a lawyer employed in a case should take the stand to assail the general reputation of a witness on the other side for truth and veracity. That he should take this stand, a "feed" lawyer in the case, to assail the general reputation of Dr. McMillan, who was his peer in social position; a physician, a man of education, and moving in the same rank in society with himself. Now I put the question to you: Was there ever a lawyer in the city of Washington who took the stand to assail the general reputation of the witness on the opposite side for truth and veracity. I grant that a lawyer may take the stand to prove a fact in the case, within his own personal knowledge, and that is often done. In this instance, however, instead of acting the part of a lawyer, getting up witnesses, and pleading his case, he comes here to blacken by his testimony a gentleman introduced as a witness on behalf of the prosecution. I feel it my duty to say, without intending any disrespect to any one, that such action

is, in my opinion, indelicate and unprofessional, and that a jury should receive such testimony with many grains of allowance, and when it is given for the purpose of blackening the reputation of such a man as McMillan should discard it entirely. But why should I detain you longer about this? We have shown who McMillan is; and who, in a court of justice, ever proved a higher character? His conduct shows what he is, as does the sentiment he expressed, "I considered this a crime against society and civilization, and I felt it to be my duty to give this information." Now, I ask you, do you harbor a feeling of prejudice against a gentleman, wherever he lives, or whence he comes, because he felt it to be his duty to give information against the miscreants who attempted to ruin your country and to insult you by the murder of your chief executive magistrate. Was not he right, and do you not indorse the sentiment he expressed, and his course of action throughout in this matter? I am sure that you will answer affirmatively, and will give full credence to his testimony.

What does he say?

"WITNESS. I remember his stating that he at one time was told in Montreal that he would meet a lady in New York.

"COUNSEL for defence then asked witness to suspend to enable him to write down what he had said.

"The COURT said that counsel must take either one course or the other. They must not interrupt the narrative for this purpose, or they must allow the witness to be directed by questions after such interruptions.

"Witness proceeded: That he met the woman in New York; he came on to Washington with her; from Washington he started on the way to Richmond with her and four or five others; that after a great deal of trouble they managed to cross the Potomac; that after they got south of Fredericksburg they were driven on a platform car drawn or pushed by negroes. As they were drawn along they saw some men coming towards them—five or six, if I recollect aright. They ascertained that these men were Union prisoners, or Union soldiers escaped from southern prisons; they were, he said, nearly starved to death; that this woman who was with them said, 'Let's shoot the damned Yankee soldiers.' She had hardly said the word when they all drew their revolvers and shot them, and went right along, paying no more attention to them.

\* \* \* \* \*

"Q. Did he say anything about what he would do if an English officer, at the request of the United States, should take him in England?

"A. One day, in talking of the mere possibility of his being arrested in England, he said he would shoot the first officer who would lay his hand on him. I remarked, if he did so he would be shown very little leniency in England. Said he, 'I know it, and for that very reason I would do it, because I would rather be hung by an English hangman than by a Yankee one, for I know very well if I go back to the United States I shall swing.'

\* \* \* \* \*

"Q. Did he give you any account of crossing the Potomac at that time? If so, state it.

"Mr. BRADLEY desired it to be noted, that all this testimony came in subject to his exception.

"WITNESS, continuing: I remember his stating one day that there were several of them crossing the Potomac in a boat. It was in the evening, I believe, when they were perceived by a gunboat and hailed. They were ordered to surrender or else they would be fired upon. They immediately said they would surrender. The gunboat sent a small boat to them; that they waited until the boat came immediately alongside of them, then fired right into them, and escaped to the shore.

“Q. What do you know about a telegraph communication down there discovered by these parties ?

“A. I remember one day he said that he was with a regiment of rebel soldiers one evening ; that after sunset he and some others went into an orchard or garden close by, to pick some fruit ; that while sitting on the ground they heard the ticking of a telegraph or what they supposed to be a telegraph machine ; that they went down to the headquarters of the regiment and reported the fact ; that the party in command ordered some soldiers to go to the house connected with the orchard and search it ; that in the garret of the house, in a closet, they found a Union soldier ; that they found he had an underground wire, and was working a telegraph—they took him down and shot him or hung him, I forgot which.

\* \* \* \* \*

“By Mr. PIERREPONT :

“Q. I will call your attention to the early part of April, the month of the assassination of the President, and ask you what the prisoner told you on the subject of despatches at that time ?

“A. All I remember about this is, that he said, at the beginning of the week during which the assassination took place, that he was in Montreal ; that he had arrived there within a few days from Richmond with despatches.

“Q. Did he characterize the despatches ?

“A. I remember that he said they were important despatches for Montreal, which had been intrusted to him in Richmond. What they were I have no knowledge of at all.

“Q. Did he say what day of the week of the assassination he was there ?

“A. He told me that he was there at the beginning of the week of the assassination.

“Q. Did he tell you what he received and from whom he received it ?

“A. He stated that he received a letter from John Wilkes Booth, dated ‘New York,’ ordering him immediately to Washington, as it had been necessary to change their plans, and act promptly.

“Q. Did he tell you what he did ?

“A. He told me that he started immediately on the receipt of the letter.

“Q. Did he tell you anything that he did on his way to Washington ; and if so, what ?

“A. The first place he named was Elmira, in the State of New York.

“Q. Did he state anything that he did there ?

“A. He told me that he telegraphed to John Wilkes Booth in New York.

“Q. Did he tell you what he learned ?

“A. He told me that an answer came back that John Wilkes Booth had already started for Washington.

\* \* \* \* \*

“Q. Did he say anything to you in relation to his own escape ?

“A. He said that he arrived at St. Alban’s one morning a few days after the assassination.

“Q. What, if anything, did he tell you occurred in St. Alban’s that morning, a few days after the assassination ?

“A. He said that the train was delayed there some time, and that he took advantage of it to go into the village to get his breakfast ; that while sitting at the public table, with several other persons, he saw that there was a great deal of talking and excitement among those who were at the table with him.

“Q. Did he tell you what he said ?

“A. He asked his neighbor what the talk was about. His neighbor said to him, “Why, don’t you know that Mr. Lincoln has been assassinated ?” The prisoner replied, “Oh, the story is too good to be true.”

“Q. Did he describe the man with whom he held this conversation ?



"A. I understood him to say an old man ; that is all I remember.

"Q. Did he tell you what the man did ?

"A. The man whom he addressed then handed him a newspaper. He opened the paper, and said that among the names of the assassins he saw his own.

"Q. What did he say he then did ?

"A. He said that it so unnerved him at the moment that he dropped the paper in his seat, and that that was the last of his breakfast for that day.

"Q. Did he tell you anything about a handkerchief as he was going out from the breakfast room ?

"A. He said he got up from the breakfast table, walked into another room, and just as he was about passing from the room he heard a party rushing in, stating that Surratt must have passed or must then be in St. Alban's, as so and so had found his pocket-handkerchief in the street with his name on it.

"Q. What then did he say ?

"A. He said that at the moment, without thinking, he clapped his hands on a courier book, in the outside pocket of which he was always in the habit of carrying his pocket-handkerchief, and that he found out that he had really lost his pocket-handkerchief ?

"Q. And then what did he tell you ?

"A. He said that then he thought it was time for him to make himself scarce.

"Q. Did he tell you in what way he then made himself scarce ?

"A. I understood him to say that he made for Canada as soon as possible.

"Q. Did he tell you to whose house he went ?

"A. I remember that he told me that he went to one Mr. Porterfield in Montreal.

"Q. Did he tell you who he was ?

"A. He told me Mr. Porterfield was a confederate agent in Montreal."

You will perceive, gentlemen of the jury, that in this testimony there are several confessions. I do not think it necessary to allude to the conversation with reference to the murder of the Union soldiers, or to the murder of this telegraph man, to both of which reference has been so frequently made.

The third point is that he distinctly confesses that he did a deed which deserved capital punishment. He says that he would rather be hung by an English hangman than by an American hangman, as he knew he would be if he returned to the United States. What clearer admission could there be of his having done some act deserving death, and from which he was then making his escape ? And this is the only act to which reference was made. The conclusion, then, is irresistible that it was a confession that by committing this act, by his connection with this conspiracy, he deserved death. Now, what more do you want, when he condemns himself, and says that an American hangman would hang him, and therefore flies to England ? There, I repeat, is his own interpretation upon his own conduct. What higher and stronger and clearer confession can an American jury desire ? In the fourth place, gentlemen of the jury, does he not clearly confess his guilt when he says to Dr. McMillan, "I received a letter from Booth stating that it was necessary that we should change *our* plans of operations ; that it was necessary that they should change *their* plans ?" Booth does not say in his communication to Surratt, "I intend to change my plans ; I intend to change the plan between Atzerodt, Herold and myself ;" but *our*, coupling him with it ; and by responding to that letter, as he did when he left Montreal for the city of Washington, he confessed the original plan was his, and the original plan, according to the testimony of Mrs. McClermont and Mrs. Benson, was to murder by cup, by pistol, or telescopic rifle.

They did come, and they did change their plan from the telescopic rifle and the cup to the pistol and the dagger. There is one other witness upon this point—St. Marie. Now I ask you, gentlemen, who contradicts him ? I have already, I believe, alluded to the character of the man, and therefore it is unnecessary that upon



this point I should detain you any longer. Do you believe him? If you do believe these four witnesses, there is an end to the case. St. Marie swears that the prisoner at the bar admitted to him that he left Washington on the morning of the 15th. Put these confessions all together, and what do they prove? His presence, his co-operation, his flight, and his own conviction that he had done an act worthy of death, and that no honest American jury could refuse or hesitate so to decide.

But is this all, gentlemen? I have said to you that there is such a thing known to the law of the land as "implied confessions," confessions arising from the conduct and deportment of the person. This subject is most beautifully, eloquently, and philosophically treated by that illustrious statesman, eloquent orator and able jurist, Daniel Webster, in the celebrated case of the Commonwealth *vs.* Knapp. I will read it:

"An aged man, without an enemy in the world, in his own house and in his own bed, is made the victim of a butcherly murder, for mere pay. The fatal blow is given, and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassin's purpose to make sure work. He explores the wrist for the pulse. He feels for it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it, as he came in, and re-escapes, has done the murder—no eye has seen him, no ear has heard him. The secret is his own—and it is safe!

"Ah! gentlemen, that was a dreadful mistake! Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner where the guilty can bestow it, and say it is safe. Not to speak of that eye which glances through all disguises, and beholds everything as in the splendor of noon, such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that 'murder will out.' True it is, that Providence hath so ordained, and doth so govern things, that those who break the great law of Heaven, by shedding man's blood, seldom succeed in avoiding discovery. Especially in a case exciting so much attention as this, discovery must come and will come, sooner or later. A thousand eyes turn at once to explore every man, every thing, every circumstance connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the slightest circumstance into a blaze of discovery. Meantime, the guilty soul cannot keep its own secret. It is false to itself; or, rather, it feels an irresistible impulse of conscience to be true to itself.

"It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares not acknowledge to God nor man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him, and like the evil spirit of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence.

"When suspicions, from without, begin to embarrass him, and the net of circumstances to entangle him, the fatal secret struggles, with still greater violence, to burst forth. It must be confessed—it will be confessed—there is no refuge from confession but suicide—and suicide is confession!"

When he fled it was to relieve himself by confession. His flight was confession *a fortiori*. When considered in connection with these verbal confessions to which I have referred, his false wig, dyed hair, his spectacles, his starting at any unusual sound behind him, his admission of guilt is clear and complete.

The Scriptures have truly said, "The righteous are bold as a lion; but the guilty flee when no man pursueth." And the truth of this saying, if the Word of God needed illustration, was most forcibly illustrated in the conduct of the prisoner at the bar as we see him on board of an English vessel, under an English flag, fleeing from his native soil for safety, as though a murderer who has stained his conscience with such a crime could ever be safe. Ah! it was a dreadful mistake to suppose himself even then secure. He starts; and when McMillan asks him, in surprise, "Why do you start? of what are you apprehensive?" he replies, "I believe there is an American detective on board." "For what?" very naturally inquires Dr. McMillan. "What have you done?" He said, "I have done more things than you are aware of; and, very likely, if you knew them all they would make you stare," or something to that effect. If there is power in the English language to convey the secret of the human heart, was he not then and there disclosing it to Dr. McMillan? Should I speak upon this case any longer with such confessions? Is it not strange that, just when the American nation has been congratulating the Emperor of France and the Czar of Russia on their escape from assassination, I should be found standing here almost three days arguing before an American jury to have them vindicate the majesty of the law, and avenge the murder of the chief executive magistrate of the greatest nation upon earth, and one in view of whose high moral character the crowned heads of Europe should pale their ineffectual fires? It is an insult to your intelligence, if not also to the American nation, that the United States attorney should stand here, and in his feeble way urge a jury of his country to strike down tenderly but surely the murderer of your martyred President, when his blood cries aloud for vengeance. Is my language too strong? I speak in the language of Holy Writ when I say vengeance. As I read this Bible, it condemns private but commands public vengeance; and I will prove it. I hope it will not be considered irreverent in me to read from that sacred word in a court of justice, for it is a cardinal law book; and I have a right to refer to it, for no laws which are inconsistent with the laws of the Bible are tolerated in a Christian community. I read from the thirteenth chapter of Romans, commencing with the first verse:

"Let every soul be subject unto the higher powers; for there is no power but of God. The powers that be are ordained of God.

"Whosoever, therefore, resisteth the power resisteth the ordinance of God, and they that resist shall receive to themselves damnation.

"For rulers are not a terror to good works, but to evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same.

"For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil."

But, gentlemen of the jury, I happened to hear this question discussed by a personal friend of mine, one of the ablest ministers in the country. He is the mildest, most patient, and gentlest-tempered man that I ever saw in my life. In the course of his sermon he discussed the subject of capital punishment. I took notes of that discourse at the time, and will now solicit your attention while I read those notes.

Mr. Carrington then read as follows:

"The argument of the opposition is, man cannot take what he cannot restore. That is true, but God can. And if God has authority to take human life, he can delegate that authority to his agents upon earth. The Bible, in the 13th chapter of St. Paul's Epistle to the Romans, declares that the civil magistrate is God's minister or agent upon earth; and certainly God can delegate to that minister or agent the authority to take human life, if he thinks proper to do so

No one can deny this proposition, unless he is prepared to deny the existence and the almightiness of God. The only question, then, is, has God in point of fact delegated to the civil magistrate, his minister upon earth, the authority to take human life in certain cases? About this we can have no doubt, if we believe that the Bible is the word of God, for in that word this authority is delegated in language so clear that he who runs may read—both in the Old Testament and in the New Testament. In the book of Genesis we find these clear and emphatic words: ‘Whoso sheddeth man’s blood, by man shall his blood be shed.’ In the 13th chapter of Paul’s Epistle to the Romans we find this language, referring to the civil magistrates: ‘For he beareth not the sword in vain.’ Now what is the meaning of this passage? In those days capital punishment was inflicted by means of decapitation with a sword, and this instrument is spoken of in the Bible as symbolical of that mode of punishment. Again: what is the object of punishment? It is not, as some suppose, to reform the criminal. The reformation of the criminal is one object of punishment, to be sure, but is not the primary, but only a secondary consideration. Punishment is principally retrospective; it is intended to strike crime, which is an evil itself; to avenge—that is the word—some wrong done to society, because God commands it. God forbids private vengeance; no man has a right to avenge his own wrongs; but he positively commands public vengeance; he commands the civil magistrate to avenge wrongs against society. Mark the language in the 13th chapter of Paul’s Epistle to the Romans: ‘For he is the minister of God, avenger to execute wrath upon him that doeth evil.’ ‘Vengeance is mine and I will repay, saith the Lord’—and my minister, the civil magistrate, shall be my avenger upon earth to ‘execute wrath upon him that doeth evil.’”

The first great object of punishment, then, is to strike crime, because God commands it; because he, in his infinite wisdom and goodness, has commanded the civil magistrates, his ministers and avengers upon earth, to avenge this wrong to society and civil government, his own appointed institution. The second object of punishment is to deter the wicked by the terror of example. The third to protect society against one who is dangerous to its peace and good order. Fourth, the reformation of the prisoner. The object of the criminal code, the gallows, the jail and penitentiaries, was not for the benefit of criminals, but for the benefit of society. You, then, gentlemen of the jury, being the duly authorized agents of the civil magistrate for the enforcement of the law, you are the ministers of God, divinely commissioned by him to avenge this wrong done society, and to execute wrath upon the evil-doer. If, then, through timidity or want of moral courage, or morbid sensibility, or an affected sentimentality, you are false to the teachings of religion, you are unfit for your present high, solemn, and sacred trust. I am aware that there are certain modern philanthropists who, in a spirit of mental amiability, maintain the doctrine that murderers should go unwhipt of full justice, or that some milder punishment should be substituted in the place of the death penalty. But they, in a spirit of wicked presumption, assume to be wiser than the Ruler of the Universe and more merciful than the God of all mercies. Jails and penitentiaries were not intended to be boarding-houses for the instruction of criminals. The Bible contains the best code of laws that was ever promulgated for the government of man; and whenever statesmen depart from its teachings they run either into despotism on the one hand or anarchy on the other.

But while the Bible enjoins submission to the authority of the civil ruler on the one hand, it forbids despotism on the part of the civil magistrate on the other. It says that he shall be a minister for good to him who doeth well. But while it enjoins submission as a duty on the part of the citizen, that injunction is not inconsistent with the right of revolution when a proper case is presented. And while the Bible forbids private vengeance, it permits the citizen to



protect himself from injury and insult by appealing to the civil magistrate in the proper manner. And while the Bible enjoins submission to law as a duty, it teaches that disobedience is sometimes a duty—when the ruler commands what is morally wrong, what is opposed to the divine law; the principle being that we should obey God rather than man. This does not necessarily imply permission to resist the law, but to disregard it and take the consequences. Daniel disobeyed the command of King Nebuchadnezzar, and then took the consequences, going to the lion's den; but God was there to protect him. The three Hebrew children, Shadrach, Meshach, and Abednego, disobeyed the order of King Nebuchadnezzar, but took the consequences and quietly entered the furnace heated seven times, and the Son of God was there to save them from harm. The Apostles preached the cause of their blessed master, their crucified but risen redeemer, in direct opposition to the command of the civil magistrate, but took the consequences, for when the officers came to arrest them they made no resistance. The early Christians adhered to their religion in the midst of persecution, but took the consequences, marching with calm and heroic courage to the stake of martyrdom. Our Saviour paid tribute to Tiberius Cæsar, although a dark, cruel, and bloody tyrant; and notwithstanding there was some doubt as to his right to the throne. Claudius had been poisoned, Caligula had died a violent death, and Nero was a monster of crime and cruelty. Government is an institution of God. Hobbs, the eccentric philosopher, says that a state of nature is a perpetual warfare; therefore reason suggests the necessity of civil government. Paley maintains that government is the result of compact. But the Bible says that government is the appointment of God.

It is not your act. Fain would you have avoided this solemn and painful duty. You are here through God's providence; you are his ministers. If you believe the crime has been committed by the prisoner at the bar, and you should in a spirit of mawkish sentimentality refuse to execute the law, you assume to be more merciful than God himself.

Now, gentlemen of the jury, have you any doubt in regard to the guilt of the prisoner? Don't you feel and know that this conspiracy existed and that he was a member of it, and acted a part? Don't you know that in pursuance of that conspiracy this murder was committed? Oh, it was a cruel, cruel blow that stilled that kind and gentle heart. I now ask you, have you a doubt? What is the meaning of that? I have said, and I repeat, that the question submitted to the jury is not whether the prisoner at the bar is possibly innocent, not whether he is proved to be guilty to a demonstration—though I surely think he is, if guilt can be capable of demonstration—but the question is, are all the probabilities in favor of that conclusion? Do all the material facts and circumstances point to his guilt? If so, he is proved guilty with that degree of certainty and accuracy which rises beyond a "reasonable doubt" in legal contemplation. In order, gentlemen, that the principle may be clearly illustrated to you, let me read from 1 Greenleaf, section 1st:

"The word evidence, in legal acceptation, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. This term and the word proof are often used indifferently, as synonymous with each other; but the latter is applied by the most accurate logicians to the effect of evidence, and not to the medium by which truth is established. None but mathematical truth is susceptible of that high degree of evidence called *demonstration*, which excludes all possibility of error and which, therefore, may reasonably be required in support of every mathematical deduction. Matters of fact are proved by moral evidence alone, by which is meant not only that kind of evidence which is employed on subjects connected with moral conduct, but all the evidence which is not obtained either from intuition or from demonstration. In the ordinary affairs of life we do not



require demonstrative evidence, because it is not consistent with the nature of the subject, and to insist upon it would be unreasonable and absurd. The most that can be affirmed of such things is that there is no reasonable doubt concerning them. The true question, therefore, in trials of fact, is not whether it is possible that the testimony may be false, but whether there is sufficient probability of its truth; that is, whether the facts are shown by competent and satisfactory evidence. Things established by competent and satisfactory evidence are said to be proved."

I will now read the note at the bottom of the page :

"Even of mathematical truths, this writer justly remarks that though capable of demonstration, they are admitted by most men solely on the moral evidence of general notoriety. For most men are neither able themselves to understand mathematical demonstrations, nor have they ordinarily for their truth the testimony of those who do understand them; but finding them generally believed in the world, they also believe them. Their belief is afterwards confirmed by experience, for whenever there is occasion to apply them they are found to lead to just conclusions."

In this connection I will refer you to the opinion of Chief Justice Shaw, in the case of Professor Webster, who was indicted for the murder of Dr. Parkman, page 287 :

"Now, then, gentlemen, what is reasonable doubt? It is not possible doubt, only because everything is doubtful. It is that doubt which, after the entire consideration of all the evidence has been taken, leaves the jury uncertain. It is not a mere probability, arising from the doctrine of chances, but it is more likely to be so than otherwise. But a reasonable moral certainty—that is, a certainty that weighs upon the mind, weighs upon the understanding—satisfies the reason and judgment that, without leaving any other hypothesis, the facts are such as to implicate the defendant, and not to implicate anybody else."

You will observe, then, gentlemen, that a reasonable doubt does not mean a speculative doubt. This principle is further illustrated by the learned author to whom I have referred, by the anecdote of the King of Siam. When an ambassador called to see him he stated that in his country the water sometimes became so hard that it would bear a man. The good king said, "Well, up to this time I had considered you an honest man; but now you have told such a falsehood that I cannot trust you again, for it is a thing I never saw, and none of my courtiers and none of my people ever saw such a thing before, and I won't believe it." All that the law requires is that there should be a moral certainty. In the language of Mr. Greenleaf, "the transactions of life are not capable of mathematical demonstration." I must produce evidence sufficient to satisfy the judgment and conscience of a reasonable man. If you are so satisfied that you would act upon it in the matter of the highest personal concern, that is sufficient. If your own interest was at stake, could you say that this man was innocent? If there is faith in human testimony his guilt has been proved beyond all rational and reasonable doubt. There is no difficulty on that subject; and I now invoke—although it is not formally submitted in my last prayer—an instruction from the court upon that point, for, in my opinion, it is always the duty of the judge to instruct the jury upon the doctrine of reasonable doubt, as there is nothing about which there is greater misapprehension. Why, gentlemen, if you acted upon such a principle as that, there would be no such thing as securing the punishment of criminals. It is a favorite theme for declamation by eloquent counsel for the prisoner. You hear them talk about "reasonable doubt," and the jury are often, in the kindness of their hearts and the tenderness of their natures, carried away by it. Disliking to shed blood, and forgetting that they are the ministers of God, and that it is not their act, feeling that there is some reasonable responsibility resting upon them, they seize hold of this

thing called "reasonable doubt," and too often act upon it. But, gentlemen, will you pardon me for saying that that is very wicked unless such a doubt exists as is recognized by the laws of your land. I then ask, do not all the material circumstances in this case point, as I have heard it said, "with fearful and unerring certainty to the guilt of the prisoner at the bar?" There is no such thing as mathematical demonstration in the ordinary transactions of life. The law says that even a mathematical problem, strictly speaking, is incapable of demonstration. Then, looking through the medium of this testimony, unless you discredit all the evidence, (and who will assume to do that?) the prisoner's guilt is as plainly visible as this hand as I hold it up before my eyes.

At this point the court took a recess for half an hour.

AFTERNOON SESSION.

The DISTRICT ATTORNEY resuming, said:

If your honor please, and gentlemen of the jury, there are theories and questions which I might discuss, but which I will not now detain you to do, particularly as I am to be succeeded by a very able gentleman who will supply any deficiencies in my argument. I doubt whether it would be fair to anticipate the defence, except so far as is shadowed forth by the gentleman who opened the case, and who, as I understood his argument, submitted five propositions. Do not be alarmed gentlemen; I do not intend to discuss them. I have already done so to a great extent. He first made an attack upon our witnesses. This I have already answered and I hope successfully. He next appealed to your sympathies, I will not say your prejudices, by referring to the mother of the prisoner as a murdered woman. This I have also answered. In the third place he expressed a sentiment, which, I submit, with entire respect to the learned counsel, was quite inconsistent with the dignity of the occasion and with the character of an honorable man whose fate we all deplore—the victim of this cruel and bloody conspiracy. That I have also alluded to.

Mr. BRADLEY. What is it?

The DISTRICT ATTORNEY. That it is no worse in the eye of God to kill him than the commonest vagabond in the street.

Mr. BRADLEY. I have understood that God was no respecter of persons. However, I asked the question because I did not know to what the gentleman referred.

The DISTRICT ATTORNEY. I do not propose to quarrel about that now.

The gentleman's fourth proposition was that it was practically an impossibility for the prisoner to make his way here by the 14th of April, and equally impossible for him to make his escape in view of the obstructions in the roads at that point of time between the city of Washington and Montreal. The fifth proposition is an *alibi*, that he was at some other place; that he was in the city of Elmira, where they have attempted to show he was on the 14th of April, 1865, when this alleged murder, charged in the indictment, was committed.

I propose briefly to discuss the last two propositions. You have only, gentlemen of the jury, to run your eye over this map to see that the direct route from the city of Washington to Montreal is by New York, Albany, Burlington, St. Albans, and Rouse's Point. And if from the evidence you have heard you will estimate the time it would take a man to travel through by these points from Washington to Montreal, in connexion with the evidence in reference to the detentions which must necessarily have occurred between the 15th, when he started from the city of Washington, and the 18th, when he arrived in Montreal, you will find that he is placed precisely on the 18th of April where Blinn, Chapin, William Conger, Albert Sowles, and Edward Sowles all placed him, and where Hobart recognized two persons under the circumstances which he states, show-

ing that it was the prisoner at the bar fleeing for his life from the United States to the province of Canada. The idea that he could have gone to the city of Canandaigua, you will see by casting your eye over this map is, for three reasons, perfectly unreasonable. If he had been in Canandaigua, escaping for his life, he would have gone directly to the lakes, taken an English steamer, and escaped to Toronto, where he would have been, as he supposed, beyond reach of American authorities. He would not have taken that circuitous route to Montreal.

First, then, the route which we prove he did take is the most expeditious and natural route.

Secondly, if he had been in Canandaigua he would have crossed immediately to Toronto and not to Montreal.

And thirdly, if he was in Canandaigua on the 15th, it was utterly impossible or at least improbable, that he should have been in the city of Burlington and St. Albans on the 18th of April, 1865. No, gentlemen, these witnesses to whom I have referred, and that silent, dumb witness, the handkerchief, bearing the name of John H. Surratt, all confirm the fact that he took the direct route from Washington to Montreal, where he was concealed by Father Boucher, of whom I shall say nothing, for he is a minister of God. You must pass upon his conduct yourselves, for the law says, that he who knowingly harbors a murderer is an accessory after the fact.

I now come to the only remaining point stated in the opening of the defence: Was he in the city of Elmira on the 14th of April? To this I have two answers; first, if he was there, it is immaterial, he is still guilty, according to my view of the law. That is a question for his honor to decide, and I shall acquiesce in his decision, whatever it may be. Secondly, in point of fact, he was not there on the 14th of April, 1865. This is a mixed question of law and of fact. Fortunately for you, gentlemen of the jury, the entire responsibility of deciding that question does not rest upon you. Fortunately for his honor, the entire responsibility of deciding that question does not rest upon him; but it is a divided duty you are called upon to discharge. First, then, permit me briefly, with all modesty and respect, to render some assistance to his honor. An *alibi* is an affirmative defence. As has been suggested to me, I have already argued that proposition successfully before his honor. I have his decision, and he is estopped now from denying it. The burden of proof is upon the prisoner. Having proved him a conspirator; having traced him here; having shown him in this city, and having traced him to Montreal; relying upon an *alibi*, they must prove it, some judges say, beyond a reasonable doubt, with the certainty with which the government is required to establish a *prima facie*-case of guilt. Certainly they must establish this affirmative defence by a preponderance of evidence. Let me refer you to an authority. I refer your honor to the Webster trial, p. 286, where this learned jurist gives a very accurate and philosophical definition of the term "*alibi*:"

"The next rule to which I ask your attention is, that all the facts must be consistent. What has happened may happen again; what is impossible could not have happened, and, therefore, the facts must be consistent with each other. Considering them to be the facts upon which the conclusion depends, if any one fact is wholly inconsistent with the hypothesis of guilt, it of course breaks that chain of circumstantial evidence, and puts an end to the case. Of this character, gentlemen, is an *alibi*. And what is an *alibi*? A man is charged with crime. He says I was elsewhere—*alibi*, the latin word for elsewhere. Well, if that be true, that cannot be consistent with the fact of his being there at that time. At precisely eight o'clock, on a given evening, he is proved to be in one place, therefore he cannot be in another place at precisely the same hour. That has been the source of a vast deal of contrariety, because an *alibi* is easily suggested with a little contrivance, and a little arrangement of proof. A person



may seem to have been in one place, when he was in another. If the *alibi* is proved, then it is a certain conclusion, because a person cannot be in two places at the same time. Therefore, showing him to be in one, shows him not to be in the other. But whenever such proof is attempted, there must be the most rigid and strict inquiry whether the fact is proved to the satisfaction of the jury; and false testimony in the attempting to prove that a man was in another place from his real one is open to all the various suggestions of contrivance, such as the appearance of sudden riding from one place to the other, and various other modes of that description."

Mr. PIERREPONT. Your honor will remember that in this case a large number of highly respectable witnesses from Boston, testified positively to the prisoner being in Boston at the time the murder was committed.

The DISTRICT ATTORNEY. Certainly a much stronger, or a more powerful case of *alibi* than the defence have presented in this trial. I read again from the same opinion, p. 291:

"There are two circumstances which apply to proof of *alibi*. In the first place there is the uncertainty which applies to the fact, not to say anything about an intentional misleading, but a witness is always liable to be mistaken. Then, in order to establish the fact, it must be proved beyond a reasonable doubt that the party was seen at the precise time and place where he is alleged to have been seen by the witness. And that is the difficulty with regard to proof of *alibi*. There is always room for the difference of time to be explained, owing to the difference of time-pieces, which sometimes vary from five to ten minutes."

Chief Justice Shaw announces the principle in this most important trial, which attracted more attention than any other in the United States since the trial of Aaron Burr, that where the prisoner relied upon an *alibi*, he must prove it beyond a reasonable doubt. I do not care to go as far as that; I think your honor has gone that far. I say that he should at least prove it by a preponderance of evidence, and I appeal to your honor in a decision already given, in which you declared that being an affirmative defence, it must be proved, if not beyond a reasonable doubt, at least by a preponderance of evidence; and that decision is conformable to all the analogies of law, and to the rules of this court in similar cases. I refer your honor to the case of the United States *vs.* Foley, when Robert Ould was the United States attorney, and his honor, Judge Merrick, the brother of my distinguished friend who represents the prisoner, was upon the bench. The defence of insanity was set up, and Judge Merrick decided that the burden of proof was upon the prisoner to establish it beyond a reasonable doubt, or at least by a preponderance of evidence. There was an appeal from his decision to the circuit court, and his decision was unanimously confirmed by your venerable predecessors in office, Judges Dunlap, Morsell, and Merrick. In the case of United States *vs.* Mary Harris, which attracted considerable attention at the time, in which the defendant was represented by very able counsel, I invoked the same construction from Judge Wylie, referring to the same decision of this court, and the records will show that that learned judge, upon that occasion, enunciated the same principle. I refer your honor to these leading American cases, and I think it will be unnecessary for me to appeal to you to stand by the decisions of this court, for they are precisely analogous to this case. Applying then that principle to the facts of this case, what is the result? Five witnesses are introduced to prove an *alibi*. As I have said, I do not intend to charge any of them with perjury. Charity is the bond of perfectness; it unites all the other Christian graces in one beautiful harmonious whole.

The rule of law is that where there is a conflict of evidence you should reconcile the conflicting statements of witnesses with truth, if you possibly can.



It is a rule of law which owes its origin to the benignant spirit of the Christian religion, which is the fountain whence all our justice flows. Now, then, we prove the presence of the prisoner in Washington by thirteen witnesses; they prove his presence in Elmira by five, all honest, all truthful, or, if you please, some dishonest on both sides. The weight of evidence is on our side. If, then, the burden of proof be on them, they fail to prove the alibi, and this jury cannot, without violating the law, decide otherwise by their verdict. But, gentlemen, two of these witnesses, Stewart and Atkinson, do not pretend to say he was in Elmira on the 14th of April. Their testimony is that it was on the 13th or 14th, they are uncertain which. Only three of their witnesses, Cass, Carroll, and Bissell, swear to his presence in Elmira. Three against thirteen, a preponderance of ten witnesses in our favor. Now then I will put David C. Reed against John Cass. Reed was a tailor in the city of Washington; Cass, a tailor in Elmira; both honest men. It is for you to say who is mistaken. Carroll saw him twice I believe. I place Wood, the barber, against Carroll. Who imputes dishonesty to Wood? He greased him, he rubbed him, he talked with him. Is he mistaken? You, gentlemen, must decide. Cass and Carroll never saw him before in their lives; Cass and Carroll saw him when he was disguised. Reed knew the boy and the father; Wood knew Booth perfectly, and saw the prisoner longer, and under circumstances better calculated to make an indelible impression upon the mind and memory. Judge ye between them. Last comes Dr. Bissell. I intend to say nothing unkind about him. Mr. Bradley brings a physician here to sustain his character. In consequence of a remark made by my colleague he seemed to think we had dealt unjustly by that witness. Mr. Bradley shakes his head. I do not intend to do injustice to him, but I say if a physician should come here and tell me that he had held a consultation with the keeper of a lager beer saloon or an alehouse, I would not allow him to practice upon my pointer dog, if I had one. Suppose, for instance, I should call Dr. Howard to visit my sick child—with his mild, gentle face leaning over the bedside of him who was so dear to me. He says, with that candor which should characterize the treatment of the sick: "Mr. Carrington, your child is very sick; I desire to hold a consultation." With the tears in my eyes, with my heart in my mouth, I say "Do it, of course; who do you desire?" "I would like to have old Colonel Gerhardt, who keeps the lager beer saloon." Dr. Bissell, by his own confession, run a double machine, sold the liquor to poison his own patients, and then cured them. I would rather have Gil Blas and old Dr. Sangrado in a consultation over a sick child. I do not think my friend should have taken it unkindly when Judge Pierrepont asked whether after such consultation the patient was still alive. It was a piece of wit that would have done credit to a Curran. I do not think my friend will, on reflection, take offence. This witness may be an honest man, but I would not like to trust him as a doctor, nor would I like to trust him to sustain the reputation of a person with whom he was so closely allied as Dr. Bissell, for when physicians and lawyers practice together they learn to love each other, and do not see their mutual faults. But, gentlemen, I place lawyer Vanderpoel by the side of Bissell. There is a Roland for your Oliver. Whom will you believe? The lawyer? I do not say that they are more worthy of belief than any other class of individuals. But who is unimpeached? Is it the doctor who kept an alehouse and invented an article very useful in domestic economy? Then there are three against three; ours are better—just as good at any rate, and we have ten behind. They bring up three men; I send forward three champions to meet them. They die together. I have got a regiment of ten behind, and victory perches upon my banner. You cannot escape it, gentlemen of the jury; the weight of evidence is in our favor upon that point, and being so, according to a principle of the law which I have invoked, they have failed to establish their defence.

I have endeavored to give you my own views. I regret that I have not conversed more fully with associate counsel. I hope I have expressed their views. I have referred to some authorities. I have occasionally had opportunities to talk with others who are interested in this matter, who have given me suggestions I have endeavored to extend and elaborate. I have referred to authorities, to the written declarations of others, to illustrate the principles discussed and to impress them upon your minds, your imaginations, and your memories, sometimes giving credit to the authors from whom I borrowed, and at other times failing to do so, as I now propose to do in the few remaining observations which I shall submit to your consideration.

I am very glad, gentlemen of the jury, that the learned gentleman who opened this case for the prisoner manifested an inclination to resent the imputation, which we have often heard, upon the loyalty of our fellow-citizens in the District of Columbia. Here, though we differ in most points in this case, we stand on common ground. When treason first raised its horrid head at the south, and it was threatened that the President of the United States could not be safely inaugurated in the city of Washington, the citizens of the metropolis indignantly resented it as an indignity to them, and under a military organization, composed of your own fellow-citizens, aided by a small band of regulars under the command of General Winfield Scott, Abraham Lincoln was safely inaugurated, as his predecessors were, on the eastern portico of the Capitol. When rebellion called for seventy-five thousand men, the very first to respond to their country's call were the Union volunteers of the District of Columbia. When it became our painful duty to invade the sacred soil with bleeding hearts, the first men who passed beyond the District line were the Union volunteers of the District of Columbia. The great orator, patriot, philologist, and Christian gentleman, Edward Everett, declared that Massachusetts enjoyed the melancholy pleasure of having offered the first blood to the Moloch of war—first to create, and then to perpetuate, this glorious Union. I would not pluck one laurel from the wreath that entwines the brow of the Old Bay State. It may be so; but the first blood that was shed in this cruel civil war upon the enemy's soil, when the rebels had assumed the attitude of belligerents, was the blood of a Washingtonian, a Union volunteer from the District of Columbia. The District of Columbia raised, in proportion to its population, more Union men than any State in this republic. After the battle of Bull Run—I may mention this—my friend, the senior counsel for the prisoner, and myself, in company, holding then commissions, went up and offered our services to aid in protecting this city from invasion. When the national legislature thought proper to pass a law requiring every juror to take a certain oath of loyalty to the Constitution and the Union, not one man ever hesitated, except perhaps in a single instance, to subscribe to this iron-clad, terrible oath, under which you, gentlemen of the jury, are impaelled. True to our country in time of war, be true to her in time of peace; for the triumphs of peace far transcend in honor and importance the triumphs of war. The soldier, who in time of war nobly exposes his own life and sheds his brother's blood in his country's cause, does well; but the Christian man, judge, and juror, who himself submits from principle to the law, executes it, and enforces obedience to it, gives an exhibition of moral courage infinitely beyond any demonstration of courage ever made upon the bloody field of battle.

There was a gentleman in my house from the Pacific coast, who in the course of conversation spoke very enthusiastically in reference to the great and growing resources of that section of the country. As he was leaving me he said, "Come and see me. I wish to talk further with you on this subject. It will stimulate you in your speech," or words to that effect, alluding to this very case; "for it will show you we have got a country worth caring for." It did not fail to make its impression upon me. He was right, gentlemen. We have a country

worth taking care of. Behold it, stretching its long and strong arms from the regions of eternal snow to a land of perpetual spring and flowers, washed upon one side by the proud waves of the Atlantic and on the other by the mild waters of the Pacific, her noble mountains rearing their lofty heads to the heavens, her valleys teeming with beauty and verdure, her inland seas, her noble rivers, upon whose bosoms the navies of the world might be borne, her beautiful harbors, where it is said the navies of the world might ride with ease and safety, rich in all that human heart could conceive or desire; oh! it has been truly said by America's greatest orator, "It is a land upon which a gracious Providence has emptied the horn of abundance, that peace, contentment, and plenty should sit smiling by her door." I may not give his precise words, but it was the sentiment he invoked.

Now let me ask you, gentlemen, what is this country worth if its highest officers are to be at the mercy of the assassin's dagger? What is this country worth if the representative of the nation, elected by one party, cannot be protected anywhere upon this western hemisphere, where this crime has been committed? It has been said that this Union was baptised in blood, the blood of our fathers; it has been preserved in blood, the blood of their children. But what is this country worth if your sons fight for its preservation and you fail by the execution of its laws to restrain and punish its enemies? I charge you by the solemn memories of the past, by the glorious hopes of the future, by the names of the honored dead who have fallen in the service of the republic, to vindicate the majesty of the law, maintain the integrity and purity of the judicial ermine, and wipe this deep and damning stain from the escutcheon of your country. I repeat, we must be cruel in order to be kind; we must punish the guilty to protect the innocent. Stern, inflexible justice is true mercy; justice to the guilty is mercy to the innocent. I charge you, then, gentlemen of the jury, assign to the prisoner at the bar, the blood-stained prisoner at the bar, that punishment which he deserves by the laws of God and man, for the great crime which he has committed in the face of heaven and earth. He is a murderer, and deserves a murderer's doom.

Mr. PIERREPONT. I shall occupy, your honor, but a few minutes in presenting the legal views which I shall express in addition to those already given by the district attorney. I have before me Will on Circumstantial Evidence, a book I have examined because it is most fertile in its citation of authorities. I cite from the Law Library, volume 41, page 51, marginal page 115:

"An unsuccessful attempt to establish an alibi is always a circumstance of great weight against the prisoner, because a resort to that kind of defence implies an admission of the truth and relevancy of the facts alleged, and the correctness of the inference drawn from them; and where the defence of alibi fails it is generally on the ground that the witnesses are disbelieved and the story considered to be a fabrication. But this observation is not universally true; an extraordinary case to the contrary occurred at the Old Bailey sessions in 1824, in the case of a young gentleman of the name of Robinson, who, on the positive evidence of many persons as to his identity, was convicted of larceny; but in several other cases where he was sworn to with equal positiveness, an alibi was satisfactorily proved, and he received a pardon.

"The defence of an alibi often involves considerations of the most difficult and perplexing nature. It is not an uncommon circumstance to endeavor to give coherence and effect to a fabricated defence of alibi, by assigning the events of another day to that on which the offence was committed, so that the events being true in themselves are necessarily consistent with each other, and false only as they are applied to the day in question. A learned writer reports a case where a gentleman was robbed, and swore positively to the prisoner, but, nevertheless, the completest alibi was proved. The witnesses, examined separately, all spoke the same minute circumstances transpiring while the prisoner was in their company on the day and hour of the robbery, and in particular that a church bell for funerals was tolling, which, in fact, tolled almost every day at that particular hour when the robbery was committed. The prisoner was acquitted. A year afterwards the gentleman, seeing the prisoner in a little shop, went to him and gave him his word that, as now all danger was over, if he would tell him the truth no injury should happen to him, but the contrary. The man said, 'I did rob you; the alibi was concerted. I know it was false, and when the jury turned round to con-



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sider the verdict, I felt a shuddering within me unlike anything I had ever felt or believed I could feel."

I read now from page 53, where, speaking on which side mercy always went, he says :

"And on the other, how much more easy it is to get up a false story of alibi, where the whole to be proved is the presence of the prisoner at a particular place at a particular time, than a false account of all minute particulars relating to so many different matters, which is necessarily implied in the proof of a false charge against the prisoner."

I read now from the same book, page 71 :

"Of all kinds of exculpatory defence, that of an alibi, if clearly established by unsuspected testimony, is the most satisfactory and conclusive, since it excludes the possibility of the truth of the accusation. A defence of this nature is often entertained with distinct suspicion, because it is easily concocted, and frequently resorted to falsely. It is essential to the establishment of an alibi that it should cover the whole of the time of the transaction to which it relates, so as to render it impossible that the prisoner could have committed the act; it is not sufficient that it renders his guilt improbable."

I will now read on this same subject from Allison's Practice of the Criminal Law in Scotland, page 624 :

"The defence of alibi is of all others the most decisive when duly substantiated; but the evidence adduced in support of it requires to be minutely considered, and the plea is not to be sustained unless the circumstances were such as to render it impossible that the crime could have been committed.

"One of the most ordinary pleas resorted to by a panel is that of alibi; and, doubtless, when duly qualified and fully proved, it is among the most effectual of any; but it requires to be carefully scrutinized, both as to the sufficiency of the evidence and the inference to be drawn from the facts if fully proved, because the plea is not conclusive unless the alibi is circumstanced and qualified in such a manner as makes it not only unlikely, but impossible that the panel could have done the deed at the time and place libelled."

The phrase "panel" is used in Scotland instead of "defendant."

"In the next place, it is essential that the plea of alibi shall be adequately proved. In judging of this matter the court and the jury have chiefly to consider the character of the witnesses who speak to the fact, the manner in which they give their evidence, and the comparative weight due to them and the witnesses for the prosecution. It is frequently no easy matter, even by the most skilful examination, to detect the falsehood of an alibi. By making the witnesses speak to the events which really took place on a particular day, and merely applying them to the day libelled, they are sometimes able to present a story to the jury which hangs together remarkably well in all its parts, and wears all the air of truth, because the events described are true in themselves, in their relation to each other, and only false when applied to the particular day in question. The only way in which it is possible to expose an artfully got up imposture of this description is by a minute and rapid cross-examination of the witnesses applied to the circumstances previously detailed in evidence by the witnesses for the prosecution, in order to detect falsehood in some inconsiderable and not previously considered particular."

I shall have occasion, when I come to comment upon these witnesses, to comment on the law here laid down.

"Frequently the trick may be exposed by asking the alibi witnesses, after they have fully and minutely narrated the events of the day libelled, to give an equally detailed account of the preceeding and succeeding days."

I shall have occasion to speak of Dr. Bissell in this connection before I am through with him.

"And their total inability to do that shows, with reference to that particular day, they must have been practiced upon. Of course the weight due to their testimony is increased if they can point out some particular circumstance, as by an examination before the magistrate a few days after in relation to the matter libelled, or by hearing that the accused was apprehended upon the charge, and being thus led to turn what they knew in it over in their own minds, which led to its being fixed in their memory."

I now read from page 627 :

"But after all the jury are frequently reduced to the difficult and painful duty of weighing the testimony on one side against that on the other; and, in doing so, it is their duty on the one hand to recollect that the presumption of law, as well as of justice, is against the prosecution, and, therefore, if the evidence on both sides is equal, or nearly so, they should incline to the side of mercy; and on the other, how much more easy it is to get up a false



story of alibi, where the whole to be proved is the presence of the prisoner at a particular place at a particular time, than a false account of all the minute particulars relating to so many different matters which is necessarily implied in the proof of a false charge against the prisoner."

If your honor please, in relation to this other point of law, my learned friend has discussed it so fully and so ably, that I do not propose to occupy the time of the court or the jury in this matter. I simply propose to read the points as I have written them down, and refer the counsel on the other side to the page, without spending the time necessary to read them; they will have the fullest opportunity therefore for the examination, even without my reading. In my judgment, this case, although very long, is like every other long case that I ever saw. It will be found when the rubbish is taken out of it, and it comes to be sifted, to resolve itself into a few of the most simple propositions, commending themselves to the common sense of men, and not requiring any very minute discussion of legal propositions to arrive at a just conclusion. Now what is the real question before this jury? I apprehend that it is nothing more than this: was the prisoner engaged in, and aiding and abetting, a conspiracy which resulted in the killing of Abraham Lincoln? In my judgment, this covers the whole case. If this prisoner was engaged in the conspiracy, aiding and abetting, which resulted in the killing of Abraham Lincoln, he is guilty, and there is no mode of getting rid of it. Now no one will dispute that the conspiracy is established; I think that will not be debated. The conspiracy then being established, the rule of law is: First, that each confederate in the conspiracy is liable for the acts of every other co-conspirator, and the declaration of each may be given in evidence against every other. And though the conspiracy may have been formed years before the prisoner ever heard of it, yet having subsequently joined in the conspiracy, he is in all respects guilty as an original conspirator. I shall refer to authorities presently, many of them having already been read.

Second. That when several persons are finally confederated in a conspiracy they are like one body; and the act of each hand, the utterance of each tongue, and the conception and purpose of each heart, (touching the common plan,) is the act of each and all; and every one of the several persons forming the confederate body is responsible for the acts, sayings, and doings of each and of all the others, and each is the agent of every other.

Third. That a conspiracy to kidnap, abduct, or murder the President of the United States in time of rebellion, or other great national peril, is a crime of such heinousness as to admit of no *accessories*, but such as to render all the conspirators, their supporters, aiders, and abettors, principals in the crime. That such is the common law of England, and is the law of this country.

I have a word to say upon this proposition: this is the first time in the history of our country, where an opportunity ever has occurred to announce this great legal truth. It has occurred in France; it has occurred in England; but it never occurred in the history of our country before. My learned friends on the other side have tried all through this case to lay aside every consideration, both moral and legal, touching this great question of an attempt to overthrow the government by the murder of its head. They cannot escape it; and your honor cannot escape it; and the country will call upon you, and ask you not to escape it; and they will hold you responsible, if you dare attempt to escape it. It is the first time, I say, that this great law doctrine has ever been brought before a court in the United States. It has been in England. It is law; and it comes to your honor for the first time to announce this law. No other person has been murdered by a conspiracy to assassinate the head of the government, for the purpose of destroying the government, and any man, and any judge, who will treat this as a mere ordinary crime, having no other qualities in it than those of a common murder, for the purpose of stealing a sum of money from a man's closet, do not understand the principles of law which should govern nations, or

the laws which bear on governments. They do not understand the law which my learned friend read from that Holy Book, if they suppose that the cases are precisely alike. I will refer presently to the authorities upon this point, as upon each point.

Fourth. That such conspiracy, either to abduct or to kill the President, and thus to overthrow the government and promote anarchy in the nation, is a crime of such a nature as to render every supporter of the conspiracy a principal in the crime, and liable for all the consequences of a murder perpetrated by a co-conspirator while carrying out the common design, though no such murder may have been originally intended, and though the accused conspirator had never personally participated therein.

Fifth. That a killing by a co-conspirator, in pursuance of a common plan to abduct, makes each conspirator guilty of the killing, though no such crime was contemplated by the other conspirators. It is shocking to justice, and to every moral sentiment, to hear it uttered in a court of justice that where a man has been engaged in a crime which resulted in murder, if that man did not intend to murder, therefore he is innocent. Such never was the law, thank God. Such, we hope in God, never will be. Test it, your honor. A set of vile men conspire together for the purpose of the highest kind of crime, in one sense, and in another not so high, to abduct the daughter of one of these jurymen for a vile purpose, and in the course of that abduction and the restraint they place upon her she dies in her agony, and they say: "Oh! my God! we had no idea of killing her. It was the last thing in the world we wanted, to kill the girl; we wanted something else." And then come in my learned friends and say: "Oh! these young men did not intend to kill her—not a bit of it." They intended something else, but in carrying out their unlawful purpose she died, and they are her murderers. Will any one undertake to say they are not? Will any one undertake to say in law they are not murderers? What doctrine is this, to be brought before a court of justice in the capital of the country? A man says: "I did not intend the precise thing that happened; I intended to violate the law; I intended to commit an infamous crime; I intended to commit a felony, but never intended these results to follow." The law says: "Thou shalt obey the law, and when you disobey it you shall take the consequences of that disobedience." If in disobeying the law any one is killed, a murder is committed, and you are the murderers. Such is the law.

As I said the other day, a man enters a house in the night time for the purpose of committing a robbery. He does not want to kill anybody; all he wants is to get some money. His daughter is a servant in the house, and in screaming to give the alarm of a midnight robber, he shoots her dead at his feet. He did not know she was his daughter; he did not mean to kill his daughter. Although a robber, he loved her as dearly as your honor loves your own. Has not he committed a murder? and would not your honor condemn him for murder, and the jury say he was guilty? He went, not to murder his daughter, but to rob Mr. Alexander, and his daughter, a servant in the house, is killed, and her father is the murderer.

Sixth. That the personal presence of the prisoner in Washington is not necessary to his guilt in this case. He could perform his part in the conspiracy as well at Elmira as at Washington, and be equally guilty at one place as at the other. That if he left Montreal in obedience to the order of his co-conspirator, Booth, to aid in the unlawful conspiracy, it matters not whether he arrived in time to bear his allotted part or not. Being on his way to take his part, any accident which may have delayed him does not change his guilt. I will ask my learned friends to meet that proposition when they come to reply, and answer it by any legal proposition or authority.

Mr. BRADLEY. You have the affirmative; I would like to see your authority for it.

Mr. PIERREPONT. You will, presently.

Seventh. That, in legal contemplation, each conspirator is present where the crime is committed toward which the confederates had conspired, or which was committed as a consequence of the confederated plan, though, in fact, the conspirator on trial may have been absent when the acting conspirators did the deed. I understand my learned friend to argue to your honor, that where a crime was committed by a person out of the jurisdiction, unless done by an unconscious agent, the party doing the act was not guilty. I so understood it. He will correct me if I am wrong. I understood him, that if the agent was an unconscious agent, he was guilty; if a conscious agent, then he was not guilty.

The COURT. I may be mistaken, but I understood Mr. Merrick to say that he was not guilty as a principal, but as an accessory.

Mr. PIERREPONT. Well, not guilty as a principal. I submit he is guilty, under the law, as a principal. Now, let us see. There lives in the city of Washington a rich man whose wife has attracted the notice of a fashionable idler in Baltimore, whose humble means match not his haughty mind. He wants more money. He succeeds in fascinating the wife of a rich man in Washington, and they enter into a conspiracy to put the old man in the grave that they may enjoy his money and their unholy love. The man remains in Baltimore; he prepares the poison and sends it to the wife in Washington, and she with her jewelled hand mixes it with his coffee in the morning and he dies, and they soon are married. Does my friend say that the moment he comes within the jurisdiction of this court he cannot be arrested and the guilty pair tried as conspirators and murderers? If so, he says it against authority; against reason; against principle; against common sense. Now let us see further. He sends the poison by mail to the man whom he wishes to murder, and the man takes it without the intervention of the wife and dies. Is not he then guilty as a principal, and the moment he comes within your jurisdiction cannot you arrest him and hold him responsible for that murder? Further: He sends it to the wife and the wife mixes it in the cup, and, by mistake, drinks it herself and dies. Has not he committed a murder then, and would not you hold him the moment he reaches your jurisdiction and have him tried for murder? In the pursuit of his unlawful purpose, if with the poison he killed one he did not intend to kill, he has committed a murder. Further: On a holiday, children are out here on the railroad playing; they are gathered in great numbers—a Sunday school, if you please; and some vile man standing just over the line in Maryland seeing the children there, puts fire to a locomotive standing over the line, and when the steam is up sends it whizzing over the rails and crushes to death the helpless children. Has he not committed a murder within your jurisdiction, and the moment his footsteps are here cannot you convict him of murder when you get him before a jury? It is not necessary he should be here. It is no matter where the man is so that he commits the crime, and the moment the crime is committed, and he comes within the jurisdiction where the crime was committed, he is to be held. In the authority which I will presently cite, Lord Campbell's decision not many years ago, this principle is fully gone into and fully established.

We all know very well that even in lesser crimes than murder this law has been held and repeatedly held. I refer your honor to "1st Comstock's Reports;" the case of *Adams vs. The People*, page 173. This case, which was reported in 3d Denio, went up to the highest court, and their decision I now hold in my hand. It was argued with great ability against the principle for which I now contend, and which the court there established, by that eminent lawyer Henry Stanbery, now Attorney General of the United States. I remember the argument well. A man named Adams, by the aid of a person in the city of New York, committed great frauds there. He lived in Ohio. He never in his life had placed a foot within the jurisdiction of New York. He never saw its



soil nor felt its tread, but was born in Ohio. Some years after he came to New York; was arrested; was indicted; was convicted; and the case went up to the higher court. The indictment was that he was in New York present when he committed that fraud. Well, learned lawyers said as earnestly then as now: "Why, Mr. Adams was never in New York; he was born in Ohio and always lived there, and the proof was perfect that he never was out of it." "But," said the law and the authorities cited, "you were present when you committed the crime, and the only difference is we could not touch you in Ohio because you were out of our jurisdiction." So Lord Campbell says: "By the law of England when a crime is perpetrated out of the jurisdiction, the perpetrator there, the agent there was conscious, and unconscious in England; they cannot touch him out of England, but the moment he comes within their jurisdiction he may be arrested." Now, in the case of Adams the court held he was just as liable as if he had been there. The court were unanimous in their opinion, not only Judge Gardner, but Judge Bronson, one of the ablest judges that ever sat upon the bench in New York, and as able as any that ever sat upon any other bench, delivered opinions upon this point. I quote from the opinion of Judge Gardner, 1st Comstock, 175:

"It was, therefore, admitted that a crime had been committed within this State, and through the instrumentality of the defendant, and the authority of the numerous cases cited to establish the position, the actual presence of the offender at the place where the crime was consummated, was not necessary to make him amenable to the law."

Again, on page 176:

"The citizen of Massachusetts who should murder an inhabitant of this State by the discharge of a loaded pistol, or by striking with a deadly weapon, across the invisible line which separates the territory of the two States, would transgress a law universally binding, and recognized as such by the citizens of both States. If it be admitted, as contended for by the counsel for the prisoner, that the offender would not violate his allegiance to his own State, he would not be the less guilty on that account; he would, notwithstanding, infringe a law he was under an obligation to obey, at all times and in all places, in New York as well as Massachusetts"

Again, on page 178:

"The immunity he enjoyed at home from arrest and punishment was not due to him as a criminal, or as a citizen of Ohio, but because he had injured no one whom that State was bound to protect, and because the inviolability of its territory was an essential to its sovereignty and independence. The prisoner knew that through his agent he was defrauding those who were entitled to the protection of our laws, and he cannot be permitted to say that he did not know that it was unlawful to cheat in New York as well as in Ohio."

Judge Bronson, in his opinion, says:

"I am of opinion that it is not a matter of any importance whether the defendant owed allegiance to this State or not. It does not occur to me that there are more than two cases where the question of allegiance can have anything to do with a criminal prosecution. First, where the accused is charged with a breach of the duty of allegiance, as in cases of treason; and second, where the government proposes to punish offences committed by its own citizens beyond the territorial limits of the State; when the offence, not being treason, is committed within this State, the question of allegiance has nothing to do with the matter.

"It is not necessary to notice the peculiar relation which a citizen of the United States sustains to the other States; for if a subject of the British Crown, while standing on British soil in Canada, should kill a man in this State, by



shooting or other means, I entertain no doubt that he would be subject to punishment here whenever our courts could get jurisdiction over his person.

“This leads me to say that it is not necessary to inquire how the criminal can be arrested, or whether he can be arrested at all. If our courts cannot get jurisdiction over his person, they cannot try him. But that is no more than happens when a citizen who has committed an offence within the State, escapes and cannot be found.”

Mr. BRADLEY. What was the charge there?

Mr. PIERREPONT. Obtaining goods under false pretences. I proceed with my propositions.

Eighth. That a co-conspirator performing his part in a conspiracy to abduct or to kill the President in the capital, though not personally present, may be lawfully convicted and punished for the crime whenever brought within the jurisdiction of this District.

Ninth. That a conspiracy is proved by facts and circumstances which convince the mind, precisely as any other crime or agreement is proved in a court of justice.

I do not propose to occupy much time further. I will cite the learned counsel on the other side my authority. I refer your honor to 1st Russell on Crimes, pages 32 and 39, marginal pages. I refer likewise, under the same head, to 4th Wendell, page 256, in *The People vs. Mather*. “There is no settled grade of enormity between them. He who conceives the mischief and sets the assassin to work is as wicked and deserves as much severity from the law as he that strikes the fatal blow. It is incontrovertible that he who procures the felony to be committed is a felon, and if the felony be a murder he is a murderer.”

Anything more to the point on that subject, I think, will not be found, and it was delivered by a very able judge. I cite your honor, also, in relation to their all being principals, to 1st Russell, page 27; and also to page 30; and also to page 29. And in relation to where parties are conspirators to show you that each was agent of the other. I refer to 2d Starkey’s Evidence, page 237. I read from the Philadelphia edition:

“It seems to make no difference as to the admissibility of the act or declaration of a fellow-conspirator against a defendant, whether the former be indicted or not, or tried or not with the latter, for making one a co-defendant does not make his acts or declarations evidence against another any more than they were before; the principle upon which they are admissible at all is, that the act or declaration of one is that of both united in one common design, a principle which is wholly unaffected by the consideration of their being jointly indicted.

“Neither does it appear to be material what the nature of the indictment is, provided the offence involves a conspiracy. Thus, upon an indictment for murder, if it appeared that others, together with the prisoner, conspired to perpetrate the crime, the act of one done in pursuance of that intention would be evidence against the rest.

“When part of the correspondence between two defendants indicted for a conspiracy to defraud the prosecutor in the sale of an annuity had been read upon the trial, whose defence was that he had been deceived by the other party, it was held that the whole of the correspondence previous to the consummation of the purchase was admissible, but not the subsequent part.”

I also refer to the case of the United States against Gooding, in 12 Wheaton; we read it the other day, page 460, and likewise 2d Peters, 353. Both relating to conspirators and the agency of one and the effects of one’s acts, doings, &c., on the others. They were cited by my colleague. I refer also to the case of *Barkhamsted vs. Parsons*, 3d Conn., page 8—the decision of Chief Justice Osborn, in which the principle is laid down, and will be found not only there but in many other books. It is this:

“The principle of common law *qui facit per alium facit per se* is of universal

application, both in criminal and in civil cases ; he that does an act in this State by his agent is considered as if he had done it in his own proper person."—10 Pickering, 498.

And this doctrine, that a person absent would be liable like one present, your honor will find laid down in Bishop's Criminal Law, section 81.

The case of the trial of Burr was cited the other day in relation to all the parties being named in the indictment. I refer on the same subject to Archibald, 77, as well as to Hawkins's Pleas. Now, if your honor please, I have stated all I have to say ; I have referred to these authorities ; your honor can easily examine them. The counsel on the other side had a right to know upon what propositions we rely before being heard. If there is anything clear and well settled in law it seems to me to be clear that these books, as well as those cited by my learned friend, the district attorney, sustain the principles for which we contend and which are applicable to the case on trial before the jury.

Mr. BRADLEY. Is that all the law you propose to cite ?

Mr. PIERREPONT. That is all we propose to state.

The court then took a recess until 10 a. m. to-morrow.

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WEDNESDAY, *July* 31, 1867.

The court was opened at 10 o'clock.

The argument on the part of the defence was opened by Mr. Merrick, who said :

May it please your honor, and you, gentlemen of the jury : The feelings with which I approach the argument of this case are beyond my power to express. They are new to me in my experience in professional life, as the case in its character, nature, and the manner of its prosecution is new to the legal history of the country. Its magnitude is beyond that of any case which I have ever known, and its surroundings are peculiar and painful beyond any experience. Under your oaths you have in charge the prisoner at the bar, and it is your duty to pass upon his life. It is in your hands, and under the social and political organization of the community, it is the duty of the government to pursue, through the forms of law, any who may violate its obligations. The government entering upon this cause, and apparently believing that this young man has violated the law in the particular set forth in the indictment, has caused him to be arraigned before this tribunal, and his future destiny to be committed to you. But there is something in this prosecution beyond the mere arraignment by the government, and beyond the ordinary courses pursued by the governmental power in bringing a criminal to justice. I find arrayed against my client the best talent at the bar, and a numerous combination of counsel in court and out of court, and I find certain high officers of the government temporarily abandoning the duties committed to them in the particular functions which they are discharging, and devoting themselves to the manipulation of the witnesses to be sworn before this jury. This combination of legal gentlemen, aided by official personages outside, I find surrounded by a swarm of spies and detectives, scattered all over the country, supported and remunerated from the treasury of a government with hundreds of millions at its command, and all this machinery to pursue to the gibbet one penniless young man, who rests upon professional charity for the vindication of his name and the preservation of his life. I regret that it will become my painful duty to speak some truths that I would leave unspoken. I regret that it will become my painful duty to inquire into the motives that are influencing the conduct of men ; and I am inclined to believe, gentlemen, that the inquiry which I will make may lead you to the conviction, that whilst we have been talking a great deal of conspiracies to

abduct and conspiracies to murder on the part of rebel sympathizers, with a view to the destruction of the national life, there have been other conspiracies in higher places to commit a murder through the forms of law, and in utter disregard of every high principle that should govern the man of honor. I say I regret that it will be my duty to speak these painful truths; for in the course of my professional life I desire to say nothing that will pain anybody; but at the same time, in the course of the discharge of that professional duty I shall have to say what I believe that duty involves the necessity of saying—not, I trust, without the fear of God in my heart, but without the fear of any living man before my eyes. Why is it that all these appliances, this vast machinery, are in this case? Why all this wonderful array of counsel here and elsewhere? What do they represent? They nominally represent the government; but the course of this prosecution has convinced me, without evidence outside, upon which to found the opinion, further than the evidence which has been before your eyes in the conduct and the manner of men, that although they so nominally represent the interest of society, there are two sets, one that represents the government in its assumed offended majesty, and the other that represents some officers of the United States seeking for their own purposes the shedding of innocent blood.

In a prosecution such as this, conducted against one of its citizens by a government, what should be the course of that government, and what is due to the jury and the prisoner? Whatever there is that can throw light upon the alleged crime should be let into the jury box. All evidence that could go before the human mind calculated to impress it with conviction, or modify its opinions, should be allowed to come before you. What has been the case with regard to this trial? Wherever any technical rule of law could by any constraint whatever exclude a piece of testimony calculated to enlighten your judgment, it has been invoked to exclude that testimony; has been bent from its uniform application and its generally understood principle for that purpose. I shall find no fault with his honor on the bench in his rulings, for this is not my place to express an opinion about the decisions of the court. A member of the bar should be loyal to the tribunal before which he practices, to the full extent of gentlemanly and professional courtesy, and in the court-room bow with pleasant acquiescence in whatever the judge may say. With that acquiescence I bow, but yet there is nothing—and I must say this, and say it in justice to myself—there is nothing that has fallen from his honor in the adjudication upon these questions of testimony that has changed my opinion that the testimony should be allowed to go to the jury. One hundred and fifty exceptions taken by the defendant's counsel encumber this record. It is certainly strange that there should have been so wide a difference, and I regret it. Without complaining, as I said, of the decisions of the court, it can only be accounted for from the fact that the attorneys representing the government in this case have strained every principle of law, and invoked in their behalf every discretionary power of the court, as against the prisoner at the bar.

But again, another feature has marked the course of the United States. The prisoner is here arraigned for a particular crime, and the jury are charged with an investigation of his guilt or innocence as to the crime with which he thus stands charged. Prejudice should find no place in your hearts. Feeling should raise no cloud to obscure your judgment, and the United States should stand, represented by its attorney, the impersonation of a stolid logic, with the utter absence of every emotion. Instead of representing the United States in that capacity and in that character, every feeling that could rock the human heart upon its foundations has been invoked to influence you; and every sentiment calculated to excite your prejudice has been urged upon you with a violence which I have never seen equalled in a court of justice. The question for you to decide is, whether or not John H. Surratt is guilty of the murder of Abraham Lincoln?



My learned brother, the district attorney, whilst he congratulates you upon the return of peace to our blood-stained land, upon the end of war and the restoration of fraternal love, in the very next breath tears open the wounds of war and pours into your minds a torrent of invective calculated to keep alive forever fraternal hatred, and asks for a renewal of all the animosities unfortunately engendered in a war that is now at an end, and which being at an end, should have ends with it. Why has he done it? Why has he told you of the shooting of Union soldiers, as they were making their escape? Why has he dwelt upon that so long? Why has he told you of the hanging of the operator of the telegraph wire during the war in the confederacy? Why all this? Why has he, against every rule of professional courtesy, and the instinct of an honorable heart, pointed to the prisoner as the convicted and dying man, and whilst he told him, as he told you, that he stood upon the borders of the grave, wounded and insulted him by turning and addressing to him such remarks as: "You dying man, you are a traitor and a coward." Why has he done this? Why has he sought to delineate to you the sentiments and feelings of the prisoner as in sympathy with the southern confederacy? It was to stir your hearts. It was to carry you back from the present day of peace to the past days of animosity and war; and placing you amid the conflict of armies, and the passions of a few years ago, to have you renew all these bitter feelings long enough to give him an iniquitous verdict of guilty. Facts not bearing on the case; facts not relating to the case, and having no connection with it, have been rolled up before you, that the dying embers of extinguished passion may be fanned into a flame, and the season of war revived here in this court of justice. Shame on the United States! I blush to see the United States attorney thus degrading his high office, and asking twelve jurors, who have sworn to try the issues upon the facts in evidence, to forget their high obligations and to decide this case according to the prejudice and animosities of a past conflict. Peace has returned nominally; my learned brother thinks it has returned entirely. Would to God it had; but it has not. We know, however, in our hearts that peace has returned; that the war is over, although as yet the consequences of peace have not followed. In the southern hemisphere some of the stars that glitter upon our national banner shine with a glimmering light through party animosity; but it is to be hoped that the time will yet come when these party animosities will be thrown aside, as the mist before the rising sun, and that we will see that galaxy combined in one united stream of glorious light that will belt the earth in its course. I repeat, peace has come, but all its consequences have not; and its consequences never will come, if the government of the United States stands before a jury to continue to tear open afresh the wounds of the war; to visit in time of peace vengeance for deeds done during the war. Accursed forever, I say, be the heart that in this day would create one single sentiment of fraternal animosity. Our land has been drenched in blood; passions have been fierce, and desolation, such as the world never saw, has been spread over this country. But it is now at an end. Let fraternal harmony be restored; let the dead past bury its dead; let the dead past be forgotten and forgiven. No triumph was allowed in Rome to the hero of a civil war. And why? Because it kept alive in the memory of the people the animosities that divided them in the strife. Our civil war is over. Let there be no triumph; no jibes, no animosities, no invectives. Let me say to the North, "Extend the hand of friendship; renew the relations temporarily interrupted by the clash of arms. Take back the estranged brother to your arms, and feel that, in doing so, you are accomplishing the great purpose of Christian charity implanted in your hearts as Christian men, and the great purpose of patriotic citizens in reuniting your divided land." My learned brother is mistaken in representing God as a God of vengeance and a God of wrath. He is a God of love and of kindness. He is a God of mercy, and most mercifully has He dealt by this great land. Although it has been chastized with



affliction by His hand, still mercifully the wrath is stayed, and we must, by conforming to His great law, in the spirit of Christian charity, and answering responsive to that great prayer of "Forgive us our trespasses as we forgive those who trespass against us," have continued for the future the blessing temporarily suspended in the past. As I have no feeling, no prejudices, I shall not endeavor to excite any in others. I should be false to my duty if I did. You, gentlemen, are under the solemn obligations of an oath to do justice according to the evidence. If a sentiment of party feeling is around you, and you see and hear it—if a legal discussion on the part of the United States is converted into a political harangue—discard it. Come out from prejudice, and stand free, honest, and upright men, with unobscured judgments and true hearts, administering, as the counsel has said, that part of the Divine justice which it is committed to man to administer—judging others as you would be judged.

What is John H. Surratt charged with? In the wide digression and protracted argument of the counsel, I presume you have almost entirely lost sight of the cause. We must recur, and asking your kind indulgence, I can only give you as a promise for the favor of its bestowal that I will as briefly as possible trespass upon your patience.

The first count charges that "John H. Surratt, with his own hand, feloniously, wilfully, and of his malice aforethought, did kill and murder Abraham Lincoln."

The second count charges that "John H. Surratt, on the 14th day of April, in the year 1865, did make an assault, and so the jurors aforesaid, upon their oath, do say that the said John H. Surratt, then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the form and statute in such case made and provided."

That charges that John H. Surratt and John Wilkes Booth did then and there kill Abraham Lincoln.

The third count charges "that John H. Surratt, John Wilkes Booth, David E. Herold, George Atzerodt, Lewis Payne, and Mary E. Surratt, with force and arms, at the county of Washington aforesaid, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America then and there being, feloniously, wilfully, and of their malice aforethought, did make and assault and kill him."

I want you to bear in mind, gentlemen of the jury, one feature in this indictment. I shall make no remark about the first and second counts; but, as you will notice, the third count specifies that Surratt, Booth, Herold, Atzerodt, Mary E. Surratt, and other persons, to the jurors unknown, did, on the 14th day of April, 1865, with force and arms, at the county of Washington aforesaid, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America then and there being, feloniously, wilfully, and of their malice aforethought, make an assault, &c. I shall, in a few moments, come to the discussion of the principles of law, which are founded in common sense, and I am now addressing myself to your common sense as jurors upon the subject of what you have to find. You have to find whether or not what is said in that paper is true. Is he guilty or not guilty as indicted?

The third count says that these parties, "Herold, Atzerodt, Booth, Surratt, and Mary E. Surratt, with force and arms, on the 14th day of April, at the city of Washington, then and there made an assault on Abraham Lincoln." These parties then being here in the city of Washington, in Washington made an assault on Abraham Lincoln; and it goes on to say, "The jurors on their oaths do say that the said Booth, Surratt, Herold, Atzerodt, Payne, Mary E. Surratt, the said Abraham Lincoln then and there, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and government of the United States of America."

Now, what is the other count?

That Booth, Surratt, Herold, Atzerodt, Payne, and Mrs. Mary E. Surratt did combine, confederate, and conspire, and agree together feloniously to kill and murder one Abraham Lincoln; and the said Booth, Surratt, Herold, Atzerodt, Payne, and Mrs. Surratt, and other persons to the jurors unknown, not having the fear of God before their eyes, did on the 14th day of April, 1865, with force and arms, at the county aforesaid, in pursuance of said wicked and unlawful conspiracy, in and upon the said Abraham Lincoln, in the peace of God and of the United States then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault."

It differs only from the third in this, that the third count charges that all the conspirators made the assault at that place and that time, and did then and there kill him; while the fourth count charges that the conspirators conspired to do it, and did do it in pursuance of the conspiracy. It ends with saying that they then and there murdered him. Now, the charge in the third and fourth counts is, that these parties murdered Abraham Lincoln then and there. What precedes the final close of the count is simply the inducement: "And the jurors, upon their oaths aforesaid, do say that the said John Wilkes Booth, &c., then and there, in manner and form aforesaid, feloniously, and so on, did kill and murder Abraham Lincoln."

Gentlemen of the jury, what are you trying? Are you not trying John H. Surratt for the murder of Abraham Lincoln? Is there anything else in the case? Is there anything else in the indictment! What is to be your verdict? Guilty or not guilty, as charged in the indictment? How is he charged in the indictment? He is charged in the indictment with the murder of Abraham Lincoln. The only question for you to decide is, Did he commit the murder? Did these parties commit the murder? I am not surprised that my friends on the other side, having found their original theory of the case fail them, should be driven to the extreme principles of the law they have attempted to assert; but I should be surprised, I should be amazed, if they ever get this jury to adopt any such absurd notion. They want to try him apparently for carrying despatches; for being in sympathy with the rebel government; for being in some sort of conspiracy; anything and everything but the charge which we have come here to meet—that of murder. Conspiracy is one crime, murder is another. If we shall conspire to do an act, that is a crime, provided it is illegal. If we do the act, that is another crime. Mr. Bohrer, Mr. Ball, and myself conspire to do some unlawful act; but, before that act is consummated, Mr. Bohrer is indicted for the conspiracy, or retreats, and only Mr. Ball and myself commit the act. Mr. Bohrer can be indicted for having conspired, but he cannot be indicted for doing the act. To conspire is one thing, to act is another. This being the indictment and the crime, what are the principles of law that apply? You have heard the principles read. I shall have occasion to review them. Why have they adopted these principles? When did they determine to enforce them? When did it first suggest itself to them that this extreme necessity was upon them in the case? You recollect, gentlemen of the jury, when Mr. Wilson opened this case to the jury on the part of the government, he looked upon this indictment as a simple indictment for murder, and he said that they would prove the prisoner's complicity in the murder, and his presence here in Washington, helping to do the deed of murder. Was not that all? Did we then hear of any of these novel principles of law announced, which no tribunal in the country had yet had the honor of declaring? No, sirs; it was a simple, plain narrative, exceedingly impressive, filled with enough facts to have convicted this man before any jury in the world. They went on according to Mr. Wilson's programme: they followed out his theory; they attempted to prove that Surratt was here; that he had been in the conspiracy, and they proved that as a circumstance to show that he was guilty, because he had agreed to be

guilty; the presumption being that what a man agrees to do he is likely to do. They showed, or attempted to show, that he was in front of Ford's theatre, participating with Booth in the act; and went through their whole case very smoothly, and completed it. What followed? Why, we needed but an opportunity, as I said the other day, to strike their witnesses, when we laid at their feet a mountain of such corruption as never before infected the air of a court of justice in the United States. One by one they fell as they came. Strand by strand is unwoven this artificially woven chain, which the gentleman says is to bind this party to the body of the crime. It is an iron chain, is it? Aye, iron, but under the light of the truth in this case it is melted. Their case being gone, some new device must be resorted to. What are we to do? is the question they asked themselves. Why, the government of the United States, acting up to the measure of its uniform dignity, would have said we have been mistaken; we have been imposed upon by these witnesses. They have told us falsehoods, which you have established. We discover that they are of infamous character, and have polluted and contaminated the court into which we have brought them. Let the case be decided according to the facts as developed. Such should have been, and such would have been, the language of the United States; but the United States did not happen to stand alone in this case. Others stood beside her. Other gentlemen who had within their hearts that rankling secret of which the counsel speaks, "that will out, and makes men forget their prudence." Others, that had dreams by night less sweet than Sergeant Dye's, and saw visions by day growing stronger and stronger as they advanced from the scene of their crimes to the tribunal before which an eternal God will hold them ultimately responsible. The case must be gained; innocent blood must again be shed to wash out the damning record of innocent blood already shed. The verdict of the jury must vindicate the fearful action that they committed. Then, for the first time, starts up this new doctrine of law. Then, for the first time, changes the policy of the case; and has it not changed? I submit it to you, gentlemen, everywhere: Has it not changed? It has changed, not only once, but it has changed twice, as I shall show you, and illustrate, from the manner of its changes,

Oh! what a tangled web we weave,  
When first we practice to deceive!

I repeat, it has changed not only once, but twice. It has changed in the principles of law, and it has changed in the facts. They put Surratt, as I will show you, on the New York train in Montreal at 3.30 on the 12th, and would have brought him whistling down to Washington by Albany and New York; but the testimony that he was at Elmira became so strong that they could not meet it in the front, and must therefore resort to a flank movement. They therefore put him in Elmira on the 13th, and attempt to bring him from there. They thought they had it all safe then, and they immediately start him out on the 13th in time to reach here on the morning of the 14th, and be shaved by Wood. That was their plan of operations then. But, alas for human devices, there happened to have been a freshet about that time, (of which fact they were ignorant,) which had swept away the bridges, and prevented the running of any night train from Elmira. Gentlemen, you should have talked to your railroad conductors and masters of transportation. Finding they could not get him out of Elmira by any passenger train in the night so as to have him here on the morning of the 14th, they start him here on a special train, which Du Barry says never ran; bring him to Williamsport, and thence carry him on by gravel and construction trains. I must not anticipate, however. I will show you that he never could have got here in time for Wood to shave him, even starting, as they say, at half past ten. I will show you that he could not have got from Montreal to Elmira in time to leave there before ten o'clock at night on the night of the 13th. In their various twistings and meanderings they have



got this case in such a shape that it is almost an insult to an intelligent jury to argue it, for they have not only themselves, by their own witnesses, shown John Surratt's innocence of this murder, but in their attempt to prove his guilt, have rendered his presence here a physical impossibility. This they felt and knew. What was the consequence? Why they say to themselves, "We must get along without having him here. How shall we do it? We cannot place in his hands a telescopic rifle that will reach from Elmira to Ford's theatre. We cannot do that; and as our next best chance, we must go to his honor and tell him that to murder a President is like murdering a King; that it has no accessory; that wherever Surratt was, he is guilty of the murder; and we will further tell his honor that he dare not decide differently; that the voice of the people demands the decision." The voice of the people! Is not that strange language within these sacred walls? What people speak here? The learned and the wise of the past speak through the collected wisdom in the books. The traditions of our ancestors speak from the bench, and the principles that they speak have become established law, and only those. The popular voice stops at that door. What language is this, "To dare a judge," "Defy the court." The learned brother (Mr. Pierrepont) says he is not familiar with our rules of practice. I grant it. He has shown that most conclusively. It may be New York law and New York custom, but it is not the custom of this District. Dare a judge by popular indignation against him! The very sentiment is insulting to your honor, and to the country that gentleman professes to represent. Spotless and fearless is the ermine. Keep it so. Has your honor's conduct in this case, in being complacent, justified this arrogance? I can see no justification of it. Does your honor tremble at the threat? Look at the bulwark of human liberty. See it there; look at these twelve men, and remember Thermopylæ. One man may tremble; the judge may tremble; but see that jury, the like of whom you could not get were you to scour the whole city of New York. They care not for the popular voice one way or the other, when it attempts to interfere with what they regard as their duty. They dare do right. Your honor dares do right. Not as a lawyer, but as a Christian man, I simply dare you to do wrong. Not because the popular voice will approve or condemn; not because there is to be an appeal taken from this tribunal to any meeting in Central Park; but because you have invoked the living God to the justice of your action, and because you stand here free from all men, all prejudice, and all danger, and responsible alone to Him whose justice you are to administer. But, sir, it is fortunate for you, in the aspect in which the learned gentleman has put this question to you, that under our law you do not stand alone responsible for these questions. The jury is specially charged, it is true, with the fact, but they are also charged with the law. You are to instruct them by your learning, your wisdom, and your authority. You are to advise them; but they must know, and they must believe. My learned brother on the other side (Mr. Carrington) seemed to feel that it was necessary to press you, gentlemen, very hard upon your obligation to follow the instruction of the court. I have never heard him say that before. Other cases have been tried before this, but I have never heard him talk so earnestly to the jury about being obliged to follow the instructions of the court. Why is he so solicitous in this case? Does he think you won't dare do right? He told you, gentlemen of the jury, that you were sworn to try this case according to the law and the fact, and that you must take the law from the court; and if you departed from the law so given you, you would be perjured. I tell you it is no such thing. If you find a verdict of guilty, and do not believe the party to be guilty in every particular, in your judgment, and in your hearts, then you are perjured men, I care not what the court's instruction is. Has my learned friend read the oath? I don't think he has. Mr. Clerk, will you be kind enough to read it?

The clerk then read the oath.



Where is the law? Why did you tell the jury what you did? The language is, "And a true verdict give according to the evidence." My learned brother has had that oath ringing in his ears for six years. Why didn't he tell you what it was. You are, gentlemen, to find a verdict according to the evidence. What sort of a verdict are you to find? Guilty, or not guilty. That is all you can say. You cannot say "Guilty, under the court's instruction," or, "Not guilty, under the court's instruction." If you say guilty, you say "Guilty as indicted;" upon your consciences resting the weight of the guilt. If your verdict should be "guilty," it will be followed by blood, for you see that there is no mercy anywhere in those that represent the government. If your verdict is guilty, then indeed you look upon a dying man. Upon your consciences will rest the responsibility of that verdict. And let me say to you, gentlemen of the jury, that on that awful day when you shall stand before the last tribunal to be judged, and the All-seeing Eye shall look into your hearts and ask you why you found this verdict of guilty, think you He will hearken if you say, "The judge's instructions made me do it." He will say to you, "Were you not free agents, with minds and intellects, sworn as a jury in a free country? Were you not told by the counsel for the prisoner at the bar that it was your duty to find this verdict according to your judgments, your consciences, and didn't you disregard him? If Judge Fisher's instructions made you find it, bring Judge Fisher." Where is the judge? Think you he will step forward and say, "I will take the burden." No, gentlemen. Let me say to you now, that by the laws of the land, and the laws of God, the responsibility is on the judge to instruct you rightly; to guide you correctly; to give you wise and judicious counsel; not as mandatory and binding on your conscience, but as advisory to your judgment, to enlighten the pathway you are to tread in your investigation. We shall ask no instruction, and desire none. The law of murder is too plain to need any, and you, gentlemen, are too intelligent not to understand it. Indeed, if we did desire some explanation, we would prefer to give it in the way of argument, rather than trust it to the distinguished judge who presides. We would trust it to argument, because with regard to these plain questions all men can comprehend what the law is. We would prefer trusting it to the weight of our own character with the jury, as men and lawyers. But all this is not merely speculative with me, gentlemen. Let me see. I read from 111 Johnson's cases, p. 365. Says Chancellor Kent:

"In every criminal case upon the plea of not guilty the jury may, and indeed they must, unless they choose to find a special verdict, take upon themselves the decision of the law as well as the fact, and bring in a verdict as comprehensive as the issue, because in every such case they are charged with the deliverance of the defendant from the crime of which he is accused. The indictment not only sets forth the particular fact committed, but it specifies the nature of the crime. Treasons are laid to be done traitorously, felony feloniously, and public libels to be published seditiously. The jury are called to try, in the case of a traitor, not only whether he committed the act charged, but whether he did it traitorously; and in the case of a felon, not only whether he killed with *malice prepense*, or took the property *feloniously*. So in the case of a public libeller, the jury are to try not only whether he published such a writing, but whether he published it *seditiously*. In all these cases, from the nature of the issue, the jury are to try not only the *fact*, but the *crime*, and in doing so they must judge of the intent, in order to determine whether the charge be true, as set forth in the indictment."—(*Dagge on Criminal Law*, c 1, c 11.)

As the jury, according to Sir Matthew Hale, assist the judge in determining the matter of fact, so the judge assists the jury in determining points of law; and it is the *conscience of the jury*, he observes, that must pronounce the prisoner guilty or not guilty. It is they, and not the judge, that take upon them his guilt or innocence. It is the conscience of the jury that must pronounce the

prisoner "guilty or not guilty." It is they, and not the judge, that take upon them his guilt or innocence.

Your conscience must be satisfied. You must go forth from this room, if you would have peace in this life hereafter, and hope in the world to come, with consciences that will say to you, "Well done, thou good and faithful servant." To do that your verdict must respond to the dictate of your conscience as against the world. I have been led into these remarks by the extraordinary address of my learned brother on the other side.

Now, may it please your honor, and gentlemen of the jury, I beg to call your attention to the propositions of law submitted by counsel on the other side, and to lay before your honor, for your consideration, some authorities which, I think, will so clearly illustrate them, that there will be no difficulty for either judge or jury.

Mr. Carrington, in laying down his propositions, does not venture to go as far as the learned counsel with whom he is associated. He is wiser. He will not trust to the pinions of Icarus; and let me say here, that my learned brother will find, in the course of his voyage over this new sea where he has gone to explore, that he will experience the same sad fate of that mythological character—that his wings will be melted in the midst of his explorations. But Mr. Carrington, although more modest, does not yet meet the measure of professional wisdom which, I think, his judgment would have meted out, if other feelings had not prevailed.

I have nothing to say regarding the first and second propositions. Let me read the fourth proposition:

"If the jury believe from the evidence that President Lincoln was killed as aforesaid, in pursuance of said conspiracy of which the prisoner was a member, he being either actually or constructively present at the time, it is a legal presumption that such presence was with a view to render aid, and it lies in the prisoner to rebut such presumption by showing that he was there for a purpose unconnected with the conspiracy."

It may be that I am not capable of comprehending the subtlety of the learned gentleman, but I must say that I do not understand that proposition.

"It is a legal presumption that such presence was with a view to render aid." The law upon that point is plain, and is this: If it be proved that the prisoner was a member of a conspiracy, the fact that he was a member goes in evidence to the jury as a circumstance to show that he participated in executing the design of the conspiracy; but, outside of that fact, you have to prove that he was actually present; and if you cannot prove that he was actually present, you must prove that he was so near as to render material aid, and that he was there for that purpose.

That is the rule of law, and all my remarks will be directed to that point. In the first instance they not only attempt to prove that he was here, but, by Sergeant Dye, that he was participating. The proof was very good. Then they went on to prove that he was here, and their purpose is to argue to the jury that if he was in Washington at the time of the murder, they may presume that he was present aiding and abetting. I grant them that. It is an element of evidence for the jury; but to say that it is a presumption of law, with all due respect to my learned brothers, is to say that which is absurd in law. The question as to whether he was present, aiding and abetting the murder, is for the jury. If they prove that he was a member of the conspiracy to do the murder, that is an element of evidence for you, gentlemen, and upon which you may reason that he was there, but you must come to the conclusion that he was there actually present during the murder, or at least near enough to help the man to do it, or receive the murderer with the warm blood on his hands, and help to protect him in flight. That is the rule of law, and about which there can be no doubt.

Now, I come to this novel specimen of jurisprudence. Says Judge Pierpont, in his first proposition: "Each confederate in the conspiracy is liable for the acts of every co-conspirator, and the declarations of *each* may be given in evidence against each other; and though the conspiracy may have been formed years before the prisoner ever heard of it, yet, having subsequently joined in the conspiracy, he is in all respects guilty as an *original* conspirator."

Well, now, there is something in that that is true; but there is a main element that they want obscurely fastened on, that is not true. What is this? That each confederate in the conspiracy is liable for the acts of his co-conspirators. That is not true. He is liable for the acts of his co-conspirator where the act of the co-conspirator is in the furtherance of the general project of the conspiracy to this extent, that the act may be given in evidence against him, in order to prove him guilty of some particular act which he did; but he is not liable for the act that somebody else did; and that is the case in 17 Wheaton, as I will show your honor. Whatever one conspirator does after the conspiracy is established may be given in evidence against his co-conspirator; but his co-conspirator cannot be indicted for the particular act of his confederate, unless he did it himself. It goes in evidence as a part of the general plan to develop the movements of the general body; but it is not a substantive matter of criminal allegation, except as against the party who did the act. If it is a conspiracy for a misdemeanor where there are no accessories; a different rule will apply.

What is the next proposition?

Second. That when several persons are finally confederated in a conspiracy they are like one body, and the act of each hand, the utterance of each tongue, and the conception and purpose of each heart, (touching the common plan,) is the act of each and all, and every one of the several persons forming the confederate body is responsible for the acts, sayings and doings of each and of all the others.

Well, that is the same as the other proposition, only in different words. Why didn't you indict him at once as a corporate body?

The third is:

"That a conspiracy to kidnap, abduct, or murder the President of the United States, in time of rebellion or other great national peril, is a crime of such heinousness as to admit of no accessories, but such as to render all the conspirators, their supporters, aiders, and abettors, principals in the crime. That such is the common law of England, and is the law of this country."

I must confess that I listened to that proposition yesterday with infinite amazement, not to say with some amusement, and a mingled pleasure. With amazement, that a lawyer of the reputation of the gentleman should advance a doctrine such as that; and with pleasure, when I felt that he would not have perilled his reputation by such a doctrine, except as a last resort for a desperate cause. Your honor, he says, dare not decide against it. My learned brother is a bold man. He dares to confront the profession after announcing it. He is a brave man, for it takes a brave lawyer to do such a thing as that. What does he say? I read from the Associated Press report of his remarks, which is a mere synopsis, of course. It will be observed that, in this report, the expression to the effect that the court "dare not decide against the principle he enunciated" does not appear. "It is the first time," said Mr. Pierpont, "that an opportunity was ever afforded to test the fourth point, for the fact seems to be lost sight of that this whole conspiracy was for the purpose of overthrowing the government; but neither the court nor jury could escape from that view of the case, and if this was considered only as an ordinary murder, the country would hold both court and jury responsible. It was a monstrous doctrine to enunciate, that if an abduction only was contemplated, and a murder ensued, that, therefore, the conspirators to abduct were not guilty of murder."

The learned counsel maintained that proposition by this system of logic:



The crime was so heinous that there could be no accessory; and it was thus heinous because the man killed was a President. He tells your honor that it is your extraordinary privilege to enunciate from the bench, for the first time in America, this doctrine. Well, sir, he may regard it as a privilege; but, as the representative of this young man before your honor and this jury, I will say that I do not want you to be exercising privileges, or decorating your name with the enunciation of new principles. I want you to exercise the duty of determining the law as it is, not to announce law that has never heretofore been announced in the country. He says it is the law of France, and it is the law of England. As I said the other day, there is a class of gentlemen in the United States who, since the commencement of our late war, seem to have entirely lost sight of all the early and glorious traditions of our country, and abandoned all love for constitutional liberty, and become dazzled with the prospective glory of stars and garters, titles of nobility and rank, crowns and diadems, dancing in mazy twistings before their eyes. There is a class of men like that, your honor, and it may be that in the days of republican liberty we will have to meet that class of men in order to preserve our Constitution. Ideas of monarchy and rank are growing among the people. Why, the very dead of the Revolution, of the last war with Britain, and of the late war for freedom and constitutional independence, rise to condemn the gentleman and to repudiate his doctrine. Give me the Constitution of my country and her ancient liberty, undimmed by the darkness of a single declaration of title or of honor. The President is a simple American citizen, the representative of the free people of America. The monarchy of this country, grand and sacred beyond the touch or the reach of an assault, is the embodied will of the people in the Constitution of the United States; our only emperor, our only king, is the Constitution of the United States. It is the only sovereign of a republic. It is the supreme law of the land, and when that ceases to be the supreme law of the land, and we attach to individuals in office special privileges, special powers, and a special grace, we take away a part of the sanctity that belongs to that Constitution to give it to men. Sir, I will never do it. If I might venture to use the language of the gentleman, and did not feel that it was transcending the propriety of forensic discussion and discourse, I would say your honor dare not do it. No man feels more keenly than I do the enormity of this great crime; the disasters that it brought, and the disasters that it was likely to bring, committed by a parcel of inconsiderate and half-run-mad individuals. But yet, sir, the consequences of a crime cannot change the character of the crime in contemplation of law. If a captain at sea, with one passenger on board of his vessel, scuttles his ship and escapes from it, he is just as guilty as the captain of a steamship with a thousand lives who scuttles his vessel and sends the whole thousand to eternity. It is murder in the one, and it is murder in the other; and although the consequences of this crime might have been disastrous beyond the killing of an ordinary individual, yet, in contemplation of law, the killing was but the killing of an individual, and the charge is murder, and nothing but murder. But, says the counsel, there are no accessories. What does he mean? There is but one crime known to the law to which there are no accessories, and that is treason. Are you trying us for treason? Gentlemen of the jury, are you sworn to try this case for treason? What is the law of treason? A party indicted for treason is entitled to a list of his witnesses. If I am indicted for treason, why don't you furnish me with a list of that battalion of infamy that you brought into court? You indict me for treason, and yet you deny me the constitutional right which I am granted by the Constitution of the United States in the case of treason. What more am I entitled to? To have the overt act of treason charged in the indictment proved by two witnesses. You indict me for murder, and one witness is enough; in an indictment for treason I must have two. Treason, your honor, in its practical application to an individual where he is indicted for it, has two features



that mark it as distinct from every other crime. One is, that you are entitled to have a list of your witnesses; and the other is, that you must prove the act by two witnesses. Why did not you give me a list of my witnesses when I called for them? If you meant to call this treason, which you made murder on your record, and meant to hold me responsible for treason, when I called for that list, why did you resist it, keeping back the secret purpose to hold me responsible for treason when you denied me the privileges that the law tells me I am entitled to? Sir, it was dishonest. It is an attempt to trick a man out of his life. Courts of justice were not made to play tricks upon individuals, and hang them by chicanery. You talk about public sentiment. The American republic would revolt at such an idea, and the whole heart of the country would condemn such a piece of conduct.

The sixth proposition sets forth :

“That the personal presence of the prisoner in Washington is not necessary to his guilt in this case. He could perform his part in the conspiracy as well at Elmira as at Washington, and be equally guilty at one place as at the other. That if he left Montreal in obedience to the order of his co-conspirator Booth, to aid in the unlawful conspiracy, it matters not whether he arrived in time to bear his allotted part or not. Being on his way to take part, any accident which may have delayed him does not change his guilt.”

“He could perform his part in the conspiracy as well at Elmira as at Washington?” Common sense would suggest, then, in regard to that, that if the principle of law were true, the counsel ought to have put into it that he was in Elmira for the purpose of performing his part. If he happened to be in Elmira for something else, does the learned gentleman mean to contend that he was guilty, even on his own bad law? It was necessary to say that he was there for the purpose of performing his part. Was he there for that purpose? Does the gentleman mean to argue that he was there participating in the conspiracy? Does he mean to contend that that was his allotted place? Turn back to these minutes and blush for shame, gentlemen, if that is your purpose, for when we offered to prove why he went to Elmira, and what he was doing there, you told the court that there had been no proof on your part as to what he was doing there, and, therefore, we could not offer any; and so the court decided. If you mean to contend that he was in Elmira performing his part of the conspiracy, then I say you have tricked us again, for you remember, gentlemen of the jury, that we had General E. G. Lee on that stand, prepared to prove what Surratt went to Elmira for, and what he was doing in Elmira, and to show that it had nothing to do with this conspiracy, and the court said: “You cannot prove it, for the reason that there is no charge that he was in Elmira helping the conspiracy, and, therefore, it is not necessary to show it.”

If there had been one scintilla of proof in, or if there had been an intimation from the counsel that they intended to claim, that he was in Elmira helping the conspiracy there, and doing the allotted part assigned him, then the court would have said: “Gentlemen, that being part of the charge, you may disprove it, and give the evidence you propose.” But they disclaimed it then, and it is too late now. Too late for law, and too late for honor. Let us deal fairly by this young man, and even if the reputation of Joseph Holt should not have the vindication of innocent blood shed by judicial murder, let us do justice still. I will waste no more time on these propositions of law. That is upon the consideration of their propositions. I come now to the authorities of my own. The propositions of law submitted by the counsel on the other side gave rise to the consideration of the question as to who are principals, and who are accessories; and that question subdivides itself into another question, to wit: Who are principals in the first degree, and who are principals in the second degree? Your honor is perfectly familiar with these distinctions in the law, and you are also perfectly familiar with the broad distinctions that have

been observed for time out of mind. To be a principal in the first degree involves the commission of one crime; to be a principal in the second degree involves the commission of another crime; to be accessory before the fact involves the commission of a third crime. A principal in the first degree can never be a principal in the second degree, and a principal in the second degree can never be a principal in the first degree, and the accessory before the fact can never be a principal in the first or second degree.

Now, I ask the attention of your honor, as also your attention, gentlemen of the jury, while I read a few passages from that great authority in criminal law, "Hale's Pleas of the Crown." I read from page 438, vol. 1:

"To make an abettor to a murder or homicide principal in the felony there are regularly two things requisite: First, he must be present; second, he must be aiding and abetting *ad feloniam et murdrum fieri homicidium*.

"If he were procuring or abetting, and absent, he is accessory in case of murder, and not principal, as hath been shown, unless in some cases of poisoning, *ut infra*."

Presence constitutes the distinction between accessory and principal. He who strikes the fatal blow is the principal in the first degree. He who stands by and sees it done, aiding and abetting it, and ready to help it, if help should become necessary, is a principal in the second degree, and commits the same degree of moral guilt which the principal in the first degree has committed. But if, instead of being present, doing the deed, or present aiding and assisting another to do it, and ready to give him material help in doing it, he simply counselled it to be done, employed a man, paid money to do it, and gave him weapons with which to do it, and he does it in his absence, the man who employed the other to do the deed is accessory, but not principal. There is the difference. The principal must be present; the accessory is absent. The accessory may be just as guilty as the principal, but still, not being present, he is not principal, and if accessory, can only be indicted as accessory. I will show you now from the books that I have stated the principle correctly. I have already read it to you. There are two requisites to make a principal, says the author. The first, that he must be present; and the second, that he must be aiding and abetting the murder.

The COURT. Mr. Merrick, let me see if I have a correct understanding of your position. I understand you to hold that he who strikes the blow causing the death is the principal in the first degree, and he who is present giving countenance and assistance, though not participating in the blow, is a principal in the second degree, and that he who counsels, aids, or assists, but is not present at the time of the giving of the blow, is merely an accessory.

Mr. MERRICK. Yes, sir.

The COURT. I understand you to say further, that he who strikes the blow, being principal in the first degree, is indictable for one crime, and he who is present giving aid at the time of the infliction of the blow is indictable for another.

Mr. MERRICK. No, sir. The moral guilt is the same; but the form of the indictment is different.

The COURT. Do you hold that they cannot be joined together?

Mr. MERRICK. Oh, no, sir; I do not mean to make that point. I am not going to set up anything that is not law. My reputation is not big enough for that.

Mr. BRADLEY. They may be joined together, or they may be indicted separately.

Mr. MERRICK. Certainly.

I will read to your honor from Hale—page 515—quite a clear exposition of this principle:

"By what hath been formerly delivered, principals are in two kinds: princi-

pals in the first degree, which actually commit the offence; principals in the second degree, which are present, aiding and abetting of the fact to be done.

"So that regularly no man can be a principal in felony unless he be present, unless it be in case of wilful poisoning, wherein he layeth or infuseth poison with intent to poison any person, and the person intended or any other takes it in the absence of him that so layeth it; yet he is a principal, and he that counselleth or abetteth him so to do, is accessory before.—(*Co. P. C.*, cap. 64, p. 138.)

"Who shall be said present, aiding, and abetting in case of felony hath been sufficiently declared in cap. 34, in case of murder, in cap. 48, of burglary, in cap. 46, in case of robbery, and need not again be repeated.

"Accessories again are of two kinds. Accessories before the fact committed, and accessories after.

"An accessory before, is he that being absent at the time of the felony committed, doth yet procure, counsel, command, or abet another to commit felony, and it is an offence greater than the accessory after; and, therefore, in many cases clergy is taken away from accessories before, which yet is not taken away from accessories after, as in petty treason, murder, robbery, and wilful burning."

Now, your honor, and you, gentlemen of the jury, will observe that here is one exception, where a party may be a principal, and yet not present. The counsel yesterday, in his address to the court, asked me to tell him something about what jurisdiction could take cognizance of the crime committed by an individual who started a locomotive out of Maryland and run it into the District of Columbia, where it run over and killed a number of children, the man remaining in Maryland. Why, sir, the man is a principal in the second degree. He is a principal to the murder. If I am in the house of Mr. McLean, for instance, [a juror,] and while partaking of his hospitality prepare poison for him, and put it where I know he will get it, and then go to New York, and he one week afterwards takes the poison and dies, I am the principal. And why? Because I am present with the material drug that did the deed. My hand is still there. No other will has come between me and the act. So, if I start a railway car, and it goes by the impulse of the steam, under the guidance of my will, who first put it in motion, it being a thing without volition and without consciousness, I am responsible for what it does; because my will is infused into it, and my consciousness is in it. It being a material thing, without will of its own, it goes by my will; I breathe life into it, and if death follow, my life must answer for it. But how is it with an individual? I want to commit a murder upon Mr. Bohrer, [a juror;] I employ a gentleman in town to kill him, giving as compensation for the deed a thousand dollars. I ask him, "When are you going to do it?" He replies, "I will do it next Saturday." "Very well," say I, "here is your money. I am going to New York." I go to New York, and the man kills Mr. Bohrer. In that case I am accessory before the fact, but not a principal. And why? Because the gentleman that I employed to do the deed was a reasonable creature, having a consciousness of his own, and it was optional with him whether he did it or not. He had a will of his own, and although my agent, he was nothing more than my agent. I being absent he must be hung as principal in the first degree, and I tried as accessory. But in the other cases there was no principal to try. You could not try the locomotive, and you could not try the poison. In order to have an accessory there must be a principal which you can try. There must be a principal which is responsible. The locomotive is not responsible; the poison is not responsible. Whenever you employ a rational creature to commit a crime—one who is responsible and can be tried—and the deed is done, that creature becomes principal, and he being the principal, I become the accessory. That is the law.

I will read a little further.

I next read from page 615:

"In case of murder, he that counselled or commanded before the fact, if he



be absent at the time of the fact committed, is accessory before the fact, and though he be in justice equally guilty with him that commits it, yet, in law, he is but accessory before the fact, and not principal. A. sets out a wild beast, or employs a madman, to kill others, whereby any is killed. A. is principal in this case, though absent, because the instrument cannot be a principal."—*Dalt.*, cap. 108, (§.)

These principles lay at the very foundation of the English law, and I apprehend that your honor scarcely sits on that bench to attempt to uproot that ancient and well-established inheritance of Englishmen and Americans. The learned counsel would ask you to abolish all distinction between accessories and principals. Sir, I humbly submit that it cannot be done. I will now trace the principle as it has been brought down from the courts of England, and then follow it through the courts of the United States. I refer your honor to the case of *Rex vs. Soares*, in Russell and Ryan's Crown cases.

This was the case of *Rex vs. Samuel Soares, William Atkinson, and John Brighton*:

"The prisoners were tried before Mr. Justice Le Blanc, at the Winchester Lent assizes, in the year 1802, on an indictment charging them with feloniously uttering and publishing, as true, a certain false, forged, and counterfeit bank note for £5, knowing it to be forged, &c., with intent to defraud the governor and company of the Bank of England.

"There were the other usual counts for forging and for disposing of and putting away the note with the like intent, and similar counts stating the intent to be to defraud the person to whom it was offered in payment.

"It was proved that the prisoner Brighton offered the note in question in payment to one Henry Newland, at Gosport. The other two prisoners, Soares and Atkinson, were not with Brighton at the time he offered the note in payment, nor were they at the time in Gosport; but both of them were waiting at Portsmouth till Brighton should return to them, it having been previously concerted between the three prisoners that Brighton should go over the water, from Portsmouth to Gosport, for the purpose of passing the note, and when he had passed it should return to join the other two prisoners at Portsmouth. All the prisoners knew this was a forged note, and had been concerned together in putting off another note of the same sort, and in sharing among them the produce.

"The counsel for Soares and Atkinson objected, on their behalf, that on the above evidence they were not guilty as charged by the indictment, not being present at the time that Brighton uttered the note, nor so near as to be able to aid or assist him, and that they could be charged only as accessories before the fact.

"The jury found that the forged note was uttered by the prisoner Brighton, by concert with the other two prisoners, and found them all three guilty.

"The prisoner Brighton was left for execution; but judgment was respited as to the other two, the counsel for the bank desiring to have an opportunity of arguing it, if, on consideration, they should think the indictment maintainable against the two prisoners who were not present.

"This case was taken into consideration by all the judges, on the first day of Easter term, 1802; and again, in the same term, on the 29th of May, 1802, when they were all of the opinion that the conviction was wrong; that the two prisoners were not principals in the felony, not being present at the time of uttering, or so near as to be able to afford any aid or assistance to the accomplice who actually uttered the note, and they thought it too clear to order an argument on it; an application was accordingly made to the Crown for a pardon."

As far back, then, as 1802, all the judges of England took into consideration this principle in a case identical in character with the case at bar; and I here defy the learned counsel on the other side to find a single case in the history of



English law controverting the principles of that great father of English jurisprudence, Lord Hale, which principles, as laid down by him, I have read to your honor. Sir, there is a uniform and unbroken current from the earliest dawn of the law to the present time in England. There is not a ripple on the surface; there is not pollution in any drop of the water that flows through that current that would justify a lawyer for one single instant in attempting to controvert the principle. I refer your honor to another case in 1806, the case of *Rex vs. Davis and Hall*, page 113:

“This case was tried before Mr. Baron Graham at the spring assizes, for the town of Nottingham, in the year 1806. The indictment charged the two prisoners with uttering a forged promissory note, of the Stourbridge and Bromgrove bank, for ten pounds, purporting to be signed by Thomas Biggs, for Francis Rufford and Thomas Biggs, knowing it to be forged, with intent to defraud the said Francis Rufford and Thomas Biggs, and also one Martin Roe, to whom the note was uttered.

“The case was clear as to the prisoner Davis; the only doubt was as to the part taken by the prisoner Hall. It appeared that Davis, Hall, and another man, who escaped, came together on horseback to the Sun Inn, at Nottingham, on the 30th of November, 1805, about two o'clock in the afternoon, and put up their horses in a three-stalled stable. The man who was unknown, went first out of the yard of the inn, and Davis and Hall went out together a short time afterwards. At about half past four o'clock on the same day, Davis came alone to the shop of one Martin Roe, and bought some silk handkerchiefs for the sum of £2 18s., and paid for them by the note in question, receiving in change £7 2s., part of such change being a five-pound note, and the rest silver and small gold, and Davis then left the shop. Shortly after, Roe, having suspicion as to the note received of Davis, sent his shopman in search of him, and went himself to a Mr. Mills, another shopkeeper, in a place called Long Row, adjoining the market-place, where Davis was found, having been detained by Mr. Mills, to whom he had uttered another note of the same kind as that paid to Roe, and who suspected the note to be forged. Davis, on being expostulated with, affected indifference, and said that if Roe would go with him he would return the goods and the change. Both the notes were returned to Davis, and he walked out of Mills's shop, accompanied by Roe, and proceeded down the Long Row straight to the Sun Inn. Mills and Kilbourne, a constable, followed close behind. In passing a place called Thuxland's passage, which was about two hundred yards from Mills's shop, and about one hundred and fifty from the shop of Roe's, and about twelve yards from the Sun Inn, Davis stepped from the carriage road to the causeway, and there spoke to a man who was standing on the causeway, and to whom he came quite close, putting his face close to him. This man, who afterwards turned out to be the prisoner Hall, then joined Davis and passed together with Davis and Roe, to the Sun Inn, and entered the yard, when Kilbourne, the constable, seized Davis and instantly handed him over to the custody of Mills, in order to pursue Hall, who ran up the yard towards the three stables, and was apprehended by Kilbourne just as he got to the stable door. Kilbourne lost sight of him for a moment, when he turned a corner almost close to the stable door, which was then open. Under the horse which was furthest from the stable door was found a handkerchief wrapped up as a bundle, and it was proved that a person from the doorway might have thrown it over the sides of the stall to the place where it was found.

“The bundle was secured and produced in court. It contained Stourbridge and Bromsgrove notes of five guineas and ten pounds, to the amount of £286, all of the same plate, being printed checks, filled up with the checks, sums, and signatures of the firm and entering clerks, in the same manner as the note in question. The whole was proved to be forged, as well as the two notes uttered at Nottingham, and several others uttered by Davis at different places, on his way from Birmingham to Nottingham.

"It appears that the prisoners had affected ignorance of each other, but their intercourse at Birmingham and at the inn in Nottingham was clearly proved. The time which elapsed between Davis's uttering the forged note at Roe's shop and his being found by Hall at Thuxland's passage was about fifteen or twenty minutes.

"It further appeared that on the 17th of November the office of a Birmingham stage coach had been broken open, and a parcel of blank checks, which had been sent from London, directed to the Bromsgrove and Stourbridge bank, had been unpacked, and many blank checks of the same kind with those produced had been stolen.

"Upon this evidence, the only doubt being as to Hall's concurrence in the act of uttering the forged note in question, the learned judge left it to the jury to consider whether from the circumstances stated they were not satisfied, not only that the prisoner came with the concerted purpose of putting off these notes at the time of the altering of the note in question so disposed, and so near at hand as to be willing and ready to assist in the putting it off, or to favor Davis's escape in case of detection.

"The jury found both the prisoners guilty, upon which a question was reserved for the opinion of the judges, viz: whether this evidence was sufficient to affect Hall as a principal in the uttering of the forged note in question.

"In Easter terms, 28th April, 1806, all the judges except Lord Ellenborough being present, the conviction was held wrong as to Hall, he not being to be considered as aiding and abetting."

Could you have a stronger case, your honor? Two parties conspire to utter a forged note. They go to the town together. They put up at an inn together, and one of them utters the note, but the other not being present, or so near as to give material aid, was held not to be a principal. This was decided in 1806.

I next refer your honor to page 249; to the case of *Rex vs. Babcock et al.*:

"This was the case of *Rex vs. William B. Babcock, Robert Brady, and Sylvester Hill*. The prisoners were tried before Mr. Baron Graham, at the Old Bailey June sessions, in the year 1813, upon an indictment, the first count of which charged them with forging and procuring to be forged, on the 5th of September, 1812, an order for the payment of money.

"NOTE.—If several plan the uttering of a forged order for payment of money, and it is uttered accordingly by one, in the absence of the others, the actual utterer alone is the principal."

*Rex vs. Patrick Kelley*:

"The prisoner was tried and convicted before Mr. Justice Bayley, at the summer assizes for Carlisle, in the year 1820, of stealing two horses.

"It appeared in evidence that the prisoner and one Whinroe went to steal the horses; Whinroe left the prisoner when they got within half a mile of the place where the horses were. Whinroe stole the horses and brought them to the place where the prisoner was waiting for him, and then the prisoner and Whinroe rode away with them.

"The learned judge thought the owner's possession was not destroyed by Whinroe's theft, and that the prisoners' joining and running away with the horses might be considered as a new larceny; but, upon adverting to the case of *Rex vs. King*, before the judges in Easter term, 1817, he thought his first opinion wrong, and reserved the case for the consideration of the judges.

"In Michaelmas term, 1820, the judges met and considered this case. They held the conviction wrong, being of the opinion that the prisoner was an accessory only, and not a principal, because he was not present at the original taking, extending only to the offence, and that they should be detained till the next assizes, to be tried as accessories before the fact."

I now refer your honor to the case of *Rex vs. Wm. Stewart and Ann Dickins*.

The prisoners were tried before Mr. Barron Garrow, at the Warwick Lent assizes, 1818, for disposing of and putting away a forged note of the Bank of England.

A witness, of the name of James Platt, stated that he had agreed with the prisoners for the purchase of a quantity of forged Bank of England notes, for which he paid, and that he attended on several different days to receive them. At length, by appointment, he went to the house of the prisoners. When he saw the prisoner Dickins, she informed the witness that Stewart was gone to get ready for him. In about half an hour Stewart came in, and told the witness they were ready for him. Stewart desired Dickins "to go up yonder," and that he and Platt would meet her "at the old spot." Stewart and Platt, the witness, then went to a public house about a mile off. Dickins came to them there, and beckoned them out of the house. The prisoners conversed together apart, and then came to Platt. Stewart said to Platt, "You see Ann there, whom you have seen at our house; she will deliver you the goods, and I wish you good luck." The prisoners Stewart and Dickins were then both together. Platt bid them good-bye, and went to the woman whom the prisoners called Ann, and Ann and the witness walked together a short distance along the road, as there were strangers passing. After a short time Ann gave Platt different parcels out of her reticule. Platt then left her, and went to an inn and opened the parcels, which were found to contain the forged notes. The witness counted and marked them, and delivered them to the chief constable. It was not more than three minutes after Ann was pointed out by the prisoner Stewart before she delivered the goods to Platt, and she was at a distance of about one hundred yards from the prisoners when she was so pointed out. The witness, Platt, did not know whether the prisoners were or were not in sight when Ann delivered the notes to him, nor which way they went.

Reynolds, for the prisoners, contended that upon this evidence the prisoners could not be convicted on an indictment charging them as principals; that the evidence went to charge them only as accessories before the fact to a felony by the woman called Ann.

The learned judge told the jury that if they were of the opinion that the delivery was by Ann on her own account, though the prisoners might have procured it, they ought to find them not guilty on this indictment. But if they were satisfied that Ann was brought to the place by the prisoners, for the purpose of delivering the notes which they had agreed to furnish, and the price of which they had received, and that the delivery by Ann was of goods (so called) on their account, and in completion and satisfaction of their agreement, then he thought the case was, in point of law, made out against the prisoners.

The jury found the prisoners guilty, and stated that they considered Ann as acting merely in the manner suggested in the latter observations. But judgment was respited in order that the opinion of the judges might be taken on the point.

In Easter term, 1818, the judges met and considered the case. They held the conviction wrong. All of the judges held the opinion that it was clear that the woman Ann was a guilty agent, and the prisoners were only accessories before the fact. They directed that the prisoners should be recommended for a special pardon.

What becomes of the learned gentleman's principle, that if Surratt started from Canada in obedience, as he says, to the summons of Booth, but did not get here, that he is responsible? Is what I have read the law of the land, or are we to have some new doctrine to be first promulgated in this trial, in order to secure, by some trick, the judicial murder of this poor boy? I ask your honor for the law of the land. It is the inheritance of American citizens. We brought it from England when we came here, and we kept it pure against her tyranny and her devices for our misfortune. It is, indeed, the shield against wrong and oppressions. I love it, and I honor it. Educated in it, I will never do it wrong



by straining any of its principles—at least never against the charities of a Christian heart. Keep it, your honor, as long as you sit on that bench, free from the impurities by which you are now sought to desecrate it. Let it stand as it has ever stood, firm as a rock in mid ocean, undisturbed by the tempests, however violent they may beat against it, however high may be dashed the political sea by the swelling of men's bosoms and the contest of their passions. Heretofore that great common law has stood unshaken and undisturbed, and the torrent of waves has been thrown against its breast only to be dashed back in frothy insignificance. Let it ever thus stand.

I have now shown your honor that from the earliest days down to the latest in England this principle has been recognized, and the learned gentleman can find no case contravening it. What will he do? He tells me that by the law of England, to kill the President of the United States is so heinous a crime that there are no accessories. Can he find a parallel case in England? Was anybody ever tried there for killing the President of the United States? No, sir. What will he do? He may find a case for compassing the King's death. Has the President of the United States ever had his temples pressed with a crown? Is he the state? He says he can find an authority in France. I grant it. To imagine the death of Louis Napoleon, by the laws of France, is treason. Is it treason here to imagine the death of Andrew Johnson? Is it treason to wish his death? If it be, then when your grand jury meets, charge them to indict Thaddeus Stevens and all his corps. [Sensation.] No, sir; it is not treason. We can wish what we please in this free land, and public men are open to the freest and severest criticism. If in the Corps Legislatif an individual passes censure on the Emperor, what is the consequence? The President stops him, for the sanctity of the imperial person will not bear censure of a private individual. How is it here? Here, thanks be to God, we have freedom of speech, with a restored Constitution, temporarily suspended by usurping power, but once again the birthright of Americans. He may find you a case in France, and he may find you a case in England, where imagining or conspiring the death of the sovereign is treason; but that is not a parallel case. The pride of our country is, that neither the anointed of men nor the anointed of the Lord claim political power by virtue of the anointment.

Political power flows from the people, and is the gift of the people. Will he find me a case in England or in France where, except in revolutionary times, you may impeach the emperor or the king? To make the cases parallel you must show some disparities to affect the people in the one country that affect them in the other. In France, can the Corps Legislatif impeach the Emperor? They did impeach Charles—aye, sir, and they impeached Louis, and the head of each answered to the impeachment; but it was the impeachment of passion, and not the impeachment of law. Does the learned gentleman think he could induce a member of the Corps Legislatif to introduce a motion to impeach the Emperor? Could he have an investigating committee to sit for almost twelve months out of the year, seeking for causes of accusation against the Emperor? No, sir; these are republican principles, not imperial. There is no sanctity about the person of our President. The pride of our free institutions is that the President of the United States is like a private man. He is a servant, crowned by the hearts of the people, and sustained by them. He claims no fictitious authority; no fictitious sanctity. The line of his duty is marked by the Constitution. The extent of his power is defined by law, and his relation to the people is well ascertained. If he cannot find in England any authority to controvert the principles I have laid before your honor, can he find any in America? I will show your honor that in the United States we have repeated again and again, ratified and confirmed the principles which I have been reading from the English law.

I now desire to refer your honor to the case of the Commonwealth vs. Knapp, (9th Pickering, pp. 517, 518.)



In that case, gentlemen of the jury, there was a conspiracy between the Knapps and Crowningshield to murder an old gentleman living in Massachusetts, by the name of White. Crowningshield was to perpetrate the murder, and the Knapps were to pay him for it. Crowningshield did perpetrate the murder, and afterwards committed suicide. One of the Knapps was subsequently tried as principal in the second degree for being present, aiding and abetting in the murder. It appeared in proof that the house of Mr. White had been entered by some one having the confidence of the proprietor, and that the window had been left open for the access of Crowningshield. The evidence showed that from the window to the ground a plank had been extended in order to admit the entrance of the murderer; and the evidence further established the fact that whilst the murderer was in the house doing the deed of murder, the prisoner at the bar [Knapp] was in an alley about fifteen or twenty yards off, where he could see what was going on, where he could hear, and from which place he could be heard. In other words, he was in the alley, where he could render material assistance, and the question was, "What kind of presence was necessary in order to constitute him a principal in the second degree?" and he was there by previous agreement. The evidence further was that he received Crowningshield after the murder, went with him to deposit under the steps of the church the club with which the deed was committed; for, says Hawkins, "the hope of their immediate assistance encourages and emboldens the murderer to commit the act, which otherwise perhaps he would not dare to do, and make them guilty in the same degree [as principals] as if they had actually stood by, with their swords drawn, ready to second the villainy." These principles have been fully recognized by the very learned and distinguished Chief Justice of the Supreme Court of the United States, in 4th Cranch, 492.

The person charged as a principal in the second degree must be present; and he must be aiding and abetting the murder. But if the abettor, at the time of the commission of the crime, were assenting to the murder, and in a situation where he might render some aid to the perpetrator, ready to give it, if necessary, according to an appointment or agreement with him for the purpose, he would, in the judgment of the law, be present and aiding in the commission of the crime. It must, therefore, be proved that the abettor was in a situation in which he might render his assistance in some manner to the commission of the offence. It must be proved that he was in such a situation by agreement with the perpetrator of the crime, or with his previous knowledge consenting to the crime, and for the purpose of rendering aid and encouragement in the commission of it; that he was actually aiding and abetting the perpetrator at the time of the murder. But if the abettor were consenting to the murder, and in a situation in which he might render any aid, by arrangement with the perpetrator, for the purpose of aiding and assisting him in the murder, then it would follow, as a necessary legal inference, that he was actually aiding and abetting at the commission of the crime. He must be in some position where he would be able to render aid to the perpetrator. What kind of aid? Aid in doing the deed; aid in resisting any opposition that might be made; and aid in striking down the strong arm that might interpose to protect the victim from the assassin's dagger. He must be where he can reach the scene of action at a shout, or reach it in time to have the murder consummated.

He must be there by appointment, too. It is not enough that he should be there incidentally; it is not enough that he should be there accidentally, without the fact of his presence being known to the principal. It must be a part of the plan that he should be in that particular spot, that the knowledge may nerve the principal's arm, may strengthen his heart, uphold his failing courage, and assist him in the perpetration of his murderous design. The learned judge further says:

"For the presence of the abettor, under such circumstances, must encourage and embolden the perpetrator to do the deed, by giving him hopes of immediate

assistance; and this would in law be considered as actually aiding and abetting him, although no further assistance should be given.

“For it is clear that if a person is present, aiding and consenting to a murder, or other felony, that alone is sufficient to charge him as a principal in the crime. And we have seen that the presence, by construction or judgment of the law, is in this respect equivalent to actual presence.”

We do not, however, assent to the position which has been taken by the counsel for the government, that if it should be proved that the prisoner conspired with others to procure the murder to be committed, it follows, as a legal presumption, that the prisoner aided in the actual perpetration of the crime, unless he can show the contrary to the jury. The fact of the conspiracy being proved against the prisoner is to be weighed as evidence in the case, having a tendency to prove that the prisoner aided; but it is not in itself to be taken as a legal presumption of his having aided unless disproved by him. It is a question of evidence for the consideration of the jury.

If, however, the jury should be of opinion that the prisoner was one of the conspirators, and in a situation in which he might have given some aid to the perpetrator at the time of the murder, then it would follow, as a legal presumption, that he was there to carry into effect the concerted crime; and it would be for the prisoner to rebut the presumption by showing to the jury that he was there for another purpose unconnected with the conspiracy.

We are all of opinion that these are the principles of the law applicable to the case upon trial.

If they prove that this man was in the conspiracy, and if they prove he was near the theatre where he could have given aid at the time of the murder, then I admit that the burden is upon me to show what he was doing there; because, having proved he was one of the conspirators, his approximation to the scene of action, according to the course of ordinary reasoning and common sense, would induce me to believe that the probabilities were that he was there for the purpose of carrying out the plan of the conspirators. They must prove, however, that he was there where he could give aid at the time; that he was near enough to help to give aid to him who was to strike the blow—near enough to help, at a call, to strike down the defenders of the victim if was determined to kill.

I now refer your honor to Burr's trial. Chief Justice Marshall, in this great case, about which I shall have something to say to you, gentlemen of the jury, delivered one of his most elaborate opinions, after probably the ablest forensic discussion that ever took place in the United States. In that opinion, on page 333, he says:

“Hale, in his 1st vol., p. 615, says: ‘Regularly, no man can be a principal in felony unless he be present.’ On the same page he says: ‘An accessory before is he that, being absent at the time of the felony committed, doth yet procure, counsel, or command another to commit a felony.’ The books are full of passages which state this to be law. Foster, in showing what acts of concurrence will make a man a principal, says: ‘He must be present at the preparation, otherwise he can be no more than an accessory before the facts.’”

Then, on page 334, he observes:

“Suppose a band of robbers confederated for the general purpose of robbing. They set out together, or in parties, to rob a particular individual; and each performs the part assigned to him. Some ride up to the individual, and demand his purse. Others watch out of sight to intercept those who might be coming to assist the man on whom the robbery is to be committed. If murder or robbery actually take place all are principals, and all, in construction of law, are present. But suppose they set out at the same time or at different times, by different roads, to attack and rob different individuals, or different companies, to commit distinct acts of robbery; it has never been contended that those who

committed one act of robbery, or who failed altogether, were constructively present at the act of those who were associated with them in the common object of robbery, who were to share the plunder, but who did not assist at the particular fact. They do, indeed, belong to the general party, but they are not of the particular party which committed this fact."

On page 336 that learned judge says :

"In felony, then, admitting the crime to have been completed on this island, and to have been advised, proceeded, or commanded by the accused, he would have been incontestably an accessory and not a principal."

What does that apply to? Aaron Burr, the spirit and mind of the conspiracy, gathered his forces together and rendezvoused them at Blennerhassett's island. Burr was the master-mind that had formed the plan. His was the genius that had devised the scheme. His the judgment and controlling power that directed it. He was indicted in Richmond for treason. The overt act of treason was laid at Blennerhassett's island. It was alleged that Burr was present at the commission of the treason, just as it is alleged that Surratt was present here at the commission of the murder. It appeared in proof that Burr was not at Blennerhassett's island, nor near there, although in point of fact he had started out the forces that had rendezvoused on that island. There were no accessories in the treason, and Judge Marshall was reasoning upon the case, supposing it to be felony.

Does your honor dare to follow Chief Justice Marshall? Do you think the people of America will censure your honor when you follow in your judicial pathway a light of such undimmed glory as that great judge? I want no new law. Give me the old law; the old guarantees of freedom; the old lights that burned in prior days, and by following the illumination of which we can alone go forth from the deep corruption into which we have descended.

The court at this point took a recess for half an hour.

#### AFTERNOON SESSION.

Mr. MERRICK, on the assembling of the court, continued: At the time your honor took the recess I was discussing the opinion of Judge Marshall, in the trial of Burr, relating to and elucidating the points involved in this case. And now I come to call your honor's attention to a decision at a yet later day, and even nearer home. It is your honor's own decision, in this case. I think the jury will recollect, and probably have already anticipated, that your honor, with a clear view of this case, has determined it according to the principles of that statute this morning. When the counsel for the prosecution proposed to prove in rebutting testimony, by way of meeting our proofs, that the prisoner was in Elmira on the 14th; that he was in New York on the morning of the 16th, and had been transported from Baltimore to New York on the night of the 15th, we objected upon the ground that the testimony was properly not in rebuttal—not properly in reply. That we had proved him to be in Elmira on the 14th, and in order for them to reply to that, and show that he was in Washington, it must be proved that he was not in Elmira; and that the requirement of the law imposed on them was not answered by proving that he was on the 15th fleeing from Washington; because his presence in Washington being essential to the commission of the crime with which he was charged, it was part of their case in chief, and ought to have been proved by them before they closed their testimony. His honor, in delivering the opinion, decided they could introduce the proof that he was in New York, and could introduce the proof in regard to the transportation from Baltimore, provided they could connect the prisoner with it, which they having failed to do, his honor afterwards struck it out. In the case which we are now trying, it was not necessary to prove that the prisoner at the bar was ever in New York city or anywhere else than in Washington. It was



not necessary to prove that he came here from Elmira on the 13th or 14th. It was sufficient for the original case to prove that he was here and participating in the deed of murder, and unnecessary to trace his history further in the past or the future. When it is attempted to show that he was at Elmira or some other place, and that he left New York at such a time as would have made it impossible for him to be present here at the time of the murder, common sense would certainly indicate to men of ordinary intelligence and reflection that, to prove him on the cars coming to this direction, at such a time as would place him here on the night of the murder, is directly responsive to the matter set up.

So your honor decided our motion upon the ground that it was unnecessary to prove the prisoner was anywhere else but in Washington on the night of the murder; and that it was sufficient for the original case to prove that he was here participating in the deed of murder, and unnecessary to trace his history further, either in the past or future. So, gentlemen of the jury, and your honor, we say your honor has already in this court determined this question; and that in the determination which your honor has pronounced upon this question the case has been shaped, and evidence has been ruled out and ruled in. It is for this case by your honor *res adjudicata*. And his honor states the very principle for which I contend. That they must show that he was here, and not only that he was here, but here participating in the murder. I beg to call your honor's attention to another point; as I have shown the jury and the court the indictment charges that he was here, it charges that he was present, made the assault, and committed the murder. Now, I maintain that if the theory of law of the learned counsel upon the other side is correct, that because he was in the conspiracy to murder, he could be guilty of the murder, being elsewhere than here, the indictment must charge the fact as a fact. If his theory of the law be right, that, being in Elmira, the prisoner at the bar could commit a murder in Washington, the indictment must charge the fact that he was in Elmira, and, being in Elmira, by certain means he committed a murder here. And I refer your honor and gentlemen of the jury to the case of Burr again on that point. Now, what was the point in that case, and upon what did he go? As the learned judge says, there are no accessories in treason; all are principals. So says the counsel on the other side. There are no accessories in the crime; unless the crime be murder, there are no accessories—all are principals. In Burr's case the overt act of treason occurred on Blennerhassett's island. An assemblage of men had been gathered together there by the strong intellect of Aaron Burr. He was the soul and body of that conspiracy. The indictment charged that, being the body and soul of that conspiracy, he was present on Blennerhassett's island, and there levied war. They showed he had sent troops there, and that he was co-operating in another place, and that he was in such a relation to the deed done that if it had been felony he would have been accessory; and being treason, and there being no accessories, he was in such relation to the deed done that he became a principal. What said Chief Justice Marshall? On page 350: "Now the assemblage on Blennerhassett's island is proved by the requisite number of witnesses, and the court might submit it to the jury whether that assemblage amounted to a levying war. But the presence of the accused at that assemblage being no way alleged, except in the indictment, the overt act is not proved by a single witness, and of consequence all of their testimony must be irrelevant." The overt act of treason was charged on Blennerhassett's island, and the indictment alleged Burr was present; but Burr was not present, although he was principal, and the further proof of the case stopped with the motion, upon the ground that the indictment must conform with the fact. If Burr was in Chillicothe giving aid and shaping the movement on Blennerhassett's island, the indictment should have alleged that he was in Chillicothe; that having been in the conspiracy and combination, he was in Chillicothe giving aid and comfort and abet-



ting the levying of war on Blennerhasset's island, and therefore guilty of treason; and he would have been convicted; but the indictment did not so allege, but it alleged he was on Blennerhasset's island. Although he was a principal in the offence, yet that indictment not having charged the fact as a fact, the court ruled it to be defective, and stopped the introduction of testimony. When my learned brother prepared this indictment for murder, he meant murder; when he wrote it he meant nothing but murder. His mind had been habituated to the ordinary customs of jurisprudence; had not been enlarged to the new speculative theories which his associate has introduced.

Having prepared an indictment for that purpose, it cannot now be twisted to suit the ingenious devices of his senior associate. They must get up another indictment if they are right in your theory of law. They cannot try a new case made yesterday on an indictment prepared for an old case by the district attorney. I think, gentlemen of the jury, I have made these points of law sufficiently plain, and I feel a satisfied conviction that I have scarcely uttered one single word in regard to the legal propositions for the guidance of this jury which your honor will not repeat in giving them the assistance you are bound to give in your judicial position to aid them in arriving at the truth in their inquiry.

There is one other point of law to which I beg to make a very brief reference. The district attorney said on yesterday that there was much misunderstanding in regard to the principle that the jury must find a verdict of not guilty unless they were satisfied beyond a doubt. There is no misunderstanding about that among you, gentlemen of the jury. You know what the doubt is. The learned gentleman did not state it with entire accuracy. That you should find a verdict of acquittal unless you are satisfied beyond a reasonable doubt of the guilt, is a principle founded in the charity of the human heart and in the beautiful precepts of the Christian church. It is not allowed to man, whose judgment is limited, at best, and whose vision is but obscure, even when most seriously and earnestly strained, to take the life of his fellow-man upon mere probabilities and chance. It is a difficult task, at best, for us, with such testimony as we obtain, to enter into all the motives and conduct of our fellow-man. And I suppose there is no truly upright gentleman living in organized society that would not wish and pray to be delivered from the necessity of sitting in judgment upon his fellow-citizen. Why? Because the apprehension of doing wrong to another, makes mankind shrink with fear from the undertaking to do it. To enable us to discharge our duty with satisfaction, and to be assured that no wrong shall come, the law says "you shall not convict unless guilt be proved beyond a reasonable doubt." You must be satisfied in your own mind to a certainty; not a mathematical certainty—that we cannot reach—that is not attainable—but you must be satisfied to such a degree of certainty that you can say, I have no doubt about it. I will illustrate. Suppose that ten of your number should, after a careful weighing of the testimony, hearing of these arguments, say they were satisfied this man was innocent, and two should say, we are satisfied to the contrary. The very existence of the opinion of innocence, under the same opportunities to judge, of ten honest men, must inevitably shake the conviction of the two. I have influences in my mind and heart that are firm, and clear, and decided, and yet when I hear the contrary opinion of a man with equal advantage, I begin to doubt, and I want to talk it over, and if responsibility accompanies it, give the benefit of that doubt, and avoid the consequences of assuming the danger. I do not say that the one or two should yield conviction. No, gentlemen, never yield conviction. You are sworn to do your duty, and find according to your judgment. But judgment and conviction are made up from many influences legitimately in the case. The conviction of others' judgment operates upon your mind and shapes it more or less. I cannot, and

it is unnecessary I should, explain the matter of doubt. But I will read simply the principle of the law determined in this court time and again. I will refer your honor to Roscoe's Criminal Evidence, page 654. Take the facts of a criminal case, we have every hypothesis you can conceive; we have every possible condition of circumstances, and if these facts are reconcilable with any hypothesis that involves innocence, you cannot find the prisoner guilty. Take the case of Burr. Suppose you should believe John H. Surratt was in a conspiracy to abduct the President; that there was such a conspiracy, and that all the facts are reconcilable with that conspiracy, and that the facts occurring on the 14th of April are reconcilable with the hypothesis that the conspiracy to abduct had failed, and a new conspiracy to murder had been created, you cannot find this prisoner guilty. I care not what he may have done—whether he carried despatches, shot down Union soldiers, (which I will show you is not to be credited,) fought a gunboat, or what he might have done; if you find these facts are reconcilable with that theory that he was in a conspiracy to abduct, which conspiracy was abandoned and a new one created, of which he was not a member, you cannot find him guilty. This principle of law is again repeated by that most excellent judge (Judge Wylie) now beside his honor, where he has ruled in this court: That unless the jury find that the whole evidence in the case excludes a reasonable supposition of the prisoner's innocence, and also is perfectly reconcilable with his guilt, they must acquit. Except the facts are inconsistent with other hypotheses that involve innocence, you are to take them up, test them by every theory that you may form, see if they fit any part consistent with innocence, and if so, you must acquit. Again says Judge Wylie: "In all cases the jury must from the whole evidence find the material fact charged against the prisoner to be true to a reasonable and moral certainty"—not probability, but a reasonable and moral certainty—"a certainty that convinces and directs the understanding and satisfies the reason and judgment." It could not have been expressed in better language—"convincing the understanding, satisfies the reason and judgment." There must be no lurking apprehension, no latent doubt, no slumbering fear, no possibility in your minds that hereafter your dreams will be disturbed and your waking hours haunted by the ghost your verdict is to make. There must be a conviction controlling the understanding, satisfying the judgment, and filling the full measure of the conscience asking to be left at peace. That being the law of this case, and these the principles which are to apply to it, I come—as most appropriate to these principles—to the consideration of that fact most immediately suggested by the principles I have been discussing; for I propose, gentlemen, as far as I can in the course of this argument, which is not to be protracted much longer, to lead you along from one point to another, as the points themselves shall suggest each other. Now, if these principles of law I have stated and argued be correct principles, what is the first inquiry? Was John H. Surratt in the city of Washington on the night of the 14th? His presence here aiding and assisting the murder is essential to his guilt, and his absence at the time of the murder not only entitles him to a verdict of "not guilty," but is a powerful circumstance alone, by itself, to show that he was not in the conspiracy and had no connection with it; or if he was in the conspiracy to murder, then it would be a circumstance to show that he was here. I concede it, when you prove him to have been in the conspiracy to murder, and in the conspiracy to abduct. But bear in mind you cannot change the purpose of the conspiracy in his absence, and one conspirator involves an absent conspirator in a new design. If you are satisfied beyond a reasonable doubt that he was in a conspiracy to murder, then it is a circumstance to be weighed by you to show that he was here, aiding in the consummation of the conspiracy.

Now if I show to you that he was not here, it is, if not a conclusive, almost a conclusive circumstance to show that he was not in the conspiracy. When

the bud had blossomed, and the appointed hour arrived when the deed was to be done, if you say from the evidence that this party was not here doing his part in the conspiracy, it is a strong and powerful circumstance to show that he was not in the conspiracy, and had not undertaken to do that which he was charged with having done. Upon this point the burden of proof is with the counsel on the other side to show that he was here. As the court has said in the opinion I have read, it was necessary for them to show that he was here, and not necessary to show that he was not elsewhere; that it was a part of the case in chief to show that he was here in Washington aiding and abetting the murder. They come into court to prove that. We come into court to meet it. How do they prove it? The first witness introduced for the purpose of establishing his presence here is Sergeant Dye. My learned brother said I had published a libel on Sergeant Dye (I understood the expression as applicable simply in the course of argument) by asking the court to admit a record under the seal of Pennsylvania, to show that he had been indicted for passing counterfeit money. I would make no reference to it here, except that my learned brother had in his argument stated that I had assailed Sergeant Dye, and I therefore make the allusion to defend myself. I introduced this record for what purpose? I received, under the broad seal of Pennsylvania, a certificate that he had been indicted or held to bail for passing counterfeit money, and that the case was set for trial at that term of court. The case was dismissed after he was examined here. When that record came to me I made no question where it came from. It came under the seal of political and legal authority, spoke for itself, and proved itself. I asked his honor to admit it; he refused. Was it a libel? If it was, it was a libel published by Pennsylvania, and not by me, and let the gentleman hurl his anathemas at the State of Pennsylvania, not at me.

What says this redoubtable sergeant? He sat in front of Ford's theatre on the night of the 14th, on the platform arranged for persons getting out of carriages and entering the theatre, for half an hour. He saw two men talking, one a villanous-looking man, the other a genteel-looking man. He saw a third, a genteelly dressed man, come up and speak to them; time was called; the genteel man went up street and came down; he heard the time called again; the genteel man went up the street the second time and came down; he heard him call the third time, ten minutes past ten, when he went up street rapidly; Booth entered the theatre; Sergeant Dye goes to take his oysters, and the next thing he hears is that the President was shot. Says Judge Pierrepont, in a style and manner that delighted me, for I like grammatical expressions, "Have you ever seen that man before?" "I see him now," says the sergeant; "that is the man—the prisoner at the bar." I will stop Sergeant Dye at that place, and comment on him for a moment before I take him down H street. When Ford and Gifford were put upon the stand I handed them a plat, which they proved as a correct representation of the front part of Ford's theatre. Sergeant Dye stated that he was sitting on the southern end of this carriage-platform, and that when the prisoner came and called the time, he saw him distinctly; he saw that pale face; has seen it in his dreams since then; it has hovered over him by night, and walked beside him by day. Says my learned brother on the other side, dreams are necessarily the consequence of deep impressions, and this was a very deep impression. I will show you, gentlemen, before I get through with him, that he dreams too freely, and that there is too much speculation in his dreams. He saw that pale face. When did he see it? He saw it when the prisoner was looking at that clock. One of the jurors, who are sometimes shrewder than lawyers, as this witness retired from the stand, asked him how much of that face he saw. The reply was, sometimes two-thirds, and occasionally the whole. Now, gentlemen, you see where that platform is, [illustrating from diagram in evidence.] He sat on the southern end, and from the position of the door, you will see that when he looked at the clock, and turned



directly and spoke to the other men, the back of his head was directly in front of Sergeant Dye's eyes. The man stood in the same position to Sergeant Dye that I now do to Mr. Bohrer, [counsel turning his face from the jury.] Then he turns and goes up H street. That was the first circumstance that satisfied me that his testimony was not to be relied upon by any juror. But what followed? He says he saw these three men aligned. When the second act was over and the crowd came down, they seemed to expect the President was coming out, and aligned themselves opposite the space he was to pass. Then he had them standing in order side by side. They had excited his suspicion, and he was watching them, and examining them critically. He could tell, with almost positive certainty, what was the positive height of each. He says he is a better judge of height now than heretofore, because he has been a recruiting sergeant. That may be very well when he is looking at a man standing alone, but when he looked at two men together he could tell which was taller as well in 1865 as now. Yet he saw these three men standing together, and when summoned before the military commission he testifies positively about the relative height of the three men. The man who called the time was the smallest of the three; he was about five feet seven inches in height. The others, Booth and Spangler, who he identifies, were both much taller. When his attention was called to that statement, he tells you that he only threw in that five feet seven inches; that he meant the heaviest man. I pitied the creature as he stood before you. He swore there that the man who called the time was five feet six or seven inches, and that he was a small man. If he had simply sworn to the height of this man alone, it would have been a reasonable excuse to say that he could not tell how tall a man was. He cannot tell you the height of a man seeing him alone, but surely he could tell you which was the tallest and which was the smallest, and yet be sure that the man who called the time was smaller than either Booth or Spangler. We have proved on the stand that John Surratt is larger than either. Let us see a little further. The solemn sound of that calling of the time seemed to produce a deep impression. It was the warning note of conspirators bent upon murder that called the felon to his work. We bring before you the very men that called the time. My friend smiles. Let him get rid of it if he can. I defy him. We show you Carland and Hess standing before the theatre; that Carland called the time at Hess's request. Hess recollects it was ten minutes past ten, the identical time called by the party to whom Sergeant Dye testifies. The learned counsel calls in Hess, and makes him and the prisoner stand up side by side for you, gentlemen, to look at them. That was his object. I thank God for his kindness in so presenting them to the jury. Hess answers to the description given on the other trial by Sergeant Dye. He stands just five feet seven, and the counsel who had them stand beside each other have proved the case. He swore that the other two men were five feet nine or ten; and you saw this man Hess standing beside the prisoner. Could he have made such a mistake as to have taken a man of Surratt's size for a little fellow five feet seven? Gentlemen, he has been dreaming, and dreaming too freely. That same calling of the time has sent one man already to the Dry Tortugas, and now the learned counsel want to make it hang another.

Sergeant Dye takes his oysters, hears that Lincoln is killed, and goes up street. He passes 541; a window is raised; a lady asks, "What is going on down town?" "The President is killed." "Who killed him?" "Booth." They pass on to camp; he and Sergeant Cooper. "Who is the lady; have you seen her since?" "Yes, I think I saw her at the conspiracy trial; I think it is Mrs. Surratt." "When did you come to that conclusion?" "I only came to that conclusion after I came down here and learned that it was her house. When people commenced to say she was not guilty, I knew she was guilty. I did not believe these things, and when I came down here I found out where



her house was, and I was satisfied it was the place I stopped, and that she was the woman I saw, and I recollect her." Two years have passed. It was a dim moonlight night, if you choose; say it was eleven o'clock, or half past ten; the moon just about at that point in the heavens, (an angle of five or ten degrees above the horizon;) suppose it to be up. Mrs. Surratt's house fronted to the north, and as long as the moon pursued its circuit in the southern hemisphere the front of this house was necessarily in the shade. The sidewalk in front of that house never during the course of the moon at that season of the year sees one ray of moonlight. We have proved what kind of a night it was; how dark it was. But give them the benefit of whatever they choose about the night, that side of the house was in the shade, and the moon had scarcely risen twenty degrees above the horizon, and threw its rays of light upon the side of the street opposite where Sergeant Dye was. This lady puts her head out of a window and speaks to him. He sees her at the conspiracy trial, but sees nothing that enables him to recognize her. He probably heard where she lived—for there was much said and written on the subject—but nothing suggests to him that she was the woman until after a lapse of two years, when he comes to testify in the case of her son, and then he swears from that casual glance that he recalls her as the woman he saw at the conspiracy trial. Gentlemen, I say it is simply an absurdity. I do not care to say it is worse. This man is a dreamer; a speculative dreamer; it may be a perjurer. I do not need to say it; but if it is not perjury, it is an image created by a mind overwrought in its reflections upon a subject it has thought too much of. Such things run men mad; such things make men fanatics; such things bring them round a table to communicate with spiritual mediums. He has thought of this, he has dreamed of it until his mind becomes perverted, and every thought that comes to him is colored by the peculiar tint it has taken. You know, gentlemen, it is the character of the human mind, when deeply excited with apprehension upon any subject, to fasten upon whatever occurs as something to create apprehension. It gives it excitement, excitement fevers it, and colors every object it sees. The best illustration is in the knowledge all of you have in the days of childhood, when, in the darkness of the night, the child is sent alone to bed; or you may have gone through a wood in the darkness of the night, and you recollect what images the shadows brought to your excited mind—that you saw men in stumps, in boughs of trees, and mounds of dirt. In that condition of excitement of the human intellect we flee from the creations of our own imaginations, just as we did in childhood, for the boy is father to the man.

Mr. Merrick was here interrupted by Mr. Riddle, who reminded the court that at this hour a meeting of the bar had been called, in consequence of the death of Mr. Morgan, one of its late members.

The court, therefore, took a recess until Thursday at 10 a. m.

THURSDAY, August 1, 1867.

The court met at 10 o'clock a. m.

Mr. MERRICK continued his argument, as follows:

Gentlemen of the jury: At the close of the session yesterday I was considering the testimony of Sergeant Dye. I shall take the line of argument up where I left off, and, with as much expedition as possible, and, as much as is consistent with my duty and yours, I shall hurry to the conclusion, impelled by a sincere regard for your patience, and fully appreciating that earnest solicitude you have manifested throughout this protracted and arduous trial.

I left Sergeant Dye on H street talking, as he professes to have done, with Mrs. Surratt. I have shown you how improbable his statement was. I was about to mention, or had mentioned—I don't recollect which—that Sergeant

Dye's statement in regard to that conversation was met and controverted by an honest gentleman sitting at his door on Sixth street, fronting on H, not fifty yards from the scene of the conversation. He was sitting there, he represented to the jury, from 10 until after 11 o'clock, smoking a cigar. The night was still and calm; and in that region of the town there is nothing to disturb its almost perfect noiselessness. The conversation held by a passer on the street with an individual in what might be said to be the second story, as it was so, would necessarily be in a tone sufficiently loud to be heard fifty yards on such a night as that. The counsel on the other side will endeavor to represent to you that this witness was sitting on Sixth street, and not on H. You will remember that he says that the steps of the house pass down by the side of the house that fronts on Sixth street and terminates within half a yard of H. He was sitting at the foot of his steps, and could see up and down H street, and hear what passed, and from his knowledge of the locality, and the character of the night, he thinks he would have heard this conversation if it had taken place. This witness, therefore, as far as negative testimony can contradict positive, contradicts Sergeant Dye. But the sergeant says the lady was middle aged, and wrapped in a shawl. Now, apart from the inherent evidence of a want of truth, whether that want of truth arises from a failure to recollect, or disordered and fevered imagination, or from a wilful misrepresentation, it is immaterial; apart from that, we have another fact which entirely overthrows his evidence. In reading the trial a lady of this city, and of the highest character, whose reputation and position the learned counsel on the other side could not possibly have known at the time she was on the stand, else he would not have gone so far as to wound the tender sensibilities of such a person, for he did almost, I might say, transcend the proper limits of cross-examination. This lady observed this statement of Sergeant Dye. She at once remarked, that "here is a most extraordinary coincidence; that identical conversation took place with me at my window, on that identical night." I placed her son on the stand, a young gentleman whom you saw, and whose appearance bespeaks his character, now in the employ of the federal government in this city, and at the same time a student of law, and he describes the house in which his mother resided. The description answers in every particular Mrs. Surratt's. It is a block and a half further to the east, on the same side of the street, the same high steps, and the same peculiarly constructed basement and upper story. Mrs. Lambert tells you, on that night, hearing some noise in the street, she got up, called for her servant, got her shawl, and went to the parlor, opened the window with her shawl on, and had the identical conversation with one or two soldiers that Sergeant Dye tells you he had with Mrs. Surratt. Is not Sergeant Dye mistaken? Her conversation was the same he testified before this jury that he had with Mrs. Surratt. If he is not mistaken, he is one of those extraordinary characters in life who in their course through the world meet with most singular coincidences; for it is a most extraordinary coincidence that the same conversation should have taken place between two soldiers near the same or in front of two houses built identically alike, on the same side of the street, and with a middle-aged lady dressed with a shawl. All the features—time, circumstance, conversation, and individual—correspond without the slightest variation. This man is the victim of these extraordinary coincidences, more than once occurring in this trial, like that of the individual who called the time, as I explained to you. If he is right, when these conspirators were there calling the time, then it is a singular coincidence that there should be two parties present at the calling of the time, one for the purpose of murder, the other for his own private employment on the stage, each calling ten minutes past ten. Gentlemen of the jury, I feel sure you cannot entertain for a moment this testimony of Sergeant Dye as involving the prisoner in any guilt or probable guilt. I feel you will ascribe it to that disordered state of mind in which Sergeant Dye is evidently labor-

ing, and leave him to enjoy that luxury of his dreams which may be luxury to him without harm to others, and not hang a man because Sergeant Dye saw his pale face at midnight in his dreams. I pass from Sergeant Dye to the only other witness who attempts to prove Surratt in or about the theatre, Mr. Rhodes. Who is Mr. Rhodes? If he is known to any of you, gentlemen, he is a stranger to me. He comes on this scene near its close, apparently a volunteer. We know nothing of him before he testified; we know nothing since, except his testimony. Now, what is his testimony, gentlemen of the jury? He tells you that at twelve o'clock on Friday, the 14th of April, when he was walking down the street, he passed by this theatre, and, impelled by curiosity, he entered to look at it. A day laborer, working at his trade—supposing him to be honest—he was consuming profitable hours in useless entertainment. He enters the theatre between eleven and twelve o'clock, goes into the box that was being prepared for the President for that night. He there sees a man, and he identifies the prisoner at the bar as that man. He tells you that when he went in there was a man in the box, and as he entered the man retreated from him. When he took a view of the theatre from the box, he noticed a new curtain that was down, and observed the pictures on the curtain.

He again tells you that some one called from the theatre, and he represents that the man who was in the box responded, and that he went back out of the box, and disappeared afterwards towards the stage. The learned counsel on the other side will endeavor to meet this contradiction in Rhodes's evidence, which the district attorney admitted to you in his argument, when his associate checked him. The learned counsel who checked the district attorney will attempt to meet this evident contradiction by saying to you the man was in the first box when Rhodes came in, and he went into the second box. He did not go out of the two, the partition being up. But, gentlemen, when Rhodes was in that box the partition was down, and there was only one box there. Rhodes tells you the chair was brought up while he was there; and Raybold tells you he ordered the chair to be brought up, and it could not have been put in if the partition was up, because it was too small to admit the chair with rockers of the dimensions that the chair had. There was then but one box; the partition was down. Where did that man Rhodes speak about retreat to? There was no other exit or entrance to that box except the door from the front that led into it; all else was closed. There was nowhere he could retreat. If he came out of the box he had to go out of the same door that Rhodes went in, and Rhodes says he did not go out of that door, but out of another, and disappeared to the rear of the box. He says all the calm was undisturbed except by the preparations in this box. We have shown you, by Raybold and by Lamb, that there was a rehearsal going on in the theatre at the very same hour Rhodes says he was in the box—commencing at eleven, and reaching from then until one or two. The stage was crowded with the actors, preparing for the night's performance; and yet Rhodes tells you it was quiet, with the curtain down. Lamb and Raybold both testify, and you yourself know the custom of these theatres, that there are rehearsals, and at that time. When we attempted to prove uniform custom they checked us. "You shall not give the jury benefit of that light; the light of uniform, invariable habit, proved by the manager of the theatre. You shall be restricted to the particular fact." And we proved that fact by those who saw the rehearsal, and knew it was going on. We then proved that the curtain was up, and not down. Rhodes swore it was down. We proved by Lamb, who was engaged in painting there all day long, that the curtain was not down from nine in the morning until six in the evening—until he left his work. And incidentally from him and Raybold came out the circumstance that the curtain of the theatre is never down. It is dropped at night when the audience leaves, and then by those in attendance it is raised, and remains raised until the next evening, when the performance is about to begin again. It appeared in evi-



dence that the box in the daytime was so dark that if you saw a man it was impossible to recognize him. When Judge Olin went to examine the door and look about the evidence of preparation for assassination, he carried a light with him; there was no window in the box, and no light except the aperture made to see on to the stage. It was built not for the light of day—not to enable you to see in it in the daytime; it was built to be used at night by gaslight, and at night alone. You then have these circumstances contradicting Rhodes—a rehearsal going on at the time, the curtain not down, the box dark, the man that brought up the chair seeing no one else there—he being there at the time Rhodes said he was. This is in evidence. You have, also, the further fact that the doors of this theatre were locked on the public. Do you suppose that, at that hour of the day, when a rehearsal is going on, the proprietor of the theatre is going to leave his doors open for the free ingress of the public to attend that rehearsal? It is further testified that the man having charge of the door kept the key; that the doors were locked; and that there was no admission except by special privilege granted by the party who had the keys, and who alone was authorized to turn the key in the lock. The two witnesses, Sergeant Dye and Rhodes, are the only witnesses who bring Surratt near the theatre at all; and I think that you, as sensible men, bringing to bear on their testimony the same habit of logic you would bring to bear on questions of ordinary life, will conclude that the testimony of neither is reliable as the basis of any judgment to be formed in this case.

Who is the next witness, gentlemen, by whom the prosecution attempts to establish Surratt's presence in the city of Washington? The counsellor from New York, not the counsellor assisting the prosecution, but the counsellor assisting the United States—Squire Vanderpool. Stimulated by curiosity, he leaves his professional desk in the mercantile metropolis to come to the political metropolis to witness this trial. He sees the prisoner at the bar, and recollects seeing him before. He recollects that on the 14th of April, 1865, after having been to the Paymaster's department and drawn his pay, coming down Pennsylvania avenue, and hearing music on the other side, he goes over to Metropolitan Hall, enters the hall, and sees Booth and four or five others sitting at a table drinking, and among them the prisoner at the bar. The first time he ever saw him, the only time he ever saw him, and he saw him then only for five minutes; dancing, music, and revelry in the room, and he going there for the purpose of the dance, music, and revelry, singles him out from the crowd sitting at that round table, in the midst of some sixty people. This individual plants the image in his memory, and paints it to you that he may suffer condign punishment at your hands. This was between two and three o'clock, or one and two o'clock. He told his story straight enough, but I presume there was not a man on that jury that did not see in that face, without one word from me, enough to discredit every word he said. And if he did not see it in the face, he saw it in the consideration of the singular fact, that after a lapse of two years, with but a single glance under such circumstances, he should so remember a face as to speak with the positive certainty he spoke on that occasion; and when again, at the conclusion of his testimony, he gave vent to an expression which would lead your feelings to coincide with your judgment, he used the vulgarity of a blackguard after having given the testimony of a perjurer. We met the testimony of this man Vanderpool by showing to you that there was never any music or dancing at Metropolitan Hall in the afternoon; that through the whole time of its existence there never was a rehearsal or performance there in the daytime, and there never was a round table in the room. We showed to you by Henze, the proprietor, that he was at Philadelphia, and left the place in charge of his brother. We proved by his brother that there was no rehearsal or performance on that afternoon, and we proved by the leader of the band that there was no rehearsal and no performance, and by a policeman that there was no rehearsal or performance that afternoon, no music, no dancing,



no revelry, no crowded rooms, no noise to attract the passer, no entertainment to bring in the idler. Are you satisfied? Some other place? Was he at some other hall? Had he forgotten the locality and name? Why did you not prove it? We had crushed him on his own statement. Did you leave it to the vague speculation of the jury that there might be? Aye, gentlemen, you are too wise for such tricks as that. If there was any other place, and this man was mistaken, the burden was on them to prove it, when we had proved the hall named was a place at which the circumstances to which he testified could not have transpired. I dismiss it; it is beneath dignity to attempt to discuss the testimony of such a man.

Cushman and Coleman saw Surratt, as they say, talking to Booth on the avenue. This is a mistake. Both are clerks in the departments. One says he did recollect the man he saw talking to Booth. The other says he thinks Surratt looks like that man. We ask him, "Did you not tell counsel in our hearing you could not identify him?" and he said, "Not loud enough for you to hear." But he did say so; he did say, upon seeing him in this room, that he failed to identify him. But, gentlemen, the testimony of these two men is met by another most singular coincidence—and, indeed, through this whole case, it seems as if by some special interposition of Divine Providence the defendant was able to meet, by direct testimony, the entire scheme devised by the prosecution; for never since I came to the bar, never in the whole course of my reading, have I known of a case in which the prosecution was met at every point by testimony so satisfactory and so conclusive. The coincidence of calling the time, we produced the man. The conversation with the lady, we produced the lady. The circumstance of the meeting of these two clerks of the departments with Booth and Surratt on Pennsylvania avenue, we produced the man with whom Booth conversed at the identical time and on the identical spot, and showed it was not Surratt. If there is difficulty under these circumstances in proving a negative, we are fortunate in being able to prove an affirmative. We bring before you Matthews, and put him on the stand. Matthews tells you he was on the triangle near Pennsylvania avenue that afternoon at the time named by these gentlemen, and met Booth, Booth leaning over his horse's neck talking to him earnestly, as the men describe he was talking to Surratt. It was in that conversation Booth give him that paper containing articles of agreement, bearing the signatures of the conspirators, which the prosecution would not allow to go before the jury. The existence of the paper, and the fact that the paper was given to him, is before you, and the earnestness of the conversation is also before you. It was Matthews talking to Booth, and not Surratt. The testimony of these two witnesses need not be considered by you further. They are mistaken, and they do not testify with any degree of certainty or positiveness whatever. Grillo saw him for a moment at Willard's hotel; thinks it may be the man, is not positive; never saw him before; never saw him since. I may as well, in the course of my remarks, interpolate here as elsewhere a suggestion in my mind which will serve you as a guide in considering this evidence in regard identity. There is nothing more unreliable than proof of identity. There is no testimony about which you should hesitate so long as testimony which attempts to identify an individual casually met and casually passed. Tell me, can you recollect a man's face you never saw before or since two years ago in a hotel, and whom you passed in going from your counter to that hotel? You see him now; can you recollect every man you saw two years ago. Can you recollect every man you met upon the street yesterday in coming up from the Seaton House to this court whom you casually passed, but who attracted your notice but for a moment. I defy the human memory to perform such a task. Why, gentlemen of the jury, the features of individuals make but slight impressions on us at first sight, and I presume that is the experience of each of you. You know two sisters, and at your first acquaintance you are unable to distinguish

between them. Twin sisters, features alike absolutely, manner alike, nothing to distinguish them. Upon the first, second, or third visit you could scarcely tell one from the other. Yet, upon a longer acquaintance, you look back upon the earlier forms of that acquaintance and wonder you could ever see a semblance that should have confused you. Features make but slight impressions until they are burned on the human mind. Identity is more certainly established by conversation, tone, manner, and bearing. I never would give credit to the testimony of a witness who simply saw the face of an individual in passing, and two years afterwards swore he recognized that face again, although he had never seen it before or since. But if a man tells you he had seen that man two years ago, conversed with him, remembered the conversation, tone of voice, determined the bearing and peculiar action of the person, I would trust that man and believe him, because these are the things that stamp the recollection of the individual form and voice upon the memory of our fellow man. A simple picture, floating like some vague thing through the air, seen for a moment, and forgotten the next; and when a party pretends hereafter to identify that face, and comes and swears to it, and swears positively, I can only account for it upon the ground that the imagination is wrought up by surrounding circumstances to believe a particular man is a certain man known in some past transaction. The imagination lends wings to memory, and it takes flight beyond the reach of judgment and actual recollection.

The next witness upon whom they rely is Ramsell. I must read a part of his testimony, because I think, when you hear it again, you will be entirely satisfied to dispose of him. His testimony is that he was going on the Bladensburg road early on the morning of the 15th and he saw a horse tied; noticed the horse had no rider.

"About fifteen minutes after I passed this horse a man rode up to me on this same horse, and asked me if there would be any trouble in getting through the pickets, or something of that kind.

"Q. What did you tell him?

"A. I do not recollect what I told him exactly, but I think I told him that I thought there would be, or something of that kind. I asked him if he had heard the news of the assassination of the President.

"Q. What did he say?

"A. He did not make any answer, but gave a sneering laugh.

"Q. What did he do?

"A. He looked back and on both sides.

"Q. In what manner?

"A. He appeared to be very uneasy, fidgetty, and nervous.

"Q. Could you discover anything that arrested his attention?

"A. There was a man coming from the city, an orderly, I think, carrying despatches to Fort Bunker Hill. As soon as he saw him coming he rode away.

"Q. What did he say when he saw this man coming?

"A. He said he thought he would try it, and rode away.

"Q. Try what?

"A. Try the pickets.

"Q. How did he ride?

"A. The horse went at a pretty fast gait.

[The prisoner was here requested to stand up in such a position that the witness might see his back.]

"Q. Did you ever see that man [pointing to the prisoner] before?

"A. I think I have seen that back before.

"Q. Did you see it on that horse?

"A. I think I did."

Gentlemen, I could but fancy a private theatrical between my learned friend Judge Pierrepont and Ramsell.

Judge Pierrepont.—“Do you see yonder cloud, that is almost in the shape of a camel?”

Witness.—“By the mass, and 'tis like a camel, indeed.”

Pierrepont.—“Methinks it is like a weasel?”

Witness.—“It is backed like a weasel.”

Pierrepont.—“Or like a whale?”

Witness.—“Very like a whale.”

Why, gentlemen, it is a farce, unbecoming pranks before a dignified jury, as the gentleman calls this, to be introducing such evidence on which to risk the life of a man.

Another witness, gentlemen, is John Lee. What shall I say of John Lee? Overwhelmed with infamy, pursued everywhere, as he has been, with witnesses that testified to his bad character, and they could not maintain it by any witness, I believe, except by one woman and one man, whom they found it necessary to protect from contradiction by refusing to allow us to lay the foundation of showing that he had made contradictory statements when he had made these statements on the witness-stand. Not only is he covered with infamy; I care not for that—you cannot regard his testimony for a moment; but I intend to show that this accumulation of infamy upon these witnesses, this mass of corruption they brought in here to infect the atmosphere of justice, poisons their whole case. I do not say this to induce you to discredit their evidence, for I know it is doing an insult to your judgment to attempt to refute that testimony. Your own kind hearts have refuted it. But I refer to him as a link in that chain which smells rank in the nostrils of honest men.

Wood, the negro barber; he is their great reliance. What does he testify? “At nine o'clock on the morning of the 14th of April, Booth came into my shop with McLaughlin and two others. I shaved Booth, then I shaved Surratt. I recognize the prisoner at the bar. I never saw him before. I have never seen him since. It was nine o'clock.” “Do you fix the time?” “Yes. I had been to breakfast. I had shaved Mr. Seward, and that is how I know what time it was. While I was engaged in shaving him, McLaughlin takes out of his pocket some curls and decorates his hair. With the disguise of a woman he turns around and inquires, ‘Would not I make a nice-looking lady?’” The reply is, “You are a little too tall.” He identifies McLaughlin more emphatically than he does Surratt. And yet you have the distinct testimony of W. J. Murphy and Barnard J. Early, where McLaughlin was every minute of the time, from Thursday night until Friday morning. They came with him from Baltimore; they were with him at the hotel; they were with him on the streets; they did not leave him for five minutes which is not accounted for, and he never was in that shop. Some gentlemen outside asked me, and indeed you might have asked in your minds, what we were proving about McLaughlin; they did not see what Murphy and Early were there to prove. They did not seem to see where our blow was intended to strike. We could not account for Booth. There was an incident here. We could meet the exact incident of McLaughlin's presence, and we therefore proved where McLaughlin was, and contradict this servant emphatically as to him. I say servant, Wood, the negro barber. The gentleman did not know whether he was white or black—a good many folks don't know whether they are white or black nowadays. The time at which Wood shaved him is fixed, not on cross-examination, not drawn out by counsel straining their ingenuity to get it out of him. It is fixed in his examination in chief. I will read it to you, for it is somewhat important in other respects: “I think it was near about nine o'clock. I had had my breakfast. Q. Where had you been? At Mr. Seward's, and came down.” There is another circumstance in connection with this testimony to which I will call your attention. It is something singular he should have remembered to have shaved two of these parties. Where were the other chairs in this large shop? And where were the other



men who were in that large shop? These are circumstances that are to be considered only in connection with other circumstances tending to break the force of his evidence. It was near nine o'clock. At that hour in the morning, you, gentlemen of the jury, know that a barber's shop is almost invariably crowded. Persons are coming in and going out; and I ask you, as plain men of common sense, will you attach any weight to the testimony of a man whose business is of such a character as leads him to shave and adorn one hundred men probably every morning, and out of that number fixes one man who was there on the 14th of April two years prior to the day, and who testifies, "I had never seen him before or since," and says that man was in my shop at that hour? In the multitude of faces we see every day there is a difficulty in identifying one. If during the day we saw but one solitary face we might recollect it. If we saw ten, the probability of recollecting one would be less; and if we saw twenty, less still. And so in proportion to the number we see, is the difficulty in identifying and recollecting any one. There is a place, a rendezvous of crowds—hundreds coming there for identically the same thing, the same operation generally, the same performance, generally the same conversations, with nothing to mark this one individual, and yet, after the lapse of two years, he identifies him as the man. But the conclusive answer to this question of Mr. Wood's testimony is the position in which the learned counsel have placed Surratt. They represented to you that Surratt left Elmira at ten o'clock on Thursday morning; that he was ferried across the river, and reached Baltimore at 7.25—the only train on which he could possibly reach Baltimore from Harrisburg. Now, Mr. Koontz testifies that the next train left Baltimore at 8.50, and reached here at 10.25. You have him in the depot at 10.25; give him, if you choose, five minutes to meet his companions, Booth and the others—that is half past ten; give him a quarter of an hour to talk with them, lounge, and go into the barber's shop; and you have it near eleven o'clock. Yes, this barber, whose business in the shop marks the hours of the day, makes an egregious blunder when he testifies on that stand. These gentlemen expected to have Surratt in Washington city by eight o'clock at furthest.

In the course of their evidence they have so placed him on the roads that it was a physical impossibility, according to their own showing, to reach here until 10.25. That, gentlemen, I take to be a conclusive answer to Wood's testimony. But another circumstance. He gave him a clean shave all round his face:

"You say he had no beard on his face?"

"No, sir; he had a slight mustache."

"No imperial, goatee, or anything on his chin?"

"No, sir."

He says: "I shaved him clean round the face, with the exception of his mustache. He had a slight mustache at the time." Every witness in the case that testified in regard to him gives him a goatee at the time not so long as he now wears, but one a barber would certainly notice. This barber says he shaved him all round, and he had no beard, no hair on his face, except the mustache. Now, however slight this circumstance may be in considering the question of identity with an ordinary man, in the light of a barber's business, it becomes a very material circumstance. He shaved him all round, and he had no hair on his face. This, gentlemen, is not the man he shaved.

Feeling themselves grow weak in testimony they fall back—upon who, gentlemen of the jury? Upon Mr. Cleaver. I must confess I was very much surprised when I saw Cleaver come upon the stand, and recollected the denunciations I heard thundered against him by the district attorney, and recollected the fact, which came out in evidence, that only a few weeks since, for a crime without a name, a verdict was brought in against that man and he was sentenced. A new trial was granted on technical grounds, and he stands for trial in this court now. I say a crime without a name. It is a crime not without a name



in law; it is a crime that cannot be named in this presence. Murder; not only murder, but murder most foul and unnatural. The spirit of the ungrown girl stands before the eternal throne as the accusing spirit of that accursed man. Why, gentlemen, has the United States government bowed itself to the low humiliation of using such an instrument as that? But that is not all of Mr. Cleaver. I do not talk of him to you to get you to disbelieve him, for I believe your indignation rose as you saw him on the stand. I talk of him as part of that blessed chain. Not Cleaver alone, but Cleaver manipulated by Conover; and not Conover alone, but Conover manipulated by Ashley, incarcerated in your jail with that most notorious felon Conover, whose name has passed into history, upon whose body yesterday grated the doors of the Albany penitentiary, incarcerated with this man Conover, the schemer, the deviser of all the perjury of the military commission, passing through the sieve of the office of the chief of the military bureau; Conover, the tutor of the man who sits there beside the counsel—Richard Montgomery—that Richard Montgomery who helped to give part of that infamous testimony which stains with dishonor the records of my native country; Conover, the vile tool of Ashley, scarcely better; this man, manipulated by Conover, brought out by Ashley, dug up from the purlieus of the jail's infamous depths, is put on that stand to ask you to take his oath against the life of that poor boy. O, gentlemen, gentlemen; thank God, although counsel may forget sometimes what is due to a jury, a jury such as this cannot forget what is due to themselves as men. Spurn it, gentlemen, indignantly; not only disbelieve, but spurn it.

David C. Reed, whom the counsel relies on, says he thinks Surratt is the man. He does not swear positively; and so weak and insufficient was his testimony, we deemed it unnecessary to contradict him. Living in this community, you know him. You know his business; you know his trade. He tells you in his cross-examination he had previously said Surratt had been in his room, and he believed it; but now he thinks he was mistaken when he said he saw him in his room. He tells you he had seen him at Pumphrey's stable time and again. Pumphrey tells you that he kept a stable, and never saw him there but three or four times in his life, and that he testified falsely when he speaks of sitting there at the door. He knew him from childhood to thirty years of age. Look at him now. You see the boy broken down with imprisonment, wasted, worn with suffering such as would mark any countenance; but in that countenance no sensible man can read thirty or thirty-five years.

Gentlemen, as I look at that sorrowing face with its deep furrows, that sunken eye, I feel the burden that has fallen on him. I can imagine him almost an old man, and if he could show you his heart, as I show you his face, your own would bleed. Proved by his brother to be only twenty-three, and yet this man who has known him ever since he was a child, when he saw him in the street, saw a man of thirty or thirty-five years of age. My learned brother, on one of the days which he devoted to his eloquent address to you, thought proper to speak of one of our witnesses as dealing out iniquity, death, and sin in the shape of fluids. Who is David C. Reed? What was he dealing out? Iniquity in the shape of liquors sold at the bar? No, sir; O, no! The fiery draught that inflames a man's blood, in order that he may get what he pays to poison him, that is not his business. It is to inflame their blood that he may rob them at his faro bank. Take him, sir, with the witnesses you have assailed; you don't want me to touch yours in the raw, keep your hands off mine. Of his reputation in this community I will not say more.

Who next? Susan Ann Jackson. She made a statement that produced a deep impression on this jury at the time she made it; it sunk into the hearts of the whole community. She told a simple story from that stand of having seen John H. Surratt on Friday, the 14th day of April, 1865, in his mother's house, having, at the request of his mother, prepared supper for him. Happy circum-

stance! she went a little further. She not only says she prepared supper for him, but she gives a part of the conversation, and as if by another one of those manifestations of Providence in behalf of this prisoner, we are able to prove the identical conversation, and when it took place. She swore that she saw him that evening, prepared supper for him, and that when she came in Mrs. Surratt said to her, "This is my son John; is not he like Anna?" She had never seen him before. She never saw him afterwards. She never saw him but once. She did see him once, and this was when she saw him. Gentlemen, it struck me as something remarkable that Susan Jackson should not have testified to this before, and in answer to my question on that point she said she had given the same testimony before Captain Olcott, soon after the assassination, and that it was taken down in writing. You know, gentlemen—every man that reads, knows—how the government raked the country over to prove that John H. Surratt was in the city of Washington at that time.

Now, if she could have given any such proof, would she not have been summoned before the military commission and required to testify? It struck me at once, if she had given to the officers of the government at that time information that she knew this material and very important fact, it was a very remarkable circumstance that the government did not put her on the stand. But I was not then prepared to believe all about this prosecution that I am now prepared to believe. You have her evidence before you, that she stated these facts to the officers of the government in 1865. That is what she says. Does she know? Does she recollect? Is it so? I apprehend that she recollects what she then said, but I apprehend there was no such testimony written down by Captain Olcott. If there was, as I have said, they would have used it then; if there was, as I have said, they would use it now. They knew she was lying on that stand, and they tacitly acquiesced in the lie. They knew, for they had before them her examination before Captain Olcott, that she had sworn on that examination not as she swears here. They had the record of her examination in the Bureau of Military Justice; they have seen it; they knew that she had either failed to recollect or was wilfully lying—maliciously and recklessly—and they acquiesced in the lie. Now, what is the proof? She is asked on page 429 if she knew Rachel, or Eliza, Seavers. No, she did not know any such person. She was asked whether she knew Rachel, or Eliza, Hawkins. No, she did not know; she did not know any such woman. Why, gentlemen, her own husband on the stand, brought here to vindicate her character, to prove that what she said was true—her own husband proved that this very woman, Rachel, came to the house that morning, spent the day with her, and was carried to the provost marshal's in her company. That is their testimony, not mine. Why did she deny that she knew Rachel? It is evident that she told a palpable falsehood; she did know Rachel. Why did she deny it? Because she knew what she had told Rachel about this business. She knew she had told her she had seen John Surratt on the 3d of April and never saw him afterwards. From the instant she was asked if she knew Rachel she saw the toil in which she was caught, and met the battle boldly. She commenced lying from the instant she found she had to lie to extricate herself from the difficulty she was in.

What does Rachel say? Rachel says she was here spending her Easter holidays; that she called on this woman to see her, and to see her own child. She knew her, and she went there to see her. They had a talk about Mrs. Surratt. Susan was apprehensive about her home, and about getting her money. Rachel told her that she would get her money; that Mrs. Surratt would pay her, if it took the last cent she had on earth. The conversation then comes up about John. She had not seen John for two weeks—he was there two weeks before—he was like Anna. This was on the Monday or Tuesday after Friday, the 14th. Rachel, as you all saw, manifested a kindly heart on the subject. She is an excellent specimen of that system which is passing away, and which

hereafter will be remembered in romance and in story. The gentleman upon the other side thought she showed a little too much sympathy. His education in the north has not led him to be familiar with the institutions in our section of the country. The honest and earnest sympathy of these old family negroes is beyond expression. But the love of the negro is always accompanied by the most perfect honesty. Show me an old family negro who has dandled the children of her master in her arms, and is now called "mammy" by the grey-haired man, and I will show you a specimen of honesty such as cultivated education or high civilization cannot exhibit. Show me a negro who cares not for the family in which he was reared, which has protected him, which has extended to him the kindly hand of charity, but whose heart has turned away from them, and I will show you as black-hearted and false a man as you can find in the wilds of Africa. Love and honesty, carelessness and dishonesty go together. They ask Rachel if she has not a strong sympathy with the family. She came out boldly and frankly, and acknowledged that she felt a sympathy for them. "I love them, and I want this man to get off." Says Mr. Bradley, "Do you love them well enough to tell a lie?" "No, bless God, I would not tell a lie for anything in this world," speaking in the plain vernacular of the darky.

But, gentlemen, Rachel does not stand alone in this contest. She is corroborated by Clarvoe, who was there to search the house on the night of the murder. Clarvoe came down stairs, and says two negro women were there. He speaks to one of them in the door, and says, "Aunty, where's Mr. Surratt?" "I do not know Mr. Surratt; do you mean Mrs. Surratt's son John?" "Yes." "I hain't seen him for two weeks." Did that conversation occur? There is not one of this jury who will doubt the word of Clarvoe. Is she the woman? Clarvoe says while he was coming to court he met a woman on the steps, and was startled by the thought that she was the one. He believes she is the woman. McDevitt was present and heard the conversation. He will not say whether she is the woman or not. You will recollect that Susan Ann Jackson states that she covered herself up in bed, and did not see anybody. Clarvoe tells you how he searched her room; searched her bed; found the bedclothes turned down, and that nobody was in it. Do you believe him? He examined the room; he looked under the bed; he was there to search and find whoever might be concealed. But, gentlemen, the good angel of this case, whom my learned brother commends so highly, Miss Fitzpatrick, settles this whole question. Honora Fitzpatrick says that when John came back on the 3d of April, she was in the parlor and received him, with his mother; that his mother sent her down to get some supper for him; that she went down and got some supper; set out the table with some bread and butter, cold ham, &c., for they ask her about the particulars. She then went down with the mother and John Surratt into the supper-room; they take their seats, and presently Susan Ann Jackson comes in with a pot of tea. Says Mrs. Surratt: "Susan, this is my son John; don't he look like Anna?" Then it was she saw him; then it was this conversation took place. That was the only time she ever saw him, for she swears she never saw him but once. My learned brother says you must take Miss Fitzpatrick's word as gospel truth.

But there is alongside this good angel testifying as against this perjured negro, this bad angel in the case. The war of light and darkness will go on forever, I presume, throughout its entire extent—the war between Ormuzd and Ahriman is famous in Persian history and story; the war between the Saviour and the fiend in his battle between the evil and the good continues, and in the smaller fields of ordinary life the same contest is eternally raging, and in this case we see it presented in individuals—good and bad angels. The good angel, Miss Fitzpatrick, and that accursed fiend, Weichmann. The good angel in the case, Miss Fitzpatrick, testifies in behalf of this mother's innocence, against Susan Ann Jackson. Then appears the bad angel, Weichmann, combining all the qualities



of the spirits my learned brother has conjured up through the magic wand of Milton, from hell—Weichmann comes in to give his aid—Weichmann, this accursed fiend, whose conscience drives him madly before its applying lash—Weichmann testifies that John Surratt was not at supper on the night of the 14th. He tells you that he came back from Surrattsville about half past eight or nine o'clock; that when they came back they went down and took supper together; that he went up with the family into the parlor immediately after, and remained there with Mrs. Surratt, and talking to the girls; that Mrs. Surratt could not possibly have left the parlor and gone down to supper without his knowing it; that she did not leave until ten o'clock, and then went to bed. With your own devils will I exorcise your devilish spirit; with your own devils will I destroy your accursed kingdom. I repeat, Weichmann says she could not have gone down to supper with John Surratt, nor could she have given him supper, without his knowing it.

Is not this enough to destroy this woman? Is she mistaken or is she lying? So far as her testimony is concerned, it is demolished. But I am sorry to say of the course of this prosecution that the conviction is forced upon me, that I honestly believe, as I am responsible before Almighty God, that woman is lying, with the full knowledge of the United States government.

One other witness I have not mentioned—St. Marie; impeached, but vindicated. He says Surratt admitted to him that he was here and escaped from here. I presume there is no member of this jury who would take the word of St. Marie, who would be willing to found his judgment upon it. The learned counsel rests a great deal upon confessions. I shall have something to say of the force of confessions hereafter. I attach no importance to them. He says St. Marie was a friend in the service of the Papal guards. Why is he here? Why should he betray his friend, if it isn't true? Gentlemen, the jingle of yellow earth has been the knell to many a man's honesty. Why was he in the Papal guards? He was pursuing this man. If he was his friend in the Papal guards, why is he here, consenting to come? How could you get him here? Why should he give information to the American consul? Is he so very public-spirited? Does he so love American justice and American glory that he should voluntarily, and without hope of reward or benefit, come forward and inform on his friend to the American consul? Gentlemen, for myself I cannot, without sickening at heart, hear the testimony of any one of these professed informers. In the course of my professional experience I have learned to look upon them with suspicion, with distaste, and hatred. During our civil war, when this land swarmed with petty emissaries of political and private malice, every petty scoundrel in every district had his spy at every table. I have learned to condemn them. If I had the power I would take every informer in the United States, unite them as one man, and swing them as high as Haman. Spies and detectives! The habits of imperial and kingly government have come to be the common daily food of American society. Scarcely, gentlemen, not one of you during the last three years of the war could move without it being reported to some official; and they yet swarm in the land; they suck the blood of the government; they have depleted its treasury. Even to-day, now in time of peace, these political emissaries are fed at the public board, while honest industry bleeds and grows thin that they may grow fat and rich. The system is infamous; the tools are more infamous than the system.

Now, gentlemen, we have gone through with their evidence as to the presence of the prisoner here. I think I have shown you that it is corrupt from beginning to end, unprecedented by anything within your recollection. What other evidence is there? Negative evidence, but strong. If John H. Surratt was in Washington city on the 14th day of April, is it not a remarkable fact that no one single acquaintance who knew him met him? Of all the witnesses who testified not one single individual had ever seen him before except Reed, and he



did not speak to him, but nodded in passing. They have not brought here one friend or one acquaintance except Reed, who saw him here on that day. Strangers saw him here, as they say, undisguised, open, attempting no concealment, moving about the streets; walking on Pennsylvania avenue, says Reed; drinking at Metropolitan Hall, says Vanderpool; riding on H street, says Cleaver. He was everywhere visible to strangers, yet not one single friend or acquaintance saw him or spoke to him. Is it not remarkable?

They say Mrs. Surratt's house was the rendezvous of the conspirators. Mr. Carrington says it was the rallying point. If it was the rallying point, and John Surratt was here on the 14th of April, preparing for the consummation of the deed in which was centred all the hopes of that conspiracy, why did he not go to the rendezvous? Would not that have been the first place he would have gone? Booth was there at one o'clock, says Mrs. Surratt, I believe. There was no concealment about that. If John Surratt was in town, why was not John Surratt there? Was he there? Mr. Holohan, who was in the house, says he was not. Mrs. Holohan says he was not. Miss Jenkins says she knows he was not, because she was there all the time. Miss Fitzpatrick says he was not. Weichmann says he was not. Booth was there; Booth was his friend; Weichmann was his friend. Where could he have been but in the company of these two friends at the place of their common meeting?

But there is another who testifies in his behalf, and that he was not there; a voice from the grave—a nameless grave, without a stone or flower. Mrs. Surratt says he was not there—that he had not been there for two weeks. Weichmann says he had not been there for two weeks, and if Weichmann ever told the truth it was then, before he commenced to devise a scheme for the protection of his own life, impelled and forced to the falsehoods he has since told by the threats and representations of this government, that unless he lied to suit their purposes he should be hung with the other conspirators. If he ever told the truth it was then. Gentlemen, this voice from the grave speaks in behalf of the child. Says Clarvoe to Mrs. Surratt, “I want to know where John is.” “I go a letter from him to-day; I have not seen John for two weeks.” Is it true? The living truthfully bear testimony that he was not here; the dead speaks from the grave that he was not here. Her declarations are not in evidence; we cannot produce them here to protect the child. But there is one single voice rising from the tomb, and as it ascends to the heavens is re-echoed back, protect that boy. You (addressing counsel for the prosecution) have broken the cerements of that grave; you have brought her before this jury; now close those cerements if you can. She sits beside him, and covers him with a wing you can never shut. You thought it was adroitly done. We had not said one word to this jury about her, but in bringing her before them you disclosed your plan. Her trailing garments from the tomb sweep through this room. We feel the damp chill air of death. You may bid the spirit down now, but it will not down. It is here, as it has been elsewhere. It speaks to this jury—a mother pleading for her son, testifying in his behalf. It lives upon earth; that spirit which speaks to living men hisses in the ears of those who did this damning murder. Enough for the present. She says her son was not there. I shall refer to other matters connected with her in the course of my argument. I feel that I am drawn to it. I feel that a spirit I cannot resist impels me to say it, and I will say it in its proper place.

You then have, gentlemen of the jury, their witnesses proving Surratt's presence stricken down. You have honest men testifying that he was not here. You have his dead mother casting this last protection around her child, saying he was not here. But if he was here, how did you get him here? You prove that he was in Montreal on the 12th of April, 1865. How do you get him to Washington? He left Montreal, according the testimony of your witnesses, at 3.30 on the afternoon of the 12th. They put him on the New York train.

You see [illustrating by a large map spread out before the jury] the train runs to Albany, New York, and Washington, forming almost a straight line, with a slight curve at New York. They admit that on the 13th he was in Elmira. They start him in Elmira at 10 o'clock on the morning of the 13th, in order to reach Washington city. Now, they have got to bring that boy from Montreal to Washington city, and have him in Washington by 9 o'clock on the 14th, in time for Wood to shave him. How will they arrange it? Remember, they bring him by way of Elmira. Leaving Montreal at 3; Rouse's Point at 5.45; St. Albans, 7 25; Essex Junction, 8.30; Burlington; 9.05; Troy, 5.20; Albany, 5.45—sixteen hours from Montreal. Then at 5.45 on the morning of the 13th he was in Albany. Now, if he had come straight to New York he would have reached there that day in time to have taken the night train from New York, reaching here the next morning. That was the trip they intended originally to bring him; there is no doubt about that; but our testimony that he was in Elmira was too strong, and instead of meeting it boldly they undertake to flank it, and therefore determine to put him in Elmira on Thursday the 13th. Very well, we now have him at Albany at 5.45 on the morning of the 13th, the earliest possible time at which he could arrive there. How will they take him to Elmira? He leaves Albany at 7 o'clock, Syracuse at 1 p. m., Canandaigua at 4.52; from there to Elmira in three hours—say 8 o'clock. I want you to see these courses and distances. He got to Elmira the night of the 13th. There is no night train running from Elmira; the bridge over the river is broken up; the road is in bad condition; the trains start at 8 o'clock in the morning. He could not, therefore, leave Elmira at night. The counsel for the prosecution were not aware of that when they determined to say he was in Elmira, and they were obliged to resort to a burden train or special train leaving at 10 o'clock in the morning. But how could he get to Elmira, is the first question, by 10 in the morning? We have shown you the time from Montreal. It is 11 hours to Canandaigua, and he cannot get to Elmira without going to Canandaigua. That is proved by their own testimony, when they put him on the New York train at Montreal. They can only get him off at Albany, in order to get him to Elmira, and they cannot get him to Canandaigua until 5 o'clock Thursday evening. It is physically impossible, and yet they want to tell you he was in Elmira at 10 o'clock. Now, if that is not a mathematical demonstration, I cannot understand it. In order to make the thing doubly sure, I asked Clarvoe, who travelled over the route many times, how many hours it was from Montreal to Albany. He said 17. I asked Chamberlain, who lived in Canandaigua, how far it was from Albany to Canandaigua. He said 10, making 27 hours from Montreal to Canandaigua. Will you, gentlemen, bring him by any other route? You put him on the New York route, and I have followed him by that route to the only point where he could diverge to go to Canandaigua. We take him where you give him to us. If there was any other route it was your duty to prove it.

Gentlemen of the jury, I invoke your serious consideration to this statement. There may be difficulties about a question of identity; but these are physical facts. I have shown you that it was physically impossible that he could reach Elmira in time to be here on the morning of the 14th, or at any time on that day. They did not know the railroad connection had been broken up at Elmira when they placed the prisoner there on the 13th. They had not found out there was no night train. When they did find it out they ought to have given up their case. I may not know myself; prejudice may blind my eyes; but I do believe, and I state to you, gentlemen, in all earnestness, the solemn truth, that if I were prosecuting this case, whatever prejudice I might have, when these physical facts were developed to me, I would abandon the case. Go to work, gentlemen, and figure them up. Overcome them, if you can. Appoint a committee of three to escort him from Montreal to Elmira.

When you go to your hotel appoint this committee, and let them report to you in committee of the whole. Figure close, and figure well. Take the starting-point by the 3 o'clock New York train from the city of Montreal on the 12th of April, running with all the speed a locomotive can produce, and determine in your minds when you can get him to Canandaigua, and when you can get him to Elmira. I say it is physically impossible.

But suppose you get him to Elmira; what follows? My learned brothers on the other side were fighting so hard on this side, between Elmira and Washington, that they seemed to have overlooked the road on the other side. They were trying to get him out of Elmira, but they had not thought how to get him in there. They had him there, and they seemed to take it for granted that he arrived there on the afternoon of the 13th. It was on the afternoon of the 13th that he saw Carroll; but, unfortunately, these figures are things that do not lie. However, I will take their standpoint, and put him in Elmira. Let him come there in the unprecedented short time of some thirteen hours from Montreal. Put him there at 8 o'clock in the morning, and then see how you will get him out. From Elmira to Williamsport is  $5\frac{1}{2}$  hours; Williamsport to Sunbury, 2 hours; from Sunbury to Harrisburg,  $2\frac{1}{2}$ ; from Harrisburg to Baltimore,  $4\frac{1}{2}$ . There were two passenger trains from Elmira that morning; the passenger train at 8 o'clock, and a second section, as it was called, at 8.05. Was there any train after that? The counsel has put a witness upon the stand who testifies he thinks he brought Mr. Dubarry down on that day, and that he left at  $10\frac{1}{2}$ . Fitch states there was no train from Elmira going south on the 13th, as I understand him, after the regular train at 8.05, special or otherwise. If there had been it would have been upon his record, and it is not there. Dubarry confirms Fitch, who, when questioned, on page 904, states most emphatically that there was no train, special or otherwise; that such a train would be on his records, and that he has searched the records, and cannot find it; that he has no memory of any, and if there had been any, passenger, freight, or otherwise, there would have been a memorandum of it; that he has no recollection of coming down in any special train.

Again, the passengers coming from Elmira would lie over at Williamsport until ten that night. That could not be avoided. Leaving Williamsport at ten, they reach Harrisburg at two, and the witnesses in their first testimony say they would reach Baltimore about seven; but the time is afterwards definitely fixed on page 924 at 7.25. Now, suppose they put him in a special train from Elmira at ten and a half, and run him down to Williamsport. At Williamsport there is a ferry, and they have him ferried over by Montgomery.

Mr. BRADLEY. By Drohan.

Mr. MERRICK. Well, it is by Montgomery, and I still say Montgomery. Montgomery hired him, Montgomery paid him—Montgomery, Conover's pet, right-hand man and friend. Conover made Montgomery, Montgomery made Drohan. What does Drohan say, the miserable creature? He was a ferryman, ferrying passengers across at Williamsport. He sees a man he ferried over on the 13th; he comes here; he is asked who is the man; he says "that is the man," and when he says it he is not looking at the prisoner, but at some one else. He was looking three yards away from the prisoner. Gentlemen, you ought not to have taken him until he had learned his lesson well. How does he identify him? He identifies his coat. This ferryman, living in the backwoods of Pennsylvania, identifies a peculiar coat he had on. Gentlemen, lying will out. Too great particularity was his misfortune. Why, that coat had not figured among other witnesses yet. He was coming here in that coat, he left Elmira in that coat, and this man Drohan, Montgomery's legal son, saw him in that coat. Why did he not have that coat on when Reed saw him? Why did he not have that coat on when he was shaved just fresh from the car, without an opportunity to change his apparel? After travelling in burden trains,



gravel trains, construction trains, without a change of raiment, why did he not have that coat on when he was shaved? Reed, who has been a tailor, notices his clothes particularly, and thought it was nicely cut. Drohan is the only man who saw him in that peculiar coat. Montgomery oveleaped himself. He had better quit business until his partner gets out of the penitentiary, for he is the senior member of the firm. He does not do his work well, gentlemen; you ought not to have him.

Excuse this digression, gentlemen. Drohan ferries him over. He arrives at Sunbury. The freight train leaves at 4.30, the passenger train at 12.13; that is midnight. Could he have reached there in time for the freight train? He may have done so. The freight train, however, runs to Marysville, and, reaching Marysville, crosses the river at 9.20 p. m. From that time until 8.05 a. m. no freight or passenger train left. They had some difficulty in getting him to Elmira; they had difficulty in getting him to Elmira, and when they get him to Harrisburg you find that no train left Harrisburg until 3.30 in the morning, and that train arrives in Baltimore at 7.25, leaves for Washington at 8.50, and arrives in Washington at 10.25. Give them, then, the advantage of every connection—gravel trains, construction trains, freight trains, special trains, horse cars, Drohan ferries, Montgomery's aid, railroad connections, railroad junctions, and they cannot get him here in time for the barber nigger, Wood, to shave him.

But go back again, and I ask you, can they get him here at all? Du Barry tells you, and Fitch tells you, that there was no train left Elmira after 8.05 that morning, special or freight. But, even suppose you get him by special train or freight train down to Williamsport. I give them the benefit of all they ask. Will you, gentlemen of the jury, with your experience in railroads, tell me, that in running gravel trains and special trains you make the time once in a thousand; and, if you are forced to depend upon close connection in running gravel or construction trains between Williamsport and Sunbury, would there not be a reasonable doubt? Is there not a positive certainty? Is it not ridiculous to ask the jury to credit any such absurd things?

But, gentlemen of the jury, there is one other point. These are figures—material, physical facts. Now, here is a moral fact, which comes in appropriately in aid of these physical, material facts. What say the learned gentlemen on the other side? That Booth wrote to Surratt it was necessary to change their plans, and to come immediately to Washington—wrote to him from New York, they say. I will show you directly whether he did start immediately. McMillan says Surratt telegraphed to Booth, from Elmira to New York, to find out whether he had left. When did Booth leave New York? They have proved that he must have left there on the 7th. Bunker tells you that he remained in the National Hotel until the 14th; and that after the 7th he never left the hotel until the night of the murder. The letter from New York must, then, have been written as early as the 7th, and Surratt keeps that letter until the 12th. That is not moving like a well-disciplined soldier. Booth registers his name at the National Hotel on the 8th, and never leaves until after the assassination. If he wrote from New York on the 7th, or before the 7th, the letter should have reached Montreal in 24 hours, and Surratt got the letter on the 8th. And yet he did not budge until the 12th; and when he did budge, which way did he go? He is ordered to Washington, and understands Booth is in New York. Even when he gets to Elmira he still thinks Booth is in New York. If he thought his commander-in-chief was in New York, and he was ordered to Washington, his object would be to see his commander, and why did he not go to New York to see him? What did he go to Elmira for? Look at that map. Look at the relative positions of Montreal, New York, and Washington—New York almost in a direct line from Montreal to the point which he was aiming and seeking to reach—the object of the expedition the



conspirator was supposed to be engaged in. Why did he go to Elmira, twelve hours out of the way? His general is here. He is directed to come directly here, and yet, instead of coming directly here, he goes to Elmira and telegraphs to New York to know if Booth has left. He then, if he did send the telegraph, did not actually know on the 13th where Booth was. This conspirator—his Beelzebub—on the 13th, on the day before the assassination, did not know where Booth was—where Satan was. Is not that a most extraordinary circumstance? Conspirators, moving on time to do their bloody work, counting the minutes as honest men count hours, sworn by the brother's oath to stand by each other and by their common plot—a conspirator waits until 24 hours before the fatal moment, and then he, the second conspirator, does not know where his principal conspirator is. They say he telegraphed from Elmira to New York. Where is the telegraph? Why did you not bring it in?

I repeat, why should he have gone to Elmira? My learned brothers upon the other side say he may have been at work in aid of the conspiracy at Elmira. His honor has settled that, so far as his judgment goes to settle it; and it goes a great way. His honor says you shall not bring into this case what he is doing in Elmira, because they have not proved that his being in Elmira had any connection whatever with this conspiracy. He has pronounced that judgment, and it has regulated and controlled the evidence. It shut out our testimony; closed down the defence. We might have proved what he was there for—that he was there on innocent business, having no connection with this conspiracy; that was excluded. His honor says you cannot bring in rebuttal testimony not intended to knock down anything; when that fact has not been set up, you cannot knock it down. There is no proof, therefore, that his presence at Elmira had anything to do with the conspiracy. If his object, then, was simply to come to Washington, why did he go to Elmira instead of going by New York, where he could have met his commander-in-chief?

At this point the court took a recess of half an hour.

#### AFTERNOON SESSION.

Mr. MERRICK, resuming, said: If your honor please, I think I have shown the jury that the testimony by which they have attempted to establish the fact of John Surratt's presence in Washington is not to be relied upon, and that that testimony soils and discredits this entire case from its unfortunate commencement. I think I have further shown the jury that it was physically impossible for him to have reached this city at the time when, according to the evidence they themselves have adduced, he was here; and although you may think it an unnecessary repetition, I beg leave, with your permission, again to recommend to you this course in arriving at your conclusions: Take him to Montreal upon the 12th of April, 1865, at three o'clock on the New York train, follow him step by step, figuring it on paper and by the map.

I have further shown you that not only is their testimony not to be believed, but that it was physically impossible for him to get here; that none of his friends who knew him saw him—that is, his friends summoned and placed on the stand by them, not us; and it was, therefore, entirely immaterial that we should introduce any evidence in regard to an alibi whatever. The learned counsel upon the other side read to you the law in regard to alibi, as intended by him to be applied to this case. I accept it in any shape they may choose to place it, and I say the alibi is proved beyond the possibility of doubt. We have proved beyond the possibility of a doubt that he was not here. You may just as well tell me that I can start from the city of Washington on the 4.30 train this afternoon and reach New York at 10 to-night. It is physically impossible. And, further than that, we have proved his presence in Elmira by some of the most respectable witnesses who have been placed upon that stand—as respectable as

any witnesses who can be brought upon that stand. You saw them; you felt their character, for it was manifest in their deportment.

In reference to this thing of the credit of witnesses, and the belief of a juror, there is a difficulty in reducing it to any philosophical proposition, or determining from it any logical course of reasoning. You see a man and you hear him testify, and you believe him or you do not believe him according to the instinct of nature, which is a power in the human breast exercised unconsciously, but which often leads us better than the best of judgments. Stewart testified, and you heard his evidence, to having seen Surratt in Elmira on the 13th or 14th. He did not know which; but he fixed the time at which he saw him as one of the two days during which his partner was absent in New York, and he fixed the period of his partner's absence by the books of the firm. You heard Carroll's testimony, and listened to the severe cross-examination, in which the counsel professed to lay the foundation of a contradiction he didn't afterwards attempt to build upon. He laid his foundation, endeavoring to induce you to believe that he had behind some superstructure that he would afterwards rear; but he laid but a single plank towards the erection of such. A witness was called on the stand with the hope and expectation, no doubt, of contradicting Carroll; but the witness, instead of contradicting him, confirmed him, and, therefore, the testimony of Carroll stands before you unquestioned and undisputed. He says he saw Surratt in his shop on the evening of the 13th, as he believes, and again on the 14th of April, 1865. Mr. Atkinson swears to the same day, or to this effect, that he saw him in that shop on the 13th or 14th of April, 1865; and Mr. Cass testifies, and in a manner that gives his evidence all the impress of the stolid character of a substantial and truthful man. He says that on the morning of the 15th, when the news of the President's death was coming in, he was at his store. He saw a gentleman coming across the street, whom he took to be a Canadian friend of his; but as he approached he saw it was not his Canadian friend, but a gentleman coming into his store who wanted to purchase some clothing of a character that he did not have. They entered into conversation. The conversation became partly political, when some sentiments were expressed which Mr. Cass did not approve of, and which were, when he manifested his disapproval, withdrawn, and the conversation was then pleasantly renewed. He said, without hesitation, when asked the question, "This is the man." That was on the morning of the 15th of April, when he was about shutting up his store in honor of the memory of the deceased President, after the news had come that he was dead. You recollect, gentlemen, how I afterwards examined him, in connection with Mr. Bradley: "Do you recollect the man's face and his features, or is it from his manner or his action that you identify him?" "I thought I recognized his face; but when I came to talk with him, to observe his action, hear his voice, and notice his manner, I knew it was him." He identified the man by his voice, action, deportment, and manner, and not by his face alone. Not one of their witnesses in Washington have seen the prisoner and talked with him before or since. These witnesses from Elmira have talked to the prisoner, observed his action, and they swear, not to the dim impressions made on their recollections of features, which are liable to be effaced by new features succeeding with succeeding days, but they swear to the manner, action, and conversation, and say they recognize him from all these things, and not simply from the features of his face.

Then, gentlemen, there is Dr. Bissell, upon whom there was a vigorous attack made, and whose testimony came to us without our ever having known or heard of him, further than this, that we knew that Surratt had talked to some man there on crutches. His character has been tainted, though not successfully assailed; but throw his testimony out of the case if you doubt it. I want no tainted witness, and he is the only one. Throw his testimony out if you choose, and hand him over to the other side, where he can find congenial

company in the witnesses; for he has none among ours. Again I say, throw him out of view. I care not for his evidence. Our case rests upon the evidence of men of unimpeached and unimpeachable character, and physical circumstances that speak not by man's recollection, but by the unalterable laws of God. One other circumstance connected with these witnesses from Elmira is worthy of your considerations. They all testify to the peculiar kind of coat known as a Garibaldi jacket. You saw the pattern of it exhibited in court, buttoned round the throat, and plaited in the back and in the breast, with a belt around the waist—a coat a like unto which there is none in this room, and probably none in use in the city of Washington. They testify to seeing that identical coat on this man. We bring here from Canada the tailor who swears that he made this identical coat for this man in Canada, on the 9th of April, 1865. He swears that he made it for Surratt, and we find Surratt in that coat in Elmira. He then returns to Canada, and they prove by the agent of the hotel and the clerk who kept the register that when he came there he had on that identical coat.

Now, gentlemen of the jury, they start him out from Canada on the 12th of April, 1865. We put him in a certain coat on the 9th of April, 1865, and find him in that same coat in Elmira, observed by these witnesses, on the 13th and 14th, and when he gets back to Canada he has on the identical coat in which he left Canada, and which he wore in Elmira. He is unseen by any of their witnesses, except Montgomery's precious son, which is a circumstance which is to weigh heavily in behalf of the Elmira witnesses, if indeed their high characters need any additional circumstance to give their testimony full credibility before the jury. But, say learned gentlemen, he was coming here, as I have stated to you before, in obedience to the mandate of Booth, to perform his part in this conspiracy. I have already noticed that position. I have already shown you that Booth went to the National Hotel on the 8th, and did not leave until the 14th; and by McMillen have shown you that Surratt did not know where Booth was. Having shown you, gentlemen, that he was not here, that he had had no connection with Booth from the 7th, and could not have had from the 7th down to the 12th, or after the 12th to the 14th, and never after; in other words, having shown you that he had no connection with Booth from the 7th to the present time, it is a circumstance to show that he was not in this conspiracy, as it is to be presumed that if he was in it that he would have been in Washington city, performing his part in it. He was not in the conspiracy to kill the President, and had nothing to do with it. He had no knowledge even of its existence, and did not leave Montreal in obedience to Booth's mandates. Booth wrote him, says McMillen, from New York; but he did not start immediately. Booth left New York on the 7th. Now, what was the statement that Surratt made to McMillen with regard to this subject—for it is upon McMillen's testimony that they rely to show Booth was in this conspiracy. McMillen says Surratt stated that he "received a letter from John Wilkes Booth, dated New York, ordering him immediately to Washington, as it would be necessary to change their plans, and to act promptly." Change their plans? Change their plans to what? Can the counsel for the other side account for the change, and specify what it was? He is notified that the plan is to be changed. Change from what to what? Did he tell McMillen what the plan had been, and what the change was? McMillen does not disclose it. But there was a change of plan. What was it? Cameron discloses the fact of what occurred between Surratt and McMillen, for we must take McMillen's testimony, gentlemen, with many grains of allowance. McMillen has himself told you that he sees the reward glittering in the future; that he is entitled to the reward if anybody is. And while he has made a declaration which the learned district attorney has been pleased to quote as a sentiment worthy of repetition, and creditable to the human heart, to wit, "that he gave him up because he regarded him as an enemy to society and civilization," he also tells you that when he did give him up, he expected



a reward; and in his cross-examination, to which your attention will be called by my distinguished brother, you will find that while he swore that he had collected from Father Boucher, through a bailiff, the money that was due, he forgot his own receipt; and that he falsified the truth in his testimony concerning that receipt after it was handed to him. It refreshed his recollection, but not until he found that he had told that which was not consistent with the truth. It was a receipt dated in June for five dollars in full of all demands, and yet just before it was shown to him he had sworn that in the August following Boucher was indebted to him for services rendered one year before. What does Cameron say?

“Q. Did he ever state to you that Surratt told him that he was in Elmira; that he went from there to some town, the name of which he could not recollect, but which had an Indian derivation?”

“A. He so stated. I tried to recollect the town by repeating all the names of towns in New York having an Indian derivation I could think of; but he could not recollect, nor could I.”

You will call to mind the fact, gentlemen, that some of the towns in New York have an Indian derivation. There are a great many that have, and among them is *Canandaigua*. It is unnecessary I should pursue this point. It is a matter about which I care to speak as little as possible.

I will read further from Cameron's testimony.

“Q. Did he further state that Surratt first learned of the assassination of President Lincoln at the city of Elmira, and that he immediately turned his face toward Canada?”

“A. Yes. He answered that as the reason.

“Q. Did he ever state to you in any conversation on board that boat, or elsewhere, that he was on intimate relations with Surratt on ship-board; that Surratt could not have been guilty of participation in the assassination; that he really regarded him as a victim?”

“A. He did, in answer to my question, whether he was in favor of compromising himself as an officer of the line of steamers, by furnishing shelter and affording facilities to such a man for leaving the country.

“Q. Did he ever state to you that Surratt told him that the plan for the abduction of Mr. Lincoln was the individual enterprise of Booth, and that he furnished \$4,000 or \$6,000 for that purpose?”

“A. He so stated and mentioned those sums specifically.

“Q. Did he state that the whole plan was laid by Booth?”

“A. Yes, by ‘that reckless man, Booth,’ I think was the expression; and that he always regarded it as the individual enterprise of that man.

“Q. At what time was it that you had these conversations with him—do you recollect the date?”

“A. Not without reference to my diary. [Diary consulted by witness.] It was on Monday, the 30th of October. I left on the 28th.

“Q. Did he ever say to you at that time, or after the 26th of September, 1865, that he had never communicated with Surratt to any one else?”

“A. He stated so emphatically. I made a very earnest appeal to him not to state what he had mentioned in that conversation in regard to Father La Pierre. He stated that he was his early schoolmate, and that he had not repeated it to any one else; he told me so positively and solemnly; and he cannot deny it.

“Q. Did he tell you that Surratt did not know of his mother's position until about the day of her execution?”

“A. He did; he defended John Surratt when I assailed him on that point.”

He tells McMillan he was in Elmira, and when he heard of the assassination he returned to Canada; that the plan of abduction which had been laid was Booth's own plan, and had failed entirely. Now, there are some circum-



stances in the case that may justify the jury in believing there was a plan of abduction. If there was a plan of abduction—and there are some circumstances in the case going to show there was—and the plan that was carried out was not an abduction, but a killing, then the change of the plan was probably from the abduction to the killing; for, bear in mind, gentlemen of the jury, that the killing did not occur in the attempt to carry out the plan of abduction. This conspiracy of the 14th was not for the purpose of abduction, but was a new plan, a new scheme, which was to kill. If there had been an abduction, and in abducting it had become necessary to kill in order to carry out the abduction, then the abductor might be held responsible for the killing. If there was a plan of abduction, and that plan was given up and abandoned, and a new plan was formed to kill, and the parties went to the theatre with the intent of killing, and not abducting, it was not a part of the conspiracy to abduct, but a new conspiracy with which the original parties to the conspiracy to abduct had nothing to do.

But, say my learned brothers on the other side, this man Cameron is not to be believed. Well, bring in witnesses to impeach him. They did, and they swore to his character. A few of them thought he was an erratic, uncertain man. From Elkton these gentlemen came; came with their feelings, came with their prejudices. When we examined McMillan we found that his opinion of Cameron was founded upon the fact that early in the late war Cameron ordered an article to be published in a Baltimore paper with reference to the doings of some Union soldiers, which was not entirely true. A portion of it was his imagination. Why, gentlemen of the jury, if every man who published things that were not entirely true during the late war is to be held as unworthy of belief in a court of justice, I apprehend a large portion of our people would be discredited. I apprehend that a large portion of our people in high position would be discredited. But, they say again, he is not to be believed because he has rebel sympathies; and we have gone into the question of rebel sympathies to test credibility. Gentlemen of the jury, as I have before stated, either in an argument addressed to you or to the court, I was no secessionist. I desired the preservation of this Union. I desired its preservation with all the States unimpaired in their rights as States, and the preservation of the Constitution of the United States unimpaired and untorn by the carplings of demagogues, north or south. I feared the suppression of the rebellion. I desired peace and union, but I feared peace. I feared the destruction of the power of the South, and the utter and entire giving over to the Union of that, because I saw moving abroad in the country a spirit that sought vengeance, and blood, and money, and ran this war like a great manufacturing machine, gaining funds from the blood that was shed from the hearts of brothers; and I saw a spirit in the dominant triumphant military power, which power had been achieved under the presence of defending the American Constitution, which I believed would turn round on that Constitution and destroy it and tear down our liberties. My anticipations have not been disappointed. The spirit is abroad, growling to-day, and shakes the very pillars of your capital. Whilst the Executive of the United States stands fast by the Constitution of the United States, and endeavors to uphold and maintain it, that spirit seeks to destroy him, in order that it may get at that Constitution and destroy it. I feared it. I feared that spirit, which still lives in the course of the gentleman, in attempting now, after the war is over, to discredit a man because he followed in that war his honest conviction. Sir, there were as honorable men in the service of the South as there were in that of the North—men whose hearts were as bold, whose characters were as unstained, whose consciences were as pure, and whose record as unsullied before the world and God as that of men north of the fatal line. I defend not the act of that high treason. I defend not the iniquity that stained this land in blood. Now that the war is over, I arraign and condemn the spirit that would keep

alive the prejudices and the hatreds of the war. If you come to the veracity and to questions of truth, and try them by the public record of the two sides, I would ask who has kept the faith the best between the two contending foes, of the obligations that were entered into at Appomattox Court House, when Lee gave up his sword to Grant? Who has kept best that faith? Has the acquiescent and submissive southerner, keeping to the pledge he then gave of submission to the supreme law of the land? or has the dominant spirit of incendiary fanaticism, seeking vengeance in the north, and now blotting out nine States of the south, and establishing military despotism where once in her glory rode and triumphed the goddess of constitutional liberty? Who has kept the faith best, I again ask? O, gentlemen, I wept for my country in the war. I wept for her when her sons stood arrayed in battle against each other; and now that peace has come, and I see treason, not in arms, but treason sapping the foundations of the republic, in security and peace, without arms, and without noise, and crushing out the liberty of one-half of my people, and destroying the sacred obligations pledged by Congress that this war was for the Union, and nothing but the Union; and to save the States, I weep more than I wept in that war, although I then sorrowed deeply over the distresses of my country. But neither they nor you can prevent the result which is to follow. It is inevitable. The same Almighty power that has watched this nation in its course watches it still, and when for its iniquities its chastisement has been sufficient, perfect peace and constitutional liberty will be restored; and though you and I, gentlemen, in our day and generation, may suffer grief and be pained, our children will inherit a country as proud as that which we inherited, and which we may rejoice to know they will live in and honor. Bad men cannot have permanent triumph; but, in order that their defeat may be hastened, let us abandon this idea of a crimination and recrimination. Let us condemn this vengeful spirit of hostility, which would have us believe that southern men cannot tell the truth; that a man with southern sympathies must be presumed to lie. Such opinions are unpatriotic, unchristian, unbecoming, and unfounded.

If Surratt was in a conspiracy, it was abandoned on the 16th of March. That is the proof. Now, gentlemen, let us recur to see what their proof is. They tell us there was a conspiracy to murder, and, says Mr. Carrington, the scene first lay on Pennsylvania avenue, in 1864. That Mrs. McClermont sees there two or three gentlemen talking. She hears them speak the name of "the President;" "telescopic rifle;" "but his family will be along;" "they can be gotten rid of." Says the gentleman, that is the first scene in this conspiracy to murder. One of these men was Booth. Why, gentlemen, it seems to me, that whatever the counsel on the other side looks at takes the color of his opinions. Small circumstances that amount to nothing grow in his eyes as large as mountains. Then, what Mrs. Hudspeth saw. These interviews and the incidents occurring at each, taken together, says he, show a conspiracy to murder at this very time. The letter which Mrs. Hudspeth found, speaks; it speaks of poison; and ah! at that very time, he exclaims, Herold was an apothecary's clerk. [Laughter.] Wonderful. He was an apothecary's clerk, and, according to the testimony of his employer, he had never put up but one prescription, which was a dose of oil.

Mr. BRADLEY. And not at that time.

Mr. MERRICK. And not at that time, but in August. All this time, too, you will bear in mind Surratt did not know Booth. He is one of the conspirators, and yet he is not acquainted with Booth. He first became acquainted with him in December, 1864, according to Miss Fitzpatrick, who was a boarder at the house from the first of November, 1864. This house was the rendezvous of the traitors during one or two years of the conspiracy, and yet the head traitor and conspirator was not at the house. Weichmann says that Dr. Mudd introduced

him and Surratt to Booth in December, 1864, or January, 1865. That is Surratt's first acquaintance with Booth. There is no proof in the case, not one particle, that Surratt had ever seen Booth before that day. On the 16th of March Weichmann testifies that Booth, Payne, and Surratt came in very much excited and strutted about the room; that Surratt said, "My prospects are ruined; cannot you get me a clerkship?" The whole thing, whatever it was, was evidently broken up then and there. They were never seen together after that day. The next we hear of Surratt is that he is off with some lady toward Richmond, and then in Canada. For what purpose he was in Canada the court would not let us prove, or we could have shown why he went to Canada. Now, gentlemen, they say Surratt furnished the arms and put them at Surrattsville. Well, now, what is the plain common-sense course of reasoning with regard to all this business? Here were a number of young men, with their minds inflamed upon political topics, sympathizing earnestly with the South, as a great many of our Maryland young men did, desirous of rendering it such assistance as they could, probably helping persons to cross the river, carrying despatches between the United States and the Confederate States, and having arms for the purpose of their common protection; and further than that it is not improbable that there may have been some idea of abducting the President as a measure of war—a thing which was unjustifiable, and for which they might have been taken and executed; but it is not improbable, I say, for the reason that there were at that time, as you will recollect, a great many confederate prisoners in the north, and a good many federal prisoners in the south; and it has passed into history that the North refused to make those exchanges which were demanded by the rules of war and the laws of humanity. It has passed into history that the Confederate States at that time offered to surrender up to the North from ten to twenty thousand prisoners if the United States would send transportation to Savannah to take them.

Mr. BRADLEY. And without any exchange.

Mr. MERRICK. Yes, and without any exchange. They said: "We are exhausted; our resources are gone; our food is gone; we starve; your prisoners starve; come and take them, for we are unable to do that justice by them which the law of war requires." Said the United States: "You shall keep them." For the starvation of those prisoners I hold the United States responsible, and not the South. Her own men starved; her own people had no food; her own supply was exhausted. Children fell from the mother's breast because there was not nutriment enough for them. Mothers withered and died for food. Soldiers fell by the wayside, jaded and worn out for the want of physical sustenance. Their own people suffered with the prisoners, and they asked the United States to take them that they might live, for they could not feed them; and they refused to do it. That has gone into history, gentlemen. It is a matter now uncontroverted, undisputed. I say again, that at the time of which I have been speaking, there may have been some scheme to take Mr. Lincoln to the south, in order to accomplish an exchange of prisoners, but not to kill him, for that would not have effected their purpose. Killing him would have defeated the object. Mr. Lincoln was not to blame for this condition of things; I do not blame him; I can pass upon him in my heart as high a eulogium as my learned friend did, although not in as eloquent a manner, for I cannot attain to his eloquence. I hold Mr. Lincoln blameless for the errors of his administration, for he was dominated over by those men who still dominate in high places from which they should be removed. There may have been among those young men some such wild scheme, but that it was broken up is conclusively established by Weichmann's testimony.

But, says my learned brother upon the other side, one of these horses belonged to Surratt, and he bought the horses, and he bought the guns and a rope. What became of those horses? I know that Judge Pierrepont, who is to close



this case, will use those horses to caper and prance before you; but what is the fact about them? Cleaver says that Booth brought the horses to his stable; Stabler says Surratt brought the horses to his stable and paid the fare. That after Surratt had paid for their livery for a certain time, Booth paid for the livery. In March, Booth paid for the livery. Surratt told Stabler that they were Booth's horses, and he would pay for them. Booth says to Weichmann, on the 10th of April, the horses are not John Surratt's; they are mine. Booth then says, these horses, although they may have been Surratt's, had become his. What is the conclusion? Isn't it that if Surratt owned these horses, and had been in this conspiracy, he had got tired of the thing and thrown it up. That it had passed from his mind, and he had gone into other matters to which he was devoting his attention, but that Booth, more ardent and determined, still clung to it, and kept the property; and if he wrote Surratt any letter at all, it was in the hope of inducing him to come again under the control of his fascinating and superior mind. It was not to change a conspiracy in which Surratt already was, but it was to form a new conspiracy, to wit, a conspiracy to kill. But, gentlemen, this whole matter is definitively concluded by the diary of J. Wilkes Booth. If there was this conspiracy, the question now is, "When was it formed?" You will see from McMillen's testimony that Booth wrote the plan was to be changed. When was the conspiracy to kill formed? We say it was organized on that identical day. You will remember, gentlemen, that Richmond fell about the 1st or 3d of April; that Lee surrendered on the 9th of April; that the confederacy was passing away, and that the forces of the Union were advancing upon them, and no one who saw them from a distance, and was not influenced by feelings, had hope of the perpetuation of the dominion of that new government established in the south. When Booth saw that this thing had occurred; that Lee had surrendered; that all hope for the southern confederacy was gone; that there was no longer expectation that it could live, his mind, inflamed and maddened by the reflection that that which he had loved and supported was destroyed; his mind, impressed with the conviction from the unfortunate teachings of a father, great in his profession, that Brutus was a great man because he had slain the eternal Cæsar in his capital, and being inflamed by that teaching, and believing and trusting that he could and might do something great in his profession like unto Brutus, that would immortalize him and his name, and leave it to be repeated by schoolboys as the name of Brutus is repeated by them for slaying the mighty Roman, he, on the 14th day of April organizes this plan for the purpose of doing this bloody deed, after all other plans had failed. What did he say in the diary?

APRIL 13, 14—*Friday, the Ides.*

*Until to-day nothing was ever thought of sacrificing to our country's wrongs. For six months we had worked to capture. But our cause being almost lost, something decisive and great must be done. But its failure was owing to others, who did not strike for their country with a heart. I struck boldly, and not as the papers say. I walked with a firm step through a thousand of his friends; was stopped, but pushed on. A colonel was at his side. I shouted *sic semper* before I fired. In jumping broke my leg. I passed all his pickets. Rode sixty miles that night, with the bone of my leg tearing the flesh at every jump.*

*I can never repent it, though we hated to kill! Our country owed all our troubles to him, and God simply made me the instrument of his punishment.*

The country is not

APRIL, 1865.

what it was. This forced Union is not what I have loved. I care not what becomes of me; I have no desire to outlive my country. This night (before the deed) I wrote a long article and left it for one of the editors of the National



Intelligencer, in which I fully set forth our reasons for our proceedings. He or the gov'r—

When was that conspiracy formed? "*Until to-day nothing was ever thought of sacrificing to our country's wrong. For six months we had worked to capture.*" They have introduced this diary. It is their evidence. It is the only evidence in the case as to the time of the conspiracy; and I challenge any man upon that jury, with this diary in his hand, to tell me that the conspiracy was formed one hour before that time. It comes in sanctioned by the government, for they introduce it, and surely, they did not introduce it to knock it down. No! They introduced it to make it substantial. They introduced it that you might believe it. They give it the credit of their words, and they cannot escape the consequences. I know that the gentleman will attempt to deny this position, and attempt to get rid of the obligation on which he stands to respect as true the statements of that diary, but he cannot get rid of it. He has offered the diary to you for no other purpose. It is evidence for nothing else, for it bears upon no other direct point, and you must take that as the evidence of the only man that knew—John Wilkes Booth.

"This forced Union is not what I have loved. I care not what becomes of me. I have no desire to outlive my country. This night, before the deed, I wrote an article and left it for one of the editors of the National Intelligencer, in which I fully set forth our reasons for our proceedings."

Where is that article. That would disclose the date. That would tell the whole story. The court excluded it; and why? Because we could not give in evidence Booth's declaration, according to the general rule of law on that subject. I differed from the court upon the question, seeing many reasons, as I supposed, why it should be regarded as an exceptional case; but still I appreciated the rule of law. But the counsel on the other side could have let it in without objection. That would have cleared up all obscurity in the diary. What motive could Booth have in telling a lie on this subject? What motive could he have in writing a falsehood that was to live after him? He is fleeing; he has done the deed; the thing is accomplished; history and the muse must take up the circumstance and preserve it. Why should he then, under this condition of things, seek to leave behind a falsehood that could in no manner benefit him or another? "Until to-day nothing was thought of sacrificing to our country's wrong." The surrounding circumstances all show that until that day he probably did not; but then was the fatal hour that tried the souls of men who desired the success of the southern confederacy.

Gentlemen, there is no evidence in the case other than this diary as to the time when that conspiracy was formed. You must take that diary. If you believe that diary, gentlemen of the jury, to be true, this case is at an end. Even though you should get Surratt from Montreal to Washington city before he could get to New York, this diary makes the case too plain to resist. But they still claim a verdict! Who claims a verdict? As I have stated to you, gentlemen, in the large array of counsel in this case—I may be wrong—I think I notice two distinct representatives. One is the government of the United States, represented by the district attorney. Whatever else there is outside of the district attorney, is in the judicial branch of the executive department, appertaining to the enforcement of laws against criminals, belongs to the office of the Attorney General. He represents the judicial authority of the federal government in the executive department. I ask, is the assistant attorney here by appointment of the Attorney General of the United States?

Mr. PIERREPONT. If you desire an answer, I will say "Yes."

Mr. MERRICK. By appointment from the Attorney General?

Mr. PIERREPONT. Certainly.

Mr. MERRICK. I had supposed that such was not the case.

Mr. PIERREPONT. You were wrong in your supposition; it is the case.

Mr. MERRICK. I had supposed it was not the case; and I had good reason for supposing so. The attorney says he is, and that is sufficient. I have no further comment to make on that particular point.

Why is the district attorney of the Attorney General deemed expedient? Does he feel that public justice demands that he should employ assistant counsel in this case, or is there somebody else behind, gentlemen of the jury? Are there any other officers of the federal government that have purposes to accomplish in this cause?

Says the learned attorney upon the other side, (Mr. Pierrepont,) in a speech delivered, I think, before you were impanelled:

"It has likewise been circulated through all the public journals that after the former convictions, when an effort was made to go to the President for pardon, men, active here at the seat of government, prevented any attempt being made, or the President being even reached, for the purpose of seeing whether he would not exercise clemency; whereas the truth, and the truth of record, which will be presented in this court, is, that all this matter was brought before the President and presented to a full cabinet meeting, where it was thoroughly discussed, and, after such discussion, condemnation and execution received not only the sanction of the President, but that of every member of the cabinet. This, and a thousand others of these false stories, will be all set at rest forever in the progress of this trial; and the gentlemen may feel assured that not only are we ready, but that we are desirous of proceeding at once with the case."

Now, if this declaration of my learned brother upon the other side is correct, this trial was not entered upon for the purpose alone of inquiring into the guilt or innocence of the prisoner at the bar. It was not entered upon because public justice demanded his arraignment before you, gentlemen, but in order that a thousand false stories about men high in office might be settled at his expense. Then, although my learned brother is here under appointment by the Attorney General of the United States, yet it is an appointment which probably had its origin in the stimulus of some private feeling lying behind. He comes here, not to try this case alone, but he comes here to set at rest certain false stories. Has he done it?

Mr. Merrick, again recurring to the remarks made by Mr. Pierrepont, said: Where is your record? Why didn't you bring it in? Did you find at the end of the record a recommendation to mercy in the case of Mrs. Surratt that the President never saw? You had the record here in court.

Mr. BRADLEY. And offered it once and withdrew it.

Mr. MERRICK. Yes, sir, offered it and then withdrew it.

Did you find anything at the close of it that you did not like? Why didn't you put that record in evidence, and let us have it here? We were not going to quarrel with it; we would like to know all we can about the dark secrets of those chambers whose doors are closed, but from which light enough creeps in to make us anxious to look within. We only know enough to make us curious; but that is enough to make us *feel*. You were going to show, too, that nobody prevented access to the President on the part of those who wanted to get a pardon. Why didn't you do it? Gentlemen of the jury, I should have been glad to have heard that proof. They have brought these charges into the case and I must meet them as part of the case. I should have been glad to have heard that proof. Who of you is there, who was in the city of Washington, who will ever forget that fatal day when the tolling of the bells reminded you of the sad fact that the hour had come when those people were to be hung? Your honor, [referring to Justice Wylie, who was at the time sitting by the side of Judge Fisher on the bench]—and in your praise be it said—raised your judicial hand to prevent that murder, but it was too weak. The storm beat against your arm, and it fell powerless in the tempest. You remember that day, gentlemen. Twenty-four hours for preparation. The echoes of the

announcement of impending death scarcely dying away before the tramp of the approaching guard was heard leading to the gallows. Priest, friend, philanthropist, and clergymen went to the Executive Mansion to get access to the President, to implore for that poor woman three days' respite, to prepare her soul to meet her God, but got no access. The heart-broken child—the poor daughter went there crazed, and, stretched upon the steps that lead to the Executive Chamber, she raised her hands in agony and prayed to every one that came, "O, God! let me have access, that I may ask for but one day for my poor mother—just one day!" Did she get there? No. And yet, says the counsel, there was no one to prevent access being had. Why don't you prove it? O, God! If such a thing could have been proved, how would I not have rejoiced in the fact; for when reflecting upon that sad, unfortunate, wretched hour in the history of my country—an hour when I feel she was so much degraded, I could weep until the paper be worn away with the continual dropping of my tears. Who stood between her and the seat of mercy? Has conscience lashed the chief of the Bureau of Military Justice? Does memory haunt the Secretary of War? Or is it true that one who stood between her and Executive clemency now sleeps in the dark waters of the Hudson, while another died by his own violent hands in Kansas?

The learned gentleman is right. He did come here to put these things at rest, or to endeavor to put them at rest; but he could not do it. What else is there in this case to show a feeling behind, besides public justice, impelling to conviction? Gentlemen of the jury, as the counsel has stated in his speech, public rumors had gone abroad, and certain grave charges had been made. You know that political accusations had been brought against Judge Holt, Mr. Bingham, and the Secretary of War, in the House of Representatives, and that it had become a political matter. There were parts of those accusations that the learned counsel was going to put at rest. Where is the proof? The proof is in this: Follow me for a moment. I said I would show there was a conspiracy or conspiracy. What has the chief of the Bureau of Military Justice got to do with this case? Does not your honor hold an independent court? Is not the judicial tribunal of the land separate from the executive? Is it not a fundamental principle of American constitutional law that the executive and judicial departments shall be distinct and separate? The Bureau of Military Justice is a part of the executive department. What has he to do with this case? "Nothing," says the counsel. "Is he counsel?" we ask. "No," say they. Why then is he manipulating their witnesses in the case? Smoot, one of their witnesses, tells you that he is called up before Judge Holt, with ten others, examined, and his examination taken down in writing. The day after giving his testimony, he comes back and says that it was not Judge Holt that examined him, but was somebody else. I pressed him, pressed him hard, as to the place and time. He then recollected it was in the Winder Building, opposite the War Department; and when I pressed him still further he had to say that the office he was in had written over the door "Judge Advocate General's office." Again, I ask, "What had the Judge Advocate General to do with this case?" Not only was Smoot there, but Norton was there, and God only knows how many more. It is apparent, then, that he has taken a deep interest in this case. Why is he taking such an interest? It certainly is indiscreet. He has lost his prudence and he has lost his discretion; he has lost his judgment, thus to expose himself and his office in a criminal prosecution.

My learned brother, the district attorney, read from the speech of Daniel Webster, in the case of "White," a paragraph to affect your minds in reference to what he claims is the confession of John Surratt. I will again present it before you:

"The secret which the murderer possesses soon comes to possess him; and like the evil spirit of which we read, it overcomes him and leads him whither-



soever it will. He feels it beating at his heart, rising to his throat and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstances to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed; it will be confessed; there is no refuge from confession but suicide—and suicide is confession."

Mr. District Attorney, gird on your loins and answer me. Whose discretion is broken down? Whose prudence is betrayed? Is there anybody else's heart at which the vulture gnaws? Is there any high and great man who is forgetting the dignity of his office and the duties of a moral creature so far as to descend to the preparation of witnesses with which he has nothing to do to satiate his hunger with the blood of an innocent being? All these facts that I have mentioned to you—Conover's character, Susan Ann Jackson's testimony, and the story of the handkerchief—were known to the Judge Advocate General.

Mr. BRADLEY. And known to the prosecution.

Mr. MERRICK. Yes, and known to the prosecution. But I am now speaking of the chief of the Bureau of Military Justice. He you know has furnished the evidence in this case. A word, and a word only, with regard to the handkerchief story. You will recollect that we brought the man here who lost the handkerchief. But, oh! say they, another handkerchief was lost two days before. Extraordinary coincidence, isn't it? How many strange coincidences have happened in this case! Gentlemen, when they unfurled that banner in this court of justice, they knew it was not the banner of truth. They knew all the circumstances connected with the loss of it. They knew that one of Baker's detectives had got hold of it, and that it had been reported to the government. No matter whether they knew the truth in this case or not, prudence has been betrayed; discretion has been broken down; courage has been conquered. Following on Judge Pierrepont's declaration, which I have read to you, and these circumstances, comes Mr. Carrington, breaking the ceremonies of the tomb, and demanding your verdict against Mrs. Surratt. In God's name, isn't it enough to try the living? Will you play the gnome, and bring her from the cold, cold earth, and hang her corpse? Bring her in, but there is no occasion for doing so; she is here already. We have felt our blood run cold as the rustling of the garments from the grave swept by us. Her spirit moves about, and the Judge Advocate General and all those men may understand that it is the eternal law of God—though, so far as men are concerned, fresh and innocent blood may apparently vindicate innocent blood previously shed—yet the spirit will still walk beside them. He may shudder before her, because she is with him by day and by night; and he may say,

Avant! and quit my sight! Let the earth hide thee!

Thy bones are marrowless; thy blood is cold.

But the cold blood and the marrowless bones are still beside him, and her whisperings are presaging that great judgment day when all men shall stand equal before the throne of God, and when Mrs. Surratt is called to testify against Joseph Holt, what will he in vindication say?

Gentlemen of the jury, if my learned brethren are going to try her in this case, why not give us the benefit of her dying declarations? Mr. Carrington, your honor, has gone outside of this record, and I must follow him to some extent, at least. He has gone outside of it in speaking of the military commission defending the major generals and others. I am glad I recurred to it, for it reminds me of a statement of his that I desire to correct. He says we accused those honorable men of murder. No, sir; I refrain from any expression of opinion on that subject. It is true that the most exalted judicial tribunal in



the world, vindicating the liberty of American citizens and their constitutional rights against military authority, and maintaining the supremacy of the courts over the military law, have pronounced that and all other commissions similarly constituted to be illegal; but what I denounce here is not the men who in judgment sat there, but the men conducting the trial, and who with this diary of Booth in their hands, could have proved Mrs. Surratt's innocence by showing this conspiracy to have been organized on the 14th day of April; but who, though producing the toothpicks and the penknife found on Booth, yet never even so much as disclosed the fact that such a diary existed. They never made it known to these men or to the country. Do they not deserve to be denounced. Now that it has become known to the country, they come in before this jury to get them, with the diary in evidence before them, to find the same verdict that the military commission found. I put a witness on that stand and asked him, "Did you administer the consolations of religion to Mrs. Surratt?" "I did. I gave her communion on Friday; and prepared her for death." I asked him, "Did she tell you, as she was marching to the scaffold that she was an innocent woman?" I told him not to answer the question before I directed him to. He nodded his head, but he did not answer the question, because he had no right to, as the other side objected. If you are going to try that woman, and she being dead is unable to be here to defend herself, can you not at least have charity enough to let her last words come in in her defence? Will you try one who is not only absent from the court, but who is dead? While trying one that is dead, will you deny to her the poor privilege of having the last word she uttered on earth spoken in her vindication? Were you afraid of it? Did you feel that the words would sink deep into the hearts of everybody that was here in this room, and in the United States, and cause to well up from that heart a fountain of mercy, rich and pure as the fountain that sprung from the rock at the bidding of the sacred rod? Shame on you! Prepared for the world to come, and marching to the scaffold, with her God before and the world behind her, and a load of sin laid at the feet of Almighty God, and no hope but in that eternal mercy upon which we must all rely, I ask whether she cannot at such an hour speak for herself. "No," you answer. Why not? Is it likely she would lie? No, gentlemen, they will not say that. Then why is it? They did not want to hear it. Oh, they must indeed be hardened of heart, reckless of guilt, and indifferent to justice. But, although they had no desire to hear it, they do hear it, and you hear it, for as that voice spoke then, it speaks now, and will continue to speak until justice is meted out. It whispers and is heard. It descends upon the head of that boy, and breathes upon each of your hearts. Yes, gentlemen, that woman in the nameless grave in yonder arsenal yard, the ceremonies of which have been broken by the government, comes here to vindicate her child. "A nameless grave," did I say? Yes, alas! too true. Aye, sir, it would seem as if the ordinary feelings of humanity and common respect for the dead, to say nothing of regard for the honor of our country and sympathy for the sufferings of a distracted and loving daughter, would suggest to those pressing this prosecution (and who have charge of the matter) to allow this poor girl the privilege of paying a simple tribute to a mother's love by having her remains removed from a felon's grave. Yes! there that mother lies in a nameless grave, on which no flower is allowed to be strewn by that heart-broken daughter, who for the past two years has been earnestly pleading that she might have the privilege of placing those last sad, and to her sacred, relics where filial love might weep the tear, and a filial hand plant a flower on the tomb.

Mr. MERRICK, very much affected, said: I cannot pursue this subject further. He then proceeded to speak on the subject of the prisoner's departure from the country.

Says the district attorney, Surratt has confessed his guilt by flight—flight

from a mother over whose head was impending such a sad fate. Gentlemen of the jury, he knew not of her condition until she was executed, or about that time; and when he got the information he was restrained by force from coming. This we were ready to prove. Fly! What else could he do? Suspicion of guilt in that day was certainty of conviction. Military commissions were organized, not to try, but to condemn. Who of you would not have fled if a reward had been offered for your head? He saw his name in the papers while in Canada, and he fled. Of course he fled. He went from a blazing country. He fled not from justice, but from lawlessness. He fled not from trial, but from conviction and oppression. Suppose he had been here, could he have had a trial? Why, guilty or innocent, he would have been hung. Law was dead in the country. The iron hand of power had suppressed judicial authority. Tyranny rode wild in the land. No man was safe with a price on his head. To tell me that to flee under such circumstances was confession is to tell me that which is too absurd to merit the dignity of reply.

Gentlemen, something has been said in the earlier part of this case with regard to the Catholic church, and her connection with the prisoner at the bar and the southern confederacy. She needs no vindication from me. There she stands, and there is her history. Whether her children believe the church of God, or, as other men, believe the devices of man, she there stands, one of the grandest institutions that the world has ever beheld. She guided men from darkness to civilization, and through the whole period of despotic authority in Europe she has been upon the side of the people, and against monarchy. From the first beginning of her power she has upheld the rights of the people whenever oppression has attempted to violate law; and whenever the people have been turbulent in their resistance to legitimate authority she has thrown over them the mandate of her spiritual bidding, "to respect the law and obey the constituted authorities of their country." And in our late rebellion she said to all people, north and south, "Obey the law, and respect the Constitution of your country." "I speak not politics," says she, "in my church. The banner which is floating from this church is the banner of the cross in all countries; and as the follower of the Cross, I teach all people to obey the law." Such was her conduct with regard to our late rebellion. Such she stands forth to her eternal credit; and throughout her history, even to those who question the divinity of her origin, there is much that is too great for the machinations of men, and they stand almost confessing what their judgment and feelings question. Nor do I honor her above other churches especially, for I would not have you believe that I have any prejudices in this regard. My views and my feelings on this subject may be peculiar, but they are my own. I believe that churches differ in form more than in substance, and that the true conscientious Christian in one church serves his God if his conviction be there, as faithfully as he does in any other. To illustrate my view: You see before you different branches of a stream, and find the same water in all the branches. He that drinks from one branch, though perhaps in color something different from another, yet drinks substantially the same water that quenches his thirst; and so with these various churches. They are but the different branches of one great stream, whose source is in Calvary, at the foot of the Cross. To the honor of the Catholic church be it said, that when this young man was accused of crime in the Papal dominions, and there was no extradition treaty between this country and that, and no power to compel the Pope to surrender him, the Pope and Cardinal Antonelli voluntarily, and without hesitation, gave him up. They said, "Take him back to America and try him; if guilty, execute him." The Catholic church is on the side of virtue and mercy. She protects the fleeing criminal when she believes him to be innocent, but when the hand of power says, "he is guilty, give him to me," she gave him up without a word.

Gentlemen of the jury, the district attorney has invoked your loyalty. I cannot follow him through his long tirade about the glory of the District volunteers, [Laughter,] for I do not envy his achievements in that regard, and have no disposition to waste time in pursuing his argument on that point, but I do invoke your loyalty. Loyalty is a word that does not properly belong to the lexicon of republics, but if it does belong to the lexicon of republics, it means the faithfulness of the citizen to the supreme power of the republic. What is the supreme power of the republic?—the Constitution of the United States, and the laws in pursuance of that Constitution. The loyalty of the Austrian is due to the successors of the Cæsars. The loyalty of the Englishman is due to the Queen. The loyalty of the Frenchman is due to Napoleon, but the loyalty of the American citizen is due to no mortal man; but due to the spirit of human liberty, incarnate in the Constitution of the United States. Be loyal to that. Be loyal to the law; above all things be loyal to yourselves, and do your duty. "A feeling of duty performed," as has been said by a great man, "will follow you through the world; but a feeling of duty unperformed will pursue you with the lash of affliction wherever you may go." All evils that are physical can be avoided; but evil that comes from the conscience, when it arraigns us day by day, cannot be fled from. "You may take up the wings of the morning, and flee to the uttermost parts of the earth;" but there is neither rock nor corner in which you can hide yourselves from it. Go forth then, gentlemen, from your jury box with a conscience free and unembarrassed; a conscience that will say to you in all time to come, "You have done your duty." Gentlemen of the jury, I invoke for the prisoner not your mercy, but your most deliberate judgment. There has been blood enough in this case. No man can measure with larger dimensions than myself the enormity of the crime which was committed in the murder of Abraham Lincoln. Already four have been hung, and others suffer punishment, some for a term of years, and some for life. I repeat, there has been blood enough. Think, gentlemen, of what disasters have fallen upon this young man. Three years ago, within the limits of the city, there was a quiet wedding. Around the hearth was gathered a happy band. A mother blessed it with a mother's love. Her gentle daughter, budding into womanhood, gave to the scene the sweet hues of her devoted smile. Beside her sat a brother, just bursting into the promise of the man. Think, gentlemen, what has transpired since that night. The bright fire is quenched and gone, the hearth is desolate, the mother sleeps in a nameless, felon's grave, the daughter drags out a weary life with a broken heart, and the son is before you pleading for his life. But, gentlemen, as I have said, duty performed must be with you ever. If he is guilty, convict him; if he is innocent, acquit him. May the Eternal God so guide your judgments and enlighten your convictions that the remembrance of this day and the day of your verdict may hereafter and forever be a sweet and pleasant recollection. I thank you, gentlemen, for your kind attention.

FRIDAY, *August 2, 1867.*

The court met at 10 a. m.

Mr. BRADLEY, Sr., in behalf of the prisoner, spoke as follows: I should be happy, gentlemen of the jury, if I could have been saved the labor, and you the fatigue, of an address on this occasion. The whole case has been so completely exhausted by the gentleman who has preceded me, that I should do great discredit to your judgment if I thought it necessary to enlarge upon the points made, or upon the whole or any portion of this defence. The case itself is an exceedingly simple one, plain in its facts, not enlarged in its proportions. But a factitious importance has been given to it, for reasons which undoubtedly may be strong and prevailing with those who have given it this importance, but which have no weight in my mind.



You are sworn to try a simple case of the murder of an individual. There is nothing beyond it. We are to look to the indictment for the subject-matter of your inquiry, and in that indictment you find nothing but a charge of the felonious killing of an individual. Great surprise has been expressed by the counsel on the other side, who have conducted this prosecution with an energy, skill, and, I will add, vindictiveness which I have never seen equalled, and have never read of since the days of Jeffries and Scroggs, unless it be in some prosecutions in Ireland. They have endeavored to enlarge the proportions of the case made in the indictment, to something which shall not only stir up your prejudices and mislead your judgment, and control your consciences; but something which shall attract the attention of the whole country—nay, of the civilized world. For what purpose—with what ends—this great mass of irrelevant matter has been introduced, it is for them to say, and for you to judge.

I do not rise to discuss this case at length; it needs no discussion. It was closed, so far as the defence was concerned, when the prosecution proved by Sangster that the defendant left Montreal at 3 o'clock on the 12th of April, and when they proved by McMillan that he was in Elmira on the 13th. The defence was then complete out of the mouths of their own witnesses. But when they added to it that most wonderful, clear, explicit statement of the principal actor in that drama, Wilkes Booth, that the conception of the assassination originated on the 13th and 14th of April, and was consummated on the same day, they took away from themselves the right to assail the accused as they have done, they took away all excuse for this shameless and monstrous abuse of their position by calling him names—a man, manacled at the bar.

This may be, and probably will be, the last time I shall ever address a Washington jury. For more than forty years I have gone in and out before you. I know you all—every man. You know me. And I say, that in the history of that long period of time no man at this bar has ever dared to assail a prisoner as this prisoner has been. He would have been frowned down by the indignation of all honest men if he had done so. He would have been put out of the pale of respectable lawyers. Gentlemen, history sometimes teaches us, and teaches us powerfully, what we should do in order that men should respect us. Perhaps the greatest lawyer that England ever produced—the man who, more than any other, marked out, shaped, and laid the foundations of the common law under which we live—whose writings are still the hornbook of the profession and guide of the learned in it—Sir Edward Coke—when he was attorney general of England, with all his learning, all his great erudition, with his desire to form and shape the common law, subjected himself to the censure which, in the minds of all right-feeling men, will be cast upon the course of this prosecution. Let me read to you from the history of the life of this man, contained in the "Lives of the Chief Justices of England," by Lord Campbell; on page 252 you will find this passage, and I commend it to the careful consideration of the counsel engaged in prosecuting this defendant.

But he (Lord Coke) incurred never dying disgrace by the manner in which he insulted his victims when they were placed at the bar of a criminal court.

He, the light of the profession, whose intellect was almost unmeasurable, the grasp of whose knowledge has never yet been reached; he, the very light of the profession, incurred never dying disgrace by the manner in which he insulted his victims when they were placed at the bar of a criminal court.

Has mortal man ever heard such a torrent of abuse as has been poured forth in this court upon this poor young man?

The first revolting instance of this propensity was on the trial of Robert, Earl of Essex, before the Lord High Steward and Court of Peers, for the insurrection in the city, with the view to get possession of the Queen's person, and to rid her of evil counsellors. The offence no doubt amounted, in point of law, to treason.



That is what is said here. Though our Constitution defines what treason is, we are now invoked to adopt a new constitution to suit the purposes of this case.

The offence amounted, no doubt, in point of law, to treason; but the young and chivalrous culprit really felt loyalty and affection for his aged mistress; and without the most distant notion of pretending to the crown, only wished to bring about a change of administration in the fashion still followed in continental States. Yet, after Yelverton, the Queen's ancient sergeant, had opened the case at full length and with becoming moderation, Coke, the attorney general, immediately followed him, giving a most inflamed and exaggerated statement of the facts, and thus concluding: "But now in God's most just judgment, he of his earldom shall be Robert the Last; that of the kingdom thought to be Robert the First."

"This," says he on page 253, "was a humiliating day for our order." And it was a humiliating day for that glorious profession of which this man was the ornament, and of which I am an humble member. And this exhibition on this trial has been a most humiliating day, degrading to the profession, and disgraceful to the officer. Again, on page 257, he says, "His first appearance as public prosecutor in the new reign was on the trial, before a special commission at Winchester, of Sir Walter Raleigh, charged with high treason by entering into a plot to put the Lady Arabella Stuart on the throne. And here, I am sorry to say, that by his brutal conduct to the accused, he brought permanent disgrace upon himself and the English bar." Now let us see what that was. Look upon the picture here before you; upon that which is thus denounced by one of the ablest men who has ever held high position at the bar of England. "He must have been aware," and I will demonstrate to you that these gentlemen are aware, "He must have been aware that notwithstanding the mysterious and suspicious circumstances which surround this affair, he had no sufficient case against the prisoner, even by written depositions and according to the loose notions of evidence then subsisting. Yet he addressed the jury in his opening as if he were scandalously ill-used by any defence being attempted; while he was detailing a charge which he knew could not be established of an intention to destroy the King and his children. At last the object of his calumny interposed, and the following dialogue passed between them."

Compare this with what you have heard at this bar within the last three or four days:

Raleigh. You tell me news I never heard of.

Attorney General. Oh, sir, do I? I will prove you the most notorious traitor that ever held up his hand at the bar of any court.

Raleigh. Your words cannot condemn me; my innocence is my defence. Prove one of these things wherewith you have charged me, and I will confess the whole indictment, and that I am the horriblemest traitor that ever lived, and worthy to be crucified with a thousand torments.

Attorney General. Nay, I will prove them all; thou art a monster; thou hast not an English but a Spanish heart.

Raleigh. Let me answer for myself.

Attorney General. Thou shalt not.

Raleigh. It concerneth my life.

Attorney General. Oh, do I touch you?

The proofless narrative having proceeded, Raleigh again broke out with the exclamation, "You tell me news, Mr. Attorney," and thus the altercation was renewed.

Attorney General. I am the more large because I know with whom I deal to-day—with a man of wit—I will teach you before I have done.

Raleigh. I will wash my hands of the indictment, and die a true man to the King.

Attorney General. You are the absolutest traitor that ever was.

Raleigh. Your phrases not will prove it.

Attorney General. (In a tone of assumed calmness and tenderness.) You, my masters of the jury, respect not the wickedness and hatred of the man; respect his cause. If he be guilty, I know you will have care of it, for the preservation of the King, the continuance of the gospel authorized, and the good of us all.

Raleigh. I do not hear yet that you have offered one word of proof against *me*. If my Lord Cobham be a traitor, what is that to me?

Attorney General. All that he did was by thy instigation, thou viper; for I thou thee, thou traitor.

The depositions being read, which did not by any means make out the prisoner's complicity in the plot, he observed:

You try me by the Spanish Inquisition if you proceed only by circumstances without two witnesses.

Attorney General. This is a treasonable speech.

Raleigh. I appeal to God and the King in this point, whether Cobham's accusation is sufficient to condemn me.

Attorney General. The King's safety and your clearing cannot agree.

The safety of some men who lie behind this prosecution and your clearing shall not agree. You heard, yesterday, who they were. You heard some of the motives impelling you to find guilty the prisoner because they had convicted the mother. "His safety and your clearing cannot agree."

I protest, before God, I never knew; go to, I will lay thee upon thy back for the confidentest traitor that ever came at a bar.

At last all present were so much shocked that the Earl of Salisbury himself, one of the commissioners, rebuked the attorney general, saying, "Be not so impatient, good Mr. Attorney; give him leave to speak."

Attorney General. If I may not be patiently heard, you will encourage traitors, and discourage us. I am the King's sworn servant, and must speak.

If you dare, says the counsel from New York, lay down the law differently from that which I have laid down, I will call the majority of the country and impeach you. I may advert, gentlemen, if my strength holds out, again to this. It is monstrous, revolting, shocking—this assault made by the prosecution upon that defenceless, pinioned man. I would like to see you, sir, after he shall have been acquitted, talk to him upon the open street; but this is nothing as compared with the spirit shown by this prosecution. If my strength holds out, I shall have occasion to advert again to the spirit of this prosecution, which has as far transcended Lord Coke as to this poor accused as that does anything you have ever heard from the mouth of a prosecuting attorney before. Against this, gentlemen, I desire to enter my protest. I trust that this case will be a lesson, or warning, to other men who shall hold that office hereafter, that they may turn back to the record of this case, and that the seal of the condemnation of every man connected with this bar shall be placed upon such an abuse of authority. But I go a step further. I heard it with utter amazement. I did not believe my ears until I turned to my associate to see if it were so. I say I heard with utter amazement another thing broached. That the jury in a capital offence, where they are to bear the burden of responsibility, and to answer for the discharge of that duty, that they are not to find a general verdict, but to find a verdict under the instructions of the court; that the court is a part of the government—the government is supreme; they, the prosecutors, are ministering servants moving along the machinery of the government; and as the government appoints the courts, and the courts interpret the laws, the jury are perjured if they do not follow the dictates of the court. Is it possible, with all the information this day spread around us, with all the intelligence under which we live, with all the learning coming to us from past ages, that a jury are to be considered perjured if they do not follow the dictate of the court?

Gentlemen, let me call your attention to the history of Jeffries, Scroggs, and Wright. They were chief justices of England; they were the right arm of the supreme government, and they hurried men to the scaffold by scores. Their names are accursed to this day, and will be as long as the English language lasts. When at last a jury was found independent enough to stand up against the tyrannical mandates of the judge, and to find a verdict of not guilty, all England rang with shouts of joy as a triumph of the people against this armed power. Let me give you a reference to the life of Mr. Chief Justice Wright, who presided at the trial of the bishops, in second "Campbell's Lives of the

Chief Justices." I refer to the conclusion of the case of the seven bishops, page 109.

He told the jury that "anything that shall disturb the government, or make mischief and a stir among the people, is certainly within the case *de libellis famosis*. And I must, in short, give you my opinion. I do take it to be a libel."

I now read from page 111 :

"The chief justice, without expressing any dissent, merely said, 'Gentlemen, have you a mind to drink before you go?' So wine was sent for, and they had a glass apiece; after which they were marched off in company of a bailiff, who was sworn not to let them have meat or drink, fire or candle, until they were agreed upon their verdict.

"All that night they were shut up. Mr. Arnold, the King's brewer, standing out for a conviction still six next morning, when being dreadfully exhausted, he was thus addressed by a brother jurymen: 'Look at me; I am the largest and strongest of the twelve, and before I find such a petition as this a libel, here will I stay till I am no bigger than a tobacco pipe.'"

The court sat again at 10, when the verdict of *Not Guilty* was pronounced, and a shout of joy was raised which was soon reverberated from the remotest parts of the kingdom. One gentleman, a barrister of Gray's Inn, was immediately taken into custody in court by order of the Lord Chief Justice, who with an extraordinary command of temper and countenance, said to him, in a calm voice: "I am as glad as you can be that my lords, the bishops, are acquitted; but your manner of rejoicing, here in court, is indecent. You might rejoice in your chamber and elsewhere, and not here. Have you anything more to say to my lords, the bishops, Mr. Attorney?" Attorney general: "No, my lord." Wright, chief justice. "Then they may withdraw." And they walked off surrounded with countless thousands, who eagerly knelt down to receive their blessing.

Now, gentlemen, let me give you the latter end of that man. Soon after this he was turned out of office. "He was almost constantly fighting against privation and misery; and, during the short time that he seemed in the enjoyment of splendor, he was despised by all good men, and must have been odious to himself. When he died, his body was thrown into a pit with common malefactors; his sufferings, when related, excited no compassion, and his name was execrated as long as it was recollected."

But let me come down to our own country. You have already had reference to the language of Chief Justice Kent, than whom there is no greater name among the intellectual legal men of this country. My brother Merrick read to you from page 366. I may, perhaps, read a little further from the language of this great man, vindicating the right of the jury in capital cases to render a general verdict. I detract nothing from the authority of the court. God forbid. The juries in every case are bound to receive instructions from the court; but they are to apply those instructions to the evidence; "by the evidence as applied to the law their consciences are to be governed.

There is, as the district attorney has stated, a higher law. Here is a higher law, and the mandate of no judge, or of any other authority, can take an honest man from the path of rectitude and make him do wrong. I do not read that passage of Romans, quoted by the learned district attorney, as he does. I believe in the right of private judgment, of obedience to the law, in resistance to oppression, come from whatever quarter it may. "Render unto Cæsar the things that are Cæsar's, and unto God the things that are God's." But there is another command, not given in words: "Render unto yourselves and to your consciences that which you believe to be in obedience to what is right." Mr. Chancellor Kent has said, (page 366 :) "In every criminal case, upon the plea of not guilty, the jury may, and, indeed, they *must*, unless they choose to find a special verdict, take upon themselves the decision of the law, as well as the fact, and bring in a verdict as comprehensive as the issue; because in every



such case they are charged with the deliverance of the defendant from the crime of which he is accused. The indictment not only sets forth the particular fact committed, but it specifies the nature of the crime. Treasons are laid to be done traitorously; felonies, feloniously; and public libels to be published seditiously. The jury are called to try in the case of a traitor, not only whether he committed the act charged, but whether he did it *traitorously*; and in the case of a felon, not only whether he killed such a one, or took such a person's property, but whether he killed with *malice prepense*, or took the property *feloniously*. So in the case of a public libeller, the jury are to try, not only whether he published such a writing, but whether he published it *seditiously*. In all these cases, from the nature of the issue, the jury are to try not only the *fact* but the *crime*, and in doing so they must judge of the *intent*, in order to determine whether the charge be true as set forth in the indictment. (Dagge on Criminal Law, b. 1, c. 11, s. 2.) The law and fact are so involved that the jury are under an indispensable necessity to decide both, unless they separate them by a special verdict. "This right in the jury to determine the law, as well as the fact, has received the sanction of some of the highest authorities in the law."

He then goes on for several pages to review these authorities, until he comes to this case of the seven bishops, which will be found on page 370, where he says, in reference to the trial of Algernon Sydney: "Upon the trial of Algernon Sydney, the question did not distinctly arise, but Lord Chief Justice Jeffries, in his charge to the jury, told them it was the duty of the court to declare the law to the jury, and the jury were bound to receive their declaration of the law."

That is the doctrine promulgated here. That is the doctrine which brings you under the pains and penalties of perjury if you conscientiously render a verdict different from what the court has directed you. He says further: "They did, in that case, unfortunately, receive the law from the court, and convicted the prisoner; but his *attainder* was afterwards reversed by Parliament, and the law, as laid down on that trial, was denied and reprobated, and the violence of the judge and the severity of the jury held up to the reproach and detestation of posterity. The case of the seven bishops is a precedent of a more consoling kind. It was an auspicious and memorable instance of the exercise of the right of the jury to determine both the law and the fact. I shall have occasion to notice this case hereafter, and shall only observe, for the present, that the counsel on the trial went at large into the consideration of the law, the intent, and the fact; and, although the judges differed in opinion as to what constituted libel, they all gave their opinions in the style of advice, not of direction, and expressly referred the law and the fact to the jury. Mr. J. Holloway, in particular, observed, that whether libel or not, depended upon the *ill-intent* and concluded by telling the jury *it was left to them to determine*."

They did not tell the jury, if you do not find a verdict according to our institutions, we will fine and imprison you; we will send you to the grand jury to be indicted for perjury. They said, we advise the jury. He proceeds on page 371: "The weight of the decisions, thus far, was clearly in favor of the right of the jury to decide generally upon the law and the fact. But since the time of Lord Holt the question before us has been an unsettled and litigious one in Westminster Hall. Lord Mansfield was of opinion that the formal direction of every judge since the revolution had been agreeable to that given in the case of the dean of St. Asaph; but the earliest case he mentions is that of Franklin before Lord Raymond, in 1731; and that has been considered as the formal introduction of the doctrine now under review. The charge of Sir John Holt in Tuchin's case appears to me to be decidedly to the contrary; and in another case before Holt the attorney general admitted that the jury were the judges *quo animo* the libel was made. The new doctrine, as laid down in the present case, may, therefore, be referred to the case of Franklin; but in Oneby's case, who was tried a few years before for murder, Lord Raymond and the court of king's bench advanced



a general doctrine, which may, perhaps, be supposed to curtail the powers of the jury as much as the decision of the case before us. He said that all the judges agreed in the proposition; that the court were the judges of the malice, and not the jury; that upon the trial the judge directs the jury as to the law arising upon the facts, and the jury may, if they think proper, give a general verdict; or, if they find a special verdict, the court is to form their judgment from the facts formed, whether there was malice or not; because, in special verdicts, the jury never find, in express terms, the malice, but it is left to be drawn by the court."

He then reviews a series of cases down to page 374: "The constant struggle of counsel and of the jury against the rule so emphatically laid down by Lord Raymond, the disagreement among the judges, and the dangerous tendency of the doctrine, as it affected two very conspicuous and proud monuments of English liberty—trial by jury and the freedom of the press—at length attracted and roused the attention of the nation. The question was brought before the Parliament and debated in two successive sessions. There was combined in the discussions of this dry law question an assemblage of talent, of constitutional knowledge, of practical wisdom, and of professional erudition rarely, if ever, before surpassed. It underwent a patient investigation and severe scrutiny upon principle and precedent, and a bill *declaratory* of the right of the jury to give a general verdict upon the whole matter put in issue, without being required or directed to find the defendant guilty merely on the proof of publication and the truth of the *innuendoes* was at length agreed to, and passed with uncommon unanimity. It is entitled 'An act to remove doubts respecting the functions of jurors in cases of libel;' and although I admit that a declaratory statute is not to be received as conclusive evidence of the common law, yet it must be considered as a very respectable authority in the case; and especially as the circumstances attending the passage of this bill reflect the highest honor on the moderation, the good sense, and the free and independent spirit of the British Parliament. It was, no doubt, under similar impressions of the subject that the act of Congress for punishing certain libels against the United States, enacted and *declared* that the jury who should try the cause should have a right to determine the law and fact, under the direction of the court, *as in other cases.*"

What does that mean? The Congress of the United States has established that the jury, in the case of libel against the United States, shall have the right to determine the question of law and of fact *as in other cases.*

"And before the passing of that statute, the same doctrine was laid down in full latitude, and in explicit terms, by the Supreme Court of the United States. The result from this view is, to my mind, a firm conviction that this court is not bound by the decisions of Lord Raymond and his successors. By withdrawing from the jury the consideration of the essence of the charge, they render their functions nugatory and contemptible."

Shall we hear anything more from the other side of the right of the court not to instruct, not to charge, not to advise, but to control? Will we hear again that by the law a juror is perjured who renders a general verdict contrary to the instructions of the court? Will we hear a threat held out of a grand jury, before whom the district attorney sends whoever he pleases—if you fail to follow the mandate of the court, that you will be indicted for perjury? It is the duty of the district attorney, if he knows the fact that a perjury is committed, it is his bounden duty, to send the witness to the grand jury. And if you commit perjury by disobeying the orders of the court he must send your case to the grand jury, if the argument of the learned gentleman on the other side be right. Against this monstrous doctrine I desire, if it is the last speech I shall ever make to a jury, to enter my most solemn protest. I desire to set upon it the seal of condemnation. I do not say this, gentlemen, on your account; for, as I have said, I know every man upon that jury personally, and

every man there knows me. I say nothing to flatter you, because you would despise it if I did. But I say it for the sake of the law—for the sake of the law of my country—that I condemn, I repudiate, I trample under foot any such doctrine as this—that a juror commits perjury because, according to his conscience, he renders a general verdict of acquittal or guilty.

I said to you, gentlemen, at the outset, that this case was one within a small compass. I am most happy to agree, in this, with the learned counsel from the city of New York. It is within a small compass. And yet, will you tell me what all that means, (holding up the book of evidence,) two-thirds of which is the made up evidence of the prosecution. First is the evidence in relation to the attempted assassination of Secretary Seward. The learned judge says it is evidence in the case; that you are to look upon it as in issue in the pleadings, as in issue enabling you to ascertain whether this accused party killed the President himself, or was in a conspiracy to kill, the result of the conspiracy being that he was killed by one of these conspirators. What was the object of the introduction of this proof? How did the district attorney apply it in that long harangue upon the assault upon Mr. Seward? In all that he stated, painting it with prepared study, reading from his manuscript, endeavoring to excite the horror of every individual on that jury, and endeavoring to enlist your prejudices and passions, not one word did he say connecting it with this great fact of the murder of Mr. Lincoln. I agree that it is a very fine piece of word-painting; but I yet am at a loss to conceive how the testimony in respect to the attempted assassination of Mr. Seward is admissible in evidence. It must have some effect; but I am at a loss to conceive how an attempt to take the life of Mr. Bohrer by one man is evidence of a conspiracy to kill Mr. Berry, who is killed by another man. It is beyond my comprehension.

I am now talking of this new scheme, this admirable invention of the enemy. I am talking of the indictment, and the case made in the indictment. For what purpose have we that terrible picture drawn of the slaughter of wasted Union soldiers along the railroad, and that terrible fight with a gunboat by the little cock-boat crossing the river. How did they bear upon this question of the killing of an individual? I shall have occasion presently to talk to you of the other branch of the case, though I am afraid my strength will not enable me to do so. I speak now of the indictment against John H. Surratt for killing an individual. The learned prosecutor who is to follow will make it all plain. I am not now talking about the attempted assassination of the Secretary of State. I want to know upon what principle they can apply this evidence to show that John H. Surratt was combined with Booth in a conspiracy to kill an individual. It is done to excite passion and prejudice. I wish I had here, as I had yesterday, the life of Julius Cæsar, written by Napoleon. I would like to read from that heathen writer a passage or two as to what men shall do who have to pass upon the lives of individuals; the opinion, not of a Christian man, but of a heathen. Not of one looking for his reward beyond the grave; but of one who, in a formal speech, says "we perish in the grave." He tells you that when weighing matters which are to be considered affecting a man's life, there should be neither passion, nor prejudice, nor feeling. This is done to invoke passion, prejudice, and feeling in the mind of the jury, and to extort from their distorted judgment a verdict which their cooler judgment would reprobate.

Now, gentlemen, I will ask your attention for a brief time, to some other more material questions of fact directly referring to the matter in issue. The indictment in this case has been read to you; I believe the substance of it, at least. The first count charges that John H. Surratt murdered Abraham Lincoln, on the 14th April, 1865. The second count charges that Wilkes Booth and John H. Surratt murdered Abraham Lincoln on the 14th April, 1865. The third count charges that Wilkes Booth, John H. Surratt, Atzerodt, Payne, and Mrs. Surratt murdered Abraham Lincoln, on the 14th April, 1865.

These are all pure cases of murder, and he is indicted as a principal in that murder. I shall not now discuss the question, which my learned brother from New York seems to think properly presented in the proposition presented by him as to whether or not, in a charge of murder, a man not within the jurisdiction, not near enough to contribute aid, not within reach to render some sort of assistance, can be made a principal or not. The law is too clear. There is no tyro at this bar, who has been at the bar for one year, who does not know that in order to be a principal in a murder the party charged must be the actor, not in a position or condition where he may assist, and that by pre-arrangement. Then he is an accessory before the fact, but not a principal. Otherwise, if he be indicted as a principal, he must be acquitted.

And now we come to the fourth count, the only thing that is saved out of this shipwreck. The fourth count charges that these parties, naming them with others unknown, on the 14th day of April, 1865, with force and arms at the county aforesaid, in pursuance of said wicked and unlawful conspiracy in and upon the said Abraham Lincoln, in the peace of God and of the said United States, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said John Wilkes Booth, in pursuance of said wicked and unlawful conspiracy, a certain pistol of the value of ten dollars then and there charged with gunpowder and one leaden bullet, which said pistol he, the said John Wilkes Booth, in his right hand then and there held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off to, against, and upon the said Abraham Lincoln; and that the said John Wilkes Booth, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, shot and sent forth, as aforesaid, the aforesaid Abraham Lincoln, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln, then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said John Wilkes Booth, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, one mortal wound of the depth of six inches and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishing did live; on which said fifteenth day of April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died, and that the aforesaid John H. Surratt, and the aforesaid David E. Herold, and the aforesaid George A. Atzerodt, and the aforesaid Lewis Payne, and the aforesaid Mary E. Surratt, then and there, in pursuance of said wicked and unlawful conspiracy, feloniously, wilfully, and of their malice aforethought, were present, aiding, helping, and abetting, comforting, assisting, and maintaining the said John Wilkes Booth, the felony and murder aforesaid, in manner and form aforesaid, to do and commit.

And the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and government of the United States of America.

There is one truth in that whole indictment. On the 14th of April the parties who effected the murder did conspire, and did conspire in the city of Washington—Atzerodt, Booth, Herold, and Payne. As to them, it is true the con-



spiracy was then and there formed—then and there executed. It is true, as stated in the indictment, in the usual form, that they inflicted a mortal wound on Abraham Lincoln, from which said mortal wound the said Abraham Lincoln died on the 15th of April.

Now, gentlemen, there is no principle of the criminal law better settled than this: that every indictment must contain a statement of every ingredient material to constitute the offence, and be stated with certainty to a certain intent, in general; that is, so clearly that the defendant may know with what he stands charged, how he is to defend himself, and when he may plead either conviction or acquittal if he should be pursued the second time. I ask you to apply that principle. The indictment states that these parties, on the 14th of April—the time is not material, place is material—some time on the 14th of April, before the act was committed, (I find no fault with that,) these parties did, in the county aforesaid, conspire—the place is essential—these parties, in the county aforesaid, did conspire to kill, and, in pursuance of that conspiracy, in the county aforesaid, these parties did kill. I do not like to read law books to the jury, and very seldom do. It is, however, my duty, as far as I can, in this matter to assist his honor, the judge, in his conclusion as to the law of conspiracy, under which, as I had supposed, this case came. But I understand now it is a higher law—that is, a law which no court in this country has ever had an opportunity to lay down—which for the first time your honor is to have the credit of announcing to the world. Your honor is to have the diadem and crown of glory of finding out what no man ever found before, what no man living under the common law ever knew—a law made for the case after the offence is committed. The counsel will have your honor believe that the whole country is looking to your decision; that the whole country waits in anxious expectation the announcement of this new higher law; that the country is ready to burst into enthusiasm in support of the judge who will, for the first time, announce to a jury a doctrine not known to any other lawyer in the United States; that the whole country is ready to burst into an indignant surge against the judge who will dare to deny such a law. I turn in doubt for the authority to be read on such a case as this, because, if the doctrine of the gentleman be true, there are no accessories in such a case. If he is to be tried for assisting in the rebellion, for attempting to strike down the government, that is a distinct, substantive crime, to be tried by different laws and governed by different rules of evidence. And then I demand that they shall put it into their indictment. I read now from the old edition of Archibold's Criminal Pleadings, page 11:

“As to what are material facts, it is necessary to observe that every offence consists of the *commission or omission of certain acts under certain circumstances; and each of these being a necessary ingredient in the offence, is material and must be stated in the indictment.*”

Again, on the same page:

“But in *indictments* for offences of commission every act which is a necessary ingredient in the offence must be laid, with time and place, as above mentioned.”

Again:

“And this distinction seems to have been established, that in felonies, *in furorem vitæ*, the greater strictness above mentioned (namely, that time and place be laid to every material fact) is required.”

Now, sir, if you are going to have constructive presence, if you are going to hang a man upon constructive presence, he being out of the jurisdiction, I think it is a material circumstance to state where he was, and that he was out of the jurisdiction. I read for you from page 12:

“What we have now said relates to acts which are necessary ingredients in the offence; for mere circumstances accompanying these acts need not be laid with time or place—March Pl. 127; 2 Ro. Rep., 226—unless rendered essential by the particular nature of the offence.”

Now we will see, by the by, whether or not this is not rendered so by the particular nature of this new offence. Again, on page 13, same edition:

“At common law (by which indictments are still regulated in this respect) the jury in



strictness should have come from the town, hamlet, or parish, or from the manor, castle, forest, or other known place out of a town where the offence was committed; and therefore every material act mentioned in the indictment must be stated to have been committed in such a place."

And so they have said in this indictment. Again, at page 15, bottom of the page :

"In all other cases every fact or circumstance which is a necessary ingredient in the offence must be set forth in the indictment.

"And if any fact or circumstance which is a necessary ingredient in the offence be omitted in the indictment, such omission vitiates the indictment, and the defendant may avail himself of it by demurrer, motion in arrest of judgment, or writ of error. Thus an indictment for assaulting an officer in the execution of process, without showing that he was an officer of the court out of which the process issued—5 East, 304; for contemptuous or disrespectful words to a magistrate, without showing that the magistrate was in the execution of his duty at the time—Audr., 226; against a public officer for non-performance of a duty without showing that he was such an officer as was bound by law to perform that particular duty—*Quod exonerat termentum datus plagam*, without saying *percussit*—5 Co. 122, b. —; that he feloniously did lead away a horse, &c., without saying "take"—2 Hale, 184—in all these and the like cases the indictment is bad, and the defect may be taken advantage of in the manner above mentioned."

Again, at page 16, middle of page :

"And not only must all the facts and circumstances which constitute the offence be stated, but they must be stated with such certainty and precision that the defendant may be enabled to judge whether they constitute an indictable offence or not, in order that he may demur or plead to the indictment accordingly; that he may be enabled to determine the species of offence they constitute, in order that he may prepare his defence accordingly; that he may be enabled to plead a conviction or acquittal upon this indictment in bar of another prosecution for the same offence, and that there may be no doubt as to the judgment which should be given if the defendant be convicted."

Again, as to certainty; the latter part of page 17 :

"Certainty, to a certain intent in general, being a medium between the two degrees of certainty above mentioned, may be inferred from what has just now been said respecting them; and it should seem, therefore, that in cases where it is required, everything which the pleader should have stated, and which is not either expressly alleged or by necessary implication included in what is alleged, *must be presumed against him.*"

Again, on page 25 :

"If all the ingredients in the offence (whether it be an offence at common law or one created by statute) be not set forth in the indictment, or if any of them be not stated with sufficient certainty, the defendant may demur, move in arrest of judgment, or bring a writ of error."

And now, at page 388 will be found the form of the indictment in a case of conspiracy, which must be modified to meet the circumstances of the case; and the circumstances necessary to constitute an offence are there set out with great particularity.

From page 391 I now read :

"It is usual to set out the overt acts—that is to say, those acts which may have been done by any one or more of the conspirators in order to effect the common purpose of the conspiracy. But this is not essentially necessary; the conspiracy itself is the offence, and whether anything have been done in pursuance of it or not is immaterial."

Again :

"But before you give in evidence the acts of one conspirator against another you must prove the existence of the conspiracy, that the parties were members of the same conspiracy, and that the act in question was done in furtherance of the common design."

And now we turn back for a reference to treason, and the form in which the pleadings shall be made out and the overt acts to be stated. You will find the indictment for treason contained on pages 264 and 267 :

"The evidence must be applied to the proof of the overt acts, and not to the proof of the principal treason, for the overt act is the charge to which the prisoner must apply his defence. And whether the overt act proved be a sufficient overt act of the principal treason laid in the indictment, is matter of law to be determined by the court."

"Where a conspiracy is laid as an overt act, the act of any of the conspirators in further-

ance of the common design may be given in evidence against all. (R. v. Harday, 1 East P. C. 99. R. v. Stone, 6 J. R. 529; and see Kel. 19, 20, and ante, p. 68.) In such case the first thing to be proved is the conspiracy; secondly, evidence must be given to connect the defendant with it; and lastly, if intended to give in evidence against the defendant the acts of any other person, you must show that such person was also a member of the same conspiracy, and that the act done was in furtherance of the common design." (See R. v. Sidney, 3 St. Te. 798, &c. R. v. Lord Lovat, 9 St. Tr. 670, &c.)

Again :

"But if any one overt act be proved against the defendant in the proper county, acts of treason tending to prove such overt act laid, though done in a foreign country, may be given in evidence; and this was done in nearly all the trials of the rebels in the year 1746." (Fost. 9, 22.)

And, again, now, if the court please, what are the *allegata* here? It is not the compassing or effecting the death of the President of the United States. No, gentlemen, neither your honor the judge, nor you, the jury, can take any official or judicial notice of that, because it is not laid in the indictment that the party in this case was the President of the United States, or that it was done in the time of great civil war, or that it was done to destroy the effective force of the nation, or that it was a blow at the life of the nation. We are to be tried according to the allegation in the indictment, and not according to fancy springing up afterwards.

The allegation in the indictment is a simple case, as I said at the outset—as I understood my learned brother from New York to say at one time—a simple case which everybody can understand. It is the case of the murder of a private individual. Is not the punishment the same? Can you do anything more than hang a man? Is not the mode of trial the same? Are not the rules of evidence the same? But if another rule is to prevail, then I ask your attention to the 10th page of this book—Archibold's Criminal Pleading :

"But where the person injured has a name or dignity as a peer, a baronet, or a knight, he should be described by it, and it should seem if he be described as a knight, when in fact he is a baronet, or the contrary, the variance would be fatal."

Now, tell me where your law is. Tell me where you can get the law, if this be not the case of an individual—if it be not the case of an individual killing another. I ask, why did you not tell us so and put us on our defence, if it be a higher offence in the law? That is the point, gentlemen. We are not talking about a political offence. If it be a higher offence in the law to kill the President, or to assail, with intent to kill, the Secretary of State, than it is to kill, or to assail with intent to kill, any private individual, and if we are to be tried by different rules of evidence, why did you not tell us so? If this be anything more than an ordinary indictment of murder by conspiracy; if it is to be decided by different rules; if it is not to be measured (I mean in the courts of law) in the scales of justice, but by political feeling—by the injury it may inflict upon society, and not in the scales of justice—I ask you, why did you not put in the indictment these facts, which make it a different offence from that upon which you put us upon trial? Different, ay, gentlemen, as widely different as a brawl in the street is from treason; different from that oath which you have taken to decide this case according to that indictment. If the party injured has a title; if the party injured is entitled to special protection, or is entitled to the benefit of trial by different laws; if a different punishment is to be inflicted; if different rules of evidence are to be admitted in the trial of the man, I say that law, justice, and humanity demand it should be put into the indictment; that you, gentlemen, shall not be smuggled out of the verdict because they invent some offence different from that which you have been sworn to try.

Now, gentlemen, we differ as widely upon other principles of law—not expediency, but legal propositions. I shall not go over the case cited by Mr. Merrick, nor shall I take the time to examine those cited by the prosecution to show

what proof is necessary to make a conspirator guilty as a principal, but I will refer your honor to Bishop's Criminal Law, 1st volume, section 264 :

"In law, therefore, as in morals, when several persons unite to accomplish a particular object, whether they collectively put each his individual hand to the work, or one doing it, the others lend the aid of their wills—not in the way of mere passive desire, but of active support—the persons thus uniting are all and severally responsible for what is done."

Again :

"And if several conspire to seize with force a vessel and run away with her, and death comes to one opposing the design, all present aiding and abetting are guilty of the murder of such one. The principle that all whose wills contribute to a criminal result are in law guilty, furnishes the leading test sufficiently, ordinarily, of itself to determine whether or not a person who did not himself perform a particular thing, is to be held for it criminally."

This is a most admirable exposition of the law, as far as it goes. I read again :

"Obviously, if two or more persons are lawfully together, and one of them commits a crime without the concurrence of the others, the rest are not thereby involved in guilt. So if they are unlawfully together, or if several persons are in the actual preparation by a concurrent understanding of some crime, and one of them, of his sole volition, not in pursuance of the main purpose, does another thing criminal, but in no way connected with this, he only is liable."

For that he cites a long list of cases, beginning with 1st Leach and running down to 9th Carrington and Payne, several cases in England and several in the United States. He then goes on :

The district attorney nods his head in approval. I am very glad to see it; but I do not understand his argument. I did not understand his argument the other day, if that was what he meant. If there is not a concurrence of the will of the parties to do that thing, but they design to do something else, and one or more of them go off from the conspiracy into an operation of their own and kill somebody, the others are not responsible for it. To make them reponsible each for the other it must be in this identical company, this entity, this artificial company and conspiracy; and they are responsible just so far as they have a common design, and no further. Just as a corporation is bound by the limits of its charter, and its officers and members can do nothing beyond the limits of its charter, so these conspirators are agents for each other within the limits of their conspiracy and not beyond. Let me proceed :

"So if two persons have committed a larceny together, and one of the two suddenly wounds an officer attempting to arrest both, the other one cannot be convicted of this wounding unless the two had conspired not only to steal, but to resist also with extreme violence any who might attempt to apprehend them."

I read again from section 266 :

"In like manner, if several are out committing a felony, and upon an alarm run different ways; and one of them, to avoid being taken, maims a pursuer, the others are not guilty parties in the mayhem."

Again, in section 267; and now we come to what we understand to be the true principle of the law of conspiracy :

"Yet if two or more combine to do an unlawful thing, and the act of one, proceeding according to the common plan, terminates in a criminal result, though not the particular result intended, all are liable. This doctrine is merely a deduction from principles already laid down : First, that the party not acting participated in the intent with which the act was committed, and thus became criminally responsible for the act; secondly, all who are responsible for what is done unlawfully are so for its entire consequences, whether contemplated or accidental."

Again, from 267 A :

"Thus far we have trodden on secure ground. But in the facts of cases a doubt often arises of the extent to which the wills of those who did not directly commit the act concurred in what the rest did. This matter, however, is one of evidence, to be considered in our work on Criminal Procedure. Yet, connected with this question of evidence is another analogous to it, namely, suppose the one committing the wrong was really carrying out the common purpose in a general way, yet not after any agreed method, how far are the rest holden criminally for what of evil accidentally comes from the volition of this one other than the



evil specifically contemplated; if the evil result was intended by all, then clearly all are trover, though it was brought about in a manner not specifically designed."

Again :

"Harkins has something on the point as follows: If a man command another to commit a felony on a particular person or thing, and he do it on another—as, to kill A, and he kill B; or to burn the house of A, and he burn the house of B; or to steal an ox, and he steal a horse; or to steal such a horse, and he steal another; or to commit a felony of one kind, and he commit another of a quite different nature, as to rob J. S. of his plate as he is going to market, and he break open his house in the night and there steal the plate—it is said that the commander is not an accessory, because the act done varies in substance from that which was commanded."

Now, then, I ask the attention of the court, and of you, gentlemen, to section 268:

"The true view is doubtless as follows: Every man is responsible criminally for what of wrong flows directly from his corrupt intentions; but no man intending wrong is responsible for any independent act of wrong committed by another. If one person sets in motion the physical power of another person, the former is criminally guilty for its results. If he contemplated the result he is answerable, though it is produced in a manner he did not contemplate. If he did not contemplate the result in kind, yet if it was the ordinary effect of the cause, he is responsible. If he awake into action an indiscriminate power, he is responsible."

And that is an answer to the argument addressed to the court by the learned counsel from New York, in his illustration as to putting a steam engine on the railroad, &c. It is a complete answer.

"But if the wrong done was a fresh and independent wrong, springing wholly from the mind of the doer, the other is not criminal therein, merely because when it was done he was intending to be a partaker with the doer in a different wrong. These propositions may not always be applied readily to cases arising, yet they seem to furnish the true rules."

From these authorities, together with those already cited by my brother Merrick, I deduce the following proposition:

The act must be in execution of the design of the conspirators. It must be to effect the object of the conspiracy. I have shown you that the object of the conspiracy must be distinctly set out in the indictment, and the overt act as distinctly stated. If it is a conspiracy to rob, and one of the conspirators commit a murder, not in execution of the common design to rob, the others are not responsible. If to kidnap or abduct, and one of the members, leaving his connection with the others, murders, and that murder has no connection with the original plan to abduct, the others are not liable. Now, here is a conspiracy charged in this indictment as a conspiracy to kill, not to abduct. It is a conspiracy to kill an individual, not the President of the United States. It is a conspiracy to kill, not to help the rebellion. It is a conspiracy to kill an individual, not to take away the life of the government. The burden of proof is upon the government to show the existence of that conspiracy, and John H. Surratt as a co-conspirator. The burden of proof is upon them to show not only a conspiracy to kill, but Surratt as connected with that conspiracy, and Surratt moving in that conspiracy to kill.

Now, let us see, as I sum up very briefly, what the proof is, as I understand it, as made by the government. I do it briefly, gentlemen, because I know you are intelligent men, and you have listened with extreme patience and suffering even to this great mass of evidence—that you are wasted with this more than six weeks' confinement. I wanted to close the case long ago. Not that I feared the truth; not that I relied upon error; not because I thought there was any danger of that jury being misled by truth; not because I feared discussion. I did fear what we have had, a harangue of three days, and three days of abuse such as made my gall rise within me.

I have already said that the court cannot, that the jury cannot, take any notice of the fact that the victim of the assassination was the President of the United States. It is not in the bond; it is not in the pleadings. We are not



upon our defence for that. We have had no notice of it until it was suddenly sprung upon us by the active brain of the counsel from New York. There is nothing but killing in the indictment. Nothing of civil war; nothing that the object of the conspirators was to advance the interests of the rebellion.\* The indictment is that this party killed Abraham Lincoln, and nobody else. There is no allegation of any fact from which it can be found that Abraham Lincoln was President of the United States; or that this country was not in a state of the most profound peace. It is an error under which the learned counsel has fallen, and, I say with the utmost deference and respect, I fear into which they have in part led the learned judge without having presented clearly the indictment to him. It is too late now to retrieve themselves by this new proposition, to wit: that the act of killing the President of the United States, under such circumstances, is an offence in which there are no accessories, and an offence to be tried by different rules; an offence never dreamed of by the law-makers of this country; an offence not known to the laws of England, because there is no such authority in the law of England; an offence impossible here in this republic, where we know no lords or commons; where we have no king; where there is no such offence as compassing the death of the sovereign; where there is no sovereignty committed to a king; but where the sovereignty is in me, in you, in all of us. Certain powers are delegated; yet, now, they seek here utterly to retreat from every possible assault against the accused for killing an individual, and to throw up an outward defence, and renew the assault from this masked battery.

The learned counsel (and he must be learned, for he has learned that which no lawyer within the sound of my voice ever knew before) tells us it is not, as doctrine, anti-republican, hostile to liberty, that a man should be put upon his trial according to all the forms of law, upon a perfect indictment presented when the case was to be tried; and that he should be tried for a new and different offence, to be created for the first time out of the head of the judge. He says he will furnish authority for it. He did not condescend to enlighten us with even as much as the district attorney gave us; not even a speech from a school reader. Did my learned brother recollect a speech of his own on the arrest of General Dix? Did he recollect when he told Judge Russell, in the city of New York, that the President was not a dictator; if he was a dictator, arrest him, depose him, assassinate him? No, sir; not even if he were a dictator. Do not assassinate him. Let your own strong arms rally together and take away the beaten dictator by the ballot-box; and if you cannot, take him away by the cartridge-box and bayonet; but do not assassinate him.

They seek, I say, to retrieve themselves by this new doctrine, after the evidence is closed; after they have ruled out step by step upon technical rules, upon the ground of the case made in that indictment, evidence for the defence going perfectly to acquit that young man of all participation in this murder—evidence offered in writing—a witness on the stand, with two other witnesses here, men of character and respectability—our written statement showing his whereabouts from the 29th day of March until the 18th day of April—all this they ruled out and rejected, because they had not in their evidence made a case to be answered by such proof. When we offered by General Lee to prove that this young man arrived in Canada about the 6th of April; that he was there until the 12th; that he went then to Elmira on business under his (General Lee's) employment; that he transacted that business in Elmira; that he returned and reported, showing that he must have been there during the time engaged in that business—when we offered in writing a statement of this evidence, they objected. They said no; we have made no case to which this is in reply. And when they obtained the ruling of the court excluding the evidence, they have the supreme audacity to say to you, gentlemen, that this man was in Elmira participating in that assassination in order to further the

ends of rebellion, and yet shut from you proof of what he was actually doing there. Surely justice has deserted men, and reason has fled to brutish beasts. I say, gentlemen, there is no such doctrine; and I say, further, if there be such doctrine, there is no man in that jury box who would not rather sit there until he "shrink to the size of a tobacco pipe," than render a verdict against a party under such circumstances. You have no right to go home to your wives and children; you have no right to re-enter upon the business of life; you have no right to the cheering consolations of all those with whom you have been accustomed to associate, if you shall have done a deed which stamps you and your posterity with eternal disgrace, by convicting a man without law and without reason.

Gentlemen, I wish I was a younger man. I wish I could knock off thirty years of my age, and fight this battle here. But I am too old; younger men must take it. I would fight it to the death. I would fight it as long as I had breath. I would bring up my children with energy and determination to continue the fight in defence of the principle that you shall not find a man guilty of an offence unless it be charged in the indictment; that you shall not go outside of the indictment to find weapons to kill other than those recognized by the law.

But I am breaking the rule I laid down for myself. I have no strength to bear excitement nor to endure the fatigue of discussing this case as it ought to be discussed.

Gentlemen, the charge in this indictment is the killing of Abraham Lincoln, and a conspiracy to kill him as an individual, not as a President. The charge is of killing him in a state of profound peace, and not in time of war. The charge is of killing him from malice aforethought, and not for the purpose of helping the rebellion. The case is to be tried by the ordinary rules; the same rules of evidence are to be applied, the same judgment of the jury is to be applied, the same verdict is to be rendered of guilty or not guilty. I am speaking now not of this case specially; I am speaking of the laws that govern you, me, and everybody else. I am speaking of a principle, not of an individual case. I have no more fear about this case than I have of my own. I have not had for weeks; but I am speaking to protest with all my heart and soul against this monstrous doctrine. The case is to be tried by the ordinary rules. No authority has been cited, not a hornbook, not an elementary writer, not a county court decision, in favor of the theory which the learned gentlemen have set up, that in this free country a man may be indicted for an ordinary offence, for the offence merely of killing, and be tried and convicted upon another law, not written and not found in any of the books.

Now, gentlemen, a word or two as to the proof in this case, for I shall hurry through what I desire to say, in order to give you rest, and to close, so far as I can, my connection with this case. I came into it most reluctantly. I was burdened with other business. It was in the midst of our civil court. At my time of life I did not seek honor or renown. I knew that these parties had no means to recompense me for my labor. I believed I should have to furnish out of my own pocket the funds for the ordinary expenses of the trial, during its progress, not to say anything of receiving compensation. I wished to avoid the excitement, wear, and tear of such a case; but if you had seen her who came to me, you could not have done otherwise. She did not weep; not a tear fell from her eyes. The fountain of her tears had been dried up. Two years of long, continued suffering had wasted that fountain. The eye once bright in her was dim—the countenance depressed. To be sure, it was lighted up with the hope that hereafter she might one day again see her blessed mother. Yet I refused. I refused until my two younger brothers undertook to take the laboring part of this case; and well and faithfully have they discharged it. For two months, in season and out of season, by day and by night, at home and abroad, with ex-

pense, toil, and labor, have they diligently discharged their part of this work. You heard, yesterday, how admirably, how gloriously one of them triumphed in the results. I doubted this case very much. I had read that conspiracy trial. I thought I saw something of the implements which might be used or manipulated by the government of the United States, from its vast treasure and exhaustless resources, and I feared; but when I went into that young man's cell and heard his story, and as I traced out the history, and found every word he told us verified by others—for he kept nothing back, and concealed nothing—my heart gladdened within me that I was permitted to stand up and defend him against wrong and oppression. I say I have not for weeks feared the result; I have never feared it, since the government proved his innocence a month ago. What is the proof? That the President, Abraham Lincoln, was killed by John Wilkes Booth alone, when John H. Surratt was four hundred miles away, when he was ignorant of what was being done. Is not that so? What is their proof? I first direct your attention to the testimony of that accomplished gentleman, Dr. McMillan, with the most wonderfully retentive memory that I ever saw—when it suits his convenience—but who, happily for us, forgot that he had given a written receipt, and when that written receipt was presented to him it changed the whole tenor of his testimony. I ask you to follow out that witness on the stand. That is the use of open oral examination of witnesses. It is that the jury may look upon him and see him eye to eye, and see the nervous flutter and shake, the quivering of the eye, whether or not the witness in the presence of the prisoner can look upon him and swear against him; that we may see whether the pulse beats strong or feeble; whether the nerves are strung or not; that you may see whether it is the face of brass or the face of innocence and integrity. There never was a better illustration. You never saw a witness go on the stand with a more confident strut, like one of those little bantam cocks perched upon a fence to crow. Then did you see how he first clutched his hands and shook my brother Merrick for what he thought was a gross insult; and so he went on with his testimony to suit the case, until he came to the testimony of Father Boucher. Your eyes were on him—many were—and he could no more look that man in the face than Mr. Carrington can look John H. Surratt in the face when he is acquitted. I took him when he came upon the stand recalled by them, and undertook to settle his controversy with the priest. He had it all rehearsed. He had told the counsel what to ask. He had studied it all up. He thought he had his part ready. He testified exactly as if he believed it. When I handed to him that written receipt and said, "Is that your handwriting?" covering his accounts with Father Boucher down to the 21st of June, he saw it all, and knew that you saw he had lied right straight through. You saw the quivering of the man's nerves; you saw the light go out of his eyes, somewhat different from his appearance when first on the stand, and when I thought he was going to jump out of the box and grapple with my brother Merrick. You saw how he quailed before the eye of these twelve jurors looking at him; you saw the craven with guilt detected depicted in that face. Well, still he is their witness, and what does he prove? If he proves anything on the face of the earth—and I do not know that he does prove anything—he proves that Surratt told him he had received a letter at Montreal calling him to Washington, and telling him they had abandoned the scheme of abduction, had changed their plans, making it necessary for him to come immediately to Washington; not that he was to come here to achieve glory and renown by the capture of the President, but that they had changed their plans. The witness says Surratt told him that the plan had been to abduct the President, but that he had received a letter telling him to come on here to Washington, for it became necessary to change the plan. Is that all? He says that when he got to Elmira he telegraphed to Booth—at Washington? O, no! They would not telegraph their operations here. He telegraphed to Booth at New York. When he was in El-



mira on the 13th or 14th of April, he telegraphed to Booth in New York. Didn't he believe Booth was in New York? Have you not proved there was a change in the plan? That he went as far as Elmira, and then telegraphed to Booth in New York, and no mortal man has ventured to swear yet (I do not know what may come) to this jury, that whatever that change of plan was, it was ever communicated to this young man. Yet they have the boldness and effrontery to stand up here and denounce him as a villain, assassin, coward, traitor, as a representative of the chivalry of the South, and to ask, in tones of irony, whether he is a representative of the chivalry of the South; and this while they are prosecuting a man for his life—a man who they prove had nothing to do with the assassination. And they come here with this effrontery and extraordinary audacity to ask you for a verdict. I say, gentlemen, Surratt was four hundred miles away, entirely ignorant of what was being done; and, secondly, that, according to their proof, the plan of the conspirators, whoever they were, and whatever that plan was, had been changed, and the new plan had not been communicated to Surratt. That is their proof. But they are not satisfied with it. This case assumed a new phase last winter, and that new phase has brought to light an instrument of proof which, while it stamps the deepest disgrace upon the conductors of that prosecution before the military tribunal, suppressed testimony which would have acquitted a woman—a woman, not a man; not a hard, vigorous nature; not a wild, reckless man; not a foe to society; but a pious mother, a loving woman, kind and gentle, who had so touched her servants, as you saw from the mouth of that colored woman, Rachel Hawkins; who had gathered around her a circle of friends who loved and respected her; who had two orphan sons, one of whom would now be her protector if he were at liberty; the other, a brother, in Texas—a prosecution which suppressed that diary written by Booth on the day of the assassination; that diary, which exculpates her as perfectly as though she had never seen him; that diary, which speaks from the grave; that diary, written in the awful presence of his Maker, before whom he was shortly to appear; that diary, which shows who, and what the man was—a fanatic and enthusiast—a madman. He inherited it. His grandfather, old Richard Booth, was the most thorough red republican that ever settled in Maryland. He used, in the spirit of his fanaticism, to run away slaves into Pennsylvania, and his son, Junius Booth, had to pay for them. He christened his son Junius Brutus Booth, and he made him christen his own son Junius Brutus Booth, and this son, John Wilkes Booth, inherited the idiosyncrasy of this grandfather. He was an accomplished man. He was not only an actor, but he had the manners and education of a gentleman, and a most wonderful control over man and woman. He was admitted into the best society in this city, and at the time of his death was intimate in families which I shall not name, but families against whom no human being can utter an imputation. Accomplished young ladies not only permitted him to wait upon them, but to take them to the theatre and elsewhere; but he had running through him this vein of insanity, accompanied with a pure, fervent, and indescribable affection, and love of a son for a mother. I have been told by a gentleman who well knew them, that when he desired to go south and join the rebellion, his mother restrained him. Putting both hands upon her, he said: "You are not a Roman mother; you will not let me go; you know my heart is there." I said he had a wonderful power and control over men, and he exhibited that power upon the stage, making his \$20,000 a year. He has gone, as he deserved, to a dishonored, if not a felon's grave.

I say, gentlemen, they have shown that this new plan was not communicated to John H. Surratt. They show this by these two witnesses. The prisoner at the bar, himself, is one whose testimony is brought here through the benign spirit of McMillen, and most wonderful is that man in weaving, what he calls a revelation of facts in this case. Surratt did leave Montreal at the time



time he says he did. Surratt did reach Elmira at the time, and Surratt did not go any further than Elmira, and upon this he has woven further revelations which are contradicted by the proof in the case. You see the prosecution have proved not only by McMillen, but by this admission of Surratt's, that he was in the former conspiracy—a conspiracy to abduct. That plan was changed, so that if he came to assist in a plan, it was a plan of which he knew nothing, and they have shown that he knew nothing of it. Is not that the evidence of this case? I am taking their own doctrine. I am taking them upon the monstrous doctrine which they have put forth, that to kill the President is a monstrous, unheard of crime, for which new laws are to be made by the court. They must show that he intended to kill, and contributed to the act; and they have taken all this trouble to prove that he did not.

I throw out of view and discharge from consideration these mighty men, Lee, Dye, Rhoades, Cleaver, and on top of them put Susan Ann Jackson; and alongside of her my brother Vanderpoel—Susan by far the most respectable of the two. I wish I could tell you, gentlemen, what we tried to get Vanderpoel back for cross-examination for. We tried to get several of the witnesses back for examination. I wish I could tell you what this witness said outside about this case before he left the court-house, as to how he came to make the statement he did make here. I throw out of view all these witnesses. I set them down all as mistaken—I will not say manipulated. I will not say corrupt, but as mistaken; for they certainly were *mis*-taken when they were taken here. I take the truth confirmed by irrefragable testimony. Now, what are they? I take the proof of the handwriting of Booth, which cannot lie. It may be changed. I take the proof of the handwriting of John Harrison on the register at Montreal. Who says Booth did not tell the truth when he tells you that for six months they had labored to capture, and that they found it necessary to change their plans? That is the proof, and who says it is not true? Gentlemen, they themselves, by their evidence, show that in October the plan of abduction was in operation. They offer by that accomplished young man Weichmann to show that an effort was made on the 16th of March to do something, which failed, and from that time forth John Surratt was not in connection with any of these parties, with the single exception of one gentleman—gentleman I suppose I am to call him. I call him rascal, villain, liar, perjurer, and I think I will show you before I am done with him what sort of a gentleman he is—fit associate for Conover, Cleaver and Montgomery. They prove by Weichmann that on the 16th day of March this very prisoner, John Surratt, rushed into the room where Weichmann was, and exclaimed: “I am ruined; all my prospects are gone. *Weichmann, can't you get me a clerkship?*” From the sublime to the ridiculous! And the only time when they are brought, not together, but in juxtaposition, after that, is from the statement of this same accomplished young gentleman, who has the right to open all the drawers in the Philadelphia custom-house whether he has the keys or not. This same young man says he swore on the trial at the arsenal that he saw him two weeks after that; but that would not do, for he found John Surratt was in Canada, so he comes down to the 20th, and says that four days afterwards—on the 20th—he went to Mrs. Murray's to see if there was a room engaged there for Payne; but, mind you, Payne did not know John Surratt when he went there to see him. Is it not proved that John Surratt had no connection with Payne after the 16th, or that Payne arrived until the 27th? According to his story he never saw Booth, Atzerodt, Payne, or Herold in company with John Surratt after this. If so, I cannot find it has been stated in his testimony, and I looked carefully for it this morning. I cannot find that he brings John Surratt in company with any one of these parties after the 16th of March, the day of the final effort. On the 24th of March he starts him on his voyage to Richmond. He brings him back from Richmond on the 3d of April; he brings him to his mother's house about

six o'clock in the evening of the 3d of April, where he stops for a little while, and then goes down to the Metropolitan and sleeps there. Hollohan tells you he was with Surratt until between 9 and 10 o'clock that night, and he went to bed then, and Mrs. Hollohan corroborates this. I say, then, it is proved that the 16th of March, when the plan, whatever it was, failed, was the last connection John H. Surratt ever had with any of these parties; and John Wilkes Booth tells from the grave that the project failed; that after experimenting for six months, they found it necessary to change their plan. McMillen tells us that when Surratt was in Montreal he received a letter from Wilkes Booth that the plan had been changed; that Surratt went as far as Elmira and telegraphed to Booth in New York, and there he remained. Whether he telegraphed him is another matter. They did not show that he did. If they could they would have shown it, for they have not only gone up into the moon skylarking there in the clouds and mists of heaven, and into the computation of sidereal observations, but they have gone into the depths of the earth to hunt up and root up dead bones as well as living things in order to excite your prejudices in this case, and extort a verdict from prejudice, not from judgment, nor from the heart.

Now, then, I say the assassination was committed when Surratt was four hundred miles away, when the plan had been changed without his knowledge. We show that the whole plan was abandoned and a new plan formed when it was physically impossible that Surratt could have assisted in the execution of it.

The learned district attorney, with a tremendous figure of his, says that John Wilkes Booth killed the President, and has gone to—I will not name the place—but he has left Beelzebub here to work for him. I think he must have had some familiar spirit with him, or else I should like to know where he got the rakings of that place which he produced on the stand as witnesses here—men so utterly corrupt and debased by such shocking crimes as humanity stands back aghast to see. They are put upon the stand by respectable counsel as credible witnesses.

But, we have had a gentleman in black here—I was looking about for him a little while ago; I think he is the *foster* father of this case—who has been raking the valley of the Susquehanna with that detective, Roberts, trying to extort something from our witnesses, respectable men, by which they hoped to entrap them into something to contradict. This gentleman in black sat by the counsel from New York in his cross-examination of men of such high character as Mr. Cass. I am sorry Mr. Cass is a black republican; that is the only bad thing I know about him—(a black republican, I believe, but a perfectly upright man. I think that red republicans, such as Thad. Stevens, are crazy,) and I am sorry for it; but this gentleman put into the learned counsel's mouth such questions as, "Did not you talk with Colonel Foster?" "I don't know him." Here sat the man right alongside of the counsel. "Did not you talk in his presence?" "I don't know him." "Did not you talk to Mr. Wilson?" "I don't recollect." "Did not you talk to him," (Mr. Wilson standing up;) "and did not you say so and so?" Insinuating to this jury a corrupt charge against that honest man. Now, gentlemen, if he had had any reason to make such an assault, no word would have fallen from my lips.

But there was this man, as honest and of as good standing and character as my learned brother is in New York, who, by insinuation and innuendo, is to have his testimony shaken by calling his attention to what has passed between himself and these two or three persons around about him. They did not dare to put one of them upon the stand, and say that he had told anything other than the pure truth.

But that is not all. I will cite, if my strength holds out, two or three more such cases, where the counsel says to a respectable physician, "Have you not been indicted for malpractice in your profession? Have you not been arrested

for it? Did you have a consultation with Dr. Bissell? Did the man live after that consultation?" Yes, gentlemen, it was the greatest insult I ever heard offered to a witness on the stand; and the greater because the counsel does not venture to undertake to prove any one of those insinuations. I have not asked any such question of any witness on the stand calculated to excite any prejudice against him, unless I knew and believed what I asked was true. I have not asked any questions tending to impeach the integrity of any witness, unless I had at hand proof to sustain me. I never have, and I never will assail the honest integrity of a witness, without the plainest proof in my possession of his falsehood and perjury. But I have done, and I will, I trust—if I live to try another case before a jury—still charge home corruption to a witness who I believe to be corrupt, and where I have proof to show he is corrupt. But, so help me Heaven, if I ever insinuated guilt to an honest, upright man—a witness in my hands—without proof to support it, may I be turned out of the society of honest men, and driven to seek my support among felons. Look at the case of Mr. Nagle, of Montreal. Gentlemen, you saw that witness upon the stand. He was with us while he was here; a gentleman, a man of character; a man employed by myself to assist us in preparing the case on the other side of the line; a man who worked industriously for us; a man who came here with the witnesses; a man who was paid for his expenses and the cost of these witnesses. A witness is put upon the stand, not to assail him, but to support the character of McMillen, and the counsel asks that witness as to the character of Nagle. I would like to see the gentleman bring any witnesses from Montreal to impeach him. I know something of his character and standing there. I know that Mr. Nagle has a high standing, gentlemen, but may have political enemies; and after what has taken place here, I would not like to say that no man could be found to discredit him. I rather think they could go into the city of Washington to-day here and get fifty men who would say they would not believe me on oath. I judge so, at least, from articles that have appeared in a dirty sheet in this city charging me with corruption, with trying to bribe witnesses; charging me with getting up a scheme to play a trick upon the prosecution by sending to them a parcel of Jews, and that a detective traced them to my room. Gentlemen of the jury, after what has been written of that transaction in the public newspapers, when you get out of that jury box you will see it, and you will see where the corruption was.

Again, let us see where this assault goes. There has been a singular character exhibited in the course of this trial—perhaps rather a rare one; he would make a figure in a novel—I mean Stephen F. Cameron. He is an eccentric man; he is a man of genius; he is imaginative, and people who hear him talk—stupid blocks—sometimes cannot understand a little coloring and exaggeration, and set him down as romancing. Fools, who have an idea a little above an oyster, come here to tell you that he is imaginative and erratic, but no one, with a single exception, has had the hardihood to tell you he is corrupt. And who is that one? Never mind; let him pass.

There were one or two who spoke against him; one is a little fellow by the name of Torbert. He tells you that he believes he is a religious man, and yet, when he is asked by Mr. Alexander if he would believe him on his oath, he says he would not. A religious man, and not to be believed on his oath! A man who makes such a statement in these days of enlightenment either does not know what religion means, or he is a pretty judge of character.

I say, then, gentlemen, for I have been led off by this digression, that they have shown it was impossible for Surratt to have assisted in the execution of this plan, and now I am going to show it. I understand the gentleman in black has been looking at that map, upon which I made figures, and now if you, gentlemen, have not taken it into your possession, I insist that you shall, and keep it. As I have no reply, and as the gentleman in black has had hold of this, I take it for granted that they are going to demonstrate an impossibility,



and therefore I want you, gentlemen of the jury, to take notes as I refer to these figures. He left Montreal at 3, to take the New York train. He reached Rouse's Point at 5.45. I want you should get this down correctly, and then I would like to see the conjuring on the other side with the gentleman in black to change these figures. The train reached St. Albans at 7.25. I pass over Essex junction, and take Burlington at 9.05, and Troy at 5.20 in the morning of the 13th. That is all I want. There is no mistake about these figures—no dispute about the evidence. If there is I desire to have it put right now. No correction is made. I therefore assume it to be admitted that the prisoner reached Troy at 5.20 and Albany at 5.45 on the morning of the 13th. Now, our time-tables show that the first train west from Albany left at 7 in the morning and reached Canandaigua at 4.52 in the afternoon. Mr. Guffy, the railroad superintendent, was brought by the prosecution to prove that was the route, and the only practicable route, to Elmira. There is another intermediate route about which they have taken care not to give any evidence. This, then, is the only route in question, and he could not have reached Canandaigua before 4.52 on the afternoon of the 13th—25½ hours from Montreal. He is at Canandaigua, then, on the afternoon of the 13th. It is not only proved, but it is conceded, and conceded on the record, that he was in Elmira on the 13th. Now, he must go to Canandaigua before he could get to Elmira. It takes two hours and a half to run down to Elmira, so that, if the cars had connected and he had gone down by the first train, he could not have reached Elmira before 8 o'clock on the evening of the 13th. *Quod erat demonstrandum*; that is mathematically shown. He could not get to Elmira unless he had been a bird, and going by the route of Albany it would take a carrier pigeon to have reached there before 8 p. m. on the 13th.

That is the government proof, and there I was willing to stop the case. I thought, I confess, in such a government as this, when they had proved a man's innocence they would enter a *nolle prosequi*. I had learned that there was no greater condemnation on any man than to prosecute a case involving life when the proof was clearly against the prosecution and in favor of the accused. And I say now, that for the prosecution to shut their eyes against a case thus made out by themselves is worse than judicial blindness. It is wilful blindness, and to prosecute a man for his life after they have proved his innocence—I will not trust myself to say what it is. I say, if the court please, that unless this new doctrine is to prevail—and it is for you, gentlemen of the jury, to say, by rendering a general verdict, whether it shall prevail, and a man be tried for that for which he is not put on trial, and of which he has had no notice, and new laws invented to cover past offences—unless that is done, I say the man was acquitted more than a month ago, and the government knew it. They could not shut their eyes—it would be an insult to their intelligence to suppose they could shut their eyes to it. The leading counsel on the other side has certainly shown great skill and intelligence in conducting this case after he had proved the innocence of the party in introducing testimony—to do what? What is the question to be tried? Not the innocence of John H. Surratt: he is clear. The government has proved that he is not guilty, and now the government is to prove his mother guilty. They have proved the prisoner innocent, and we have fortified that proof beyond the hope of the most ingenious and elaborate discussion to shake it. We have fortified the case by proof on the part of the defence, so that I defy even the gentleman in black, himself, to disturb it.

When that excitable, nervous Carroll was on the stand, I really thought they were about to get him into some trap. He says that Surratt arrived there on the 12th, 13th, or 14th; that he knows he was there, from the fact that Mr. Oxford left for New York on the 12th, and came back on the 15th. Well, did you ever see a humming-bird jumping at a flower, flying at it here, picking into it a little, with more intense satisfaction than that evinced by the learned counsel-



lor from New York in cross-examining this witness? I really thought they were going to entrap him. But what did he tell you? That this strangely dressed man was in his store during the absence of Mr. Offord in New York, between the 12th and 15th; that he never saw such a costume before; that he examined it carefully; that he talked with him twenty or thirty minutes; that the man came the next afternoon, and he saw him again; that he saw him here in jail, conversed with him, saw his manner, saw him sitting in court, swears that it is the same man, except that his goatee is a little longer now, and not quite so broad. And they tortured that man; they threw their little squibs at him at every assailable point; but when at last they allowed him to go off the stand, and a man was placed there to contradict him, the witness confirmed every word that Mr. Carroll had said. They had sent this man Roberts there with Knapp, the sheriff—Knapp going in, and Roberts remaining outside as a spy—to see if they could not entrap him into some statement on which they could contradict him. Fortunately, Roberts was an honest man, and declined to twist his conversation into any other shape, and his testimony not only did not contradict, but fortified that of the witness Carroll.

Now, if Carroll tells the truth, the prisoner was in Elmira on the 13th or 14th. If it was on the 13th, he could not have seen him until after 8 o'clock in the evening; if it was on the 14th, he saw him at lunch time.

But, gentlemen, when Mr. Atkinson was on the stand, why was no attack made upon him? A well-dressed, well-fed alderman of the borough of Elmira—a dignified man. He sits there quietly and tells you that after lunch, on the 13th or 14th, he came into the store and saw a strangely dressed person talking with Mr. Carroll, who was there ten or fifteen minutes. He went and sat down where he could hear them talk, so that he could hear his voice in its slightest tones, and notice his mode of expression—where he could look at him and see his action. He came here, went into the jail, had a conversation with him, and had not a shadow of doubt that he certainly was the man he saw in Elmira on the 13th or 14th.

Now, they have put the prisoner where he could not get to Elmira until the night of the 13th, and this gentleman must, therefore, have seen him after lunch on the 14th. Two and two make four, according to the arithmetic I learned when I was a little boy.

Now I bring you to the testimony of Mr. Stewart. You saw him, and you have no doubt of the perfect straightforwardness and truth of his testimony; you have no more doubt that these two witnesses knew what they say than you would have of your own brother. Mr. Stewart tells you there are two stores separate, yet communicating with a large arch; that he was in one store, a hat, cap, boot, and shoe store, &c., and that Carroll was in the other, when a strangely-dressed man accosted him. He never saw the man before; he went into the gentlemen's furnishing department and entered into a conversation with Mr. Carroll. He was attracted by the man's appearance; went round the counter and came and stood near by, where he could hear the tone and voice of the stranger, and note his manner. He went back again into the other store, returned again, walked round them, and then went round the counter, back again. He was there twenty or twenty-three minutes. He tells you that it was about his dinner-time, and his dinner he testifies was about 12 o'clock. It was after he had returned from dinner, and was between 12 and 1 o'clock. Now, what day was that? It was the 14th, for there was no doubt that the prisoner was the man they saw there. He told you he was struck not only by his dress, but by his voice and manner. But he has talked with him here. He has seen, not his back when he was riding rapidly away; he has heard him talk in his natural voice, and not in that calling of the time—10 o'clock and 10 minutes. He has familiarized himself with his voice, his manner, and his conversation, and he then comes here, sees him, talks with him, and identifies him as the same person. There could be no doubt about it.

I next come to Mr. Cass. What does he tell you? In vain they attempted an assault upon him. No armor of tempered steel ever withstood an assault better than his did, clad in the panoply of truth. He tells us that on the morning of the 15th, between 9 and 10 o'clock, or about that time, as the news of the death of Lincoln was being received, he had dismissed his clerks, and was closing his store himself, when he saw a stranger on the opposite side of the street, whom he took to be a friend of his from Canada, dressed in a costume he had never seen any one else wear. That man walked across the street before he ascertained it was a different person. Mr. Cass turned when he was within ten feet of the stranger, who followed him into the store. The man asked him for shirts of a particular make, which he had not, and he showed him others. The conversation then turned upon the cause of closing the stores. He made a remark, which was somewhat offensive to Mr. Cass, which led to a conversation and an explanation on his part. He noticed his manner; he noticed his voice and his features. He comes here, visits the man in jail, talks with him, hears his voice, and knows he is the man.

Now, gentlemen, need I weary your patience with a further vindication of this young man? I repeat that they have proved a change in the plan, made at a time when it could not have been communicated to this party, and at a time when it was physically impossible almost for Surratt to have assisted in the execution, even if he had known it. Finally, upon this point, when they have proved, as they have clearly, that after Surratt left the United States, about the 3d of April, he had no communication with the co-conspirators, and was on his way to learn what the new plan was; that is, according to their proof. He had no opportunity to combine with the individual conspirator who committed the assassination, or as one of the co-conspirators.

Let me say, further, that it is to my mind perfectly clear that the government knew all this before this indictment was found.

I am done with the defence of Surratt. I ask your indulgence for a short time upon one or two other parts of the case. I say that, from the evidence in this case, it is clear to my mind that the government knew these substantial facts before this indictment was found. And if this evidence now before you, then in their possession, had been laid before the grand jury, instead of the miserable recital of Weichmann, his written statement, you would never have been troubled with the trial of this case. It is not within the range of our privilege to state to you what has been communicated to me by William P. Wood, chief detective of the Treasury Department, upon this subject. But after this case is over you may have an opportunity of knowing what that statement is. Independent of the revelations of William P. Wood, made to me on the public streets, and in the presence of three or four others, the proof is clear that the government knew the scheme to abduct did exist, and had been abandoned. They knew it did exist prior to the 16th of March, because the trial of the conspirators had possessed them of that knowledge. They knew there was no meeting of the conspirators, and no steps taken by the conspirators, after the 16th of March to renew that original plan. They knew, for the evidence was there, that on the 24th or 25th March, whichever it was, Surratt left here for Richmond, for they traced him to Richmond; they traced him back to this city on the night of the 3d of April; they knew that on the night of the 3d of April he was not out of his mother's house, unless it was with that arch traitor Weichmann; they knew when he went from here—not fleeing them, for he had nothing to flee from—and that he reached Canada on the 6th of April. That is all in proof. They knew he left Canada to come to Elmira on the 12th of April, and was there on the 13th and 14th of April. And I would like to know what has become of the register of that Brainard House in Elmira, where he stopped. It has been searched for over and over again by different people. They knew, if they knew anything, that from Elmira he telegraphed to Booth; they knew it

as well as they know it now. They knew that Booth had written from New York to Canada as well as they know it now, and that it was responsive to Booth's letter that he came to Elmira, as well as they know it now. It is all untrue. But, true or not, they knew it as well before this indictment was found as they do now. They knew that he returned to Canada on the 18th, and remained there until the 17th September following, when he went to Europe; that he never was here again until he was brought here in chains. And with this knowledge; with this complete vindication; with what the public never saw; what the grand jury never saw; what that military commission never saw—Booth's diary, buried in the vaults of the government, secreted from all eyes; kept away from Congress and every one else—they knew all this, and they had recalled in the fall of 1865 the reward they had offered for his apprehension. They knew his innocence when they recalled the reward which they had offered for his apprehension, and which they have taken the trouble to prove. Well, he is caught; he is caught in Egypt, and he is brought here. Public justice demanded an investigation—I agree; and he ought to have been put upon his trial—I agree. Every facility should have been offered for his defence. A great and magnanimous country should have helped to ascertain the truth; and when the truth was developed, when it stood in capital letters so large that he who runs may read—aye, in letters of light, so that it may be read in the darkest night, “not guilty” upon the evidence of the prosecution, they should have abandoned it. God save the country when its leaders prove the innocence of a man and then prosecute him for his life, to gratify, not public justice, but something else no country ought to gratify. There is a leaf in our public history which deserves to be read, and read carefully. In October or November, 1865, the reward offered for this young man's head by the government was withdrawn. Through the political campaigns of that fall public attention was called to the trial, conviction, and execution of his mother. A strong voice—a voice for the people—a voice that made itself heard throughout the confines of this country in the halls of Congress, pronounced it a judicial murder. It was charged distinctly that it was brought about by a suppression of proof. The political effect of that proceeding was beginning to be felt. A miserable wretch, who had received hospitality at the hands of Surratt and his mother in other days, sought after him and betrayed him. He had eaten salt at his mother's table. He is betrayed, seized, imprisoned, and brought to this country. The government know they cannot convict him; but these men, who have been assailed in Congress, believe they may receive a vindication of their conduct at the hands of a jury.

For four weeks—for more than four weeks—have we been trying Mrs. Surratt. More than four weeks ago the innocence of this young man was complete; but it did not answer the purposes of this prosecution. The Supreme Court has decided, as was most eloquently said by my excellent associate, that the tribunal by which Mrs. Surratt was condemned and executed was an illegal, unconstitutional tribunal, without authority. Politicians and lawyers have denounced her execution as a murder, and based on an insufficient proof. It was necessary for the protection of the actors in that portion of this drama to make some new move and to satisfy the public mind; and it was equally necessary that the sacrifice should not escape from the horns of the altar. They bound him with chains, the counsel says. I say they were forged chains. They bound him with chains of iron. I say there were false links which united them together. They say it was not a magic chain, but one which cannot be broken, connecting him with the crime and the past. I say it was a chain fabricated—colored as iron, fabricated of earth, covered over with the gloss of eloquence, polished by ingenuity; but it breaks at the touch. The gentleman says that their evidence is complete, connecting him with the past. The district attorney says that you are to weigh that evidence. If it were not beneath



the dignity of this occasion—and yet I do not know that it is, for it has almost become farcical—I would go to the historian of the State of our brother counsellor from New York, and would refer him to the celebrated case in Knickerbocker. The learned judge had two men appear before him in controversy about their accounts. One produced a small book in which the accounts were legibly written. The other produced, as an offset, a much larger book, and asked that it should be decided according to weight of evidence. The judge announced his decision that “dis book is a much pigger book zan dat book and you has your gase.” The counsel for the prosecution tells you he has thirteen witnesses, and that the weight of evidence is to control. Gentlemen, suppose you were to have four pounds of pure gold in one scale and thirteen of false, base metal in the other scale, it would be a much better comparison. We have given you the pure metal; it has a clear ring. We give you Cass, Stewart, Carroll, Atkinson, not to say Bissell. They ring like a morning carol; they gladden the heart of this young man. They ring with a cheerful peal; they ring triumphantly; they ring victory—not guilty. What are these poor, leaden things. You can get no sound out of them but a dead sound. Gentlemen, you are to take the witnesses on the two sides and weigh them according to their value in the scales of truth. It was very boastfully said in the opening of this case that they would vindicate the conduct of the law officers of the government engaged in the conspiracy trials. They would produce Booth’s diary; they would show that the judgment of the court was submitted to the cabinet and fully approved; that no recommendation for mercy for Mrs. Surratt—that no petition for pardon to the government—had been withheld from the President. Is it so? As the trial progressed it became painfully clear that it was not John Surratt alone upon his trial. Despairing of success with the son they turned their attack upon the mother. To that I shall briefly ask your attention. It is connected with the case of the son.

Now, gentlemen, let us see who was Mrs. Mary E. Surratt. I believe no tongue has spoken of her except in her praise, unless it be Lewis J. Weichmann and John M. Lloyd. Entirely happy in her temper and disposition, and in the pursuit of those just duties which were preparing her for the training of her children, and for her future life, here and hereafter, evidently happy in her associations. Look at these witnesses who appeared before you upon that stand. Mrs. Holohan, and those children of nature, little Miss Fitzpatrick and Miss Lee Jenkins. No breath of suspicion ever passed across her path; no taint of failure in any of the relations of life touched her, so far as we know, and, except from the mouths of these two men, she walked peerless and without reproach. That she was lovable is shown by the testimony in this case; that she was loving is most true. She receives under her roof, shortly after her arrival in the city, a young man who is introduced by her son as an old college mate. She receives him as a friend of her son; she treats him as a son. In sickness she nurses him, in health she waits upon him. She pours out to him tenderness; she admits him to all the freedom of her family as though he were a son. Two brief months pass, and a stranger is introduced into that family, gifted in a most eminent degree, fascinating in his manner, attractive in his appearance; and this leads me to explain about his hands, by the way, which Mrs. Hudspeth identified as those of Booth, from their smallness and delicacy. Booth’s hands were large—so large as to be a deformity and the only deformity about his person. This person is introduced by the son, or by the friend she has treated as a son, and this intimacy grows as his influence increases, over not only the son, but the mother, and with the young girls in the family. It was natural—most natural. Two short months passed, and this gentleman is a frequent visitor at her house. A man comes there, introduced by Weichmann. He has told three stories about it. The man is brought by him into Mrs. Surratt’s parlor, and is introduced to her as Mr. Wood. He tells you that man came to the door and asked after



Mr. Surratt; he was not at home; he then asked after Mrs. Surratt. Could he see her? "Yes; what is your name? I will introduce you." He walks in and introduces him. That man stays one night, according to Weichmann's story, and supper is provided for him. He leaves the next day, and again in about two weeks returns. Up to this time Herold has never been in the house. Atzerodt was frequently there, and is treated as a simple body, with a nickname, and is made a sort of butt in the house. Booth is there, according to his story, almost every day, yet he swears to you he never saw Booth in the house with Atzerodt. He distinctly and positively swears to it. He tells you that the introduction of Booth was some time in the latter part of 1864, or beginning of 1865; that he and Surratt were both introduced to Booth by Dr. Mudd at the same time, on Seventh street. He swears before the military commission, within six weeks after the death of the President, that that was about the 15th of January. He admits he swore so. He says he fixes the date by the date of a letter which he received about that time.

Now he fixes it by another incident, which incident is equally untrue, for he says now it was just after Surratt left Adams's Express. In another part of his testimony he says it was just after he went to Adams's Express; but still, in another part of his testimony, it was fixed by Dr. Mudd—Dr. Mudd came to Washington on the 22d of December, and left just after Christmas, and it was after he came here Booth visited very frequently. This man Weichmann is treated as a son, and trusted with the range of the house; confided in by all; sleeping in the same bed with John Surratt; drinking the same whiskey with Holohan; wearing the same clothes with Atzerodt; out at night with him, and in the day. This man knows just as well all that is going on in that house among these men as any other human being. They could not, if they would, conceal it from him. He is too prying—too inquisitive; he is too thirsty after knowledge. He associates with these people, and he is clerk in a branch of the War Department; converses with Howell, a blockade-runner, well knowing him to be a blockade-runner; talks with him about the number of prisoners, and the knowledge he has obtained in the department to which he belongs; Howell teaches him the cipher, and yet he never intended to make any communication to be used in the south! Did he know what was going on; was he a party or not? Can you separate them? Can you put him to sleep while the others are rioting down stairs? Does he not tell the story of Surratt and Payne playing with bowie-knives; that they stopped when he made his appearance, but as soon as they saw who it was they went on with their game? O, no! they threw dust into his eyes.

I tell you, gentlemen, that man, with that cipher in his possession; with that knowledge of the condition of the prisoners; with those frequent conversations with Howell, the blockade-runner; with that intimacy with all these parties engaged in this conspiracy—that man knew everything as well as they did. He did not deny it. It is written in broad letters upon his face. There is much to be learned by an examination of the face, and you saw him upon the stand. I do not want to describe him; you all looked at him; you all saw through him as your eyes fell upon him, quivering as he tried to cover himself, as it were, with a garment to prevent your penetrating into his inmost heart and see what was lying there.

Well, a brief month passed and a change takes place in this family and with these parties. In the mean time there are extraordinary incidents. A new actor is introduced, Mr. John M. Lloyd. Mr. Lloyd tells you that early in March, (and I call your attention to it on Surratt's account,) Surratt, Herold, and Atzerodt arrived at his house with some arms and carbines, that Surratt told him to conceal them, and that he innocently concealed them. Did not Mr. Lloyd know more than that? We shall see by and by. I pass on. Again Mrs. Surratt is at Surrattsville on business, and on her way there, on the 11th of April, she

meets Lloyd near the Eastern Branch bridge. He gets out of his buggy to talk with her. Lloyd tells you that, in the presence and hearing of this man Weichmann—for he could have heard if he had listened—and Weichmann looked right at him as he began to talk, he tells you in his presence that Mrs. Surratt told him to have those arms ready, they would be wanted in a few days. Weichmann does not tell you what was said. He says that they spoke in so low a tone that he did not hear. In the trial of the conspirators he swore that it was in a whisper, and admits that, when in conversation about it afterwards, Lloyd reproached him for having said it was in a whisper; that Lloyd said it was in an undertone, but loud enough to be heard. Is it true? Here begins the conflict between these two. I tell you that Mrs. Surratt knew no more about these arms being in the house than you do; and I will say, by-the-bye, that I think Lloyd was as deep in this scheme of abduction, or whatever it was, as Weichmann, Booth, Herold, or Atzerodt.

Well, the time passes, and again, in a few days more, on the 14th of April, this lady is summoned to Surrattsville in the country, on business, as is proved by the letter of Mr. Calvert, not offered in evidence, but spoken of by the witnesses. She reaches Surrattsville.

Now, gentlemen, up to this time Weichmann has not heard any disloyalty. This conversation took place between Lloyd and Mrs. Surratt within Weichmann's hearing, but he has not seen or heard anything wrong about her. He drives her to Surrattsville. When he arrives there he does not see him. He sees him before he goes away. He gets into his buggy and drives up and down the road, and remains there until Mrs. Surratt is ready to go away. John Lloyd tells you that Mrs. Surratt was out, ready to go away when he got there. He drove into the yard, and she came to him with a parcel, which she carried out from the buggy, and then asked him to mend the buggy. Weichmann tells you he came out with a piece of rope, and that he got in behind the horse to tie up the broken spring. Now let us go back a step or two.

Between two and three o'clock Weichmann and Mrs. Surratt started to go out to Surrattsville. He said that he had been after the buggy; that he saw Booth, and shook hands with him. When he came she came out to get into the buggy; and said, "Stop, let me go back and get those things of Mr. Booth's." She brought down and put into the buggy something wrapped up in a paper, about five or six inches in diameter, which she says was brittle glass; that he carried it safely to Surrattsville. Lloyd tells us that the paper parcel she gave him was a field-glass, and it has been exhibited here to you as having come through that means.

Now, gentlemen, on the trial before the military commission he admits that she did not say, "Wait until I can get those articles of Booth's;" that she did not mention Booth's name before they started in the buggy; that the parcel she put in the buggy he handled, and thought it was a half dozen saucers. He now comes and tells you a directly opposite tale; that she told him to wait until she could get Booth's things, and that she brought down a field-glass—not a half-dozen saucers. He could not have been mistaken about that. Now, when it suits his convenience, he gives you John Lloyd's field-glass, and he turns the half-dozen saucers into a field-glass belonging to Wilkes Booth.

But that is not all this poor creature, Lloyd, himself utterly entangled in this conspiracy, tells us—that when he got home from Marlboro' that day, he was drunk—quite drunk; that he went into the house and received this field-glass from Mrs. Surratt; laid down, and was taken sick before she came to him to get him to mend the buggy. Neither tells the truth. We put upon the stand another witness, wholly indifferent as between them—Bennett Gwynn, who tells us what part of the buggy was broken; how he directed it to be repaired by Mr. William Notty—for a rope to tie it up; who tied it up he did not name; but he did not see John M. Lloyd there at all. John Lloyd tells you he was very

drunk that night; but the next morning when he was met by detectives in pursuit of Booth, they tell you he was quite sober. Clarvoe knew him well. He told Clarvoe that he had been up all night, and he took upon his soul an obligation as strong before God as the oath administered upon this stand, that he had not seen Booth or Herold. It had not the legal obligation of an oath that binds a man and subjects him to the punishment of perjury; that is a mere temporal view of it. It is the obligation that binds him to his God, and makes him responsible there, not here; and he who takes that name with a solemn pledge of his truth is just as much a perjured liar and villain, if it be not true, as if he had sworn it upon the stand, under the sanction of the law. He swears now, when these detectives meet him, and he takes the most solemn form of obligation which he can impose upon his soul, that Booth and Herold had not been there that night, and he knew nothing about it. But he comes here and tells you, with no higher obligation upon him, that these men had been to his house that night, and that he had given them this field-glass, whiskey, and carbine; and you are to believe him now, and connect Mrs. Surratt with this transaction, and you are to do it upon the oath of this miserable, drunken, perjured wretch. It matters not now to her; she sleeps the sleep of the just; she sleeps in the arms of her Savior; she has passed beyond the influence of mortal control. If that man lied before that commission, he lies now. Strike out his testimony. Did John M. Lloyd tell the truth? I shall have something more to say about Weichmann. I dismiss John M. Lloyd now and forever.

I think, gentlemen, you will find, by a review of the testimony of Weichmann himself, that the view I have taken of the testimony of Lloyd is fully corroborated. And now I come back to his testimony. There is not in its whole range one single material and scarcely an immaterial fact which passed in the presence of any observer, and to which contradiction was allowed by the rules of law, where we have not flatly contradicted him. There must be some truth in the statement. He must have a stem of truth on which to weave his falsehood. The warp is truth, but the woof is all falsehood in this case. First, let me show you how false he has been to human nature; false to the woman who nursed him sick, and attended him in health; who made his life comfortable and enjoyable; who trusted him as a son, and who, he says, treated him as such. False to such a woman as that! Was he false, is the question? Now, let us look back and see whether he was false or not, and by his own admission trace him, step by step, in his course. Let us begin, however, further back. He comes to you to tell you that he accepted a situation at St. Matthew's Institute, in this city. That is to make a favorable impression; on the contrary, when he is cross-examined he tells you that he besought and begged the situation, and was glad to get it. To accept a situation implies that it was tendered to him. To beg for it is not to accept it. He accepted a situation at St. Matthew's; and he says, in his cross-examination, "I sought it, and was glad to get it." This gentleman has the most remarkable memory of dates and events that ever was seen, and he gives some most remarkable reasons for recollecting. He says on the night of the 13th of March, he was at Mrs. Surratt's when Payne came in. "I fix the time Payne came, because it was two evenings before the 15th of March, when 'Jane Shore' was played." Now, on the trial before the commission, he fixed the play of "Jane Shore" on a totally different night. On the 18th of March. "I was out; I left John at home; we went to see the 'Apostate' played by Booth and John McCullough." On the trial of the conspirators, he swore it was on the 26th of March. "On the trial of the conspirators, I said it was on the 26th;" I now "say it was on the 18th." How does he make that correction? He says: "I was introduced to John McCullough on the 2d of April; I said so then—it was not true." This is on page 412. He says: "I saw John McCullough's affidavit stating he was here at that date;



but I changed the date before I saw it, in my own mind, and told Mr. Aiken so, while the defence was taking my testimony. I did swear that Payne came on the 13th of March. I fix it because it was two days before the 15th, when 'Jane Shore' was played. It was on the 18th when Booth played '*Pescara*' with McCullough." Now, when was he introduced to Dr. Mudd, and by Dr. Mudd to Booth? "I was introduced to Dr. Mudd in the winter of 1864-'65, when Booth had room 84. I did state before the commission that I could fix it by the Pennsylvania House register. I did so; it was about the 15th of January, to the best of my recollection. I now say it was in the winter of 1864-'65, and was fixed positively by the time Booth occupied room 84. I fix it by the fact that John Surratt was employed at Adams's Express Company a short time after this introduction. This has occurred to me within the last two years. I have been to see when he was employed at Adams's Express, and learned that it was on the 31st December. I must have been introduced before I stated I was, on the conspiracy trial, which was on the 15th of January."

The question was pressed upon him at what time he was introduced to Dr. Mudd. He evades it; but at last he says that, since proof was given on the trial of the conspirators that Dr. Mudd was not here at the time fixed by him, he was here on the 22d of December, and he knows also by the fact that Surratt did not go to Port Tobacco until after that introduction. He says: "I have thought over this matter for two years." He says: "I do not recollect when on my way to prison whether John M. Lloyd asked me, or I asked him, in what tone of voice Mrs. Surratt spoke. I told him I testified she spoke in a whisper. He expressed astonishment."

Here, then, are these strange, irreconcilable contradictions from a witness who comes here to take the life of the son, after he has succeeded in taking the life of the mother. Again, as to his times, dates, and memories, I refer to page 417: "Surratt went to New York and saw Booth early in February, 1865. I remember it was while Howell was in the house, but I cannot fix it within ten days. A lady came back with him; he did not tell me he went to bring her. He told, some days after he got back, that he saw Booth. He was absent about two days and one night." He says: "I did not keep the days, hours, or minutes of everything." He says: "John Surratt told him he went on that day."

While he belonged to the Commissary General's office he made several statements of approximate estimates of the number of prisoners, but never told Father Rorcaford that he furnished information to Howell, though he knew Howell was a blockade-runner. He says: "After I left the stand, before the recess, I did go to counsel, and he asked me another question. I did not suggest the question; but they asked me about what I had called their attention to." Now, on page 426, he says: "I met Payne on two occasions at Mrs. Surratt's. I cannot fix the dates. I think it was in the latter part of February, 1865. I said before the military commission that I told him I would introduce him to the family if he desired it." Finally, after evading my question as long as possible, he answers: "Yes, he had introduced him." He says, on page 431: "to the best of my knowledge, I never loaned my cloak to Atzerodt. Atzerodt once put on my hat, and had a laugh about it. It came down over his eyes; but that was all."

Now, I need only to call your attention to the contradictions of this testimony as to Payne and as to Atzerodt by Mrs. Hollohan, Miss Fitzpatrick, and Miss Jenkins. They tell you that Wood never was known to any one of that family by any other name but Wood. They never heard the name Payne until after their arrest; yet this man swears that he introduced him on the second occasion as Mr. Payne. We have referred to his former visit as Wood, and recollect him as the same man who spoke to him as Wood; though he was introduced



now as Payne. Again, each one of them testifies to the fact of his exchanging clothes with Atzerodt, not once, not twice, but over and over again; seeing him at different times with different articles of dress belonging to Atzerodt. He swears to lending him his cloak, and to his putting on his hat once, but on no other occasion, and adds, "I am willing to state everything." Again, he swears that Payne left on the 16th, after that sparring exhibition in his room with John Surratt; that five or six days after that, while passing by the post office with Surratt, Surratt went into the post office and received a letter addressed to "Sturdy," opened it, and it turned out to be a letter from Wood; that Surratt told him it was a letter from Wood. Now observe, he says that was five or six days after this. He says on the conspiracy trial that that letter was received fourteen days after Payne came to Mrs. Surratt's. He knows Payne came on the 13th, because "Jane Shore" was played on the 15th, and Payne went on the 16th. Yet he swore upon the stand here that it was five or six days after. On the conspiracy trial he swears that that letter was taken out of the post office fourteen days afterwards, and here he swears it was five or six days afterwards. "Payne returned on the 27th of March, as I understood by an interview Surratt had with him at Mrs. Murray's. I recollect that the date of the receipt of that letter was before the 27th of March." I now read from page 432:

"Q. On the trial of the conspirators did you or not state that that letter was received some two weeks after the incident of the fencing with the bowie-knives? A. Yes; and I fixed the 20th of March.

"Q. Did you not say, 'Some two weeks after, Surratt, when passing the post office, went into the post office, and inquired for a letter that was sent to him under the name of James Sturdy, and I asked him why a letter was sent to him under a false name, and he said he had particular reasons for it?' What day was that? A. It must have been about two weeks after that affair.

"Q. The latter end of March? A. Yes, sir; it must have been before the 20th of March. The letter was signed Wood.

"Q. Now, if that fencing took place on the 15th of March, how could you make out that it was two weeks afterwards? A. I was mistaken in the time at first, but I fixed the time, and I fixed the time of the horseback ride in front of Mrs. Surratt's house the 20th of March; I think you will find I fix it at that date. [He now fixes the 16th.]

"Q. In regard to that horseback ride—did you state on the other trial, 'I will state that, as near as I can recollect, it was after the 4th of March; it was the second time that Payne visited the house; I returned from my office one day at half-past four o'clock,' &c. A. Yes, sir.

"Q. Then you gave an account of these parties coming to your room, and state: 'Some two weeks after Surratt went to the post office and got a letter addressed to James Sturdy;' did you state that? A. Yes; I afterwards fixed the date of that horseback ride, in answer to the question of Mr. Cox, on the 20th of March. You will find it in the second volume.

"Q. Then you have examined carefully the testimony that you gave down there? A. I have studied over it for the last two years. You do not suppose that such an incident as that is an every-day incident in my life, and that I have not been thinking of it?

"Q. Is there anything else you have been doing? Have you been writing it down? A. I have written it down. I have written about it frequently.

"Q. Have you not within the last few months? A. Yes; I have within the last few months.

"Q. Have you not written out a very full statement within the last few months? A. Yes, sir; I thought it was my duty.

"Q. Have you not read over and studied that statement very carefully? A. Yes, sir; I have read it over.

"Q. Have you not read it over more than once? A. I have read it over several times."

I will not take up your time by stating what he said about his testimony before the grand jury. To proceed, he says he met Atzerodt the latter part of January, 1865, about three or four days after his introduction to Booth, and several days after Surratt got back from Port Tobacco; that he was very frequently at the house, and that Surratt introduced him, as he did every one of the party. He says "on the 2d of April I met him there." Surratt was not there on the 2d of April; Surratt was in Richmond. He says: "I never saw him there when Booth was present. He was present, it may be, ten or fifteen times. Booth was there every day he was in the city." Now, gentlemen, you recollect Mr.

Barry was examined as a witness on the stand, and that he tells us he brought back the horses which Surratt took to Port Tobacco; that he found Booth and Atzerodt at Mrs. Surratt's house, and spent a portion of the evening there; that Weichmann was one of the party. Weichmann swears about Dr. Wyvill taking the horses back, and gives a detailed account of it. Dr. Wyvill swears he did not bring them back, and never was in Mrs. Surratt's house, while Mr. Barry swears he did bring them back.

They may tell you that these are immaterial circumstances; aye, but when we pile up grain after grain, day after day, incident after incident, you make the mountain, and it is the last hair that breaks the camel's back. So it is with these apparently trivial contradictions. They run into statements of facts, details, times, dates, and envelop him in inextricable difficulties. It may appear at first that we contradict on immaterial points; but we contradict him to such an extent as proves to you that he has been weaving a web, and not recollecting what has passed.

Again he swears, on page 376, that he met Payne at Mrs. Surratt's in the latter part of February, 1865, while in his cross-examination (page 411) he says Payne came on the 14th of March. He says here that he never was under arrest. I read to him his response on the other trial, that he was put in charge of an officer by McDevitt and that he was never for any time out of his custody. He swears that he was appointed a special officer by the War Department to go to Canada. You know that was inserted merely to give him transportation, and that McDevitt had him all the time in custody. He says on page 444: "I remember better now than I did two years ago, for I had been a prisoner then, and was suffering from extreme nervousness." In other words, he remembers now better than he did a month after the transaction, because he had then been in prison, and was suffering from extreme nervousness. He says: "My memory is more distinct now than it was then." He was asked whether he had read a report of that trial, and he admits that he read it a day or two before he gave his testimony. He says on page 449—and now we are coming to the keys that unlock the mystery of his hostility to these parties—"I may have said my character was at stake in this trial, and I intended to do all I could to aid the prosecution." He intends to do all he can to aid the prosecution, and he tells the extraordinary story of a remark made by Mrs. Surratt as they approached the city after their visit to Surrattsville, and reached an elevation overlooking the city—"That all this joy would be turned into mourning for the sins of the people," or words to that effect. He is asked if he said that before the military commission, and replied that he did not, but that he recollects now better than he did two years ago, and gives this important proof for the government. He says he did not then state the remarks made by Anna Surratt on the night the officers came there, referring to Booth having been there only an hour before, because it was not as clear then in his mind as now. Now he intends to do all he can for the prosecution!

"Q. You say Mrs. Surratt asked you to pray for her intentions on the 14th of April? Have you stated this matter before to anybody? A. (No response.)

"Q. Have you written it down? A. No, sir; I did not write it.

"Q. Have you ever written it down? A. I have written it all down here within the last five or six months. I prepared a statement for the prosecuting attorney.

"Q. Do you recollect whether, when you first wrote it down, you did not write that this exclamation of hers, or application to pray for her intentions, was after she had made that remark in reply to her daughter? A. No, sir; I am positive I never wrote that down as happening after the assassination. She asked me to pray for her intentions before the assassination.

"Q. Didn't you tell us, on your examination here the other day, that she was walking up and down the room, with beads in her hands, and very nervous and excited, when she asked you to pray for her intentions, after the detectives had gone away? A. No, sir.

"Q. Have you not, in a verbal or a written statement, or both, said that after the detectives had gone away, and after the remark of Miss Anna Surratt, and the reply of her mother, she, Mrs. Surratt, while walking up and down the room with beads in her hands, and in a state

of agitation, asked you to pray for her intentions; to which you replied, 'I do not know what your intentions are, and I cannot pray for them;' when she answered, 'Pray for them anyhow?' A. I am positive all that occurred before the assassination.

"Q. I am not asking you what you are positive about, but I am asking you whether you have not written down, and have not stated, that that thing occurred after the detectives had gone? A. No, sir; I do not remember to have done anything of the kind."

Now, let us look at that testimony for one moment. Let us see where we are. Mrs. Surratt had been to Surrattsville, and was very pleasant and cheerful all the way there and all the way back. According to the theory of the prosecution, she then knew that that night her son—we may say, her only son, for Isaac was in Texas—was to embark in this desperate, terrible, and damnable crime, with other parties—in the massacre of the President and his cabinet. She was cheerful and pleasant all the way to Surrattsville and back. When she came back they had their supper. She was still cheerful and pleasant, although she saw looming in the distance a halter for herself and her son, if they were parties in this conspiracy. They are going to commit a more than human, a diabolical crime. The district attorney has denounced her as diabolical, and yet she is cheerful and pleasant. That supper over, she starts out with Mrs. Hollohan, and every man who saw that woman on the stand knew that if she is not "a guardian angel," she reflects in her character virtue, truth, purity, and consistency. Mrs. Hollohan tells you that she had engaged to go to church with her, and that after tea they started to go to church; that it must have been somewhere after 9 o'clock; that they walked about half a square, and Mrs. Hollohan herself suggested that they return, because the night was dark, and because of that torchlight procession. They returned, and Mrs. Surratt went cheerfully into her parlor. Yet she was then, according to this story, not only herself, but her son was in complicity with this horrid massacre. This wicked man Weichmann knew it would never do to represent that woman as still in possession of that peace and cheerful innocence which she manifested. She returns almost from the threshold of that church which leads her above, or he sends her to everlasting death. She goes back; and he, as the serpent who had wormed himself into her confidence, the man whom she had trusted as a son, the man with whom her only, her beloved son slept, that man invents a false, delusive story of her nervous condition and excitement. It is not true—you know it is not true. If it is true, then Honora Fitzpatrick speaks a lie, and Lee Jenkins speaks falsely.

Now, if she was not thus crushed, nervous, and excited, walking up and down the room, Weichmann could not have accounted for her condition, and she never would have called upon that man to pray for her intentions. It is a wilful, fabricated lie. No such thing occurred; no such thing could have occurred. It is against all womanly nature. If she had no regard for herself, yet standing and looking at the leap that her son was about to take, according to the theory of the prosecution, leaping into eternity, with their feet almost in the grave, she could never have been cheerful; she dared not approach the portals of her church; she dared not ask any one to pray for her intentions. Do you believe it? It is against a mother's instinct. It is against all the feelings of her nature from the birth of Eve until this day, which makes a mother hover over her son, cherish him, sacrifice herself for him, not to lead him to destruction. It is utterly impossible for her to be calm as he is about to take the fatal leap.

Again, this man Weichmann tells you and tells this jury that the next morning, at the breakfast table, he told the company there assembled that he intended to go to a justice, or wherever it was necessary, to make an exposure of all that he knew of this transaction and of this party, without mentioning the name of John Surratt; and then he tells the shameless falsehood, which ought to have blistered his tongue, and which should carry his name as long as language can carry it down to infamy, of that poor stricken girl—not here upon trial, not here to defend herself, not a party in this conspiracy—that she disgraced and debased



herself by saying that the death of Lincoln was no more than that of a nigger in the Yankee army. Do you believe she said it? And if she said it in the excitement of that moment, what manly heart would repeat it to her prejudice. What heart, with the instincts of nature about it, would repeat such a story to the prejudice of that poor girl, to bring infamy upon her.

Now, let me say a word in reference to the district attorney. I have borne with some degree of patience the assaults made by him upon this defenceless prisoner. But I say that if I could, to procure the conviction of her brother, assail as he did the poor girl, imputing to her such a sentiment and on such proof, I would ask every pure and virtuous woman as she passed me to draw her skirts aside, lest she should be contaminated with the touch. What, not satisfied with calling a defenceless man a coward, an assassin, a traitor, but, still further to inflame the passions of the jury against him, to put upon the stand that heart-stricken girl—wasted, worn, broken down—now trembling in an ecstasy of doubt as to the fate of that brother—to repeat that remark, and have printed it in the newspapers, to go into her hands—at such a moment as this, I say, standing as long as I stand at this bar, or any bar—I was going to say, I believe, the bar of my God—I would make my protest against it.

But, again, you all of you recollect that man's testimony about hearing the footsteps of the man distinctly in the vestibule, and seeing Mrs. Surratt go to the door, open it, let a man into the parlor, remain there, and not return after he left. He tells you of the remark made by Anna Surratt that evening in reference to that man, and that they were talking of Booth. We stamped the lie at once. We put upon the stand Honora Fitzpatrick and Lee Jenkins, both at the table with her, and they testified that it was a Mr. Scott who came up these steps to leave a parcel of papers for Lee Jenkins, and that Anna Surratt went to the door to receive them. And yet to see men and women in this presence shaking hands and passing compliments with such a man as that! Shame, where is thy blush? Virtue, where is thy shield? Innocency, where is thy protection? When men and women admit a wretch so base, a son turning against a mother, a brother turning against brother, a brother turning against sister, in order to wreak his vengeance upon the fated head of this young man, for whose prosecution he is to lend against him all his aid, because—that is his confession—because for two years he has been persecuted for their sake. Manhood! What a man is that! He is no man!

One word more, and I have done. I have exhausted your patience and my strength. If I had attempted to follow the field laid open for me, I should have wearied you still more. But I have not strength, nor you patience, and, besides, the case is exhausted. I have a few words to say and to read one other item of testimony, to show you that Mrs. M. E. Surratt was not guilty; that the proof against her was not sufficient to have hung a dog; that the proof against her is rotten to the core. No honest man should cherish it. This man, Weichmann, tells you that he knows Louis Carland. Who is he? He is, or was, a costumer at Ford's theatre. It is not attempted to impeach him. I would like to know anybody who says he can impeach Louis Carland; or who says that Louis Carland has any interest in this case except his sense of justice. Does any man say he cannot tell the truth? Nobody has said it; nobody can say it. I challenge impeachment. This poor creature is asked whether or not he has conferred with Carland after he gave his testimony to the commission, and what he said on that subject. He denies it. Carland, on page 814, says:

“He wished me to go with him to St. Aloysius church, as he said he wished to make a confession; that his mind was so burdened with what he had done that he had no peace.”

Does my learned brother mean that sort of confession when he speaks of the prisoner at the bar? I have been taught that confession is not to man, but to God. A new doctrine in the Presbyterian church has been broached here in



this case. Confession is confession to God, who looks into the heart and can see whether that is pure or adulterated with the hope of gain.

Confession to man, outside of the Roman Catholic church, can secure no sanction from any minister of religion, except for advice and help.

“Q. Did he say to you that he was going to confession to relieve his conscience? A. Yes, sir; he did.

“Q. Did you say to him, ‘That is not the right way, Mr. Weichmann; you had better go to a magistrate and make a statement under oath?’ A. I did.

“Q. Do you remember his replying to you, ‘I would take that course if I were not afraid of being indicted for perjury?’ A. He did make that remark to me, and I then asked him the particulars. He said if he had been let alone, and had been allowed to give his statement as he had wanted to, it would have been quite a different affair with Mrs. Surratt than it was. In the first place, he said that when he came home and had a half-holiday, Mrs. Surratt said it was a pleasant day—

“Mr. Pierrepont. Never mind all that.

“Witness. He said it would have been very different with Mrs. Surratt if he had been let alone.

“Q. Did he say who troubled him? A. Yes, sir; he said the parties who had charge of the military commission.

“Q. Did he say to you that he had been obliged to swear to the statement that had been prepared for him, and that he was threatened with prosecution for perjury—threatened with being charged with being one of the conspirators unless he did. A. Yes, sir, he did; that it was written out for him, and that he was threatened with prosecution as one of the conspirators if he did not swear to it.

“Q. Did he say to you anything about his having been told by a man that he had made the confession or statement in his sleep? A. Yes, sir. He said that a detective had been put into Carroll prison with him, and that this man had written out a statement which he said he had made in his sleep; and that he had to swear to that statement. I asked him why he swore to it when he knew it was not true? He said part of it was true, but not all the points that he could have given, if he had been let alone, were contained in it.

“Q. It was on account of that statement that he wanted to go to confession—to relieve his conscience? A. Yes, sir.

“Q. Did he tell you that on the 14th of April, 1865, the day of the assassination, Mrs. Surratt had told him that she wanted to go to see Mr. Nothey on business, having received a letter from Calvert requiring her immediate attention; and that they had gone to Surrattsville, and when they found Mr. Nothey was not there, and that he and Mrs. Surratt had started to come home, when they met Mr. Jenkins, in turning around to see where the spring of the buggy was broken? A. He didn't tell me the particular man, but he told me that if it had not been for some gentlemen calling them back after they had started to Washington, Mrs. Surratt would not have seen Lloyd that day. He said further, that in turning round to go back the spring of the buggy was broken, and that then it was they met Lloyd.”

Now, this man swears that is not so. If it be true, how does the conduct of Weichmann stand before you? If it be true, he stands convicted of having told one story to the military commission and of having told you another story now, infinitely more aggravated than the story he told then, because he says he recollects it better now than he did then, and because he has determined to give all his influence to the prosecution, for he seeks to be revenged because these people persecuted him for two years; and this man you are asked to credit.

I should have been very glad to have gone over several contradictions of this man's testimony by Mr. Hollohan, Mrs. Hollohan, and Miss Jenkins, but I cannot undertake to retain them in my memory. I wish you could have a copy of this printed report; there is evidence here about which there is no lie; about which you can have no difficulty; evidence so plain that he who runs may read. And when the learned judge from New York shall have concluded his argument, and when the learned judge on the bench shall have summed up the case to you, I beg of you, for you have thought over this matter this long time while this discussion has been going on, not to leave that jury box, but to render at once a verdict of “not guilty,” that this young man may not go forth to the world with any doubt resting upon him by long deliberations. And if you can in your conscience, as I know it would be right and proper to do, I ask you also to state in writing, having heard this case, your convictions of the innocence of his mother.

SATURDAY MORNING, *August 3, 1867.*

The court opened at 10 o'clock.

After the list of jurors had been call by the clerk, Mr. Pierrepont rose and said :

May it please your honor and gentlemen of the jury, I have not, in the progress of this long and tedious cause, had the opportunity as yet of addressing to you one word. My time has now arrived. "Yea, all that a man hath would he give for his life." When the book of Job was written this was true, and it is just as true to-day. A man, in order to save his life, will give his property, will give his liberty, will sacrifice his good name, and will desert his father, his brother, his mother, and his sister. He will lift up his hand before Almighty God and swear that he is innocent of the crime with which he is charged. He will bring perjury upon his soul, giving all that he hath in the world, and be ready to take the chances and jump the life to come ; and so far as counsel place themselves in the situation of their client, and just to the degree that they absorb his feeling, his terror, and his purpose, just so far will counsel do the same.

I am well aware, gentlemen, of the difficulties under which I labor in addressing you. The other counsel have all told you that they know you and that you know them. They know you in social life, and they know you in political affairs. They know your sympathies, your habits, your modes of thought, your prejudices even. They know how to address you, and how to awaken your sympathies, while I come before you a total stranger. There is not a face in these seats that I ever beheld until this trial commenced, and yet I have a kind of feeling pervading me that we are not strangers. I feel as though we had a common origin, a common country, and a common religion, and that, on many grounds we must have a common sympathy. I feel as though if hereafter I should meet you in my native city, or in a foreign land, I should meet you not as strangers, but as friends. It was not a pleasant thing for me to come into this case. I was called into it at a time ill suited in every respect. I had just taken my seat in the convention called for the purpose of forming a new constitution for my State, and I was a member of the judiciary committee. That convention is now sitting, and I am now absent where I ought to be present. I felt, however, that I had no right to shirk this duty.

The counsel asked whether I represented the Attorney General in this case. They had, perhaps, the right to ask, and so asking I give you the answer. There surely is no mystery about the matter. The district attorney, feeling the magnitude of this case, felt that he ought to apply to the Attorney General for assistance in the prosecution of it, and he accordingly made the application. I have known the Attorney General more than twenty years. Our relations have been most friendly, both in a social and professional point of view. The Attorney General conferred with the Secretary of State, who is, as you know, from my own State; and they determined to ask me to assist in the prosecution of the cause. On receiving a letter from the Secretary of State, I came to Washington, when I met him and the Attorney General. That is the way I happened to be here engaged in this case ; and I may say that I am assured that there was no member of the cabinet but those two who ever heard or knew of my retainer until after my arrival here. I have simply tried to perform my duty as I best could, but I have no doubt failed to a great extent. A trial protracted as this has been, and in such oppressive weather, is indeed a trial. It is a trial to the court, it is a trial to you, it is a trial to the counsel ; it is a trial to health, it is a trial to patience, and it is a terrible trial to the temper. When the President of the United States was assassinated, I was one of a committee sent on by the citizens of New York to attend his funeral. When standing as I did stand in the east room by the side of that coffin, if some citizen sympathizing with the enemies of my country had, because my tears were falling in sorrow

over the murder of the President, there insulted me and I had at that time repelled the insult with insult, I think my fellow-citizens would have said to me that my act was deserving of condemnation; that I had no right in that solemn hour to let my petty passions or my personal resentments disturb the sanctity of the scene. To my mind the sanctity of this trial is far above that funeral occasion, solemn and holy as it was, and I should forever deem myself disgraced if I should allow any passion of mine or personal resentment of any kind to bring me here into any petty quarrel over the murder of the President of the United States. I have tried to refrain from anything like that, and God helping me, I shall so endeavor to the end.

To me, gentlemen, this prisoner at the bar is a pure abstraction. I have no feeling toward him whatever. I never saw him until I saw him in this room, and then it was under circumstances calculated to awaken only my sympathy. I never knew one of his kindred, and never expect to know one of them. To me he is a stranger. Toward him I have no hostility, and I shall not utter any word of vituperation against him. I came to try one of the assassins of the President of the United States, as indicted before you. I laid personal considerations aside, and I hope I shall succeed in keeping them from this cause, so far as I am concerned. I believe, gentlemen, that what you wish to know in this case is the truth. I believe it is your honest desire to find out whether the accused was engaged in this plot to overthrow this government, and assassinate the President of the United States. My duty is to try to aid you in coming to a just conclusion. When this evidence is reviewed, and when it is honestly and fairly presented, when passions are laid aside, and when other people who have nothing to do with the trial are kept out of the case, you will discover that in the whole history of jurisprudence no murder was ever proved with the demonstration with which this has been proven before you. The facts, the proofs, the circumstances all tend to one point, and all prove the case, not only beyond a reasonable, but beyond any doubt.

This has been, as I have already stated, a very protracted case. The evidence is scattered. It has come in link by link, and as we could not have witnesses here in their order when you might have seen it in its logical bearings, we were obliged to take it as it came; and now it becomes my duty to put it together and show you what it is. I shall not attempt, gentlemen, to convince you by bold assertion of my own. I fancy I could make them as loudly and as confidently as the counsel upon the other side, but I am not here for that purpose. The counsel are not witnesses in the cause. We have come here for the purpose of ascertaining whether under the law and on the evidence presented, this man arraigned before you is guilty as charged. I do not think it proper that I should tell you what I think about everything that may arise in the case, or that I should tell you that I know that this thing is so and so, and that the other is another way. My business is to prove to you from this evidence that the prisoner is guilty. If I do that I shall ask your verdict. If I do not do that I shall neither expect nor hope for it.

I listened, gentlemen, to the two counsel who have addressed you for several days, without one word of interruption. I listened to them respectfully and attentively. I know their earnestness, and I know the poetry that was brought into the case, and the feeling and the passion that was attempted to be excited in your breasts, by bringing before you the ghost trailing her calico dress and making it rustle against these chairs. I have none of those powers which the gentlemen seem to possess, nor shall I attempt to invoke them. I have come to you for the purpose of proving that this party accused here was engaged in this conspiracy to overthrow this government, which conspiracy resulted in the death of Abraham Lincoln, by a shot from a pistol in the hands of John Wilkes Booth. That is all there is to be proven in this case. I have not come here for the purpose of proving that Mrs. Surratt was guilty, or that she was inno-



cent; and I do not understand why that subject was lugged into this case in the mode that it has been; nor do I understand why the counsel denounced the military commission who tried her, and thus indirectly censured, in the severest manner, the President of the United States. The counsel certainly knew when they were talking about that tribunal, and when they were thus denouncing it, that President Johnson, President of the United States, ordered it with his own hand; that President Johnson, President of the United States, signed the warrant that directed the execution; that President Johnson, President of the United States, when that record was presented to him, laid it before his cabinet, and that every single member voted to confirm the sentence, and that the President, with his own hand, wrote his confirmation of it, and with his own hand signed the warrant. I hold in my hand the original record, and no other man, as it appears from that paper, ordered it. No other one touched this paper; and when it was suggested by some of the members of the commission that in consequence of the age and the sex of Mrs. Surratt it might possibly be well to change her sentence to imprisonment for life, he signed the warrant for her death with the paper right before his eyes—and there it is, (handing the paper to Mr. Merrick.) My friend can read it for himself.

My friends on the other side have undertaken to arraign the government of the United States against the prisoner. They have talked very loudly and eloquently about this great government of twenty-five or thirty millions of people being engaged in trying to bring to conviction one poor young man, and have treated it as though it were some hostile act, as though two parties were litigants before you, the one trying to beat the other. Is it possible that it has come to this, that, in the city of Washington, where the President has been murdered, that when under the forms of law, and before a court and a jury of twelve men, an investigation is made to ascertain whether the prisoner is guilty of this great crime, that the government are to be charged as seeking his blood, and its officers as “lapping their tongues in the blood of the innocent?” I quote the language exactly. It is a shocking thing to hear. What is the purpose of a government? What is the business of a government? According to the gentlemen’s notion, when a murder is committed the government should not do anything toward ascertaining who perpetrated that murder; and if the government did undertake to investigate the matter, and endeavor to find out whether man charged with the crime is guilty or not guilty, the government and all connected with it must be expected to be assailed as bloodhounds of the law, and as seeking “to lap their tongues in the blood of the innocent.” Is that the business of government, and is it the business of counsel under any circumstances thus to charge the government? What is government for? It is instituted for your protection, for my protection, for the protection of us all. What could we do without it? Tell me, my learned and eloquent counsel on the other side, what would you do without a government? What would you do in this city? Suppose, for instance, a set of young men who choose to lead an idle life say to themselves that it is not right that some rich man living here should be enjoying his hoarded wealth, and they break into his house at night and steal therefrom. My learned friend would say, when you came to prosecute them for that robbery, “What! would you have this great and generous government of twenty-five or thirty millions of people pursue these poor young men, who merely tried to break into the house of one of your citizens and steal his money?” Should not this government be generous and let them go? Oh, yes! Let them off. Well, they are let off, and a few days afterward they break into the house of my friend Merrick for the purpose of stealing his money, when he, a brave man, undertakes to resist them, and in doing so they strike him down in death. Oh, generous government! with from twenty-five to thirty millions of people, let the young men off. Why should a great and generous government with all its powers be pursuing the young men who thus murdered Mr. Merrick while



attempting to prevent a robbery at his house? Why should the officers of the government be "lapping their tongues in the blood of the innocent?" Suppose this view as to the duty of a government were universally entertained, what would be the result? How long would your government last? How long would you hold a dollar of property? How long would the safety of your daughters be secure? How long would the life of your sons who stand in resistance to lust and rapine be safe? I have never heard such shocking sentiments uttered in relation to the duty of government from any human lips, or from any writer on the face of the earth. We have been told here that our government has nothing of divinity that hedges it about; that it is only the government of man's making. The Bible tells us that all government is of God; that the powers that be are ordained of God; and I can tell you, gentlemen, if such are the sentiments of this country that there is no divinity and no power of God that hedges about this government, its days are numbered, its condemnation is already written, and it will lie in the dust before many years have rolled by. No government that is not of God will last. It will soon come to naught. No other government ever did long exist. No other government can exist. Every government which is a government of the people is of God, and the powers that be are ordained of God. When you come together to the polls, and you elect as the ruler of this great nation a President, he is made so by the sanction of your votes, and in that act the voice of the people becomes the voice of God. I repeat, a government which is thus instituted is ordained of God, and it is as much hedged about as that of any King that ever reigned on England's throne. Is it possible that our countrymen will say that the government which we thus have made, which our fathers established, and which we are thus cherishing, has nothing of divinity hedging it about?

Does it rest alone upon human whim, without having anything sacred about it, and without any protection of the Almighty over it? If so, let me again repeat, its days are numbered; it will soon pass away. Once there was an empire in Rome. It was an empire which was in its day the greatest that the human mind had ever reared; but it did not believe, or rather ceased to believe, that there was a God who ruled; that government was of God; and they ceased to punish great crimes, such as treason, rapine, and murder, and it happened a very short time after they ceased to inflict punishment for such crimes—ceased to exercise the powers which belonged to government—that the Roman empire tumbled into ruins. It was trampled down by the barbarian, and now not a sou of the Cæsars lives on the face of the earth, and not a descendant of a Roman matron exists anywhere in this wide universe. The empire perished, and crumbled into dust; nothing but its ashes remain. And thus will it ever be whenever a people cease to obey God, and cease to think that government is of God. Let us see what the Bible says on this subject; what views were entertained in the Old Testament, and what in the New.

Mr. PIERREPONT then read from 1 Samuel, chapter xv, as follows:

Samuel also said unto Saul, the Lord sent me to anoint thee *to be* king over his people, over Israel; now therefore hearken thou unto the voice of the words of the Lord.

Thus saith the Lord of hosts, I remember *that* which Amalek did to Israel, how he laid *wait* for him in the way, when he came up from Egypt.

Now go and smite Amalek, and utterly destroy all that they have, and spare them not; but slay both man and woman, infant and suckling, ox and sheep, camel and ass.

And Saul gathered the people together, and numbered them in Telaim, two hundred thousand footmen, and ten thousand men of Judah.

And Saul came to a city of Amalek, and laid wait in the valley.

And Saul said unto the Kenites, go, depart, get you down from among the Amalekites, lest I destroy you with them; for ye showed kindness to all the children of Israel when they came up out of Egypt. So the Kenites departed from among the Amalekites.

And Saul smote the Amalekites from Havilah *until* thou comest to Shur, that is over against Egypt.

And he took Agag, the king of the Amalekites, alive, and utterly destroyed all the people with the edge of the sword.

But Saul and the people spared Agag, and the best of the sheep, and of the oxen, and of the fatlings, and the lambs, and all *that was* good, and would not utterly destroy them; but everything *that was* vile and refuse, that they destroyed utterly.

Then came the word of the Lord unto Samuel, saying,

It repenteth me that I have set up Saul *to be* king; for he is turned back from following me, and hath not performed my commandments. And it grieved Samuel, and he cried unto the Lord all night.

And when Samuel rose early to meet Saul in the morning, it was told Samuel, saying, Saul came to Carmel, and behold, he set him up a place, and is gone about, and passed on, and goue down to Gilgal.

And Samuel came to Saul, and Saul said unto him, blessed *be* thou of the Lord; I have performed the commandment of the Lord.

And Samuel said, what *meaneth* then this bleating of the sheep in mine ears, and the lowing of the oxen which I hear?

And Saul said, they have brought them from the Amalekites; for the people spared the best of the sheep and of the oxen, to sacrifice unto the Lord thy God; and the rest we have utterly destroyed.

Then Samuel said unto Saul, stay, and I will tell thee what the Lord hath said to me this night. And he said unto him, say on.

And Samuel said, when thou *wast* little in thine own sight, *wast* thou not *made* the head of the tribes of Israel, and the Lord anointed thee king over Israel?

And the Lord sent thee on a journey, and said, go, and utterly destroy the sinners of the Amalekites, and fight against them until they be consumed.

Wherefore then didst thou not obey the voice of the Lord, but didst fly upon the spoil, and didst evil in the sight of the Lord?

And Saul said unto Samuel, yea, I have obeyed the voice of the Lord, and have gone the way which the Lord sent me, and have brought Agag, the king of Amalek, and have utterly destroyed the Amalekites.

But the people took of the spoil, sheep and oxen, the chief of the things, which should have been utterly destroyed, to sacrifice unto the Lord thy God in Gilgal.

And Samuel said, hath the Lord *as great* delight in burnt offerings and sacrifices as in obeying the voice of the Lord? Behold, to obey *is* better than sacrifice, *and* to hearken, than the fat of rams.

For rebellion *is as* the sin of witchcraft, and stubbornness *is as* iniquity and idolatry. Because thou hast rejected the word of the Lord, he hath also rejected thee from *being* king.

And Saul said unto Samuel, I have sinned, for I have transgressed the commandment of the Lord, and thy words; because I feared the people, and obeyed their voice.

Now, therefore, I pray thee, pardon my sin, and turn again with me, that I may worship the Lord.

And Samuel said unto Saul, I will not return with thee; for thou hast rejected the word of the Lord, and the Lord hath rejected thee from being king over Israel.

And as Samuel turned about to go away, he laid hold upon the skirt of his mantle, and it rent.

And Samuel said unto him, the Lord hath rent the kingdom of Israel from thee this day, and hath given it to a neighbor of thine, *that is* better than thou.

And also the Strength of Israel will not lie nor repent; for he *is* not a man, that he should repent.

Then he said, I have sinned; *yet* honor me now, I pray thee, before the elders of my people, and before Israel, and turn again with me, that I may worship the Lord thy God.

So Samuel turned again after Saul; and Saul worshipped the Lord.

Then said Samuel, bring ye hither to me Agag, the king of the Amalekites. And Agag came unto him delicately. And Agag said, surely the bitterness of death is past.

And Samuel said, as thy sword hath made women childless, so shall thy mother be childless among women. And Samuel hewed Agag in pieces before the Lord in Gilgal.

Then Samuel went to Ramah; and Saul went up to his house to Gibeath of Saul.

And Samuel came no more to see Saul until the day of his death; nevertheless Samuel mourned for Saul; and the Lord repented that he had made Saul king over Israel.

Mr. PIERREPONT then read from the eighteenth chapter of St. Matthew as follows:

Woe unto the world because of offences, for it must needs be that offences come; but woe to that man by whom the offence cometh.

\* \* \* It were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea.

Such was the order in the times of this Book. All government is of God. The powers that be are ordained of God. Now, from whom come these words? Not from the Old Testament, but they come from the meek and lowly Jesus, the Saviour of the world, who died for you, for me, for all. It is true, as the counsel have said, that God is a God of mercy; but He says: "Though I am a

God of mercy, I will by no means clear the guilty." Now, the counsel who has addressed you, you will remember, said in his speech, with great earnestness: "We have blood enough; let us have peace." The question before you, gentlemen, is not about blood; the question before you is not about peace. The question before you is whether you have not had murder enough, and assassination enough, and crime enough, to enable us to have at least once before a civil tribunal in this land a trial and a verdict. Not a single one of all those engaged in the conspiracy has been tried before a civil tribunal; and the question now is, have you not had enough of this murder, and enough of this assassination, to have at least one jury of the country say so, and to say that we will stop it? You and I have nothing to do with the consequences. All we have to do is to do our duty, and ascertain whether the man is guilty. You do not punish the man; I do not punish the man. I have not a feeling toward him of punishment, and you have no such feeling. The duty does not lie with you, nor with me. We have nothing to do with that. The question for us is to see whether this man is guilty of this violation of the law of the land as charged; and if so, to so declare; and then if, for any cause, the Executive sees fit to show leniency, he will show it. If he does not, he will not do it. It is not for you or for me to say what the leniency should be. It is not for you or for me to have anything to say upon that question. Our business is, I repeat, to ascertain whether he is guilty of this violation of the law, and if he is guilty, so to say, and then afterward to say whatever may be thought fit to be said with regard to any leniency. Our duty is, and the duty of the court is, to find out that one fact, and to have you pronounce your verdict, under your oath, according to the facts as you find them.

There are one or two other things that I must notice before I come to the main question. One of these is in regard to the attacks which were made by counsel yesterday upon the learned district attorney and myself. Have you seen anything in the conduct of the district attorney in this case that was improper? Have you seen anything but an earnest desire to discharge his duty? If I understood the counsel aright yesterday, he said that if he should stand in that place and should have done as the district attorney had, he would expect the women, as they passed him, to gather their skirts and pull them aside, lest they be contaminated by the touch. I did not at that time know why there was so much bitterness of feeling thus expressed, but I have been shown since last night this record called the "Rebellion Record," and I find in it that on the fifth of January, 1861, Edward C. Carrington, now district attorney, issued to the public a stirring letter calling out the militia of this District for the purpose of aiding in the protection of the government of the United States; calling upon them to rally; and they did rally at his call. The fact of this native-born citizen of Virginia, one of your own number and living in your midst, having thus early and patriotically taken the side in favor of his government, when even his own State had deserted him, of course would be likely to call down the greatest bitterness and hatred against this loyal and noble citizen on the part of a certain class. We have been told, gentlemen, by the counsel upon the other side, that the Judge Advocate General had done a great many wrong things in his life. We have been told that the military commission which Mr. Johnson had established, and he alone, had done wrong things in their prosecution; and we have been told, likewise, that the Supreme Court of the United States had decided that this commission was illegal. Now, you would hardly expect an eminent lawyer to make such a statement unless he believed it. The counsel must have believed it, or he would not have made it. But he is wholly mistaken. No court in the United States has declared this commission to have been illegal. There is no such decision on record—not any.

Some of those very persons are now in confinement, and if the Supreme Court of the United States had declared the commission that tried them illegal, why



should they now, in a time of profound peace, be kept in prison? If such were the case would not an application have been immediately made by my learned brother for a writ of *habeas corpus* to release them? But nothing of the kind is done. And why? Because no such decision has ever been pronounced. No court has, and in my judgment no court will, pronounce this commission thus formed by the President of the United States to have been illegal.

Gentlemen, my belief in this case being that you honestly desire to get at the truth, and that you have no other desire, I propose to dismiss all these outside considerations and pass to the subject which is fairly before you. I have said but little compared with what has been said, and I propose hereafter to say even much less. I wish to lay aside all this rubbish and to pass to the solemn business of investigating into the truth of the charge contained in the indictment. You will see whether I do it fairly or not. I shall not deceive you. I could not if I would. I do not know you as the other counsel know you. They tell you they know you. My learned friend the district attorney, in his speech, told one of the counsel that he knew him, and that he was an actor, and that his acting in the course of this trial would have done great credit if, indeed, it would not have surpassed that of Edwin Forrest. Well, I do not know anything about that, but I thought some of you looked as though you knew whether there was any truth in that remark or not. I do not know, but I think you will be able to determine between what is mere acting and what is stern reality; between a drama played upon the stage, and a truthful drama played in real life. I think you knew when witnesses came upon that stand, and you looked at them, who told the truth and who lied; and you knew the degree. You are men of business, and you are accustomed to see your fellow-men; to look into their faces; to deal with them, and to know their manner. There is a kind of instinct that goes out from the living witness who stands before you, and which leads you to understand whether he is telling the truth or not. You are not as accustomed to this thing as a lawyer, perhaps, but still you are accustomed to it in your daily transactions with men, and can tell from the appearance of the man whether he is telling the truth, or is not. I quite agree with the learned counsel when he speaks of the great advantages of having witnesses before you. I think you knew whether Dr. Bissell told the truth or not. I think you knew whether Cameron told the truth. I think you knew whether every witness that you listened to here told the truth; and I must say you did listen most carefully. You have conducted yourselves here like men who felt that they had a solemn obligation resting upon them, who felt that they had some responsibility as connected with this government; who felt that they had the peace and good order of society committed to their hands, and that this was a grave and serious business which they were called upon to engage in. I have wondered at the patience with which you have listened, and at the endurance which you have shown in this long and exhausting trial; and to me it does seem to foretell that when this case is over, truth will prevail and justice will be done.

Now, gentlemen, I come to some facts in this case about which there is no dispute. I propose to begin with the facts conceded on either side. I will, therefore, tread upon no debatable ground here, and at this point allow me to make one general observation. In the arrangements of Divine Providence in this world, things are so ordered that one truth is in perfect harmony with every other truth. It is always so. From that there is no variation. God is a God of truth, and all the sin and woe on earth comes from a divergence from that line of truth that proceeds from His heavenly throne. If everything was truth there would be no crime. If all was truth there would be no wrong. All wrong comes from a violation of that great principle. When you violate the truth everything is out of joint, every truth being in harmony with every other truth. Every falsehood that is interposed dislocates it, and breeds mischief and injury to the community. It is so in the physical life. It is so in nature in every



form. It is so in the moral world. Men are slow to believe this, but a little observation will show you how true it is. Even the clergy do not teach it as much as they should, in my opinion. You cannot violate a law of God without receiving punishment even on this earth. No man ever did do it; no man ever went to his grave, having violated a law of God, without having been punished for it, and no man ever will.

You all see that in the ordinary affairs of life. Mr. Alexander (a juror) gives a note to Mr. Bohrer, (also a juror,) and when it falls due he fails to pay it. Bohrer knows he can pay it, but will not; therefore. Mr. Bohrer resolves never to lend him any more money, and not only so, but remarks upon the bad faith of Mr. Alexander about town. In that way other people get to mistrust him and it is not long before Mr. Alexander discovers that he has no credit. That is the punishment Mr. Alexander gets for not paying his note after having promised to do so. He turned from a truth to a lie, and he is having his punishment meted out to him in the loss of his credit and position. This is a plain and simple illustration that we can all understand and appreciate. Again: You place your hand in the fire, and of course it is burned. You thus suffer the punishment of violating a law of nature. Then, again, you may take a poison. It may be a slow one, and therefore you may not at first perceive any effect from it, but the effect will come eventually. The froth from the mouth of the mad dog may touch a broken spot upon your skin, but it may be twenty years ere you die from the effects of that touch. It does not necessarily follow that the effect will always be immediate, but you may rest assured the effect in the way of punishment at some time or other will follow violated law. That is the reason punishment comes. If the law of nature had not been violated it would not have come. The effect, in some instances, as I said, comes slowly; in others it follows swiftly. In the case of a man's failing to keep his word, he loses his credit. In the case of his cheating his neighbor he loses his credit. But there are more secret things than that. You may cheat your neighbor according to law, and you may be successful if prosecution is had. You may cover it up so that the charge cannot be distinctly made; but you may mark this as a certain truth, that if you are a bad man, and you are doing wrong to your neighbor, you know it, and some how or other you communicate that knowledge to a great many of your fellow-citizens who did not before know it. They feel, somehow or other, that they have no confidence in you, and in that way you are often punished for your secret crime. When you go before your fellow-men and look them squarely in the face your guilty eye tells it. I need not pursue this topic further. At some future time, when you think this over, I will warrant that the more you think of it the more you will believe it. You will find it is true, from the greatest to the minutest thing in this entire universe.

Now let us come to a truth which we have here fixed in the case. There is one fixed truth in it, and I say every other truth in the universe is in harmony with the truth. Here it is:

John Harrison entered his name in his own handwriting on the 18th day of April, 1865, in the register at St. Lawrence Hall. The man, the prisoner at the bar. As I said, we all agree upon this fact. Now let us start from this point, and with the principle I have stated acknowledged, that every other truth is in harmony with this truth, let me ask what happened after this? He passed from the hotel; he took no meal in the house; he contracted no bill, but fled somewhere. I refer now, of course, to the prisoner. Where did he flee? He fled to the house of a man named Porterfield, and there for a few days remained in concealment.

Then two carriages came up, and dresses were prepared so as to have each man dressed exactly alike; and in the night time, when all was darkness, one man got into the carriage and drove one way, whilst the second one got into the other carriage and drove in a different direction. What did all that mean? What was

it for? He was either fleeing because he had aided in the death of Mr. Lincoln in this conspiracy, or because he had not. Which was it? Was he fleeing because he had not? You will hardly say that. Then it was because he had. He had been engaged in something which made him wish to flee. Where does he next go after leaving Mr. Porterfield's? Why, he goes in that carriage in the darkness of the night to a little place called Libiore, to the house of Boucher, whom you saw upon the stand. He is a priest—a priest who has not done any honor to his honored church. In this connection it will be remembered that when this government was in pursuit of this prisoner, Cardinal Antonelli, even before the government ever made a request, hastened to deliver him up in consequence of the enormity of this great crime. This priest will hear from the Pope and from his bishop before he is a year older. As I said, the prisoner went to this priest's house, and was there concealed, the priest tells you, until the following July. Let us see why he was being concealed in the house of this priest, where his friends visited him, and where he was enjoying himself in hunting; where many, from day to day, came as his visitors; and what was going on in this city at that time. A reward had been offered for his apprehension—a large reward, both by the city and by the government, and there he stays in concealment. And what else was going on? His own mother had been apprehended, and was on trial for her life. Where was her son? Concealed, visited by these people. And why concealed? Has the counsel explained to you why he was concealed? Not at all. Why was he concealed? It was either because he was innocent or because he was guilty. Which was it? You will have to determine. Now let us turn a moment and see what was going on here during that time. The mother and the other conspirators were on trial. The proceedings were reported every day in the newspapers, and the entire civilized world were thus notified of what was transpiring and were carefully observing it. Did not he know about it? He was here within thirty-six hours of this city and kept there concealed; changed the color of his hair, changed his garments, wore spectacles for disguise, was visited by his friends, who were traitors to his government.

Did not he know what was going on? Let us see whether he did or not. I hold in my hand a very curious little paper; and let me say here that I never knew a trial of great magnitude, and where there was fraud or crime, that these things did not appear. They always do. I knew they would before this trial commenced, and at that time I had never heard of this paper. What is it? Here is a paper with a mark and a cross before it. "S," "P" and then a "C," with a blank line between, and then the words "all right," "Toney," "No hurry," "G. A. Atzerodt," and addressed to Washington, D. C. Let us see what further there is about it. It is put into the post office in New York on the 15th day of May, 1865, soon after the trial of his mother and Atzerodt had commenced, and that trial continued, and the death warrant; the original of which I have here, was signed on the 5th day of July following. Yet he wrote that letter to one of his conspirators, and put it into the post office in the city of New York on the 15th day of May. Now they wanted to make some little question, I believe, about the handwriting. Gentlemen, here is the handwriting. I will show it to you. Here is the card that nobody denies. They are as much alike as any two things can possibly be. It is his own natural hand, and here is the letter which all admit to be his own. Here is this card and here is this writing. They are exactly alike. The writing is not even disguised in the least.

Now, what did all that mean? You heard Boucher's account here. I shall come to that in the progress of the examination of the evidence. He says the prisoner staid with him until the latter part of July, after the execution of these criminals. Then what did he do? He took him, secretly, to the house of another priest, named La Pierre, who had discretion enough not to come here and tell the world of his shame. I tell you again that this priest, Boucher, will

hear from his Pope and his bishop before he is a year older. The Catholic church never did sanction such a heinous crime as this; this is evident from the action of the Pope in this particular case, who hurried with unusual zeal to deliver up the fugitive in his dominions, although we had no treaty of extradition, the moment he heard that he was the one suspected of participation of this horrible crime. Well, he takes him up to La Pierre's, and there he is concealed, and concealed until when? He is concealed until the following September, receiving his friends, and amusing himself in the best way he could with safety to his life. In September, just five months after this murder, La Pierre takes him upon the steamer for Montreal, locks him up in a state-room, and takes him down, and from thence goes with him on board of the Peruvian, having first gone to Dr. McMillan, the surgeon of the ship, and told him he had a friend who was in some difficulty, and wanted to escape without his name being known. He is introduced to McMillan as McCarty, has on spectacles, and has his hair dyed. The steamer starts for the Old World, and now what happens? He had not been on that steamer thirty minutes after she started before he appeared startled, and looking around, says to McMillan, "that man is an American detective; he is after me." The wicked flee when none pursue; the righteous are as bold as a lion. He was not very bold, was he? He put his hand in his pocket and drew out his revolver, remarking, "but this will fix him." McMillan inquires, "Why do you think this gentleman to whom you refer is an American detective; and if so, why do you care?" Says he, "I have done such things that, if you should know them, it would make you stare." What were the things he had done? It is true he had run away from his mother; but good boys have done that before.

What were the horrid things he had done, which, if McMillan knew, would make him stare? Why did he startle at seeing an American detective, as he supposed, but who turned out to be a lumber merchant from Toronto? Why was he frightened whenever any one came near? He is innocent, they say. We will follow him on. Somehow or other, there was such a terrible burden weighing upon his heart that he could not keep it to himself, and he had every once in a while, for the purpose of unburdening his guilty soul, to go behind the wheel-house and talk to McMillan, (the only one he knew,) and from time to time to detail to him the scenes through which he passed—those which left such a horrid impression on his mind. Criminals tell us that they always find relief in thus unburdening their heavy hearts. Most criminals, sooner or later, if they are not brought to justice, will return to the place of their crime, in very madness and torment at their guilty secret, and will tell all that they have done. They cannot retain it. When the prisoner got to old ocean, where only one whose name he knew was there, he could not help telling his awful secret. Now you know very well what it was. I shall come to what it was before I am done. He finally came to Ireland. When he came to Ireland, he hesitated whether he should land on the Irish coast, or whether he should wait until he got to Liverpool; and he consulted Dr. McMillan as to which he had better do. Says Dr. McMillan, "I cannot tell you which you had better do. You can do just as you please." He replies, "I will go to Liverpool." Finally, as they neared the coast of Ireland, while coming into the bay, McMillan found him unexpectedly upon the deck, with his clothes on and a little satchel in his hand, ready to depart. The prisoner says, "I have changed my mind. It is now night, and dark, and I have concluded I will land here in Ireland." What then did he do? He wanted McMillan to go into the bar-room and drink. It being late at night, the bar was closed, but they found the bar-keeper and had it opened. What did he then do? He takes tumbler after tumbler of raw brandy, until he is made so drunk as scarcely to be able to walk, and Dr. McMillan calls an officer to watch him as he passed over the gang-plank. Why was that? We have now got him in Ireland. He had not been in that country long before



something seemed to whisper in his ear that this gallant land had no place for treason and murder, and he consequently vanished from there. Where next do we see him? Next he wanders about muffled in the darkness of the night in Liverpool. He had not been there long before something seemed to say that England's air could not be breathed by treason and by murder; and again he fled. Where next do we find him? In Rome; away from his language, his country, his kinsmen, his all. He changed his name there to Watson. He enlisted in the Papal zouaves and went away from Rome. Was not he safe then? Oh, yes, to be sure, he is all safe. He is in the disguise of a Roman zouave, and he is ordered away to Ferrara, far from Rome, where there are none that know him but those in his battalion. In that land all others are strangers to him. Now he is safe. Safe! God does not allow those who commit such deeds as his to be safe anywhere. It must have been an awful hour when he saw peering through the cap of the zouave the old familiar face of St. Marie, whom he knew in his school-boy days. Again I say, safety under such circumstances is not possible. God is wiser than that. What then happens? He walks down the road soon after, and says to St. Marie: "Let by-gones be by-gones. I want to save my life. I escaped from Washington in the disguise of an Englishman on the morning or night of the assassination, and I got away and am here." And this disguise of an Englishman, and the courier's bag of an Englishman which he carried, and the handkerchief, are subjects to which I wish to call your attention when I come to the specific evidence. I am now speaking generally of what occurred. Then he heard from the Vatican, in no whispered tones, that the States of his holiness the Pope had no nook or corner in which treason and murder could be hid. In desperation he made a fearful leap at the peril of immediate death and escaped to Malta, and when he had reached that island in the Mediterranean sea, there something still haunted him and told him that there was no hiding place for treason and for murder, and from thence he vanished. Next we trace him into Egypt; that ancient of lands—the land of mystery and of old, where the Pharaohs dwelt; where Joseph was a slave; where Moses lived; where by the power of devils and of God such miracles were wrought; where flows the wondrous Nile, upon whose banks are the grandest ruins of forgotten empire, and the pyramids, which are eternal; and there, even; the colossal sphynx, looking at him with her stony eyes, seemed to say, "what scourge for treason and for murder can this dark monarchy afford this traitor?" He fled no more. His knees smote together and his arms fell nerveless at his side. He resisted not at all. He gave himself up without a struggle; was placed upon a United States ship of war, and came over the long sea, and up the broad river to the city of his crime. Two years between the crime and the arraignment—two awful years. God grant that you nor your children may ever pass through such years as those. He is brought before the grand jury of your city, and is indicted for this crime. Now, this was the strange flight of an *innocent* man, as my learned friend says, or rather argues it was. Now, what do you think about it? Do you think that an innocent man would do those things? Do you think he fled because he did not engage in murder, or because he did—which? Let us see if we can unravel the mystery. It is certainly a mystery as it now stands—that an innocent man should thus flee. I think that we can get at it. What was it? Let us come back in the history of time a little. You will remember that on the anniversary of that day on which the Saviour was crucified, the President of the United States was murdered, and that Secretary Seward was assassinated. It is a day that will ever be remembered in the history of this country. The enormity of the crime sent a shudder through the civilized world. For no cruelty, for no oppression, for no wrong, but simply for his holy devotion to liberty and the service of his country, was he thus foully murdered. As you well know, the pathway of his youth was not



smoothed with dalliance and with luxury, but it was rough, stony, and thorny, with affliction and with toil. He had always been a man of sorrows, and his acquaintance with grief had left a deeper melancholy in his face than could be seen in any other. A few weeks before he died, you will remember, he uttered these remarkable words:

"Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the *cause* of the conflict might cease with, or even before, the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same bible and pray to the same God; and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces; but let us judge not that we be not judged. The prayers of both could not be answered; that of neither has been answered fully. The Almighty has His own purposes. 'Woe unto the world because of offences, for it must needs be that offences come; but woe to that man by whom the offence cometh.' If we shall suppose American slavery is one of the offences which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offence came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said, 'The judgments of the Lord are true and righteous altogether.'

"With malice toward none, with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow and his orphan; to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

And earlier, before the bloody sacrifice, he wrote to a poor woman who had sent all her sons to battle and to death, this short letter of condolence:

"EXECUTIVE MANSION,

"Washington, November 21, 1864.

"DEAR MADAM: I have been shown, in the files of the War Department, a statement of the adjutant general of Massachusetts, that you are the mother of five sons who have died gloriously on the field of battle. I feel how weak and fruitless must be any words of mine which should attempt to beguile you from the grief of a loss so overwhelming. But I cannot refrain from tendering to you the consolation that may be found in the thanks of the republic they died to save. I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

"Yours, very sincerely and respectfully,

"A. LINCOLN."

This, gentlemen, as I have already said, is a trial of one of those conspirators. It has this marked feature in it: it is the first judicial trial that has ever been instituted to try any of those conspirators. Our freedom-loving race and the sturdy blood from which we spring have always clung with exceeding fondness to liberty—to the right of trial by jury in a court of law, and they have always been jealous of military power. When the other conspirators were tried it was claimed that as the head of the United States had been murdered in his camp, it was eminently fit that the trial of those conspirators should be held by military men. Many said that in the city of Washington there was so much feeling and sympathy for the rebel cause, there were so many enemies of our country here, that the chances were that a jury would not be found among whose number there would not be some one or two in sympathy with the traitor and the assassin, who would prevent a verdict. That argument was used in favor of the military tribunal, instead of a trial in the courts of law. I am one of those who at all times, and upon all occasions, have insisted that the civil courts, with a jury of twelve men, were competent to the trial of these crimes. I have always believed it. I believe it now. It is for the very reason that I believe it that I stand here. I have always proclaimed it. I do not stand here, called because I be-

longed to the side of the republicans, for, as all know, I never did. The public office which I held was given me by democrats. The office which I now hold in the convention was from the democratic city of New York. I am called here because I believed, and because I ever insisted, that a jury of twelve honest men, when they find a man guilty, will say he is guilty; and that the court is competent to administer the law, and that the jury are competent and willing to administer justice. If you set at naught all my confidence, and if you prove to the world that I am wrong, and that a jury of twelve men in the city of Washington will not find a man guilty of this great crime when he is proved to be guilty, then I will acknowledge that I have been mistaken, and bid farewell to the cherished dreams of my youth and of my manhood, which whispered that my country might continue to be free, for I know that no country can long be free that will not administer justice upon those who commit great crimes. Society will have protection; property will have protection; life will have protection; and if it cannot come through the civil tribunal, then every good man will hail the military. Then we will all join in saying that if our rights are thus to be swept away, let the useless ermine fall from the judge, let the sword write the record, and let the military commander execute the law.

I do not know what purposes the great Ruler of the world may have in this trial; but of one thing we may all be assured, that this is not an unmeaning trial. It is, as I have said, the only trial had before a court and jury of any of these conspirators. The whole civilized world is looking on. There is not a hamlet in this great country that has not already read the evidence. There is not a country in the whole of Christian Europe that will not soon have read it. It is proved that liberty cannot exist in this happy land. Our enemies, who wish to see the whole world in arbitrary power, would be delighted beyond expression if they could find that a jury in the city of Washington would not convict a criminal of this great crime when the evidence proved him guilty. Every lover of freedom, every lover of constitutional liberty, every lover of our free and blessed government is ready to fall upon his knees and pray that no such calamity may befall our country as to have a jury of twelve men, or one out of the twelve, refuse to find a man guilty when the law and the evidence say that he is guilty. In a great country like this, of course, there are a variety of interests. There are many men who feel hostile, the one toward one political party and the other toward the other, in this country. We have been through with a civil war which tended to inflame the passions. Congress, as you know, has recently been in session here, and just left. Of course, these great political subjects are topics of conversation. A great many men from interested motives, some from political motives, and some possibly from patriotic motives, are very anxious to remove this capital from its present place. They say it does not belong here; that the people are not in sympathy and harmony with this great government; that it is full of people who hate the government, and therefore they would like to see it removed. They would like any excuse in order to get it removed. A great many others desire to have it retained here. Those who live on the other side of the mountains would seize on any ground to take up this capital and move it over there, where it is more central; and what every such man of all things wants to be able, at the top of his voice, to say in Congress, when they meet in November, is: "You see it is just as I told you. You cannot get justice in the city of Washington; a jury of the city of Washington refuses even to find guilty the assassin of the President, who is overwhelmingly proved to be guilty. We will remove the capital far hence. We will take it to a place where a public officer can be safe, and where those who are in power may be relieved from the dangers of assassination, which they cannot be if a jury of the country say it is right." As I said, great issues hang on this trial, it being the first and only trial of the conspirators before a civil court and a jury of twelve men. Its responsibility and

its magnitude cannot be over-estimated. He is guilty, or he is not guilty. Which is it? If he is not guilty he has been very badly treated. If he is not guilty he has been fleeing about the world in disguise to very little purpose. If he is not guilty your grand jury have done him a great wrong. If he is not guilty the Pope did him a great wrong when he thus surrendered him when he was not even applied to. If he is not guilty the whole world almost have done him a terrible wrong. How are you going to repair this wrong. It ought to be repaired. He ought to be paid high for all this great wrong if he is not guilty. He is guilty, or he is not. What I propose is, from this evidence under the law to prove he is. Now, if evidence proves anything, or ever did prove anything, it will prove it here; and what I propose is, when I come to the discussion of this evidence, not to give you my confident assertion about what is evidence, but to read it to you, that those who shall ever take the trouble to read this speech of mine shall find in it the evidence on which I rely, taken from the book, word for word; and it will be read, and this whole civilized world will give its verdict upon that evidence. It is upon that evidence that I shall ask your verdict.

We have lately, as you know, acquired possessions from Russia. Suppose you and I go out there after this trial is over, to make an exploration, and as we are going through the forest, we find a baby wrapped in a blanket. What would the inference at once be? It would be that the baby came there by some human hand. It would be that it had a father and a mother. It would be that it was wrapped in the blanket from the tender care of a human being. You would have no doubt about it, would you? Would you want me, when I came back and was telling to an audience what Mr. Todd and I had seen there, to prove that the baby had a father and a mother, or that the blanket was wrapped around it by some human being, from tender care? It is one of those things you would say, we know, and not a thing to be proved. It is true that the Rev Mr. Stephen F. Cameron might swear, in his imaginative way, that he had seen these babies growing out in that country, like toadstools under a tree, (laughter,) but you would not believe it. And although Bissell should come and swear that he had seen the spiders weave the blanket in which the child was wrapped, you would not believe it. You would judge as to the truth, from your experience and your knowledge of the laws of human nature. And why? God hath given us reason and intuition by which we arrive at conclusions, and by which we know a thousand things which are not proven, and which are not to be proven.

Those come in, forming our judgments when we come to weigh the evidence, and determining our minds as to whether we believe or do not believe the thing presented as a fact. For instance, you may take this tumbler, which I accidentally broke; you see its bright edges where it was broken; you did not see it broken, but I did. I know that piece came from this piece; but, when I put that to this (putting two pieces together,) there you see that every blister in the glass, and that every part of it exactly fits. You know that part came from this part as well as I know it; you do not need any other proof; it is demonstration. No human hand, no skill or Chinese art, can cut the glass and mark the little blisters and little veins you here see so that the one shall as exactly fit the other. It is not in human power to do it. Nothing short of Almighty power can perform that feat. It is proved. There you see in the bottom something of a whitish color. That tumbler we will suppose to have been found off in a rubbish heap behind the house. Well, what of that? Nothing, more than that the owner of that house died about three months ago, and he was suspected of having been poisoned.

There was not any proof of it at all; no proof could be had. His loving wife had gone through deepest weeds to his grave, and wept most profuse tears over the spot. She had not poisoned or murdered her husband, of course not. The



same day they find, while engaged in the investigation to discover who was the guilty party, in a rubbish heap this glass with a little powder at the bottom of it. The physicians and the chemist examine it and they tell you it is arsenic. Well, what of that? That does not prove that the man's wife murdered him, surely. Let us go a little further. There is the broken glass. There is the arsenic at the bottom. But that does not connect it with anybody. It happens, however, that a negro servant, in the chamber where the sick man lay, is moving a bureau, when she finds that piece of glass (holding up a piece of the tumbler to view) behind it. Well, what of that? That does not prove anything; it is a perfectly clean piece of pure glass. There is no poison about that—none. She shows it to my friend, Mr. Carrington, the district attorney. She merely finds it there while she is working about the premises; but she remembers that on a certain day when she was moving back that bureau, that a tumbler fell there, and a piece was broken from it. What did she do with the tumbler? She says: "Well, I gathered it up and I threw it away; but I do not know where." We take this piece of glass that was found behind the bureau, and we put it alongside of this tumbler that I hold in my hand, and we find that one fits the other. There is no proof about it except the edge and the fitting. Do you doubt it was broken from it? Would you, if you were trying the case, have much doubt that that was the tumbler that stood on the bureau, and from which this piece was broken when the servant turned it over and it fell, and which had in it the arsenic? And when you find the arsenic in the man's stomach and inquire into the motive that led to his death, don't you think you have traced the murder through a demonstration of those two little things? You cannot get rid of it. You have got the proof of it; you cannot help coming to such a conclusion. Your mind cannot doubt it if it tries. Those views relate to physical science merely. Let us now come to the moral. You will find that is just as certain and just as capable of demonstration to the human mind as the other. Judging what we know from our intuition and from our reasoning, we are aware that men having no motive to speak otherwise will speak the truth. You know that when you are going up the street, and you ask a man, "Have you seen the President pass in his carriage?" he will tell you yes or no, as may be the fact in the case, unless he has some motive to tell a falsehood. That we know from our daily experience. We know that all men tell the truth unless they have some motive to falsify. Sometimes it is a motive of telling a story; sometimes it is from malice; sometimes it is to clear one's self from a crime; but as a rule we know men tell the truth. We know when witnesses are called upon the stand, having no other motive than to tell what they know, that they will tell the truth. That is our experience. It is the only way you can try any cause, and it is the only way you can recover a debt. It is the only way you can decide anything in human affairs. It is on the great fact that men as a rule tell the truth that we build up everything in our action, and that we get information one from the other, day by day, and act upon it. Further, we all know that a woman will never desert her child unless she has some great motive for so doing. We know that a son will never tear asunder all the ties he owes to his mother, to his sister, to his brother, to his country, to his native land, and to his government which protected him, without some great motive. That we know. We do not need to have it proved. I do not need to say anything on this subject further than to simply state the facts to you as they exist. We know that the father will protect his child. We know that he will give his fortune to save him from infamy. We know that he will do anything to protect his daughter. He will give his money, his liberty—yea, often will he give his life, and willingly give it. When you find a father cruel to his son, or a son deserting his mother and sister in time of great peril, and in time of their direst need, you know he does not do it unless some great and terrible motive impels him to do it. That we all know. Then we undertake to discover



what that motive was which led to such an unnatural act. That is an honest, fair way of reasoning, as you will certainly say, and of judging of human actions. We know, gentlemen, several other things that need not be, and never are proved in a court of justice. We know that it is not possible for a man to be in two places at the same time. You know that a man cannot be in Elmira and in the city of Washington on the same day, or, at any rate, the same hour of the same day. You know he cannot be in Burlington and be in Montreal at the same moment; that does not need to be proven. You know that when a man has motives such as the desire to save his life, that he will resort to any means to accomplish his end. You know that he will swear to any falsehood, that he will make up any evidence, and you know that one of the most common things, if you have ever read much of proceedings in courts, is to attempt to prove an *alibi*. As has been justly said by all the writers upon the subject, it is one of those things most easily forged of any defence that is ever attempted. It grows out of the fact that it often happens that honest witnesses prove an *alibi*. They are honest about it, and the facts they state are facts. The only thing that differs is the time. You will remember the great case of Webster, to which attention has been called; that when Dr. Webster was tried in Massachusetts for the murder of Dr. Parkman, a number of the most respectable citizens of Boston swore to an *alibi*; that they swore to it circumstantially. They swore to seeing him in a particular store where they had gone for a particular purpose. They looked at the books and found the charges made at the time it was stated, and all the circumstances seemed to conspire to prove that he was in a different place from that alleged. It is quite possible that many of you can recall your own reading of that great case. I well remember that I believed at the time that he was innocent, and it was from the fact of so many respectable persons, men and women, of Boston swearing positively to the fact of his being in another place than it was alleged he was. The jury, however, who saw and heard the witnesses, and were made aware of all that transpired, found, without hesitation, that he was guilty, and he subsequently admitted his guilt and told all the circumstances connected with the murder.

In a case which I read to the court to-day, the author says: "An unsuccessful attempt to establish an *alibi* is always a circumstance of great weight against a prisoner, because the resort to that kind of defence implies an admission of the truth, the relevancy of the facts alleged, and the correctness of the inference drawn from them; and where the defence of *alibi* fails, it is generally on the ground that witnesses are disbelieved and the story considered to be a fabrication."

It is the easiest thing in the world for a man who is anxious—and especially where the question is one of life and death—to bring himself to believe that he saw the man on a day other than which he really did see him. He did see him, we will suppose, and he saw him on a particular day, but it is necessary for the defence to show that he saw him on the following day. In regard to that he is not sure. He says: "I am not positive. I know I saw him about that time; at least a man that looked like him. I did not know him." "Yes, but don't you think it was the day after?" "Well, I don't know; it was within two or three days of that time." "But this is a question in which a man's life is involved. Don't you think it was the 15th you saw him?" "I don't know; it was the 12th, 13th, or 15th; I cannot tell which." "Don't you think it was the 15th?" "I am not sure about that." So, a witness, by being thus interrogated, and being urged to think the matter over in connection with a particular date, might finally bring himself to believe he saw him on the day named by counsel. He says to himself: "Any way, it is not swearing against a man's life, and if I am mistaken, it is only in favor of his life;" and finally he says, in reply to the earnest inquires of counsel, "I think I may say it was that day."

Our learned friends on the other side have told us, in the progress of their argument, that they could not subscribe in the least degree to the doctrine that it was a higher crime to conspire against the government of the United States, and through that conspiracy commit a murder upon the person of the Chief Magistrate, than it was to murder the humblest vagabond in the street, or words to that effect. Now that is not the doctrine of a statesman ; it is not the doctrine of the Bible ; it is not the doctrine of the law. It is a far more heinous crime to conspire against the government of the United States, and to murder its President for the purpose of bringing anarchy and confusion on the land, than to murder a single individual. It is because its consequences are so much more terrible. It is because it is involving the lives of hundreds and of thousands. It is because it is involving considerations affecting the stability, the protection, the life, and the liberty, it may be, of a nation. The law of England, which I have cited, but which it would seem, my friends have not read, lays it down, and without a statute, but as the common law, that it is a crime of such heinousness as to admit of no accessories. They, however, undertake to say that the crime of the murder of the President of the United States in time of war or great civil commotion is not as heinous a crime as it would be in England to murder the chief of their country ; and that there is no divinity about our government. What is its origin? All government is either of God or the devil, and they will have to take their choice. I say that government is of God, and that no other government will stand. What says the civilized world upon this subject. I wrote a note to the Secretary of State two days ago, asking him to send me the letters that were transmitted from the different governments of the civilized world upon the subject of this murder, and what do you think he sent me? He sent me the note I hold in my hand, and with it this large printed volume, It takes every line and word of that book, a book of 717 pages, closely printed, to contain the letters of condolence that were written to this government from the foreign governments of the world. Entire Christendom wrote, entire Christendom looked upon it as one of the most horrible of crimes—one that required every nation, even to the Turk, to write for the purpose of expressing their abhorrence of the crime. And, gentlemen, I hold in my hand the original paper, sent by some 13,000 rebel prisoners, and our prisoners, at Point Lookout. Here is the paper in which these rebel prisoners, met together, passed their resolutions of condemnation, and their curse upon this crime. I would try this case before any twelve of those rebel prisoners, and feel certain of a verdict; and yet the gentlemen tell us this murder is like that of the commonest vagabond that ever walked the street, and the crime no higher. Not so thought the rebels; not so thought any honorable man in arms against us; not so thinks any right-minded man on the face of the earth.

The court here took a recess for the space of half an hour.

#### AFTERNOON SESSION.

Mr. PIERREPONT resuming, said: I pass, gentlemen, from all these general considerations now to the evidence in this case. As I have already said, I do not know you as the other counsel know you ; but I do believe that you wish earnestly and honestly to know the truth in this case, I do not believe you will be influenced by any mean or selfish motive in your decision. I believe you are far above all possible considerations, except these great considerations which should weigh upon you in this case. I pass from what I have said to the investigation of the evidence. You know, gentlemen, there are classes of men who are called experts ; we have had them upon the stand here in the investigation of this case. We have had them for the purpose of determining handwriting. An expert who is skilled is able not only to determine handwriting when it is disguised, but the handwriting of another by comparing it with that which is known. It is a very curious fact in our history—a discovery which science and

especially the investigations in law have made, that no man can disguise his hand. He may in a few letters or a few words, but he cannot write any considerable number of words and disguise his hand. And it is on that principle and without your thinking much about it that we are enabled to do business at all. Checks are constantly coming to the bank to be paid; receipts are given for debts due; and letters are written and book accounts are kept as tracks that are made, all depending on this great principle that a man has a handwriting peculiar to himself; it is as peculiar as his face; it is as certain as his expression; he can no more disguise it than he can disguise his walk from those who are acquainted with him or who watch him. He may disguise his walk for a few steps, but he cannot long; and he cannot disguise his handwriting if he will write a page. And another thing no mortal man can do, no mortal man can twice write his name alike. There is no mortal man on the face of the earth who ever did or ever can do it. You may write your name ten thousand times and examine them, and there are no two of these signatures which you can place one over the other and exactly fit. That is as well ascertained as any fact on the earth; so true is it, that when we find one signature that will exactly lie over another in height, length, and every possible respect, that we know it to be a forgery. I repeat it, you cannot disguise your hand from one who is familiar with it and expert in it; and you cannot disguise your walk for any considerable length of time, nor can you disguise your voice. It was attempted by this prisoner to Hobart. The walk is often attempted to be disguised, and the handwriting to be disguised, as in the case of Booth, but we know well, any expert who has had any experience knows well, that it cannot be done.

And the same is true in other things. You know your various callings and business, connecting with cloth, fur, iron, gold, silver, or whatever may be your calling, none of which I know anything about. Yet in your varied callings you are experts in your goods and wares, and whatever you are doing you can tell in a moment things that I can tell nothing about. I don't know where the goods come from. I don't know whether the sable brought up to be sold to my wife at an expensive price is covered by dye or is a real and natural one. The furrier knows and can tell in a moment. The watchmaker can tell whether the watch presented is a false or a true one. I can tell you nothing about it. In the city of New York in the assistant treasurer's office, and I believe they have a similar one here in Washington, there is an expert in coin. You can take a basket full and pour it out on the counter. He will pass them through his hands with wonderful rapidity, and in every instance detect the base coin. He has been there twenty years, as is well known, in our city. So in the bank, the expert knows the false from the true note in a moment. So in China, where silver is valued not in the shape of coin, but as to the fineness of it they can tell by the touch. Men devote themselves solely to that business. And so you have in all the various callings, men who from experience or natural fitness are experts in a particular thing to which they give their attention.

Now, it never seems very much to have occurred to people that there are experts in relation to moral questions just as much as in relation to physical science and matters of sight.

But it is just as true, and it is just as easy; and I undertake to say that any lawyer who has practiced law for twenty years, and who is not an expert in detecting the false evidence from the true when he sees a witness's eye and hears his voice, and sees his hesitation and his manner and mode, his consistency or inconsistency, if he cannot select the true from the false, he had better take some other calling. He is not fit for that business. No lawyer who has had an experience of twenty years, who has had any moderate success, can fail to know he can detect it with an intuitive feeling, a sensation by which he knows when a man goes on the stand, whether he is telling the truth or whether he is



telling a falsehood. He cannot utter five sentences before, in his manner, in the inconsistency of his words, and a thousand other ways which cannot be told, but which you feel, you know whether he is telling truth or not.

Gentlemen, I shall endeavor now to apply some of these principles. I have been talking about the evidence in this case, and I now come to the positive evidence. I had occasion to remark, I think, to the court, in arguing a legal proposition, that it was always, in a case of murder, proper to look at the position of the parties who are charged, and consider the evidence, for the purpose of coming to a reasonable conclusion as to whether the thing was done or was not done; as to whether the man committed the crime or did not commit it. We are to look and see the motive, and whether the thing done was contrary to the natural course of human events.

In March, 1863, Mrs. Surratt was keeping a tavern at a place called Surrattsville. I believe the villa consisted in the tavern. Her husband had died in 1862, and there were left the son Isaac, the daughter Anna, and the prisoner at the bar. His counsel tells you, as all the facts show, that they were poor; they had but little means. And in the autumn of 1864 they moved to the city of Washington, to 541 H street, and opened a boarding-house. Her eldest son was in the rebel army in Texas. Her other son was a man full grown, who came to this city with her, and was not in employment in November, 1864, when she opened the boarding-house. Now let us see, at this time, what were the sentiments of the family in relation to this subject, which afterward became an object of hostility and vengeance and of murder. I read from the testimony of Tibbett, at page 179 :

I heard her (Mrs. Surratt) say she would give any one a thousand dollars if they would kill Lincoln.

He states that her son was present. He states further these words :

Whenever there was a victory I have heard Surratt say the d—d northern army and the leader thereof ought to be sent to hell.

That was in 1863. In March, 1863, Herold, who was one of these conspirators, and is admitted to be, was with John Surratt at Surrattsville, and is one of his acquaintances. In 1864 John Surratt was at Piscataway church, where he meets the same Herold, and in December, 1864, John Surratt was at the National Hotel with Dr. Mudd and Booth, at room No. 84. Mudd was an old acquaintance, and Booth was a new acquaintance. And this was Surratt's first introduction to Booth. To this I want to call your attention. I propose to show you from this evidence—and I have given it some attention and time—when Surratt first became acquainted with Booth; the time when he was first drawn into this conspiracy, and to trace it, date by date, by evidence which cannot lie, to its final consummation. I read from page 471 :

A. In the winter of 1864-'65. I was invited one evening by Surratt to take a walk with him down the street. We left the house and walked toward Seventh street, and went down Seventh street. Just as we were opposite Odd Fellows' Hall, somebody called "Surratt, Surratt." I said, "John, there is some one calling you." He turned, and as he turned, recognized Dr. Samuel Mudd, an acquaintance of his, from Charles county, Maryland. He shook hands with the doctor, and then introduced him to me. Dr. Mudd then introduced his companion, as Booth, to both of us. After the etiquette consequent on such occasions, Booth invited both of us to his room at the National Hotel. Arriving at the room, Booth requested us to be seated, rang the bell, and had the servant bring drinks and cigars to the room for the four gentlemen assembled. I made some remark about the appearance of the room; Booth said, yes; it was a room that had been occupied by a member of Congress.

Q. Do you know the number? A. The number of the room at that interview was 84. Booth took down some congressional documents from the secretary, and remarked what a nice read he would have to himself when left alone.

Q. Was Dr. Mudd still there? A. Yes, sir. After a little conversation Dr. Mudd arose, went out into the entry that led by the room, and called out Booth. They did not take their hats with them; they did not go down stairs, because if they had done so I should have heard the noise of their footsteps. After five or six minutes they returned to the room, and John Surratt was called out. The three then remained in the entry for several minutes, and



came back again. Dr. Mudd then came over to me where I was sitting and remarked: "Weichmann," said he, "I hope you will excuse the privacy of the conversation; the fact is, Mr. Booth has some business with me; he wishes to purchase my farm in the country, but he does not want to give me enough." Booth also came to me and made an apology to the same effect, saying he did intend to purchase lands in the lower part of Maryland, and that he wanted to buy Dr. Mudd's farm. I was then seated on a sofa near the window. Booth, Dr. Mudd, and Surratt then seated themselves round a centre table in the middle of the room, about eight feet from me. They then began a private conversation, audible merely as to sound. Booth took out from his pocket an envelope and made marks on the back of it, and Surratt and Mudd were looking intently at him. From the motion of the pencil I concluded that the marks were more like roads or straight lines than anything else. After about twenty minutes' conversation round the table, they rose, and Dr. Mudd then invited us around to the Pennsylvania Hotel, where he was stopping. Arriving at the Pennsylvania Hotel, I sat down on a settee and talked with Dr. Mudd. Booth and Surratt seated themselves around the hearth and talked very lively there, Booth showing him letters, and Surratt evincing a great deal of glee. About half-past ten Booth got up and bade us good night. We left a short time after, Dr. Mudd stating that he was going to leave town next morning. On going home, John Surratt remarked that that brilliant, accomplished young gentlemen, to whom I had been introduced, was no less than J. Wilkes Booth, the actor. When I first met Booth on Seventh street, I did not know that he was an actor at all. I had seen him several times on the stage, but I did not know that he was J. Wilkes Booth, the actor. I knew when he told me so. He said that Booth wanted to purchase Dr. Mudd's farm, and that he, Surratt, was to be the agent for the purchase of that farm. Some weeks afterward, when I asked Mrs. Surratt what John had to do with Dr. Mudd's farm, and whether he had made himself an agent of Booth, she said: "O, Dr. Mudd and the people of Charles are getting tired of Booth, and they are pushing him off on John."

Now that is the first time Surratt met Booth, and his drawing of the farm probably suggests to you what it suggests to anybody. There was not any purchase of a farm; no such thing was ever intended. There is not a particle of evidence that there was any such purchase. If it had been about the purchase of a farm, they would not have taken so much pains to make Weichmann know it. When men are engaged in something they wish to conceal, they are always careful, and often betray themselves by their extreme care to disguise what they wish to conceal. It would have been no matter whether Weichmann knew what they were doing or not, if that had been their real business. It needed no excuse, concealment or explanation, if it had been the truth. It is not likely it had any truth in it. The lines they were drawing were for another purpose.

This you well know, gentlemen, was in December, 1864. And now let us look at another matter, and a very important one, which soon follows. I read from the testimony of Dunn, of Adams Express office. He says he was cashier:

Q. Will you state what occurred on or about the 13th of January following? A. I did not fix the date; I only say that he was in our service in that office close in the neighborhood of two weeks. It won't vary more than a day or two of that, one way or the other.

That we prove by the cashier, you remember. He went there on the 30th day of December.

Q. Tell the jury what occurred at the end of two weeks? A. He came into my office, and applied to me for a leave of absence.

Q. What did he say? A. I expressed my astonishment that he should apply so soon after taking his position, and he gave as a reason that his mother was going down to Prince George's, and he wanted to accompany her as her protector.

Well, that was no more true than the story about Dr. Mudd's farm, and it was told for the sake of concealment.

Q. What did you say as to his going with his mother to Prince George's, as her protector? A. I told him that I could not consent to give him the leave of absence he wanted; that he had been there but a short time.

Q. What then occurred? A. He left the office and went back to his work. The next morning a lady called in the office. She introduced herself as Mrs. Surratt, the mother of the young man of that name in my employ.

Q. What did she say? A. She asked that he might have a leave of absence to accompany her to Prince George's county, where she had urgent business.

Q. What did you say to that? A. That I had no reason to change my mind; I had answered her son's application the day before, and I could not give my consent. She still urged her application, and I told her it was impossible for me to yield; that her son could go without my consent, if she and he so determined; but if he did he could not return to that office.

Q. What then occurred? A. She bade me good morning, and left the office.

Q. What did he do? A. He left the office the same day.

Q. Did he ever come back? A. No, sir.

Q. Did he ever come back for his money? A. No, sir.

Now let me show you a little in this connection. My friend, Mr. Merrick, will understand what I mean by a chain of evidence. There is a little piece of paper here found in Booth's pocket. It is in Surratt's handwriting, and reads: "John Harrison Surratt I tried to get leave, but could not succeed."

He did take it, and immediately wrote to Booth. This is no magic chain, my friend.

Now, I call your attention, gentlemen, to what further occurred in this same connection, and I refer you to the testimony of Mr. Martin, of New York. He was very anxious to have it appear that he went to Richmond, at the time he went, on business; that he went with the knowledge of the President of the United States. He had a right to give that statement, because it seemed to compromise him, and he gave it on the stand as you remember. He was down at Port Tobacco on his way to Richmond. It was in connection with getting out cotton. You will remember there was a time in the progress of the war in which it was thought wise by some members of the government to get out all the cotton and tobacco that could be obtained from the south. I believe the President entertained that view. This gentleman says, that although the President did not give him any written permission, he gave him to understand that he did not object if they could get it out of the confederacy, with certain conditions. I believe military men generally, and General Grant particularly, were especially hostile to any of this trade existing between the two parts of the country, thinking it tended to retard the progress of our armies. Mr. Martin was down there, and let us see what he says:

A. While in Port Tobacco, I remained for ten days, in order to get an opportunity to cross the river. I employed a man by the name of Andrew Atzerodt, and paid him to make some arrangements for me to cross the river.

Q. Was that his full name? A. I do not know; he went by that name.

Q. Was his name George A.? A. I presume so; he went by the name of Andrew

Q. There was no doubt about the other name being Atzerodt? A. I think not. I heard his name, and recollect asking him once if it was a Russian name. He tried to make arrangements for me to cross, and went down the river several times. I paid him for his trouble, and finally abandoned the idea and left there. I did not cross there at all.

Q. What time was that? A. About the 10th of January, 1865; from the 7th to 15th.

Q. Who else did you see there connected with this conspiracy? A. I saw Surratt there on one occasion.

Q. Tell what you know about it; what was said or done. A. I had no particular conversation with him. I was introduced to him. He did not refer to his business, and I do not think I did to mine. On one evening after dark a man told me that a party was just about to cross over. I said I would like to be introduced to him. He said he would do so. In probably fifteen or twenty minutes he came in and said he was mistaken; that they were not going to cross. During the evening I was introduced to Surratt. No particular conversation passed between us. I may have told him I was going to cross the river. I think I did. I remained that night. The next day when he came in to supper he had on his leg-gins. I asked him if he was going. He said he was going back to Washington; that he was employed in the Adams Express office; that he had three days' leave of absence; that his time was nearly expired, and that it was necessary for him to start back that night.

In all of which there was not a word of truth, as you know. He never had any leave of absence at that time, and he told that story for the purpose of concealment, as people will when they are engaged in an unlawful purpose. The pains they take is often one of the means of their detection.

Q. State whether you saw him and Atzerodt speak together. A. I am not positive whether I saw them speak at all with each other.

Q. Did you see them after that day? A. I did not see him after this conversation at the supper table, and have not seen him since till I saw him here.

Q. Did you see Atzerodt afterwards? A. Yes, sir. I remained two or three days and tried to get across. I saw him there all the time I was there.

Q. Did you see him on the other side? A. Never.

Q. Did you see either of them on the other side? A. I never saw or heard of either of them on the other side.

Q. Did you see either of them at any other place, at any other time, that you remember of? A. I did not.

Then a little further :

Q. You had other conversation with Atzerodt, did you? A. I did the night Surratt left there. I was losing confidence in Atzerodt. I thought, although I had been paying him tolerably liberally, that he had been throwing off on me. I staid up pretty late that night. He came to the hotel about 11 o'clock. I accused him of intending to cross over that night with other parties; told him that I had been paying him all that he had asked, and that I must cross by the first boat. He denied that anybody was going to cross that night. I reiterated the charge I had made of duplicity upon his part. He then made this explanation: He said no one was going to cross that night, but on Wednesday night a large party would cross, of ten or twelve persons; that he had been engaged that day in buying boats; that they were going to have relays of horses on the road between Port Tobacco and Washington. Said I, "What does this mean?" He said he could not tell. After a moment I said I supposed that confederate officers were to escape from prison, and that he had made arrangements to cross them over into Virginia. He said: "Yes; and I am going to get well paid for it."

Well, there was no truth in that. What do you suppose was the purpose of those relays of horses? What do you suppose Surratt came back to the city of Washington for in the night? To Adams Express? He never had any leave of absence from there, and he never went back there. He told Booth he could not get leave, and he did not get it.

I now come down in the order of dates, and there is a power of logic in dates you cannot resist. People would like to resist it if they could, but they cannot. When the sun rises in the east to-day, it goes over and sets in the west to-night, and as it rolls over it stamps a record which no crime can ever wipe out. A good many men would like to erase it, or change some figures in it, but when it goes down in the night, it stamps it eternally. Now let us see, in the order of dates, what next occurs. I hold here the register of the Maltby House, Baltimore. On the 12th day, I think, of the same month, you will see here entered the names of "Louis J. Weichmann" and "John Harrison Surratt, Washington, D. C.," room 128; both in the same room. There it is, (pointing to the entry,) both in their own handwriting, written on that day in Baltimore—"Weichmann," "Surratt"—within three or four days after Surratt left Port Tobacco. Now what does all this mean, except that it is one of those little links in the chain which binds truth to truth; one of those things which show what I have already said, that every truth in the universe is consistent with every other truth? Now let us see what is the next truth:

Q. Look at the book now shown you (book exhibited,) and tell the jury what book it is?

A. This is the register of the Maltby House, Baltimore, Maryland.

Q. Please look under the date of that register of January 21, 1865, and state what you find there? A. I find my own name and the name of J. Harrison Surratt registered there on the twenty-first of January, 1865, as occupying a room, No. 127.

Q. The same room? A. Yes, sir.

Q. Whose name is first entered? A. My name.

Q. In whose handwriting is it? A. In my handwriting.

Q. Whose name is next entered? A. Surratt's.

Q. Is it in his handwriting? A. It is.

Q. Will you state whether or not those names were actually entered on that day by you and Surratt? A. They were.

Q. Did you occupy room No. 127? A. We did.

Q. What time in the day did you reach Baltimore? A. On the evening of the 21st of January. It was on a Saturday evening.

Q. At this time did you know Payne? A. No, sir; I had never met him.

Q. Nor Wood, as he was afterward called? A. No, sir.

Q. Will you state what occurred while you were there? Give it in its order of time. First I will ask you if you know, of your own knowledge, whether Payne was boarding in Baltimore then? A. No, sir; I do not know, of my own knowledge.



Q. Now proceed to state what occurred while you were there. A. On the morning of the 22d Surratt took a carriage and said that he had \$300 in his possession, and that he was going to see some gentlemen on private business, and that he did not want me along.

He had not got his \$300 from Adams Express. He has not any of it yet. He had \$300 with him. He took a private carriage and went to see somebody he did not want Weichmann to know. Now let us see who that somebody was. Weichmann was asked if he saw Payne there. No, he had never seen him. He was asked whether he knew he boarded there. No. Somebody else did, though. I read you now from the testimony of Mrs. Mary Branson, a widow woman who came upon that stand from Baltimore:

Q. In 1865, where did you live? A. I lived at No. 16 Eutaw street, Baltimore.

Q. Did you see, while the trials of the conspirators were going on in Washington, a man called Lewis Payne? A. I did.

Q. Will you state whether in January, 1865, and for some time after that, this same man Payne boarded at your house? A. He boarded at my house in January.

Q. How long did he continue after January? A. He staid with me about six weeks.

Q. Did you know where he went then? A. I did not.

There is another link in this chain, and that is not a magic chain. He was boarding there; he came after that to Mrs. Surratt's house, and this meeting with him in Baltimore was for something. I do not undertake to say; I am going to leave it to you to say what you think it was about. This is Payne, who was one of the conspirators; Payne, who attempted to assassinate Secretary Seward; and Payne, who was taken into Mrs. Surratt's house afterward. I next read in this same line of date from page 374:

Q. Did Surratt name to you then, or at any subsequent time, the name of the person who kept the house where he went? A. No, sir.

Q. When he came back, which you say was 3 o'clock, what occurred? A. I returned home that evening; whether he returned with me or not I do not know, but it is my impression that he did not. I think I left him in Baltimore.

Q. You returned that evening? A. Yes, sir.

Q. At Mrs. Surratt's house, at this time, where was your room in the house in relation to Surratt's room? A. Well, Surratt and I were so friendly and so intimate with one another that we occupied the same room.

Q. How about the bed? A. We occupied the same bed.

Q. Did you ever see Atzerodt? A. Yes, sir; I met Atzerodt about four weeks after Surratt's first introduction to Booth, and about a week or ten days after Surratt returned from the country, in the early part of January, 1865.

Q. From Port Tobacco? A. Yes, sir.

That was the time when Mr. Martin speaks of seeing him at Port Tobacco.

Q. Where did you meet Atzerodt? A. In Mrs. Surratt's parlor; he was introduced to me by John Surratt.

Surratt had met him in Port Tobacco when Mr. Martin saw him with him about the 10th or 12th of January. In a few days after that he came up to Washington, came to Mrs. Surratt's house, and Weichmann was introduced to him by Surratt himself in the parlor. I now read again from the testimony of the same witness:

Q. When did you next see Atzerodt at the house? A. O, I saw him very frequently there between the time of his first coming there and up to the time of the assassination; perhaps he visited there altogether twenty times.

Q. He was there, then, very often? A. O, yes, sir; very often, indeed.

Q. That is, you saw him there very often? A. Yes, sir.

Q. Will you state during what hours of the day your occupations kept you from the house? A. From nine until half-past four.

Q. At what hours in the day or at night were you in the habit of seeing Atzerodt there so frequently? A. I generally met him in the parlor on my return from work, between four and five or five and six o'clock.

Q. What was he doing there? A. Nothing in particular that I know of, except talking with Surratt.

Q. Did Booth also come there? A. Booth came there very frequently.

Q. Do you remember of Surratt going anywhere in February of that year? A. Yes, sir; he went to New York in the early part of February.

Q. Did he tell you what he went for; and if so, what?



This is now coming to the next month. We have traced him through January, and we now come to February :

A. He did not state what he went for, but he did state whom he saw there.

Q. Who was that? A. John Wilkes Booth.

Q. What more did he tell you about that visit to York, when he saw John Wilkes Booth?

A. Nothing, except saying that Booth had a very fine parlor, and that he had been introduced to Edwin Booth.

Q. In New York? Yes, sir.

Q. When did you first see Payne? A. I met Payne at Mrs. Surratt's house in the latter part of February, 1865, for the first time.

He left Baltimore, where he was boarding; came down then to Washington. It was not necessary for Surratt to go to Baltimore to see him again, and it does not appear that he ever did go to Baltimore again :

I met Payne in Mrs. Surratt's house in the latter part of February, 1865, for the first time. I was seated in Mrs. Surratt's parlor one evening, when I heard the door-bell ring. I went to the door. On opening it, I saw standing there a man, tall, with very black hair, very black eyes, and ruddy countenance. He asked me if Mr. Surratt was at home. I said he was not. Then he asked me if Mrs. Surratt was at home. I said she was. He then expressed a desire to see Mrs. Surratt. I inquired his name, and he said Mr. Wood. I went into the parlor, and told Mrs. Surratt that a gentleman by the name of Mr. Wood was at the door, who wished to see her. She requested me to introduce him. I did introduce him to Mrs. Surratt and the rest in the parlor as Mr. Wood. I had never met him before this, and I did not introduce him to Mrs. Surratt of my own accord. I never saw the man before.

Q. What did Mrs. Surratt do? A. Payne approached Mrs. Surratt and talked to her. I do not know what he said. She came to me in a few moments, and said "that this gentleman would like to have some supper, and as the dining-room below was disarranged, she would be very much obliged to me if I would take supper up to him in my own room." I said "yes," and I did take supper on a waiter to him in my own room.

You notice, gentlemen, that the first time Payne ever came to this house, he is put up in a private room, and supper taken to him on the order of Mrs. Surratt; and this is in February, 1865, after he has come from Baltimore, after he had left Mrs. Branson's. I am taking these events in their order of time, because I think it is the natural way, because I think it will help you to get at the gist and truth of this evidence, far better than by taking them up in any other order. I read again :

Q. What occurred after the supper was carried up to your room? A. I sat down there while he was eating supper, and made some inquiries of him, asking him where he was from, &c. He said he was from Baltimore.

Q. In what story was this room of yours where he had this supper? A. It was the third story.

Q. Front or rear? A. Third story, back room.

Q. What furniture was there in the room? A. There was a bed there.

Q. The bed on which you and Surratt slept? A. Yes, sir; a table, a looking-glass, and three trunks.

Q. It was a bed-room? A. Yes, sir.

Further on this witness testifies :

Q. Tell what occurred while Payne was eating his supper there? A. I asked him where he was from. He said Baltimore. "Any business there?" said I. He said, "I am a clerk in the china store of Mr. Parr."

Q. What more? A. That was about all. He ate his supper, and then said he would like to retire. He did retire.

Q. To what room? A. He slept in the attic. He did not then, nor did ever, sleep in my room.

Q. Did you see him the next morning? A. No, sir. When I arose he was gone.

Q. When did you next see Payne at the house? A. I saw Payne the next time on the evening of the 13th of March, 1865. As luck would have it, I was again sitting in the parlor when the bell rang. I again went to the door. I met the same man whom I had three weeks before. His former visit, however, had produced so little impression on me that I had forgotten him. I asked him his name. He said, "My name is Mr. Payne." He again asked for Mr. Surratt, but Mr. Surratt was not at home that evening. I took him into the parlor, where were Mrs. Surratt and the ladies, and said, "This is Mr. Payne." They all recognized him and sat down and commenced conversation. In the course of the conversation one of the young ladies called him Mr. Wood, and then I recollected that on the previous occasion he had given the name of Wood. On this occasion he was no longer a

clerk in a china store, but he represented himself as a Baptist preacher. He wore a suit of gray clothes, and a black neck-tie. His baggage consisted of two linen shirts and a linen coat. The following day—I believe it was the afternoon—Surratt had returned. He was lying on the bed at the time.

Mr. BRADLEY. Who was? A. Surratt. I was sitting at my table writing. Payne walks in, looks at Surratt, and says, "Is this Mr. Surratt?"

Q. You were in your room up stairs? A. Yes, sir. I said, "It is." He then looked at me, and immediately observed, "I would like to talk privately to Mr. Surratt." I then got up and went out of the room, as any gentleman would have done. The following day, 15th March, on returning to my room from my work, I found a false mustache on my table. Not thinking much about it, I threw it into a toilet-box that was there. From the appearance of things around my room, I knew John Surratt was at home.

Surratt was his room-mate, you know.

I then went into the back attic, and just as I opened the door I saw Surratt and Payne seated on the bed, surrounded by spurs, bowie-knives, and revolvers. They instantly threw out their hands as if they would like to conceal them. When they saw it was me, they regained their equanimity.

Q. Where did those things lie? A. They were on the bed.

Q. State what those things were. A. Eight spurs—brau new spurs—and two revolvers.

Q. How were they as to being new? A. I do not remember whether the revolvers were new or not. There were two revolvers, however, and two bowie-knives. When I went down to dinner, I walked into the parlor and told Mrs. Surratt that I had seen John and Payne fencing with those things here, and added, "Mrs. Surratt, I do not like this."

Q. Did you tell her what you did not like? A. Yes, sir; about Surratt being seen with the bowie-knives.

Q. Did you tell her what you had seen? A. Yes, sir. I told her I had seen them on the bed playing with those toys. She told me that I should not think anything of it; that I knew John was in the habit of riding into the country, and that he had to have these things as a means of protection. We went down to dinner. The same evening Surratt showed me a \$10 ticket for a private box at the theatre. I wrested the ticket from him and told him I was going to the theatre. "No," said he, "you are not; I don't want you to go to the theatre this evening, for private reasons." He then struck me in the pit of the stomach, and took the ticket away from me again. He was very anxious that evening to take the smallest ladies in the house.

Then he goes on to tell who they took.

Q. To what theatre did they go? A. To Ford's theatre. That night about 11 o'clock, as I was lying in my bed—I had retired—Surratt and Payne came into the room. Surratt took a pack of playing-cards which were on the mantel of my room, when they both left, and remained out all night. A few days afterwards, in conversation with a young man named Brophy—

Mr. BRADLEY. Was Surratt present? A. Yes, sir. In this conversation with this young man, Surratt stated that he had spent the other night, meaning the 15th of March, with a party of sociables at Gautier's saloon, and that he would like to introduce us, but it was a private club, or something to that effect.

I now turn to page 379, and again read:

Q. I had passed to the 15th and 16th of March in my last inquiry. I now pass back to the 3d of March. Can you tell what occurred on the 3d of March, 1865; whether you saw Surratt and Booth? A. Yes, sir.

Q. Where? A. I went down the street with Surratt in the evening of that day. At that time there was a good deal of serenading around town on account of the proposed inauguration of the President on the following day. After a while Surratt left me, and I went to hear the music.

Q. Whom did you first go out with? A. John Surratt.

Q. Was there anybody else with you when you first went out? A. No, sir.

Q. Did anybody join you? A. No, sir.

Q. You came back together? A. No, sir; we did not come back together; Surratt left me.

Q. Where did he leave you? A. On Pennsylvania avenue, near Eighth street.

Q. Then what occurred? A. When I returned to the house of Mrs. Surratt, I saw John Wilkes Booth and John H. Surratt in the parlor, talking together.

Q. About what time did you return? A. After seven.

Q. Then what occurred? A. Then I proposed that we should walk up to the Capitol. Congress was at that time in session. Three of us did go—Surratt, Booth, and myself. When we were returning from the Capitol, Surratt and I left Booth at the corner of Sixth street and Pennsylvania avenue.

Q. What did Surratt then do? A. We went home.

Q. Did you see Booth again that night? A. No, sir.

Q. After you and Surratt got home, what? A. Nothing.

Q. Did you see Booth the next morning, the 4th of March? A. I saw him on the evening of the 4th, at Mrs Surratt's. He was in the parlor then. I did not see him during the day.

Q. Was John Surratt at home that evening? A. Yes, sir; he had been riding round town all day with the procession; he was on horseback.

Q. Did you see Herold that evening? A. No, sir.

Q. Who else beside Surratt and Booth were at the house that evening? A. No one, that I know of, except those in the house.

Q. Up to this date had you seen Herold at the town house? A. I met Herold at Mrs. Surratt's once.

Q. When was that? A. In March, 1865.

Q. What time in the day? A. After 4 o'clock. I generally saw these people there, and these events that I narrate, after 4 o'clock.

Q. Where was Herold then? A. He was in my room; talking with Atzerodt and John Surratt.

Q. He came there on horseback. Do you know how he went away? A. He went away on horseback. He left the horse in Mrs. Surratt's yard.

Q. When did you next see Herold at the house? Did you see him there between that time and the 16th of March, 1865? A. I saw him only once at Mrs. Surratt's house.

Q. Do you know what the play was on this night that you speak of Payne and Surratt going to the theatre with these young girls? A. "Jane Shore."

Q. Do you know whether Booth played that night? A. He did not.

Q. Do you know when he did play at Ford's theatre next after that? A. He played on the evening of the 18th of March.

Q. What did Booth play in at Ford's theatre on the 18th? A. He took the part of *Pescara*, in the play of "The Apostate."

Q. Who were there? A. Surratt invited me to go to the theatre that evening with him. I at first refused, but finally consented. He showed me a pass for two, signed by J. Wilkes Booth. As we went down Seventh street, near the corner of Seventh street and Pennsylvania avenue, we met Atzerodt. He was also going to the theatre. At the theatre we met David E. Herold and Mr. John T. Holohan, a fellow-boarder at Mrs. Surratt's.

Q. Then at the theatre that night were Surratt, Herold, Atzerodt, and yourself, and Booth playing? A. Yes, sir. Mr. Holohan was also there.

Q. And this you say was on the 18th? Yes, sir.

Now this, as you see, when he was playing "The Apostate" at this theatre, was less than a month before the great drama where he played the apostate, traitor, assassin, murderer.

I next call your attention to the testimony of a young lady. Miss Fitzpatrick, who we put upon the stand, who was a boarder at that house—a young girl who did not seem to remember a great deal, but did remember some things of very grave importance. I refer to page 232. She says she was living at Mrs. Surratt's house; that she knew George A. Atzerodt, but did not know him by that name.

Q. By what name did you know him? A. I knew him by the name of "Port Tobacco."

Q. Where did you see him? A. I met him at Mrs. Surratt's.

Q. About what time was it? A. I do not remember; he called there one afternoon.

Q. Do you recollect what year it was, and what month? A. No, sir; I do not remember.

Q. How long before the assassination was it that you saw this man? A. I do not remember.

Q. Was it not the day or night previous? A. No, sir; that was not the night.

Q. How often did you see this man at Mrs. Surratt's? A. I do not remember how often I met him there.

Q. Did you see him there more than once? A. Yes, sir; I think I have seen him there more than once.

Q. Do you remember his ever spending a night there? A. I remembered he staid there one night.

Q. Do you remember what night that was—how long before the assassination? A. I do not remember, sir.

Q. Could you give any approximate idea of the time? A. No, sir; I have no idea at all.

Q. Do you know how long you commenced boarding there before Atzerodt came? A. No, sir.

Q. Did you know a man by the name of Lewis Payne, whom you saw before the military commission? A. I did not know him by that name; I knew him by the name of Mr. Wood.

Q. When and where did you first see him? A. I met him at Mrs. Surratt's, also.

Q. How often did you see him at Mrs. Surratt's? A. I do not remember seeing him there but twice.

Q. With whom did he come, and in what company did he come? A. He called there one evening by himself.



Q. How long was that before the assassination? A. I think it was some time in March.

Q. Was that the first time you saw him? A. Yes, sir.

Q. In what room did you first see him? A. I met him in the parlor.

Q. With whom was he talking at the time? A. He was not conversing with any one in particular.

Q. Who were in the room at that time? A. Mrs. Surratt, her daughter Annie, Miss Holo-han, and Mr. Weichmann.

Q. When was the next time you saw him there? A. I saw him in March, also.

Q. Did you never see him there afterward? A. No, sir.

Q. You did not see him the day you were arrested? A. I recognized him at the office after I was taken there.

Q. You did not see him at the house? A. He was at the house, but I did not recognize him.

Q. When you got to the office you recognized him as a man whom you had seen at the house? A. I saw Mr. Wood, sir.

Q. When you say Wood, do you mean Lewis Payne, whom you saw before the commission? A. Yes, sir.

On page 234, this witness says :

A. The last time I saw Mr. Surratt was two weeks before the assassination.

Q. During these visits by Atzerodt and Payne to Booth, did you see John at the house? and if so, did you ever see or hear them conversing? A. I have seen them, but never heard them conversing together.

Q. Do you recollect in the month of March of going to Ford's theatre? and if so, state in whose company you went. A. I went with Mr. Surratt, Mr. Wood, and Miss Dean.

Q. State in what part of the theatre you were seated—whether you occupied a box or seat in the orchestra. A. We occupied a box, sir.

Q. When you say Mr. Surratt, you mean John H. Surratt, the prisoner? A. Yes, sir.

Q. And when you say Mr. Wood, you mean Lewis Payne? A. Yes, sir.

Q. While your party was in the box, did you see J. Wilkes Booth? If so, state what he did. A. Mr. Booth came there and spoke to Mr. Surratt. They both stepped outside the box, and stood there at the door.

Q. You mean spoke to the prisoner? A. Yes, sir.

Q. State if any one else joined them while they were standing there. A. Mr. Wood.

Q. Lewis Payne, you mean? A. Yes, sir.

Q. How long were these three talking together? A. They remained there a few minutes.

Q. Could you hear what they said? No, sir; I was not paying attention; they were conversing together.

Q. State, if you please, where the box was—in what part of the theatre? A. I think it was an upper box. I do not remember what side of the theatre it was on.

On the next page, referring to the Herndon House, the witness says :

A. I remember passing with Mrs. Surratt; I do not know what month it was.

Q. Who were in company with you and Mrs. Surratt at that time? A. Mrs. Surratt, Mr. Weichmann, and Miss Jenkins.

You will observe, gentlemen, that this young girl, in both the occurrences about the theatre and about the Herndon House, quite unconsciously and innocently, fully confirms Weichmann in all these particulars.

Q. When you got to the Herndon House, state what Mrs. Surratt did and what the rest of the party did? A. Mrs. Surratt went in, the others of us walked up the street a little ways.

Q. Did you wait for her up there? A. Yes, sir.

Q. How long did you wait for her? A. Only a few minutes there.

Now, this is the Herndon House, where I shall show you presently, by the positive evidence of Mrs. Murray and other witnesses, Mrs. Surratt went to get private board for Payne to stay; where she did get it, and where he did stay.

I now turn your attention to another piece of evidence in connection with this. Payne was secreted at the Herndon House, where Mrs. Surratt went to engage a private room for him; and this is another of those striking pieces of evidence which will always appear in trials of this kind. It is a curious thing, in this same month, at this same time, when Booth was in New York, when arrangements are being made by Mrs. Surratt to secrete Payne at the Herndon House—Payne, the man who was in delicate health, and who would take his meals in his rooms; and now let us see what occurred. Here is a telegram, the



original in the handwriting of J. Wilkes Booth himself, sent from New York on the 3d of March, 1865, and it reads as follows :

To — Weichmann, esq., 541 "H" street, Washington, D. C. Tell John to telegraph the number and street at once.

J. BOOTH.

"Tell John to telegraph the number and street at once." Why did not Booth telegraph to John? Here is another of these efforts to conceal what is known to be a criminal knowledge. He wants to take a roundabout way to accomplish the end. Why did he not telegraph to John? Why did he want the despatch to go through Weichmann? He mentions John's name, and knows that Weichmann, his room-mate, will show the telegram to John, and therefore he says to Weichmann, tell John to telegraph the street and number at once. What does Weichmann do? He does tell John; and now let us see what occurs. He takes this telegram to John, and, finding it was something he did not understand :

Q. What did he say? A. I told him I thought it was intended for him. I asked him what number and street were meant. [The telegram reads, "Telegraph the number and street at once."] He says, Don't be so damned inquisitive.

There was nothing very strange that he should ask the question, but John says, "Don't be so damned inquisitive." The number and street was the Herndon House, where Mrs. Surratt had engaged a room of Mrs. Murray. Booth is in New York, and wants to know where Payne is. Therefore he wants John to telegraph the number and street at once, and when Weichmann asks John what it means, the reply is, "Don't be so damned inquisitive."

The testimony goes on :

That same evening he asked me to walk down the street with him. We went as far as Tenth and F, when we met a Miss Anna Ward; he then walked back from Tenth and F streets to Ninth and F streets with me, and went into the Herndon House and called for Mrs. Murray.

That is why he wanted the street and number telegraphed at once.

Q. You went in with him? A. Yes, sir.

Q. When she came he desired to speak to her privately? A. Mrs. Murray did not understand him; then Surratt said, "Perhaps Miss Anna Ward has spoken to you about this room; did she not speak to you about engaging a room for a delicate gentleman who was to have his meals sent up to his room, and that he wanted the room for the following Monday?" which was the 27th of March, 1865. Mrs. Murray recollected, and said that a room had been engaged. The name of the party for whom the room was engaged was not mentioned by myself, by Mrs. Murray, or by John Surratt.

Now you will understand the mystery. You understood it at first. I merely put this telegram with the fact of engaging the room at the Herndon House, in their order of date, and one explains the other. Mrs. Surratt had engaged a room at the Herndon House, and Booth wants to know its location. John goes there with her to talk about the room. Then Payne comes there, and his room is to be telegraphed to Booth, and this is what John told Weichmann not to be so damned inquisitive about.

Mr. BRADLEY, Jr. With the permission of the gentleman, I will interrupt him, simply to ask a question of the court. I believe, according to the practice of your honor, it is not considered regular to interrupt a counsel in the course of his argument. What I desire to know is, that if there is any misstatement of fact made by him in the course of his argument, you will allow us the privilege of correcting it after he is done.

The COURT said that would be done if the counsel should misstate.

Mr. PIERREPONT. I intend there shall be no chance for that, gentlemen, and for that reason I read the testimony from the record. It is so easy for counsel, in the heat of argument, to state evidence differently and give it a different turn and sound from what it is in fact. It is for that very reason that I have taken this laborious way of reaching the evidence upon which I rely, word for word,

and giving counsel the page at which I read. I now read upon the same subject from page 383 :

Q. This was on the 23d of March, I think. Now, on the 24th of March did anything occur or not? A. No, sir.

Q. Then I will come to the 25th of March, 1865. Did you see John Surratt or that day? A. Yes, sir. As I went to breakfast, and looked out of the dining-room window, I saw John Surratt, his mother, and Mrs. Slater, who had been at the house previously, in a carriage containing four seats, to which were attached a pair of white horses.

Q. Do you know where the horses came from? A. Yes, sir. Mrs. Surratt, the same evening, told me that the horses had been hired from Brooke Stabler.

Q. Did the three go away together? A. Yes, sir.

Q. About what time in the day did the three leave? A. About eight o'clock in the morning.

Q. When did you next see Mrs. Surratt? A. I saw her the same evening.

Q. Where? A. In her house.

This you well know is March 26, 1865.

Q. How did she come back? A. She returned alone.

Q. Did she return in the carriage, or in some other way? A. In the Port Tobacco stage—the stage that runs from Bryantown, or Port Tobacco, to Washington, and delivers passengers at the Pennsylvania House.

Q. Did Mrs. Slater and John Surratt return with her? A. No, sir.

Q. Did they come there that night at all? A. No, sir.

Q. Did Mrs. Surratt tell you anything that occurred with them? A. I asked her where John had gone. She said he had gone to Richmond with Mrs. Slater to get a clerkship.

All manner of excuses, you will notice, are given—quite unnecessary excuses, as such excuses are always given to cover up something. Such is the excuse about the farm. He gives you an excuse of what he had gone to Richmond for. You will see them all through. You recollect that John writes a letter to this poor old Brooke Stabler—this broken down keeper of livery—tells him that he did not know how long he should be gone, for he has woman on the brain. If he had had woman on the brain, do you think he would have been very likely to have made that old man the *confidante* of his loves? He did it to conceal from him what he was about. Then you will remember that those horses came back, and now I read from page 385 :

Q. Did you go with her (Mrs. Surratt) to church at any time, and returning, stop anywhere? I do not remember the dates. You will give them. A. Yes, sir. After the 27th, I do not remember the particular evening, Anna Surratt, Miss Jenkins, Miss Fitzpatrick, Mrs. Surratt, and I, had been to St. Patrick's church, on the corner of Tenth and F streets.

Q. What occurred in returning? A. On returning she stopped at the Herndon House, at the corner of Ninth and F streets. She went into the Herndon House, and said that she was going in there to see Payne.

Q. Mrs. Surratt said that? A. Yes, sir.

Q. Tell what occurred? A. She did go, and she came out.

Q. How long was she in there? A. Perhaps twenty minutes.

Q. Did you see her when she came out? A. Yes, sir.

Q. Where were you waiting? A. We walked down Ninth street to E—the party did—and down E to Tenth; and then returned to the corner of Ninth and F, and met Mrs. Surratt just as she was coming out of the Herndon House.

Q. Did she join you? A. Yes, sir; and went home with us.

Q. To her house? A. Yes, sir.

Q. Did she say anything to you? A. No, sir.

Q. Did you have any conversation with her that day on that subject in any way? A. During that week I was one day going down Seventh street, and again near Seventh street and Pennsylvania avenue, I met Atzerodt. I asked Atzerodt where he was going. He replied, "To see Payne." Then I inquired, "Is it Payne who is stopping at the Herndon House?" His answer was, "Yes." I had always been curious to know who that man was who was stopping there.

Q. Did Mrs. Surratt tell you who it was? A. When I mentioned to her, after returning home, that the man Payne who had been boarding at her house was at the Herndon House, she wanted to know how I knew it. I just told her as I have stated here.

Q. What did you tell her? A. That Atzerodt told me. She appeared angry that Atzerodt should have said so to me.

Q. State in what way she indicated her anger? A. Merely by her countenance—her expression.

Mr. PIERREPONT. I come down to the month of April, in which the assassination happened.

Q. Do you know where Mrs. Surratt was on the first of April? A. In the morning, when I left the house, she was sitting at the breakfast table, and when I returned in the evening she was not at home.

Q. When did you next see her? A. She came home a short time afterwards in a buggy driven by her brother, Mr. Jenkins. She said that she had been to Surrattsville.

Q. Did she say anything more? A. No, sir.

Q. On that 1st of April, or the evening of that day, did you see either of these parties at the house? A. No, sir.

Q. On the 4th and 5th did you? A. I saw Atzerodt at Mrs. Surratt's house on the 2d of April. She had again sent me on the morning of the 2d of April to the National Hotel to see Booth, and if he was not there, to go and see Atzerodt, and tell either of them she wanted to see him that morning.

Q. Did you go? A. I went to the National Hotel, but Booth was not there.

Q. Did you find Atzerodt? A. I then went to the Pennsylvania House, and right in front of the Pennsylvania House I saw Atzerodt standing and holding by the bridles two horses; one was a very small one, and the other a very large horse, blind of one eye. Said I to him, "Whose horses are those?" He replied, "One is mine and the other is Booth's." I then communicated my message to him, and he requested me to get on one of the horses and ride back with him. I refused, stating that I wished to go to church. He then said he would go to church with me. Then I mounted the horse, and Atzerodt and I rode to Mrs. Surratt's house. Atzerodt got off and went in to Mrs. Surratt's, and I remained outside part of the time, taking care of the horses. That same afternoon, Mrs. Surratt said to me that Mr. Jenkins, her brother, would like to return to the country, and that she would be much obliged to me if I would go to the Pennsylvania House and see Atzerodt, and say to him that he would oblige her very much by letting Mr. Jenkins have one of John's horses—meaning her son's horses. I went down to the Pennsylvania House that afternoon with Mr. Jenkins, and I did ask Atzerodt for one of these horses for Mr. Jenkins, stating to him my message as I had received it. His reply was that before he could loan Mr. Jenkins one of the horses he would have to see Mr. Payne about it. I then said to him; "What has Payne to do with the horses? You have said that one is yours, that another is Booth's, and Mrs. Surratt says that the horses are John's." John Surratt himself had told me that they were his, and had shown me at one time a receipt for the livery of the same two horses, the bill amounting to \$30.

Q. What did he reply? His answer was that Payne had a heap to do with them. Mr. Jenkins, Atzerodt, and myself then walked up to the corner of Ninth and F streets, and Atzerodt requested us to remain outside and he would go in and see about the horses.

Now then, gentlemen, you will note this fact. They put Mr. Jenkins upon the stand, and did Mr. Jenkins deny this?

Q. What house was that? A. The Herndon House. He told us to remain outside on the pavement. Mr. Jenkins and I remained on the pavement for about twenty minutes. Atzerodt came out, and he told us that Mr. Payne would not consent to the loan of those horses.

Now, then, we begin to find out who this man Payne was—this sick man, who was to have his meals sent to his private room.

I returned to Mrs. Surratt's house and told her what Atzerodt had said. She said she thought it was very unkind of Mr. Atzerodt; that she had been his friend, and had loaned him the last five dollars out of her pocket.

Q. What more occurred? A. Nothing more on that day.

Q. You didn't get the horse? A. No, sir; Mr. Jenkins walked home the next morning, I believe.

Q. This was the 2d? A. Yes, sir.

Q. Now, on the 3d, what occurred? A. On the 3d of April, after the excitement and noise of the day, I was seated in Mrs. Surratt's parlor in the evening, on the sofa, when, about half-past six o'clock, John Surratt walked into the room. He was very neatly dressed. He had on a new pair of pants. I asked him where he had been. His answer was, to Richmond. I then said, "Richmond is evacuated. Did you not hear the news?" "No, it is not," he said; "I saw Benjamin and Davis in Richmond, and they told me it would not be evacuated."

Q. Was Mrs. Surratt in the room at this time? A. Yes, sir.

Q. What did she say? A. She merely bade him good evening.

Q. How long did he stay there? A. He went up into my room and put on some clean clothes.

Q. Did he go with you? A. No, sir; he went up before me. I went up a few minutes afterwards; I think he called me up stairs.

Q. When you got to the room with him, what did he say? A. He did not say very much. He said that he wanted to exchange forty dollars in gold. He did exchange this forty dollars



in gold for forty dollars in greenbacks. He showed me in the room nine or eleven twenty-dollar gold pieces, and fifty dollars in greenbacks.

Mr. BRADLEY. Before he made the exchange? A. He made the exchange after he showed me the gold. He showed me the gold and the greenbacks at the same time.

Q. Did he say anything as to where he had got the money? I did not ask him where he got it. I expressed a sort of surprise. He said that he had an account in the Bank of Washington, but he did not say that he had gotten this money from the Bank of Washington.

Q. Did he say anything when you expressed your surprise? A. No, sir.

Q. Did you see any other money that he had? A. No, sir; not that evening.

Q. Any other evening? A. No, sir.

Q. That was all the money you saw him have at that time? A. I had seen him before. He always appeared to have plenty of money in his pockets—five dollars and ten dollars. He seemed to be always well supplied.

And yet you see he was a young man with no occupation and without any means; his mother a poor woman, keeping a boarding-house in the city of Washington. I now turn your attention to page 216 of the testimony of this old man, Brooke Stabler, coming in with these various dates, beginning at the beginning:

Q. What was your occupation from the first day of January to the first day of June, 1865? A. I was in a livery stable; taking charge of a livery stable.

Q. Whose stable was it? A. John C. Howard, on G street, between Sixth and Seventh.

Q. Do you remember the number? A. I do not.

Q. Did you know John Wilkes Booth? A. I did.

Q. Did you know John H. Surratt? A. I did.

Q. Did you know George A. Atzerodt? A. I did.

Q. Did you see them at your stable? A. Frequently.

Q. Did you see them all together there? A. I have seen them together and separately.

Q. What did you see them doing? A. They were talking, sometimes.

Q. Talking together? A. Yes, sir.

Q. State when you first saw John Wilkes Booth at your stable, as near as you can remember. A. I cannot remember exactly the time; it was about the time Surratt entered his horses at that stable in my care.

Q. When did Surratt put his horses at that stable in your care? A. That, I think, is stated in my testimony on the other trial; I do not recollect it now.

Q. Can you state whether it was about February, 1865? A. It was along about that period.

Q. In what manner did Surratt put his horses in your charge? A. He left them there to be taken care of—to be fed and watered.

Q. How many were there? A. Two.

Q. Will you describe these two horses? A. They were bay horses. One was an ordinary horse; the other was rather a fine horse—saddle horses.

Q. Were both horses, or one a mare? A. Both horses.

Q. What was the direction he gave you about them? A. His direction was that he wanted them taken care of in the best manner I could.

Q. In reference to their use, what did he direct? A. That they were not to be used except by his order.

Q. Did he give you any order about their use? A. He gave me an order on one occasion for Booth to use them.

Q. What did he say in giving that order? A. His directions were that Booth and no one else was to have his horses, but that Booth could get them at any time.

Q. Booth could get either horse at any time; he did not mention any one? A. I do not recollect that he did; Booth usually got one horse.

Q. Which one? A. The better one.

Q. When these men came, did they come together or separately? A. Sometimes two of them would come, and I believe all three of them have come together.

Q. How was it generally; did they all come together, or separately? A. There were generally two of them.

Q. How often in the course of a day were they there sometimes? A. Two or three times a day, sometimes.

Q. Did you see Atzerodt ride out with Surratt on any occasion? A. I did on one occasion.

Q. Did you have any written order from Surratt? A. I had one.

I now come to the letter which Surratt wrote to Brooke Stabler when he returned these horses on the 26th of March, and went off with this woman, Mrs. Slater, or Mrs. Brown—sometimes she went by one name and sometimes by the other. This was the letter which he returned with the horses:

MARCH 26, 1865.

Mr. BROOKS: As business will detain me for a few days in the country, I thought I would send your team back. Mr. Bearer will deliver in safety and pay the hire on it. If Mr.



Booth, my friend, should want my horses, let him have them, but no one else. If you should want any money on them he will let you have it. I should have liked to have kept the team for several days, but it is too expensive, especially as I have woman on the brain, and may be away for a week or so.

Yours respectfully,

J. HARRISON SURRETT.

Well, he had woman on the brain, had he? Was that what he went down there for? And was this poor old stable-keeper the man to whom he communicates his amours? Do you believe that is so, or was this letter for a mere blind? "I should like to have kept them, but could not; it was expensive, especially as I have woman on the brain and may be away for a week or so." He had something else on the brain, that was put on his brain at the time, or at a little before the time he wrote this card. "I tried to get leave, but could not succeed." He took his leave. He never got a cent of the money that was due to him; he had not a cent of resources in the world. His mother was a poor woman, as the counsel tells you, in very straightened circumstances, as she undoubtedly was. Where did he get his money? Where did he buy his horses? Do you suppose women on the brain gave him any money? He says "that is expensive." It is apt to be so. Where, I say, did he get his money, and how did he buy his horses? How could he have them kept at this great expense? "If Booth, my friend, should want my horses, let him have them, but no one else." I read again:

Q. Who did you see Surratt ride out with from your stable with any of the horses? A. I have seen him ride out with Booth, and I have seen him ride out with Atzerodt.

Q. Did you receive any other note from John H. Surratt? A. Not that I recollect of now.

That recollection, however, was refreshed afterward, and he produced the note. And it is a note in the case. I will presently read it. I turn now to read from the testimony of this same witness:

A. I have seen Booth, Atzerodt, and Herold.

Q. With whom? A. With Surratt.

Q. Did you omit any name yesterday? A. Yes, sir; Herold's name was omitted yesterday.

Q. Did you have any conversation with either of those men in relation to Surratt's trip anywhere; and if so, what was it? A. I had with Atzerodt.

Q. State what it was. A. He showed me the conclusion of a letter which he had received from Surratt, stating—

Mr. BRADLEY. Never mind that.

Mr. PIERREPONT. You can state what Atzerodt said. What did he say? A. He told me that he had a letter in his hand from Surratt, but that he would not let me see it at all. He opened it, and the concluding paragraph I read.

Q. What further did he say? A. He said that in that letter—

Here comes an objection by the counsel to this evidence going in, but it was admitted by the court, and this answer is given:

He told me that he would not show me the letter—the body of it—but that he would show me the latter part of it. He stated that the letter was dated in Richmond, and that he had understood that the detectives were after him, and he was making his way north as fast as he could. That is about the amount of what Atzerodt told me.

I read from the same page:

Q. He did not name whose particular squad, that you remember? A. No sir; I do not recollect that he did.

Q. You say government detectives—detectives of what government? A. Government of the United States.

I now refer to page 223, to give you the other order from the prisoner already referred to in the testimony of this witness:

Mr. Howard will please let the bearer, Mr. Atzerodt, have my horse whenever he wishes to ride: also my leggings and gloves; and oblige yours, &c.,

J. H. SURRETT.

541 H street, between Sixth and Seventh streets, *February 22, 1865.*

This is the note written by Surratt to Brooke Stabler, not only to let Booth have his horses, as did the other note, but also to let Atzerodt have his horses. Referring to these parties coming together to the stable, his testimony is given:

Q. What did they do when they got down to the back part of the stable? A. That I do not know. They would be conversing together. Frequently I noticed that.

Q. Will you state what the manner of the conversation was, so that these gentlemen can understand it? I mean as to whether it was in a loud or in a confidential, whispering tone? A. They would generally be about 150 feet from me—from 100 to 150 feet. Sometimes I would see them when they would be down there; at other times I would not; I would be busy in the office.

Q. Could you hear anything they said? A. No, sir.

Q. What was their manner of conversation? A. It was not so that I could hear any voice at all.

I turn now to the testimony of James W. Pumphrey, page 225:

Q. State when, where, and under what circumstances you first formed his acquaintance. A. John Wilkes Booth came to my stable one day for a saddle horse; he asked for the proprietor; I stepped up and told him I was the man; he said he wanted a saddle horse to ride for a few hours; I cannot tell the exact day that he came there; I did not know at the time it was Booth, but found out that it was after talking with him for a short while; he said he wanted a saddle horse to take a few hours' ride in the country; I told him I could let him have one; he said he did not wish any but a good one; I told him I had a very good saddle horse, I thought; he then said, "I wish you would have him saddled;" I ordered him saddled, and then said to him, "You are a stranger to me, and it is always customary with me when I hire a horse to a stranger to have him give me some security, or some satisfactory reference." At that time Mr. Surratt—I do not know whether he stood across the street, or came over—

Q. The prisoner? A. Yes, sir; Surratt said he knew him; that it was Mr. Booth, and he would take good care of the horse; I cannot now tell whether the prisoner came over and said this to me, or stood on the opposite side of the street and hallooed across.

Q. How long have you known the prisoner? A. A great many years.

Q. State as near as you can all that Surratt said at that time? A. I think he said he would see me paid for it; that he was going to take a ride with Mr. Booth.

Q. Go on. A. That is about all; I went in and ordered the horse to be saddled and brought out; there were some gentlemen sitting in front of my stable at the time; who they were I do not know.

Q. What kind of a horse was it? A. A light sorrel. When I came out with the horse saddled, he was gone; I asked some of them out at the door where he went? They said they thought he went to the Pennsylvania House. The boy stood at the door with the horse, and I stood out there watching for him. I saw him come out of the Pennsylvania House; he came out alone, and came over and started off on the horse alone.

Again:

Q. I will ask you if you saw him on the 14th of April, 1865? A. Yes, sir. He called at my stable that morning.

Q. State what time it was you saw him. A. Somewhere between 11 and 1 o'clock, as well as I can remember. I did not pay much attention to the time. He called for a saddle horse, stating that he wanted to ride that afternoon. He expressed a desire to have the same horse that he had been in the habit of riding. I told him he was engaged, and therefore he could not have him. He wanted to know if I could not put the person off to whom I had engaged him, and let the man have the horse that I was to give to him. I told him I could not do that. He then wanted me to give him a good one. I told him that the horse I was going to give him was a very good saddle horse. I told him I thought so, and he would think so after he had ridden him. He says: "Well, don't give me any but a good one." I told him I wouldn't; that I would give him a little mare; that she was small, but a very good one.

On page 327 Fletcher was called. He says we was at Naylor's stable on the 14th of April; that he saw Atzerodt and Herold at the stable, but not together. That he saw Atzerodt first. On page 229 this witness states, referring to occurrences on the night of the 14th of April:

Atzerodt came after his horse about 10 o'clock. I sent one of the boys down to the stable to get the horse ready for him. He afterwards wanted to know if I would not go and take a drink with him. I told him that I had no objection. He and I then went down to the Union Hotel and had a glass of ale. He asked if I would have any more. I thanked him, but told him I would not take any more. Returning back to the stable, he said to me, "If this thing happens to-night, you will hear of a present."

That was what Atzerodt told the keeper of the stable from whom he obtained these horses. He could not keep it in, he was so full of it, so sure of it. He says, when he was getting this horse and drinking with him and wanted to treat him over again, "If anything happens to-night you will hear of a present."

When he had mounted his horse I remarked to him, "I would not like to ride that horse this time of night; he looks too scarish." Said he, "He is good on a retreat."

Further on:

Q. Did you see Herold again? A. Yes, sir.

Q. Where? A. On the corner of Fourteenth street and the avenue.

Q. State what he was doing. A. He was coming down the avenue from Fifteenth street. He was not riding very fast. It seems he knew me. I went up to him and demanded the horse.

Herold did get one of his horses this same night.

Q. About what time was that? A. I think it must have been twelve minutes past 10 o'clock.

Q. How long after you had seen Atzerodt turning up Tenth street? A. I cannot say how long. I walked just as fast as I could from Twelfth street to Fourteenth street. When I demanded the horse from Herold he paid no attention to me, but put spurs into the horse, and went up Fourteenth street as fast as the horse could go. I kept sight of him until he turned east of F street. I then returned to the stable, saddled and bridled a horse, and started after him.

He afterwards saw the horse, as he says on the next page, at Major General Augur's headquarters, the horse having been caught in the night, after the murder, and returned there.

Mr. Toffey, on page 231, gives an account of the catching of this horse. He says:

On the night of the 14th, or the morning of the 15th of April last—it might have been a little after one—as I was going to the Lincoln hospital, where I am on duty, I saw a dark bay horse, with saddle and bridle on, standing at Lincoln Branch barracks, about three-quarters of a mile east of the capitol. The sweat was pouring off him, and had made a regular puddle on the ground. A sentinel at the hospital had stopped the horse. I put a guard round it, and kept it there until the cavalry picket was thrown out, when I reported the fact at the office of the picket, and was requested to take the horse down to the headquarters of the picket, at the Old Capitol prison.

I now bring your attention to another kind of evidence. On page 203 is the testimony of Mr. Samuel A. Rainey. He says he lives in Washington; has lived here for twenty years. His business is keeper of a livery stable.

In answer to the question, who took the livery stable with him in 1865, he says:

A. Dr. Cleaver; his name is William E. Cleaver.

Q. Was he a veterinary surgeon? A. Yes, sir.

Q. How long did you and Cleaver continue together in that business? A. To the best of my recollection some eight or nine months; not quite a year.

Q. He and you, from the 1st of January to the 1st of June, were partners? A. Yes, sir.

Q. Were you equal partners? A. Yes, sir.

Q. Did you keep the books of the firm? A. They were kept by Dr. Cleaver. My health was bad during that year—I was very little at the stable—and it is bad still; I was there off and on, but not regularly.

Q. Did you know John Wilkes Booth? A. Only by name; I was not acquainted with him.

Q. Did he come to your stable, and did you see him there two or three times? A. I remember seeing him there once or twice—once that I remember.

Q. I suppose you know what Surratt came there for; if so, state. A. Yes, sir. It is customary for men coming there to have business, generally.

Q. What was his business? A. Surratt came there on one occasion to get a horse.

Q. At what time was that? A. I do not remember; my partner hired the horse.

Q. You saw him there? A. I saw him there.

Q. Have you any memory of what kind of a horse that was? A. To the best of my recollection it was a bay mare.

His partner, he says, was Cleaver. I now turn to page 205, the testimony of Cleaver, called Dr. Cleaver.

Q. How long have you been a veterinary surgeon? A. Seventeen years in this city.

Q. How long have you lived here? A. About seventeen years.

Q. Were you educated as a veterinary surgeon? A. Yes, sir.

Q. In 1865, or prior to 1865, did you keep any other stable in any other place? A. Yes; I kept a stable on B street.

Q. Did you know J. Wilkes Booth? A. Yes, sir.

Q. Did you know John H. Surratt? A. Yes, sir.



Q. How long have you known John H. Surratt? A. About twelve years, I think; ten or twelve years.

Q. Have you had a speaking acquaintance with him? A. Yes, sir.

Q. What was the mode in which you addressed him and he addressed you? A. He came down to hire a horse of me at the time Booth kept his horse with me.

Q. What did you call him and he call you? A. I usually called him "John," and he called me "Doc."

Q. When did Booth first bring his horse to you to keep. A. The 1st of January, 1865, the day we got the stable.

Q. And to that stable on 6th street? A. Yes, sir.

Q. What was the health of your partner at this time? A. He is sickly all the time.

Q. State what horse Booth brought. A. He brought a one-eyed bay horse first.

Q. What next? A. About ten days afterwards he brought a light bay horse, very light bay.

Q. Did he bring any others? A. No, sir.

Q. At what time was this? A. In January, 1865. I think you will find it in the book there.

Q. State whether you saw him and Surratt there together. A. Yes, sir.

Q. What were they there together about? What did they say and do? A. I do not know; the first time I hired a horse to them. The first time I saw Surratt there with Booth, Booth came, I think, and paid one or two weeks' livery. Then, three or four days after, he came down and I hired him a horse to go into the country.

Mr. BRADLEY. Hired to whom?

A. To Surratt. He came and hired a horse two or three times. The next time Booth and Sam. Arnold came there together.

I now pass to near the bottom of this page.

Q. What time was it that he got there? A. About seven o'clock that evening. It was raining very hard. He came about three and ordered them.

Q. When he came at seven what occurred? A. He came there; I was standing in the gangway. It was raining very hard.

Now here is a fact, gentlemen. I pause to comment for a moment. They say because Cleaver has shown himself to be of violent passion in a certain way, he cannot tell the truth. I appeal to you as men of sense, to your experience, and ask you whether it is your experience that that fact so changes a man's truthfulness, as far as you know. My experience is not that a man's getting drunk changes his truthfulness. A man may have a passion for liquor, a passion for other things. I have known some men, entirely truthful men, who were drunk three times a week, and whose truthfulness, whether everything or anything was at stake, nothing could shake. But in this case the testimony of this man, as you see, bears evidence of truth. He gives distinct dates and particulars. How could he know it was raining at this particular time, and at this particular date, if he fabricated his testimony? You, gentlemen, know that a record is kept here at the Smithsonian Institute, and one other place in Washington, every hour in the day, from one year's end to another, of the state of the weather, the state of the clouds, and of the amount of rain that has fallen, whether it rains or is not raining, and that if he were not testifying to the truth, how easy would it have been to contradict him, and prove that his testimony was false; and yet my learned friends have not brought a single witness to dispute his statements.

I asked him if he was going to the country on such a night as that. He said yes, he was going down to T B, to a dance party.

This was not woman on the brain; this was a dance party. Always some reason given for whatever he did, and this is the reason he gives for going down into the country that night.

I told him it would have to be a fine dance party that would take me down there such a night as that. I asked him to go over to the Clarendon and get a drink. He said he thought he had had enough then. I thought so too.

Q. Did Booth come? A. He had not come yet; I asked Surratt into the office to sit down.

Q. Did he come in? A. Yes, sir; he came in and sat there some few minutes. He told me he was going down in the country to T B, to meet a party and help them across the river—



He had forgotten the dance then. At first he was going down to T B to a dance, but when he got into the office he was going down for another kind of dance; "that he and Booth had some bloody work to do; that they were going to kill Abe Lincoln, the d——d old scoundrel; that he had ruined Maryland and the country. He said that if nobody did it, he would do it himself, and pulled out a pistol and laid it on the desk. And he represented two counties in Maryland."

Well, he was pretty tolerable drunk, I suppose. At this time he felt as if he could represent a dozen counties. He pulled out his pistol as he did on the ship when he thought he saw an American detective, and said that would settle him. He pulled out his pistol as he did when near the coast of England it was suggested he might be arrested in England. He pulled it out here in the same style when telling of the great things he was going to do.

Q. State whether the rain continued? A. Yes, sir, very hard.

Is there any lying about this? Cleaver did not know the record would show this fact when he testified about how hard it was raining.

Q. Did Booth come? A. He came about eight o'clock.

Q. State whether there was any conversation afterward between Booth and Surratt? A. Mr. Surratt chastised him for being so late—for keeping him waiting so long.

Q. Will you explain what you mean by the word "chastise?" A. I think he was going to hit him in the face with a glove or something of that kind—in joke, of course. He either bit at him, or hit him, I do not know which.

Q. Jokingly? A. Yes, sir.

Q. I simply wanted to know whether you used the word "chastise" in the ordinary meaning of it, or whether you meant to chide—find fault? A. Yes, sir; to find fault.

I shall have occasion on another subject, and in another part of this case, in regard to Cleaver's testimony in another matter, to show you from this printed book how that testimony was brought out. Whatever abuse the other side may choose to heap upon Mr. Ashley or anybody else who brought it out, certainly Cleaver did not deserve any abuse for the mode in which it came out, for you know it came out most reluctantly. He tried to keep it in. He was an Englishman. He was our enemy. He did not want to say a word about it. He told it in confidence to a fellow-prisoner. It was subsequently found out by a member of Congress, who indirectly got hold of it and made it known to the district attorney. It was forced out of him by power—not willingly. He did not mean to say a word.

I now come to another piece of testimony, which is very remarkable, perhaps the most so of any in this case, teeming in all its aspects, in all its fearful bearings, when you consider how it comes out, how unwillingly, how reluctantly it is made to appear—I mean the testimony of Mr. John M. Lloyd. Mr. Bradley, if I remember correctly, charged him with being a liar, and in the conspiracy. He also charged him with being a drunkard. I believe he drinks; I have no doubt about that. He was not drunk when he gave his testimony; he was not drunk when the officers of justice who went after Booth and Herold passed his house to give the arms which the prisoner himself had there concealed; and when he told them he had not seen Booth, Herold, or anybody, he was not drunk. He lied to them; he says he lied to them. He says he knew Surratt; he knew Mrs. Surratt; he was Mrs. Surratt's tenant. He knew it would involve her in difficulty, and he wanted to shield her. He did want to shield her, and when we got him upon the stand we had to handle him with a delicacy not common; with a care that kept the mind alive, I can assure you. He would have concealed every important fact in this case if he could have done it. I believe no man rejoiced more at this murder than he. I believe that no man would have assisted in the murder sooner than he, and I agree with Mr. Bradley that he was a party knowing to this crime, and believing himself implicated, made every effort to conceal it. The testimony is strong upon that point. He tried to conceal it in giving his testimony. You will see when I read it:

Q. Will you state where you lived in the year 1865? A. I moved to Surrattsville about the last of December, 1864. I resided at Surrattsville up to October, 1865.

I now come to page 277. He is asked whether he knew Mrs. Surratt.

A. Yes, sir; my acquaintance with them was very short the whole time.

Q. Did you rent this house of her? A. Yes, sir.

Q. Did you know one David E. Herold? A. I knew David E. Herold; he was at my house on several occasions. I first saw him, I think, at Mr. Birch's sale.

Q. You saw him several times afterwards? A. Yes, sir.

Q. Did you see him at the conspiracy trial? A. I did.

Q. Did you know one George A. Atzerodt? A. I never knew him by that name until two weeks before the assassination. I used to call him by the name of Israel.

Q. By what name did the prisoner call him? A. Well, he came in there one morning with him, and laughingly stated something about somebody calling him "Port Tobacco;" this is the only time I ever heard the name made use of.

Q. Did you see him at the conspiracy trial? A. Yes, sir.

Q. I will ask you if you ever saw David E. Herold, George A. Atzerodt and the prisoner at the bar in company together? A. One morning, probably about five or six weeks before the assassination, Surratt and Atzerodt came to my house. Herold had been there the night before, and said that he was obliged to go to "T B" that night: he stopped in there and was playing cards; he played several games; the next morning Surratt and Atzerodt drove up.

You will note here that he stated Herold had been there that night and said he was going to T B. We shall bring the witnesses presently to show you what he did at T B, and what arms he had with him—I think you remember something about it.

Q. You saw the three men at your house at that time? A. Not until after that.

Q. When? A. About half an hour after that; Surratt and Atzerodt left and went down the road, and I supposed in the direction of "T B." They all three returned together, Atzerodt, Herold and Surratt.

Q. Now we have them all three at your house; state what they did. A. There were several other persons besides them there at the time. I therefore paid no particular attention to them. They came in and took a drink, probably, and were playing cards, as well as I remember. After a while Surratt called me into the front parlor, and said he wanted to speak to me. There I saw lying on the sofa what I supposed to be guns; they had covers on them. Besides these there were two or three other articles.

Q. State what the other articles were? A. One was a rope—a bundle of rope as big around, I suppose, as my hat, (a black felt hat of ordinary size;) it was coiled rope. I should think from the size of the bundle that there was not more than 18 or 20 feet in it. I took it to be an inch and a quarter rope.

Q. What other articles do you think of? A. There was a monkey-wrench.

Q. If you saw those things again would you be able to identify them? A. I cannot say that I could.

Q. State what the prisoner said to you about those things after he had shown them to you? A. He wished me to receive those things and to conceal the guns.

This is the prisoner, you will recollect before this murder, and these (pointing to carbines placed in evidence) are the guns, the very guns.

I objected to it and told him I did not wish to have such things in the house at all; he assured me positively that there should be no danger from them. I still persisted in refusing to receive them, but finally, by assuring me most positively that there would be no danger in taking them, he induced me to receive them. He did not say what sort of guns they were, as well as I can remember.

Q. State what you did after you consented to receive and conceal them? A. I told him there was no place about the premises to conceal such things at all, and that I did not wish to have them there. He told me then of a place where he knew it could be done; he then carried me up into a back room from the store-room.

Q. Had you ever been in that room before? A. Never. I supposed the place was finally closed up. I did not know that there was anything kept there at all. I tried on several occasions to get in there to have it occupied as a servant's room, for persons passing backwards and forwards very frequently stopped there in the winter with servants, and I had no place to put them, but had to let them lie down stairs on my lounge.

He says he had never seen this place before, but Surratt knew it. Surratt took him to this secret place with the guns, the cartridge-box and the ammunition, as I shall presently show.

Q. After you and the prisoner went into this room with these articles, state what you did.

A. I put them in an opening between the joists of the second story of the main building.

Q. Do you recollect of any other articles that you have omitted that he brought to you at that time? A. Nothing more was brought at that time.

Q. State whether or not there was any ammunition brought there? A. There was a cartridge-box brought there; whether it was full of ammunition or not, I am not able to say.

Q. Did you examine it to see whether or not there was any in it? A. No, sir. I did not examine anything at all.

Q. Did you conceal that with the guns? A. Yes, sir; that was put with the guns.

Q. What did you do with the rope and the monkey-wrench? A. I left the monkey-wrench and rope at Surrattsville when I moved away. What has become of them I cannot say.

Q. What part of that building did you deposit these articles in? A. I deposited them in the store-room.

Q. Explain that. A. The store-room is a place where we kept barrels of liquor and such like.

Q. It was not the same place where the guns were put? A. No, sir.

Q. State how long Surratt wanted you to keep these articles? A. He told me that he only wanted me to keep them two or three days, and that he would take them away at the end of that time. On that condition I consented, and that alone.

Now, taking Lloyd's own testimony, I will ask you to say if he did not know there was mischief brewing, for which these arms were concealed; have you any doubt about that? He admits himself that when the guns were called for he knew all about it, or knew enough about it to put him on his guard, and enough about it to have made him guilty.

Q. Did anything else pass between you and the prisoner at that time? A. Nothing more, as far as I remember.

Q. What afterward happened between these parties? A. I do not know of anything particular happening after that, except that they engaged in playing cards.

Q. How long did they stay at your house playing cards after those things had been concealed? A. I do not remember distinctly, but probably half an hour.

Q. What did they then do? A. They left.

Q. Did they leave in company with each other? A. That I cannot say; I did not see them when they left. They all went out on the porch together, as well as I remember.

Q. When was the next time you saw the prisoner? A. I think I met him two or three days after that going down to Surrattsville, and I supposed at the time that he was going to take those things away; and I said nothing to him about them.

Q. Did you have any conversation with him at all? A. Nothing more than that he asked me if he could get his breakfast down there. I told him I thought so—some ham and eggs. I was on my way to Washington when I met him. He got his breakfast there, I think.

Q. Did you see him any more after that? A. I saw Surratt again after that, as well as I remember, on the 25th of March.

Q. Did you see him again before the assassination? A. I met him about a week after that on the stage, about four or five miles this side of Surrattsville, returning to Washington, while I was returning home. He was on the stage and I was in my buggy.

Q. Did you ever see him any more? A. No, sir; not until now.

Q. Did you see Atzerodt after this interview that you have described? A. I saw Atzerodt I think, once after that.

Q. Where was that? A. I met him about at the Selbyville post office. That is, I met him twice that day. I met him once on the Navy Yard, and in the evening while he was coming on.

Q. Did you ever see them all in company together after that? A. No, sir; I think that was the only time I ever saw them all in company, that I remember of.

Q. You have stated that you knew Mrs. Surratt, and rented this house from her. I will ask you if you saw her shortly before the assassination of the President; and if so, when and where you saw her? A. I met her on two occasions.

Q. State where it was the first time? A. The first time I saw her was in Uniontown. I think it was the Tuesday.

Q. Previous to the assassination? A. Yes, sir.

Q. State in whose company she was? A. She was in company with a young man whose name I did not know. Since that time, however, I have discovered his name to be Weichmann.

Q. Where was she standing or sitting? A. She was sitting in the buggy alongside of Mr. Weichmann, in one of these high, narrow buggies.

Q. State if you had any conversation with her; and if so, state what was said by you both at that time.

The COURT. What day of the month?

The DISTRICT ATTORNEY. The Tuesday before the assassination is the way the witness fixes it in his mind.

WITNESS. She made use of a remark to me—called my attention to something that I couldn't understand.



Mr. MERRICK. Who did?

WITNESS. Mrs. Surratt.

Mr. MERRICK. Just state what was said, or the substance of it, not your understanding of what was said or your failure to understand what was said.

WITNESS. I do not wish to state one solitary word more than I am compelled to.

We called upon the court, and the court told the witness that he was compelled to answer, and he finally did give a reluctant answer. This question was put by the court.

State what was said, as far as you recollect, whether you understood it or not.

WITNESS. She tried to draw my attention to something.

Mr. MERRICK. No matter what she tried to do. State what she did say and did do.

WITNESS. She finally came out and asked me about some shooting irons that were there.

Now, this makes one feel very much as the prisoner did I read you about, in reference to the false *alibi*, where the man said when the jury went out, he felt such a chill come over him as he never had felt before. She finally came out and asked him about some shooting irons that were there.

Q. Where? A. At Surrattsville, as I supposed.

WITNESS. As well as I recollect, in speaking of the shooting irons, she told me to have them ready.

This was on the day of the murder, gentlemen—on the afternoon of that fatal day. How did she know that her son had concealed these shooting irons where they now lay in that secret room that even Mr. Lloyd had not known?

As well as I recollect, in speaking of the shooting irons, she told me to have them ready; that they would be called for or wanted soon, I forget now which. Either expression sounded to me as if it amounted to the same thing, for I was satisfied.

What was he satisfied about? He was satisfied that she knew of these secret arms. That she knew her son had concealed these arms. That, gentlemen, is not drawing any long inference from this evidence. Is it not a fair statement of it? What do you say about it? What will you say when you go before your God about it? What do you think about it now?

Q. Now state what you said to her? A. When she made this remark, I told her I was very uneasy about those things being there; that I had understood the house was going to be searched, and I did not want to have those things there; that I had a great notion to have them taken out and buried, or done something with.

Buried! as you bury a murdered corpse. Buried! Why buried, if they are innocent things?

Q. What did she say then? A. The conversation then dropped on that, and turned on John Surratt. I told her I had understood that the soldiers were after John to arrest him for going to Richmond. I had understood that he had gone there. She laughed very heartily at the idea of anybody going to Richmond and back again in six days, and remarked that he must be a very smart man indeed to do it.

Q. Anything more? A. That was about the substance of the conversation that passed between Mrs. Surratt and myself at that interview. It did not last longer than between five and ten minutes.

Q. Did you see her any more from that time until the 14th of April, the day of the assassination? A. She was there on the evening of the Friday of the assassination, I think.

Now we are down to the day of the murder. She comes there again, and what occurs? The evidence of the Tuesday's proceedings we have gone through with; let us see what she did upon the day of the murder.

Q. What persons did you find at home when you got there? A. I found a good many gentlemen there—I suppose some ten or twelve. I saw there, among others, Mrs. Surratt and this man Weichmann.

Q. State if you then had any conversation with Mrs. Surratt; and if so, on what part of your premises, and what that conversation was? A. When I drove up in my buggy to the back yard, Mrs. Surratt came out to meet me. She handed me a package, and told me, as well as I remember, to get the guns, or those things—I really forget now which, though my impression is that "guns" was the expression she made use of—and a couple of bottles of whiskey, and give them to whoever should call for them that night.

What are you going to do with that evidence, gentlemen? Will you brush it away? If so, when you come out I hope you will tell our fellow-citizens why; that you will explain it, and let it be known to the world. She gave the



witness a couple of bottles of whiskey and told him to give them to whoever should call for them that night. Why the guns? Why the field-glass? Why the cartridge box? Why that field-glass taken by her from the city that day? Why the bottles of whiskey, to be called for that night? Who was to call for them that night? I go further now, and show what became of the package she took from the buggy.

Q. You speak of a package which she showed you at that time. What was it? A. I did not notice the package until probably an hour later or more.

Q. When did you notice it? A. I thought of it and carried it up stairs, and it feeling rather light, my curiosity led me to open it to see what it contained. I read in printed letters on the front piece of it, "field-glass." These letters were on a small part of it.

The field-glass is on the table before you, and you can see these letters there now, if you have the curiosity to read them.

Q. You discovered that about an hour afterwards. What disposition did you make of it at that time? A. I put it with the other things.

Q. You mean with the gun and cartridge-box? A. Yes, sir.

That gun and cartridge-box, put in that secret room, behind the joists, where he got them that night.

Q. Do you recollect of any of these parties to whom I have called your attention—Surratt, Atzerodt, or Herold—coming to your house that night, after this interview? A. Herold was there about 12 o'clock that night.

At a little after 10 o'clock that night, as you remember, the murder was committed. Herold was there about 12.

Q. The same person who was at you house on Tuesday? A. Yes, sir.

Q. Who was in company with him at that time? A. I do not know.

He did not know who this was. We could not get him to tell, and only by some dexterity were we able to get it out of him. He was determined he would not tell that that was Booth. And when he saw that the counsel were trying to make it appear that he was so far off that he could not hear the conversation, and therefore could not give any evidence of what was said—he was ready to put him as far off as he could. Now let us see what he says here:

Q. State what Herold said about that time? A. Herold said when he came into the house—when I opened the door—"Mr. Lloyd, for God's sake make haste and get those things." He did not name what things they were.

He would not name what things they were. But he already admitted that he knew exactly what things they were. Mrs. Surratt had been there a little while before, and asked him to get these things ready.

Q. When he said that what did you do? A. I went up stairs and got them.

Q. What things? A. I got one of the guns, the field-glass, and the cartridge-box, which was all I could bring down at that time, and I did not go back any more.

Q. To whom did you give these things? A. To Herold.

Q. Did you offer anything to the other person? A. I do not think I did. I do not know whether the other person took anything or not. If he took anything at all, it was nothing more than a field-glass.

Then we had a great contest here about what should be told. Finally we asked him, When did you first hear of the assassination? He did not want to tell.

WITNESS. I will state that at the time this man was speaking to me as to what had been done, Herold was across the road. That is, as far as my memory serves me, I think he was.

The DISTRICT ATTORNEY. At the time he was speaking of himself—complaining of having something the matter with him—was Herold present, or in such a position that he could hear what he said?

WITNESS. I believe Herold was present when he told me his leg was broken.

Mr. BRADLEY. Has that anything to do with Herold?

Mr. PIERREPONT. Yes, sir, it has.

The COURT. The whole conversation, I presume, is evidence.

Mr. PIERREPONT. In the presence of Herold, he said his leg was broken. What further did he say after saying that?

The COURT. In Herold's presence and hearing.

Mr. BRADLEY. The court will rule whether he can go on and state what passed.

You see the strong effort made to assist him in keeping Herold separate from Booth, as he was endeavoring to do. Now let us see what he further says:

WITNESS. He asked me if there were any doctors in that neighborhood. I told him only one that I knew of, Dr. Hoxton, about a half mile from there, but that he did not practice. He told me so himself. He said he must try and find one somewhere.

Q. Did he say anything about taking any gun? A. He was opposed to taking any gun, and opposed to Herold taking one.

Q. Why? A. Because his leg was broken.

Q. Did he, or Herold, mention his name at that time? A. No, sir; there was no name given at all.

Q. Did you have a good look at the man? A. I was close to him, but did not pay particular attention to him. He appeared to me as if he was drunk.

You see here the great struggle that occurred, and which finally resulted in bringing out that this was Booth from this reluctant witness. But we did at last succeed.

A. I do not remember that he said anything else. He may have done so, but if he did it has escaped my memory, except that portion that I was going to tell awhile ago, but was stopped.

Q. You were going to tell something else? A. Yes, sir; I suppose it will come out hereafter.

Q. You were going to tell something else that the man with the broken leg said, were you? A. Yes, sir.

Q. What was the condition of the moon at that time? A. The moon was up, but it appeared to me as if it had not been up very long.

Q. When did you first hear of the assassination?

Then objection was made by counsel in the most zealous way to our asking the question, "When did you first hear of the assassination;" we had a long debate, the court ruled and my question was repeated.

WITNESS. I cannot answer that question.

We then had another struggle. The court told him he must answer, but he said he could not answer that question until the other was settled. I said to him:

You cannot say whether you heard of it a week afterwards, the day before, or that night? A. It might be the second time.

Mr. PIERREPONT. My question is not as to the second time. I ask you on your oath to state when you first heard of this assassination.

WITNESS. If I answer that question, it will come exactly in contact, in my opinion, with what has already been prohibited by the court.

The witness was very much afraid he should do something illegal in this testimony. He came to it as a legal question, and he would not answer it until the court directed him to answer it. I then repeated the question:

I now ask you when you first heard it?

WITNESS. On that ground then I cannot answer.

Well, we had a hard time of it, as you see. I said:

I do not ask you who stated it, I ask you when you first heard it?

WITNESS. That is the question I am to answer; I cannot answer it.

The COURT. You must answer that question, when you first heard the news of the assassination.

You see this witness had a legal opinion as to the propriety of his evidence, and it was only after a very severe reprimand by the court, and after all these efforts by counsel, that it was finally dragged out of him, that he heard it that night.

Q. Were they then both before your house? A. One was there. I do not know that both were. Herold, I think, was across at the stable.

Q. That is the time you heard it. A. Yes, sir.

Q. You think the man with a broken leg was too far from Herold to have Herold hear him? A. I do.

Q. Could he see him? A. Yes, sir. There was nothing intervening between.

Q. You were close to the man with a broken leg? A. Yes, sir.

Q. Now, tell us what he said about the assassination. A. He did not tell me directly what he did himself. The expression he made use of, as well as I remember, was that "he" or "they" had killed the President. I did not understand which it was, "he" or "they."

Q. Did he say anything about any other man? A. Not a word.

Q. I mean as regards any other person being assassinated? A. I am not certain; but I think it is possible that he might have made use of Secretary Seward's name.

Q. What is your best recollection? A. I think it was him who spoke of it, but I will not be altogether certain about it.

Q. By what familiar or nickname did you hear Atzerodt called? A. I never heard him called very familiarly by any name, except on one occasion, when Surratt told me that some ladies had dubbed him "Port Tobacco."

Q. It was Surratt you heard call him that? A. Yes, sir.

Q. Was Herold present then? A. No, sir.

The hour of three having arrived, the court took a recess until Monday at ten o'clock.

MONDAY, August 5, 1867.

The court met at 10 a. m.

Mr. PIERREPONT, resuming his argument of Saturday, said:

I proceed with the testimony of Lloyd, which was nearly closed when we adjourned on Saturday. I read from page 399:

Q. You have stated that you knew Mrs. Surratt, and rented this house from her. I will ask if you saw her shortly before the assassination of the President; and if so when, and where you saw her? Witness. I do not wish to go into the examination of Mrs. Surratt, as she is not here to answer before this tribunal.

I next read from page 408:

Q. You state you took the paper off the package; what did you first see? A. My curiosity prompted me to open the cover of it. (The glass was here handed to the jury for inspection.)

Q. What did you find when you removed the paper covering? A. I found an instrument a good deal like this.

Q. As to the case? A. I found the case, I suppose, something similar to this. It was a leather case.

Q. You found that first? A. Yes, sir.

Q. Then you opened it? A. Yes, sir.

Q. Whatever Mrs. Surratt left there of this kind you gave to somebody that night? A. Yes, sir.

Q. Did you give it to the one with the broken leg, or Herold? A. I think Herold took it off. As well as I remember, I did not go outside of the gate until Herold took the things. I think Herold took them out.

At page 412, he says:

Q. Who was with Mrs. Surratt when you saw her? A. Mrs. Surratt was alone when I first saw her; she met me alone.

Q. Whereabouts in the back yard did you meet Mrs. Surratt? A. Near the wood pile.

At page 414, he says:

Q. Did not you testify before the military commission that you were asked by one of them if you did not want to hear the news?

This is on the cross-examination of Lloyd. He answers:

A. Yes.

Q. And that you replied you were not particular, or did not want to hear it? A. I told him he might use his own pleasure about that; that I did not care anything about hearing it.

Why did he not care about hearing? For the simple reason that he then knew all about it. He expected such news.

Q. And then they told you that the President had been killed, or that "we have killed the President?" A. "We," or "they," I do not remember which.

Q. At what time did the soldiers get down there? A. About eight o'clock. I had not been up very long.

Q. You say they told you that they had killed the President, but that you never thought much about it until the soldiers came? A. I thought the man was drunk. I paid no attention to it. He talked to me as if he was drunk.

Q. Do you recollect when the police officers came out there? A. I recollect when Clarvoe came.

Q. Did you tell Clarvoe that Herold had not been there? A. I do not recollect distinctly the question Clarvoe put to me. The soldiers had been there before he got there.

Q. Why cannot you recollect, were you drunk? A. I had been drinking that morning, and then I became frightened, after the soldiers told me what had been done. I did not know what to do or how to act.



Q. Try and recollect what Clarvoe said to you. A. As well as I recollect, he told me there was money enough in this thing to make both of us rich, if I would give him information I possessed.

Q. Didn't you tell him then that neither of these men had been there? A. I may have done so.

Q. Don't you recollect that you did do it? A. I have not the least doubt I did do it. I did not want to be drawn in as a witness in this affair at all.

Now, let us see what reason is given by this man, a tenant of Mrs. Surratt, who is in the house, and to whom the guns had been given; who knew where they were secreted by this prisoner at the bar; who went with him and saw them secreted; who received this field-glass on that same day from Mrs. Surratt, and put it with those articles, and from whom he received on that day the injunction to have two bottles of whiskey and those shooting-irons and other things ready, as they would soon be wanted.

A. I have not the least doubt I did do it. I did not want to be drawn in as a witness in the affair at all. I knew that Mrs. Surratt's name would be drawn in, if anything was said, and I did not want to say anything about it.

That is the reason he gives you. He did know Mrs. Surratt's name would be drawn in; he knew that Mrs. Surratt's son and Herold had brought the arms there; he knew that Mrs. Surratt's son had hid them in that secret room; he knew that Mrs. Surratt had come there on the day of this murder, and told him to have those shooting-irons and other things ready, that they would soon be wanted, and likewise to have two bottles of whiskey ready. Well might he say, then, that "I knew Mrs. Surratt's name would be drawn in, if anything was said, and I did not want to say anything about it."

At page 416 he said:

Q. What time in the night was that? A. About midnight.

Q. Who roused you up? A. I think it was probably Herold himself.

Q. Hallooing about? A. Very likely.

At page 418 he says, in reply to a question from the court:

A. I will explain: In case of going before a court to give testimony, or anything of that kind, I cannot in justice to myself taste any liquor without possibly making me say something or use some expression that I would not wish to, or oftentimes making me forget things I do not wish to forget.

You will remember, gentlemen, the question I put to him. I asked him if he had any liquor on board then, but counsel on the other side objected to the answer. Counsel said you could tell as well as this witness could whether he had any liquor in him or not. Yes, you could tell; and you know very well whether he had any liquor in him or not; whether he was testifying or not as a sober man. You will also remember what a reluctant witness he was.

At page 420 he states further:

Q. In your examination in chief I understand you to say that Herold went down below your house; that he started alone, and the next morning came back with these carbines? A. The night before, Herold started alone; the next morning I saw his horse at my front gate.

I am reading this, gentlemen, to show you the connection of Herold and John Surratt with these guns and other weapons of death which had been concealed there:

Q. You did not see Herold bring them? A. I did not. I knew nothing about the carbines or anything of the kind until my attention was called to them in the front room.

Q. Herold, if I understand you, went down the night before, and the next morning came back, and when you came in you found the carbines in the room—who brought them you do not know? A. I was invited into the room by John Surratt.

Q. You do not know who brought them in? A. I do not.

Q. Do you know where Herold went that night? A. He told us in the bar-room that he was obliged to go to T B that night. It was getting very late when he left. I told him that I had one spare bed, which he might occupy if he wished.

Now I am going to take him to T B, and bring him up here to this place with these arms which this prisoner, in connection with Herold, concealed. Before

doing that, however, I want to pass, for one moment, to the subject of this glass, to show when and how it got there—a fact in evidence before you, and about which there is no dispute. I read from page 410 :

Q. Now I come to Friday morning, the day of the assassination ; what occurred on that morning ? On Friday morning I went to my office as usual ; arrived there at nine o'clock. This was Friday, the 14th of April. Was at the office until about half-past ten, when an order came from the Secretary of War to the effect that those clerks under his charge who desired to attend divine service that day might do so.

Q. This was Good Friday ? A. Yes, sir. I left the office and went directly to St. Matthew's church, at the corner of 15th and H streets. After service was over, about a quarter of one or one o'clock, perhaps, I went home to Mrs. Surratt's house.

Q. At what time ? A. I got home at one o'clock or a little after one. I took some lunch, and then went up to my room and sat down and wrote a letter. About half-past two or twenty-five minutes after two, I heard a knock at my room door. In opening the door I saw Mrs. Surratt. She stated to me that she had received a letter from Mr. Charles Calvert about her property, and that it would be necessary for her to go into the country again and see Mr. Nothey, who owed her \$479, with interest on the same for thirteen years.

You will remember she had been there only the Sunday before.

Q. The same Mr. Nothey with whom you had seen her on the 11th ? A. Yes, sir. She gave me a ten-dollar note with which to go and get a horse and buggy. As I went out the parlor door, John Wilkes Booth came in. He shook hands with me and then went into the parlor. I then went to Mr. Howard's stable and there saw Atzerodt, who was endeavoring to hire a horse. His request was not complied with. He could not get one. I asked what he wanted with a horse. "O," he says, "I want to send off Payne." I then went to the post office and dropped the letter I had written and returned to Mrs. Surratt's house.

Mr. BRADLEY. Did you get the buggy ? A. Yes, sir.

Q. And you went back with the buggy ? A. Yes, sir ; I went up into my room for a minute or two, and as I passed the parlor door I saw Mrs. Surratt and Booth in conversation.

This was the day of the murder, gentlemen.

Q. What time in the day was this ? A. I cannot state the precise hour. It was between twenty-five minutes past two and twenty to twenty-five minutes to three. Booth was standing with his back against the mantel-piece, with his arms resting on it, and Mrs. Surratt had her back towards him.

Q. What further ? A. I went down to the buggy and Mrs. Surratt came down in a few moments, and was just about getting into the buggy when she said, "Wait, Mr. Weichmann, I must get those things of Booth's." She went up stairs into the house, and came down with a package in her hand. It was a package wrapped up in brown paper, tied round with a string, I believe, and, to the best of my knowledge, about five or six inches in diameter. I did not see the contents of the package.

Q. Did you see what was done with it ? A. It was put in the bottom of the buggy. Mrs. Surratt stated that it was brittle. She said even that it was glass, and was afraid of its being wet. I then helped her into the buggy, and we drove off.

Q. On the way down, did anything occur of any note ? A. Yes, sir ; the buggy was halted once near a blacksmith's shop, about three miles from Washington, on the road to Surrattsville. There were some pickets there on the left-hand side of the road near the blacksmith's shop. The soldiers were lolling on the grass, and the horses were grazing about. Mrs. Surratt had the buggy halted, and wanted to know how long those pickets would remain there. She was informed that they were withdrawn about eight o'clock. She said, "I am glad to know it," and drove off.

As you will remember, I read to you the other day the testimony of Mr. Lloyd, wherein he stated that this glass was brought there in the package ; was put with the guns ; and on the night of the 14th, after the murder, taken away by Herold.

I now again come to the guns ; to the fact that the very guns which Booth and Herold took away from Lloyd's on the night of the murder, were brought there to Surratt's own mother's house by Herold from "T B," and secreted there by Surratt. I read from the testimony of Mr. Kaldenback, page 637 :

Q. Do you know John M. Lloyd ? A. Yes, sir.

Q. Do you recollect being there some time in the year of 1865 ? A. Yes, sir.

Q. State if at that time you recovered any fire-arm there ; and if so, state the circumstances under which you recovered it ? A. Yes, sir ; I found a fire-arm there. I lived there then ; it was about the 25th of April, 1865, or somewhere thereabouts ; I found it in the partition between the plastering.

Q. What did you find ? A. I found a carbine ; it had a covering over it.

Q. Describe in what part of the house it was? A. It was between the dining-room in the main house and the kitchen, which was attached to the main building.

Q. Was it concealed? A. It was right between the plastering in the partition wall.

Q. Describe fully to the jury the examination you made, and what you discovered at that time? A. There were detectives there; I am not certain what date it was; somewhere about the 25th of April; this detective was there on that night; he told me there was a fire-arm there, and said I must find it; this detective and myself went in search of it, and after searching for it for some time I found it.

Q. Tell the jury how you found it, where it was concealed, and everything about it? A. I took a hatchet, knocked the plastering loose, and found it between the partitions; after I found it, I went for this detective before I removed it at all; he took it in his possession and carried it off.

Q. Who was this detective? A. His name was George Cottingham, a government detective, at that time stationed down there.

Q. State how it was that you happened to go to that particular place and find it? A. It was by the direction of Mr. Lloyd.

I now read from the testimony of Mr. Thompson:

Q. Where did you live in the spring of 1865? A. At T B.

Q. What were you doing there? A. I was keeping a hotel there.

Q. What was the name of it? A. The "T B Hotel."

Q. Do you remember anything that happened there at that time connected with Herold? A. Yes, sir.

Q. Tell us what it was. A. Herold came there some time in March—I do not know what time in March, 1865.

Q. What did he bring with him? A. A sword, a couple of carbines, and a couple of double-barrel guns.

Q. Anything else? A. I remember nothing else except a revolver.

Q. Nothing else? A. Nothing else that I know of.

Q. Who came with him? A. Nobody at all.

Q. What did he come in? A. He came in a buggy.

Q. What did he do with those arms? A. He put them in the bar-room until the next morning.

Q. What did he tell you? A. He told me that he was going down the Patuxent river shooting ducks.

"Shooting ducks," he says. You will observe throughout that wherever a letter is written, wherever an act is done, an excuse or reason is given for it, as is always the case, as I have before stated, when an effort is being made to conceal crime. There was no truth in this statement, as you will see presently from the testimony.

Q. Did he tell you he expected anybody there that night? A. Yes, sir; he said he expected John Surratt there.

Q. What did he do in the night? A. Nothing at all; he came there about 8 o'clock—our supper was over—and ordered supper. They had supper prepared for him, and he afterward went to bed.

Q. Did Surratt come there that night? A. No, sir.

Q. What happened the next morning? A. The next morning he got up, took his guns, and came back towards Washington.

Q. Do you know which road he took; the roads fork this side of your place, do they not? A. I do not know which way he took.

Q. Does one road go to Surrattsville? A. One road goes to Surrattsville, and the other to Piscataway.

Q. You do not know which road he took? A. I do not.

I now read from the testimony of Mr. Norton, at pages 630 and 631, on the same subject—these guns:

Q. Will you state where you lived in the month of April, 1865? A. At T B, Prince George county, Maryland.

Q. When did you see any arms? A. I saw some arms in the month of March, 1865.

Q. Where did you see them? A. I saw them at T B.

Q. Who brought them there? A. David Herold brought them there.

Q. What did he bring? A. He brought some guns.

Q. How many? A. Two.

Q. Did he bring anything else? A. He brought two carbines.

Q. Anything else? A. He brought a pistol.

Q. What else? A. He had a knife with him.

Q. Any ammunition? A. Yes, sir.

Q. What else? A. He had a rope with him.



Q. Any other thing? A. He had a wrench.

Q. Anything more? A. He had a horse and buggy.

Q. What time in the day did he come? A. He came in the night.

Q. What time in the night? A. About 8 o'clock.

Q. What did he do with the things he brought? A. He took them out of his buggy.

Q. What then? A. I carried them into the bar-room.

Q. Then what did you do with them? A. I did not do anything more with them that night.

Q. Did you or he do anything more with them? A. Yes, sir.

Q. Did he the next morning? A. He fired his pistol off.

Q. Did he do anything more? A. He went away after breakfast.

Q. Did he take the arms and ammunition all with him? A. Yes, sir.

Q. Do you know which way he went?

Mr. Lloyd has told you which way he went and where he went. On page 632 he says:

Q. What did Herold say to you about Surratt? A. He asked me if Mr. Surratt had been there. I told him he had not; he said he expected he would be there.

Q. Did he tell you at what time he expected Surratt there? A. He said he expected him there that night.

Q. What time in the night was it that he said that? A. That was shortly after he came there.

Q. Did Surratt come that night? A. He did not.

Q. Did you see him that night? A. No, sir.

Q. When did you see Surratt after that? A. I saw him on the 3d of April, 1865.

Q. Where did you see him? A. At T B.

Now we see how these carbines got to Lloyd's. He has told us that Herold came there that morning with them from T B, and that he (Lloyd) met Surratt there with them; that Surratt took him into the parlor where the guns lay, and told him where to conceal them; that he did conceal them in the place pointed out, but that he did so reluctantly. He further told us that after the murder was committed Herold came, in company with Booth, and took the guns away. One of these guns was subsequently taken away from the barn down in Virginia where Booth was shot, and brought here. It is now before you. I understand counsel on the other side to have asked us in the progress of this cause to connect one thing with another; and they have frequently moved the court to strike out certain evidence because it was not connected. I think it will occur to you that *this* is tolerably well connected. Here we have Herold at a tavern at T B, a little below Surrattsville, with these guns. He expected to meet Surratt at T B that night, but the latter failed to go there. The next morning Herold takes the guns and goes to Surrattsville and leaves them there in the parlor of Lloyd's hotel. Surratt calls in Lloyd, and then goes with him to hide the guns. The guns are hid, and then, when the murder is committed, Herold goes there and gets them. Mrs. Surratt, on the very night of the murder, takes this glass to Lloyd's, has it put with the guns, and tells him (Lloyd) to have two bottles of whiskey ready; that those shooting-irons will soon be wanted. Now, won't you tell me, gentlemen of the jury, how Mrs. Surratt knew about these shooting-irons? She was not there when Herold took them to that place, nor was she present when her son concealed them behind the plaster. Who told her, then, about those guns? Will you answer that question, gentlemen? How did Mrs. Surratt find out, on the day of the murder, when she took that field-glass there, that those concealed shooting-irons would be wanted soon? Again I ask, how did she find out, on the day the night of which the murder was perpetrated, that her son had hid those shooting-irons there, and that they would be wanted that night, she not having been present when they were brought, or when they were concealed. Does it need any answer? If it does, I will read to you the answer given by one of their own witnesses from Prince George's county—old Mr. Watson—page 746. You will there see the reason that he gives. It is the true reason. There cannot be any doubt of that, for it is one that will commend itself to everybody:

Q. In this conversation you speak of, you took sides with Mr. Bingham; you said you thought Mrs. Surratt was guilty, did you? A. Yes, sir; and think so yet.

At page 727 he testifies as follows:

Q. In this conversation you had with Mr. Tibbett, you told him you believed Mrs. Surratt was guilty? A. I did; I told him I believed she was guilty; and I think that every man—

Mr. Merrick stopped him there, and thus prevented him from completing his answer. "I think that every man"—every man what? That every man who has heard this evidence knows and feels that Mrs. Surratt was guilty. From all the facts connected with the bringing of those guns to this house, their concealment, and the placing of the field-glass with those articles, will not every one say that old Mr. Watson is right when he says, "I did say she was guilty, and I think so yet."

Now, if Mrs. Surratt knew where those arms were concealed, she of course got that information from somebody. From whom did she get it? Isn't it more than probable that she got such information from her own son, a full grown man, who had concealed them with his own hands. Herold brings them from T B; Surratt meets him there, and calls Lloyd into the parlor. Surratt points out the secret place where they can be concealed, and his own mother goes, on the day of the murder, and tells Lloyd the shooting-irons will be needed, as also the field-glass, and that they will be called for soon, and tells him to have two bottles of whiskey ready. And you will remember these things were called for before 12 o'clock that night. Gentlemen, how are we to dispose of this matter? What do your honest minds say about it? It strikes me that there can be but one opinion regarding it. Every honest man, it appears to me, must entertain the same opinion as that expressed by old Mr. Watson on the stand. There is no escaping from the fact that Herold, Surratt, and his mother were all combined together in this matter; that the knowledge of the one was the knowledge of them all.

I now come down to another little piece of evidence in the same connection. It is the testimony of Justice Pyles, from the same county, who also was an unwilling witness. He says John Surratt came to him to get some papers executed. He did not know exactly what they were. I will read from his testimony, page 386:

Q. State how long prior to April, 1865? A. I did not commit that to memory. I think about three months, as near as I can recollect, before the assassination of Mr. Lincoln. About that time I had left home; I was working at my father's, or lower place, some mile or so from there. Mr. Surratt came down there for the purpose of getting me to sign some papers. I really cannot tell anything regarding the import of those papers.

Q. To get you to sign some papers? A. Yes, sir; as a justice of the peace, in order to make them legal.

Q. State what he said to you in regard to the object of his visit. A. Well, he seemed to be urgent to have me sign the papers, and having no pen, ink, or anything of the kind at the place, we proposed to go over to my brother's, about a quarter or half a mile off, and get pen and ink there. We started, and going along I asked him about his business, and so on. The draft was on hand at that time, and I asked him about it. He said either that he wanted to get some money, or to fix some papers to leave for his mother, or something of that kind. He told me he wanted to go away. I asked him where, or something of that sort, for I did not want him to go away, he had been in the neighborhood so long; and he said he wanted to go away to avoid the draft.

What these papers were we do not know. They are one of those little things that appear in the progress of a cause of this kind. These papers were to be drawn up for some purpose. They were drawn up before a magistrate. Now, what were they. The preparation of these papers undoubtedly meant something. This testimony was given early in the case; and, if they had not meant something, counsel had ample opportunity to have it all explained away.

We now come to the testimony of another witness of theirs—Mr. David Barry. It is a matter, brief but of much import. It will be found on page 873:

Q. Take that letter (letter exhibited to witness in direct examination) and look at its date. A. Yes, sir; the letter is dated March 26, 1865.

Q. Can you tell the jury now the date when you came up here with these horses? A. It was the 26th of March, 1865.

Q. Sunday? A. Yes, sir; Sunday.

Q. They were gray horses? A. Yes, sir; both gray horses.

These horses were the horses that Mrs. Surratt, Mrs. Slater, or Mrs. Brown, as she is sometimes called, and John Surratt took from Brooke Stabler's when they went down in the country.

Q. When you brought the horses you took that letter to the stable? A. Yes, sir.

Q. And when you had done that you went to Mrs. Surratt's house? A. Yes, sir, in the course of the evening.

At the bottom of the page will be found the following:

Q. Now please state to the jury when you saw her in the passage? A. The day before, which was Saturday, the 25th of March.

Q. And then you saw a woman who John told you was Mrs. Brown? A. Yes, sir.

How many names Mrs. Slater went by I do not know; but it seems she was at this time called Mrs. Brown. The record goes on:

Q. Where did you see her last? A. In Port Tobacco.

Q. Who was with her? A. John Surratt.

Q. What did John Surratt tell you he was going to do? A. He told me he was either going to put her in safe hands to be taken to Richmond, or, if necessary, he would take her to Richmond himself. He sent this message to his mother: that if he did not cross the river he would be home the next day by the stage: that if he did not cross the river, he would return as soon as he could.

Now, this is the testimony that their own witness, Mr. David Barry, gives of the conversation he had with Surratt on the day after he had taken these gray horses and had gone down there to Port Tobacco. The woman "on the brain" that he wrote about in a letter to old Brooke Stabler, was this woman, Mrs. Slater, or Mrs. Brown, whom he wanted to get to Richmond. He sent word to his mother that if he could get her across the river he would return in the next stage; if he could not, he should go to Richmond with her. That is what he was going to Richmond for, and this, you will remember, comes from their witness, and not from ours.

Q. The last time you saw Surratt he was in Port Tobacco? A. Yes, sir, on the 26th of March.

Q. Describe this woman he called Mrs. Brown. A. She was a rather slim, delicate woman. I think she had black eyes and dark hair. I do not recollect whether I saw her with her bonnet off. I think she wore her veil down nearly all the time. I saw her at the table.

Q. She was delicate in size? A. I think so; that is my recollection.

Q. What was her age, about? A. I should say she was under thirty.

At page 872 this same witness says:

Q. Proceed and state whether you, in company with John Surratt, went from that place anywhere else; and if so, where you went. A. Yes, sir; I accompanied them to Port Tobacco.

Q. How long did you remain at Port Tobacco? A. I should like to say why I went to Port Tobacco. There was a man in Port Tobacco who belonged to the signal corps of the confederate army. I was anxious to see him in order to get information from two sons I had in General Lee's army. I understood from a man by the name of Howell, represented to be a blockade-runner, the day before Surratt came down, that he was at Port Tobacco. I mentioned it to Surratt, and asked him if he knew whether this man was there. He replied, "Yes." How he got his information I forget. He then offered me a seat in his carriage, remarking at the same time that it was somewhat doubtful whether he returned himself, but said if he did not return I could drive the carriage back; that he intended to see a lady he had in charge across the Potomac river, and, if necessary, to Richmond.

Q. You staid all night at Port Tobacco? A. I did.

Q. Now state whether Surratt wrote any letter in your presence, and whether you brought it to this city. A. Yes, sir; I think he did. (Exhibiting letter of the prisoner to Brooke Stabler, relative to returning horses, dated March 26, 1865, heretofore placed in evidence.)

This gentleman, who had two sons in the rebel army, comes here on the stand—brought by the other side—and states to you these facts. He has told the truth, and so will every honorable rebel when he is testifying under oath on the stand. A brave man will always tell the truth. As I said to you the



other day so I say now, that I would select from the 13,000 rebel prisoners who passed those resolutions at Point Lookout any twelve to try this case, and I would have no doubt that they would bring in a verdict according to the evidence. All men of honor, all men who are brave, while they may be misled, will always tell the truth. It is only the coward and the dishonorable man who will tell a lie. The wicked man and coward is the one who is afraid to do his duty; the upright and the honorable man is always as bold as a lion. It is the wicked that "fleeth when no man pursueth."

I next come to the testimony of Mr. Smoot, which will be found on page 310. Mr. Smoot was not, as you saw, a very willing witness. Whether he was a frightened witness or not, I do not know, but he lives down in that county where the sympathy of the people, as a general thing, is with the prisoner, and he might have been afraid of the effect upon himself of the testimony that he would have to give here, or he might have been frightened by what Mr. Merrick said to him before he came upon the stand; for he himself told us, under oath, that he had been spoken to by Mr. Merrick about his testimony in this case, and had been told by him that he (Merrick) was after him with a sharp stick. Let me read his testimony on this point, so that there may be no mistake about it, for I told you that I did not intend to comment on any evidence that I had not read to you word for word as it was given.

(By the ASSISTANT DISTRICT ATTORNEY:)

Q. Have you not been to Mr. Merrick's office since you have been in the city? A. I passed Mr. Merrick's office yesterday morning.

Q. How often have you been to Mr. Merrick's office? A. Only once.

Q. Have not you been talking with Mr. Merrick on the street about this case? A. Yes, sir; he asked me some questions about it. He said he was after me with a sharp stick, or something of that kind.

Now, whether he was terrified by Mr. Merrick's "sharp stick" or not, I do not know. I know, however, that we experienced great difficulty in getting him upon the stand. You heard his name called more than a score of times. Mr. Smoot, Mr. Smoot, Mr. Smoot resounded through this court-house for more than two days before we could get Mr. Smoot on the stand, so reluctant was he, for some reason, to appear and give his testimony. Let us see what he says when we did get him:

Q. Do you recollect of his paying you a visit when you were living in Prince George county, near Surrattsville, some time, I think, in the month of January or February, previous to the assassination? A. Yes, sir; I recollect he was at my house on one occasion.

Q. Which month was that? A. I disremember now. I know it was in cold weather—soon after I moved there.

Q. How long did he remain with you on that occasion? A. He went to my house at night, and went away the next morning—he staid the night there, that is all.

Q. Will you state if you had any conversation with him at that time? A. Yes, sir; I was talking with him.

Q. State what the conversation was. A. I do not recollect the exact conversation. We were talking about different things all the while.

Now, that is the answer that he gave to the district attorney's question. He knew what the question related to, for he had had conversations with Mr. Carrington upon this subject, and yet he gives the reluctant, evasive answer that I have just read to you.

Q. Go on and state, if you please, how he employed himself at that time? A. I saw him very often. I was joking him about his going to Richmond. He never acknowledged to me that he had been to Richmond, but laughed and said: "If the Yankees knew what he had done, or what he was doing, they would stretch his neck."

What was he doing in the month of January or February, just before this murder, which led him to believe that, if the Yankees knew it, they would stretch his neck? Why did he think they would stretch his neck if they knew what he was doing and what he was going to do? He did not think they would stretch his neck because he was living here in Washington, faithful to

the government that protected him, and without having violated any law, did he? or did he think they would stretch his neck for being engaged in a conspiracy against the government—a plot to murder its chief? I will read a little further:

Q. Describe his manner when he made use of that remark? A. He smiled, and raised his head up in this way (witness throwing his head back in illustration of the manner,) and said: "They would stretch this old neck of mine."

Now, won't you ask the counsel why they didn't tell you the reason he thought they would stretch that old neck of his? It never occurred to you or one of your sons, did it, that the government would stretch your or his neck, if they knew what either of you was doing, or was going to do? He knew what he had done, and he knew what he was plotting to do; and he knew, if the government were made aware of it, they would, as they ought, have stretched his old neck. "Out of the abundance of the heart the mouth speaketh." It is always thus. A man cannot keep secret a crime so heinous as this. Even before the crime is committed, he will in some way or to somebody reveal it, for "out of the abundance of the heart the mouth speaketh." Did you ever notice this fact? If not, note it now. If a man's heart is full of anything—I do not care what it is—and that is the burden of his heart, and you stay with him over night, talk with him at the supper table in the evening; by the fireside, after your tea and before you go to bed; and then again the next morning when you get up and take your breakfast, if you don't say much yourself, you will find that he unconsciously to himself will drop out something or other, which you, being led afterwards to put with some other thing that you know of, will reveal the secret of his heart. It may be that such burden relates to some business or political matter in which he is deeply interested, or some great crime which he has committed or is about to commit. This fact is well understood in diplomatic circles, and many times men resort to the mode I have spoken of for the purpose of learning the secrets of a prime minister of the government. A skilful diplomatist, anxious for information, will call upon the officer whom he thinks can give him such, and in conversation at meals and the fireside, in a quiet and unsuspecting manner, will draw from him such facts as he wishes to know, and then, perhaps, communicate them to his government. As in great affairs, so in smaller ones.

I call your attention, gentlemen, now to page 508. We now have Surratt in Washington, after he had left T B.

Q. What time in the evening of the third of April did he leave the room?

A. He left there about 7 o'clock.

Q. What did he say? A. Between half past six and half past seven he asked me to go down the street with him and take some oysters. He was dressed in gray clothes, with a shawl thrown over his shoulders. He told me that same evening that he was going to Montreal. We got the oysters near Four-and-a-half street and Pennsylvania avenue.

Q. Did he tell you the day he left Richmond? A. No, sir.

Q. After eating the oysters, what occurred? A. We walked back as far as the Metropolitan Hotel, and there he bade me good night. He said he would correspond with me when he got to Montreal. I have not met him since except to-day.

Q. On the 5th of April, what occurred? Did you observe Booth or Herold? A. Booth was at the house between the 3d and 10th of April, on one or two occasions. I remember on one of those occasions a letter was received.

Q. What time in the evening was this the case? A. About 7 or 8 o'clock.

Q. In the parlor? A. Yes, sir. I walked into the parlor. Booth was sitting on the sofa. Mrs. Surratt was in the room, and a young lady; and Miss Anna Surratt was directly opposite Booth. I sat down at the other end of the same sofa on which Booth was sitting. After conversing for a while around the room, Booth got up and said: "Miss Ward, will you please let me see the address of that lady?"

Just here, gentlemen, I will call to your mind the fact that Miss Ward has not been produced.

The witness goes on:

Miss Ward advanced to meet him in the centre of the room, and handed him a letter. After

Booth and Miss Ward had gone out, Anna Surratt got up and said, "Mr. Weichmann, here is a letter from brother John," and read the letter. No lady's name was mentioned in it.

Booth was there in the room; here was a letter from John Surratt, and Booth wanted to conceal from Weichmann, who was there, from whom the letter was. Booth said he wanted to see the address of that lady, but it turned out that there was nothing regarding a lady about it.

At page 509 the witness says:

On the evening of the tenth Mrs. Surratt asked me if I would not be kind enough to drive her into the country on the morning of the 11th of April. I consented.

Q. What day of the week was that? A. That was Tuesday.

Q. Did you go with her? A. Yes, sir; the following morning.

Q. What time did you leave? A. She said to me, "Mr. Weichmann, won't you go round to the National Hotel and tell Mr. Booth that I sent you for his horse and buggy, and desire to know whether I can have it." I did go to the National Hotel, and found Booth in his room. I communicated my message just as Mrs. Surratt had told me. He said, "I have sold the horse and buggy, but here is ten dollars; go you and hire one."

Thus it appears that Booth furnished money for Mrs. Surratt to go into the country on this fatal errand to aid in this fatal expedition. I read on:

In speaking about the horses, I said to him, "I thought they were John Surratt's horses." "No," says he, "they are my horses." I left the hotel, and went to Howard's stable and hired a horse and buggy. I then went to Mrs. Surratt's house. We left the house about half past nine o'clock. As we were on our way down to Surrattsville we met Mr. John M. Lloyd.

On page 510 the witness continues:

Q. After this conversation what did you do? A. I drove to the tavern.

Q. What occurred there? A. She wanted to meet a Mr. Nothey there, but when we arrived at Surrattsville, at half past 2 p. m., Nothey was not there, and she had a messenger despatched for him, with word that he should meet her there at 2 o'clock. We then drove further on to Mr. Bennett Gwynn's, where we took dinner. After dinner, Mr. Gwynn, Mrs. Surratt, and myself returned back to Surrattsville.

Q. What occurred there? A. Mrs. Surratt went into the parlor, and this time found Mr. Nothey there. She had an interview with him.

Q. Then what occurred? A. I do not know what occurred. I was not in the parlor when they had this interview.

Q. I only ask what you saw and heard? A. After they had concluded that business, Mrs. Surratt got into the buggy and returned to town.

I now bring your attention back to this 3d of April. On the morning of the 3d of April, we found Surratt at T B. In the afternoon of that day he left and came to Washington, reaching here about 6½ o'clock. At 7 o'clock he went with Weichmann to an oyster saloon and took some oysters. He then stated that he was going to Montreal. Weichmann and he parted at this saloon, and he, Surratt, did not return to the house again that night, nor is there any pretence that he did. He shook hands with Weichmann on parting, and promised to write to him from Montreal. The reason I call your attention, gentlemen, to his leaving his mother's house on this occasion in company with Weichmann and not returning again that night, is for the purpose of showing you that the attempt which has been made here to prove that it was on that night that Susan Ann Jackson saw him there, is a failure; that it was utterly impossible for the fact to be as they hold. She neither saw him there at that time, nor was that the time when the clothes were left there to be washed. I will show you presently, however, at what time the clothes were gotten out to be washed, and whose clothes were gotten out for that purpose. Their own witnesses showed a short time afterwards what a terrible fact Holahan had proved when he testified that, on going there the week after this murder, he found Surratt's handkerchief lying on the bed, clean, and apparently just brought from the wash. I have no doubt that what Holahan states is the truth, but they had no idea what an unfortunate fact for their case it would prove to be. Susan Ann Jackson told you that on that Friday night some clothes were left out on the bed there, and that Mrs. Surratt told her they were her son John's



clothes. This she said was somewhere about 9 o'clock in the evening, after they had all had supper and cleaned off the table, and that John came there some time after this, on this same night, which was the night of the murder, and that she had an extra pot of tea made for him. The clothes which were taken out, and which Mrs. Surratt said were John's clothes, were no doubt the ones that Holahan saw on the following week. This is the way that the Almighty, in his inscrutable wisdom, brings out the truth—yea, even from those who are trying to conceal it.

I now call your attention to page 512:

A. We left Surrattsville on our return home about half-past six in the evening.

Q. What occurred on the way home with Mrs. Surratt; was she very cheerful on the way returning? A. On our way home she said she was very anxious to be home at nine o'clock; that she was to meet some gentlemen there.

Q. Did she state who? A. I asked her who it was, if it was Booth. She made no reply.

Q. What further occurred in returning? A. I further stated something about Booth's being in the city here and not acting; I asked her why he was not acting. Her reply was: "Booth is done acting, and is going to New York soon, never to return." She turned round to me and asked if I did not know that, or if I did not know that Booth was crazy on one subject. I told her I did not. What that one subject was she never stated to me. On our return we met the pickets I had seen stationed on the left side of the road as we went down. The soldiers at this time were on their horses, returning to the city. Our buggy passed right between them. I should suppose there were four or six soldiers on horseback, and I remember distinctly that the buggy passed right between them.

Q. When you got on the hill in front of the city did anything occur? A. Yes, sir; just about two miles from Washington there is a very high hill, which commands a fine view of the city. That evening of the 14th there was a brilliant illumination in Washington, on account of the restoration of the flag over Fort Sumter. I made some remarks to Mrs. Surratt, saying that it was better for the country that peace should return. She said, "I am afraid that all this rejoicing will be turned into mourning, and all this gladness into sorrow."

No doubt she feared so. She had just left Lloyd, whom she had told to have those shooting-irons and two bottles of whiskey ready; that they would be wanted soon. She could not help saying "that all this rejoicing would be turned into mourning, and all this gladness into sorrow." Why did she say so? Why did she feel it? Because she knew what arms had been concealed at Lloyd's house, and what was the purpose of their concealment there. She knew what terrible plot was on that very night to be carried into execution, and she could not avoid this sudden outburst. There was nothing very unnatural in this, when her heart was so full of this terrible crime.

I want you to note the time of day, for it has a bearing upon the question as to the time when Susan Ann Jackson saw this young man at the house, and took the clothes to wash.

I will read on:

A. Just as we came into Pennsylvania avenue, near the Capitol, we saw a torchlight procession coming either up or going down the avenue. The horse shied at the brilliant lights, and we were compelled to turn up Second Street.

This was not in the daytime, but just about 9 o'clock, and she wanted to get home at 9 o'clock, you will remember.

Q. After turning from the torchlight procession, where did you then go? A. We arrived at home at 9 o'clock, or a few minutes before nine. I helped Mrs. Surratt to get out and then returned the buggy. We left Surrattsville at half past six, and it takes two hours or two hours and a half to come to Washington.

Now, nobody has disputed this. We all agree upon the time they left and upon the time they arrived here, which was at 9 o'clock.

I returned the buggy to Howard's stable, which was right back of Mrs. Surratt's house on G street. I then immediately returned home. I then went down and partook of some supper. Mrs. Surratt the same evening showed me a letter which she had received from her son. While I was sitting there eating supper with Miss Fitzpatrick, Miss Jenkins, Miss Surratt, and Mrs. Surratt in the room, I heard some one very rapidly ascending the stairs.

Q. What occurred with Mrs. Surratt after the footsteps descended the stairs; did she come down or remain up? A. She remained in the parlor. After supper I went into the parlor, and the young ladies who had been at supper with me also came into the parlor.

We sat and talked there. Mrs. Surratt once asked me where the torchlight procession was going that we had seen on the avenue. I told her that I thought it was a procession of arsenal employes going to serenade the President. She replied that she would like to know very much, as she was interested in it. As I recollect now, her manner appeared to me to be very nervous and very restless. I once asked her what was the matter. She said she did not feel well. She had some prayer beads in her hand—she was walking up and down the room. She once asked me to pray for her intentions. I asked her what her intentions were, and said I never prayed for any one's intentions unless I knew what they were.

You remember Miss Honora Fitzpatrick told you the same thing. She said that she did not hear Mrs. Surratt say what Weichman had testified to, but she said Mrs. Surratt was walking up and down the room.

I now refer you to page 520 :

Q. How often was Booth at Mrs. Surratt's house two or three months prior to the murder? A. He came very frequently. It was a very common thing for me to see him in the parlor with Surratt, when Booth was in town, after 4 o'clock. They appeared like brothers.

Q. Was there any term by which Booth was called? A. Mrs. Surratt appeared to like him very much.

Q. What term did she use in speaking of him? A. I heard her once, when Booth had staid two or three hours in the parlor, call him "Pet," saying, "Pet stayed two or three hours in the parlor last evening." I am positive she used the word "Pet." She named the hours from 10 at night until 1 in the morning.

At page 521 will be found these remarkable telegrams that Booth sent. Here are the original in his own handwriting, so there can be no mistake about them. It seems that those that he had and expected to have in his employ received their communications and their orders direct from him from time to time. You will recollect that I showed you the other day this card [exhibiting the card] in which J. Harrison Surratt writes : " I tried to get leave, but could not succeed." As you will recollect, we proved that he tried to get leave from Adams's Express Company, but failed to do so. Booth did not like to have any of these men engaged in this conspiracy allow their business to interfere with the execution of their plans. He therefore telegraphed in these words :

NEW YORK, March 13, 1864.

To Mr. McLaughlin, No. 57 North Exeter street, Baltimore, Md. :

Don't you fear to neglect your business. You had better come at once.

J. BOOTH.

Mr. PIERREPONT explained that the telegram was written on a printed blank marked 1864, but on the back of it was an indorsement 1865, and he had no doubt 1865 was the proper date.

Mr. PIERREPONT made the same explanation as to date being 1865 instead of 1864.

NEW YORK, March 27, 1864.

To Mr. McLaughlin, No. 59 North Exeter street, Baltimore, Md. :

Get word to Sam. to come on. With or without him, Wednesday morning we sell—that day, sure. Don't fail.

J. WILKES BOOTH.

We suppose the " Sam." mentioned to be Sam Arnold, who was one of the conspirators, but that we do not know. I do not undertake to state things that the evidence does not warrant. I have a right to infer, however, when Sam. Arnold is proved to be one of the conspirators, and has taken his pay for it, that he is the one alluded to.

" With or without him, Wednesday morning we sell—that day sure. Don't fail."

You will remember that the thing they were selling was " ile," as they called it. They were going to strike " ile," and when the thing was done, then they were to sell the " ile" stock and make a great deal of money out of it.

I now turn to page 525, and show you the letter which, on the 12th of November, 1864, Surratt wrote to Weichmann. Here is the letter, and here is the

card, [exhibiting the same to the jury]. You can at once see by looking at them whether an expert is necessary to determine the question as to whether they were written by the same party. Here is a card which nobody disputes, and here is another letter to Atzerodt which nobody will dispute. It does not require the eye of an expert, either, to be able to perceive that they are exactly alike. There is a curious fact connected with one of these letters. This letter Surratt commenced to write in the same hand as he has written the card, but before he gets to the bottom he completely changes it. You can hardly find two handwritings more unlike than that at the commencement of this letter and that at the close. He seems to have considerable skill in that kind of thing—in writing in two or three different hands. Some men, I know, possess the capacity to do this; I do not. Now, let us see what this letter is:

SURRATTSVILLE, November 12, 1864.

DEAR AL.: Sorry I could not get up. Will be up on Sunday. Hope you are getting along well. How are times—all the pretty girls? My most pious regards to the latter; as for the former, I have not a continental d—m. Have you been to the fair? If so, what have we now? I'm interested in the "bedstead." How's Kennedy? Tight, as usual, I suppose. Opened his office, I hear. Fifty to one 'tis a failure. Am very happy I do not belong to the "firm." Been busy all the week taking care of and securing the crops. Next Tuesday, and the jig's up. Good bye, Surraattsville. Good-bye, God forsaken country. Old Abe, the good old soul, may the devil take pity on him.

Test:

JOHN H. SURRETT.

SURRATTSVILLE, MD.

To LOUIS J. WEICHMANN, Esq., Washington, D. C.

You will notice the word "bedstead" in this letter. What do you suppose it means? I do not know, but I am pretty sure it does not mean a bedstead.

I now turn to page 526, where we learn a little more about the oil business.

Q. Did you hear anything said by Mrs. Surratt or John about a cotton or "ile" speculation? A. Yes, sir. Shortly after Surratt's introduction to Booth, Surratt told me that he was going to Europe; that he was engaged in cotton speculations. He stated this in the presence of his sister.

No sister has been brought to deny this. No inmate of the house has been brought to deny this statement, nor any part of it. But I continue the reading:

He said that \$3,000 had been advanced to him by some elderly gentleman residing in the neighborhood.

That was rather odd, wasn't it, that this elderly gentleman should be advancing to him \$3,000 for him to engage in cotton speculations with? He did not tell us who he was, and we have not seen him. The statement goes on:

And that he was going to Liverpool, from Liverpool to Nassau, and thence to Matamoras, in Mexico, to find his brother Isaac. He was in the habit of stating that very frequently.

Why, I suppose he did state it very frequently, because there was not a word of truth in it, and no intention of that kind; but it was said simply to divert the mind from the real purpose of the conspiracy.

You will notice, gentlemen, that we have not had any evidence about the oil speculations that Booth was said to have gone into. We had his testimony early in the case. You do not find that Booth, as far as the evidence goes, ever entered into any oil speculations in reality, but you will find, when you read his letter, where he says "strike, and strike deep," that the oil he wanted was the blood of that great and good man whom he so foully murdered.

Now, gentlemen, we pass to another subject, and one you will all remember. It is general, and yet it is particular. It relates to this subject very directly, although at first view it would seem to be indirect. Let me take you back to the time of the Charleston Convention, in the month of May. The great democratic party of this country there met for the purpose of nominating a candidate for the Presidency of the United States. They had the power absolutely in their hands. Mr. Lincoln had already been nominated by our adversaries before the final action. All of us knew that if we made a wise nomination we could elect



the man we put forth, if we went into it heart and soul and shoulder to shoulder, as we had done in former years. What happened? When the convention met, those who loved their country and loved its government were willing to make every sacrifice for harmony, but those who were determined to put an end to their government succeeded in breaking up that convention, and putting an end to a cordial and harmonious nomination of some member of the democratic party who could have been elected, and whose election would have had the effect to avert this terrible calamity of a civil war through which we have passed. The leading men in this conspiracy against the government desired, and intended, if they could possibly do it by any effort of theirs, to have Abraham Lincoln elected. They desired an excuse to break up this government and establish a new one, in order that, as one of them told me with his own lips, they might have a government composed of gentlemen, in which gentlemen should rule, and in which the negro and the low white should take no part, except as the laborer of those who governed. That was their wish and their aim. They succeeded to a certain extent. Mr. Lincoln was elected. Then came various plots and plans looking to the destruction of the government. One was to force Buchanan to resign in order that Breckinridge, the Vice President, might be placed at the head of affairs, and by means of his influence as President, and the powers invested in him by virtue of his office, prevent the inauguration of Lincoln on the ground that he was not constitutionally elected. That failed, and then a plot was entered into for the purpose of preventing his inauguration by force in another way. Mr. Lincoln was, however, finally inaugurated. Then, when the southern States found that there was going to be an earnest war, that freedom was raising her voice, and that our freedom-loving people would peril their lives, their fortunes, and their sacred honor to protect the government, that in the north and the south the feeling in favor of the old flag was such that they would have a bloody business before they could destroy this government, what did they attempt to do? Various plots were formed for the purpose of seeing how they could overturn and throw the government into confusion. At first it was proposed to kidnap the President and take him to the south. That they soon discovered, however, required too much machinery, and for many reasons was impracticable; that it was a great deal easier to have him shot dead, or stabbed, or poisoned! They therefore abandoned the project of kidnapping. Gentlemen, this whole subject has been fully considered. It was stated here that this conspiracy commenced in 1863. That is true. It did commence at that time. We at first thought of going into its early inception on the occasion of this trial, but we found that was not necessary, and would only encumber the case. The plan of abduction having been abandoned, a plan was then laid for the murder of the President, the Secretary of State, and the Vice President, and thus have the government thrown into confusion, when, in view of the hostility which existed between different parties at the north, they hoped to be able to march into the city of Washington, overturn it, set up their slave oligarchy and rule the people with a rod of iron, compelling the poor white, and the humbler citizen even who is not poor, to bow in subjection to their power. You would not so have it. The loyal people of Virginia would not so have it, nor those of Maryland, nor those of this District, nor those of the northern States, and they rose in their might and forbade it.

Now, what takes place? Mr. Lincoln had gone into power, and the government was succeeding, though with great difficulty, for there were great dissensions among us, as there always are in a great commotion, as there always are in a great civil strife such as that through which we have just passed, when brother is arrayed against brother, and father against son. Even here and in my own city we were hostile to the exercise of military power over the civil. We were hostile to numerous acts of this government, for many of us felt that the war was not carried on in the manner in which we desired to have it

carried on, and it was believed by many of those in the south that when these passions were thus aroused and these parties thus arrayed, the one against the other, that, if Mr. Lincoln could be gotten out of the way, such confusion might be created in the north that the south would be able, in this state of anarchy, to successfully establish their separate and independent government, in which, if they had been successful, an absolute loss of liberty to every one of you would have been the result. You cannot have two great powers of a common origin, of a common language, and a common religion, where there is no natural boundary, and where only an imaginary line cuts off great rivers which empty into the sea, situated side by side, without having continual war; and from continual war liberty always shrinks away, and the military commander becomes supreme and absolute. Liberty always perishes under such circumstances.

In 1864, as early as the month of April, the plot was discovered by one of those providential occurrences which often happen in this world. Mrs. McClermont, while standing down on the avenue, waiting for a car to pass, saw three men talking together, and heard them speaking of the Soldiers' Home, where Mr. Lincoln was then staying, and to which place, in the afternoon, he used to ride out with his wife and little boy; heard them speaking about using a telescopic rifle, and heard one of them remark that his wife and little boy were generally along; heard another one say that they must put them out of the way, if necessary. Mrs. McClermont, the wife of one of your own citizens, born here, and who has lived here all her life, comes and tells you this. She tells you who the men were. She knew them. She knew Booth, she knew Herold, she knew Atzerodt; and those were the men. So early as that she overheard this conversation. You cannot say that she was lying about it, for she had no motive to lie. You must believe her, and I am sure you do believe her.

Who is this Herold that she met there at this time? You have heard some account given of him when he was arrested at the time Booth was killed. Booth called him a boy—an innocent boy—and said that he wanted to surrender. You will notice that Booth had a kind of romantic gallantry about him, which led him to always take the blame upon himself. Booth wanted to come out, and urged Colonel Conger to allow him the privilege of doing so, and of fighting his whole command. He remarked that Colonel Conger was a brave man, and ought not to deny him this privilege. He meant to sell his life at the most costly price. He intended to lay at his feet some one or two or three or more, of the men before he surrendered. He wished to shield Herold, who was with him. He wished to take all the responsibility upon himself. He imagined himself a greater than Brutus; a curious, wild notion he had after the strange drama in which he had been such a bloody actor; and yet, strange to say, he thought all were against him, and even doubted whether God could forgive him. Indeed, I think he says he knew He could not. It is not strange that his mind had become unhinged; not strange that he had run to these wild extremes in his thoughts of dying for his country's cause. Let me again ask who was this Herold? He was a little clerk, humble and poor; employed in a drug-store of Mr. Thompson's. He went there in March, 1863, and staid there until he was discharged, as Mr. Thompson tells us, the following fourth of July. How happened this weak young man, with neither courage, physical strength, genius, nor power, to have been brought into this conspiracy? You can see why Payne was, why Atzerodt was, why Surratt was, but why this weak Herold was brought into it, it is not so easy at first sight to discover; but when a certain fact is mentioned it can very easily be accounted for. Mr. Lincoln got his medicine at the drug store of Mr. Thompson, where Herold was, and if Herold could be brought into this thing, could be made a party to the plot, there might be a chance to poison Lincoln, and thus he might have been gotten rid of without the great violence and risk which would attend the shooting of him. We shall show

you more of this in the evidence as we proceed and from Booth's own writings. That is why Herold was brought into this conspiracy; and, being in it, he had to be kept in it. After he was discharged from this store, he never was in any other employment, but kept with Booth from that time on. There is no evidence to show that he was in any other employment from the hour he was discharged from this drug store, where Mr. Lincoln got his medicines, until he was taken, put in irons, and finally disposed of by the military commission.

The court here took a recess for half an hour.

#### AFTERNOON SESSION.

On reassembling, Mr. PIERREPONT resumed, as follows :

Gentlemen : I now come to an act in this great drama which, though strange, is not new. So wonderful is it that it seems to us to come from beyond the veil which separates us from death. As I have already said, "all government is of God." The powers that be are ordained of God, and for some wise purpose which we do not understand the great Ruler of all, by presentiments, by portents, by bodings, and by dreams, sends some shadowy warning of the coming doom when some great disaster is to befall a nation. So was it in the days of Saul, and so was it when the great Julius Cæsar fell; so was it when Brutus died at Philippi; so was it when Christ was crucified, and the wife of Pontius Pilate sent to her husband, "Have thou nothing to do with this just man, for I have suffered many things this day in a dream because of him;" so was it when the great Henry IV of France was assassinated; so was it with Harold, at the battle of Hastings; so was it on the bloody day of Bosworth field; so was it when the Russian Czar was assassinated; so was it and so has it ever been when men in high governmental places have been stricken down by the assassin's hand; so was it before the death of Abraham Lincoln, the President of the United States. In the books which I hold in my hand—in this Life of Cæsar, by De Quincey; in this Life of Pompey, by Plutarch; and in this presentation which is given in Julius Cæsar by the great dramatist, Shakspeare, are related the portents which came to warn Pompey when he left the ship and landed on the coast of Egypt; and the warning given to Julius Cæsar, not only in the dream of Calpurnia, his wife, but in his own dream on that bloody day when he was assassinated in the Senate. The same was true when the Prince of Orange was assassinated; and equally true is this great historic fact, that never in the whole history of the world with which we are familiar has there been a single instance of the assassination of the head of a government in which the assassins have not all been brought to justice. It is a terrible thing to fight against God. Government being of God, any attempt to throw a people into confusion and anarchy is fighting against God, and in no instance has he ever suffered a man guilty of such a crime to go unpunished. Though the criminal may take unto himself the wings of the morning and flee to the uttermost parts of the earth, yet the eye of God will follow him and the hand of justice will eventually be laid on him, and compel him to give a rendition of his bloody account.

On the 13th of April, 1865, Abraham Lincoln called together his cabinet. He was in good spirits, for, as you well remember, we had at that time been receiving the most gratifying and cheering news; but still upon his soul there lay a heavy gloom, and he remarked, "I am very anxious to hear from Sherman." The reply was, "You will hear good news from Sherman. There can't be any doubt about that." General Grant was there, and he knew Sherman. He took occasion to assure the President that the news from Sherman would be all right. "I don't know," replied Mr. Lincoln, and then repeated what he had before said, "I am very anxious to hear from Sherman," adding the remark, "I feel some great disaster is coming upon us. Last night I was visited by a



strange dream, the same dream that in the darkness of the night, when deep sleep had fallen on men, hath three times before visited me. Before the battle of Bull Run, before the battle of Stone river, before the battle of Chancellorsville, it came to me, and the following day came the news of the disaster. This same dream came to me last night in my sleep, and I feel as if some great calamity is to befall the nation, in which I am to be personally affected." The members of the cabinet who heard that will never forget it. In a few hours afterwards (a pause) he did not hear from Sherman, but the DREAM came again and led his spirit up to God who gave it.

In this connection there is a little incident that appears no less strange. I hold in my hand two letters—those found by Mrs. Benson in the railroad car. One is written in a delicate female hand. You have seen them before, but I want you to see them again. You will not easily forget them; and after you have heard all the history that there is connected with them you will tell it to your children. You have no doubt that was written by a woman, have you? (Handing the jury letter, said to be written by the wife of Payne.) It has all of a woman in it. I want you to notice the indorsement on the envelope; it will become historic. These papers will never pass out of the possession of the government, except by theft.

The words are "Assassination—General Dix." There is a remarkable history connected with this letter. Let us trace it. Mrs. Benson, it seems, was in the city of New York, riding in a railroad car with her little girl, in 1864, just after the re-election of Mr. Lincoln. What occurred to make this fact of any consequence? Let us see. From Canada she comes upon that stand and tells you her simple story. I want to give it to you in her own words:

Q. What time in November was it—the first or last part? A. It was about the 14th, I think.

When we turn here to the record of the hotel, we find Booth was there in New York on that day, and did not return here until the 15th. This is only, gentlemen, in confirmation of what I said the other day, that every truth is in perfect harmony with every other truth; and here let me say that I pledge you my honor and my hope of eternal salvation to show you that there is not a word of this evidence which the government have relied upon that is not in perfect harmony with every other word, as you will see as we proceed; for I repeat, every truth is in perfect harmony with every other truth. What does she say in her testimony? I will continue the reading:

Q. What is it that enables you to recollect the month? A. The circumstance of picking up the letters in regard to the assassination.

Q. Do you recollect of General Scott and General Butler being in the city at that time? A. General Butler had been in the city, but he had left on the morning of the day I found the letters.

Q. Was General Scott there on that day? A. Yes, sir; he was at the Hoffman House; he resided there.

Q. Do you remember, madam, during that visit in November, riding on the Third avenue cars? A. I do.

Q. Who was in company with you at that time? A. My little girl, my daughter, was with me.

Q. How old was she? A. She was nine years of age at that time.

Q. Was any one else in company with you and your daughter at that time? A. There was not.

Q. I will ask you if you saw anything on the cars at that time, or heard anything, that attracted your attention; and if so, state what it was. A. There were two gentlemen in the car, sitting next to me. One of these was an educated man, the other was not. I overheard their conversation at different times, when the car would stop.

Q. State, if you please, the appearance of these parties. A. One of them was a very fine, gentlemanly-looking man.

Q. Did you observe his hand? A. Yes, sir.

Q. Did that attract your attention? A. Yes, sir; he had the hand of a man who was never obliged to do any work; had a smooth, white hand. It was quite a small hand.

Q. Did you observe anything about his face that attracted your attention? A. My seeing

that he was disguised was what first attracted my attention. In the jarring of the car his head was struck, which had the effect to push forward his hat. He seemed to have a wig and false whiskers on, and these were pushed forward at the same time, showing the skin underneath the whiskers to be fairer than the front part of his face, which seemed to be stained with something. The front part of his face was darker than that under the whiskers.

Q. State if there was anything peculiar about either of them on the face. A. There was a scar on the right cheek of the gentlemanly-looking man, just underneath where the whiskers were. When the whiskers were pushed forward I could see the scar; that was on the side next to me.

Q. Can you give us a description of the other one? A. The other person was a large man, a common-looking man. He was a shorter and a stouter man than this one. The one who had the scar on the face called him by the name of Johnson.

Q. Will you state if both, or either of them, were armed in any way; and if so, what arms they had? A. The well-dressed gentleman, the one who sat next to me, put his hand back to get letters out of his pocket, and I saw that he had a pistol in his belt.

Q. Did you get a close observation of the pistol? A. No, sir; I did not. I only saw it was a pistol.

Q. Will you state if you heard them say anything at that time to each other; and if so, what? A. I heard the gentleman with the scar say he would leave for Washington day after to-morrow. The other one said he was going to Newburg, or Newbern, that night.

Q. Was anything else said that night? A. The man named Johnson was very angry because it had not fallen upon him to do something that he had been sent as a messenger to direct this other man to do.

Q. Why did he say he was angry? A. He seemed to be angry. He said he wished it had fallen upon him instead of on this other man to whom he had brought the message to go to Washington.

Q. Who left the cars first, you or this party? A. They both left before I did.

Q. Immediately upon their leaving the car, did anything happen, or was your attention directed to anything? A. I saw them exchanging letters in the cars. I had letters of my own to post, and was then on my way to the post office. As I was leaving the car my little girl picked up a letter at the edge of my dress and gave it to me, with the remark that I had lost one of my letters.

Q. You saw her pick it up? A. Yes, sir. It was just under the edge of my dress.

Q. What did you do when this letter was handed you? A. I took it without noticing that it was not one of my own, and put it in the pocket of my coat with my other letters, and kept it there until I got to the broker's, where I was going with some gold, near Nassau street. In putting my hand into my pocket to get some money, I took out the letters that I had in there. I instantly saw these letters in a blank envelope, and knew they were not mine. Being in an unsealed envelope, I opened them to see what they were, and found that they related to this plot.

Q. What did you then do with them? A. I saw General Butler's name was mentioned in the letter, and knowing very few persons in New York, having been there but a short time, the first thought that I had was to give them to him. As his name was mentioned in the letter, I thought that he would pay more attention to them than any one else. I had seen by the newspapers that he was in the city at the time. I went up to the Hoffman House, where he had been stopping, and inquired for him.

Q. Did you find him there? A. No, sir; he had left that morning. I then asked for General Scott. He was not well, but said he would see me. I said I wanted to see him with regard to something of importance. When I entered the room I told him of what I had found, and the circumstances connected with the finding. He asked me to read the letters to him. I did so, and he thought they were of great importance. It was nearly dark at the time.

Now let us see what these letters are. I have shown you this little letter written in the delicate hand of the wife to Louis, her husband. When General Scott and General Dix saw this letter from this loving woman they knew that there was no sham about it. None of you can read that letter without having your heart touched, although it was written by the young wife of Payne, the assassin. I will now read the letters:

DEAR LOUIS: The time has at last come that we have all wished for, and upon you every thing depends. As it was decided before you left, we were to cast lots, [as was done in regard to the betrayal and crucifixion of Christ.] Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback. *Abe must die, and now.* [You will remember that he had just been re-elected a few days before, and the hope that some of the rebels entertained of benefit to their cause by the election of McClellan was therefore gone.] You can choose your weapons—the cup, the *knife*, the *bullet*. The cup failed us once, and might again. Johnson, who will give you this, has been like an enraged demon

since the meeting, because it has not fallen upon him, to rid the world of the monster. You will remember that Mrs. Benson heard him call the man he was talking with as Johnson. He says the blood of his gray-haired father and his noble brother call upon him for revenge, and revenge he will have; if he cannot wreak it upon the fountain-head, he will upon some of the bloodthirsty generals. Butler would suit him. As our plans were all concocted and well arranged, we separated; and as I am writing—on my way to Detroit—I will only say that all rests upon you. You know where to find your friends. Your disguises are so perfect and complete that, without *one* knew *your face*, no police telegraphic despatch would catch you. The English gentleman, *Harcourt*, must not act hastily. Remember he has *ten* days. Strike for your home, strike for your country; bide your time, but strike sure. Get introduced, congratulate him, listen to his stories—not many more will the brute tell to earthly friends. Do anything but fail, and meet us at the appointed place within the fortnight. Enclose this note, together with one of poor Leenea. I will give the reason for this when we meet. Return by Johnson. I wish I could go to you, but duty calls me to the West. You will probably hear from me in Washington. Sanders is doing us no good in Canada. [You remember drunken Sanders was not supposed to be doing the rebel cause much benefit in Canada, and Booth was right when he said so.]

Believe me, your brother in love,

CHARLES SELBY.

St. Louis, October 21, 1864.

DEAREST HUSBAND: Why do you not come home? You left me for ten days only, and you now have been from home more than two weeks. In that long time only sent me one short note—a few cold words, and a check for money, which I did not require. What has come over you? [The poor woman didn't know he was in a plot to commit a murder.] Have you forgotten your wife and child? Baby calls for papa till my heart aches. *We are so lonely* without you. [Do you think a woman, a real woman, wrote that, or do you not?] I have written to you again and again, and, as a last resource, yesterday wrote to Charlie, begging him to see you, and tell you to come home. I am so ill—not able to leave my room; if I was, I would go to you wherever you were, if in *this world*. Mamma says I must not write any more, as I am too weak. Louis, darling, do not stay away any longer from your heart-broken wife.

LEENEA.

This first letter was sent by Booth to Payne to allure him from his poor heart-broken wife; and the other was from that distressed, loving wife, urging him to return to her and their child.

You will now begin to see, gentlemen, what is meant by a change of plan. They changed their plans several times. At one time the plan was for Louis Payne to kill Lincoln. At another time it was to have him poisoned by Herold. At another time to have him killed by an Englishman, as I will presently show you from the evidence; and lastly, it was arranged that Booth should perform the bloody part.

There is truth in those letters, gentlemen; and so thought those distinguished and gallant officers, General Scott and General Dix, when they were placed in their hands. General Dix forwarded the letters to Washington, and they were finally placed in the hands of President Lincoln. Gentlemen, there is a history about these letters that will never perish. I have shown you Mr. Lincoln's indorsement on the back. Mr. Lincoln had received a great many threatening letters, as had most of the officers of the government, but had paid no regard to them, considering them as mere threats and nothing more. When this letter of Booth's was given to him he went over to the War Department, and into the private office of the Secretary of War.

After the door had been locked, this letter was shown to the Secretary of War, and it made a deep and lasting impression upon that officer. It was taken back by Mr. Lincoln. After the President had been shot, and the Secretary was standing by his dying bed, the remembrance of this letter flashed across his mind, and it immediately occurred to him that perhaps it might have some connection with the murder. He went forthwith to the Presidential mansion to see if he could get the letter. He found it in a private drawer of Mr. Lincoln's, in this envelope, and with this indorsement in his own handwriting: "Assassination."



Mr. MERRICK. Is there any evidence of those impressions, Judge?

Mr. PIERREPONT. I admit the impressions are not proof. I am only giving them as a part of the history of this strange transaction. It is a history that should not be allowed to perish. It is a history that belongs to the country; belongs to you, gentlemen, and to that strange letter and that indorsement by this murdered statesman.

Mr. MERRICK. Make a note of that, Mr. Bradley, for you have a right to reply to it.

Mr. PIERREPONT. I now refer you, gentlemen, to page 450 of the record.

In regard to the subject of Booth's whereabouts, Mr. Bunker says, in reply to the questions:

Q. I wish to refer to the memorandum merely to refresh your memory, and state when Booth was at your hotel during the latter part of 1864 up to the time of his death. A. November 9, 1864, J. Wilkes Booth arrived at the National Hotel, and occupied room 20. He left by the early train on the morning of November 11.

Q. You know, in some way, that fact? A. Yes, sir; by a book we kept at the hotel, called the departure book. He returned again November 15th, and left on the 16th.

He was then in New York, at the very time when Mrs. Benson says this letter, which I have read to you, dropped from his pocket.

Now you see, gentlemen, what is meant by a change of plan. In the spring of 1864 the plan was to murder Mr. Lincoln. They laid various plans for its accomplishment. They thought to do it as he went to the Soldiers' Home, by the telescopic rifle, and they did not intend, in the event of concluding to carry out that plan, to let his wife and his child stand in their way. They then thought to do it by having Payne to call upon Mr. Lincoln, get into conversation with him, listen to his stories, seem to be interested in them, and then, at that moment, to strike the knife home, deep into his heart. They at another time thought to poison him, and for that purpose tried the cup; but it seemed that that failed them once, and, as Booth said, might fail them again. They finally concluded they would try to kill him in the theatre, instead of on his way to the Soldiers' Home, and have Payne kill Secretary Seward at his house. That plan they carried out.

But, gentlemen, notwithstanding this change of plan, never was there for more than a year any other purpose than to murder. They had long since abandoned the idea of kidnapping, for that required too much machinery, too many men, and subjected them to too much danger; and the changes in the plan that had taken place recently were simply as to the mode of killing and the men who should strike the fatal blow.

I turn now to the testimony of Charles Dawson, at page 338. There was found, after the death of Booth, in the hotel where he boarded, this letter addressed to him. Here it is: "J. W. B., National Hotel, Washington, D. C." Let us see whether this letter throws any light on this terrible tragedy. You will notice, it is dated April 6; the murder was April 14:

SOUTH BRANCH BRIDGE, April 6, 1865.

FRIEND WILKES: I received yours of March 12, and reply as soon as practicable. I saw French and Brady and others about the oil speculation. [Here comes in the oil speculation, just before the murder.] The subscription to the *stock* amounts to eight thousand dollars, and I add one thousand myself, which is about all I can stand; now, when you *sink* your well, go deep enough; don't fail; everything depends upon you and your *helpers*; [who were his helpers in sinking his well? Have we not one of those helpers on trial?] If you can't get through on your *trip*, after you *strike* it, strike through Thornton Gap and across by Capon, Romney's, and down the branch, and I can keep you safe from all hardships for a year. [Why did he want to run after he had struck "it?" I should think—should not you?—that he would want to keep still, gather the oil and put it in a cask, to use it.] I am clear of all surveillance now that infernal Purdy is beat. I hired that girl to charge him with an outrage, and reported him to old Kelly, which sent him in the *shade*, but he suspects too damn much now; had he better be *silenced for good*? I send this up by Tom, and if he

don't get drunk you will get it the ninth. At all events, it can't be understood if lost. I can't half write; have been drunk for two days. Don't write so much highfalutin next time. No more; only Jake will be at Green's with the funds. Burn this.

Sue Guthrie sends much love.

Truly yours,

LOU.

What kind of men are you dealing with? Notwithstanding all this, the prisoner is innocent, free from crime, say the counsel, and an effort is made to arouse your sympathies in his behalf. You are asked: "Have not we had blood enough, and shall not this great and generous government of twenty-five millions of people let this man go who has been engaged in this crime?"

"At all events, it can't be understood if lost."

I think we are understanding something about it. Is there a man sitting here that does not understand it? Have you any doubt about what this letter means? Booth writes in a tragic strain, as you see. In one of his former letters you remember he said: "We have tried the cup, the knife, and the bullet. The cup has failed. Now, strike! strike deep! strike for your country! Remember that brother's oath, and strike home!"

Booth speaks in this letter of "Jake" being up at Green's with funds. "Jake" was up in Canada with a great many funds before and afterward. "Jake" had funds, and Surratt took \$70,000 and \$30,000 of the funds to "Jake." "Jake" had funds, and these men, who are poor and idle, entered into this horrid crime expecting a reward from him. If they had succeeded, perhaps "Jake" would have divided with them. I do not know how that is, however, but he nevertheless had funds.

The writer says "Burn this." Why did he want to have it burned? He had already said that it could not be understood if lost. But it was neither burnt nor lost. It went to its destination, and here comes up as a telling witness against this terrible crime. It lives and cannot be blotted out. You cannot ignore it and do not want to.

I come next to the evidence of Mr. Chester, at page 444. Mr. Chester says (speaking of Booth) that the last time he saw him was on Friday, a week previous to the assassination. I will read:

Q. When and where did you last see him? A. The last time I saw him was on Friday, one week previous to the assassination. I was with him nearly the entire afternoon. We separated at the corner of Fourteenth and Broadway, in New York city.

I wanted to show you that Booth was in New York city at that time—the Friday—exactly a week before the assassination. This witness proves that fact. I now come down to what occurred at Mrs. Surratt's house after the murder on the night of the 14th. I read from page 514:

Q. Did anything occur in regard to your health that night requiring you to get up? A. The next morning about 2 o'clock, I had been to the yard, had gotten to my room again, gone to bed, and was just about falling to sleep when I heard the door bell ring very violently. It rang several times in very quick succession. There were only two gentlemen in the house at that time, to my knowledge, Mr. Holohan and myself. I drew on my pants, and, with my night-shirt open in front, barefoot, I went down to the front door. I rapped on the inside of the front door and inquired who was there. "Government officers," was the reply, "come to search the house for J. Wilkes Booth and John H. Surratt."

Q. What did you say? A. I told them that neither of them were at home.

Q. What occurred further? A. "Let us in anyhow," said they; "we want to search the house."

By the COURT. Q. Was this on the morning of Saturday? A. Yes, sir; about two or half past two on the morning of April 15. I then told them it would first be necessary for me to ask Mrs. Surratt's permission. In order to do so, I went to her bedroom door, which was immediately in the rear of the parlor, and rapped, saying, "Mrs. Surratt, here are government officers who wish to search the house." "For God's sake let them come in," said she; "I expected the house would be searched."

Why did she? Why, a few hours before, she had been with Lloyd, and told him that the whiskey bottles and the shooting-irons must be got in readiness, that they would be called for soon. And you will remember that but a short

time before her own son had taken tea for the last time with her alone and left, as I shall show, on his awful mission. "I expected the house would be searched," she blurted out. On the trial of Dr. Webster, as you will remember from your reading of the case, it appeared that he had cut off the head and the greater portion of the body of Dr. Parkman, and had destroyed such parts. When a portion of the body was found, and they went to him and told him of its discovery, what was his first inquiry? He asked, "Has it *all* been found?" Why did he say *all*? Would anybody else have said *all*? No; but he had cut it up, and he knew that the larger part had been destroyed, and unconsciously he thus gave expression to his first thought, "Has it *all* been found?" How similar the case of Mrs. Surratt in this expression: "I expected the house would be searched." Guilty persons always make disclosures in this way.

The witness continues:

A. I returned to my room; the detectives also came to my room.

Q. Did you dress yourself that morning? A. Not just then; the detectives commenced to search my room; they looked in the closet, looked under the bed, and looked all around. I asked them for God's sake to tell me what is the matter; what this means; what means searching the house so early in the morning. One of them looked at me and said: "Do you pretend to tell me you do not know what happened last night?" I said I did; I did not know what had happened.

Q. State what was the manner of these officers in making this inquiry. A. They appeared to be astonished that I had not known what had transpired. Then Mr. Clarvoe said, "I will tell you," and he pulled out a piece of a cravat; there was blood on it. Said he, "Do you see that blood? That is Abraham Lincoln's blood; John Wilkes Booth has murdered Abraham Lincoln, and John Surratt has assassinated the Secretary of State."

They supposed then that John Surratt was the one who had attempted to assassinate the Secretary of State. Nobody then doubted John Surratt was in the city that night. The counsel for the prisoner has said, "If John Surratt was here, why did not his friends come and tell of it? Why didn't we put them on the stand?" Why, gentlemen, we did not suppose that his sympathizing friends, who wanted to shield him, would come and tell of his presence here. If they had, they would have received the same amount of abuse that Dr. McMillan and St. Marie have received for telling what the prisoner confessed to them. We did not expect his friends to tell of it. There were plenty of them, however, who knew that he was here, for everybody understood the fact at that time.

I then went down stairs with Mr. Clarvoe and Mr. McDevitt. Mrs. Surratt just then came out of her bedroom. I said, "What do you think, Mrs. Surratt?—Abraham Lincoln has been murdered." I did not say Abraham Lincoln, I said, "President Lincoln has been murdered by John Wilkes Booth, and the Secretary of State has been assassinated." I did not bring her own son's name out, from respect to her feelings. She raised her hands and exclaimed, "My God, Mr. Weichmann, you don't tell me so." She seemed astonished at the news. At this time Miss Surratt and Miss Jenkins were not down stairs.

Q. What did Mrs. Surratt then say? A. The talk was about the murder; every one in the room had been told that Booth had done it; Anna Surratt commenced to weep and said, "Oh! ma, all this will bring suspicion on our house; just think of that man (we were speaking about Booth at the time) having been here an hour before the murder." "Anna, come what will," she replied, "I think John Wilkes Booth was only an instrument in the hands of the Almighty to punish this proud and licentious people."

If you remember, Booth's diary says the same thing. He says he thinks he was an instrument in the hands of the Almighty. That seemed to be the theory, that they were instruments in the hands of God. They had wrought themselves up to such a pitch of madness that they finally made themselves believe that they were divinely appointed agents in this horrible murder.

I turn you now to the testimony of Colonel Smith, who searched this house. You will see it is very important. His testimony will be found on page 442:

A. Before ringing the bell I leaned over and looked through the blinds into the parlor, and discovered four females sitting close together, evidently in close conversation. From what occurred I should judge they were anxiously expecting some one. They were turning and listening from time to time, as if waiting for somebody to come. I then rang the bell; somebody came to the window and whispered, "Is that you, Kirby?"

Q. Tell how. A. They whispered, in a low voice, "Is that you, Kirby?" I said "No, it



is not Kirby, but it is all right; let me in." She said, "All right," and opened the door. I stepped in, and said, "Is this Mrs. Surratt's house?" She said, "Yes." I said, "Are you Mrs. Surratt?" She said, "I am the widow of John H. Surratt." I said, "And the mother of John H. Surratt, jr.?" She said, "Yes." I then said, "Madam, I have come to arrest you and all in your house, and take you down to General Augur's headquarters for examination. Be kind enough to step in." She stepped into the parlor. There were three parties there; one was lying on the sofa. Said I, "Who are these ladies?" She said, "This is Anna Surratt, that is Olivia Jenkins, and that Honora Fitzpatrick." I said, "Ladies, you will have to get ready as soon as possible and go with me down to General Augur's for examination." Whereupon Miss Surratt commenced wringing her hands, and said, "Oh, mother, think of being taken down there for such a crime!" Mrs. Surratt stepped to her, put her arms around her neck, and whispered something in her ear, and she became quiet. I said to her that I had sent for a carriage, and to please to get ready as soon as possible; that I would send somebody with them down to headquarters.

By the COURT:

Q. What time was that? A. As nearly as I can state, a quarter after 10. Mrs. Surratt said, "I will go up stairs and get the ladies' things." I said, "I advise you to get warm wrappings, as it is a damp, drizzly night." She said, "I will go right up stairs." I said, "Excuse me, madam, this house is suspected; I will accompany you up stairs." I told Clarvce to remain in the room and see that no papers were destroyed, and that no communication passed between the ladies. I went up stairs with Mrs. Surratt. She obtained clothing for the ladies to go to headquarters. In the mean time two other detectives had reported, one by the name of Morgan and another by the name of Samson. I sent Samson down stairs to take charge of the servants, and waited for the carriage. Mrs. Surratt said to me, "By your leave, sir, I would like to kneel down and say my prayers, to ask the blessing of God upon me, as I do upon all my actions." I told her certainly; I never interfered with any such purpose. She knelt down in the parlor and prayed. In the meantime I heard steps coming up the front steps. Wermerskirch and Morgan were in the upper part of the house with me. I told them to go behind the door, and that when they rung or knocked to open the door and let them step in, whoever it was, and I would meet them in the hall, thinking at the time it was Kirby that I was going to trap. I stepped into the parlor, and the door-bell rung. The door opened. I stepped out into the hall and found myself face to face with Payne. Payne was standing on the threshold of the door with a pickaxe over his shoulder. I stepped out and met him. He said, "I guess I have mistaken the house." I said, "You have not." He said, "Is this Mrs. Surratt's house?" I said, "Yes." He seemed to hesitate. I drew my revolver and cocked it, and said, "Step in." He stepped in immediately. I said, "Lay down that pickaxe." He laid it down, or put it in the corner. I took him to the back part of the hall and set two men to stand guard over him. We then commenced questioning him and examining him. I asked him where he had been. He said he had been working on the railroad and canal; that he had been working in different parts of the city. I asked him how long he had been here. He said a week or ten days. I asked him if he had any papers with him. He said he had a pass, which he took out and handed to one of the officers, who passed it to me. I looked at it and found it to be an oath of amnesty, or an oath in which he bound himself not to go south of the Potomac, I think.

Mr. BRADLEY. Where is that paper?

WITNESS. I do not know.

Mr. BRADLEY. You need not say anything more about the paper.

WITNESS. I then told him he was so suspicious a personage that I felt bound to arrest him and send him down to General Augur's headquarters. I sent for a carriage immediately. I left him in charge of two men, and went down stairs to search the premises. I saw the servants there, and from them I learned—

Mr. BRADLEY. You need not state what you learned from the servants.

Mr. PIERREPONT. What was said by the servants or anybody else in presence of Payne or Mrs. Surratt is evidence.

WITNESS. There was nothing said by the servants in presence of any one, except the detective and myself. I asked Payne what he had been doing. He said he was a laboring man. I asked him where he lived. He said he could not tell. I asked him whether it was east, west, north, or south. He said he could not tell me where he lived. I asked him what he came to Mrs. Surratt's for at that hour of the night. It was then verging toward 11 o'clock. He said he came to get instructions about digging a ditch in the back yard. I asked him what he came at that hour for to get instructions about digging a ditch. He said he didn't know; he was passing along. I asked him when he met Mrs. Surratt. He said he met her this morning, and agreed to dig a ditch for her, and that he wanted instructions to go to work the next morning. I then stepped to the parlor door and said, "Mrs. Surratt, will you be kind enough to step here a minute?" Said I, "Do you know this man? Did you hire him to dig a ditch for you? She raised both her hands and said, "Before God, I do not know this man; I have never seen him; I did not hire him to dig a ditch." Shortly after that a carriage reported, and Mrs. Surratt and the three ladies were sent to General Augur's headquarters. A little while after Payne was also sent there in another carriage. Both carriages went in charge of detectives.

“Yea, all that a man hath will he give for his life.”

Q. Who did you find in the house? A. We found Mrs. Surratt, Miss Surratt, Miss Fitzpatrick, Miss Jenkins, a little colored girl asleep on the floor in the back room. We found Susan Ann Jackson, or a colored woman, who said her name was Susan, a man down stairs, who she said was her husband.

Q. Would you know this Susan if you were to see her? A. I think I would.

Q. Was she a full grown person? A. Yes, sir.

Q. Did you talk with this man? A. I did a few minutes.

Q. Did you ask Susan any questions? A. Yes, sir; I asked her a number of questions.

Q. Did you ask her anything about John Surratt?

Now, gentlemen, I have to stop here a moment for the purpose of comment. The learned counsel, in the most vehement tones, the other day, said: “If Susan Ann Jackson had told any of these officers, why did not the prosecution bring it out?” Did not counsel know that we did try to bring it out, and that they stopped us? If they do not, I will show it to them here from the record. They saw, and you saw, gentlemen, how desirous I was to get this fact out, that she had made this statement to Colonel Smith, and that he had in writing reported it to the War Department, and that he had it placed on file that very night. Let us see what they did:

Q. Did you ask her anything about John Surratt?

Question objected to by Mr. Bradley.

Mr. Pierrepont said he had the right to ask whether the witness had held any conversation; he had not asked what that conversation was.

The court decided the question could be put in that shape.

Q. Did you question her? A. I did.

Q. Did you question all the others? A. I questioned them all.

Q. Did you make a written report of your examination at that house at the time?

Question objected to by Mr. Bradley as immaterial.

Objection sustained.

Q. Have you a distinct memory of what occurred at the time? A. I have.

Question objected to by Mr. Bradley as improper on examination in chief.

The court said it was proper to ask a man whether his memory is distinct about what he says.

WITNESS. My memory is distinct even to the very words.

That is the reason we did not get it out. We wanted to get it out, as you see here. The counsel, of course, must have forgotten all this, or they would not have said that we ought to have brought this fact out. There is some advantage in having a printed book of evidence in a protracted case like the one we are trying, for it tends to refresh our memories. In a case running through two months like this one, if counsel should forget any of the testimony that might have been given, it is very excusable. For fear I might forget some of it, I early made the determination that I would state no evidence to you, nor comment on any, except such as I had read from the book, giving it word for word as it fell from the lips of the witness.

Mr. MERRICK. I did not forget. My remark was addressed to the written examination before Colonel Olcott, which you never did offer in evidence.

Mr. PIERREPONT. And for the simple reason that there never was any taken. I tried very earnestly a second time to bring this evidence out, as you will see, but I did not succeed. The law did not permit it, and therefore the court ruled against me. And the court ruled right. If counsel, however, had not objected, it could have come in. My learned friend says that he did not forget, but that he was alluding to another matter. I shall take up that other matter when I come to Susan Ann Jackson's testimony.

Now let us see whether this statement of Colonel Smith's is confirmed or not. I turn to the testimony of Captain Wermerskirch, page 606:

Q. State what he said when he came to the house. A. When he came to the house he was asked to come in, because he refused to come in after he saw strangers present. After he came in he was asked what he wanted; he said he wanted to see Mrs. Surratt; he first inquired if that was Mrs. Surratt's house; he was then confronted with Mrs. Surratt and she was asked whether she knew the man; she held up her hands and said she did not know the man, and called God to witness: “Before God I do not know this man.”

I have said that the Bible states, "Yea, all that a man hath will he give for his life." She had been at prayer and had just risen from her knees when she was called out into the hall. She then, in the presence of these men, lifted up her hands before her God and exclaimed, "I do not know this man." Human nature is indeed weak in such troubles. Appreciating this fact, I pass this matter by without further comment. Let us throw the veil of charity over it as far as we can.

I now turn to page 607 :

WITNESS. Major Smith told Mrs. Surratt and the other ladies—there were three of them—that he arrested them; that they were his prisoners; that they had to come up with him to the Provost Marshal General's office. Thereupon Mrs. Surratt requested him to allow her to go up and get their cloaks and bonnets to put on. Major Smith told her she might go up there, and accompanied her himself. Miss Annie Surratt had been weeping a great deal and was quieted by Mrs. Surratt; what she said to her daughter I do not know, because she said it in a very low tone—whispered it to her. She then asked Major Smith's permission to kneel down and pray, and she thereupon knelt down. Shortly thereafter they left. We had sent for a carriage in the mean time, and the carriage had got there and they were sent up to headquarters.

Q. After praying in the manner you have described, where did Mrs. Surratt go? A. After prayer she came out in the hall; she went through the hall and entered a carriage.

Q. Did she then see Payne? A. It was at that time she saw Payne.

Q. Then the remark to which you have already testified of Mrs. Surratt, her denial that she knew Payne, was made after this? A. After this; yes, sir.

Now I come to the testimony of Colonel Morgan, at page 460, who was likewise there :

Q. Will you please state what occurred in the presence of Payne? A. I directed that Mrs. Surratt and all the others in the house should be sent up to the provost marshal's office. They hesitated about going. I told them they should not delay, but go right away. I told Mrs. Surratt to go up stairs and get the bonnets and shawls of the rest of the party. She did so, I sending an officer along with her. She got all the things and brought them down in the parlor, where they prepared themselves to leave. When they were about ready to go, she said something about it being a cold, damp night. I said I would send for a carriage, and immediately directed one of my men to go and get one. About three minutes before he returned there was a knock and a ring at the door. I was at the time standing by the parlor door. I instantly stepped forward and opened the door, thinking it was the man returning with the carriage. Instead, however, of it being him, a man entered dressed as a laboring man, with a pickaxe over his shoulder. As soon as he saw me he stepped back and said, "O, I am mistaken." Said I, "Who do you wish to see?" He said, "Mrs. Surratt." I replied, "It is all right; come in." I passed him in, and put him behind the door, standing myself with my hand on the door, open. I said to Mrs. Surratt, "Are you ready?" and then remarked either to Major Smith or one of the clerks standing there, (I cannot now say which,) "Pass them out." As they were about starting, I looked around, and saw Mrs. Surratt just getting up from her knees and crossing herself. I said, "Hurry up and get along; the carriage is waiting." I sent a man off with them to the provost marshal's office. After I passed them out I commenced to question Payne.

Q. Passed who out? A. Mrs. Surratt and the other three ladies.

Q. Before you passed Mrs. Surratt out what was said to her about Payne, if anything? A. After she got up from her knees, Major Smith made some inquiry as to whether she recognized him. I did not hear exactly what he did say, nor the reply she made.

Q. What did she say to you? A. She leaned her head over toward me, and said, "I am so glad you officers came here to-night, for this man came here with a pickaxe to kill us."

Then he says further at page 470 :

Q. Where was Payne in reference to you when Mrs. Surratt went out? A. Payne was close up to me.

Q. Did Payne make any reply when Mrs. Surratt leaned a little back in the manner you have described, and said to you, "I am glad you officers came here to-night, as that man with a pickaxe came to kill us?" A. No, sir.

Now, gentlemen, a great many things have been going on in this brief time over which I have passed. Where was John Surratt all this time? I do not need to tell you that no man can be in two places at the same time. That you will all admit is not within the range of possibility. He was somewhere—where was he? That is the question. These two points in this case are fixed. About them there is no dispute—that he left Montreal on the 12th, and returned to



Montreal on the 18th. Between those two dates all these things of which we have spoken relating to this murder were done. Where was John Surratt all this while? Was he in Canada? *They* could very easily tell you where he was every hour from the 18th till he left on the steamer to go to Europe, could they not? He was at Porterfield's, at Boucher's, and at La Pierre's, and they could tell you where he was between the 12th and 18th—only six little days. Where then, I again ask, was their client, the prisoner, during this time? He slept somewhere, did he not? He ate somewhere; he saw somebody; he staid at some house. He was in some wood, some field, some village, some city, somewhere. They know where he was and could give us the information if they would. Why cannot they bring us the man in whose house he slept, the servant who made his bed, who brought him his water, the barber who shaved him, the person of whom he bought an apple, a meal of victuals, or a ticket, or something? Why did they throw a thick veil of night over these six awful days? What is the reason, gentlemen? He knows where he was, doesn't he? He knows every step he took. He knows every hotel in which he slept. He knows every place where he got food or drink, and yet he does not tell you one of them, as I will presently prove to you. The books of law which I have read to you say that when an *alibi* is attempted after the government have shown the party present where the crime was committed, the prisoner must prove beyond any possibility of doubt that he was somewhere else. That is the law. My friends on the other side have admitted that, and said they found no fault with it. It is, then, for them to show where he was, if they know; and if they do not know, it is because they have not tried to get the information, for their client knows.

Now, let us see if we can find out where he was, as long as they will not tell us. I am sure I know where he was at this time, and I am just as sure that you will know where he was when I get through reading this evidence, if you do not already. I want to call your attention to this remarkable circumstance that occurred in the taking of this evidence. I do not know whether it arrested your attention at the time or not, but you will remember it when I recall it to your minds. For some reason, which I did not then understand, but which was fully revealed in the progress of the case, Mr. Du Barry was put by the defence upon the stand, and brought his records of the railroad between Elmira and Baltimore. I afterward put him on the stand, as you will recollect; but I will recur to that presently. Why was he called by the defence? Why, to show that between Elmira and Washington, in consequence of the freshets that had been sweeping away all the bridges, railroad connections, &c., there was no railroad communication by means of which Surratt could have come from Elmira on the 13th and reached the city of Washington on the 14th. After Mr. Du Barry had testified, you remember the senior counsel, in the argument which he made to the court, said, not only once, but repeatedly:

"We have shown it was a physical impossibility that he could have come from Elmira on the 13th and reach here in the forenoon of the 14th." Well, he said it with confidence—perhaps with effect. It would be effective if it were true; we knew it was not true; we thought we could prove it was not true, and we undertook to prove that it was not true, but found ourselves in great trouble. Although we got the original books from the very engineer who drove the trains, yet when the man who was brought here to prove them was cross-examined, it turned out that he did not make, himself, the original entries, and the court ruled the evidence out. Then we tried to get the men themselves. They would not come, and in your presence and before the court we made the proof of that fact and sent out a process of attachment to arrest those men and bring them here. I made a remark on that occasion, which was printed in this case, that every impediment had been thrown by that road in the way of our getting at the facts connected with the movement of those trains. That remark got

into the newspapers and produced the effect which I will presently show you, and a pretty strange effect it was. I now read Du Barry's first examination, when he was put upon the stand by the defence; and before I made these remarks which are printed here in this case, I read from page 594:

Q. Turn to the 13th, if you please, and see if any train left Elmira, coming south, after 12 o'clock on the afternoon of the 13th? A. There is no record of such a train.

Well, I did not understand that. I knew if human testimony was to be relied on that Surratt did come on a train here from Elmira, and that from the depot he went to a barber shop and got shaved, for we had any number of witnesses who saw him. But the witness stated that no train left Elmira coming south after twelve o'clock m. on the 13th. Well, the witness stated what was a fact. No train did leave there after twelve o'clock; but a train did leave Elmira at half-past ten o'clock, and that was the train Surratt was on, as we have proved.

Q. No train leaving Elmira after 12 o'clock on the 13th? Now what time of day on the 13th and 14th did the trains coming south leave Elmira? A. The schedule called for a train leaving there at 8 o'clock in the morning.

Very likely the schedule did. There was not any perjury committed by the witness in making that statement, but it is not far from it. When a special train left at 10½ o'clock, to say nothing about it, but to state that the schedule time is 8 o'clock and that no train left after 12 o'clock looks to me very much like a suppression of the truth; and the law says that the suppression of a truth is as great a lie as the statement of a falsehood.

Now I take up the cross-examination:

Q. Do you say that there was no train running through from Elmira with soldiers on that day?

The COURT. Which way?

Mr. PIERREPONT. This way, coming south on the 13th.

A. I cannot say that there was no train with soldiers.

At that time I did not know, and my friend, the learned district attorney, did not know, exactly what time this train left; but we found out afterwards, as we shall show. The schedule time was 8 o'clock, and no train did leave after 12 o'clock, but a special train left at 10½ o'clock, and he came on that special train. Now let us read further:

Q. On the 13th, 14th, and 15th? A. The road was partially repaired, and one train was running through daily.

Q. They ferried? A. That was not on my route.

Q. Don't you know they ferried? A. I do.

Q. Didn't you go over the ferry yourself? A. I did on the 14th.

Q. But you were not at Elmira on the 13th? A. No, sir.

Q. Were there any trains that did not run on schedule time? A. I have no record of them.

Q. Were there any? A. Not that I am aware of.

How did that leave the case? It left it without any evidence of this 10.30 train, did it not? It left it apparent that this Mr. Du Barry was not at Elmira on the 13th. Was he? We will see what occurred after this remark of mine, of which I have spoken, got into the newspapers.

We finally succeeded, after much trouble, in getting Mr. Rogers, the very engineer who ran the special train the other way. He met Surratt at Troy on the 13th. In that way we got at the correct time, showing that he left Elmira at 10.30 on the morning of the 13th. We show the further fact that Du Barry was in Elmira at that time. Du Barry, you remember, testified that he was not there. He was therefore mistaken, as he admits in his subsequent testimony. We brought Surratt across the ferry. Two men saw him. The witness Drohan took him across alone, going up to him when in the middle of the stream and collecting his fare. He talked with him and looked him directly in the face; and the moment he entered this room and saw the prisoner he said he recognized him as the same man. He was not cross-examined by the learned coun-

sel for the defence; but immediately upon the conclusion of the examination in chief, Mr. Bradley, in a very theatrical manner, said, "Go away; I don't want any more." My friend, Mr. Carrington, pronounced that to be acting superior to anything that Forrest ever performed. I do not know anything about that, for I do not understand that kind of thing. My custom is merely to present the evidence to you in a plain and simple manner, in such a manner as may aid you in coming to a proper determination in regard to the issues before you. My object on this occasion is, before my fellow-men, and before God, to help you to arrive at the truth. I thought it strange that counsel did not cross-examine him, but I concluded that the prisoner, when he saw the face of that old Irishman, and recalled the fact of crossing the ferry with him alone, and having a conversation with him about the price in the middle of the river, knew he would only clinch the nail the tighter by cross-examination, and therefore the counsel very wisely refrained. But they thereby prevented me from bringing out a good many striking things which I should have done if a cross-examination had been had. Whether it was acting or not I do not know, but I can say this, it was very shrewd and skilful in them, and the counsel deserve credit for it as a professional exhibition.

After we had examined these other witnesses, and after the remark to which I have alluded appeared in the newspapers, we called Mr. Du Barry, and he told us all about it. We were a great deal bothered about this thing at first, this "physical impossibility" of getting the prisoner from Elmira to Washington, in regard to which the counsel had said so much. We knew that he did get here, but we were not able to show how he got here. We were trying, but we did not get along very well. Finally, one morning, you may have noticed that when we were about to commence with the proceedings of the day, I suddenly got up and went out of this room, and in about ten minutes as suddenly returned with Mr. Du Barry, their witness, whom they had put upon the stand, and who had said that he was not in Elmira on the 13th at all, and who had further stated that there was no record of any train after 12 o'clock on that day. Mr. Du Barry took the stand and told us the whole story, and here it is. Then we at once got over this physical impossibility.

Q. You were called and sworn by the defence before, were you not? A. Yes, sir.

Q. Have you the same records with you now that you had then? A. Yes, sir.

Q. Won't you tell the jury what railroad connection there was between Sunbury and the city of Washington on the 13th and 14th of April, 1865—what were the modes of getting to Washington?

Then he went on and told the various modes, and told them fairly. I have no fault to find with Mr. Du Barry. Though he didn't at first recollect, yet when his mind was refreshed he came here and told the whole truth, and here it is:

Q. Do you know anything about the special train? A. No, sir.

I would at this point like to correct some evidence that I gave when I was on the stand before. The question was asked me as to whether I was in Elmira on the 13th. I answered, "No, sir." Since that time I have sent for the telegraphic despatches of that date, and I find that I promised to be in Elmira at that time; and I believe I was in Elmira on the 12th and 13th.

Gentlemen, was my statement to you incorrect? Wasn't it as I have now read it? Let us see:

Q. But you do not remember? A. I cannot fix it by any circumstance.

Q. Will you come down to Sunbury? Will you tell us when the freight train left Sunbury on the afternoon of the 13th of April, 1865? A. At 4.30 p. m., by the record.

We could not get that before.

Q. Will you tell us when the passenger train left on the same day? A. A passenger train left Sunbury, by the record, at 12.13 on the night of the 13th and the morning of the 14th.

Q. When did that reach Baltimore? A. From the record, at 7.25.

Q. On the morning of the 14th? A. Yes, sir.

The learned counsel's physical impossibility instantly vanished into thin air



with that testimony. After it was given you heard no more about the physical impossibility of the prisoner's getting from Elmira to Washington at that time. Du Barry put that matter all right.

Now we will see what the railroad man, who brought it from Baltimore here, says. I read from Mr. Koontz's testimony, page 1148 :

Q. Tell me the time of the arrival of the trains in Baltimore on the 14th of April, 1865.  
A. I do not know.

Q. Tell me at what time the first train left on the 14th. A. At 4.20 a. m., and reached Washington at 5.45 a. m.

Q. When did the next leave? A. 5.30 a. m.

Q. When did that arrive? A. 7.20.

Q. When did the next leave? A. 7 a. m.

Q. When did that arrive in Washington? A. 8.43 a. m.

Q. When did the next train leave? A. 8.50 a. m.

Q. When did that arrive? A. At 10.25 a. m.

Mr. BRADLEY. Now get him to the barber shop here so as to be shaved at 9 o'clock.

Mr. PIERREPONT. I will get him here most beautifully, and so smoothly that you will see him shaved without a quiver. My friend Mr. Bradley is very much troubled about that barber shop, but we will relieve all his anxiety on that subject. But let us see whether he was on the train or not, because if he was not on the train he did not go to the barber shop.

Mr. Pierrepont said he would first call the attention of the jury to the relative positions on the map of the cities of Elmira, Williamsport, Harrisburg, Baltimore, and Washington. Having done this, he read from the testimony of Mr. Strayer, page 1036 :

Q. State whether on the 13th of April, 1865, you were in Elmira. A. Yes, sir ; I was there in the morning.

Q. What time did you leave there? A. I could not tell you exactly the time. I was twenty-five miles south of there about half past eleven. I suppose I left there about ten or half past.

Q. You left Elmira. Was that a special train? A. Yes, sir ; the second section of the mail.

Q. Where did you run to? A. To Williamsport.

Q. Williamsport lies directly south of Elmira, does it not? (Exhibiting a large map of that section of the country.) A. Yes, sir.

Q. What is the distance between Elmira and Williamsport? A. Seventy-eight miles.

Q. Did you meet any other conductor on the way? A. I met the mail north.

Q. Who was the conductor? A. Mr. Rogers.

Q. Is he here now? A. He is in the city, in some place.

Q. Where did you meet—at what point? A. At Troy.

Q. Is Troy between Elmira and Williamsport? A. Yes, sir ; 25 miles south of Elmira.

Q. What river is there at or near Williamsport? Q. No answer.

Q. Can you tell exactly the hour when the two trains got there? A. It was between the hours of one and two o'clock that I got to Williamsport.

Q. Did you go no further than Williamsport? A. No.

Q. You took passengers? A. I was the second section mail. The first train took the mail and the passengers.

Q. Do you know a ferryman at Williamsport who was ferrying there at that time? A. Yes.

Q. What was his name? A. There are two ; one's name is Bligh, and the other has a funny name ; I cannot remember it.

Q. Was it Drohan? A. Yes, sir ; some such name.

Q. Are you still in the employ of the railroad company as engineer? A. Yes sir.

I now turn to the testimony of Mr. Hepburn, train-master, on page 1046 :

Q. How many construction trains were running? A. Two between Williamsport and Sunbury.

Q. They did not run, as I understand it, at regular hours? A. No, sir ; they had the right of the road to work from morning till evening, keeping out of the way of the regular trains.

Q. Do you know whether they had orders to take passengers? A. They had orders to carry passengers through to any point they run to.

Q. They obeyed the orders, of course? A. Yes, sir.

Q. Can you tell the jury if the construction train left Williamsport ferry at half-past twelve o'clock, at what time it would reach Sunbury, if it went directly through?

(Question objected to by Mr. Bradley. It had not yet been in evidence that any train run that day. The court said the time might be proved first.)

A. The running time for a passenger train was an hour and forty minutes. The gravel train, with an ordinary load, would run it in a little over two hours.

Mr. BRADLEY. From Williamsport to Sunbury? A. Yes; that is, to the other side of the bridge.

Q. Do you mean the regular time was an hour and forty minutes? A. Yes, an hour and forty or fifty minutes.

Q. That was the time on the 13th of April, 1865? A. Yes, on the 13th. Before the 10th it was longer.

Q. Who gave the orders in respect to carrying passengers on the construction trains? A. I gave the orders, or they were given by me to the clerks and they ordered it.

Q. Would passengers frequently come through in that way? A. The conductors remitted money every day, or return tickets.

Q. Did they, or not, start out in the morning to supply the work of the road, going from point to point as they were required? A. Yes, sir; the bridge of Williamsport was being repaired, and the gravel train was run to and from the bridge.

I next read from page 1047:

Q. The train went from Watsontown to the bridge, as I understand it, and back again, as occasion required it? A. Yes, sir.

Q. There was no time for starting, arrival, or anything else; they were merely required to keep out of the way of the passenger trains? A. Yes, sir; the train east at that time was hauling wood from Watsontown to Sunbury.

Q. Was that on the 13th of April? A. Yes.

I read further from page 1048:

Q. What time did the train leave Sunbury for Baltimore on the afternoon of the 13th? A. At 4.30.

Q. At what time did it arrive in Baltimore? A. I think about 3.50.

I next read from the testimony of Mr. Westfall, pp. 1055, 1056, and 1057:

Q. At Williamsport, how far from the ferry is the depot where the trains coming from Elmira stop? A. About three-quarters of a mile.

Q. Were you at the depot that morning? A. I was there when the trains arrived from Elmira that day.

Q. Tell the jury what trains did arrive from Elmira? A. There were two trains that arrived between twelve and two.

Q. Were you there when the eight o'clock train leaving Elmira arrived? A. Yes, sir.

Q. What time did it arrive? A. Between the hours I have named. I could not tell the exact minute.

Q. One of them was the eight o'clock train from Elmira? A. Yes, sir.

Q. Were you there when the special train arrived at 12.30? A. Yes, sir.

Q. Will you state what occurred after the arrival of that train? A. A man came to me who was very anxious to get through. He asked some questions with regard to the train. He inquired what would be the probable chances of getting over the line. I took him to be either a rebel spy or a government detective. I cut him off very short; did not give him much satisfaction, because I thought it was none of his business as to how we run our trains at that time.

Q. Do you know which way he went? A. I could not say as to which way he went.

Q. Did you know the ferryman? A. Yes, sir.

Q. Did you see the ferryman afterwards? A. Yes, sir; I saw him that evening.

Q. Did you have any conversation with the ferryman that evening?

(Objected to by Mr. Bradley. Withdrawn.)

Q. When did you next see the ferryman, after you had the conversation with the man that you saw after the arrival of the special train.

(Objected to by Mr. Bradley. Objection overruled. Exception reserved.)

A. That evening about half past six o'clock.

Q. About what time was it that this man had the conversation with you in relation to making these inquiries about your trains? A. I should judge between twelve and two. I could not fix the time precisely.

Q. Have you seen anybody since that looks like him? A. I cannot say that I have seen any person that I could swear to positively.

Mr. PIERREPONT: I did not ask you as to whether you had seen any person whom you could swear to positively as being the one. I ask you if you have since seen anybody that looks like him.

The COURT. Ask him if he has seen anybody since that he believes to be the man.

Q. Have you seen anybody since that you believe to be the man? A. Yes, sir, I have.

Q. Do you see him now? A. Yes, sir.

Q. Do you know the prisoner? A. The prisoner is the man; that is my impression.

Q. Will you tell us when you left Williamsport that day?

WITNESS. Going in which direction?

Mr. PIERREPONT. In any direction.

Q. After this conversation, did you stay in Williamsport? A. Yes, sir; I remained in Williamsport, after transferring the passengers north, until about nine o'clock.

There is a great difference in men with regard to the manner of making their statements. Some men will state a thing positively, and others will not be so positive in their declarations. Some men, when they desire to express their firm conviction of a fact, will do so by saying they "*think*" such is the fact. Others will say, "*It is the fact.*" For instance, my confident belief is, that there has been no day in these many weeks in which every man of you has not been in his seat. I *believe* it is so, and yet if I were called to-day and put upon that stand and asked to swear whether every man had been here the whole of the time, or whether one day after recess one man was not absent, I would not swear positively that you had each one been here every hour. I believe you have been; I think it is so, and in that way I should swear. But some men with the same knowledge would be more positive than I, and say yes, they *knew* it was so.

Q. Do you know whether they were ordered to take passengers? A. Yes, sir; they were at that time, because the road had been obstructed. We gave the men orders to carry persons going from one point to another.

Q. Will you tell about the speed at which these construction trains were running? A. They were running at a very rapid speed at that time.

Q. Tell the jury why that was. A. Because, as a general thing, when we wanted anything we would go in a good bit of a hurry for it, and in getting things for the bridge it was very necessary to lose as little time as possible.

Q. How were they running then compared with the passenger train in speed? A. I should judge they would make about the same time.

Now, gentlemen, I have read to you what this man has said about seeing Mr. Westfall.

Mr. PIERREPONT next read from page 1045 as follows:

Q. On the 13th 14th and 15th of April, 1865, had you anything to do with the ferry across the Susquehanna at Williamsport? A. Yes, sir; I ran it.

Q. Do you remember a special train coming in from Elmira on the 13th, or anybody coming up to be ferried over? A. I do not remember anything about a special train. I remember a man coming to be ferried over.

(His examination objected to by Mr. Bradley. Objection overruled.)

Q. State what occurred and what you were doing when this man came? A. I was on the other side of the ferry—on the Williamsport side.

Q. Was that the same side as Elmira? Yes; it is the same side on which the Elmira train comes in.

Q. Now, tell us what you were doing? A. I was coiling up my rope, when the man came to me and asked me to ferry him across to this side. I asked him if he would pay if I would ferry him over, and he said yes.

Q. Was there anything that called your attention to him? A. Yes.

Q. How was he dressed? A. He had a peculiar coat on.

(His examination objected to by Mr. Bradley. Objection overruled.)

Q. Did the man say anything about ferrying? A. He said he wanted to go to the other side.

Q. Did he say when he wanted to go to the other side? A. Not to my knowledge.

Q. What did he say in relation to his desire for quickness? A. He said he wanted to go to the other side—

Mr. BRADLEY insisted that the witness should give a narrative, and not be interrupted with questions at every sentence.

Q. I asked you to state what the man said. A. I have said he asked me to ferry him across to the other side. I told him the charge would be fifty cents. In the middle of the river I generally made it a rule to stop the ferry to get my pay, when the party had not a ticket of the company. He gave me a dollar bill, and I had no change, and I kept the dollar bill: he said that I might have it.

Q. Have you seen that man since? A. I have.

Q. Is that the man? (pointing to the prisoner, who stood up.) A. To the best of my belief, that is the man.



Cross-examined by Mr. BRADLEY:

Q. Who brought you here? A. The authority of the government.

Q. Who came after you? A. I don't know the gentleman.

Q. A young man or old man? A. A middle-aged man.

Q. Do you see him in court? A. Yes; that is the gentleman, (pointing to Colonel Montgomery.)

Mr. BRADLEY (to witness.) You may go; get down from that stand; I don't want anything more of you.

We have now got him started along on a train which could bring him from that point here into Washington without any difficulty whatever about 10 o'clock on the morning of the 14th. That has been proved, though, through much tribulation, and there has not been any witness to doubt Mr. Westfall, who told you that the prisoner was the man he saw who was making inquiries of him, nor any man to dispute Drohan, who told you he was the man he took over the ferry. These witnesses were in the employ of the road, and could have no possible object in coming here to give this testimony if it was not the truth. We sent for them, and they came and gave their testimony—testimony that will stand the test of truth when you and I and all appear before the great judgment seat.

We have now got the prisoner here at 10.25, and are on the road to the barber's. I now propose to turn to the barber's testimony. He was an early witness in this case, and there was plenty of time for them to learn who he was and how long he had lived here, and what was his character for truth and veracity, whether he was a bad or a good man, and whether he was a Protestant or a Catholic. No doubt they did inquire about all these matters and found it impossible to bring any witness to impeach him. Now let us see what Wood tells us happened on that morning. It is one of those things about which there could be no mistake. He must either have perjured himself, or else have told the truth. He could not have been mistaken. I begin at page 514:

Q. What is your business? A. I am a barber by trade.

Q. Have you been a barber in the city of Washington for some time? A. Yes, sir; ever since I have been in the city.

Q. How many years? A. Since December, 1862.

Q. Where was your barber shop in April, 1865? A. I came here on a Saturday, about the first of September, 1862, and I engaged to go to work at Messrs. Booker & Stewart's barber shop, on E street, near Grover's theatre, next to the old Union building.

Q. In this city? A. Yes, sir.

Q. Are you working at the same shop now? A. No, sir; I now have a barber shop under the Ebbitt House, near Fourteenth street. I am now in business for myself.

Q. Did you know Booth by sight before the assassination? A. Very well, sir.

Q. Did you ever cut his hair? A. I have, frequently.

Q. Did you ever shave him? A. I have.

Q. You knew him well? A. Very well, sir.

The prisoner at the bar was here requested to stand up, which he did.

Q. Have you ever seen that man (pointing to the prisoner at the bar) before? A. I have.

Q. On the morning of the assassination did you see him? A. Yes, sir.

Q. Where did you see him? A. I saw him at Mr. Booker's barber shop.

Q. What did you do to him? A. I shaved him and dressed his hair.

Q. Will you tell us who came into the shop with him, if anybody? A. Mr. Booth came in; there were four persons who came together.

Q. Who were the four persons beside Booth and Surratt? A. A gentleman I take to be Mr. McLaughlin—they called him "Mac."—and from his appearance, (I having since seen the picture of Mr. McLaughlin,) I should think it was him.

Q. Did he tell you where he had come from that morning—McLaughlin. A. They were speaking of Baltimore; the conversation between them was in reference to some Baltimore—

Q. Between whom? A. Between Mr. Booth, Mr. McLaughlin, and Mr. Surratt, the other gentlemen that was with him had nothing to say; he sat down nearly in the rear.

Q. Did you ever see the other man afterward? A. I never saw either of the parties afterward except this gentleman, (the prisoner.)

Q. Who was the other man, do you know? A. I did not know him.

Q. You may describe the man. A. He was a short, thick-set man, with a full round head; he had on dark clothes, which we generally term rebel clothes, and black slouched hat.

Q. Did you cut Booth's hair that morning? A. I did. I trimmed his hair round and dressed it.

Q. Won't you tell the jury what occurred between Booth and Surratt while you were trimming Booth's hair? A. There was nothing particular that occurred.

Q. What was said? A. While I was waiting on Mr. Booth, Mr. Surratt was sitting just in the rear of me; the thick-set man was sitting to the left of the looking-glass, just in the rear of my chair. The glass was next to the wall, and Mr. Surratt was on the right side of the glass, the other one on the left hand. There were not any words particularly that I remember said or interchanged; but when I got through waiting on Mr. Booth, he (Mr. Booth) got out of the chair and advanced toward the back part of the shop; Mr. McLaughlin was in that direction doing something about the glass. Mr. Surratt took my chair immediately on Mr. Booth's getting out. During the time that I was spreading my hair gown over him, and making other preparations for shaving him, this other young man, rather tall, with dark hair—I think not black, but dark brown hair—rather good looking, with a moustache, was figuring before the glass. He had on a black frock coat, and putting his hand in his pocket he took out two black braids: one of the braids with curls he put on the back of his head, allowing the curls to hang down; he then took the other braid and put it on the front; it had curls also, and they hung on the side. When he had done this he said: "John, how does that look?"

Q. Whom did he address as John? A. I do not know whether it was Mr. Surratt or Booth, but in making the remark, he said "John." I turned round and said, "he would make a pretty good looking woman, but he is rather tall." Says he, "Yes," in rather a jocular manner, laughing at the time. He seemed to look taller to me when he put on these curls than he did before, though I had not taken particular notice of him before that. This time Mr. Surratt said to me: "Give me a nice shave and clean me up nicely. I am going away in a day or two."

Q. Will you state, when he said "Clean me up nicely," what his condition was as to being clean or not? A. He seemed to be a little dusty, as though he had been travelling some little distance, and wanted a little cleaning and dressing up, as I am frequently called upon by gentlemen coming in after a short travel.

Q. Did he say anything to you about Booth? A. Yes, sir.

Q. What was it? A. He asked me if I noticed that scar on Booth's neck. Say I, "Yes." Says he, "They say that is a boil, but it is not a boil; it was a pistol shot." I observed, "He must have gone a little too far to the front that time." This gentleman (Mr. Surratt) observed, "He liked to have lost his head that time." I then went on and completed the shaving operation. I shaved him clean all round the face, with the exception of where his moustache was. He had a slight moustache at the time.

Q. What did you do with the hair? A. After I was done shaving I washed him off in the usual way, dressed his hair, and put on the usual tonics and pomade.

Q. Tell the jury what time in the morning it was. A. I think it was near about nine o'clock. I had had my breakfast.

Q. Where had you been that morning? A. I had been up to Mr. Seward's and had come down again.

Q. Where did you find Mr. Seward? A. In his room, third story.

Q. Was he up or in bed? A. He was up.

Q. Did you see any other gentlemen at Mr. Seward's that morning? A. Yes, sir; I think I did.

Q. Whom did you see? A. Mr. Stanton called. Mr. Seward was either on the bed or on the chair by the bed when I shaved him. I do not remember now exactly which.

You saw that man, and you heard his testimony. You heard all these little circumstances that he narrated. Do you believe him? Every man of you does. He could not have been mistaken, and he did not perjure himself. Now I repeat the "physical impossibility" of which the gentlemen speak has entirely vanished.

The court here took a recess until ten o'clock to-morrow morning.

TUESDAY, August 6, 1867.

The court met at 10 a. m.

Mr. PIERREPONT resuming, said: You will recollect, gentlemen, when a call was made several days ago by Mr. Merrick, one of the counsel for the prisoner, asking that we should produce the record of the conspiracy trial, that I brought the original record here and handed it to the counsel. I then stated that, as a part of that record was a suggestion made by a part of the court that tried the conspirators, that if the President thought it consistent with his public duty they would suggest, in consideration of the sex and age of one of those condemned, that a change might be made in her sentence to imprisonment for life. I stated that I had been informed that when that record was before the President, and

when he signed the warrant of execution, that recommendation was then before him. I want no misunderstanding about that, and do not intend there shall be any. That is a part of the original record which I here produced in court. It is in the handwriting of one of the members of that court, to wit, General Ekin. The original of that is now in his possession, and in the handwriting of Hon. John A. Bingham. When the counsel called for that record I sent, the afternoon of that day, to the Judge Advocate General, in whose possession these records are. He brought it to me with his own hand, and told me with his own voice, in the presence of three other gentlemen, that that identical paper, then a part of the record, was before the President when he signed the warrant of execution, and that he had a conversation with the President at that time on the subject. That is my authority. Subsequently to this, having presented it here, the Judge Advocate General called to receive it back, and reiterated in the presence of other gentlemen the same thing. That is my knowledge, and that is my authority. It has nothing whatever to do with this case, but the counsel called for the record, and it was for that reason produced.

I come now, gentlemen, to where we left off, which was with the testimony of Wood, the barber, who shaved this prisoner after his arrival from Baltimore, on the morning of the 14th. I had already said to you that a man could not go through with what he went through there, and be mistaken; that having shaved him and cut his hair, after the conversation he had with him in relation to Booth's wound, and in relation to the other things that occurred in the shop, noticing that he came in there dusty as from travel—from the length of time he was there, and from all the circumstances and conversation going on, he could not be mistaken.

Now, the gentlemen say he was not there at the exact hour the barber said he was. That is the only criticism they have ventured to make upon this subject. Gentlemen, I will undertake to show from this evidence that he was there at that time—under any fair construction of it, that he was there at the very hour he stated. Now let us see exactly what he did state, on page 496:

Q. Tell the jury about what time in the morning it was. A. I think it was near about nine o'clock. I had had my breakfast.

That is all he says on the subject of time. Now let us see further:

Q. Where had you been that morning? A. I had been up to Mr. Seward's, and had come down again.

Q. Where did you find Mr. Seward? A. In his room, third story.

Q. Was he up or in bed? A. He was up.

Q. Did you see any other gentlemen at Mr. Seward's that morning? A. Yes, sir; I think I did.

Q. Whom did you see? A. Mr. Stanton called. Mr. Seward was either on the bed, or on the chair by the bed, when I shaved him. I do not remember now exactly which.

Now let me call you back, gentlemen. This, you will remember, was on the 14th of April. We were then in the shorter days of the year. The witness did not undertake to fix the exact time. Nothing occurred by which he could fix the exact time; he only gives us his general impression as to about when it was. He tells you he had had his breakfast; that he had been away up to shave Mr. Seward, who was, as you know, an invalid then, suffering from the accident he had met with. He shaved him in his bed, or on the side of the bed. He had gone through all that operation, met the Secretary of War there, and had returned to his shop before this occurred. Now, in the natural course of things, in going up to Mr. Seward's, who then, as you know, lived opposite Lafayette Square, and having taken the time that was required to shave him, at what time in that season of the year, in the natural progress of events, having taken his own breakfast, would he be likely to get back to his shop? I ask you, as men of good sense, and men of fairness, to tell me, after having gone through all this, what time would he have naturally returned to his shop, supposing



this thing to occur immediately after? It is not of the slightest consequence whether he should think it was somewhere about nine o'clock, or somewhere about ten o'clock. It was undoubtedly somewhere about ten o'clock, or a little after ten. I ask you, as honest men, what you think about that? Is it likely? Do I present this in any unfair, or unreasonable, or improbable way? The witness did not attempt to fix the time; he did not undertake to fix it at all. The facts were what he undertook to state, and these are the facts.

Now, the only defect in the defence on this subject was, that they did not undertake to call little Hess, the little fellow you saw on the stand with blue-black hair, very heavy moustache, very dark, swarthy face, to personate Surrett, as he did undertake to personate him, in front of the theatre. They ought to have had Hess here to have stated that it was he the barber shaved. They had Hess for another purpose, to which I am presently coming. You saw how much this little fellow, with two dark eyes, black hair, swarthy face, and heavy moustache, looked like the prisoner at the bar.

I now come to the testimony of Rhodes. You just saw what kind of a man Rhodes was. I think men of your sense in seeing a witness in that way can tell a great deal about him. He was what they would call in my country a prying, curious Yankee, moving about, a mender of clocks, having a great curiosity to go around into different places, and see what he could see, and in his going about he came to this theatre, and had a curiosity to go in and see it. The other side undertook to show by Mr. Ford (who, when I came to cross-examine him, admitted that he was in Richmond at the time) that he could not have gone into the theatre because it was locked. It finally turned out that the theatre had four doors besides those at the side and rear, and I will engage that a Yankee could have got in somewhere if he had tried. He says he did get in. Is there any reason to doubt his statement? Had he any motive for telling a lie? He was not paid for it. He didn't get a job of mending anybody's clock by it. It was the most natural thing in the world for a man like him to do. Moving about, he came to that theatre and went in. He talked about a picture scene; the man did not know the difference between the curtain and the scenes that shift on the stage, as it finally turned out, for it was the stage scenery he saw and described as a curtain. He is not a man who has money; not a man in the habit of visiting theatres, and therefore he had the curiosity to go into this theatre in the daytime to see it. Now let us see whether he tells the truth or not.

I read from page 481. The testimony is:

Q. State as near as you can what time in the day. A. As near as I can impress it upon my mind, it was within half an hour of twelve o'clock when I entered the building.

You notice that these witnesses tell us that these rehearsals generally commenced about 10 o'clock, and you know that the American Cousin lasts about an hour and a half.

Q. After entering the theatre, state if your attention was directed by anything you saw going on in one of the private boxes. A. I went in merely to look at the theatre. I went up the steps to the second floor; went down in front where the circle was, to look upon the stage; while there I saw one of the box doors open a little and shut. I was anxious to see from that point of view, and supposing some one was in there, having heard some one stepping about, I went down to the box and looked out from that point. As I approached the box whoever was in there walked away out of the box, and I entered and looked from that point on the stage. I had been looking there about a minute or two when the same person, I suppose, who went out of the box returned and spoke to me. He said he was connected with the theatre. We then had a few words together, when my attention was again drawn to the scenery on the stage. They had a curtain down that had recently been painted, I believe, and I stood there looking at that. Then I heard this man behind me doing something. In turning around to see what it was he was doing—I supposed he was looking down as I was—I noticed that he had a piece of wood; whether he had it under his coat or was taking it out I cannot say. The piece of wood was about three feet long and about as wide as my two fingers—may be a little more in the centre—slanting a little towards each end from the centre. As I turned round he said, "The President is going to

be here to-night." That was the first intimation I had of the expected presence of the President that night. I said, "He is?" He then said, "We are going to fix up the box for his reception. I suppose there is going to be a big crowd here, and we are going to endeavor to arrange it so that he won't be disturbed."

Some excuse had to be made for these arrangements, and this was the excuse he gave :

He then fixed this piece of wood into a small hole in the wall there as large as my thumb. I should think the hole to be an inch or an inch and a half long, and about three-quarters of an inch wide. He placed one end of this stick in the hole, and it being a little too large, took a knife and whittled it down a little. He also gouged out the hole a little for the purpose of making it fit. Then he placed it against the panel of the door across to the wall, forming an angle. He says, "The crowd may be so immense as to push the door open, and we want to fasten it so that this cannot be the case." He asked me if I thought that would hold it sufficiently tight. I told him I should judge that it would hold against a great pressure; that a hole would be punched through the panel of the door before it would give way. The wood was either of oak or of North Carolina pine. I am not acquainted with that kind of wood, but I am rather of the impression it was North Carolina pine, which is a very tough wood, I believe. After he had fitted that to suit him, we had a few words more together. I then heard some one come across the stage, back of the curtain.

The DISTRICT ATTORNEY. You have spoken of this interview with a person. I will ask the prisoner to stand up here. [The prisoner did so.]

Q. State if that is the man, (pointing to the prisoner,) and whether you saw him there. A. I should judge that was the man.

Q. Have you any doubt about it? A. No, sir.

Q. State all that occurred. A. I thought it was singular that the proprietor of the theatre could not afford a lock for a box of that kind. That was what passed in my mind.

Q. What became of the prisoner. Was he there during the whole time? A. No, sir; he went out before they came into the box.

Now, when this stick that I have sent for is brought in, you will see that the piece which has been cut off, and is tied to it, shows, on examination, that it had been made smaller at the end, as this man swears it was, to enter the hole. Now, I want to call your attention in this connection to the testimony of Judge Olin. On page 519 Judge Olin states what he saw :

A. I perhaps might not improperly say that I saw a report that the President had been shot through a door, and I commenced taking preliminary examinations in reference to this matter. I went there personally, in company with Senator Harris and Miss Harris. Rathburn, who was with them at the time of the murder, was disabled by his wound from going there. I went there to examine the premises personally, to be able to understand as much testimony as was applicable to the particular transaction. When I got into the theatre, I examined this hole in the door. If you can see this panel, (illustrating by a panel of the desk,) I can represent it about as well as any other way, by saying that it would correspond with a hole placed right here, right on the corner of the panel. You would scarcely notice it unless your attention was drawn to it. Placing your eye to the hole, it was about the height a person would occupy sitting in a chair inside. I saw that it was bored with a gimlet, and that a penknife had been used to take off the rough surface. The shavings and chips from that hole were still on the carpet, which had not been cleaned, and could be seen as you entered the box. I saw, too, that the entrance into this box from the body of the house was closed by a bar when shut at an angle, and some person had taken occasion to cut into the plastering of the wall a place into which the end fitted; and with the bar placed in it and the other end against the door, any person pressing against it from the outside, the stronger he would press, the tighter the fastening would become. The plastering cut from that hole was also lying at that time on the carpet, as you went into the box of the theatre. I delivered over the preliminary examination I had made to the War Department, and that ended my connection with the matter.

Q. What did you find in reference to the condition of the staple on the door that held the doorlock? A. The staple of the lock to the door went into a hasp with screws at each end. The screw at one end had been loosened in such a way that if you shut the door and locked it, (I tried the experiment once or twice,) you could push it open; you could take one of your fingers and push the door open although locked. One of the screws, the upper one, I think, had been screwed out in such a way that the door would open without any resistance, and without creating any disturbance, if locked.

Q. You tried the experiment? A. Yes, sir.

Q. Would any person, when the door was thus locked, have noticed that such was the condition of it, unless his attention was drawn to it? A. O, no; you saw nothing of that on the outside, and you would not see it on the inside without a careful inspection. It was just a little loosened, to that extent that the door could open when gently pressed against.

Q. Then the shavings from the wall and from the hole cut out of the door were all on the carpet? A. Yes, sir.

Mr. Bradley remarked that Judge Olin came in subsequently and corrected his testimony as to seeing shavings, &c., on the carpet.

Mr. PIERREPONT. He did not correct his statement. On the contrary, he stated, on his second examination, that his impression was the same then as now, and that if he were a painter he could picture it as it lay there.

Mr. Bradley said he would make the correction after the counsel had finished.

Mr. PIERREPONT. Now, gentlemen, that little fact examined into shows how these statements agree. Judge Olin, in passing through there, found the carpets had not been swept, and that the shavings were lying there. When he made the examination he saw them there, and, as he expressed it, could paint it as a picture. As he recalled it, it all lay clear before his mind. This is one of those little circumstances going to confirm just precisely what this man saw going on the day of the murder, showing that it had just been done, and it must have been done very shortly before, because preparations had been made to receive the President, to make the box clean, to have it swept and garnished, ready to receive the head of the government.

I come now to the testimony of Dr. Cleaver, page 207 :

Q. Were you in Washington on the day of assassination? A. Yes, sir.

Q. Have you any distinct memory of what you did on that day? A. Yes, sir.

Q. Will you state whether you were riding or walking? A. I was doing both that day; I was pretty busy; I was driving a black horse that day to exercise him.

He was a horse doctor, you remember; and, perhaps, many of you know him.

Q. At what time in the day? A. I started out about two o'clock in the afternoon.

Q. Which way did you go? A. I went down to the Navy Yard first, and then down to the Congressional burying ground.

Q. When you came back, what street did you come? A. I went around by the Bladensburg tollgate, and came in H street.

Q. Did you come in late or early? A. I got to the stable, I reckon, at four o'clock, or a little after four.

Q. Before you got to the stable, when you came down H street, did you meet anybody that attracted your attention? A. I met a great many.

Q. Did you meet any one in particular that attracted your attention? A. I met John H. Surratt.

Now he did or he did not see him; let us see how this comes :

Q. The prisoner at the bar? A. Yes, sir.

Q. Did you know him very well? A. I have known him a good long while—I think I ought to know him.

Q. Was anybody riding with you at the time? A. Yes, sir.

Q. Is that person living? A. Yes, sir.

Q. How was Surratt moving when you met him, on horseback or on foot? A. He was on horseback.

Q. What kind of a horse was it? A. I did not notice the horse much; I think it was a chestnut-sorrel, a rather darkish horse.

Q. Is chestnut-sorrel a dark color? A. Yes, sir.

These horsemen know the colors quicker and better than I do, and perhaps better than you.

Q. State whether you spoke to him? A. I spoke to him and said, "How are you, John?" He nodded to me; I do not know whether he spoke or not; I was jogging along at a pretty good gait.

Q. He bowed to you, and you said, "How are you, John?" A. Yes, sir.

Now, gentlemen, this witness knew the prisoner and had known him for years. As I read the other day, he kept his horse at his stable, and so did Booth. He did not make any mistake about it. He either committed the grossest perjury, or he tells the truth. He is not mistaken; that excuse cannot be given for him. Let us see how it happened that the government got hold of this evidence. It was not from any favor of Cleaver. He did not want the government to get hold of it. On page 209, in his cross-examination, he tells you that.

Q. Did you tell that you saw John H. Surratt in this city on the afternoon of the 14th. the day of the murder? A. No, sir; I did not.

Q. Did not you know it was of importance to find out whether John H. Surratt was concerned in the murder or not? A. Yes, sir.

Q. Then why did you not tell them what you knew? A. I was well acquainted with Surratt and inclined to shield him.



This is on cross-examination, and he tells you "I was well acquainted with Surratt and inclined to shield him." And that was the truth about it. Cleaver, as I said before, was an Englishman; he was in sympathy with the rebel government; he was our enemy. He was inclined to shield Surratt, and that is the reason. I now turn to page 202:

Q. I want to know the first person to whom you told that you saw John H. Surratt on the 14th of April. A. I may have told a great many—I cannot recollect.

Q. Do you know whether you told it to anybody before you told it to Sanford Conover? A. No, sir.

Q. Were you at large in the city when Surratt was arrested? A. No, sir; I was in the city.

As you know, he was under arrest and in prison for a crime with which he was charged connected with the other sex. You know all about it, I suppose, and I do not need to go into it.

Q. I do not speak of the time you met him. During the conspiracy trials you knew it was an important fact to ascertain whether he was in the city on that day or not? A. Yes, sir; and I should not have told it now if it had not been for Conover.

Who was in prison with him, as you remember.

He soon told somebody, and the first thing I knew somebody came to the jail to see me. I got very mad at Conover. I did not want to answer the question.

Q. Did you say it was in the jail? A. Yes, sir.

Q. Who came to see you? A. I think it was Mr. Ashley, a stontish gentleman.

Mr. Ashley was a member of Congress and of the Judiciary Committee, as you all know. It is a part of the public history of the country.

I asked him, and he told me how he came to know of it. I would not answer the question until he told me who had told him of it. I knew I had not said it to anybody but Conover. When I went back I never spoke to him for six or seven days.

Q. Then you had a talk with Mr. Ashley? A. Yes, sir.

Q. Did you tell him about all these things? A. No, sir.

Q. What else did you fail to tell him? A. I did not tell him a great many things; I never told him of the sale of Booth's horse to Arnold.

Q. Did Mr. Ashley write down what you said? A. No, sir.

Q. You have been asked about the sale of a horse to Arnold. What was that?

Mr. MERRICK. We have not asked that.

Mr. PIERREPONT. It came out some way in cross-examination.

The court ruled that the question might be asked.

A. Booth came down to the stable on the 27th or 28th of January, and paid his livery; I think to the 26th. Then he came about the 27th or 28th and paid his livery up to February 1, and Sam. Arnold in company with him. He then told me in Arnold's presence, that he had sold the horse to Arnold, and that Arnold was to pay the livery from that time on.

By Mr. BRADLEY:

Q. Who was the Mr. Ashley who called on you at the jail? A. I don't know him only by that name. I believe he is a member of Congress. I never saw him before in my life.

Q. What sort of a looking man is he? A. A stontish man.

Q. Did you understand he was a member of Congress? A. Yes, sir; he told me who he was.

Q. Have you received any offer of favor or reward for the testimony you have given in this case? A. I have not, from anybody.

Q. You are quite sure of that? A. Yes, sir; I have not, from anybody.

By the DISTRICT ATTORNEY:

Q. And we understand you to say you had no idea of revealing this? A. I did not; I told it to Conover confidentially.

Now, gentlemen, is that honest testimony? It came from a man having no sympathy with this government; it came from a man who was a friend of this prisoner. It came from a man who admits himself he wanted to shield him—who told his fellow-prisoner in jail, where they were lying day after day together, and where men will talk, that he had seen, met, and spoke with Surratt on H street, on this very day of the murder. He told him in the strictest confidence. Conover tells this member of Congress of it, who comes to see him in jail, and in that way it is forced out of him; and it is true.

I now come to the testimony of Reed, on page 158. I have here to remark

that this same Reed was a tailor in this city, who testified before the commission, whose testimony is here printed in the book. They called his attention to his former testimony, and it confirms his statements now on the stand in every particular.

Mr. MERRICK said he thought the testimony of Reed before the military commission was not referred to in this examination.

Mr. PIERREPONT. We will examine and ascertain. Reed testifies now :

Q. In what city do you live? A. In Washington city.

Q. How many years have you lived here? A. About thirty years.

Q. Do you know the prisoner at the bar by sight? (Prisoner made to stand up.) A. I do.

Q. How long have you known him by sight? A. Since quite a boy.

Q. Since you or he was quite a boy? A. Since he was quite a boy.

Q. Were you in the city of Washington on the day of the murder of the President? A. I was.

Q. Did you see the prisoner at the bar on that day in Washington? A. I think I did.

Q. Where did you see him? A. I saw him on Pennsylvania avenue, just below the National Hotel. I was standing as he passed just in front of where Mr. Steer keeps the sewing-machine store.

Q. Which way was he going? A. From toward the Capitol.

Q. About what time of the day of the 14th was it? A. It was about half past two, as near as I can recollect—between two and half past two.

Q. Had you had a nodding acquaintance with him at all? A. I had; I knew him, and I suppose he knew me. There was no intimate acquaintance at all. I recognized him when I met him.

Q. As he passed did you recognize him, or he you?

(Question objected to by Mr. Bradley as leading.)

Q. As he passed, state what occurred. A. There was a recognition; whether it was by him or me first, I am unable to say.

Q. State whether it was by both. A. I could not state positively whether I nodded first or he did; we both nodded.

You notice that this witness, whose testimony I am reading, was living in the city of Washington, a man who knew the prisoner well, and who had known him for years and could not be mistaken in his identity in broad daylight.

Q. Will you state whether there was anything about his dress or equipments on that occasion which attracted your attention? A. There was.

Q. Will you tell the jury what it was? A. What attracted me more particularly was his dress rather than his face. I remarked his clothing very particularly.

Q. What was there about him that attracted your attention? A. The appearance of the suit he wore—very genteel; something like country manufactured goods, but got up in a very elegant style, the coat, vest, and pantaloons.

Q. Was there any reason why you noticed his clothes? If so, state it to the jury. A. I cannot say there was anything particular, except his appearance, so remarkably genteel. I was rather struck with his appearance.

Q. State whether he was on foot or on horseback. A. He was on foot.

Q. What were there on his feet?

(Question objected to by Mr. Bradley as leading. Objection overruled.)

A. I suppose he had boots or shoes. As he passed from me I turned and looked at his feet. He had on a new pair of brass spurs.

Q. Now describe these spurs. A. They were plain, common brass spurs; nothing very particular about them except the rowell.

Q. What was there about the rowell? A. The rowell was very large and very blue; they evidently were bran new.

You have heard testimony heretofore about these "bran new spurs" up there on the bed in Mrs. Surratt's house.

Mr. BRADLEY. In March?

Mr. PIERREPONT. Yes, in March. I should not suppose from March till April brass would be destroyed, or that brass spurs that were "bran new" would become old. I am not a hardware man, but I venture the prediction that they would not. I now turn to page 160 on the cross-examination of this witness :

Q. How long had you been in the habit of seeing him come in from the country? A. Fifteen years, as near as I can recollect.

Q. What was he doing? what was he engaged in? A. I have seen him here market days, I suppose, passing and repassing.

He was no stranger. I next come to the testimony of Vanderpool, page 241,

a lawyer from the city of New York, who was in the army, who came on here, first informing the district attorney of what he knew. The district attorney telegraphed him to come on, and he came, Vanderpool says, without any summons, to testify in this case. What object could he have? What reason could he have, unless he was impelled by the motive of furthering the ends of justice? Now, let us see what he says, and what his opportunities of knowledge were.

Q. Before you went to the war did you know J. Wilkes Booth? A. Yes, sir.

Q. How happened you to know him? A. He used to visit a club that I belonged to in the city of New York, next to Laura Keene's theatre.

Q. What was the club? A. The Lone Star Club.

You have heard something about that "Lone Star Club," I presume, of which Booth was a member, and of which this witness was a member. It was there he became acquainted with Booth, and there he knew him.

Q. Do you remember the day of the assassination? A. Very well, sir.

Q. Where were you? A. I was in the city of Washington.

Q. How many days before the assassination were you here? A. Three days before.

Q. How many days after? A. About two or three days after.

Q. Did you see John Wilkes Booth on the 14th of April? A. I did.

Q. Did you speak with him? A. Yes, sir.

He knew Booth well, belonged to the same club with him, saw him, and spoke with him.

Q. Did he know you well, and you him? A. Yes, sir—that is, he called me Major; that is the title he generally addressed me by.

Q. Did you see him more than once on that day? A. I saw him at least three times.

Q. Where did you first see him? A. It was just above Willards', on the sidewalk.

Q. Where did you next see him? A. The next place I saw him was between Eleventh and Twelfth, or between Tenth and Eleventh, on the left-hand side of Pennsylvania avenue, going from here to the White House.

Q. State whether you saw this prisoner on that day?

(The prisoner made to stand up.)

A. I did see him at this place I speak of on the avenue.

Q. Who did you see with him? A. With Wilkes Booth, and two or three others in the party.

Q. Tell the jury what they were doing. A. They were sitting around a round table, with glasses on it. This is all I recollect now.

Q. Tell the jury the circumstances of your seeing him that day and what they were doing. A. I had been up to the Paymaster's department on some business relating to my accounts.

Now, I call your attention to the evident frankness with which this witness is testifying. He states this fact of settling his accounts at the Paymaster's office on that day, of his being engaged here in business connected with the office which he held in the army, and in which he must have seen many persons. If it was not true, it was the easiest thing in the world to prove these things were false. He testified to a score of things in which he could have been contradicted if they were not true. He has not been contradicted in one single point, as I will prove to you.

In coming out, I came down the avenue on the opposite side from the place I have described, and hearing music, I went across to see what was going on at this place. As I went up stairs I think there was a woman dancing a sort of ballet dance. There was a stage or something of the kind in the back part of the room.

Now, gentlemen, will you note that this witness never pretended to state that there was any exhibition there, or any concert. It was but one single person who came out on the stage, a dancing woman.

Q. How was the room as to there being people in it? A. I should say there were 50 or 60 people there.

Q. Describe the table where Booth and Surratt sat. A. It was a round table, as near as I can remember, probably four or five feet across.

Q. What were they doing? A. Apparently talking.

Q. At what time in the day was it? A. It was in the afternoon.

Q. Was the room light? A. Yes, sir.

Q. Did you see them plainly? A. O, very plainly.



Q. Were you near them? I was about as far from them as I am from you at the present time, (twelve or fifteen feet.)

Q. Did you see them clearly? A. Yes, sir.

Q. Could there be any mistake? A. There is no mistake that I can see.

How will you get along with this? Was there any motive in this man to lie? Could he be mistaken, knowing Booth well, as he did, and seeing him there on this occasion, with this man? A bright, intelligent, active man, he could not be mistaken, and he is positive, entirely so.

I have something to say about the attempt that has been made to discredit Vanderpool. The attempt was made by doing what? By proving he was not at the place where he said he was? By proving that this business at the Paymaster General's office which he named did not occur? By showing that he was somewhere else than in this city? Not a bit of it. But witnesses were called to show that in Metropolitan Hall, on D street, there was no dancing going on; that there was no exhibition that afternoon. He never testified that there was any exhibition anywhere, except the exhibition of a single woman coming on the stage and dancing. He did not pretend to testify to anything on D street, or pretend to say where it was, except that it was along Tenth or Twelfth streets, on the left-hand side of the avenue going toward Willard's. They bring witnesses to prove something about a place on the north side of Pennsylvania avenue, and to show whether there were any such exhibitions going on there. Well, suppose there was not; very likely there was not. He did not undertake to state what the name of the place was; he did not know the name. They asked him if it was Metropolitan Hall or Washington Hall. He said it was something of the sort; he did not know the name. Now, let us see a little further what was stated about the place. They brought witnesses to prove that there was such a place on D street, and to show that there was no such exhibition going on there, and to show that no such exhibition was going on at a place on the north side of the avenue. We never said there was. But they were mighty careful to keep as clear as possible of Teutonia Hall, which was on the side of the street where he thought it was. They never called a witness from first to last to prove anything about Teutonia Hall; but it happened in a cross-examination of their witness in relation to another hall on the north side, that I brought out these striking facts, which you will find on page 784.

Mr. PIERREPONT read from page 244 of the testimony of Vanderpool on this point, as follows:

Q. You think it was between Tenth and Eleventh, or Eleventh and Twelfth streets? A. Yes, sir; it was along there. I have not been there since to see.

Q. You do not know what the place was? A. I do not recollect. It was Metropolitan Hall, Washington Hall, or something of that sort. I could not swear positively to the name.

That was the original testimony of this witness. It was "along there." He knew it was that side of the avenue; the name he could not tell. I read it verbatim:

The court ruled that the witness might be inquired of as to any place in the immediate neighborhood of Tenth and Twelfth streets on the south side, as the witness was not definite in his testimony as to the place.

Q. Won't you tell us where Teutonia Hall is?

This is cross-examination. They knew where Teutonia Hall was.

A. It is on the south side of Pennsylvania avenue, between Ninth and Tenth streets.

That is where Vanderpool went.

Q. Were you in Teutonia Hall at any time along about the middle of April? A. I was sometimes.

Q. Tell us what kind of tables they had? A. I could not tell that. They had some round and some corner tables.

The counsel made a great parade of these tables in this Metropolitan Hall; the tables were square. But when you get the witness to Teutonia Hall the tables are round enough.

Q. Do you know whether they had dancing there? A. They had a rehearsal there.

Q. Won't you tell us what time of day they had the rehearsal?

Mr. BRADLEY. On the 14th of April?

WITNESS. I do not know when they had a rehearsal. Their rehearsal was before the exhibition; generally in the morning.

Now this came out of their own witness, and with it out they have never called a witness from Teutonia Hall, never called a witness to show that this exhibition or this dance did not take place there. That was the hall where the prisoner was, and it is located just where the witness Vanderpool stated. They have been very shy about putting any witness on the stand in reference to Teutonia Hall; they bring them about some other halls we never spoke of, some halls on D street, or on the north side of Pennsylvania avenue, but they keep very clear of this hall.

I turn now to the testimony of Lee, page 195:

Q. Did you know John H. Surratt, the prisoner? A. I knew John H. Surratt by seeing him.

Q. Look at the prisoner and state if you recognize him? A. Yes, sir; I recognize that young man; but he did not have that "goatee" on when I saw him.

You notice that of these witnesses who saw him on that day, no one saw him with a goatee; every one had it off; all with a mustache, who speak on that subject at all. The barber was the first man who saw him; the barber says he gave him a "clean shave," with the exception of the mustache. You will not find, gentlemen, in this evidence any two things that do not come in harmony. The reason is that they are true, and all truth is in harmony.

Q. State if you saw him on the 14th of April, 1865; and if so, where you saw him, and about what time in the day. A. On the 14th of April. I was at that time with Major O'Beirne, the provost marshal of the District of Columbia. I went to the Washington depot with reference to men who were deserting. I was not looking for deserters myself, but was chief of the men employed for that purpose under Colonel O'Beirne.

Q. What force was that? A. The detective force of the Provost Marshal's department. I went down to the depot, and on my way back, at the corner of Sixth street, I stopped a minute to answer a question; the man who asked it I do not know, but he inquired about some young fellow who was in my regiment. When I left him I continued on up the avenue, the right-hand side going up towards Thirteenth street. When near Mr. Stinemetz's hat store I passed a man whom I took to be John H. Surratt. He was coming this way, and I was going in an opposite direction. It was between Franklin's spectacle store and Stinemetz's hat store.

Q. Are you satisfied the prisoner was that man? A. To the best of my knowledge that is the man. (Pointing to the prisoner.)

Q. Had you seen him frequently before? A. Not as frequently as I have seen some people about Washington.

Q. How often had you seen him? Did you know him well by sight? A. I should suppose I had seen him a dozen times before that.

Q. Was he walking rapidly or slowly at that time? A. He was going in an ordinary gait. I was going fast myself, walking quickly.

I now turn you to the testimony of Grillo, beginning on page 176:

Q. Did you know David Herold, one of those tried for conspiracy? A. Yes, sir.

Q. Did you know George Atzerodt? A. By sight.

And then he goes on to state about seeing him at the Kirkwood House.

A. As I was coming down Tenth street I met Herold, and he asked me if I had seen John Wilkes Booth. I told him I had; that I had seen him in the morning about 11 o'clock; that he had some letters which he had received; his letters used to come addressed to the theatre.

Q. Proceed and state what further occurred? A. I told him that I saw him a little after 4, on horseback; that he stopped in my place and got a drink.

Q. What kind of a horse was it that he rode? A. A small horse—gray, I believe, as far as my recollection serves me. Herold after this said to me, "Do you know that General Lee is in town?" I told him no, I did not; that I hadn't heard of it. He says "Yes; he is stopping at Willard's."

I suppose they expected he would be stopping there if they could succeed in throwing this government into confusion.

Q. This, I understand you, was the day of the assassination? A. Yes, sir; in the after-

noon. Says he, "Yes, he is stopping at Willard's; let's take a walk up there, and find out something about it." We started up, and as we got to the Kirkwood House we met Atzerodt sitting on the steps. He stopped to talk to him, and I walked ahead as far as the corner to wait for him. He stopped with him two or three minutes, and then came back, and walked with me up to Willard's. After we got inside of Willard's, Herold met two young men. They talked together awhile; I do not know what they said. As they were in the act of parting, Herold says: "You are going to-night, ain't you?" One of the young men answered and said "Yes."

Q. In what tone of voice was the talk before that? A. In a low tone. They were apart to themselves.

Q. Was there anything more said that you could hear other than what you have repeated? A. No, sir.

Q. What did this man who said he was going to-night do after saying "yes?" A. Nothing. We left him and went out toward Grover's theatre. I noticed Herold walking a little lame, and says to him. "What's the matter? you are walking lame." He replied, "Nothing; my boot hurts me." When we got behind the park there, he pulled up his pants to fix his boot. I then noticed that he had run down in his boot-leg a big dagger, the handle of which was four or five inches above the leg of the boot. I said to him, "What do you want to carry that for?" He answered, "I am going into the country to-night on horseback, and it will be handy there." I laughed at him, and said, "You ain't going to kill anybody with that?" I then left him at the door of Geary's billiard saloon. I went up stairs, and he walked ahead.

Q. Look about in this room, and see if you see anybody that looks like the man who said "yes" when Herold asked him if he was going to-night? A. Well, the gentleman, I believe, is that man, (pointing to the prisoner,) but I don't know. As far as my knowledge goes, he looks very much like him. He had no beard, however.

Q. Had he a mustache? A. A little mustache, as far as my knowledge goes.

You will find they all tell you the same thing; he had not any beard except on the upper lip, after Wood had taken care of him in the morning.

On page 178, the testimony is:

Q. You were in your restaurant? A. Yes, sir.

Q. Do you recollect Booth coming in there? A. Yes, sir; I was behind the bar at the time.

Q. Was anybody with him? A. No, sir; he came alone.

In which he confirms Sergeant Dye, as you will see, who tells you Booth went into this drinking place alone, just as this witness says he did:

Q. How long was that before you heard of the assassination? A. It must have been between eight or ten minutes, or fifteen minutes; I cannot remember exactly.

Q. Will you describe, if you recollect, what light there was in front of the theatre, and where it was placed that night? A. We had two lights out in the street; then there were two lamps in front of the theatre. The light is very brilliant there.

I now come to Coleman, page 521:

Q. Will you describe where you saw him, what he was doing, and what you saw? A. We were on Pennsylvania avenue, between Tenth and Eleventh streets, going toward Willard's. We looked around, and at first we noticed a very nice little horse, and a person was standing a few feet from him in the gutter. We stopped at first to look at the horse; then we noticed the rider, and I said to Mr. Cushing, "There is Booth, is he not?" I looked then again and saw that it was. We remarked the palor of his countenance. There was a little conversation. He was sitting on his horse, with his face toward us, and was leaning over, talking very earnestly with a man who stood on the curbstone. This was about six o'clock in the evening. I recollect taking out my watch to look at it.

Q. What was the style of his conversation, as to earnestness or otherwise? A. He was bending very low; he was sitting with their two heads very nearly together. He appeared to be talking very earnestly.

Q. Did you notice anything in the expression of his face? A. Yes, sir; his face was very pale—as pale as if he had got up from a sick-bed.

Q. Were any remarks made upon that subject at that time? (Question objected to by Mr. Bradley.)

Q. You need not state what the remarks were. Simply state whether the fact excited conversation on the subject. A. His paleness was such as led us to remark upon it.

Q. Describe the man he was talking with. A. He was a man of ordinary size.

Q. Young or old? A. He appeared to be a young man.

Q. How dressed? A. He was dressed in a suit of gray clothes, with a low-crowned hat—a black felt hat—on.

Q. Have you ever seen that man since, before to-day, that you know of? A. No, sir.

Q. Have you seen anybody to-day that bears any resemblance to him? A. I would like



the prisoner to stand up and turn sideways. (Prisoner stood up and turned round.) He certainly looks like that man.

The next testimony to which I shall direct your attention is that of Peter Taltaval, on page 157 :

Q. Were you in the restaurant at the time the murder was committed? A. I was.

Q. Did you know John Wilkes Booth? A. Yes, sir.

Q. Had you frequently seen him there or otherwise? A. He used to come in there very often.

Q. You knew him well by sight? A. Yes, sir.

Q. Did he come in that evening? A. He came in that night.

Q. What did he do? A. He walked up to the bar and called for some whiskey.

Q. What did you do? A. I gave it to him.

Q. State whether he was alone. A. He was.

Q. Did he drink it? A. Yes, sir.

Q. Then what did he do? A. He called for some water.

Again, on page 158 :

I saw him two or three days before with Herold.

Q. Where was that? A. In the same place; he came in there.

Q. State what occurred. A. I could not exactly say. I think they just came in—came to the bar and got a drink; probably had a little conversation together, and went out again. I could not particularly describe what passed there at all, not taking any particular notice.

Q. On the night of the murder did you see this same Herold come in? A. No, sir; I did not.

Q. On that night or the night previous did any one come in and inquire for Booth? A. No, sir; that was in the afternoon; in the afternoon of the same day Herold came in there and asked if I had seen John. I asked him what John. He said John Wilkes Booth! I told him I had not seen him.

Q. What then did he say; did he ask you anything, and if so, what? A. No; he simply came to the bar and inquired if John had been there. I asked him what John, and he said John Wilkes Booth.

Q. Did he ask you whether he had been there that day or evening? A. No, sir; he just shut the door and went right out.

Q. And between the time Herold came in and the time Booth came in, just before the assassination, you had not seen either? A. No, sir.

Q. At what time in the afternoon of the 14th was it that Herold came in? A. I should judge it must have been about 4 o'clock, as near as I can possibly think of it.

Q. At the time Booth came in and took a drink, just before the assassination, was there anything in his dress or appearance to awaken suspicion in your mind? A. No, sir; I did not take notice of anything unusual at all. He just came in there and asked for a drink.

Confirming what I am presently going to show you in another connection, I next come to the testimony of Susan Ann Jackson, page 162. Any one who has had experience in human testimony, or who has ever had much experience in courts of law, knows well that the witnesses to be relied upon as most truthful and most natural in their story are frequently witnesses of simple intellect, young children, girls, women, or simple men, who, when they try to tell the truth and only the truth, never have any difficulty at all, because it is easy to tell. I will defy the most skillful counsel that has ever opened his lips in any court to disturb the simplest child, the simplest woman, or the humblest man by any cross-examination, if that person is simply telling only what they know to be truth. You cannot disturb it; there is no power of doing it. It is only when falsehood comes in that trouble comes; where truth comes it is always easy, always consistent. Any one can tell it, simple people do tell it, and when they tell it they always adhere to it; no counsel can disturb it; that is the experience of every judge and every lawyer.

Q. Do you remember the Good Friday in April following the March when you went to Mrs. Surratt's? A. No, sir; I don't remember the very day I went there.

Q. Do you remember the Good Friday following that day, or any circumstance about that Good Friday in April? A. Yes, sir.

Q. Do you know whether Mrs. Surratt went away that day? A. Yes. She went down in the country on Good Friday, between 11 and 12 o'clock.

Q. In what did she go? A. She went in a buggy.

Q. Did you see the man who went with her? A. Mr. Weichmann.

Q. Did you see him? A. Yes, sir. He boarded there at the same time.

Q. You would know him now, if you were to see him? A. Yes, sir.

Q. Did you see Mr. Weichmann when he came back with Mrs. Surratt? A. Yes, sir; I saw him when he came back with Mrs. Surratt.

Q. About what time in the evening did Mrs. Surratt return? A. As near as I can recollect, it was between 8 and 9 o'clock.

You will remember she had been to Surrattsville, and got home about 9 o'clock p. m., as Weichmann tells us she did.

Q. After that, on that evening, will you tell us whether you saw the prisoner here?

WITNESS. That one sitting over there? (pointing to the prisoner.)

Mr. PIERREPONT. Yes.

A. Yes, sir; I have seen him in the dining-room.

Q. Who was with him? A. His mother was with him.

Q. What did his mother say to you? A. I do not know.

Q. Had you ever seen him before? A. No, sir; I had never seen him before.

Q. How long had you lived in the house? A. I had been there three weeks.

Q. What did his mother say? A. She told me that was her son.

Q. What else did she say to him or about him? A. She did not say anything else. When I was gathering up some clothes to put in the wash I asked if they were for Mr. Weichmann, and she said no, they were for her son.

This is one of those little truths that fall out in this natural way. You do not think she made it up, do you? You do not think the counsel told her to tell you that? That was not a thing that would ever have entered the head of a counsel or anybody. How happened she to tell you about these clothes? How happened it to drop out in the course of this conversation? It dropped just as truth always drops, naturally and truly. It is connected with another fact that I called your attention to yesterday. You remember that Holohan tells you the next week he himself went back to the house, and that on his bed were some clothes that had been washed and were then clean; that among them were some of Surratt's clothes; that he took some of them, put them in his pocket, and went away with them. No doubt that was so. They were the very clothes this colored woman took up on that Friday night, and which Mrs. Surratt said were her son's clothes, and they were.

Q. Did she say anything about who he looked like? A. She asked me did he not look like his sister Annie.

Q. What did you say to that? A. I said I did not know. I did not take good notice of him to see who he favored.

Do you think that colored woman made up this story?

Q. Who was it that asked you if he did not look like his sister Annie? A. Mrs. Surratt.

Q. Did you bring anything into the room you have spoken of where she was sitting with her son? A. I had just brought a pot of tea into the room.

Q. Who was in the room when you brought in the pot of tea? A. Not any one, except her son.

Q. Do you see any one now who she told you then was her son? A. Yes, sir. I am looking at him now.

Q. State whether that is the one. (The prisoner made to stand up.) A. That is the man, sir.

Q. After you took in the pot of tea what did you do? A. Just went out again.

Q. Did you return again? A. No, sir. I did not return in the room any more.

Q. Will you tell us, as near as you can, about what time in the evening you took in the pot of tea? A. As near as I can come at it, she came home between 8 and 9 o'clock. Well, when she came home and came to the dining-room, I carried in supper for Mr. Weichmann, the man who boarded there. After he went out she called me and asked me for a second plate, cup and saucer. I carried them to her.

Q. And then you found this man there? A. Yes, sir.

Q. Did you know his sister Annie? Yes, sir; she lived there.

Q. She was in the house? A. Yes, sir.

Now you saw that colored woman; you looked at her face; you heard her simple story; and when, through the ingenuity of counsel, the attempt was made to show that this took place at some other time—on the 3d of April—I read you evidence yesterday in order that you might see how utterly impossible it was that that could be. That was on Monday; it was not on Friday. The sun had rolled its course, and, as I once told you, stamped that day as it went down in the ink of night—Monday, not Friday. That is not all. The proof

is clear that he only came in there that night of the 3d of April, and went out before 7 o'clock; that he went down to the Metropolitan Hotel, took his supper there with his friend, and never returned until this night. There is no possibility of confusing these two things. The proofs all stamp this as a got-up story. I now read from the cross-examination of this witness:

Q. Were you ever examined as a witness about this matter before? A. Yes, sir; Mr. Orfutt examined me—or Captain Orfutt. I am not sure about the name.

She did not know the name. I believe there is no such name as that. There was a name having some resemblance in sound that we supposed it likely at the time she might have meant; but when we got Captain Smith upon the stand, he told you it was he who made the examination. I tried with all the ingenuity I could bring to get out, if I could in some way, the fact that he did make an examination which was reduced to writing, but I was not permitted to bring this proof, for Mr. Bradley, the associate counsel of Mr. Merrick, objected to my giving in evidence what she said that night to this Colonel Smith. I could not get it in, and it is not in. But she said something, and something they didn't want in and I did, and yet my learned friend made quite a speech the other day because this testimony, which they succeeded in getting ruled out, is not brought into the evidence.

Mr. BRADLEY said it was admitted that she was not examined by Colonel Smith that night. His examination was subsequent, and at a different place.

Mr. PIERREPONT. He examined her there, and made a written report which I wanted to put before this jury, and which the counsel succeeded in preventing me from doing, because they wanted to get rid of the effect of it. They knew it; they knew the power of it.

Mr. BRADLEY. No, we did not know what it was. We knew it was not evidence.

Mr. PIERREPONT. No! I wanted to advise you what it was; you did not know, and you were not willing the jury should know. I was willing the jury should know.

Q. Where were you examined? A. He carried me down to his office—I forget where I was—in the night.

Q. When was that? A. Monday night after the assassination happened.

Q. They took you down to a guard-house, or some place? A. They took me to the office.

Q. Do you recollect where it was? A. No, sir. I had never been there before. I do not recollect where it was. I think it was somewhere near the Treasury.

Q. Who took you there—do you remember? A. No, sir. I went in a hack.

Q. You were examined there? A. Yes, sir.

Q. Did they write down your examination? A. Yes, sir.

Q. You were not examined afterward? A. No, sir; not then, I was not.

Q. Were you at any time after this? A. Yes, sir; since then I have been down to what they call the War Department. In the course of last week, I think it was.

Q. How long after the assassination? A. It was just last week I was carried down to the War Department. Mr. Kelly carried me.

Q. And you were examined there? A. Yes, sir.

Q. Do you remember who examined you there? A. No, sir; I do not know the gentleman's name.

Q. Was what you stated then written down? A. Yes, sir; it was written down.

Q. When you were examined before General Angur, if that was the place, did you then make the same statement you do now? A. Yes, sir.

Q. You stated that Mrs. Surratt's son was there that night? A. Yes, sir.

Q. What became of him? A. I do not know, indeed; I did not see any more of him.

Q. You saw him about 9 or half past 9? A. It was between 8 and 9 when she came, after Mr. Weichmann, and she took tea; she called me to bring a pot of tea to this gentleman.

Q. Where was this gentleman then? A. I do not know.

Q. You had seen him before that? A. No, sir; I had never seen him until that night.

Q. And when you went into the parlor you found him sitting in the dining-room, and Mrs. Surratt told you it was her son? A. Yes, sir.

Q. And this is the very same gentleman? A. Yes, sir; this is the very same gentleman who was in there with Mrs. Surratt.



This, you will recollect, is cross-examination, and you will see, as I said before, how impossible it is for a skilful counsel to disturb a truthful witness.

Q. And that you told to these gentlemen, and they wrote it down the Monday afterward?  
A. Yes, sir.

Now, they brought that out themselves when she was examined and her examination written down by Colonel Smith.

Q. And you never saw him before then or since? A. No, sir; never before or since, until one day last week, when he was brought up here.

Q. And you are sure he is the very same man? A. He is the very same man she told me was her son.

Q. And the very same man you saw at her house? A. The very same man I saw the night after she came in from the country.

Q. The night of the assassination? A. Yes, sir; the same night.

Q. You say you had been living there three weeks. Was it just three weeks? A. Yes, sir; three weeks on Monday.

Q. Now, if you can go back a little, are you quite sure the gentleman you saw there, who she told you was her son, was not there on Monday, ten days before the assassination of the President? A. I never saw the gentleman she called her son until Friday night.

Q. You are sure it was Friday night? A. Yes, sir; it was the Friday night she came from the country.

These simple, striking facts fix themselves in this simple mind, and she could not be disturbed in her statement of them.

Q. And that was the night the President was assassinated? A. Yes, sir; it was the very night she came from the country. It was the Friday night before Easter Saturday.

Q. Do you not recollect the night the President was assassinated? A. It was Friday night.

Q. Was that the same night you saw this gentleman there? A. It was the very night I saw this gentleman there.

Q. You must have been there on the night of the 3d of April, the Monday night of the week before the President was assassinated? A. I was there a week in March.

Q. Did you not see him there on that Monday night, the week before the President was assassinated? A. No, sir, not as I know of; I did not see him there the week before. I saw him on Friday night.

I repeat, gentlemen, that no counsel could disturb that witness. Now, there are persons living in this city who know whether this is true or not, who were in the house that night, and who they have not put upon the stand.

I next come to the statement of Mr. Heaton, on page 500. Mr. Heaton was a clerk in the General Land Office. He was in front of the theatre before the assassination on that night.

Q. Do you remember when the President's carriage came to the theatre that night? A. Yes, sir.

Q. Did you recognize the carriage? A. Yes, sir; I saw the President and his wife and the party get out of it.

Q. I will ask you if, during that time, your attention was attracted to the crowd, either going in or coming out of the theatre, or coming from the restaurant in that vicinity, and if you saw any face that attracted your particular attention? A. I saw one face at the time that attracted my attention particularly.

Q. Go on and state what you did see. A. At the time the President's carriage drove up I saw a half a dozen or a dozen persons come round it from the restaurants in the vicinity. These were merely persons who came from curiosity to see the President. On last Tuesday week I came into court, and saw the prisoner for the first time. On looking at him I saw a very distinct resemblance between the face I saw that night and his own.

Q. State, if you please, where you saw the prisoner. A. In front of Ford's theatre, on the night of the 14th of April, 1865.

Q. About what time was that? A. Between a quarter of eight and a quarter past eight.

Q. Did you know any person in whose company he was at that time? A. No, sir.

No cross-examination.

You saw Mr. Heaton; you remember his face. I think you remember how he told you he happened to come into this room, and, looking upon the prisoner, it brought back the face he saw that night in front of the theatre. He was an honest man; he had an honest face; he was a clerk in the General Land Office. His name is Frank M. Heaton, and it is very easy to learn all about him. It would have been very easy to impeach him if he was not telling the truth. He lived right opposite the theatre. Has anybody breathed a word against him?

I next come to the testimony of Sergeant Dye, on page 12. Sergeant Dye was one of the early witnesses put upon the stand. We were told in the opening speech that Sergeant Dye was going to be impeached. He had told them where he lived, where he was born, and what his business was. Did you ever hear anybody come here to impeach Sergeant Dye? He testified here at least seven weeks ago. Has anybody been found to say a word against that soldier? Any record been brought against him of any kind? You heard in the talk here, in the motion made and in the statement made, that they were going to do something to Sergeant Dye; that they were going to make out he passed counterfeit money. Did they do any such thing as that? Did we try to prevent them from doing it? Was not that the inference they tried to leave upon you, that he did pass counterfeit money, knowing it to be counterfeit, and that he did commit some crime? Now, I do not believe that they failed to make an investigation upon the subject. I do not know. As diligent as they have been in their efforts, and as far as they have gone in their exertions to find everything they possibly could against our witnesses, they would have brought some man to have spoken against his character if they could, and they would have brought some testimony or some record to show that he had passed counterfeit money, knowing it to be counterfeit, if they could find any such thing. Now I do not know what the counsel know. I have not the capacity to see into their hearts; but when I learned from them that there was such a charge, I determined to find out what it meant, and if the learned counsel will tell me that he did not know that record, then I have nothing to say. If he does know it, he did the most cruel thing a man ever did. I have the record here, and while every exertion had been made beforehand, it turned out that the very man on whose statement the prosecution was commenced, signed an affidavit, on which the district attorney dismissed it at once, and here is the record under seal. Surely these gentlemen did not know that, or they would not have done it.

Mr. MERRICK remarked that of course they did not know it, for the suit had been dismissed since the matter was up on a former occasion.

Mr. PIERREPONT. Well, it strikes me they would have impeached him if they could. Could not they have brought some witness against him, of some record against him? This young man, in humble life, went into the army as a volunteer and as a private. He fought like a brave man, and rose from his humble position in Washington county, Pennsylvania, until he became a sergeant in the regular army of the United States, where he holds that honorable position now, having perilled his life in the defence of his country as a private soldier; having faced the cannon's mouth, with not a blot upon his name, and not a human lip to utter aught against him. Now, let us see what he says. He states that he was in front of Ford's theatre that night, sitting upon a plank. His regiment lay out at Camp Barry:

Q. As you sat there upon this plank, what was Sergeant Cooper doing? A. Sergeant Cooper was moving up and down the pavement.

Q. Did you have any conversation with him while you remained there? A. Yes, sir.

Q. While you were sitting there, state whether there was any change in the inside of the theatre as to persons coming out at the end of any act? A. They did.

Q. State what that was, and when. A. Parties came down—I presume it was about ten or fifteen minutes after we got there—and went into the saloon below and the saloon adjoining the theatre to drink.

Q. Were there quite a number of them? A. Yes, sir.

I now read from page 124:

The first who appeared on the scene was John Wilkes Booth himself. What first attracted my attention was his conversing with a low, villanous looking person at the end of the passage.

Q. You mean by low, short in stature? A. Yes, sir. It was but a moment before another person joined them. This person was neat in appearance—neatly dressed—and entered in conversation. The rush came down from the theatre, and as they were coming

Booth said to this other person that he would come out now—as I supposed, referring to the President. They were then standing facing the place where the President would have to pass in order to reach his carriage, and watching eagerly for his appearance. He did not come. They then hurriedly had a conversation together; then one of them went out and examined the carriage, and Booth stepped into a restaurant. At this time all the party who had come down from the theatre had gone up. Booth remained there long enough to take a drink. I could not say whether he did or not. He came around and stood in the end of the passage from the street to the stage where the actors passed in. He appeared in a moment again. This third party, neatly dressed, immediately stepped up in front of the theatre and called the time.

Q. To have no misunderstanding, state what you mean by calling the time. A. He stepped up and looked at the clock, and called the time to the other two.

Q. That is, he stated what it was? A. Yes, sir.

Q. Where was the clock? A. The clock was in the vestibule of the theatre.

Q. State how the light was at the time relating to the face of the neatly dressed man who called the time. A. I did not observe it particularly at that time. As soon as he called the time to the other two, he went up the street toward H street. He did not remain there long, but came down again, stopped in front of the theatre, looked at the clock, and called the time again, looking directly at these two, and seemed excited.

Q. That is, Booth and the other man? A. Yes, sir. He then immediately turned his heel and went toward H street. It was then I thought something was wrong by the manner in which these three had been conducting themselves, and as a soldier I had a revolver in my pocket with my handkerchief wrapped around it.

Q. What part of it? A. Around the revolver. We wore artillery jackets, and the revolver was in my breast pocket. My suspicions were so aroused that I unwound my handkerchief from around my revolver. It was not long before he appeared again, going on a fast walk from the direction of H street.

Q. How did he look then? A. He placed himself in front of the theatre, where the light shone clear on his face. There was a picture on that countenance of great excitement, exceedingly nervous and very pale. He told them for the third time that it was ten minutes past ten o'clock. That was the last time he called it. It was ten minutes past ten o'clock.

There was a picture on that countenance of great excitement, exceedingly nervous and very pale. Well, it was not very strange, for they had just reached the hour when they were to perform this horrid deed.

Q. Did you see that man distinctly? A. I did.

Q. Very distinctly? A. I did, very distinctly.

Q. Do you see him now? A. I do.

Q. Can you tell us where he is? A. I can.

Q. Tell us where he is. A. He sits there, (pointing to the prisoner.)

Q. Is that the man? A. It is. I have seen his face often since while I have been sleeping—it was so exceedingly pale. He hurried up towards H street again, and that is the last I have seen of him until lately.

Q. You say he was the prisoner at the bar? A. Yes, sir; and I say that I have seen him since, while I have been sleeping.

Q. Did it make a very strong impression from what occurred at the time? A. It did, sir.

Q. What did Booth do then? A. He walked directly into the theatre.

Q. Did you call anybody's attention to this at the time? A. I did.

Q. Who? A. Sergeant Robert H. Cooper.

Q. Did you point out at the time who Booth was?

(Question objected to by Mr. Bradley and withdrawn.)

Q. Where did Booth then go? A. He entered the front of the theatre.

Q. Where did you go, and who went with you? A. Sergeant Cooper and myself went to an oyster saloon. Sergeant Cooper was particularly with me.

Q. How soon after you got into the oyster saloon did you hear of the murder. A. We had not time to eat our oysters.

Q. What did you do when you heard of it? A. We did not go to the theatre. We hurried right up H street to the camp. I thought a detail would have to be made, and as I was first sergeant I would have to be there.

Q. Did Sergeant Cooper belong to the same camp? A. He did.

Q. Did you both go up H street? A. Yes, sir; we both went up to H street, and out H street.

Q. When you got out to H street what did you do? A. We passed out to Camp Barry.

Q. What occurred on the way? A. A lady hoisted the window of her parlor and asked us what was wrong down town.

How happened this lady at that time, before there had been the least alarm, to ask what was going wrong down town? When Webster murdered Dr. Parkman, they told him they had found the body; and said he, "Did they find it all?" What was going wrong down town?



Q. What did you say, and what did she reply? A. I told her that President Lincoln was shot. She asked me who did it. I told her Booth. She asked me how I knew it. I told her a man saw him who knew him.

Q. Will you tell us what was the condition of the moon at that time? A. I cannot say exactly. I disremember.

Q. Do you know whether it was full or different at the time? A. It was light enough for us to see some distance on the street.

Q. Do you know whether the moon was up? A. Yes, sir; I believe it was.

Q. Do you know whether the moon was then at or about the full? A. I cannot say.

Mr. BRADLEY here interposed an objection to the course of examination being pursued. The witness had answered that he did not recollect what the condition of the moon was, and he did not think it altogether proper to pursue this line of examination further with leading questions.

Mr. PIERREPONT. Very well, sir; I will not press the examination further. The almanac will show what the condition of the moon was on that night.

Q. Please describe this woman who opened the window, and with whom you had this conversation. A. She appeared to be an elderly lady.

Q. How was she as to being stout or otherwise? A. I could not say particularly. She resembled the lady on the trial of the conspirators—Mrs. Surratt.

Q. Have you seen the house since? A. I have.

Q. Do you remember the number? A. I do—541.

Q. Tell the jury which side of the street it is on as you go up. A. As you go toward the camp—an easterly direction—it is on the right-hand side.

Q. Is there anything peculiar about the house? A. Yes, sir; I recollect the steps distinctly as they appeared that night.

Q. Tell the jury how the steps are. A. In order to answer her question I had to go up in the direction of the steps, which are very tall.

Q. Will you state what was the manner of this woman when she thus addressed you? A. She just asked the question.

Q. State whether her manner was excited or not. A. I do not recollect.

Q. What then did you do? A. Passed on toward the camp.

Q. Did you pass swiftly or slowly? A. Passed along on a fast walk.

Q. At the time she opened the window, state whether anybody was ahead of you in the street. A. There was not. We met two policemen a short distance beyond that, who had not even heard of the assassination. What I mean by this is, that no pedestrians had passed that way.

They were the first, as appears afterward in the testimony of Cooper, to give the information to these policemen.

I now come to the testimony of Sergeant Cooper, who was with Dye at this time. I read from page 184. You will remember Sergeant Dye stated that while he sat upon that plank Sergeant Cooper was walking up and down the pavement. Sergeant Cooper says:

I was walking up and down the street. I walked up to the corner of F street once, crossed over to the other side of Tenth street, and walked down the other side.

Q. Did you cross back again on the same side the theatre was? A. Yes, sir; I went across right in front of the theatre.

Q. State whether you spoke to anybody; and if so, to whom? A. I do not remember correctly. Sergeant Dye was sitting there, and he and I may have had some conversation. We had conversations at different times.

Q. While you were walking about? A. Yes, sir, we did. When I came to where he was sitting I sometimes spoke to him.

Q. Did you speak to any other person that you remember? I do not remember that I did.

Q. You spoke of the President's carriage standing by the platform? A. Yes, sir; we observed that when we went there.

Q. Did you see anybody about the carriage; and if so, who did you see? A. The driver sat on the carriage, and while we remained there a gentleman approached the carriage to the rear, and looked in at the rear of the carriage.

In the same way that Sergeant Dye had spoken of it before.

Q. Tell what kind of a man he was; I speak of age, height, dress, and appearance. A. He was a young man, very genteelly dressed; that was all I noticed about him. I did not observe him particularly.

Q. As to height, what would you say? A. I presume he was about five feet eight or ten inches.

Q. Compared with yourself, what was his height, without going into feet and inches? A. I think probably he was about the same height I am, as nearly as I can recollect.

Q. Did you see any other man standing there near the wall? A. I observed a rough looking man standing near the wall of the theatre.

Q. Tell about his height. A. I would say, to the best of my recollection, that he was not as tall as the other gentleman, who looked into the rear of the carriage.

Q. Did you see anybody go into the drinking room by the side of the theatre? A. Yes; I saw a gentleman go into the drinking saloon below the theatre.

Q. Who was he; did you know him? A. I did not know the gentleman; he was pointed out.

Mr. BRADLEY. That is not evidence.

Mr. PIERREPONT proposed to show that this man was pointed out to witness as John Wilkes Booth.

Objection sustained.

Q. I will ask you if the same person who was pointed out to you went into the drinking saloon? A. Yes, sir; I observed him go into the drinking saloon.

Q. Was he pointed out to you, and his name given? A. Yes, sir.

Q. Did you see him come out? A. Yes, sir.

Q. After this man came out from the saloon, what did he do? A. I did not observe him after he came out from the saloon.

Q. Before that, did you hear any one call the time; and if so, what did you hear the last time you heard it? A. The last time I heard it called was ten minutes past ten. It was after this gentleman came out of the saloon.

Q. Did you hear the time called before that? A. I cannot recollect distinctly whether I did or not. I have a faint recollection that I did, but I am not certain.

Q. Were you so situated at the time you heard the time called, ten minutes past ten, that you could see the face of the man who called it? A. No, sir; I was not.

Q. What did you and Sergeant Dye then do? State what occurred. A. We started round a corner, and went to a saloon to get some oysters.

Q. Did anything occur exciting your suspicion at this time? A. I do not know that I could say that there was anything particular that excited my suspicion.

Q. As you were going down H street to camp, on which side of the street did you go? A. We went down the right-hand side to somewhere about the printing office.

Q. What occurred, if anything, on your way down? A. As we were going down H street there was a lady raised a window, put her head out, and asked us what was going on down town, or something to that effect.

Confirming essentially all that Sergeant Dye said. Sergeant Cooper was walking up and down, and did not see all that Dye saw. Now, I have one word to remark in this connection; that wherever you find witnesses not situated exactly alike, in reference to seeing or hearing what transpires, place them upon the stand, and if each tells precisely the same story the other tells, that he saw precisely the same things and heard the same words, and there is anything complicated about it, you may be entirely sure that story is made up. No two men see alike, no two men hear and remember the same words alike. They may see one specific thing or hear one single sentence; but when you place two men, one sitting and the other walking about, their faces turned in a different way, and their attention differently directed, and you find the two telling a complicated story exactly alike, the story is made up. The truth of it is apparent from the fact that one tells what he heard and saw, and the other tells what he heard and saw. They do not both see precisely the same thing or hear precisely the same words. It is just as I explained to you, when you find a signature that will exactly fit your own, will exactly cover it in distance, size and space, it is a forgery, not real. Here are these men, with little differences in their statements; but their story is substantially one.

Now, gentlemen, we have reached this point before the theatre by three men. Booth is seen before the theatre by three men, and Surratt is seen, two recognizing him positively, the other giving a description of him. He did not say positively. Dye was so situated that he could not be mistaken. Cooper saw him and described him as he went up to the carriage—both going up H street at the same hour, and the same thing occurring. Booth goes into the drinking place and takes his drink, and when the last time is called, stealthily goes into the theatre, passes into the box of the President, lifts his impious hand and kills that man, who is there trying to divert himself from the burdens and toils which were pressing him by some little diversion with his wife and friends. It was the time, if you remember, after Lee's army had surrendered, and it was the very day when he had been with General Grant; and if General Grant is in the

room he will remember it, for he told me of it himself; it was on the very day he was in the cabinet with General Grant, devising what means of leniency, what easy modes could be brought about to restore peace to this bleeding country. All remarked how gentle, how kind, how lenient was his policy on that fatal day, well remembered by the general-in-chief, and well remembered by all his assembled cabinet who were there with him. He indulged in no pleasures, he had no amusements, but occasionally relieving himself from his toils, went to the theatre that he might be diverted. His other and sole diversions, as is well known, were to go to the hospitals, to the sick soldiers, and cheer them up, to sooth them in their sorrows, and be by the side of their dying beds, as he frequently was. And here this occasion was selected, by the side of his wife and by the side of his friends, that he should, by the assassin's hand, be stricken down and die. The counsel ask, have we not had blood enough; isn't it all right? They ask this jury of twelve men of the city of Washington to say it's all right; there is no guilt about it—those who were engaged in the plot and those who perpetrated it; it is all right. It is right if they are not guilty. When they call upon you to say a man is not guilty, who was one of the plotters, they call upon you to say it is all right. They would not be willing to put it in that form, but this is the real form in which you cannot escape its being put. The form is, gentlemen, do you say the plotters in that great crime are innocent? If they are innocent, then they are right. Will you tell this community, your wives, your neighbors, your clergymen, your own souls, that this is right? It is right if there is no guilt. The whistle, the signal, sounds when Booth goes in; the time is called; the man hastens up H street; Payne mounts his horse at this given signal, and goes to the house of Secretary Seward, goes there and that murderous, that awful scene ensues in the presence of his daughter, by the side of his wife, the sick and almost dying man, mangled and cut to pieces in this brutal way, with those trying to protect him stricken down, his own son's life almost destroyed, almost by a miracle saved; his daughter from the shock goes to her grave, and his wife in a few weeks from that hour dies. Have we not had blood enough? Have not we had murder and assassination enough? Is it not time that a jury of twelve men shall say there has been enough, and we will stop it? No jury has said a word upon this subject yet. No twelve men have taken up the question and passed upon it. The civilized world have passed their verdict upon it, and it is a verdict of condemnation; 13,000 rebel prisoners at Point Lookout passed their verdict—have writ the severest condemnation upon it that words can express. The entire governments of the civilized world have expressed their condemnation of it; they said there had been blood enough. The Turk, the infidel, the Chinese, the Japanese, the Greek, the Arab, the Protestant, the Catholic—from sea to sea, from pole to pole, over this whole wide world send their letters of condolence and their resolutions of condemnation of this terrible crime. Yet the counsel tells you this is not different from the commonest murder of the lowest vagabond in the streets. That is not the verdict of Christendom; that is not the verdict of brave men who were rebels; it is not the verdict of those 13,000 rebel prisoners; it is not the verdict of humanity; it is not the verdict of man.

Now what happened? This deed is done; Herold and Booth flee. Flee where? Flee forthwith to the house of the mother of this prisoner to get arms, get the field-glass, get the ammunition, get the whiskey, which on that day she had ordered to be prepared; the arms which her own son a few weeks before had secreted, which he in connection with Herold had brought from T B there and hid them; had told his mother; and Booth and Herold called upon Lloyd, "for God's sake make haste and get those things." With them they escaped; with them they were taken; the things are brought there as living witnesses to testify with their dumb mouths against this awful crime.

Now, gentlemen, who did the deed? You notice, from the testimony here



given, that the first idea of all was that John Surratt was the one who had assassinated Mr. Seward. It turned out it was another man who had assassinated Mr. Seward, the very man who it had been arranged before should kill Lincoln. It was this bloody Payne. It was he who did the deed, and what became of him? He wandered about in these streets, and knew not where to go, or how to flee. His horse was found, but he was not found. Distracted, almost, as it were, and like a wandering damned spirit, he returned to the very house where the plot had been formed, and there enters on that Monday night; and he says, as he came there, he came at Mrs. Surratt's call to do her bidding in a menial labor. He had done her bidding in other things, or he had done that which he had plotted in other things, and he returned to that same house where he was arrested; and there, when she arose from her knees, she came out, lifted her hands, and said before God she never knew that man. And when she passed out by Colonel Morgan, in a confidential whisper, said to him, "I am so glad you officers of the government have come here to protect us, for that man with a pickaxe came here to kill us."

Well, we have had blood enough. No jury yet has ever passed on one of these crimes; you are going to do it now. The world looks on, your own friends look on, your God looks on. It is for you to try; it is not for me.

I come now to the flight. I turn to page 498; to the testimony of Charles Ramsdell, from Boston, Massachusetts, belonging to Co. D, 3d Massachusetts artillery. He was on his way, with Staples, another soldier, to Fort Bunker Hill, and had proceeded a short distance from this city, in the early dawn on the morning of the 15th, after this murder:

Q. Tell the jury how you went—whether on foot or horseback? A. On foot.

Q. What was Staples? Was he in your company? A. He was a private in my company.

Q. About what time did you leave Washington? A. I could not tell exactly what time—between four and five.

Q. Will you tell the jury, after you got out on the Bladensburg road, what you saw that attracted your attention? A. I saw a horse hitched to an opening in the fence, about two miles from here.

Atzerodt was afterward found to have left here on foot, not taking away his horse. You will find this horse answers the description of the horse Atzerodt rode, and which he probably took and tied at this place to aid in the escape.

Q. Describe that horse. A. It was a dark bay horse.

Q. Describe his forehead. A. I think he had a star on the forehead, if I recollect right.

Q. What of his feet? A. I do not recollect exactly, but I think he had one white foot.

Q. What had he on him? A. Trappings; a citizen's saddle, and a piece of woollen blanket under it.

Q. What kind of a blanket was it? A. Soldier's blanket, I think it was.

Q. Was he saddled and bridled? A. I think he was.

Q. How near the house was it where he was tied? A. It may be a hundred yards from it.

Q. Did he excite any remark? A. No, sir; not at the time.

Q. You observed him? A. I did.

Q. Soon after you passed this horse tell the jury what occurred? A. About fifteen minutes after I passed this horse a man rode up to me on this same horse and asked me if there would be any trouble in getting through the pickets, or something of that kind.

Q. What did you tell him? A. I do not recollect what I told him exactly, but I think I told him I thought there would be, or something to that effect. I asked him if he had heard the news of the assassination of the President.

Q. What did he say? A. He did not make any answer, but gave a sneering laugh.

Q. What did he do? A. He looked back and on both sides.

Q. In what manner? A. He appeared to be very uneasy, fidgety, and nervous.

He looked just that way when he got on the steamer Peruvian, and even in mid-ocean when on his way to England he looked that same way. He thought everybody he saw was a detective coming to take him—"nervous" and "uneasy." It began after the bloody deed. After that the nerves of no man get steady again—never, never, never.

Q. Could you discover anything that arrested his attention? A. There was a man coming from the city, an orderly, I think, carrying despatches to Fort Bunker Hill. As soon as he saw him coming he rode away.

Q. What did he say when he saw this man coming? A. He said he thought he would try it, and rode away.

Q. Try what? A. Try the pickets.

Q. How did he ride? A. The horse went at a pretty fast gait.

(The prisoner was here requested to stand up in such a position that the witness might see his back.)

Q. Did you ever see that man (pointing to the prisoner) before? A. I think I have seen that back before.

Q. Did you see it on that horse? A. I think I did.

No cross-examination.

You remember the appearance of the witness. He was not cross-examined; I suppose for the same reason that the ferryman was not. They thought the more he was cross-examined the more likely it would be to be made stronger.

Now let us see what happened in the order of time. You had it in evidence before you that these railroads were stopped; that they did not go as usual. Where did this man go, and when did this man see him? This horse has never been found—the only one of all these horses that has not been found and identified. Other horses were found and brought to General Augur's headquarters. You recollect the condition one of them was in, with the sweat standing in puddles under him. This horse was never found; where he is I do not know, and I do not know that anybody knows. But the man who rode him has been found. And where did he go to? The next place we find him is on the boat going from Whitehall to Burlington, Vermont, on the night of Monday following the assassination—the first trip the boat made that season. He gets to the depot at Burlington; a short man is with him, who does not talk. This man talks "Canuck," as you will find from the evidence I shall read. They are too late for the train. They ask permission to sleep in the depot. They lie down until four o'clock, when they are called, take the train, hurry off; they are gone. Blinn, who kept the depot, picks up where the tall man lay a handkerchief, and on that handkerchief was written the fatal name "John H. Surratt." He picked it up that morning. There is no doubt about that fact, much as they tried to make it appear differently. The next we find of him is on the railway. Hobart finds two men standing on the platform, who professed to have no money. The tall one does the talking; the other one says nothing. They pretended they had been laborers in New York and had not any money. You can easily see why he wanted to appear as a laborer. The witness tells you he undertook to talk like a "Canuck," as they call it in Canada; but when he grew earnest in urging him to allow him to remain, he forgot the "Canuck," and passed into good Yankee English. Let us see what he says about it. I read from page 174, and from the testimony of Blinn:

Q. Do you remember when the first passenger boat of that season landed its passengers at Burlington that season? A. The first trip made by the boat that season was the 17th of April.

Q. What day of the week? A. Monday.

Q. Can you tell whether it arrived in time for the passengers to take the train? A. It was four hours late.

Q. At what time did it arrive? A. About twelve o'clock in the night.

Q. Were you on the watch that night in the depot? A. Yes, sir.

Q. Did you see two men in that depot? If so, tell us about them. A. There were two men came in from the boat; one was a tall man, and the other shorter. They requested permission to sleep in the depot until the train left for Montreal.

Q. At what time did the train leave? A. The train left at 4.20 the next morning.

Q. Where did that boat come from? A. It came from White Hall, and connects with the cars from New York city. It runs from White Hall to Rouse's Point, on the lake.

Q. State what arrangement, if any, was made between you and them about sleeping there. A. They requested permission to sleep on the benches in the depot.

Q. Which one made the request? A. The taller gentleman; he did all the talking.

Q. What did he say? A. He wished to know if he could sleep there. People very often come along in that way, when the cars from the Rutland road were late.

Q. I am merely asking what he said? A. He wished to know if he could sleep there. I asked him if he did not wish to go to a hotel. He said he thought not; he was going to Montreal on the early train, and would like to sleep there in the depot.

Q. Did you call him? A. Yes, sir; in time for the train.

Q. At what time did you call him? A. I should think four o'clock.

Q. In the morning? A. Yes, sir.

Q. That was on Tuesday? A. Yes, sir; that was on Tuesday morning, the 18th.

Q. After he went out did you see anything where he had been lying? A. I did not.

Q. Any article? A. I did not, until daylight.

Q. Did you at daylight? A. Yes, sir.

Q. Have you it here? A. I have, or something that resembles it very much.

Q. Just look at it and state if you recognize it as the same. A. (After examining it.) I do recognize it as the same handkerchief.

Q. Where, in relation to where the tall man slept, was that? A. That was near the seat, on the floor, where his head lay.

(The handkerchief was here shown to the jury.)

Q. Is there any name on it? A. Yes, sir; "J. H. Surratt, 2."

Now, here were two men, one tall and slender, and Blinn tells you that under the head of the tall one, where he lay, he found this handkerchief, marked "John H. Surratt." Let me trace them and see where the two men, the tall one and the shorter, were next found. But first, I ask you to remember what day this was, and to notice that it was while Holohan was still in Washington, and before that handkerchief, with the name of "John H. Surratt" on it, which had been washed by Susan Jackson, and laid out to wash on that Friday night, had passed into the hands of Holohan at all.

I come now to the testimony of Hobart, page 169 :

Q. Between the 10th day of April, 1865, and the 20th day of April, 1865, state whether you were the conductor on this same road? A. I was, and have continued to be ever since.

Q. Do you remember about what time in April, 1865, the first boat came up the lake that left passengers at Burlington? A. I got the passengers from the first trip up the lake by the boat on Tuesday morning, in April.

No chance for any mistake here.

Q. Have you any memorandum of what kind of a night it was prior to this morning that you took these passengers; I mean as to whether it was stormy or otherwise? A. I think it was a clear night, but I am not sure.

Q. At what time in the morning or night was it that your train started? A. I started from White River Junction at 11.55 at night; I cannot say whether we were then on time or not, but that was the time of starting.

Q. Where did you go? A. Directly to St. Albans.

(The prisoner was here requested to stand up, that the witness might see him. He did so.)

Q. Will you tell the jury what occurred on the train that night that was peculiar? A. I arrived at Essex Junction at 5 o'clock in the morning—Tuesday morning. I left Essex Junction with the passengers from Burlington and the boat on Lake Champlain. As I went through the train, I found between the passenger car and the sleeping car two men standing on the platform; they were on the platform of the passenger car, one on each side of the door. I spoke to these men, and asked them for their tickets. They said they had none, and that they had no money; that they had been unfortunate.

You can easily see why, if they both were criminals in flight, they should want to conceal themselves as laborers, just as Payne, when he came to Mrs. Surratt's, undertook to conceal himself as a laborer. They could get along without being stopped so often until they got out of our jurisdiction.

Q. Please describe these men. A. One of them was tall; he was about my height as he stood up in the car; he was rather slim; had on a scull-cap—one of those close-fitting caps—and a short coat. His vest was opened down low, and his scarf came over under his collar and stuck in his vest.

I will call your attention presently to the statement of St. Marie, of what the prisoner told him in Rome, in walking with him on that afternoon, as to how he made his escape from Washington, and what disguise he had.

The other man was a short, thick-set man, of sandy complexion, with whiskers around his face, and had a slouch hat on.

Q. Of what color were his whiskers? A. Sandy, I think.

Q. Was he a rough or genteel looking man? A. He was a rough-looking man.

Q. How was he dressed? A. I cannot state about his dress.

Q. With whom was the conversation? A. With the tall man.

Q. State what the conversation was. A. I told him to come into the car, and put my hand on his shoulder. He came in. He said that three of them had been to New York; they were Canadians, but had been at work in New York; that they had received some



money two nights before—I won't be positive about the time—and that a third party who had been with them got up in the night, took all the money they had, and left; that he had left them without anything—in a destitute condition.

Q. What were they trying to do, did he say? A. He said they must go to Canada; that they wanted to get home; that their friends lived in Canada, and that when they got home they would get plenty of money, and would remit the amount of fare to me.

Q. What further? A. I told them that I could not carry them. I spoke to them of the necessity of having money if they were going to travel, and that I could not carry them through free. They expressed themselves as very anxious to get through. I told them that I should leave them at the next station—Milton—between Essex Junction and St. Albans. I was busy when I got there with the train, and so forgot them. I went through the train again after leaving Milton, and found them in the rear end of the car. I tried them again to see if they had not some money. They said they had none, but that they must go to St. Albans; that when they got there they could foot it. They inquired of me how far it was to Franklin; that they were going through the country. I asked them how they were going to get there? They said they were going afoot.

Q. State where Franklin is. A. Franklin lies northwest of St. Albans fourteen miles; I think the distance is about four miles from the line—the Canada line.

You see that Franklin is up there near the Canada line, and, as we shall show, by their arrival at the hotel, they probably went there by Franklin. They did not go by train, for they did not get there until some time later than the train arrived.

Q. When you asked them how they were going to get to Franklin, what did they say? A. They said that they would have to go afoot; they had no money to pay their fare on the stage; that if I would carry them to St. Albans they would try and get home, or where their friends were.

Q. Who did this talking? A. The tall man.

Q. In the progress of this talk, or in the beginning of it, state what there was, if anything, peculiar about their dialect? A. This tall man tried to use broken English, as if he were a Canuck, but occasionally he would get a little in earnest for fear he would be put off, and then he would drop the Canuck and speak good square English.

Q. What did you discover as to his square English finally? A. That was what aroused my suspicions that things were not all right; that they were travelling *incog.*, and I urged the matter more than I would if they had been really poor people and I had had a strong proof of that fact.

The court here took a recess for half an hour.

On reassembling, Mr. PIERREPONT said: I was speaking to you, gentlemen, when the court took a recess, about the flight of the prisoner. I read to you Mr. Hobart's testimony, in which he stated that the train on which he saw Surratt was due and did arrive at Montreal at 9.45. The prisoner, you will remember, inquired of Hobart the way to Franklin, which was close to the Canada line, and remarked that he was going across the country. From the fact which I am about to state, it is more than probable that he did take the route he said he would. This register which I have here, and in which his name is entered, shows him to have reached Montreal at 12.30, whereas if he had taken the regular train from St. Albans he ought to have arrived there at 9.45.

You will likewise see from this same register that he reached this hotel in Montreal at 10.30 on the 6th day of April, 1865. Did he reach Montreal at 10.30 in the morning? This is one of those pieces of evidence which come in, as evidence will always come in when it is true, to set at naught and scatter to the winds all these wild theories of my learned adversaries, regarding "physical impossibilities." The prisoner being here on the 3d day of April, 1865, leaves here the next day, and arrives at Montreal at 10.30 on the morning of the 6th, by the concessions of everybody. Now, the question arises whether he cannot get from Montreal to Washington just as quick as he can go from Washington to Montreal. My friends, "physical impossibility" has again, in this instance, disappeared.

First find out whether a thing is true or not, and if it be true you can always find out some way to get at it. If it is true that a man was here in Washington at a given time, and it is true that he was in Montreal at another time, you may be entirely sure that somehow or other he got from one place to the other

place. Whether he went by a special train, express train on schedule time, or on a freight train, is not a matter of any consequence. The question is, What is the truth about it? Was the man here? Yes, that is conceded. Was he in Montreal? Yes, that is conceded. Well, then, he got there somehow or other. It is not worth while for us to puzzle our brains very much to know how he did it, nor to be disturbed by anybody getting up and talking about physical impossibilities.

We find no trouble now about the physical impossibility of Surratt being here and then getting up to Montreal on the 6th; and if that be so, then surely there would be no physical impossibility in his getting back just as swiftly as he went.

You will remember that Mr. Conger and a gentleman by the name of Sawles saw the prisoner in St. Albans on the morning he got there. You will remember his inquiries of Hobart and about Franklin. You will remember that Hobart told him that if he continued on the train he would reach Montreal at 9.45, and you will also remember that he did not reach there until after 12 o'clock, for the reason, no doubt, that he went by way of Franklin, having got alarmed in St. Albans on hearing some person say that John Surratt must be somewhere near there, as his handkerchief had been found at Burlington.

You will remember that he says he concluded, on hearing that, that it was time for him to make himself scarce. You will bear in mind that when he told St. Marie, in Rome, that he had escaped from Washington on the morning after the murder in the disguise of an Englishman, that that same disguise was worn when Hobart saw him on the train at the time he pretended to be a Canadian or a Canuck. The same disguise was on him when he was in St. Albans, and had on the English courier's bag, which perhaps you have seen. I have seen many of them in England, and many of them on the continent. On hearing this conversation about the handkerchief, he left St. Albans. The next we hear of him is on his way to Montreal, which place he reached at 12.30, according to the register of this hotel. Let us see what he did after he got there. I read from the testimony of John Sangster, bookkeeper of the St. Lawrence Hotel:

Q. Now turn to the 18th, when he arrived again, and tell us how many hours or minutes he staid on the 18th. A. He did not stay any time in the hotel; I do not know how long; he just came into the house.

Q. Do you know where he went? A. I do not know the exact place; he went somewhere and was secreted in the city, I believe.

Q. He left the hotel instantly, did he? A. He left it instantly.

This was on the 18th. Why did he leave the hotel instantly? I will tell you why. He had been in St. Albans and learned there that his handkerchief had been found at Burlington, and that he was suspected of being somewhere on that route. He therefore concluded it was about time for him to make himself scarce. He therefore, as I have shown, leaves St. Albans, and starts for Montreal across the country, instead of going by the regular train. He gets to Montreal, enters his name on the register of the hotel, and leaves there instantly. He is then secreted somewhere in the city. He afterward tells where. He was at first secreted at Porterfield's house; then at La Pierre's, and afterward at Boucher's. Why was he secreted? He had not done anything wrong. He had committed no crime. He had had nothing to do with the assassination of the President, for he had been in Elmira all the while. Now, gentlemen, let us see how this is presently. If he was in Elmira on the 14th then he could not have been in Washington, and these thirteen witnesses who swear to having seen him at different hours during the day, and narrate minute circumstances, such as shaving him, holding conversations with him, &c., are all mistaken. He was not here—of course not; but was in Elmira. That ferryman who brought him across the river; the other man, who talked with him when he came to make certain inquiries of him, are all mistaken. He was in Elmira.

Well, won't the gentlemen please tell us where he went when he got to Elmira? Won't they tell us how he got on that boat? Won't they tell us why he went in disguise? Why he hastened to that hotel and left it so suddenly? Why he went across the country from St. Albans, instead of going on the regular train? Why he was secreted in the city of Montreal? He had done nothing wrong. Why was he flying? what is the matter? Well, men used to do that before, when similarly situated. They begin early. Here is a little bit of its history:

And the Lord said unto Cain, Where is Abel, thy brother? And he said I know not. Am I my brother's keeper?

And he said, What hast thou done? The voice of thy brother's blood crieth unto me from the ground.

And now art thou cursed from the earth which hath opened her mouth to receive thy brother's blood from thy hand!

When thou tillest the ground it shall not henceforth yield unto thee her strength; a fugitive and a vagabond shalt thou be in the earth.

That was the curse pronounced by the Almighty upon murder, that the man should be a fugitive on the earth.

And so it was with the prisoner. He fled to the uttermost parts of the earth, but found he was safe nowhere. In Egypt his final capture took place, and from thence brought back to the city of his great crime.

That there may be no mistake on this subject, I read from St. Marie's evidence, page 612:

Q. What road did you go? A. Outside the city of Velletri, on what is called the road to Naples.

Q. Did you talk to the prisoner? A. Yes, sir. I was occasionally speaking with him in English, and occasionally to the two others in French.

Q. Did the prisoner tell you at this time anything about his disguises? if so, what? A. Yes, sir. I asked the prisoner how he got out of Washington; if he had a hard time in escaping. He told me he had a very hard time.

Q. How did he say he got out from Washington? A. He told me he left that night.

Q. What night? A. The night of the assassination, or the next morning, I am not positive.

Q. What was the disguise, if any, he told you he had? A. He told me he was so disguised that nobody could take him for an American; that he looked like an Englishman; that he had a scarf over his shoulders. He did not mention any other disguise that I remember.

You have heard the witnesses tell you about that scarf, and about his cap, and you will hear presently who it was told you about his courier's bag which he had. Thus did he escape. You will remember how he attempted to impose his broken English—his Canuck dialect—upon Hobart, when he was trying to make him believe that he was a laborer. In this connection, gentlemen, I will call your attention to two remarkable coincidences. We have learned that truth is always stranger than fiction. One of these is this: If you remember, counsel first brought Gifford upon the stand to prove that Dye was lying when he said that he was there on that platform. Gifford told you that there was not anybody out there. He said if there had been he should have seen them and put them off the platform, as it was his duty to do. Carlan told you likewise that if there had been anybody on that platform Gifford would have put them off. Having got the proof that Dye was not there, they brought in little Hess to prove that he was there, but that he was mistaken as to the person who called the time; that it was Hess who called the time—ten o'clock ten—and not Surrett. That is one of the results which always attend trying to prove what is not true. They did not see where it was leading them. Great care did they take by bringing Gifford and Carlan on the stand to prove that Dye could not have been on the platform at all, and yet, forgetting that, they bring Hess on to prove that he *was there*, but that he was mistaken as to the person who called the time. Let us see what Carlan said. These attempts at making up something that is not real are a little curious and interesting. There is no contriv-



ance by means of which you can make fiction appear like truth. One is real, and has the stamp of the pure gold upon it, and the other is a forgery which is clearly perceptible. It does not require a very great expert to tell the difference. I am not much of an expert generally, but I am enough of an expert in these things, and have had experience sufficient, to tell when a man is speaking the truth and when he is making up a story. It requires no great genius or skill to enable one to do that. You can do it. All men can do it who will observe closely. I will show from their own statements that this is a made-up story, and that there is not a word of truth in it. I read from little Hess's account, page 685—little Hess, the one, you remember, who they said looked so much like Surratt that you could not tell them apart, and yet between whom, when they stood up together, you saw there was not the slightest resemblance :

A. I was not in the American Cousin, but was in a song that was to be sung after the performance of the American Cousin.

Q. Were they there before you or not? A. Mr. Carlan and Mr. Gifford were there before I was.

Q. From what direction did you come toward them? A. As I came out of the theatre I met them at the door.

Q. Did you leave them? A. I did.

Q. Which direction did you take then? A. I went right back into the theatre again.

Carlan then came on and told his story. He had not been with the witness, and therefore had not heard what Hess had said; and so after he came on he found himself in a fix. He did not know what a cross-examination was; I do not think he had ever had one before. He did not know what sort of questions were going to be asked him, and he contradicted Hess dead. They had not fixed the matter up together, or at least not this part. Ah! gentlemen, truth requires no fixing up; but one lie generates another until ten thousand lies are made from one, and no two are consistent with any truth. Lies cannot be carried out, and as I have before said, I repeat that I am never afraid of a liar on the stand.

Q. Did you see them afterwards? A. I did not.

Q. When you came out and spoke to them, was anything said about the time? A. Yes, sir; I asked them what time it was. Mr. Carlan walked as far as the first door in front of the theatre, leading into the audience department, looked at the clock, and came back and told me it was ten minutes past ten. Says I, "Ten minutes past ten; I will be wanted in a few minutes."

When I came to cross-examine him further, it came out he was not wanted until after the play was over, and it was not over, or near over at that time; yet he said, "I will be wanted in a few minutes;" and then left them immediately and went back into the theatre again. "I do not think I had been there more than two minutes when I heard the discharge of a pistol."

This was Hess's story, which Carlan did not hear; but if he had, I doubt whether he would have had sense enough to have put it together and remembered it.

Q. Did you think there was anything extraordinary in its being ten minutes past ten? A. No, sir; I did not until they spoke about it.

Q. Then you had to hurry, did you? A. Yes, sir; I had nothing else to do, and I thought that I had better linger inside than outside.

Q. The play was not then near over when the President was killed? A. No, sir; I think the second scene was on.

Now, that is little Hess's own statement. He didn't know about his cross-examination; that was going to trip him up, and show what he had stated to be a lie. The second scene only was on, and yet he threw up his hands and says, "Ten minutes past ten; I shall be wanted in a few minutes." After saying this, he admits that he was not wanted. Gentlemen, this was of his own showing. He goes on:

Q. There was no occasion, then, for you to be in a great hurry? A. No, sir; there was no great hurry.

Q. And you did not hurry? A. No, sir; I walked on leisurely.

He was tremendously startled on his direct examination at the lateness of the hour—so much so that he threw up his hands and instantly hurried off into the theatre. Now, let us see what Carlan says about this same story. I turn to page 692 :

Q. After you told him what the time was, did he say anything? A. He said it was very near time for him to go and get ready.

Q. Was that all he said? A. Yes, sir; I do not remember anything else.

I want to call back to your minds just here the cross-examination of Hess, because I had just then read to you, and you had fresh on your minds, the antics through which little Hess went, throwing up his hands, &c., when telling you of what he said and did when informed of the time. Let us go a little further. I have just read to you what he said when he went into the theatre, and as he says, did not come out again, thinking that was his best place. He goes on :

Q. He did not say anything else about the time, did he, except to ask the time? A. I think he made the remark that it was pretty near time for him to get ready for the song.

Q. Is that all he said? A. That is all I remember.

Q. That is every word that you remember of his saying? A. That is every word that I can call to memory just now.

Q. Which way did he go after he said it was time for him to dress—that being all he said? A. He went up the street, I believe; then turned, and, as far as I can recollect, went into the theatre.

Hess told you right the other way—that he went right into the theatre. As I told you, Carlan did not hear his testimony.

Q. What is your recollection about it; did he go up the street, or go directly into the theatre? A. I cannot call to mind which.

Q. What is your best recollection? A. The fact is, I have no recollection at all about it, any more than his being there.

What in Heaven's name did he come on the stand for and be sworn, if he had no recollection about it? He did not know. He knew very well from the tenor of these questions that he was running into a difficulty, and he endeavored to turn it off in that way. Men are very apt to become know-nothings under such circumstances.

Q. Do you think he went up the street? A. He may not have gone very far.

Q. Do you think he went up the street? A. I cannot say whether he went up the street or not.

Q. What do you wish the jury to understand—that he went up the street, or that he did not? A. He walked backwards and forwards for a minute or so.

Q. Did he go up part of the street? A. He went up above where we were standing.

Q. What did he then do? A. I do not know what he did. He came back again.

Q. How far did he go up? A. Ten or fifteen feet.

Q. Which? A. I do not know which.

Q. Did he then go directly into the theatre? A. I have no recollection whether he went into the theatre. He was one of the attachés of the theatre.

Q. State whether he went into the theatre. A. I do not know whether he did or not. I was not interested in where he went.

That is the way he got along with his testimony, after all this pantomimic exhibition of little Hess. Hess tells us he inquired the time of Carlan, and when Carlan told him ten minutes past ten, he, throwing up his hands, repeated it, what Carlan had told him, and yet Carlan does not recollect anything at all of that. Hess says, too, he went right back into the theatre; and yet this man cannot tell whether he went back into the theatre, up the street, or where he went.

Now, there is another curious attempt of the same kind, resulting in the same way, as all such attempts will result. You remember the testimony of Sergeants Dye and Cooper in relation to their passing Mrs. Surratt's house, and of Mrs. Surratt lifting the window and inquiring what was going on down town. You remember that they stated the street was perfectly quiet, they not meeting any person on it except two policemen, to whom they communicated the news of the President's assassination. Counsel felt the force of this evidence, and

knew that they must do something to get rid of it. Let us see how they undertake to do this. They bring on the stand a Dutchman, named Kiesecker, who lived in a house on another street—Sixth street, I believe—the steps of which ran back towards Mrs. Surratt's. You will remember that there is an alley between the lot and Mrs. Surratt's house. He says he sat there smoking on those steps until 11 o'clock that night, when his wife called him to bed. He is asked, "Did you see anybody pass?" "No; nobody; it was all silent." "Did you hear anybody talking from the window of Mrs. Surratt's house?" "No." Well, it is not very likely he did at that distance. He said he could not tell what kind of weather it was, nor whether there was or was not a moon.

He was very distinct, however, about not seeing anybody, or hearing any talking whatever, until his wife called him to bed. Equally positive was he that he heard no soldiers pass; and he also states that he knew nothing of the murder of the President until the next morning. They were very careful, however, not to call his wife, Katrine. If they had she would in all probability have told you that she had put her husband to bed that night; that he had previously taken a little lager, and that he couldn't for the life of him have told whether it was 8, 9, or 11 o'clock when she tucked him into bed. (Laughter.)

That, somehow, didn't work to their satisfaction, and what next was done? After some weeks had rolled by they brought on the stand a Mrs. Lambert, first, however, bringing on her son to describe the house in which his mother and himself lived, which house was a block and a half or more further up the street. Gentlemen, I hope you have passed that house. I have. If you have you must have seen how little resemblance there is between the house of Mrs. Lambert and that of Mrs. Surratt's. They are different altogether, both as regards their mode of entrance and their general appearance. Mrs. Lambert, on that night, goes to the door and stands on the stoop. She is there but a few moments when her colored servant comes and tells her it is too damp, and gets her to come inside. She then goes in and stands at the parlor window. A great many soldiers pass along, then two together, whom she stops, and with whom she holds a conversation. The dress or appearance of these soldiers she is unable to describe. The Dutchman didn't see or hear anybody passing. The moment I direct your attention, gentlemen, to that awful night, you will, I am sure, recall the fact that after the assassination of the President all was commotion, and men might be seen in all directions hurrying to and fro. Notwithstanding this fact, the Dutchman sat there until 11 o'clock, and never heard or saw anything whatever of all this. Mrs. Lambert had put them in a sad plight by her testimony, and, perceiving the effect of it, the counsel inquires of her, at the close of the cross-examination, whether she was satisfied this conversation was after 11 o'clock, evidently hoping that she would change it. But she did not understand what he desired to have her do, or else meant to tell the truth—I care not which way it is—and she answers, "Yes, sir; between 11 and 12 o'clock;" which nailed it fast. That didn't answer their purpose very well, for long before that Sergeants Dye and Cooper had been out to their camp, and the city was all in confusion. I have before said to you, gentlemen, that I am never afraid in any lawsuit of lies. Truth is the only thing to be feared. Well, driven from every point on that subject, we next hear from the counsel, toward the end of this cause, of another physical impossibility. The first impossibility was getting the prisoner from Elmira on the 13th. When that vanished, a few days ago, another "physical impossibility" sprung up in the mind of the counsel on the other side—the physical impossibility of Surratt getting from Canada to Elmira. That was a new thought. Counsel read certain railroad statistics; called Mr. Ball's attention to them, and asked him to note them down as he went along. He then, from those statistics, brought in a train at 8 o'clock on the 13th, and stated that it was physically impossible to get him there before. That was the earliest possible moment of getting into Elmira. That was a new idea. Up to this time



they had him in Elmira, talking with Carroll, and seen by Stewart, and seen by his partner. But now springs up in the mind of counsel this physical impossibility. We had, as you recollect, a physical impossibility in getting him out of Elmira before, but that physical impossibility we overcame very easily when we got at it. We had never taken any pains to overcome this physical impossibility, because we cared nothing as to how he got to Elmira. Our business was to bring him to Washington, and that we have done.

Again, gentlemen have been talking very earnestly about this matter, as though he left at 3 o'clock in the afternoon. Now, there is not a particle of evidence of that sort, and I challenge them to point to any. The witness does not say it was in the afternoon, as you will see from his testimony, for I am going to read it on that point. I read from pages 286 and 288 :

Q. At what time did the train leave? A. The train left at 3 o'clock; leaving the house at 2.45.

There is no intimation whether it was in the morning or whether it was in the evening. The fact exists that he got into Elmira, and therefore the "physical impossibility" is out of the way as far as that is concerned. He could easily have gotten there by special train, or by other trains, just as they might have been running, for you will remember, it is in evidence that there were breaks in the road caused by a recent freshet, and that the trains were in consequence running irregularly.

Having followed the prisoner in his flight to Boucher's house, let us see what that pious father says about him. I read from page 1022 :

Q. Where did you first see the prisoner? A. In St. Liboire.

Q. At what time? Give us the day of the week, if you can. A. I think it was on Wednesday evening.

Q. And that was the first time you ever saw him? A. Yes, sir.

Q. Who came there with you? A. Joseph F. Du Tilly.

Q. Did he come afoot, horseback, or in a carriage? A. It was in the evening, and I was in bed; therefore I could not say. I heard them say, however, that they came in a cart.

Q. What time in the evening did they reach your house? A. At 9 or 10 o'clock.

Q. Did they tell you who he was when he came? A. No, sir.

Q. Didn't they give some name? A. Yes, sir.

Q. What name? A. Charles Armstrong.

Why did he go to Boucher's house and secrete himself there? Why did he there give the name of Charles Armstrong? It was entered in the register of the hotel only a few days before as John Harrison. Why was he so fond of this change of names? It was not for the purpose of escaping detection, for you know counsel have told you that he was an innocent man. Ah, gentlemen, does not this flight, this change of names, and the other circumstances that have been related, clearly show that he was guilty? Yes; he seems to have had that same stamp upon him which the Almighty put upon Cain when he said that he should be a fugitive for the blood of his brother. Again I ask why this flight, and why this concealment? There was some reason for it, was there not?

He is further asked:

Q. When did you first suspect that he was John H. Surratt? A. About ten or twelve days after his arrival at my place.

Q. Did you in early May? A. By that time, or the last of April.

Q. By the first of May or last of April you believed he was John H. Surratt, did you? A. A little after the first of May.

Now, so early as that, when a reward was offered by the city and by the government, and this fact published all over the world, he was secreted by this man under the name of Charles Armstrong. Some months after that he escapes and flies to Rome. While there, serving in the Papal zouaves, he is detected, and the head of the church, which this Boucher so wretchedly vilifies, hastens to deliver him up to justice, even before the authorities of this government asked for him. I have said that that priest would hear from his Pope and his bishop; and he will.

He goes on :

A. From a quarter to half an hour.

Q. After you found out that he was gazetted in the papers as one of the murderers and conspirators, you let it be known to the authorities, I take it, didn't you? Didn't you communicate it to the authorities of the United States as soon as you found out he was the one?

A. No, sir.

Q. Didn't you tell it? A. No, sir.

Q. Did you try to conceal it? A. I did not speak of it.

Q. Did you try to conceal it?

Mr. BRADLEY. From whom?

Mr. PIERREPONT. From everybody.

Mr. BRADLEY. Conceal what?

Mr. PIERREPONT. Conceal the fact that this man was staying in his house.

WITNESS. I never spoke of it.

Mr. PIERREPONT. I say, did you try to conceal it? A. I do not remember.

Q. Don't you know whether you tried to conceal it or not? A. If you don't speak of a thing, is it concealing it?

Q. My question is whether you tried to conceal it? A. He was in my house.

Q. Did you try to conceal him there? A. He remained in my house without any outside communication except such as I have related.

Q. I ask you if you tried to conceal him in that house?

WITNESS. I do not understand your question?

Mr. PIERREPONT. Don't you understand what concealment means? Did you take the means of concealing him in your house? A. My house was visited by my parishioners every day.

Q. Did they see him? A. No, sir. Some of them did when he went out hunting.

Q. Did they frequently see him? A. No, sir.

Q. Did you let your parishioners know that you were keeping in your house a person published as one of the President's assassins? A. Not to my knowledge.

Q. How came you to come here to testify. A. I came of my own accord.

Q. Can you tell any of those who hunted with him? A. Joseph F. Du Tilly.

Joseph F. Du Tilly, the witness who came on the stand here to speak against Dr. McMillan, on page 1028 testifies as follows :

Q. What physician attended him during all this time that he lived with you. A. No physician at all.

Q. Won't you give us the day of the week that he left your place to go away from you? A. I cannot.

Q. Will you give us the day of the month? A. I cannot.

Q. Will you give us the month? A. Yes, sir.

Q. What month? A. In July; the latter part of July.

Q. Where did he go? A. To Montreal.

Q. How often did you see him after he went to Montreal? A. I used to see him about twice a week.

Well, he lay there in concealment then until the last of July, and then went into concealment at the house of La Pierre, in Montreal. What was that for? All those who had been arrested on the charge of being engaged in this conspiracy had been tried, and had had their sentence put in execution. He had been where he could know what was going on, and had been visited by his friends. He had written this letter to Atzerodt in the month of May, while the trial was progressing. He knew all about this. He knew where his mother was; where all were, and yet he, an innocent man, lies there concealed in these disguises. But the counsel said to you the other day, "Why, gentlemen, if you were advertised for wouldn't you conceal yourself?" I put this question to you: "If any one of you should happen to be in Canada, and you should see in the newspapers a reward offered for your apprehension as a murderer or conspirator to murder some man, would you, knowing you were innocent, go into concealment?" No, you would not. The earliest train that came would bring you here. Would not every honest man, without one moment's delay, go before the authorities and say, "Here I am. You charge me with a crime. I am innocent of it; I am not a cursed fugitive on whom the Almighty has passed sentence for blood, and fleeing away, but am innocent of the crime charged."

Mr. MERRICK. I agree with you entirely that that would be the course of

men under ordinary circumstances, when the law was properly administered and the country was in an undisturbed state; but with the country in the condition it then was, any man would have acted as he did at that time.

Mr. PIERREPONT. Gentlemen, I care not at what time. I will take you back to between the 15th of April and the 16th of September, 1865, when the prisoner was concealed. Tell me, is there a man of you who, if you had seen your name gazetted in the newspapers, and heard of a reward being offered for your apprehension as an assassin of the President, would have remained there concealed one moment? Would you not have hastened to the city with all the speed you could, and say: "Here I am. I am innocent of the crime charged against me, and call upon you to show my guilt."

I take the gentleman's own suggestion and put it to you as men of truth, honor, and integrity, and your answers will all be the same: "We will at once go and surrender ourselves up in order that the charge may be investigated." Instead of that, in this instance, we find the prisoner concealing himself, and in the month of May, while the trial of the conspirators is progressing, this letter to Atzerodt is written. He is in no hurry to come back to Washington, but remains there until September. Surely then the excitement is all over. There is no further trouble about that. Peace has been restored. The passions of the hour have been made quiet. Why don't he return? Why does he go aboard the Peruvian under disguise? Why land in Ireland as he did? Why wander about in the darkness and secret ways of Liverpool? Why flee to Rome, a strange country, and join the Papal zouaves, whose language he couldn't understand—where he was necessarily a pauper and a slave—where he had no sympathy? Why, when surrendered, run the risk of losing his life, flee to Malta, and from Malta to Egypt? Why all this, if an innocent man? Answer me that? But, ah! gentlemen, he was not innocent. He was guilty, and God said he should be a fugitive for the blood he had aided in spilling.

Now we go on a little further with Mr. Boucher's testimony. Boucher ought to have been wiser, and, like La Pierre, have kept away. I hear, however, since I have been speaking, that La Pierre has received punishment from the church for the part he took in the concealment of this man.

I read on:

Q. Had he any disguises of any kind when he was on the boat? A. I did not see any except his hair, which was dyed.

Q. Was his moustache dyed? A. I do not recollect whether he had a moustache or not.

Q. Did he wear spectacles? A. Yes, sir.

Q. That was a disguise, was it not? Did he have any other disguise? A. Not to my knowledge.

Q. Did he have his hair dyed while he was with you? A. I do not remember.

Q. Don't you remember whether he had or not? A. No, sir.

Well, now Boucher goes on and tells us a little about himself. It was somewhat interesting to know what kind of a man this was that was concealing a person under these false names, and whom he knew to be charged as one of the assassins of the President; at a time, too, when every honorable rebel, when every pagan, and every heathen that heard of it—when the whole civilized world, were sending expressions of condemnation and letters of condolence to the government. What does he say at such a time as this?

Q. Were you in Portland last summer? A. I passed through Portland.

Q. Did you stop there? A. No, sir.

Q. Were you at a watering place close by there? A. Yes, sir.

Q. A place called Cape Elizabeth? A. No, sir.

Q. Were you at any place near Portland last summer which was a sea watering place? A. Yes, sir.

Q. What was the name of it? A. Old Orchard Beach.

Q. How long did you stay there? A. About a week.

Q. What was the name of the house at which you staid? A. I do not remember.

Q. Was it the Ocean House? A. I do not remember the name at all.

Q. Who was there with you that you knew? A. Two of the priests.



Q. Who were they? A. Father Beaugard and Father Hevey.

Q. Did you state there that you were his son?

Mr. MERRICK. Father Beaugard's son?

Mr. PIERREPONT. Yes, sir.

WITNESS. That is rather a hard question.

Why was it a hard question? What was there hard about it? The simple question was, "Did you state when you were there at that time that you were Father Beaugard's son?"

He is a holy priest in the holy vestments of the church, and the learned counsel called him Father Boucher.

That is rather a hard question, he says. Well, it was hard for him to say that he did, but that was the fact. The next question is, "Did you state at this house that you were his son?" "I do not remember," he answers. Well, I am pretty sure I should never confess to that priest, and I do not believe many people ever will. There is something wrong about that man. You may rest assured that he will not long be a reproach to the church. All churches have bad men in them, but they finally get rid of them, and the church will get rid of this man.

Let us read a little further:

Q. Did you register your real name? A. No, sir.

Q. What name did you register yourself as? A. Jary.

Q. Did you go there dressed as a priest? A. I went dressed as I am now.

Q. I ask you if you went there in a Canadian priest's dress? A. My answer is, not with the ordinary ecclesiastical suit we wear in Canada—not with the cassock. There is a little difference between the dress in the two countries, and Portland is in the United States.

Q. Did you wear the priest's dress of Canada last summer at this watering place? A. I was dressed as I am now; you can judge for yourself.

Mr. PIERREPONT. I have never been in Canada. My question was simply as to whether at this watering place you did wear the Canadian priest's dress? A. No, sir.

Q. You say you entered a false name on the register? A. Yes, sir.

Q. Did any difficulty occur there in which you were involved? A. Not any to my knowledge.

Q. Did you carry yourself or give yourself out there as a priest? A. No, sir.

Q. What did you call yourself there? A. Jary.

Mr. PIERREPONT. I mean in what character? You say it was not that of a priest? A. I did not say what I was.

Q. I ask you what you called yourself there in occupation last summer? A. If you want me to say what I thought they took me for I can tell you.

Q. What? A. They took me for a lawyer.

Q. Did you disabuse their minds of that? A. I did not say anything about it.

Q. You did not disabuse their minds of that impression? A. No, sir; I thought that was honorable enough.

Suppose, when I get through with this trial, I should go to Canada, and when I got there should dress myself in a priest's apparel and pass myself off as Father So-and-so, and then when I got back here that fact should be disclosed, and when questioned about it I should say, in explanation, "I thought the character of a priest was honorable enough." How would you regard me? You would naturally suspect that some great hidden motive impelled me to this strange course; and so with Father Boucher. If I understand the rule of the Catholic church, it is that the priest shall not put off his dress, shall not take an assumed name, but shall always appear dressed as a holy father, which he professes to be, prepared at all times to hear the confessions of the sinner, to bind up the broken heart and administer the consolations of religion. I say again the church will take care of this man.

I now come to near the close of what I have to read. I now refer to the statement of Dr. McMillan, page 582:

Q. How did he happen to come to you? What occurred that brought him? A. About a week or ten days previous, I had met in one of the streets of the city of Montreal—

Q. I understand you that a week or ten days previous, somebody came to you. Who was that somebody? A. His name is Lapierre.

Q. Who or what is he? A. He is a priest.

Q. Where does he live? A. I do not know where he lives now? He lived in Montreal then. I understand he has left the city.

Q. Did he say anything about Surratt? A. Yes, sir; he said—

Mr. BRADLEY. You need not state what he said.

Mr. PIERREPONT. Well, he said something in relation to somebody? A. Yes; that somebody was going. I was going on the 15th of September to join my ship. On the steamer Montreal I met this Mr. Lapierre again, by agreement. He said to me that he would give me an introduction to his friend.

Q. Did he introduce him? A. He brought me up to a state-room, of which he had the key.

Q. Who had the key? A. Lapierre.

Q. State whether it was locked. A. It was. He unlocked the door, and in the room I found the prisoner at the bar.

Q. Was that the first time you had seen him, when the door was unlocked? A. The first time.

Q. What did he say, in the presence of the prisoner? A. He introduced the prisoner to me under the name of McCarty, the friend to whom he had referred before. I never suspected who the gentleman was, and consequently I passed the evening and most of the night with him and a third party besides the priest.

Q. Will you tell the jury, when you went into that room and found the prisoner, what was the condition of his hair? A. His hair was then short.

Q. What was its color? A. A dark brown, I should say.

Q. Was it dyed or natural? A. I did not perceive that night that it was dyed. I afterwards found it out.

Q. What was the conversation about that evening? A. I do not remember; it was a general conversation.

Q. Did Lapierre go on with you down to Quebec? A. He came all the way down to Quebec.

Q. When did you reach Quebec? A. I should say between five and six o'clock, Saturday morning.

Q. Do you know whether Lapierre slept in this same room? A. I could not say.

Q. Do you know whether the prisoner went out of the room that night? A. I believe we went down once to the bar-room.

Q. At what time in the night? A. I do not know; I suppose ten or eleven o'clock. I could not tell you the time.

Q. When you got to Quebec what happened? A. I believe we had breakfast on board the steamer in the morning, probably at seven or eight o'clock. Between nine and ten the company sent a tug to take the passengers and their luggage on board the steamer Peruvian. We all went on board.

Q. What occurred about the room; how was it arranged on the steamer for the prisoner? A. After we arrived on board Lapierre says to me—

The COURT. Was it in the presence of Surratt?

WITNESS. I believe so, sir. He said he wished me to let the prisoner remain in my room until the steamer had left. I did so; I got the key of my room, let him in, and went with him.

Q. Did he occupy it until the steamer had left? A. He did.

Q. When did the steamer leave? A. Within a very few minutes; perhaps twenty minutes or half an hour.

Q. Where did Lapierre go then? A. He went back on shore.

Q. Did you see any more of the prisoner that night? A. Yes, I saw him again.

Q. Where did you see him—in your room? A. I may have seen him in my room, but I do not recollect. I remember that while there, after lunch or after dinner, (lunch was at twelve and dinner at four,) the prisoner came to me, and pointing to one of the passengers, asked me if I knew who the gentleman was. I told him I did not; that I supposed he was a passenger, as he was himself; that that was all I knew about the man. He then said he thought the man was an American detective, and that he thought he was after himself. I said I did not believe anything of the kind, and that I did not see why he should be afraid of an American detective. I said to him, "What have you done that you should be afraid of an American detective?" He said that he had done more than I was aware of, and that very likely, if I knew, it would make me stare, or something to that effect.

Q. In this connection what act did he do, if any? A. I said that he need not be afraid of an American detective; that he was on board a British ship, in British waters, and that if an American detective had been after him, he would have tried to arrest him before he left port. He said that he did not care whether he was or not; that if he tried to arrest him this would settle him; and in saying that, he put his hand into his waistcoat pocket and drew a small four-barrelled revolver.

Q. Did any other parties go down on that boat before you took the steamer? A. There were a great many; I could not tell you how many.

Q. Were there any whose names were given to you? A. Yes.

Mr. BRADLEY. That was on the steamer Montreal.

WITNESS. That was on the tug from the steamer Montreal to the steamer Peruvian.

Q. Now, sir, did the prisoner tell you who any of the other men were? A. No. I believe he knew nobody else on board.

Q. Did you know any other man?

Mr. MERRICK. Of your own knowledge? A. Yes.

WITNESS. There was among the passengers William Cornell Jewett.

Mr. MERRICK. Otherwise known as "Colorado?"

WITNESS. Yes, sir; the very man.

Q. Who else? A. There was also a colored man who had been in the service of Jefferson Davis.

Mr. MERRICK. How do you know that?

WITNESS. He told me so himself.

Q. Did you know Beverley Tucker? A. Only from having been introduced to him on that morning of the 16th of September.

Q. Will you tell us where you saw Beverley Tucker on that day? A. I met him on the tug going from the steamer Montreal to the steamer Peruvian.

Q. Will you state whether he went on board the Peruvian? A. He did go on the Peruvian, but not to cross.

Q. I believe you stated that the prisoner went by the name of McCarty? A. McCarty; yes, sir.

Q. When did you sail? A. I should think about ten in the morning. I cannot say positively. I know the steamers were in the habit of sailing between nine and ten.

Q. When morning came, did you notice more particularly the prisoner's mustache and hair? A. After I got on board the steamer I perceived that his hair had been dyed.

Q. What did he wear, if anything, upon his eyes? A. He wore a pair of spectacles.

Q. What did he tell you about the spectacles he wore, and about his hair? A. I do not remember that he said anything about his hair. I remember his saying that he did not wear spectacles because he was short-sighted, but because they aided in disguising him a little.

Q. Did you have any conversation with him after you got on the steamer behind the wheel-house? A. I had conversations with him every day from the 16th until we arrived at Londonderry; that was about nine days.

Q. Where did these conversations take place? A. If I remember right, mostly on what is called the quarter-deck: sometimes behind the wheel-house.

Q. Will you state what he said to you about the beginning in relation to a trip to Richmond? As I cannot give it all at once, I will ask you to begin with that. A. I remember his saying to me that he had been in the habit for some time during the rebellion of going to Richmond with despatches, and bringing despatches back to this city, and also to Montreal.

Q. Did he tell you what male or female went with him?

WITNESS. I remember his stating that he at one time was told in Montreal that he would meet a lady in New York.

COUNSEL for the defence again asked witness to suspend, to enable him to write down what he had said.

The COURT said that counsel must take either one course or the other. They must not interrupt the narrative for this purpose, or they must allow the witness to be directed by questions after each interruption.

WITNESS proceeded. That he met the woman in New York; he came on to Washington with her; from Washington he started on the way to Richmond, with her and four or five others; that, after a great deal of trouble, they managed to cross the Potomac; that, after they got south of Fredericksburg, they were driven on a platform-car, drawn or pushed by negroes. As they were drawn along, they saw some men coming toward them—five or six, if I recollect right. They ascertained that these men were Union prisoners, or Union soldiers escaped from southern prisons. They were, he said, nearly starved to death; that this woman who was with them said, "Let's shoot the damned Yankee soldiers." She had hardly said the word when they all drew their revolvers and shot them, and went right along, paying no more attention to them.

Q. Was the name Mrs. Slater? A. It sounds like it, but I would not be positive that it is. The woman's name was very conspicuous in Montreal during the trial of the St. Albans raiders.

Q. What further did he say about the condition of these men? A. I understood him to say they were in a very miserable way; that they had been obliged to hide themselves in swamps and other places, and I understood him to say they were almost dead.

Q. Was there anything said about money in this connection? A. Yes.

Q. What was that? A. He told me he had received money in Richmond from the secretary of state, Benjamin, several times.

Q. Did he tell you how much? A. I remember two amounts, \$30,000 and \$70,000. I do not remember at what times he received them. He stated particular times. I remember these amounts.

Q. Did he tell you the dates when he reached Montreal from Richmond? A. I do not remember that he did. All I remember about that is that he was in Richmond a few days previous to its fall; that is to say, in the week immediate y previous.



Q. Did he give you any account of crossing the Potomac at that time? If so, state it.

Mr. BRADLEY desired it to be noted that all this testimony came in subject to his exception.

WITNESS, continuing. I remember his stating one day that there were several of them crossing the Potomac in a boat—it was in the evening, I believe—when they were perceived by a gunboat and hailed. They were ordered to surrender, or else they would be fired upon. They immediately said they would surrender. The gunboat sent a small boat to them; that they waited until the small boat came immediately alongside of them, then fired right into them, and escaped to the shore.

Q. What do you know about a telegraph communication down there discovered by these parties? A. I remember one day that he said he was with a regiment of rebel soldiers one evening; that after sunset he and some others went into an orchard or garden, close by, to pick some fruit; that while sitting on the ground they heard the ticking of a telegraph, or what they supposed to be a telegraphic machine; that they went down to the headquarters of the regiment and reported the fact; that the party in command ordered some soldiers to go to the house connected with the orchard and search it; that in the garret of the house, in a closet, they found a Union soldier; that they found he had an underground wire, and was working a telegraph. They took him down and shot him, or hung him, I forget which.

Q. In passing between Richmond, Washington, and Montreal, did he state anything of the names he took? and if so, give them. A. I remember he travelled under the names of Harrison, Sherman, and some others I forget.

Q. You have named two specific sums. What further did he say in regard to his having received money from Richmond? He told me so many things that I cannot recollect, at this distance of time, everything he said. All I can say, is, he repeatedly told me he received money from Richmond. The only two sums I remember of are thirty thousand and seventy thousand dollars.

Q. Will you give us his conversation in reference to landing in England, as connected with our government in any way? A. I remember the last day he was on board, which was Sunday afternoon. After tea he came to me on the quarter-deck and said he wished to speak to me. I went with him behind the wheel-house. He repeated to me many things he had already said before, parts of which I have stated here, and the others I do not recollect. After talking a long time in this way, he said, pointing to the coast of Ireland, in sight of which we were then sailing, "Here is a foreign land at last. Then," said he, "I hope I shall be able to return to my country in two years. I hope to God," at the same time holding a revolver in his hand, "I shall live to see the time when I can serve Andrew Johnson as Abraham Lincoln has been served."

Q. Did he say anything about what he would do if an English officer, at the request of the United States, should take him in England? A. One day, in talking of the mere possibility of his being arrested in England, he said he would shoot the first officer who would lay his hand on him. I remarked that if he did so, he would be shown very little leniency in England. Said he, "I know it, and for that very reason I would do it, because I would rather be hung by an English hangman than by a Yankee one, for I know very well that if I go back to the United States I shall swing."

At page 591 he says:

Q. I will call your attention to the early part of April—the month of the assassination of the President—and ask you what the prisoner told you on the subject of despatches at that time? A. All I remember about this is that he said, at the beginning of the week during which the assassination took place, that he was in Montreal; that he had arrived there within a few days from Richmond, with despatches.

Q. Did he characterize the despatches? A. I remember that he said they were important despatches for Montreal, which had been intrusted to him in Richmond. What they were I have no knowledge at all.

Q. Did he say what day of the week of the assassination he was there? A. He told me that he was there at the beginning of the week of the assassination.

Q. Did he tell you what he received, and from whom he received it? A. He stated that he received a letter from John Wilkes Booth, dated "New York," ordering him immediately to Washington, as it had been necessary to change their plans and act promptly.

Q. Did he tell you what he did? A. He told me that he started immediately on the receipt of the letter.

Q. Did he tell you anything that he did on his way to Washington? and if so, what? A. The first place he named was Elmira, in the State of New York.

Q. Did he state anything that he did there? A. He told me that he telegraphed to John Wilkes Booth, in New York.

Q. Did he tell you what he learned? A. He told me that an answer came back that John Wilkes Booth had already started for Washington.

Q. Did he say anything to you in relation to his own escape? A. He said that he arrived at St. Albans one morning a few days after the assassination.

Q. What, if anything, did he tell you occurred in St. Albans that morning, a few days after the assassination? A. He said that the train was delayed there some time, and that

he took advantage of it to go into the village to get his breakfast; that while sitting at the public table with several other persons, he saw that there was a great deal of talking and excitement among those who were at the same table with him.

Q. Did he tell you what he said? A. He asked his neighbor what the talk was about. His neighbor said to him, "Why, don't you know that Mr. Lincoln has been assassinated?" The prisoner replied, "O, the story is too good to be true."

Q. Did he describe the man with whom he held this conversation? A. I understood him to say an old man; that is all I remember.

Q. Did he tell you what the man did? A. The man whom he addressed then handed him a newspaper. He opened the paper, and said that among the names of the assassins he saw his own.

Q. What did he say he then did? A. He said that it so unnerved him at the moment that he dropped the paper in his seat, and that was the last of his breakfast for that day.

Q. Did he tell you anything about a handkerchief as he was going out from the breakfast room? A. He said he got up from the breakfast table, walked into another room, and just as he was about passing from the room he heard a party rushing in, stating that Surratt must have passed, or must then be in St. Albans, as so-and-so had found his pocket-handkerchief in the street with his name on it.

Q. What then did he say? A. He said that at the moment, without thinking, he clapped his hands on a courier bag, in the outside pocket of which he was always in the habit of carrying his pocket-handkerchief, and found out that he had really lost his pocket-handkerchief.

Q. And then what did he tell you? A. He said that then he thought it was time for him to make himself scarce.

Q. Did he tell you in what way he then made himself scarce? A. I understood him to say that he made for Canada as soon as possible.

Q. Did he tell you to whose house he went? A. I remember that he told me that he went to one Mr. Porterfield's, in Montreal.

Q. Did he tell you who he was? A. He told me Mr. Porterfield was a confederate agent in Montreal.

Q. What did he tell you as occurring there to himself? A. He said he staid there a short time; how long I could not say; until, however, they found out that detectives were beginning to suspect that he was in that house, and it was found necessary for him to leave there.

Q. Did he tell you how he left there? A. He said that one morning two carriages were driven in front of Mr. Porterfield's house, and that he, and another party dressed nearly as he was, came out at the same time, and got one into one carriage, and the other in the other, and drove off, one carriage driving one way and the other in the other.

Q. Will you tell us how he told you he was dressed, and the one who was dressed just like him? A. I remember his telling me that he wore at that time—I cannot tell whether he had on the same dress that night—what is known in Canada as an Oxford jacket.

Q. Will you describe it? A. I believe it is what is called in this country a Garibaldi jacket.

Q. Did he tell you how long he staid there? A. I understood him to say that he staid there some two or three weeks.

Q. Did he tell you in whose house he staid? A. He said he staid in the house of a priest named Charles Boucher.

Q. Did he state any circumstance connected with his leaving that house; when he left, &c.? In describing the place he said that between the bedroom and the sitting-room there was a hole cut in the partition to put a stove in; that under the stove there was a vacant space about six or eight inches high; that one day while the priest was absent he was lying on the sofa in his bedroom, when one of the female servants, desiring to know who was in the priest's house, put her head under the stove so as to see in the room. He saw her face as it came under the stove, and kind of scared her away by jumping suddenly at her.

Q. What occurred after that? A. The story was immediately circulated around the village that the priest had a woman in his bedroom hiding. Then the priest told him that he could not keep him any longer; that he must find other quarters.

Q. What then did he do? A. He came back to Montreal.

Q. Did he tell you to whom he went? A. I understood him to say that he went to the man who introduced him to the priest.

Q. Will you state what he related to you in relation to his secretion there? A. He told me that for four months and a half or so he was secreted in a dark room, from which he never came out except a few times, when he would go out late at night and take a walk.

Q. Will you tell us the physical condition that he was in when you first saw him on the boat? A. When I first met him the prisoner was very thin, and looked very thin, nervous, and careworn.

Q. What was his conduct on the ship in respect to being quiet or otherwise?

Mr. BRADLEY objected to the question as irrelevant. Objection overruled. Exception reserved.

A. His general conduct was gentle. He would, however, show signs of nervousness whenever any one came suddenly behind him. He would turn round and look about as if he expected some one to come upon him at any moment.

Q. Will you state what occurred after? A. I had left the prisoner after the conversation that I related yesterday; I should say it was about half past 9 o'clock when I left him. About half past 11 or 12 o'clock I was called out of the room of one of my brother officers by one of my stewards, who stated that a passenger wanted to see me outside. I came out, and found the prisoner standing in what is called on steamers or ships after square. He was already dressed, ready to go ashore. He had previously told me that he had intended to come down with us to Liverpool. He asked me what I would advise him to do—to land in Ireland, or to come down to Liverpool and land there? I told him I would give him no advice whatever: that he might just do what he pleased and land where he pleased. He then said, "Well, I believe I will go down to Liverpool with you." I was a little surprised, therefore, when I came into the after-square and saw him all ready to leave. I said, "Hallo! are you going ashore? I thought you were coming down to Liverpool." He says, "I have thought over the matter, and I believe it is better for me to get out here. It is now dark, and there is less chance of being seen." Says I, "You have been telling me a great many things about what you have done and seen, and I believe the name under which you travel is not your real name. Will you please give me your own name?" He looked about to see if there was any one near, and then whispered in my ear, "My name is Surrott."

Q. How long after that did he go ashore? A. Within twenty or twenty-five minutes. He then asked me if he could get some liquor to drink; that the bar was closed, and he wished to have something to drink before going ashore. I told him that I would see the barkeeper, and I had no doubt he could get some. I called the barkeeper, and he came and opened the bar-room, and the three of us went in—the prisoner, the barkeeper, and myself. He was nervous; he seemed to be very much excited. He called for some brandy, and the three of us each had a glass. In England and on board ship it is the habit to help any one with the liquor they may want. They never place the decanter before you and tell you to help yourself; but in this instance the barkeeper placed the bottle on the table and told us to help ourselves. The prisoner took the bottle and poured out a large half tumbler full of raw brandy. In a few minutes I asked him if he would not drink with me. He said, "Yes," and we took another, about the same.

Q. What next? A. Within a few minutes afterwards again, the barkeeper says, "It is my turn to treat now," and asked us to take a third glass, and we did so.

Q. Did he take the third? A. He did. I saw he was becoming rather the worse for his drinking. By that time we had arrived at the place where the mails and passengers are taken off from the steamships. I saw the condition in which the prisoner was, and I told the chief officer at the navy-yard it was dark and I was afraid that the prisoner might fall overboard. I said to the chief officer at the gangway, "Will you mind to take this officer by the arm and lead him down?" He did so.

Q. What did you do then with your ship? A. Turned down and went to Liverpool.

Q. What induced you to make this affidavit as soon as you landed? A. Because I thought the prisoner was guilty of a crime, not only against society, but against civilization. I thought it was my duty as a man to go and give him up to the proper authorities.

Was it not his duty as a man? Would not you say it would be your duty, and anybody's duty, as a man?

Now, gentlemen, we have already passed him from Liverpool to Rome. From Rome, where he met his old acquaintance; where he was given up, and from where he escaped to Malta, and thence to Egypt, the place of his final capture. Does not the result of his flight convince you that there is no escape for such a crime as he has committed? From Egypt, in the providence of God, he is brought here before you, who, in the providence of God, are selected to say whether what he has done is a crime, or whether it is all right. If he is not guilty, he is innocent. If he is innocent, the things in which he was engaged are right, and you will say they are right.

I now pass to the *alibi*. I have read to you the law upon that subject. The law says that where witnesses on the part of the government swear positively to having seen the prisoner in a particular place at a particular time, and the defence of an *alibi* is set up, the prisoner must prove so clearly that he was in another place as to leave no doubt whatever on the mind of the jury; and this is required for the reason that it is so very easy to fix up a defence of *alibi*; and for the further reason that, if true, it can always be proved with very little difficulty and beyond all question.

Now let us look to the defence of *alibi* in this particular case. It is the weakest one, I undertake to say, that ever was introduced into a court of justice for a defence; and yet all the witnesses who have testified on that point, with one exception, doubtless told what they thought was true.



Let us for a moment examine the testimony on this point. We will first take up the witness Carroll. Before I proceed with his testimony, however, let me remark that Surratt is proved beyond a doubt to have been in Elmira on the 13th. There is no doubt about *that*, and he came in that special train on the 13th. The two witnesses we have introduced on that subject saw him there; one you will remember took him across the ferry at that time. Let us see what Mr. Carroll, one of their witnesses, says about it:

Q. State if you can find the date with any degree of certainty? A. The first time was the 13th. He came in on the 14th also.

Q. He came in twice? A. Yes, sir.

Q. How do you fix it was those two days? A. By our petit cash book.

Q. What fact is there in the cash book that enables you to fix the date? A. Mr. Ufford, the proprietor of the house, went to New York on the night of the 12th.

Q. When did he get back? A. He returned on the morning of the 15th.

Q. Do you fix it by that? A. Yes, sir.

Q. Between those two dates? A. Yes, sir.

Mr. Carroll thinks he saw him between the 12th and 15th. I have no doubt he did. I turn now to page 855:

Q. Did you tell Mr. Ufford that it was on the 12th or 13th? A. It may be, but I know very well from our books what the dates were.

Q. Didn't you tell Mr. Ufford that it was on the 13th, and that you knew it from the fact of the time the partner of the house was absent? A. I do not know that I remember distinctly.

Q. What date did you tell the deputy marshal, Mr. Covell, he was in your store? A. After consulting the books I could not have told him other than are mentioned there.

Q. Did you tell him the date? A. I do not know; but if I did, I could not have told him any other date than that in the books.

I now turn to page 856:

Q. Did you tell him inaccurately? A. I do not distinctly remember.

Q. Did you tell him that it was on the 13th? A. I know the first time was on the afternoon of the 13th.

Q. Was that what you told him? A. I cannot distinctly remember.

Was it on the afternoon of the 13th? If it was, he has knocked that physical impossibility all dead. That physical impossibility could only bring him there at 8 o'clock at night. It is too bad to have it destroyed in that way. But I read on:

Q. Did you tell either of these gentlemen that he came in on the 14th? A. If I told them anything at all, I said the 13th or 14th.

That is just what he did say; and that is the time he saw him. Let us go further. He says on page 859:

Q. What did you state to Mr. Knapp about the date when you saw that man who you thought might be the prisoner? When did you tell him you saw him? A. I think I told him the 13th and 14th of April.

Q. Did you tell him you saw him the 14th? A. I think I did.

Q. Cannot you remember whether you did or not? A. I think I did; there were so many questions asked and so many persons interested about that time that I may be mistaken.

Q. Cannot you tell whether you said you saw him on the 14th? A. I think I said the 13th and 14th.

Q. Do not you think you told him the 12th and 13th? A. I do not think I did.

Q. What do you say about that? A. I do not remember.

Q. They were asking you a great many questions, and very particular about the date, were they not? A. I do not know.

Q. Did not they seem to be very particular on that point? A. They did not appear to me to be very particular.

Q. Are you particular in your memory about it? Can you remember what you told him? A. I do not remember telling him 12th and 13th.

Q. Did you tell him it was the 12th? A. I do not remember that I did.

Q. Did you tell him it was the 13th? A. From the time I got the date I could not have old him otherwise.

Q. Do you remember you told him it was the 14th at all? A. If my memory serves me, I think I did.

Q. Did you tell Mr. Covell it was the 12th? A. I think I did not.

Q. Did you tell him it was the 13th? A. I think I told him it was the 13th and 14th.

Q. Did you tell him it was the 12th or 13th? A. I think I told him the 13th and 14th.

Q. Did you tell him it was the 12th and 13th? A. I do not think I mentioned the 12th.

Q. Did you tell him it was the 13th or 14th? A. I told him it was the 13th and 14th.

Q. That is the best of your recollection? A. That is the best of my recollection.

Q. Have you any doubt that you told him that? A. No, sir; I have no doubt that I told him that. Mr. Covell said to me that Mr. Knapp had said it was the 12th and 13th; I told him I had no recollection of it; that the only way I fixed the date was the date of entries in our petty cash book.

Q. Did your petty cash book have that date? A. It shows that one of the proprietors of the store left in the afternoon of the 12th and returned on the 15th.

Q. Did you tell Major Field you saw him on the 12th or 13th? A. I do not remember whether I did or not.

Q. Did you tell Major Field it was the 14th? A. In all probability.

He is their strongest witness on that subject.

I now come to the witness Stewart, page 843:

Q. Do you recollect a gentleman coming in that day to speak about getting a suit of clothes there, who had on anything peculiar in the way of dress? A. On the 13th or 14th of April, I do.

Q. Which? A. I cannot say which, but one or the other.

Q. Describe as well as you can his dress. A. It was a style of cut which I had never seen before, nor have I since, until to-day. I refer to the cut and the make of the coat.

Q. How long did that person remain in the store? I should say I saw him twice. That is, I stepped from one store to the other and saw him twice. He was there from ten to twenty minutes. I cannot speak very definitely as to the time.

Very likely he did see him twice; but when he is asked whether it was the 13th or 14th he says he cannot tell which. I now turn to his cross-examination, page 844:

Q. Will you tell us what day of the month it was? A. It was either the 13th or the 14th.

Q. Which? A. I cannot tell which.

The 13th or the 14th, and that, gentlemen, is all he says in that way.

I turn next to the witness Atkinson, page 730:

Q. Do you recollect of a gentleman coming into that store on the 13th or 14th of April with any peculiar dress? A. I do.

Q. Have you any means of fixing the date? A. The only means I have of knowing the date is this fact, that it was the time when one of our house was in New York buying goods. I made an entry in the cash book showing when he took money to go to New York, and when he got back from New York and settled his account.

Q. State when he left. A. The date of his leaving is the 12th of April, 1865.

Q. The date of his return? A. The 15th of April, 1865.

Now, gentlemen, I surely cannot find fault with such witnesses as those. They do not know. Between the 12th and 15th somewhere they saw this man with a peculiar dress; but they cannot tell which day it was. The day they saw him was no doubt the 13th; but all they could swear to positively was to have seen him on some day between the 12th and 15th.

I come now to Dr. Bissell, and here I have to confess we have something to meet. Up to the time when he gave his testimony on the question of the *alibi* we had nothing to meet; but his testimony is something that we must get over. The counsel for the defence got over it by saying as little as possible about it.

Now, let us see about this distinguished physician, who is a neighbor of mine in New York. We will have to take up and consider his testimony a little; for you know he saw him in Elmira on the 14th. I do not wonder that the counsel on the other side did not touch him; but we will see what he tells us. I read from page 984:

Q. Was there any particular reason why you observed the prisoner? State whether you were on crutches at that time. A. I was on crutches at that time. I stopped at a little house. I cannot recall the name. Names are the worst things for me to remember in the world. I can remember faces.

Q. You did not stay at the Brainard House? A. I did not. I stopped at a little house on the street that runs from the east end of the depot, south or southwest, on the south side of the street, where I had been in the habit of stopping. It was so near morning that I went up and lay down on a lounge in the sitting-room or parlor until breakfast time. I ate my

breakfast, and went out in quest of this man. I ascertained that he was not in Elmira. While out, I went to a third party whom I had been directed to by letter from the town of Deposit, I think, to find him. After going and doing my business, I called at the Brainard House. I thought I would take a 'bus to the depot and take the train back to Owego.

Q. State if you had any conversation with the prisoner at that time. A. As I went in he passed me. I noticed his dress as he passed me. I went into the reading-room or office there and sat down. He came in from the bar-room or office, or reading-room, to the room I was in. He passed up and down, and kept looking at me. He wanted to know if I had been to the war. I didn't give him any satisfaction. I did not have a great deal of conversation with him. I wished to avoid it myself.

Q. Referring to your lameness, he asked if you had been to the war? A. Yes, sir.

Q. And then you had a brief conversation with him? A. Yes, I had a little conversation with him. I merely spoke with him to see if my suspicions were correct; to satisfy myself; to see if he would attempt to draw me out, or anything of the kind. I wanted to satisfy myself whether he was a spotter of the Erie Railroad Company.

You know this doctor tells you that he was here hunting up witnesses for his case, which he had placed in the hands of Mr. Wetmore, whose testimony on that subject and on the character of Dr. Bissell you will remember.

I next read from page 985, cross-examination:

Q. When did you first tell these gentlemen what you knew—when did you first come here? A. I came here this morning.

Q. When did you first have notice you were wanted? A. Yesterday afternoon.

Q. How did you know they knew anything about it? A. I do not know. I have asked Mr. Bradley how it was.

Q. Did you find out? A. He will not give me any satisfactory answer. He said he had been looking for some time for a man on crutches.

When he came in he did not have any crutches, I believe; but when he went out he needed some very badly, as you will see. Finding him so positive and fixed in this matter, I very naturally asked him some questions. He came on with much parade, as you remember, as a doctor. That being the case, I thought I would find out about his patients, and he told us that Mr. Wetmore was one of them—a lawyer whom I happened to know in New York, and whom we had here on the stand, and who told you there was no truth in the statement. Dr. Bissell was his client in the Erie railroad matter, but he was not a patient of the doctor's.

I asked him:

Q. Have you any other patient in New York? A. I am not doing a large amount of practice.

Q. What are you doing? A. I do a little office practice, and I have some outside business which I am connected with now.

Q. What do you call outside business? A. Well, I am engaged, for one thing, with Andrew M. Rankin, formerly of Chambersburg.

Q. I do not care who he is, I want to know what you are doing? A. I am engaged with him in developing some patent rights which he has.

Q. What are they—about doctors? A. No.

Q. Anything to do with doctoring? A. Yes.

Q. What? A. They are disinfectant, and may be termed hygienic.

Q. Do you know Aaron Stone, in New York? A. No, sir.

Q. Has it anything to do with his disinfectant business? A. No, sir.

Q. What are you doing in that business—that outside business? A. We are developing it.

Q. What do you mean by that? A. Getting it ready to get it upon the market.

Q. Have you got it upon the market yet? A. We have got one patent upon the market.

Q. What one patent? A. It is a patent chamber pot.

I now turn to page 991. He there tells us a little more about himself. He cannot surely complain if I only read what he says about himself:

Q. You did not prescribe for any particular class of diseases? A. No, sir.

Q. Nor follow any peculiar business? A. No, sir; I made that a secondary matter.

Q. What a secondary matter? A. The business of a physician.

Q. What did you make your principal business? A. I have been in the habit of speculating, more or less, in one thing or another—in anything at which I could make a dollar legitimately.

Q. Whatever you could make a dollar at legitimately you went into? A. Yes, sir; it would make no difference what it was.

Q. And this doctoring was a mere side amusement? A. I merely put my name up.



Q. When you were keeping a restaurant and drinking place did you have your name up as a doctor? A. No, sir.

Q. Did you doctor any of your customers then? [Laughter.] A. I do not know that I did.

Q. They did not apply to you to be doctored? A. Not at all.

Q. They applied to you for drink? A. I never pretended to go behind the bar. I do not think I ever set out a glass of liquor for any one.

Q. Did you set out anything for them to eat? A. Certainly; my men did.

Q. Then doctoring is not exactly in your line?

A. Not exactly.

I next read from page 997, where he tells us more about himself:

Q. Did you take the train? A. Yes, sir.

Q. What train did you take? A. The night train from New York. It is my impression that I took the train about two o'clock.

Q. At night? A. Two o'clock a. m.

You will remember we called Guffey, who ran the trains, and he told us there was no such train at all. By turning to page 951 counsel will find Mr. Guffey so states. That a train came in there at 6.12 was a story gotten up by Dr. Bissell.

There was no truth whatever in his story. I then went on, as you remember, to ask where he went in Elmira. I examined him in regard to the Brainard House, about how it looked, and about its rooms, &c., and he knew not one thing about it. And you will recollect the falsehood he told of going to the Haight House, which was then closed and locked.

But, again, hear what he says of himself. I next read from page 1003.

I asked him about this house. I tried to get him to draw the rooms. He said he could not draw, and declined to make any attempt.

I then said:

Q. Perhaps you can tell us something about it, as you say your memory is very distinct on such subjects. Which way were you going when you entered the house? A. I was going directly toward the house. [Laughter.]

Q. Were you crossing the street? A. I was upon the sidewalk upon the same side as the house.

Q. Did you go up steps to get in? A. I do not know whether there is one step, two steps, or three steps.

Q. Were there any? A. I am not positive that there was a step to the house or not.

Q. What is your best memory about it? Were there high steps or low steps, one step or two steps, or none at all? A. I could not say.

Q. Were there stone steps? A. I could not say.

Q. As you entered, was the sill of stone or wood? A. I could not say, for I paid no attention to it.

Q. Was there a platform upon the side made of wood? A. I could not say.

Q. Was there a platform there made of stone? A. I could not say.

Q. Did it run in right level? A. I could not say.

Q. Was there a high stoop of stone? A. I could not say.

Q. When you got in, what was on your right hand? A. I do not know.

Q. What was on your left hand? A. I do not know.

Q. What was in front? A. I do not know.

Q. Was it a double house or a single one? A. I do not know.

Q. But you went into a reading room and got into intimate conversation with the prisoner? A. Yes, sir. I went in and sat down in a chair.

Q. Where was it, on the right or left hand? A. I cannot say whether it was upon my right or left as I entered.

Q. Was it either? A. I cannot say as to that.

Q. Was there a reading-room on the right hand? A. I cannot say.

Q. On the left hand? A. I cannot say as to that.

Q. It was the first story you went into when you went into that room? A. I think it was, but I am not positive.

Q. Was it in the second? A. I think it was on the first.

Q. Can you tell whether on the right hand or the left? A. I cannot.

Q. Can you tell whether it was on either? A. I cannot.

Q. Were there any newspapers in it? A. I do not know whether there were or not.

Q. Was there a library in it? A. I do not know whether there was or not.

Q. Was there a settee in it? A. I think I sat upon a settee.

Q. Were there chairs in the room? A. Either settees or chairs.

Q. Which? A. I cannot tell which. I paid but very little attention.

Q. You know you have a very distinct memory of things. Now, as you recall that Brainard House, can you tell whether, when you went into that reading-room, Surratt was on the left hand or in front? A. No, sir, I cannot.

Q. Where was the desk? A. I have no distinct recollection as to where that was.

Q. Did you see a billiard table in there? A. Possibly I might.

Q. What is your best memory? A. I do not recollect of seeing one, though I might have seen half a dozen.

Q. Did you see a telegraphic machine there? A. I do not know that I did. I have no recollection.

Q. Was there a carpet on the reading room? A. I do not know.

Q. Was there a table in it? A. I do not know.

Q. Was there a man in it? A. Yes, sir.

Q. Tell us who the man was? A. That man (pointing to the prisoner) came in there, and there were three or four others.

Q. Is there any doubt about that? A. No, sir; not in my mind.

Q. Did he come in alone? A. He did.

Q. How long had you been in when he came in? A. I saw him first upon the sidewalk going into the house.

Q. How long had you been in when he came into the room? A. I had been in there, I should think, some fifteen or twenty minutes before he came into the room.

Q. When he came in was there anybody else in the reading-room beside yourself? A. I think there were some other gentlemen sitting there.

Q. What were they doing? A. I cannot tell. I was paying no particular attention to them.

Q. Were not they reading? A. They might have been.

Q. Cannot you bring back which side it was, or anything of the kind? A. I cannot.

Q. Was the room papered? A. I cannot say.

Q. Can you tell what color it was? A. I cannot. I cannot distinguish colors.

Q. I cannot see, then, how your sight is so good as to remember. A. I can tell white from black; but when you come down to these fancy colors, I cannot tell anything about them.

Q. Who got up first? A. I got up and left, and went to Haight's Hotel.

Q. When you got up and left, did he get up? A. I do not think he did.

Q. Did you ever see him any more? A. Never again until I saw him to-day.

Q. When you got to Haight's Hotel what did you do? A. I stopped there a few moments.

Q. What did you see at Haight's Hotel? A. It is so long ago I cannot say. I saw some people in and about there; who they were I do not know. I am not acquainted with many people in Elmira.

Q. When did you see this man, who is a prisoner here, after you saw him at the time of this conversation? A. This morning.

Q. You recognized him in a moment, didn't you? A. Yes, sir; I recognized him the moment the door was opened.

Q. In here? A. No, sir.

Q. Where was it? A. In the jail.

Q. Was he dressed as he is now? A. He was not dressed at all then.

Q. Was he dressed as he is now, or dressed in some different costume? A. He was in a different costume.

Q. Why, then, do you say he was not dressed at all? A. If I see you with a sack or a dressing-gown on, I would not call you dressed.

Q. Was he dressed in the jail in the same way that you saw him dressed at the Brainard House? A. Partially, but a different colored suit.

Q. In what respect partially? A. In the sack that he had on.

Q. It was of the same cut, was it not? A. No, sir.

Q. How was it partially the same? A. It had a belt that fastened around him; but it was of a little different style.

Q. What was the difference? A. There was a difference about the neck, and there was a difference on the plaiting.

Q. You noticed particularly about the neck? A. Yes, sir.

Q. And you remember that very distinctly? A. Yes, sir.

Q. Then you remember just what the plaiting was there? A. I remember that it was plaited, but not so distinctly that I can describe it. I know it was different from what this is.

Q. You say that you describe this plaiting that you saw two years and more ago? A. No, sir.

Q. State whether you recognized him at once? A. As quick as the door was opened I remarked to Mr. Bradley that he was the man; that I did not want to see anything further of him. I described him to Mr. Bradley, and told him that I did not want to go to the jail to see him.

Q. When did you say you first got the telegram? A. I think it was yesterday, a little past 1 o'clock.

Q. Were you greatly surprised at it? A. Yes, sir.

Q. What surprised you? A. That I should have a telegram to come here.

Q. Why did that surprise you? A. I could not imagine who had informed of what I said regarding it.

Q. Didn't you imagine that your evidence would be of great importance to the defence if you had seen him in Elmira on the 14th? A. I was not positive as to the man. I said it answered the description of the man I saw, and if I could see that man I could tell.

Q. I ask you if you did not think it would be of great importance to the defence if you had seen him in Elmira? A. No; I did not think anything material about that.

Q. You did not think it would be? A. I paid no attention to it. I merely came to the conclusion that I was not coming.

Q. What made you conclude that you were not coming? A. I did not want to have my name mixed up in the matter one way or the other.

Q. Somebody, you say, came to see you? A. Yes, sir.

Q. How did they change your mind on this subject when you were so firm and determined not to come? A. He said this: If you do not go, I shall proceed to Washington immediately and lay your statement before his counsel, and the only effect will be to delay the court until a subpoena can be gotten out and served upon you here.

Q. Who said this? A. Mr. James W. McCullough.

What do you think about a man talking in that style, who comes here and tells you, when this man is on trial for his life, and knowing that he was endeavoring to prove an *alibi*, that he did not think it was of the slightest consequence to come and let him know that he could prove he was in Elmira on the day of the murder?

I will now, in this connection, direct your attention to the testimony of Mr. Wetmore, his lawyer, page 1149:

Q. How long have you known him? A. Since 1863.

Q. Has he ever been your physician? A. Never.

Q. Have you any letters or memoranda with you that you brought from New York that tend to fix dates? A. I have some letters, or had some, which I handed to General Foster.

Q. Were they letters that you wrote? A. Yes, sir.

Q. You can tell the jury whether, on the 14th of April, Dr. Bissell was in Elmira hunting up witnesses for this suit? A. I think not.

Q. Why? A. My reason is, that on yesterday (having been subpoenaed the night before) I went to the office of Mr. Eaton, who was the counsel opposed to me in that case.

Q. Of the Erie railroad? A. Yes, sir. After some conversation Mr. Eaton presented to me these letters, which I wrote to him on the 11th, 12th, and 13th of April, 1865, and also 26th and 27th.

This is the testimony of his lawyer, Mr. Wetmore. They were documents that we could not put in evidence, but they were letters that were addressed to his own lawyer.

Q. Have you examined them? A. I have.

Q. Do they refresh your memory with regard to any fact? A. They do not exactly refresh my memory, but they confirm me in my impressions that during this time Dr. Bissell was in my office, and also of the fact that Mr. Eaton came there to see him.

Q. What date was that? A. I cannot fix the date that Mr. Eaton was there. On the 11th, 12th, and 13th of April, 1865, I wrote to Mr. Eaton, and he presented those letters to me, and which confirmed me in the impression that Dr. Bissell was at that time in my office, and endeavoring to settle the Erie railroad suit.

Q. Did you settle it? A. Yes, sir.

Now we turn to what he says about his character for truth:

Q. State whether you know the doctor's character among the people for truth and veracity. A. I have heard the character of Dr. Bissell very much canvassed.

Q. What did you find that to be—good or bad? A. I must say that his general reputation was bad.

Q. Was it very bad? A. Yes, sir; it was.

And, as you observed, from the different places where that man had lived, there came pouring in witness after witness, which are put upon the stand, the effect of whose testimony was to give him the most blasted reputation that I ever heard given to any man in a court of justice. And voluntarily did they come. Now in the course of this examination this occurs at page 989:

Mr. PIERREPONT. Won't you turn a look toward the jury?

Mr. BRADLEY. And let them see your face.

Mr. PIERREPONT. The counsel is right. I want them to see his face; we both agree. (To witness:.) Now, where in New York were you living? A. I was boarding, before I went there to keep house, at 1160 Broadway.



I think you remember his face. I am sure you will not readily forget it. No wonder that he could not give any answer to my questions. He was not in Elmira at that time, and I doubt whether he had ever been there, for he was unable, as you perceived, to give a description of anything. I repeat, I do not believe he ever saw the place. It is certain he did not go by the train in which he swore he went. It is equally certain he was not there for the purpose of getting witnesses in the suit of which he spoke, because that had already been settled. I think, gentlemen, you saw he was telling a falsehood from the very expression of his face. I was very anxious, as this record shows, that he should turn his face toward you. For through his dull and horny eyes, I could see *lies*, generating perjuries in his brain, like flies in a rotting carcass, and then a slow stream of slimy larvæ druded from his loathsome mouth, requiring more than all his "patent pots" and "patent disinfectants" to cleanse the air of the perjured and polluting odor. There was not a word of truth in anything he said.

Gentlemen, I have done. I had no expectation of occupying you so long, for I did not know that what I had to say would spread over so much ground. I cannot express to you in words my feeling of gratitude for your kind attention. I have never before seen men listen so long and so attentively. I feel that you have been listening for the purpose of getting at the truth in this case. That is what I have endeavored to aid you in reaching; and, with the assistance of the court and your consciences, I feel confident you will reach it. This is a matter affecting us all, with regard to our future as well as our present; affecting the stability of this and other civil tribunals of a like character—a tribunal without which there can be no liberty. Once pass from under civil to military law; have all crimes tried by military tribunals, instead of by a jury of your peers in a court of law, and then you may bid farewell to liberty.

It depends on jurymen and on courts whether it shall live or die; and let me assure you that liberty will not live without justice. It is that which keeps it alive. With injustice it cannot live; nor with rapine, murder and crime unpunished. Neither you nor I, nor any son or child of ours, has any protection whatever in the community if crimes are allowed to go unpunished. The government is for the protection of us all. It is not for the sake of vengeance or of blood. It is for the protection of society.

I have endeavored, in bringing before you this case, to have nothing brought before you that was not true, and to urge nothing upon you except those great principles which lie at the basis of our free institutions, and upon the sanctity and preservation of which our liberties depend. We have passed through a great struggle, during which rivers of blood have been shed. Have you in your rides, while this case has been going on, passed up beyond the Soldiers' Home? If so, you have seen a little city there. The streets of it are green. They are watered by a nation's tears. Five thousand brave men lie there in that city of the dead. Go to other portions of this land, and you will find 335,000 more of our young men lying in those silent cities. Is it all for nothing? Think you from their mouldering flesh no plants will spring, no fruit will grow? And think you their spirits would not come out from their tombs if they were to know that an assassin, a plotter, an aider and an abetter in the murder of the head of the government was, by your verdict, to go free, after having been clearly proven to be guilty? If a jury of loyal citizens say this plotting against the life of the chief of the nation is all right, what will the entire civilized world say? What the Pope of Rome, who hastened with such alacrity to deliver up the fugitive in order that he might be brought back to the city of his crime to be tried by an intelligent jury of his countrymen? Gentlemen, what have we been taking all this trouble for if you are to say to the fugitive who was thus concealed so long, and went through so many hardships to escape from justice, "Why, foolish man, why flee? There is nothing wrong in what you did; it is all right; there is no guilt in anything you have done."

At such a declaration, gentlemen, from you, the blood in men's veins would run cold; the valves of the heart would cease to open; the very stones of the street would cry out; and there is not an honorable rebel in the land who would not utter his curse upon such an act.

Now, gentlemen, there has been a great deal said to you about our having had blood enough. That is not the question here. The question is, whether we are to stop crime. I have no thirst for blood. I would not take the life of any fellow-creature if I could help it, unless it were to maintain the majesty of violated law and to prevent the destruction of my country, and then I would not hesitate. For that purpose, and for that purpose alone, would I do it, not from any love of blood. You have nothing to do with that—nothing at all. I have nothing to do with that; that lies with the Executive. It is in the Executive power to make whatever adjustment of any punishment for crime he may see fit. That is not our business; our business only is to determine whether the man charged with the crime is guilty. That is all we have to do, and it is left to the other powers to inflict the punishment or to modify it, as may seem to them best. I have only to say that when the man is found guilty honest men will say so. No *honest* men can say anything else.

In this case, I feel justified in saying that the prisoner is proved to be guilty, and in as overwhelming a manner as any man was ever proven guilty in the history of jurisprudence. I appeal to any judge, any lawyer, any man who has had experience, if there ever was a case where the guilt of the party was more clearly demonstrated. He is proven guilty, not only beyond a reasonable doubt, but beyond the possibility of any doubt. There is not a man of you who can doubt it. It has been a strange case. It was a strange providence that brought the man back here to be tried. And now that he is here, you, the twelve men who in the providence of God have been selected to try the case, are to say whether what he has done is right or not right; whether he is guilty or not guilty. That is for you to say, not for me. I know he is proven guilty. About that there can be no doubt. I do not believe that any of you have any doubt whatever on that subject.

Now, the counsel have seen fit to reflect upon the district attorney, or upon the counsel for the government, for the utterance of a sentiment to the effect that the court would not dare to do wrong. No honest man dares to do wrong. Every honest man dares to do right. Do right, and no wrong ever follows. Do wrong, and evil and misery are sure to follow.

In 1843 I was in the city of Columbus, Ohio, and a man by the name of Clarke was on trial for murder. Mr. Swayne, who is now a judge of the Supreme Court, was prosecuting attorney in that case. It is reported in the Ohio Reports. The defence was insanity. A great many doctors were brought to prove he was insane; others testified he was not insane. The jury were an honest, conscientious jury, and they were sent out. They were out all night. In the morning when the court convened they had not agreed. The court was silent and still. The jurymen were in a room corresponding with that, (pointing to witness room.) Soon after the court opened we heard the solemn voice of prayer. Some jurymen had doubted whether the man was insane, and inasmuch as it was a capital offence, and they were good men, and wanted to do right, they proposed that the jury should kneel down and ask the God of light and truth to enlighten their minds, and they were in earnest prayer when the court opened. A Mr. Wilcox, a devout man, who feared God, known well to one of those judges sitting by your honor's side, (he is now gone to his home in heaven,) said to me "That jury will agree." The jury arose from their bended knees; their minds were enlightened; they walked into the court-room and said, "He is guilty."

Gentlemen, if there is a man of you who is in doubt in this case, or any number of you, and you will take that test, it is all I ask. If once you are doubting,

you will go before your God, and go on your bended knees, asking for that light which comes alone from Heaven, to enlighten your minds to a knowledge of the truth; as you rise from your knees, I know that God will give you light, and I will say that your verdict is all right, whatever it shall be. Take that test, and you will have no trouble; take that test, and your conscience shall be at ease. You will feel that you have done your duty to yourselves, to your country, and to your holy oath—to the God before whom you and I shall soon appear, and until which you and I may never meet again after we part from this place. And then, having done your duty to the end, if you desire it—

“—— you may join with them  
Who see by faith the cloudy hem  
Of judgment, fringed with mercy's light.”

Mr. BRADLEY said there were several statements of evidence by the counsel, which he desired to correct, and if it were not proposed to give the case to the jury to-night they would digest them, and make the corrections in the morning.

The DISTRICT ATTORNEY objected, as a dangerous precedent, after the argument had been concluded on both sides, to any further statements being made to the court or jury.

The COURT replied that no further argument before the jury would be permitted. If the counsel for the defence believed misstatements of the evidence had been made in the closing argument, they would be permitted to address corrections of any such statements to the court, and the court would see the matter set right with the jury.

The court then took a recess until to-morrow, at 10 o'clock a. m.

WEDNESDAY, *August 7, 1867.*

The court met at 10 a. m.

Mr. MERRICK first called the attention of the court to the statement of the counsel in his closing argument in regard to Sergeant Dye, that if they had known of the record the counsel introduced, the remarks they made in reference to him would have been cruel beyond expression. The record referred to bore date subsequent to Sergeant Dye's examination in this court, was not, therefore, in existence at that time, and of course not known by them. The record simply showed that the prosecuting witness, on whose statement Sergeant Dye had been indicted for passing counterfeit money, had made an affidavit that he had instituted proceedings for the purpose of recovering his money. He (Mr. M.) presumed that the money was paid, and the proceedings against Sergeant Dye discontinued.

The COURT said that record was not in evidence, and the remark of the counsel therefore was not to correct any misstatement of evidence.

Mr. MERRICK said he made the statement by way of personal explanation.

The counsel had stated that Susan Ann Jackson had never been examined as a witness before Colonel Olcott. He (Mr. M.) read from the testimony of that witness, on page 44, as follows :

By Mr. BRADLEY :

Q. Were you ever examined as a witness about this matter before? A. Yes, sir; Mr. Orrut examined me, or Captain Orfutt. I am not sure about the name.

Q. Where were you examined? A. He carried me down to his office—I forget where it was—in the night.

Q. When was that? A. Monday night after the assassination happened.

Q. They took you down to a guard-house, or some place. A. They took me to the office.

The COURT remarked that that testimony sounded very familiar to him; he thought the same testimony precisely was read by Mr. Pierrepont yesterday.

Mr. MERRICK said the counsel had read from the testimony of this witness; but this was on her cross-examination.

The counsel had stated that Mrs. Surratt had engaged rooms for Payne at



the Herndon House. He read from the testimony of Mrs. Murray, page 127, on that subject as follows :

Q. Do you know whether any one came to your house in company with him when he first applied for board? A. No one at all. It was to me he applied. I was coming down stairs when he came in and asked me for a room. No one was with him at the time.

Q. Did you know Mrs. Mary E. Surratt? A. No, sir.

Q. Do you remember of her coming to your house on any occasion? A. No, sir.

Q. Do you know the prisoner, John H. Surratt? A. No, sir.

Q. Any member of his family? A. No, sir.

The counsel stated that Miss Fitzpatrick confirmed Weichmann in his statement in regard to Mrs. Surratt going to the Herndon House. Miss Fitzpatrick, on page 525, denied everything Weichmann had stated in that regard, beyond the mere fact that they were together.

Mr. PIERREPONT said he had read the evidence *verbatim*; that this was not a correction of any misstatement.

The COURT said the counsel seemed to be rather making an argument than correcting any misstatement of evidence.

Mr. MERRICK said he did not desire to transcend the rule laid down by the court. The counsel had denied that Judge Olin corrected his statement in respect to the dust and shavings being on the carpet in the President's box. He wished to read Judge Olin's correction from page 786, as follows :

All I can say with reference to it is, that if I were called upon to testify to-day again, after some reflection on the subject, I would testify as I did a few days ago, and yet I ought to say, perhaps, that after such a lapse of time as has occurred between the transaction and the present hour, if what was shown me be a correct report of my testimony before the military commission, it is more likely to be accurate than testimony recently given by me, because all the circumstances were then fresh in my recollection, and the transaction was a recent one. After this lapse of time it is quite possible that I may be mistaken in reference to that fact, as to whether I saw the plaster on the floor, cut from the hole in the wall, or the shavings that were cut by a penknife from what was apparently a gimlet hole through the door. That is all I can say in reference to the matter.

On page 787, Judge Olin continued :

Of course you know very well that an honest man would be more likely to remember a transaction that occurred a short time before, than he would after the lapse of years. That is all I can say about it.

The COURT inquired if Judge Olin did not afterward say he was still under the impression that he saw the chips and shavings on the floor.

Mr. MERRICK replied that Judge Olin made this statement :

I recollect now very distinctly the fact that the small hole in the door had been cleaned out by a sharp cutting instrument, and yet, in reference to the question as to whether I saw the plaster and the chips, it is quite possible that I am mistaken as to what I testified to the other day. I would be more likely to recollect distinctly the fact so recently after the occurrence than I would be after this lapse of time.

By Mr. PIERREPONT :

Q. As you reproduce the scene, you say you have a distinct memory about examining that hole? A. Yes, sir.

Q. What is your present belief about finding the shavings or chips? A. That is my belief—that I found them.

After the ruling of the court he perhaps would not be permitted to make what he considered misstatements of the counsel in respect to the testimony of Cass, Atkinson, Stewart, and others. He could not say the counsel had read the testimony incorrectly, but he did not read enough of it to give the jury an understanding of what it was.

The COURT remarked that of course the counsel on either side might read and comment on just such portions of the evidence as they saw fit.

Mr. MERRICK desired, by way of personal explanation, to make one or two remarks. The counsel had stated that the Supreme Court had never decided the military commission which tried the conspirators to be an illegal convocation. He understood the decision of that court in the Milligan case to declare, in

effect, all such tribunals illegal, although the identical case of that commission was not before the court.

The counsel stated that he called for the record of the trial before the military commission, and therefore he brought it in. He desired to explain. The United States district attorney in his argument referred to that record, and introduced before the jury, in that connection, matter that was not in evidence. In his reply he commented on what he had stated, and on the failure of the prosecution to introduce the record, upon matter connected with it, it could be inquired into by means of witnesses on the stand. When Mr. Pierrepont came to reply, after making some remarks upon the subject, he stated that the recommendation of Mrs. Surratt to executive clemency by the officers of that commission was attached to the record, had been submitted to the President, and that he recorded his approval upon the back of the paper upon which the recommendation was written, and thereupon he threw a roll of papers on his (Mr. Merrick's) desk, saying, "There is the original record, the counsel can read for himself."

The DISTRICT ATTORNEY here interrupted Mr. Merrick, and protested against his being allowed to proceed, and said the eloquence of the gentleman had already been mainly exhibited in an attack on the officers of the government and witnesses.

MR. MERRICK continued: He regarded this a personal explanation necessary to be made after what had transpired. He did not read the paper thrown on his table by the counsel for the prosecution, because he stated that it came from the Judge Advocate General's Office, and his experience in this case taught him to mistrust whatever came from that source. The record was carefully withheld until all opportunity had passed for taking evidence in relation to it, and he did not choose to touch it, coming before him in the manner it did. Mr. Pierrepont had stated yesterday that his information in regard to this recommendation to mercy, and the President's knowledge of it, and action upon it, had been derived from Judge Holt. He held in his hand the publication of the record of that trial, authorized, approved, and indorsed by the Judge Advocate General in July, 1865, and given to the public under official signature, certifying to its entire accuracy, as would be seen upon the pages just preceding the matter of the records, and there was no recommendation to mercy in the book. If the approval of the President was written on the paper containing the recommendation, and the President saw that recommendation, why was it not published? He had only to add, that if what was said now was true, what was published was not true.

MR. BRADLEY remarked that reference was yesterday made to the map on which had been marked a route from Montreal to Canandaigua via Ogdensburg. He wished to say that map was not in evidence, and that no testimony had been given in reference to any such route. The counsel for the prosecution had started the witness from Montreal on the New York train, and that route was the only one the jury were to consider. He had no objection to the map going to the jury if they desired it, merely as a diagram for reference.

The DISTRICT ATTORNEY said the jury would of course take judicial notice of any well known geographical fact, such as the location of a railroad. They had fixed the prisoner here in the District of Columbia.

#### CHARGE TO THE JURY.

The judge then delivered the following charge to the jury:

GENTLEMEN OF THE JURY: "Whoso sheddeth man's blood by man shall his blood be shed." So spake the Almighty to his servant Noah when the great deluge had receded and the ark had safely rested upon the holy summit of Mount Ararat. This is God's own law, and its wisdom is acknowledged by all civ-

ilized nations. Now and then we meet with sentimental philosophers who think themselves wise above what is written, and who deem it their duty to lift up their voices in condemnation of this fiat of Jehovah; and although they have made but few thorough converts to their pernicious doctrines, they not unfrequently succeed in creating in the minds of honest and tender-hearted people a morbid sentimentalism, which leads them too often to shut their ears to the stern voice of justice, and listen only to the gentle, kindly whisperings of mercy, forgetting that mercy to the guilty is injustice to the innocent. With such sentimentality you have, as jurors, nothing whatever to do. It is no matter of yours to inquire whether the prisoner at the bar is a proper subject of executive clemency, if you believe him guilty of participating in the crime with which he stands charged before you, but simply to determine his guilt or innocence.

When the dark clouds of war, which for four years had lowered in our national horizon, had begun to lift, and the sun of peace was about to gladden us again with its benignant rays; when the main army of the rebels, who followed the traitor Lee in his retreat from Richmond, had been overpowered and had surrendered to the military hero of the age, and the army under Johnston was, in vain, flying from impending capture; when our city was radiant with illumination in celebration of the downfall of the stronghold of a most wicked and atrocious rebellion; when the hearts of all loyal men were leaping and dancing to the merry peans of victory, and when the eyes of all lovers of peace throughout the land were eagerly looking to him whose great heart had never cherished the feeling of malice for even an enemy, but abounded in love and charity for all, in the hope that ere another year should have passed away, the hands which had been lifted up against each other would again be clasped in friendship and brotherly love, and States dissevered should be again united in harmonious relations; on the 14th day of April, 1865, the executive head of this great nation, the commander-in-chief of your army and navy, by the most foul and wicked conspiracy the record of which has ever stained the pages of history, was stricken down at the hands of the assassin John Wilkes Booth, in the metropolis of the republic, and under the very shadow of its Capitol.

Historians and text writers on the law may treat of the heinousness of the crime of imagining the death of a weak or a wicked king or of a wise or benignant monarch, but you know, gentlemen, as well as you know that you exist, that to murder the duly elected President of the most powerful people on earth, is not less atrocious in its character than to compass the death of a king or an emperor, albeit he may have sprung from the strong loins of the people, who have made him their representative head, and may have no royal blood coursing through his veins. You may be told that it is a crime surpassingly heinous to take or to compass the life of him who has occupied a throne, simply because he may be the king of an enslaved people, but that to take the life of a President of a free republic is an offence of no greater magnitude than to murder the "veriest vagabond that walks your streets," but an American jury will only believe this doctrine when the people have become so demoralized and corrupt, so devoid of the love of liberty and patriotic feeling, as to prefer to have a king and ruler foisted upon them by the accident of birth or fortunate adventure, rather than have the making of their own selection of him who is to execute their laws, and, for the time being, to stand as the representative head of their collective sovereignty.

It is a mistake to suppose that a free people in any country will ever consider it a more heinous crime to kill a king, or even to desire his death, than it is to assassinate a President. It is of no avail to tell you that to surround the life of a President of a republic with safeguards as sacred and powerful as those which, in monarchies, are thrown about a king, as you have been told in the argument, is a modern idea, "entertained only by those whose eyes have been



dazzled by visions of stars and garters, and who are desirous of changing our free institutions for a monarchial form of government."

On the contrary, they can only be opposed to guarding with sacred vigilance the life of a President of a free people who are themselves prepared to submit to the rule of a despot. Why should the people be less proud or less regardful of the life of a ruler selected by themselves, from among themselves, than they would be of the life of him who claimed to rule over them of his own right? When this question can be sensibly answered, I shall be willing to admit that the life of a President is less worth preserving than that of a king, and that to destroy the life of a President is a crime of less atrocity than to merely desire the death of a prince; but not till then; nor do I believe will you.

One of the conspirators who took the life of the President, Abraham Lincoln, on the 14th day of April, 1865—he who fired the fatal shot—in his flight from the scene of the murder, was overtaken by the swift vengeance of the Almighty, and died at the hands of his pursuers. Others, charged as co-conspirators in this enormous crime, were tried two years ago by a military commission; some of them were condemned to expiate their guilt upon the gallows, and others doomed to suffer imprisonment for life in the Dry Tortugas.

You have been told, gentlemen, in the argument of this case, that those who were tried before that military commission, and hung upon its findings, were themselves the victims of a base and disgraceful conspiracy to murder. Brave, gallant, and honest soldiers of their country have been held up before you as inhuman butchers of innocent men. It has been said, in support of this denunciation, that the Supreme Court of the United States have, in the case of Milligan, declared that the military court which tried Herold and others for the murder of Abraham Lincoln was an illegal tribunal, organized without law, without right, and without warrant in the Constitution—a mere convocation of military men, having no right to try the cause committed to them by President Johnson; and it has been said that it was convoked not to try, but to condemn.

In my humble judgment the Supreme Court has made no such decision. If so, why have not the prisoners now confined upon the Dry Tortugas for complicity in the greatest crime of the age been released from their confinement? They have sympathizing friends enough to have applied any such decision in the direction of their deliverance, and they would not have remained there a week after the decision had been made to the effect that they were unlawfully restrained of their liberty. If I understand the decision in Milligan's case aright, it went upon the ground that the commission which tried Milligan was not organized in obedience to the act of Congress providing for the punishment of such crimes as he was charged with committing, and the opinion of the majority of the court went upon the additional ground that no hostile foot had ever pressed the soil of Indiana at the time when he was arraigned before a military tribunal there, and that, therefore, that tribunal which condemned him for acts of treason committed in that State had no authority to try him, notwithstanding the whole nation was involved in the most terrible struggle for its life. The majority opinion being thus predicated upon a misapprehension of historic truth, we could not, perhaps, have looked for a more rightful deduction.

Unprepared, however, as all loyal hearts were for such an announcement, the American people would be even yet more astounded to have it declared by any court in this country that the commander-in-chief of the army and navy, the President of the United States, has not the power in time of war to institute a military commission for the purpose of trying a gang of spies and traitors who have found their way within the intrenched encampments of the nation's capital to take the life of the chief of the army and navy, to assassinate all the heads of the executive departments, in the interest of the pretended government with which the federal government was engaged in war. They who maintain such a doctrine profess to defend it upon the ground that no such

power is delegated by the Constitution, as *they* did who could find no warrant there to coerce seceding States into submission to the federal authority; but the day has passed by when honest statesmen will longer, if they ever did, regard the sovereignty of the federal Union as possessing no other powers save those expressly enumerated in the Constitution.

The government of the United States was doubtless created by the adoption of the Constitution. But when it had once been spoken into being it stood upon the same level with other nations, and was clothed with all the powers incident to an independent sovereignty under the laws of nature and of nations, and among these was the power, in time of war or great public emergency, to arrest and inflict upon spies and traitors the most summary punishment, whenever and wherever the strong hand of military justice can be laid upon them. It is a power incident to the right and duty of self-preservation, and ought to be exercised, just as the individual owes it to himself to strike down the assassin who is feeling for his heart-strings, without waiting to lose his own life, in order that the courts of justice may, at their leisure, proceed to try the felon according to the formularies of the law and the Constitution. The right of self-defence needs not to be inscribed upon parchment, either for individuals or for sovereign states. The Almighty impressed this right and duty upon the hearts and minds of men long before he wrote the decalogue upon the tables of stone. To say that this government has not the power in time of war to exercise this great duty of self-preservation, for want of warrant in the Constitution, is to condemn the action of the government in acquiring from France and Spain and Mexico and Russia, territory lying far beyond the limits of the original thirteen States, because such power of acquisition and growth is not provided for by the Constitution. Both these powers are but the incidents of sovereignty, requiring no warrant in written governmental charters; they are derived from the common law of nations, and are coexistent with sovereignty.

But with this military commission, gentlemen, you have no concern at this time; whether it was a legal or an illegal tribunal, is not the matter on which you are now called to decide. The oath that you have taken requires that you shall "well and truly try, and true deliverance make between the United States of America and John H. Surratt, the prisoner at the bar, whom you have in charge, and a true verdict give according to your evidence." The prisoner stands before you indicted for the murder of Abraham Lincoln, on the 14th day of April, 1865, in this city. About the time and place and manner of the death of your late President no controversy has been made in the case. If there had been, your recollection of a nation in tears, and of a whole civilized world in mourning would have revived your memory of the sad and terrible fact. The only question, therefore, for you to determine is, whether the prisoner at the bar participated with John Wilkes Booth and the others named in the indictment, or either or any of them, in this diabolical crime. If, from all the evidence in the cause, your minds shall have been convinced beyond a reasonable doubt growing out of that evidence, that the prisoner did co-operate with them; if that shall have produced a moral conviction in your minds that the prisoner did participate in the conspiracy to murder, or in a plot to do some unlawful act which resulted in this foul murder, no consideration as to the legality or illegality of the tribunal which tried the prisoner's mother; no feelings of sympathy for other members of the family; no consideration of his youth, or that other lives have already been forfeited for the crime, should, for a single moment, tempt you to step aside from the plain pathway of duty. If, however, upon a full and careful consideration of the whole testimony, uninfluenced in the slightest degree by prejudice or bias of whatever character, that moral conviction of the prisoner's guilt shall not have been impressed upon your minds, but you shall still entertain an honest and unbiased reasonable doubt fastening itself upon your judgments, and suggesting that all the credible proofs

pointing in the direction of the prisoner's guilt may be strictly true and may still be consistent with some hypothesis of innocence which you can construct from the whole credible evidence in the cause, you will give him the benefit of such doubt. It is my duty, however, gentlemen, to say to you that this doubt, to the benefit of which the prisoner is entitled, must not be a mere speculative or capricious one, prompted by passion, or prejudice, or pity, or feeling of any kind save the desire in your hearts to do exact and equal justice by rendering a verdict in accordance with the facts. It must not be a vague suggestion that, after all, the prisoner may not be guilty; it must not be the mere shadow which the angel-wing of mercy may momentarily cast upon your mental vision; but it must be such a doubt as the voice of justice shall whisper in your ears. If the testimony shall convince your understanding and judgment of the guilty participation of the prisoner with Booth or others in this crime, such conviction is the moral certainty required by the law, and it excludes the idea of reasonable doubt.

The indictment in this case charges the prisoner with being engaged in a conspiracy with John Wilkes Booth and others to effect the murder of Abraham Lincoln, and with having succeeded in the accomplishment of that atrocious crime.

It has been argued by the counsel for the prosecution, that to take the life of the President of the United States is a crime so heinous in its character that each of the conspirators is responsible for the act of each of his co-conspirators, committed in furtherance of the conspiracy, so long as he continues to be a member of that conspiracy; and that he can only be relieved of the criminal responsibility by repenting, abandoning, and renouncing his connection with the conspiracy, and countermanding any orders he may have given in relation to it.

On the other hand, it is contended by the counsel for the defence, that the indictment nowhere charges a conspiracy to kill, or the killing of the President of the United States, but simply charges a conspiracy to kill, or the killing of Abraham Lincoln, the individual; that inasmuch as there is no allegation in the indictment showing that Abraham Lincoln, at the time of the murder, was President of the United States, but simply avers the killing of an individual the case is to be governed solely by the same principles of law which are applicable to ordinary murder, and cannot be regarded by you as being in any degree more heinous in its character; that even admitting that to take the life of the President of the United States is a more heinous crime than the murder of an individual in private station, yet, for the want of an allegation in the indictment of the fact of the presidency, you cannot, no matter what the evidence may be as to the killing of the President and all the heads of departments, and the Vice-President, in your consideration of this case, and in making up your verdict, regard it as a crime standing on the same footing in its atrocity with the crime of treason or conspiring the death of a king. They argue that although, by the common law of England, to compass the death of a king is a crime so heinous in its character as to admit of no accessories before the fact, yet the law of murder is different in England and here, and that in cases of murder he who counsels, aids, or commands another to commit murder, without being present to render material aid in its commission, can only be proceeded against as an accessory before the fact, and not as a principal, as in this case. You are told that it must both be alleged in the indictment and proved by the evidence, or you cannot consider the killing of a President, or the conspiracy to murder him and all the chief officers of the government for the purpose of bringing anarchy and confusion on the nation, and thus to favor the cause of the rebellion.

But there are some things of which courts and juries will take judicial notice. One of the elements of the definition of murder is "the killing of a



reasonable creature." It is never either alleged in the indictment or proved in the evidence that the subject of the crime is a human being. It is not necessary, because it is one of those things that are presumed to be taken judicial cognizance of. It is not alleged in the present indictment that Abraham Lincoln was a reasonable creature, nor has any proof been adduced to show it; and yet we take judicial cognizance of the fact. So we may take judicial cognizance of the fact that at the time of his murder he was the President of the United States, because it is something known to every man, woman, and child in the country capable of knowing anything; and, taking such judicial cognizance of it, it need neither be alleged in the indictment nor proved by witnesses.

It is true, as stated by the counsel for the defence, that it has been laid down by Sir Matthew Hale, in his work entitled "Pleas of the Crown," that although treason is so heinous in its character as to admit of no accessories before the fact, but that its heinous character makes all principals who in any way contribute to its commission, yet that murder and other felonies not being so heinous in their character, aiders and abettors are to be proceeded against only as accessories before the fact. When, however, he comes to treat of misdemeanors, a lower grade of crime than felonies, he tells us that they will not admit of accessories before the fact because of their want of character sufficiently heinous—the precise reason for which accessories are admitted in crimes amounting to felony. Later writers have generally followed the law as laid down by Lord Hale in this treatise, and many decisions have been founded upon that authority; the writers and judges seeming contented with his reasons, or indisposed to depart from the principles laid down by him; but I confess the reasons are not very satisfactory to my mind. I have never been able yet to discover any sound reason why he who originates the plan of murder, but employs another or others as his agent or agents to perpetrate the crime, is not equally guilty with the actual perpetrator of it. If I, actuated by the malice of a depraved and wicked heart, conceived the purpose of murdering him whom I suppose to be my personal enemy, but, lacking the opportunity or the courage to carry my purpose into execution, hire another person, who wilfully executes my wicked design for me, common sense and the common conscience of mankind, which, after all, seldom fail to direct us to the true principles of the law, (which has been defined to be the perfection of reason or common sense,) would seem to dictate that I cannot be less guilty than the agent whom I had employed, upon the well known principle of law that he who does an act by another does it by himself—a principle which has been recognized by the Supreme Court of the United States in the case of *Gooding vs. The United States*, 12th Wheaton, page 460—as applicable to criminal as well as civil cases—a principle recognized in more ancient and higher authority than even the Supreme Court of the United States, or Lord Hale, or any other writer upon the law, to which we are accustomed to look for principle and precedents.

There are two cases which now occur to me, (probably others might be found.) reported in that book of highest authority known among Christian nations, decided by a judge from whose decision there can be no appeal, and before whose solemn tribunal all judges and jurors will, in the great day, have their verdicts and judgments passed in review. Man cannot make better law than God, nor can he better expound or administer the law. One of these cases is that of Naboth and Ahab, contained in the 21st chapter of the first Book of Kings. Naboth, the Jezrulite, was the owner of a vineyard hard by the palace of Ahab, king of Samaria, which had excited the cupidity of the latter, who offered to purchase it with money, or to give in exchange for it another vineyard, but Naboth was unwilling to part with it because it was the inheritance of his fathers. This excited the wrath and displeasure of king Ahab and his queen Jezebel, who conspired together to effect the death of Naboth, and they succeeded, by

having witnesses suborned to swear against him as a blasphemer, that he might be stoned to death by the elders and the nobles of the city. The plan was laid by Jezebel; the motive to the murder was Ahab's cupidity, and he lent his wife his signet ring with which to seal the letters which she sent to the elders and nobles whom she employed as the agents to consummate the wicked plot. Two sons of Belial, we are told, were the perjured witnesses who proved the blasphemy on Naboth, and thus effected his death. Ahab, profiting by the crime, took possession of the vineyard of Naboth; but the word of the Lord came to Elisha, the Tishbite, saying, "Arise, go down to meet Ahab, king of Israel, which is in Samaria; behold he is in the vineyard of Naboth, whither he has gone down to possess it; and thou shalt speak unto him, saying, 'Thus saith the Lord. Hast thou *killed*, and also taken possession?' In the place where dogs licked the blood of Naboth shall dogs lick thy blood, even thine. And it came to pass that dogs licked up the blood of Ahab according to the judgment which God had decreed against him."

The other case to which I have alluded is that of David and Uriah, recorded in the 11th chapter of second Samuel. Uriah, a loyal subject of king David, was a brave and gallant soldier in the army of Joab, which was engaged in war with the Ammonites. His wife, Bathsheba, was comely in person and very beautiful to look upon, and king David coveted her. In order to effect his wicked purpose he sent a letter to Joab, his chief captain, even by the hand of Uriah himself, "Set ye Uriah in the fore front of the hottest battle, and retire ye from him that he may be smitten and die." Joab obeyed the behest of his king, and Uriah the Hittite was slain. But the Lord sent his prophet, Nathan, unto David, saying, "Thou art the man who did this evil thing. Thou hast killed Uriah the Hittite with the sword, and hast slain him with the sword of the children of Ammon." This judgment of the Lord was not that David was accessory before the fact of this murder, but was guilty as the principal, because he procured the murder to be done. It was a judgment to the effect that he who does an act by another does it himself, whether it be a civil or a criminal act.

The counsel for the prisoner at the bar in this case contend that he was not in the city of Washington, or near enough to the scene of the murder to have taken part in it by rendering material aid to Booth, the actual assassin, who fired the fatal shot; and that the evidence adduced on the part of the government, as well as that of the defence, shows such to have been the fact. This is what is termed in the law an *alibi*—the Latin word for elsewhere. This is a line of defence always held in little favor by the courts and juries, not only because it is one which common sense teaches us may be most easily supported by perjury, but because it is one involving identity of time, as to which mistakes are very easily made, so that it is by no means difficult to support this plea frequently (and especially after the lapse of months or years) by the testimony of honest and truthful witnesses, who, on account of the great liability of the human mind, particularly when influenced by the promptings of pity or sympathy, to be mistaken in the precise time, in reference either to days or hours. The past history of crime teaches us that, in the days of notorious public depredations upon society, it was a very common device to gallop upon fleet horses straight across the country, and by appearing before credible witnesses shortly after the commission of a robbery or other crime, to obtain the testimony of such witnesses, and thus secure an acquittal by an *alibi*. We have an instance of the honest fallibility of the human memory in respect to the identity of time, under the promptings of pity or friendship, or sympathy, in the case of the commonwealth of Massachusetts against Webster, for the killing of Dr. Parkman, some eighteen years ago, in which several witnesses of respectability swore so positively, and yet so honestly, to facts placing it beyond the pale of possibility that Doctor Webster could have been present at the scene of the murder, if that testimony had been strictly true in relation to the time, that the general sense of the com-

munity seemed in doubt as to whether Littlefield, an important witness for the prosecution, was not in fact the real murderer of Parkman, and yet, after the verdict of the jury had been rendered, and the sentence of law pronounced against the prisoner, Webster, who knew better than any other mortal, made full confession of his guilt. If it were true that hard ridings across the country in olden time furnished facilities for criminals to establish the defence of an *alibi* by honest witnesses, how much greater facilities for that purpose are furnished at the present day by the power and speed of steam, by which space and time have become almost annihilated. I have already said that this plea has always been regarded with extreme suspicion, and yet when once clearly established to the satisfaction of the jury it constitutes the most complete defence. But an honest and sensible jury cannot fail to regard it with suspicion, unless it shall be so clearly established as to satisfy them of the prisoner's absence from the scene of the crime. The suspicion which attaches to this plea has passed into a proverb among the people, as well as with the courts and juries, and it is true that an unsuccessful attempt to establish an *alibi* is always a circumstance of great weight against a prisoner, because a resort to that kind of defence implies an admission of the truth of the relevancy of the facts alleged against him, and the correctness of the inference drawn from them.

In this connection I may also observe, that when once a conspiracy to commit a crime shall have been proved on the party who is on his trial, or an act done in pursuance of that conspiracy—he having been connected with it—if the evidence shall satisfy the minds of the jury that he was present either constructively or actually, that is to say, either at the scene of the crime in person, or near enough to give any the slightest support or encouragement to the actual perpetration of it, or if he be remote from the scene for the purpose of aiding it, and in performance of the part of the plan assigned to him, he is equally guilty with his co-conspirators who actually perpetrate the crime.

You have been told, gentlemen, by the counsel for the defence, in a manner not very respectful, certainly by no means complimentary to the court, that you are the judges of the law as well as the facts in criminal cases, and that you have the right to disregard the instructions of the court in matters of law; and they tell you that their exposition of the law, and the weight of character they possess, may be more safely relied upon than the instructions which may be given you by the court. The weight of character of a prisoner's counsel would be a very variable, and not unfrequently a very unsafe, criterion by which the jury should judge as to the law of his case. Perhaps they would have you regard the court as sitting on the bench merely to discharge the duty of preserving order and decorum in the court-room, which probably the crier of the court or bailiff might be disposed to regard as an usurpation of his prerogative. If the jury are to entirely disregard the judge's instructions as to the law of a case, I confess I see but little left than that for him to perform.

It is true, gentlemen, that you have the power, and in cases where your consciences are satisfied that the instructions of the court are dictated, not by an honest desire to enlighten the jury as to the true state of the law, but by corrupt and wicked motives, you may have the right to disregard the instructions purposely intended to mislead you. But to claim that the jury are better judges of what the law may be than the court, is about as reasonable as to assert that a plain farmer or merchant may be taken fresh from his plough or his counter, and be more capable of navigating and manœuvring a steam frigate, or to lead your armies to certain victories, than your admiral or commander-in-chief. In my opinion, you have just the same right to disregard the evidence of the witnesses who stood before you unimpeached in any matter respecting the facts involved in the cause as you have to disregard what the court may say to you, under an official oath, as to the law that may apply to the facts. A jury have the *power*, if they choose to exercise it, after having assumed the obligations of an



oath, to say that they will neither believe the judge nor the witnesses, but decide upon the law and facts according to their own caprice or the confidence which they may repose in the character of the counsel on either side; but such is not the purpose for which juries were instituted, and they have no right so to act. When the witnesses in the cause have testified before you as to the facts, it is then the office of the judge, under his official oath, to testify to you in the spirit of truth, according to the best of his knowledge and ability, as to what is the law which may be applicable to these facts; and an honest jury will disregard neither the testimony of the witnesses nor the instructions of the judge, unless they are satisfied that corrupt motives have actuated them. They will leave the party where the law leaves him, to his legitimate redress—a writ of error to the appellate court.

Much stress has also been laid by the counsel for the defence upon the fact which they assert, that during the progress of this trial more than one hundred and fifty exceptions have been taken to the ruling of the court, concerning the admissibility of evidence. If they have found themselves under the necessity of calculating the number of these exceptions, and parading them before you, with a view of having you to render a verdict according to irrelevant evidence not before you rather than according to the legal evidence which you have heard, I have no disposition to criticise their taste, but leave them to present their case in their own way. At the same time I feel it my duty to remark to you that if counsel will be so bold as to present propositions to the court which every tyro in the profession ought to know are untenable, it does not necessarily follow that the judge must always be so weak as to sustain them. It has heretofore been supposed that exceptions to the ruling of a judge at *nisi prius*, were intended to be passed in review before the appellate tribunal. I have never before known them to be neatly calculated and presented to the jury by way of argument.

In reference to these matters I may observe that, perhaps, I owed it to the dignity of the bench to have interrupted counsel in the conduct of the case in this particular, but in a cause involving the life of the prisoner upon the one hand, and the vindication of the outraged justice of a nation in mourning upon the other, I deemed it my duty to cast not an atom in the one scale or the other, which might by any possibility tend to prejudice either side of the issue.

I come now to direct your attention, in a general way only, to the evidence in the cause. It would be impossible for me to review it in detail without trespassing on your patience, which has already been nearly exhausted. I have already said that the counsel for the defence rely upon an *alibi* to acquit the prisoner. They have also endeavored to destroy the credibility of many of the material witnesses whose testimony has tended to connect the prisoner with the body of the crime, either by contradicting them by other witnesses on points material to the issue, or by attacking their character for credibility. Whether they have succeeded in destroying the credibility of any one or more of them, it is your province alone to determine.

On the other hand, the prosecution rely for a conviction on the evidence which they have spread before you, tending to show the malice of the prisoner towards the federal government, and especially towards the deceased, Abraham Lincoln, for a long time prior to the murder. His frequent communications and intercourse, private, confidential, and mysterious, with Booth and the other conspirators, personally and by letters; his interest manifested in providing, as they allege, quarters at the Herndon House for Payne, who attempted to assassinate Secretary Seward; his great intimacy with the other conspirators; his procurement of arms for aiding the escape of Booth and Herold, and his concealment of them at Surrattsville, at the house of John M. Lloyd, shortly prior to the assassination of the President; his fabrication of false accounts and contradictory statements as to the object of his movements; his expression used

to Smoot shortly before the assassination of the President, that if the Yankees knew what he was doing, or was about to do, they would stretch his neck for him; his fixing of the wooden bar against the door of the President's box at the theatre; his presence here in this city on the day of the murder; his being in company with Booth and McLaughlin at the barber's on the morning of that day; his appearance in front of Ford's Theatre on the night of the murder; his excited and suspicious manner while there, and his calling out the time to Booth and the other man with them two or three times shortly before the fatal shot was fired by Booth, as the signal for action; his alleged activity in the management of the entire conspiracy planned for the fatal evening of the 14th of April; his flight from the city on the morning of the 15th of April, as soon as it was possible for him to leave; his swift haste to get into Canada; his abandonment of his mother and family; his concealment of himself in Canada at the house of the rebel sympathizers Boucher and La Pierre; his disguise of his person by the coloring of his hair, the changing of his dress, and wearing of spectacles; his flight from Canada under an assumed name and disguised personal appearance; his free and voluntary confessions to Dr. McMillan on board the steamer *Peruvian*; his constant apprehension of the United States detectives, even on the British steamer and on British soil; his flight from England to Rome, and entering the Papal service; his confession to St. Marie while there, as to the manner of his escape from Washington immediately after the murder; his failure to prove to you where he ate and slept during the time when he left Montreal on the 12th of April till he returned on the 18th of the same month; his flight from Rome to Egypt—all these matters have been presented for your careful and candid consideration. You are to weigh them; you are to determine whether any or all of them are true, and make up your verdict in strict accordance with the facts.

In giving these matters your attention you will not fail to remember that flight from the scene of crime, the fabrication of false accounts and contradictory statements, the concealment of instruments of violence, are all circumstances strongly indicative of guilt. You will further bear in mind that a confession of crime, when freely and fairly made, the body of the crime being proved, (which is, in this case, the fact of murder,) is one of the surest proofs of guilt, because it is the testimony of the Omniscient speaking through the conscience of the culprit. You will not, either, forget that circumstantial evidence carries with it the highest degree of moral certainty. These are well settled rules of law, to which it is my duty to invite your attention.

From the observations which I have addressed to you, you will infer:

First. That a conspiracy formed in time of war, to take the life of the President and Vice-President of the republic and the heads of the executive departments, for the purpose of aiding the enemies of the federal government, by throwing it into anarchy and confusion, is treason as heinous and as hurtful to the people of this country as the compassing the death of the king or queen of Great Britain is to the subjects of that realm.

Second. That every person engaged in such conspiracy, as long as he continues a member of it, is responsible not only for the act of treason, but for any murder or less crime which may flow from it in its prosecution.

Third. That the government may waive the charge of treason against any or all the conspirators, and proceed against them for the smaller crime of murder, included in the greater crime of treason.

Fourth. That under an indictment for a murder resulting from the prosecution of such conspiracy, evidence of the entire scope of the conspiracy may be considered in estimating the heinous character of the offence laid in the indictment.

Fifth. That it was not necessary to aver in the indictment the fact that Abraham Lincoln, the victim of the murder, was at the time of its commission Presi-

dent of the United States, or to prove it in order to allow the jury to take that fact into the account in determining the heinous character of the crime, it being a fact of which courts will take judicial cognizance.

Sixth. That he who does an act by another does it by himself, and is responsible for its consequences in criminal as well as in civil cases.

Seventh. That although an *alibi*, when clearly established, forms a complete and unanswerable defence, the mere absence from the immediate scene of a crime resulting from a conspiracy unrepented of and unabandoned by the party charged, will not avail him if he were at some other place assigned him performing his part in that conspiracy.

Eighth. That this plea is, unless clearly made out, always regarded with suspicion, and a circumstance weighing against him who attempts it, because it implies an admission of the truth of the facts alleged against him, and the correctness of the inference drawn from them.

Ninth. That flight from the scene of crime, the fabrication of false accounts, the concealment of instruments of violence, are circumstances indicating guilt for the consideration of the jury.

Tenth. Although a confession in the slightest degree tainted with the promise of favor, or by duress or fear, is not admitted as evidence against him who makes it, yet, if made freely and voluntarily, is one of the surest proofs of guilt.

As to the credibility of the witnesses you are to be the exclusive judges. You have seen them face to face. You know whether they are confirmed or unsupported, or contradicted, by other witnesses of credit, and other circumstances. You are to judge whether their testimony has been impeached, and are to consider every matter which will tend to shed any light upon the question as to what has been truthfully or falsely deposed by any witness.

You will diligently collate and compare, and carefully weigh and consider, all the testimony in the cause on both sides.

You will not disregard or reject the testimony of any witness unless you shall be satisfied that he has been shown to be unworthy of your credence by reason of his want of character for truth, his contradicting himself, or being flatly contradicted by others of equal credit, or by dishonesty of purpose manifested by his conduct and manner in testifying before you, or unless what he has told you is inconsistent with the other evidence in the cause.

In conclusion, you will take the case with the honest purpose to do justice to the United States on the one hand, and the defendant on the other, bearing in mind that it is the office of the law to secure the punishment of the guilty and the protection of the innocent.

If John H. Surratt, in the honest and intelligent conviction of your judgment and consciences, is not guilty, so pronounce him by your verdict, thus giving a lesson of assurance that a court of justice is the asylum of innocence. On the contrary, if guilty, pronounce him guilty, and thus by your verdict furnish a guarantee of protection to the intended victims of guilt, and a testimonial to the country and the world that the District of Columbia, set apart by the Constitution of the United States as the theatre for the exercise of federal power, gives the judicial guarantees essential to the protection of the persons of the public servants commissioned by the people of the nation to do their work, safe and sacred from the presence of unpunished assassins within its borders.

The foreman of the jury, (Mr. Todd,) before retiring, desired permission for the jury to take with them a copy of the printed evidence in the case.

The COURT said it was not customary to allow the jury to have the written evidence.

Mr. BRADLEY said so far as the defence was concerned, they were perfectly willing to allow the jury to have a copy of the record.

The DISTRICT ATTORNEY replied that he must adhere to the established rule



of practice, and therefore deemed it to be his duty to object to the jury having a copy of the record.

The COURT said he must adhere to the same rule in this as in other cases, and directed the case to be given to the jury.

Mr. MIDDLETON, the clerk, then administered the customary oath to the bailiffs, Messrs. William S. Ross and Robert Hughes.

The bailiffs took charge of the jury, and they retired to their room at twenty-eight minutes before twelve o'clock.

SATURDAY, *August 10, 1867.*

At one o'clock p. m., the district attorney, and the prisoner and his counsel, being present, the jury appeared in court.

The clerk put the usual question: "Gentlemen of the jury, have you agreed on a verdict?" to which the foreman, Mr. Todd, responded in the negative.

The COURT stated that he had this morning received the following communication in writing from the jury:

*To the Hon. George P. Fisher, Judge of the Criminal Court:*

SIR: The jury in the case of the United States *vs.* John H. Surratt most respectfully state that they stand precisely now as when they first balloted upon entering the room, nearly equally divided, and they are firmly convinced that they cannot possibly make a verdict. We deem it our duty to the court, to the country, and in view of the condition of our private affairs and situation of our families, and in view of the fact that the health of several of our number is becoming seriously impaired under the protracted confinement, and to make this statement, and to ask your honor to dismiss us at once.

Most respectfully submitted:

W. B. TODD.  
 ROBT. BALL.  
 J. RUSSELL BARR.  
 THOS. BERRY.  
 GEO. A. BOHRER.  
 C. G. SCHNEIDER.  
 JAMES Y. DAVIS.  
 COLUMBUS ALEXANDER.  
 WM. McLEAN.  
 BENJ. F. MORSELL.  
 B. E. GITTINGS.  
 W. W. BIRTH.

The COURT inquired whether anything was to be said why the jury should not now be discharged.

Mr. BRADLEY said the prisoner gave no consent to any discharge of the jury. If they were to be discharged, he desired it understood that it was against his will and protest.

The DISTRICT ATTORNEY, on behalf of the government, left the whole matter in the discretion of the court.

The COURT remarked that this was the third communication of a similar tenor he had received from the jury. If he thought there was any possibility of their coming to an agreement as to the guilt or innocence of the prisoner, he would have no objection to keeping them out longer; but supposing, from the statement made by them, no such result could be expected, he directed the jury now to be discharged.

The prisoner was then remanded to the custody of the marshal.

The following is a copy of the indictment upon which the foregoing trial was had :

### INDICTMENT.

DISTRICT OF COLUMBIA, *County of Washington, to wit :*

The jurors of the United States of America for the county of Washington aforesaid, upon their oath, present that John H. Surratt, late of the county aforesaid, yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county of Washington aforesaid, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said John H. Surratt a certain pistol, of the value of ten dollars, then and there charged with gunpowder and one leaden bullet, which said pistol he, the said John H. Surratt, in his right hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off to, against and upon the said Abraham Lincoln; and that the said John H. Surratt, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, shot and sent forth, as aforesaid, the aforesaid Abraham Lincoln, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln, then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged and sent forth out of the pistol aforesaid, by the said John H. Surratt, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, one mortal wound of the depth of six inches, and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishing did live; on which said fifteenth day of April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said John H. Surratt the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and government of the said United States of America.

*Second count.*—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John H. Surratt and John Wilkes Booth, late of the county aforesaid, yeomen, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, afterwards, to wit, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county of Washington aforesaid, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said John Wilkes Booth a certain pistol, of the value of ten dollars, then and there charged with gunpowder and one leaden bullet, which said pistol he, the said John Wilkes Booth, in his right hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off to, against, and upon the said Abraham Lincoln; and that the said John Wilkes Booth,

with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder, shot and sent forth, as aforesaid, the aforesaid Abraham Lincoln in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said John Wilkes Booth, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, one mortal wound of the depth of six inches and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishingly did live; on which said fifteenth day of April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died, and that the aforesaid John H. Surratt then and there feloniously, wilfully, and of his malice aforethought, was present, aiding, helping, and abetting, comforting, assisting, and maintaining the said John Wilkes Booth in the felony and murder aforesaid, in manner and form aforesaid to do and commit.

And so the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and government of the said United States of America.

*Third count.*—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John H. Surratt and John Wilkes Booth, late of the county aforesaid, yeomen, and David E. Herold, late of the county aforesaid, yeoman, and George A. Atzerodt, late of the county aforesaid, yeoman, and Lewis Payne, late of the county aforesaid, yeoman, and Mary E. Surratt, late of the county aforesaid, and others to the jurors aforesaid unknown, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, afterwards, to wit, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county of Washington aforesaid, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said John Wilkes Booth a certain pistol, of the value of ten dollars, then and there charged with gunpowder and one leaden bullet, which said pistol he, the said John Wilkes Booth, in his right hand, then and there had and held, then and there, feloniously, wilfully, and of his malice aforethought, did discharge and shoot off to, against, and upon the said Abraham Lincoln; and that the said John Wilkes Booth, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, shot and sent forth as aforesaid, the aforesaid Abraham Lincoln, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln, then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said John Wilkes Booth, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, one mortal wound of the depth of six inches and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishingly did live; on which said fifteenth day of



April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died; and that the aforesaid John H. Surratt, and David E. Herold, and George A. Atzerodt, and Lewis Payne, and Mary E. Surratt, and other persons to the jurors aforesaid unknown, then and there, feloniously, wilfully, and of their malice aforethought, were present, aiding, helping, and abetting, comforting, assisting, and maintaining the said John Wilkes Booth, the said felony and murder aforesaid, in manner and form aforesaid, to do and commit.

And so the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and government of the said United States of America.

*Fourth count.*—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Wilkes Booth, late of the county aforesaid, and the said John H. Surratt, late of the county aforesaid, and the said David E. Herold, late of the county aforesaid, and the said George A. Atzerodt, late of the county aforesaid, and the said Lewis Payne, late of the county aforesaid, and the said Mary E. Surratt, late of the county aforesaid, together with divers other persons to the jurors aforesaid unknown, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, at the county of Washington aforesaid, unlawfully and wickedly did combine, confederate, and conspire and agree together feloniously to kill and murder one Abraham Lincoln; and that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, and other persons to the jurors aforesaid unknown, not having the fear of God before their eyes, but being moved and seduced by the instigations of the devil, afterwards, to wit, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county aforesaid, in pursuance of said wicked and unlawful conspiracy in and upon the said Abraham Lincoln, in the peace of God and of the said United States, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said John Wilkes Booth in pursuance of said wicked and unlawful conspiracy, a certain pistol of the value of ten dollars then and there charged with gunpowder and one leaden bullet, which said pistol he, the said John Wilkes Booth, in his right hand then and there held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off to, against, and upon the said Abraham Lincoln; and that the said John Wilkes Booth, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, shot and sent forth, as aforesaid, the aforesaid Abraham Lincoln in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there, feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said John Wilkes Booth, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, one mortal wound of the depth of six inches and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishing did live; on which said fifteenth day of April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died, and that the afore-

said John H. Surratt, and the aforesaid David E. Herold, and the aforesaid George A. Atzerodt, and the aforesaid Lewis Payne, and the aforesaid Mary E. Surratt, then and there, in pursuance of said wicked and unlawful conspiracy, feloniously, wilfully, and of their malice aforethought, were present, aiding, helping, and abetting, comforting, assisting, and maintaining the said John Wilkes Booth, the felony and murder aforesaid, in manner and form aforesaid, to do and commit.

And the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and government of the United States of America.

E. C. CARRINGTON,

*United States Attorney for the District of Columbia.*

Copy—test :

R. J. MEIGS, *Clerk.*















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