

THE
WORKS
OF
WILLIAM H. SEWARD

EDITED BY
GEORGE E. BAKER

"Nature and Laws would be in an ill case, if Slavery should find what to say for itself, and Liberty be mute; and if tyrants should find men to plead for them, and they that can waste and vanquish tyrants, should not be able to find advocates."
MILTON.

IN THREE VOLUMES

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our democratic system. It is the agent by which the people acquire the information they need in regard to the conduct of every department of the government—the judiciary as well as the legislative and executive authorities. All these departments, as well as the public conduct of all citizens, are subjected to the scrutiny of an all-powerful and all-controlling public opinion, ascertained, collected, and pronounced by the public press. That public opinion is higher than courts, and will, when it is necessary, correct even judicial errors. The conductors of the press have legitimate functions to perform, and if they perform them honestly, fairly, and faithfully, they ought to be upheld, favored and protected, rather than discouraged, embarrassed and oppressed. Under such circumstances it is neither wise, nor will it be successful, to enforce on an honest, enlightened and patriotic journal, the rules of libel established in the worst of times in England—that if a publication reflect upon any man or magistrate it shall be *presumed*, without *proof* and against all rational presumption of candor and fairness, that the error was intentional, malicious and malignant, and that vindictive damages shall be awarded where an honest but unsuccessful effort to justify is made. Far wiser and better would it be to open the doors wider to defence in such cases, and to restore the ancient English law which distinguished harmless invective, or that temperate and discreet censure or ridicule which promoted public morals, from vicious and licentious defamation. If this course is not taken, and we shall still adhere to the dictum that any censorious or ridiculing writing shall be deemed malicious and therefore libelous, the law cannot be executed, because not sustained by a sound public opinion. The action of libel will more and more be relinquished by good men, for whom it was designed, and be left to fall more completely into the hands of litigious and corrupt men as an engine of extortion and oppression. The judgments of a court will be but *brutum fulmen* if they be not sustained by the candid judgment of society, and will have no power to arrest the evil of licentiousness. Whatever may be the course of courts of justice, the press will go on to perform its high and imperative duties, sustained by the free people, whose liberties it maintains and defends. To fetter it with the star chamber re-scripts of libel will be an effort as vain as would be an attempt to graduate and control by the ancient laws of the highway the velocity of the newly discovered and all-revolutionizing magnetic telegraph.

DEFENCE OF WILLIAM FREEMAN.*

INTRODUCTORY NOTE.—In 1845, Henry Wyatt, a convict in the State Prison at Auburn, murdered another convict. Wyatt was indicted, and eminent counsel were applied to, to defend him. But they declined, on the eve of the trial, on the ground that no provision was made for their compensation.

Wyatt appealed to Mr. Seward's humanity, and he at once consented. When the circumstances were investigated, reason was found for the belief that the prisoner was insane. The trial came on in February, 1846, and after an impartial hearing, the jury disagreed. On the 12th of March, succeeding, a fearful tragedy occurred near Auburn.

William Freeman, a negro, and a native of that place, who had recently been discharged from five years' confinement in the State Prison, having provided himself with weapons, proceeded to the house of John G. Van Nest, in the suburbs of Auburn, and there, without notice and without any apparent motive, slew Mr. Van Nest, a wealthy and worthy citizen, Mrs. Van Nest, her sleeping infant, and her aged mother, and wounded mortally, as was then thought, the laboring man who dwelt with them, leaving only the maid-servant of the family, and she only had been spared because he had been disabled in the affray. He took an old horse from the stable, and, finding the animal unfit to travel, stabbed and left it by the road-side. He proceeded to the house of a relative, forty miles from Auburn, expressing a desire to remain there until he should recover from his wounds. He was arrested and conveyed back to Auburn, and then, surrounded by the people of Auburn and the adjacent country, was taken to the scene of his crimes, to be identified by the survivors, in the presence of the dead bodies of his victims.

So far from manifesting any compunction, he avowed the deed, and described its details, and laughed continually during the recital. The incensed people saw in this and other strange conduct of the prisoner, and in the absence of any motive of the crime, reason to apprehend that he might escape punishment, by a plea of insanity. They were easily made to believe that the partial success which had attended that plea in Wyatt's case, had emboldened the negro to commit acts so atrocious and so horrible. They resolved, therefore, and prepared to take him from the hands of the police, and to inflict summary justice upon him.

This design, however, was baffled by stratagem, and the multitude reluctantly dispersed, after being assured by a judge that Freeman should be tried, and "no Seward should defend him."

Meantime the victims were buried, amid sincere exhibitions of popular sympathy, mingled with execrations against the homicide, and unsparing denunciations of the lawyer whose defence of Wyatt was supposed in some way to have brought about these

* Argument in defence of William Freeman.—Auburn, July 21 and 22, 1846.

revolting crimes, and who also, it was supposed, would have the audacity to appear in defence of the wretch who had committed them. The clergyman who conducted the funeral, carried the excitement to a higher pitch, by appealing to the instincts of self-preservation and against the indulgence of moderation and forbearance toward "adroit counsel," in their efforts to lower the standard of moral accountability by the plea of insanity. Mr. Seward's law-partners and his friends, overpowered by these demonstrations of popular prejudice, gave pledges to the public that he would not outrage the prevailing sentiment, by defending the prisoner. The governor, Silas Wright, responded promptly to the popular demand for a special term of the court, to try both Wyatt and Freeman on the 1st of June. In the meantime, Mr. Seward returned from Washington, and heard the strange facts in the case with pain and surprise. They raised a suspicion that the prisoner was a lunatic. He thereupon wrote to the most eminent members of the Medical Faculty in New York, Connecticut, and Massachusetts, and called their attention to the case, as one which interested science and humanity not less than justice, and requested them to attend on the trial and make the necessary examinations of the prisoner, to the end that if he was sane the law might have its due vindication, and if he was not, the country might be saved from the crime of inflicting judicial murder upon a lunatic. He received favorable answers, and then rested, willing and anxious to leave the conduct of the case to any proper member of the bar who might be in any way employed, or induced, or assigned to defend the prisoner. The court assembled. The physicians pronounced the prisoner a lunatic. No counsel, however, appeared in his behalf, and the people who thronged the court-house and streets were expecting an unobstructed triumph. Mr. Seward, however, appeared and interposed a preliminary plea that the prisoner was insane. The plea was received, but it drew down upon Mr. Seward the public indignation in that vicinity and throughout the whole country, and his conduct became the subject of a political issue. His own party generally recoiled from a proceeding so unpopular, while the other party condemned him without reserve, and without moderation. After a trial of a fortnight, as to the sanity of the prisoner, the jury went out for consultation. Eleven were for a verdict that he was sane, and one for a verdict that he was insane. A private intimation of these facts was conveyed to the court, and a message returned that a verdict might be rendered that the prisoner was sane enough to distinguish between right and wrong. The twelfth juror joined in this verdict, believing it insufficient to put the prisoner on his trial; the other eleven, however, privately knew that the court would decide it to be sufficient. The trial proceeded, (Mr. Seward's efforts to set aside the verdict having failed), and after the lapse of another fortnight, a verdict of guilty was rendered, and the unconscious prisoner was sentenced to be executed. Mr. Seward applied to the governor for a pardon, but was denied. He then appealed to the Supreme Court for a new trial. John Van Buren, Attorney-General, appeared in opposition. After a patient hearing of the case, however, the court reversed the judgment, and granted a new trial. The same judge, who had before tried and condemned the prisoner, now refused to try him again, on the ground of his manifest idiocy. Indeed, the time soon arrived when all doubts were at an end.

Freeman died in his cell, about a year after his trial and conviction. A *post mortem* examination was made of his brain, and seven of the physicians of Auburn concurred in a statement that it was the subject of a chronic disease, remarkable in its extent. Such is a brief outline of this most extraordinary case. For other facts in this interesting trial, the reader is referred to the "Trial of William Freeman, by B. F. Hall, Esq., Auburn, N. Y., 1847," to the Memoir, and to the following argument:—En.

MAY IT PLEASE THE COURT—Gentlemen of the jury: "THOU SHALT NOT KILL," and, "WHOSO SHEDDETH MAN'S BLOOD, BY MAN SHALL HIS BLOOD BE SHED," are laws found in the code of that people who, although distracted and dispersed through all lands, trace their history to the creation; a history that records that murder was the first of human crimes.

The first of these precepts constitutes a tenth part of the jurisprudence which God saw fit to establish, at an early period, for the government of all mankind, throughout all generations. The latter, of less universal obligation, is still retained in our system, although other states, as intelligent and refined, as secure and peaceful, have substituted for it the more benign principle that good shall be returned for evil. I yield implicit submission to this law, and acknowledge the justness of its penalty, and the duty of courts and juries to give it effect.

In this case, if the prisoner *be* guilty of murder, I do not ask remission of punishment. If he be guilty, never was murderer *more* guilty. He has murdered not only John G. Van Nest, but his hands are reeking with the blood of other, and numerous, and even more pitiable victims. The slaying of Van Nest, if a crime at all, was the cowardly crime of assassination. John G. Van Nest was a just, upright, virtuous man, of middle age, of grave and modest demeanor, distinguished by especial marks of the respect and esteem of his fellow-citizens. On his arm leaned a confiding wife, and they supported, on the one side, children to whom they had given being, and, on the other, aged and venerable parents, from whom they had derived existence. The assassination of such a man was an atrocious crime, but the murderer, with more than savage refinement, immolated on the same altar, in the same hour, a venerable and virtuous matron of more than three-score years, and her daughter, the wife of Van Nest, mother of an unborn infant. Nor was this all. Providence, which, for its own mysterious purposes, permitted these dreadful crimes, in mercy suffered the same arm to be raised against the sleeping orphan child of the butchered parents and received it into Heaven. A whole family, just, gentle, and pure, were thus, in their own house, in the night time, without any provocation, without one moment's warning, sent by the murderer to join the assembly of the just; and even the laboring man, sojourning within their gates, received

the fatal blade into his breast, and survives through the mercy, not of the murderer, but of God.

For William Freeman, as a murderer, I have no commission to speak. If he had silver and gold accumulated with the frugality of Croesus, and should pour it all at my feet, I would not stand an hour between him and the avenger. But for the innocent, it is my right, my duty to speak. If this sea of blood was *innocently* shed, then it is my duty to stand beside him until his steps lose their hold upon the scaffold.

"Thou shalt not kill," is a commandment addressed not to him alone, but to me, to you, to the court, and to the whole community. There are no exceptions from that commandment, at least in civil life, save those of self-defence, and capital punishment for crimes in the due and just administration of the law. There is not only a question, then, whether the prisoner has shed the blood of his fellow-man, but the question, whether we shall unlawfully shed his blood. I should be guilty of murder if, in my present relation, I saw the executioner waiting for an insane man, and failed to say, or failed to do in his behalf, all that my ability allowed. I think it has been proved of the prisoner at the bar, that, during all this long and tedious trial, he has had no sleepless nights, and that even in the day time, when he retires from these halls to his lonely cell, he sinks to rest like a wearied child, on the stone floor, and quietly slumbers till roused by the constable with his staff to appear again before the jury. His counsel enjoy no such repose. Their thoughts by day and their dreams by night are filled with oppressive apprehension that, through their inability or neglect, he may be condemned.

I am arraigned before you for undue manifestations of zeal and excitement. My answer to all such charges shall be brief. When this cause shall have been committed to you, I shall be happy indeed if it shall appear that my only error has been, that I have felt too much, thought too intensely, or acted too faithfully.

If error on my part would thus be criminal, how great would yours be if you should render an unjust verdict! Only four months have elapsed since an outraged people, distrustful of judicial redress, doomed the prisoner to immediate death. Some of you have confessed, before you came here, that you approved that lawless sentence. All men now rejoice that the prisoner was saved for this solemn trial. But if this trial, through any wilful

fault or prejudice of yours, should prove only a mockery of justice, it would be as criminal as that precipitate sentence. If any prejudice of witnesses, or the imagination of counsel, or any ill-timed jest shall at any time have diverted your attention, or if any pre-judgment which you may have brought into the jury box, or any cowardly fear of popular opinion shall have operated to cause you to deny to the prisoner that dispassionate consideration of his case which the laws of God and man exact of you, and if, owing to such an error, this wretched man shall fall from among the living, what will be your crime? You will have violated the commandment, "Thou shalt not kill." It is not the form or letter of the trial by jury that authorizes you to send your fellow-man to his dread account, but it is the spirit that sanctifies that great institution; and if, through pride, passion, timidity, weakness, or any cause, you deny the prisoner one iota of all the defence to which he is entitled by the law of the land, you yourselves, whatever his guilt may be, will have broken the commandment, "Thou shalt do no murder."

There is not a corrupt or prejudiced witness, there is not a thoughtless or heedless witness, who has testified what was not true in spirit, or what was not wholly true, or who has suppressed any truth, who has not offended against the same injunction.

Nor is the Court itself above that commandment. If these Judges have been influenced by the excitement which has brought this vast assemblage here, and under such influence, or under any other influence, have committed voluntary error, and have denied to the prisoner or shall hereafter deny to him the benefit of any fact or any principle of law, then this Court will have to answer for the deep transgression, at that bar at which we all shall meet again. When we shall appear there, none of us can plead that we were insane and knew not what we did; and by just so much as our ability and knowledge exceed those of this wretch, whom the world regards as a fiend in human shape, will our guilt exceed his, if we be guilty.

I plead not for a murderer. I have no inducement, no motive to do so. I have addressed my fellow citizens, in many various relations, when rewards of wealth and fame awaited me. I have been cheered on other occasions by manifestations of popular approbation and sympathy; and where there was no such encouragement, I have had at least the gratitude of him whose cause I

defended. But I speak now in the hearing of a People who have prejudged the prisoner, and condemned me for pleading in his behalf. He is a convict, a pauper, a negro, without intellect, sense, or emotion. My child, with an affectionate smile, disarms my care-worn face of its frown whenever I cross my threshold. The beggar in the street obliges me to give, because he says "God bless you," as I pass. My dog caresses me with fondness if I will but smile on him. My horse recognizes me when I fill his manger. But what reward, what gratitude, what sympathy and affection can I expect here? There the prisoner sits. Look at him. Look at the assemblage around you. Listen to their ill-suppressed censures and their excited fears, and tell me where among my neighbors or my fellow men, where even in his heart, I can expect to find the sentiment, the thought, not to say of reward or of acknowledgment, but even of recognition. I sat here two weeks during the preliminary trial. I stood here between the prisoner and the Jury nine hours, and pleaded for the wretch that he was insane and did not even know he was on trial: and when all was done, the Jury thought, at least eleven of them thought, that I had been deceiving them, or was self-deceived. They read signs of intelligence in his idiotic smile, and of cunning and malice in his stolid insensibility. They rendered a verdict that he was sane enough to be tried, a contemptible compromise verdict in a capital case; and then they looked on, with what emotions God and they only know, upon his arraignment. The District Attorney, speaking in his adder ear, bade him rise, and reading to him one indictment, asked him whether he wanted a trial, and the poor fool answered, No. Have you Counsel? No. And they went through the same mockery, the prisoner giving the same answers, until a third indictment was thundered in his ears, and he stood before the Court, silent, motionless, and bewildered. Gentlemen, you may think of this transaction what you please, bring in what verdict you can, but I asseverate before Heaven and you, that, to the best of my knowledge and belief, the prisoner at the bar does not at this moment know why it is that my shadow falls on you instead of his own.

I speak with all sincerity and earnestness; not because I expect my opinion to have weight, but I would disarm the injurious impression that I am speaking, merely as a lawyer speaks for his client. I am not the prisoner's lawyer. I am indeed a volunteer

in his behalf; but society and mankind have the deepest interests at stake. I am the lawyer for society, for mankind, shocked beyond the power of expression, at the scene I have witnessed here of trying a maniac as a malefactor. In this, almost the first of such causes I have ever seen, the last I hope that I shall ever see, I wish that I could perform my duty with more effect. If I suffered myself to look at the volumes of testimony through which I have to pass, to remember my entire want of preparation, the pressure of time, and my wasted strength and energies, I should despair of acquitting myself as you and all good men will hereafter desire that I should have performed so sacred a duty. But in the cause of humanity we are encouraged to hope for Divine assistance where human powers are weak. As you all know, I provided for my way through these trials, neither gold nor silver in my purse, nor scrip; and when I could not think beforehand what I should say, I remembered that it was said to those who had a beneficent commission, that they should take no thought what they should say when brought before the magistrate, for in that same hour it should be given them what they should say, and it should not be they who should speak, but the spirit of their Father speaking in them.

You have promised, gentlemen, to be impartial. You will find it more difficult than you have supposed. Our minds are liable to be swayed by temporary influences, and above all, by the influences of masses around us. At every stage of this trial, your attention has been diverted, as it will be hereafter, from the only question which it involves, by the eloquence of the Counsel for the People* reminding you of the slaughter of that helpless and innocent family, and of the danger to which society is exposed by relaxing the rigor of the laws. Indignation against crime, and apprehensions of its recurrence, are elements on which public justice relies for the execution of the law. You must indulge that indignation. You cannot dismiss such apprehensions. You will, in common with your fellow citizens, deplore the destruction of so many precious lives, and sympathize with mourning relations and friends. Such sentiments cannot be censured when operating upon the community at large, but they are deeply to be deplored when they are manifested in the jury box.

Then again a portion of this issue has been tried, imperfectly

* John Van Buren.

tried, unjustly tried, already. A jury of twelve men, you are told, have already rendered their verdict that the prisoner is *now* sane. The deference which right-minded men yield to the opinions of others, the timidity which weak men feel in dissenting from others, may tempt you to surrender your own independence. I warn you that that verdict is a reed which will pierce you through and through. That jury was selected without peremptory challenge. Many of the jurors entered the panel with settled opinions that the prisoner was not only guilty of the homicide, but sane, and all might have entertained such opinions for all that the prisoner could do. It was a verdict founded on such evidence as could be hastily collected in a community where it required moral courage to testify for the accused. Testimony was excluded upon frivolous and unjust pretences. The cause was submitted to the jury on the Fourth of July, and under circumstances calculated to convey a malicious and unjust spirit into the jury box. It was a strange celebration. The dawn of the Day of Independence was not greeted with cannon or bells. No lengthened procession was seen in our streets, nor were the voices of orators heard in our public halls. An intense excitement brought a vast multitude here, complaining of the delay and the expense of what was deemed an unnecessary trial, and demanding the sacrifice of a victim who had been spared too long already. Four hours that assemblage was roused and excited by denunciations of the prisoner, and ridicule of his deafness, his ignorance, and his imbecility. Before the jury retired, the court was informed that they were ready to render the verdict required. One juror, however, hesitated. The next day was the Sabbath. The jury were called, and the court remonstrated with the dissentient, and pressed the necessity of a verdict. That juror gave way at last, and the bell which summoned our citizens to church for the evening service, was the signal for the discharge of the jury, because they had agreed. Even thus a legal verdict could not be extorted. The eleven jurors, doubtless under an intimation from the court, compromised with the twelfth, and a verdict was rendered, not in the language of the law, that the prisoner was "not insane," but that he was "sufficiently sane, in mind and memory, to distinguish between right and wrong;" a verdict which implied that the prisoner was at least *partially* insane, was diseased in other faculties beside the memory, and partially diseased in that, and that, although he had

mind and memory to distinguish between right and wrong in the abstract, yet that he had not reason and understanding and will to regulate his conduct according to that distinction; in short, a verdict by which the jury unworthily evaded the question submitted to them, and cast upon the court a responsibility which it had no right to assume, but which it did nevertheless assume, in violation of the law. That twelfth juror was afterward drawn as a juror in this cause, and was challenged by the counsel for the people for partiality to the prisoner, and the challenge was sustained by the court, because, although he had, as the court say, pronounced by his verdict that the prisoner was sane, he then declared that he believed the prisoner insane, and would die in the jury box before he would render a verdict that he was sane. Last and chief of all objections to that verdict now, it has been neither pleaded nor proved here, and therefore is not in evidence before you. I trust then that you will dismiss to the contempt of mankind that jury and their verdict, which thus equivocated upon law and science, health and disease, crime and innocence.

Again. An inferior standard of intelligence has been set up here as a standard of the negro race, and a false one as a standard of the Asiatic race. This prisoner traces a divided lineage. On the paternal side his ancestry is lost among the tiger hunters on the gold coast of Africa, while his mother constitutes a portion of the small remnant of the Narragansett tribe. Hence it is held that the prisoner's intellect is to be compared with the depreciating standard of the African, and his passions with the violent and ferocious character erroneously imputed to the aborigines. Indications of manifest derangement, or at least of imbecility, approaching to idiocy, are therefore set aside, on the ground that they harmonize with the legitimate but degraded characteristics of the races from which he comes. You, gentlemen, have, or ought to have, lifted up your souls above the bondage of prejudices so narrow and so mean as these. The color of the prisoner's skin, and the form of his features, are not impressed upon the spiritual, immortal mind which works beneath. In spite of human pride, he is still your brother, and mine, in form and color accepted and approved by his Father, and yours, and mine, and bears equally with us the proudest inheritance of our race—the image of our Maker. Hold him then to be a MAN. Exact of him all the responsibilities which should be exacted under like circumstances if

he belonged to the Anglo-Saxon race, and make for him all the allowances, and deal with him with all the tenderness which, under like circumstances, you would expect for yourselves.

The prisoner was obliged—no, his counsel were obliged, by law, to accept the plea of *Not Guilty*, which the court directed to be entered in his behalf. That plea denies the homicide. If the law had allowed it, we would gladly have admitted all the murders of which the prisoner was accused, and have admitted them to be as unprovoked as they were cruel, and have gone directly before you on the only defence upon which we have insisted, or shall insist, or could insist—that he is irresponsible, because he was and is insane.

We labor, not only under these difficulties, but under the further embarrassment that the plea of insanity is universally suspected. It is the last subterfuge of the guilty, and so is too often abused. But however obnoxious to suspicion this defence is, there have been cases where it was true; and when true, it is of all pleas the most perfect and complete defence that can be offered in any human tribunal. Our Saviour forgave his judges because "they knew not what they did." The insane man who has committed a crime, knew not what he did. If this being, dyed with human blood, be *insane*, you and I, and even the children of your affections, are not more guiltless than he.

Is there reason to indulge a suspicion of fraud here? Look at this stupid, senseless fool, almost as inanimate as the clay moulded in the brick-yard, and say, if you dare, that you are afraid of being deceived by him. Look at me. You all know me. Am I a man to engage in a conspiracy to deceive you and defraud justice? Look on us all, for although I began the defence of this cause alone, thanks to the generosity, to the magnanimity of an enlightened profession, I come out strong in the assistance of counsel never before attached to me in any relation, but strongly grappled to me now, by these new and endearing ties. Is any one of us a man to be suspected? The testimony is closed. Look through it all. Can suspicion or malice find in it any ground to accuse us of a plot to set up a false and fabricated defence? I will give you, gentlemen, a key to every case where insanity has been wrongfully, and yet successfully maintained. Gold, influence, popular favor, popular sympathy, raised that defence, and made it impregnable. But you have never seen a poor, worthless, spir-

itless, degraded negro like *this*, acquitted wrongfully. I wish this trial may prove that such an one can be acquitted rightfully. The danger lies here. There is not a *WHITE* man or *WHITE* woman who would not have been dismissed long since from the perils of such a prosecution, if it had only been proved that the offender was so ignorant and so brutalized as not to understand that the defence of insanity had been interposed.

If he feign, who has trained the idiot to perform this highest and most difficult of all intellectual achievements? Is it I? Shakspeare and Cervantes only, of all mankind, have conceived and perfected a counterfeit of insanity. Is it I? Why is not the imposition exposed, to my discomfiture and the prisoner's ruin? Where was it done? Was it in public, here? Was it in secret, in the jail? His deafened ears could not hear me there unless I were also overheard by other prisoners, by jailers, constables, the sheriff, and a cloud of witnesses. Who has the keys of the jail? Have I? You have had sheriff, jailer, and the whole police upon the stand. Could none of these witnesses reveal our plot? Were there none to watch and report the abuse? When they tell you, or insinuate, gentlemen, that this man has been taught to feign insanity, they discredit themselves, as did the Roman sentinels, who, appointed to guard the sepulchre of our Saviour, said, in excuse of the broken seal, that while they slept men came and rolled away the stone.

I advance towards the merits of the cause. The law which it involves will be found in the case of Kleim, tried for murder in 1844, before Judge Edmonds, of the first circuit, in the city of New York, reported in the *Journal of Insanity* for January, 1846, at page 261. I read from the report of the judge's charge:

"He told the Jury that there was no doubt that Kleim had been guilty of the killing imputed to him, and that under circumstances of atrocity and deliberation which were calculated to excite in their minds strong feelings of indignation against him. But they must beware how they permitted such feelings to influence their judgment. They must bear in mind that the object of punishment was not vengeance, but reformation; not to extort from a man an atonement for the life which he cannot give, but by the terror of the example, to deter others from the like offences, and that nothing was so likely to destroy the public confidence in the administration of criminal justice, as the infliction of its pains upon one whom Heaven has already afflicted with the awful malady of insanity."

These words deserve to be written in letters of gold upon tablets of marble. Their reason and philosophy are apparent. If you send the lunatic to the gallows, society will be shocked by your inhumanity, and the advocates for the abolition of capital punish-

ment will find their most effective argument in the fact that a jury of the country, through ignorance or passion, or prejudice, have mistaken a madman for a criminal.

The report of Judge Edmonds' charge proceeds :

"It was true that the plea of insanity was sometimes adopted as a cloak for crime, yet it was unfortunately equally true, that many more persons were unjustly convicted, to whom their unquestioned insanity ought to have been an unailing protection."

This judicial answer to the argument that jurors are too likely to be swayed by the plea of insanity, is perfect and complete.

Judge Edmonds further charged the jury—

"That it was by no means an easy matter to discover or define the line of demarcation where sanity ended and insanity began," and that it was often "difficult for those most expert in the disease to detect or explain its beginning, extent, or duration," "that the classifications of the disease were in a great measure arbitrary, and the jury were not obliged to bring the case of the prisoner within any one of the classes, because the symptoms of the different kinds were continually mingling with each other."

The application of this rule will render the present case perfectly clear, because it appears from the evidence that the prisoner is laboring under a combination of *mania* or excited madness, with *dementia* or decay of the mind.

Judge Edmonds furnishes you with a balance to weigh the testimony in the case, in these words :

"It was important that the jury should understand how much weight was to be given to the opinions of medical witnesses. The opinions of men who had devoted themselves to the study of insanity as a distinct department of medical science, and studied recent improvements and discoveries, especially when to that knowledge they added the experience of personal care of the insane, could never be safely disregarded by Courts and Juries; and on the other hand, the opinions of physicians who had not devoted their particular attention to the disease, were not of any more value than the opinions of common persons."

This charge of Judge Edmonds furnishes a lamp to guide your feet, and throws a clear and broad light over your path. He acknowledges, in the first place, with distinguished independence for a judge and a lawyer, that "the law, in its slow and cautious progress, still lags far behind the advance of true knowledge." An insane person is one who, at the time of committing the act, labored under such a defect of reason as not to know the nature and quality of the act he was doing, or if he did know it, did not know he was doing what was wrong; and the question is not whether the accused knew the difference between right and wrong *generally*, but whether he knew the difference between right and wrong in regard to the very act with which he is charged." "If some controlling disease was in truth, the acting power within him, which he could not resist, or if he had not a sufficient use of

his reason to control the passions which prompted him, he is not responsible. But it must be an absolute dispossession of the free and natural agency of the human mind. In the glowing but just language of Erskine, it is not necessary that Reason should be hurled from her seat, it is enough that Distraction sits down beside her, holds her trembling in her place, and frightens her from her propriety."

Judge Edmonds proceeds :

"And it must be borne in mind that the *moral* as well as the *intellectual* faculties may be so disordered by the disease as to deprive the mind of its controlling and directing power.

"In order then to establish a crime, a man must have memory and intelligence to know that the act he is about to commit is wrong; to remember and understand, that if he commit the act, he will be subject to punishment; and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment which he will secure by abstaining from it.

"If, on the other hand, he have not intelligence enough to have a criminal intent and purpose; and if his moral or intellectual powers are either so deficient that he has not sufficient will, conscience, or controlling mental power; or if through the overwhelming violence of mental disease his intellectual power is for the time obliterated, he is not a responsible moral agent."

The learned Judge recommends to the jury,

"As aids to a just conclusion, to consider the extraordinary and unaccountable alteration in the prisoner's whole mode of life; the inadequacy between the slightness of the cause and the magnitude of the offence; the recluse and ascetic life which he had led; his invincible repugnance to all intercourse with his fellow creatures; his behavior and conduct at the time the act was done, and subsequently during his confinement; and the stolid indifference which he alone had manifested during the whole progress of a trial upon which his life or death depended."

Kleim was acquitted, and sent, according to law, to the State Lunatic Asylum at Utica. The Superintendent of the Asylum, in a note to this report, states that Kleim is uniformly mild and pleasant, has not asked a question, or spoken or learned the name of any one; seems very imperfectly to recollect the murder or the trial; says he "was put in prison; does not know what for; and was taken to the court, but had no trial;" that his bodily health is good, but that his mind is nearly gone—quite demented.

You cannot fail, Gentlemen of the Jury, to remark the extraordinary similarity between the case of Kleim, as indicated in the charge of Judge Edmonds, and that of the prisoner at the bar. If I were sure *you* would receive such a charge, and be guided by it, I might rest here, and defy the eloquence of the Attorney General. The proof of insanity in this case is of the same nature, and the disease in the same form as in the case of Kleim. The only difference is, that the evidence here is a thousand times more conclusive. But Judge Edmonds does not preside here. Kleim was a *white* man, Freeman is a *negro*. Kleim set fire to a house, to

burn only a poor, obscure woman and her child. Here the madman destroyed a whole family, rich, powerful, honored, respected and beloved. Kleim was tried in the city of New York; and the community engaged in their multiplied avocations, and heedless of a crime not unfrequent there, and occurring in humble life, did not overawe and intimidate the court, the jury, or the witnesses. Here a panic has paralyzed humanity. No man or woman feels safe until the maniac shall be extirpated from the face of the earth. Kleim had the sympathies of men and women, willing witnesses, advocates sustained and encouraged by popular favor, and an impartial jury. Freeman is already condemned by the tribunal of public opinion, and has reluctant and timorous witnesses, counsel laboring under embarrassments plainly to be seen, and a jury whose impartiality, although it ought to have been ascertained at the beginning, is yet to be proved.

The might that slumbered in this maniac's arm was exhausted in the paroxysm which impelled him to his dreadful deeds. Yet an excited community, whose terror has not yet culminated, declare that, whether sane or insane, he must be executed to give safety to your dwellings and theirs. I must needs then tell you the law, which will disarm such cowardly fear. If you acquit the prisoner, he cannot go at large, but must be committed to jail, to be tried by another jury, for a second murder. Your dwellings therefore will be safe. If such a jury find him sane, he will then be sent to his fearful account, and your dwellings will be safe. If acquitted, he will be remanded to jail, to await a third trial, and your dwellings will be safe. If that jury convict, he will then be executed, and your dwellings will be safe. If they acquit, he will still be detained to answer for a fourth murder, and your dwellings will be safe. Whether the fourth jury acquit or convict, your dwellings will still be safe: for if they convict, he will then be cut off; and if they acquit, he must, according to the law of the land, be sent to the Lunatic Asylum, there to be confined for life. You may not slay him, then, for the public security, because the public security does not demand the sacrifice. No security for home or hearth can be obtained by judicial murder. God will abandon him who, through cowardly fear, becomes such a murderer. I also stand for the security of the homes and hearths of my fellow citizens, and have as deep an interest, and as deep a stake as any one of them. *Here* are my home and hearth, exposed

to every danger that can threaten theirs; but I know that security cannot exist for any, if feeble man undertakes to correct the decrees of Providence.

The Counsel for the People admit in the abstract that insanity excuses crime, but they insist on rules for the regulation of insanity to which that disease can never conform itself. Dr. FOSGATE testified that the prisoner was insane. He was asked by the Attorney General, "What if the law, nevertheless, hold to be criminal that same state of mind which you pronounce insanity?" He answered with high intelligence and great moral firmness, "The law cannot alter the constitution of man, as it was given him by his Maker."

Insanity such as the Counsel for the People would tolerate, never did and never will exist. They bring its definition from Coke, Blackstone and Hale, and it requires that by reason either of natural infirmity or of disease, the wretched subject shall be unable to count twenty, shall not know his father or mother, and shall have no more reason or thought than a brute beast.

According to the testimony of Dr. SPENCER, and the claim of the Attorney General, an individual is not insane if you find any traces or glimmerings of the several faculties of the human mind, or of the more important ones. Dr. SPENCER has found in the prisoner, memory of his wrongs and sufferings, hunger to be appeased, thirst to be quenched, choice between bread and animal food, love of combat, imperfect knowledge of money, anger and malice. All of Dr. SPENCER's questions to the accused show that, in looking for insanity, he demands an entire obliteration of all conception, attention, imagination, association, memory, understanding and reason, and every thing else. There never was an idiot so low, never a diseased man so demented.

You might as well expect to find a man born without eyes, ears, nose, mouth, hands and feet, or deprived of them all by disease, and yet surviving, as to find *such* an idiot, or such a lunatic, as the Counsel for the People would hold irresponsible. The reason is, that the human mind is not capable, while life remains, of such complete obliteration. What is the human mind? It is immaterial, spiritual, immortal; an emanation of the Divine Intelligence, and if the frame in which it dwells had preserved its just and natural proportions, and perfect adaptation, it would be a pure and heavenly existence. But that frame is marred and disordered in its best estate. The spirit has communication with the world

without, and acquires imperfect knowledge only through the half-opened gates of the senses. If, from original defects, or from accidental causes, the structure be such as to cramp or restrain the mind, it becomes or appears to be weak, diseased, vicious and wicked. I know one who was born without sight, without hearing, and without speech, retaining the faculties of feeling and smell. That child was, and would have continued to be an idiot, incapable of receiving or communicating thoughts, feelings or affections; but tenderness unexampled, and skill and assiduity unparalleled, have opened avenues to the benighted mind of Laura Bridgman, and developed it into a perfect and complete human spirit, consciously allied to all its kindred, and aspiring to Heaven. Such is the mind of every idiot, and of every lunatic, if you can only open the gates, and restore the avenues of the senses; and such is the human soul when deranged and disordered by disease, imprisoned, confounded, benighted. That disease is insanity.

Doth not the idiot eat? Doth not the idiot drink? Doth not the idiot know his father and his mother? He does all this because he is a man. Doth he not smile and weep? Do you think he smiles and weeps for nothing? He smiles and weeps because he is moved by human joys and sorrows, and exercises his reason, however imperfectly. Hath not the idiot anger, rage, revenge? Take from him his food, and he will stamp his feet and throw his chains in your face. Do you think he doth this for nothing? He does it all because he is a man, and because, however imperfectly, he exercises his reason. The lunatic does all this, and, if not quite demented, all things else that man, in the highest pride of intellect, does or can do. He only does them in a different way. You may pass laws for his government. Will he conform? Can he conform? What cares he for your laws? He will not even plead; he cannot plead his disease in excuse. *You* must interpose the plea for him, and if you allow it, he, when redeemed from his mental bondage, will plead for you when he shall return to your Judge and his. If you deny his plea, he goes all the sooner, freed from imperfection, and with energies restored, into the presence of that Judge. You must meet him there, and then, no longer bewildered, stricken and dumb, he will have become as perfect, clear and bright, as those who reviled him in his degradation, and triumphed in his ruin.

And now what is insanity? Many learned men have defined

it for us, but I prefer to convey my idea of it in the simplest manner. Insanity is a disease of the body, and I doubt not of the brain. The world is astonished to find it so. They thought for almost six thousand years that it was an affection of the mind only. Is it strange that the discovery should have been made so late? You know that it is easier to move a burden upon two smooth rails on a level surface, than over the rugged ground. It has taken almost six thousand years to learn that. But moralists argue that insanity shall not be admitted as a physical disease, because it would tend to exempt the sufferer from responsibility, and because it would expose society to danger. But who shall know, better than the Almighty, the ways of human safety, and the bounds of human responsibility?

And is it strange that the brain should be diseased? What organ, member, bone, muscle, sinew, vessel or nerve is not subject to disease? What is physical man, but a frail, perishing body, that begins to decay as soon as it begins to exist? What is there of animal existence here on earth exempt from disease and decay? Nothing. The world is full of disease, and that is the great agent of change, renovation and health.

And what wrong or error can there be in supposing that the mind may be so affected by disease of the body as to relieve man from responsibility? You will answer, it would not be safe. But who has assured you of safety? Is not the way of life through dangers lurking on every side, and though you escape ten thousand perils, must you not fall at last? Human life is not safe, nor intended to be safe, against the elements. Neither is it safe, nor intended to be safe, against the moral elements of man's nature. It is not safe against pestilence, nor against war, against the thunderbolts of heaven, nor against the blow of the maniac. But comparative safety can be secured, if you will be wise. You can guard against war, if you will cultivate peace. You can guard against the lightning, if you will learn the laws of electricity, and raise the protecting rod. You will be safe against the maniac, if you will watch the causes of madness, and remove them. Yet after all, there will be danger enough from all these causes to remind you that on earth you are not immortal.

Although my definition would not perhaps be strictly accurate, I should pronounce insanity to be a derangement of the mind, character and conduct, resulting from bodily disease. I take this

word derangement, because it is one in common every day use. We all understand what is meant when it is said that anything is ranged or arranged. The houses on a street are ranged, if built upon a straight line. The fences on your farms are ranged. A single object too may be ranged. A tower, if justly built, is ranged; that is, it is ranged by the plummet. It rises in a perpendicular range from the earth. A file of men marching in a straight line are in range. "Range yourselves, men," though not exactly artistical, is not an uncommon word of command. Now what do we mean when we use the word "*deranged*?" Manifestly that a thing is not ranged, is not arranged, is out of range. If the houses on the street be built irregularly, they are deranged. If the walls be inclined to the right or left, they are deranged. If there be an unequal pressure on either side, the tower will lean, that is, it will be deranged. If the file of men become irregular, the line will be deranged. So if a man is insane. There was a regular line which he was pursuing; not the same line which you or I follow, for all men pursue different lines, and every sane man has his own peculiar path. All these paths are straight, and all are ranged, though all divergent. It is easy enough to discover when the street, the wall, the tower, or the martial procession is deranged. But it is quite another thing to determine when the course of an individual life has become deranged. We deal not then with geometrical or material lines, but with an imaginary line. We have no physical objects for landmarks. We trace the line backward by the light of imperfect and unsatisfactory evidence, which leaves it a matter almost of speculation whether there has been a departure or not. In some cases, indeed, the task is easy. If the fond mother becomes the murderer of her offspring, it is easy to see that she is deranged. If the pious man, whose steps were firm and whose pathway led straight to heaven, sinks without temptation into criminal debasement, it is easy to see that he is deranged. But in cases where no natural instinct or elevated principle throws its light upon our research, it is often the most difficult and delicate of all human investigations to determine when a person is deranged.

We have two tests. *First*, to compare the individual after the supposed derangement with himself as he was before. *Second*, to compare his course with those ordinary lines of human life which

we expect sane persons, of equal intelligence, and similarly situated, to pursue.

If derangement, which is insanity, mean only what we have assumed, how absurd is it to be looking to detect whether memory, hope, joy, fear, hunger, thirst, reason, understanding, wit, and other faculties, remain? So long as life lasts, they never cease to abide with man, whether he pursue his straight and natural way, or the crooked and unnatural course of the lunatic. If he be diseased, his faculties will not cease to act. They will only act differently. It is contended here that the prisoner is not deranged because he performed his daily task in the State Prison, and his occasional labor afterward; because he grinds his knives, fits his weapons, and handles the file, the axe and the saw, as he was instructed, and as he was wont to do. Now, the Lunatic Asylum at Utica has not an idle person in it, except the victims of absolute and incurable dementia, the last and worst stage of all insanity. Lunatics are almost the busiest people in the world. They have their prototypes only in children. One lunatic will make a garden, another drive the plough, another gather flowers. One writes poetry, another essays, another orations. In short, lunatics eat, drink, sleep, work, fear, love, hate, laugh, weep, mourn, die. They do all things that sane men do, but do them in some peculiar way. It is said, however, that this prisoner has hatred and anger, that he has remembered his wrongs, and nursed and cherished revenge; wherefore, he cannot be insane. Cowper, a moralist who had tasted the bitter cup of insanity, reasoned otherwise:

"But violence can never longer sleep
Than human passions please. In ev'ry heart
Are sown the sparks that kindle fry war;
Occasion needs but fan them and they blaze,
The seeds of murder in the breast of man."

Melancholy springs oftenest from recalling and brooding over wrong and suffering. Melancholy is the first stage of madness, and it is only recently that the less accurate name of monomania has been substituted in the place of melancholy. Melancholy is the foster-mother of anger and revenge. Until 1830, our statutory definition of lunatics was in the terms "*disorderly persons who, if left at large, might endanger the lives of others.*" Our laws now regard them as *merely* disorderly and dangerous, and society acquiesces, unless madness rise so high, that the madman slays his imaginary enemy, and then he is pronounced sane.

The prisoner lived with Nathaniel Lynch, at the age of eight or nine, and labored occasionally for him during the last winter. Lynch visited him in the jail, and asked him if he remembered him, and remembered living with him. The prisoner answered, Yes. Lynch asked the prisoner whether he was whipped while there, and by whom, and why. From his answers, it appeared that he had been whipped by his mistress for playing truant, and that he climbed a rough board fence in his night-clothes and fled to his mother. Upon this evidence, the learned professor from Geneva College, Dr. SPENCER, builds an argument that the prisoner has conception, sensation, memory, imagination, and association, and is most competent for the scaffold. Now, here are some verses to which I would invite the doctor's attention :

"Shut up in dreary gloom, like convicts are,
In company of murderers! Oh, wretched fate!
If pity e'er extended through the frame,
Or sympathy's sweet cordial touched the heart,
Pity the wretched maniac who knows no blame,
Absorbed in sorrow, where darkness, poverty, and every curse impart."

Here is evidence not merely of memory and other faculties, but of what we call *genius*. Yet these verses are a sad effusion of Thomas Lloyd, a man-slaying maniac in Bedlam.

The first question of fact here, gentlemen, as in every case where insanity is gravely insisted upon, is this :

IS THE PRISONER FEIGNING OR COUNTERFEITING INSANITY ?

What kind of man is he? A youth of twenty-three, without learning, education, or experience. Dr. SPENCER raises him just above the brute; Dr. BIGELOW exalts him no higher; and Dr. DEMON thinks that he has intellectual capacity not exceeding that of a child of ten years, with the knowledge of one of two or three. These are the people's witnesses. All the witnesses concur in these estimates of his mind.

Can you conceive of such a creature comprehending such a plot, and standing up in his cell in the jail, hour after hour, day after day, week after week, and month after month, carrying on such a fraud; and all the while pouring freely into the ears of inquisitors curious, inquisitors friendly, and inquisitors hostile, without discrimination or alarm, or apparent hesitation or suspicion, with "child-like simplicity," as our witnesses describe it, and with "entire docility," as it is described by the witnesses for the people, confessions of crime which, if they fail to be received as

evidences of insanity, must constitute an insurmountable barrier to his acquittal?

I am ashamed for men who, without evidence of the prisoner's dissimulation, and in opposition to the unanimous testimony of all the witnesses, that he is sincere, still think that this poor fool may deceive them. If he could feign, and were feigning, would he not want some counsel, some friend, if not to advise and assist, at least to inform him of the probable success of the fraud? And yet no one of his counsel or witnesses has ever conversed with him, but in a crowd of adverse witnesses; and for myself, I have not spoken with him in almost two months, and during the same period have never looked upon him elsewhere than here, in the presence of the Court and of the multitude.

Would a sane man hold nothing back? admit everything? to every body? affect no ignorance? no forgetfulness? no bewilderment? no confusion? no excitement? no delirium?

Dr. RAY, in his Treatise on the Medical Jurisprudence of Insanity, (p. 333) gives us very different ideas from all this, of those who can feign, and of the manner of counterfeiting :

"A person who has not made the insane a subject of study, cannot simulate madness, so as to deceive a physician well acquainted with the disease. Mr. HAASLAM declares that 'to sustain the character of a paroxysm of active insanity, would require a continuity of exertion beyond the power of a sane person.' Dr. CONOLLY affirms that he can hardly imagine a case which would be proof against an efficient system of observation.

"The grand fault committed by impostors is, that they *overdo* the character they assume.

"The really mad, except in the acute stage of the disease, are, generally speaking, not readily recognized as such by a stranger, and they retain so much of the rational as to require an effort to detect the impairment of their faculties.

"Generally speaking, after the acute stage has passed off, a maniac has no difficulty in remembering his friends and acquaintances, the places he has been accustomed to frequent, names, dates, and events, and the occurrences of his life. The ordinary relations of things are, with some exceptions, as easily and clearly perceived as ever, and his discrimination of character seems to be marked by his usual shrewdness.

* * * A person simulating mania will frequently deny all knowledge of men and things with whom he has always been familiar."

And now, gentlemen, I will give you a proof of the difference between this real science and the empiricism upon which the counsel for the people rely, in this cause. JEAN PIERRE was brought before the Court of Assizes in Paris, in 1824, accused of forgery, swindling, and incendiarism. He feigned insanity. A commission of eminent physicians examined him, and detected his imposture by his pretended forgetfulness, and confusion in answering interrogatories concerning his life and history. The most prominent of these questions are set down in the books.—*Ray*, p. 338.

I submitted these questions and answers, with a statement of JEAN PIERRE's case to Dr. SPENCER, and he, governed by the rules which have controlled him in the present cause, pronounced the impostor's answers to be evidence of insanity, because they showed a decay of memory.

Again, gentlemen, look at the various catechisms in which this prisoner has been exercised for two months, as a test of his sanity. Would any sane man have propounded a solitary one of all those questions to any person whom he believed to be of sound mind? Take an instance. On one occasion, Dr. WILLARD, a witness for the people, having exhausted the idiot's store of knowledge and emotion, expressed a wish to discover whether the passion of fear had burned out, and employing Mr. Morgan's voice, addressed the prisoner thus: "Bill, they're going to take you out to kill you. They're going to take you out to kill you, Bill." The poor creature answered nothing. "What do you think of it, Bill?" Answer: "I don't think about it—I don't believe it." "Bill," continues the inquisitor, with louder and more terrific vociferation, "they're going to kill you, and the doctors want your bones; what do you think of it, Bill?" The prisoner answers: "I don't think about it—I don't believe it." The Doctor's case was almost complete, but he thought that perhaps the prisoner's stupidity might arise from inability to understand the question. Therefore, lifting his voice still higher, he continues: "Did you ever see the doctors have any bones? Did you ever see the doctors have any bones, Bill?" The fool answers: "I have." "Then where did you see them, Bill?" "In Dr. Pitney's office." And thus, by this dialogue, the sanity of the accused is, in the judgment of Dr. WILLARD, completely established. It is no matter that if the prisoner had believed the threat, his *belief* would have proved him sane; if he had been terrified, his *fears* would have sent him to the gallows; if he had forgotten the fleshless skeleton he had seen, he would have been convicted of *falsehood*, and of course have been sane. Of such staple as this are all the questions which have been put to the prisoner by all the witnesses. There is not an interrogatory which any one of you would put to a child twelve years old.

Does the prisoner feign insanity? One hundred and eight witnesses have been examined, of whom seventy-two appeared on behalf of the people. No one of them has expressed a belief that he was simulating. On the contrary, every witness to whom the

inquiry has been addressed, answers that the sincerity of the prisoner is beyond question.

Mr. JOHN R. HOPKINS says: "I watched him sharply to discover any simulation, but I couldn't. There was no deception. If there had been I should have detected it."

ETHAN A. WARDEN, President of the village of Auburn, with whom the prisoner had the most extended conversation, says: "I suppose he thought he spoke the truth."

IRA CURTIS, Esq., testifies: "It did occur to me whether the prisoner, with his appearance of sincerity, was attempting to play off a game of imposture. The thought vanished in a moment. There was too much before me. I have no doubt of his sincerity. I don't believe it is in the power of all in this room to teach him to carry on a piece of deception for fifteen minutes, because he would forget what he set about."

Dr. HERMANCE says: "He spoke with so much sincerity."

The Rev. JOHN M. AUSTIN says: "He did not dissemble. I should suppose him the shrewdest man in the world if he did dissemble. I have not the slightest doubt that there was no attempt to dissemble."

The tenor of the testimony of all the witnesses for the prisoner, learned and unlearned, is the same.

The witnesses for the people, learned and unlearned, concur.

Dr. BIGELOW says: "He has betrayed no suspicion of me. He has manifested entire docility to me."

Dr. SPENCER describes the manner of the witness in giving all his answers, as "entirely frank."

Dr. CLARY concludes the question of sincerity against all doubt. He says: "It seemed to me that he either thought he was reading or that he meant to deceive, and I don't think the latter, for he always seemed to be very frank."

It being thus absolutely settled, gentlemen, that the prisoner does not simulate insanity, I pass to the second proposition in this defence, which is, that

IT IS PROVED THAT THE PRISONER IS CHANGED.

I shall first ask you to compare him now with himself in the earlier and happier period of his life.

NATHANIEL HERSEY, a witness for the people, a colored man, knew the prisoner seven years ago, and says: "He was a lively, smart boy, laughed, played, and was good-natured; understood as well as any body; could tell a story right off; talked like other folks."

This is the testimony of an associate of the prisoner at the age of sixteen.

JOHN DEPUY is a brother-in-law of the accused, and has known him more than twelve years. This witness says: the prisoner "was an active, smart boy, lively as any other you could find, a good boy to work; set him to work any where and he would do it; sociable and understood himself, and had some learning; could read in the spelling book pretty well; could read off simple reading lessons in the spelling book, smooth and decent."

DAVID WINNER, a colored man, was the friend and companion of the parents of the prisoner. He says: "When this boy was twelve or thirteen years old, he was a pretty sprightly lad, sensible, very lively. I saw no difference between him and any other boy of sense, at that time."

NATHANIEL LYNCH, a witness for the people, in whose house the prisoner was an inmate at the age of eight years, says: "He was a lively, playful boy, almost always smiling and laughing, and appeared to be a lively, laughing, playful boy."

DANIEL ANDRUS, a witness for the people, testifies that he employed the prisoner eight years ago, and talked with him then as he would with any other laboring man.

MARY ANN NEWARK has known the prisoner from childhood, and says: "He was a lively, smart boy."

HONEST ADAM GRAY was a friend of the prisoner's parents, and says: "He was a smart boy, was very active; always thought him a pretty cunning kind of a boy."

Dr. BRIGGS knew him twelve years ago, as "a lad of ordinary intelligence for boys of his condition."

ROBERT FREEMAN was a fellow servant with the prisoner, at the American Hotel, eight years ago, and though he never entered into any argument with the prisoner to find out his mother-wit, he says: "He was playful betimes, seemed to understand every thing, and very active."

Dr. VAN EPPS knew the prisoner in his early infancy, and says: "He then appeared as bright and intelligent as children generally are at that age."

THOMAS F. MUNROE, a witness for the people, certainly not partial to the prisoner, says: "In his youth he was quick and active, and not much different from other black boys."

A. A. VANDERHEYDEN, a witness for the people, represents the prisoner as "active and intelligent" in his youth.

ARETAS A. SABIN, a witness for the people, knew the prisoner fifteen or sixteen years ago, and says that he was no more or less playful than other boys, and that he *wept* on entering the State Prison at the age of sixteen.

JEFFERSON WELLINGTON, a hostile witness, testifies that the prisoner was sociable and talked freely upon general subjects at the age of sixteen.

LEWIS MARKHAM has known the prisoner from childhood, and declares that "he was a smart boy, pretty active, quick, sprightly, shrewd, attentive and faithful, without any lack of conversational powers."

ETHAN A. WARDEN received the prisoner into his family fifteen or sixteen years ago, "as a bright boy, and took him for the reason that he was so," and now declares that "he was then a lad of good understanding, and of kind and gentle disposition."

SALLY FREEMAN, the prisoner's mother, gives this simple account of him: "When he was young he was a very smart child, before he went to the State Prison. He was always very playful and good-natured. About understanding things he was the same as other children."

Finally, DEBORAH DEPUY, who is of the same age with the prisoner, of the same caste, and moves in the same humble sphere, testifies that she "knew him before he went to the State Prison, in childhood and youth;" that "his manners, action, and mind were very good—as good as other boys;" that she "associated with him; he was as bright as any body else; he was very cheerful;" she had "been with him to balls and rides: he acted very smart on such occasions;" she had "talked with him often, and never discovered any lack of intelligence."

Such, gentlemen, is a complete picture of the childhood and youth of the prisoner at the bar. Its truthfulness and fidelity are unquestioned, for all the witnesses on both sides have drawn it for you.

Look on that picture and then on the one I shall now present, and, since I must speak of a class lowly and despised,

"Let not ambition mock their useful toil,
Their humble joys and destiny obscure;
Nor grandeur bear with a disdainful smile
The short and simple annals of the poor."

You have seen that the prisoner wept, as well he might, when he entered the State Prison at the age of sixteen. It was the last manifestation he has ever given of a rational mind.

ETHAN A. WARDEN says: "I saw the prisoner in the State Prison. He appeared stupid and different from what he used to be, and from what I expected he would be. I cannot describe the difference; it was so peculiar. I said to him, 'Bill, are you here?'"

and repeated the question two or three times; at first he did not understand, but at last said, 'Yes.' He appeared changed."

JOHN DEPUY saw the prisoner in the State Prison at five different times, but was not allowed to speak with him. Depuy says the prisoner "was carrying something on his back like a knapsack, and walking back and forth in the yard. He did not appear as he did before he went to prison. He appeared stupid, took no notice of anything. He did not know me, and took no notice of me. I saw him at other times when at work and when idle, and then thought there was something the matter with him. I thought he was not in his right mind."

WILLIAM P. SMITH was a foreman of one of the shops in the State Prison during the third year of the prisoner's confinement there, and had charge of him. He describes him as "passionate, sullen, and stupid." This witness relates that the prisoner had oiled his shoes neatly and set them upon a wood pile, that a convict accidentally disturbed the shoes, and that the prisoner struck the convict with a billet of wood with great violence, for which offence he was punished; that at another time, with as little provocation, he attacked another convict with great fury for displacing some yarn on a reel. The witness says: "When I sent him on an errand, he required repeated and very particular instructions. I considered his intellect at the time very low indeed. He knew very little, not much more than a brute or beast."

THERON R. GREEN, who was a keeper in the prison and had charge of the prisoner, declares that he "had very little mind, was a half-day man, was slow, awkward, dull, downcast, and would have frequent freaks of laughing, without any observable cause of laughter." The witness tried to instruct him in his cell on Sundays, but he could learn nothing." Mr. Green says: "He was irritable, malicious, and of bad temper; often violated rules, for which I did not punish him, because I thought him irresponsible. I think that he had as much capacity as a brute beast. I don't know as he had more. If more, there was none to spare. I remarked when he left the shop, that he ought not to go at large."

HORACE HOTOHKISS was a teacher in the Sunday School at the State Prison, and says that the prisoner "was dismissed from the school because he could not be taught to read."

Such is the imperfect history of the prisoner at the bar, while he was shut up from the observation of men, and deprived by the discipline of the State Prison of the use of speech and of the privilege of complaint.

He was discharged from prison on the twentieth of last September.

ALONZO WOOD, the new chaplain of the State Prison, visited him in his cell there twice during the last month of his confinement, and asked him questions, which the prisoner noticed only by inclining his head. The chaplain expressed a hope to him on the day of his discharge that he might be able to keep out of prison thereafter, and inquired whether he wanted a Bible. "I understood him to say," says the witness, "that it would be of no use—that he couldn't read." At the Clerk's office he received the usual gratuity of two dollars, for which he was required to sign a voucher. He answered, "I have been in prison five years unjustly, and ain't going to settle so."

The officers, including the reverend chaplain, laughed heartily at what they thought gross ignorance.

The prisoner's faithful brother-in-law, JOHN DEPUY, was waiting in the hall to conduct him homeward. His narrative is simple and affecting. "I sat down," says Depuy, "on the long chair in the hall. He came out and passed me as if he didn't know me. I went up and touched him, and asked him if he knew me, and he kind o' laughed. We came along to Apple-

gate's, where I stopped to assist to raise a new building. He sat down on a pile of boards. He sat there and acted very stupid and dull and said nothing. They asked me what damned fool I had with me sitting there?

"He didn't know the value of his money. He had received four half dollars, and thought they were quarters. We went to the hatter's for a cap—found one worth half a dollar; he threw down two halves. I handed one back to him, and told him to come out. After he came out, he insisted that he had paid only half enough for the cap, and that they would make a fuss about it." All the leisure hours of that day and the next were spent by the prisoner, according to DEPUY's account, in giving relations of the injustice and cruelty he had suffered in the prison. He was very deaf, and assigned as the cause of it, that Tyler, one of the keepers in the prison, had struck him across the ears with a board, and had knocked his hearing off so he couldn't hear, and his hearing had never come back. "I asked him," says the witness, "if they had done anything for his deafness. He said, 'Yes, they put salt in my ear, but it didn't do any good, for my hearing was gone and all knocked off.'"

Again. The prisoner told DEPUY that while eating, he had broken his dinner knife in the prison, and the keepers had threatened to put him back five years for that; and says DEPUY, "he asked me if they could do it." He complained to DEPUY, as we shall have occasion to see hereafter, that he had been wrongfully imprisoned, and wanted to find the people who had done him such injustice, for the purpose of getting pay from them.

Such was the change which had come over the prisoner. The bright, lively, social, active youth of sixteen, had become a driveling, simple fool.

The prisoner remained with DEPUY some two or three months. He asked for esquires, to get warrants for the people who put him in the state prison; at one time said the justices refused to give him warrants; at another time, that "he had got it all fixed," and he wanted DEPUY to go down and see that he got his pay right; at another, said that "he couldn't do nothing with them—they cheated him all the time, and he couldn't live so." He followed DEPUY seven miles, to Skaneateles, and brought him back to Auburn, to help the prisoner in a dispute with Mr. Conklin, the harness-maker, about sawing some wood, for which he claimed

thirty-seven and a half cents, and Conklin refused to pay him more than twenty-five cents. DEPUY, dealing with the prisoner as Dr. BRIGHAM would, made peace by paying him the difference, and settled in the same way a difference between the prisoner and Mr. Murfey, the merchant.

The prisoner's mind was very unsteady during the winter. DEPUY continues: "He did not know half the time what he was doing; he would go up the street, and then turn and run violently in the other direction. He never commenced any conversation with any body, never asked a question; smiled without cause; got up out of his bed at night many times, sometimes two or three times in the same night, and on such occasions would sing irregularly, dance and spar, as if with a combatant; saying sometimes: 'By God! I'll see you out;' sometimes he would take a book and mumble words as if reading, but there was no sense in the words. When asked afterward what he got up nights for, he answered that he didn't know." The prisoner never talked with anybody after coming out of prison, unless to answer, in the simplest way, questions put to him.

Many persons remember the negro, with his saw, deaf, sad and sullen, seeking occupation about the wood-yards, during the half-year of his enlargement. Few stopped to converse with him, but the report of all confirms what has been testified by DEPUY. Those who knew the prisoner at all, were chiefly persons of his own caste.

MARY ANN NEWARK says that she saw him after he came out of prison, and he resided with her several days before the homicide. He did not recognize her in the street. "He sat still and silent when in the house, asked no questions, and answered quick and short-like. His manner of acting was queer-like; he never mentioned any name or spoke of anybody."

NATHANIEL HERSEY, the prisoner's old friend, found him changed, had to speak loud to him; "he appeared to be quite stupid." HERSEY asked him what ailed him; "he said he was deaf, that they rapped him over the head at the prison."

ROBERT FREEMAN discovered that he appeared downcast when he first came out of prison. He spoke to the prisoner, who took no notice. Robert took hold of his hand and asked him how he did. The witness says, "He appeared more dull and downcast, and I could not tell what the matter was; could never establish any communication with him."

Old ADAM GRAY, who knew him as a "pretty cunning kind of a boy," testifies: "I think there is a change in him. It doesn't seem to me that he knows as much as he did before he went to prison. He doesn't seem to talk as much, to have so much life, nor does he seem so sensible. Last winter he boarded with me two months. He would get up nights, take his saw and go out as if he was going to work, and come back again and go to bed. On such occasions he would try to sing, but I couldn't understand what he said. He made a noise appearing as if he was dancing."

Some three weeks before the homicide, the prisoner was boarded at Laura Willard's. The truthful and simple-minded DAVID

WINNER, seems to have been led by Providence to visit the house at that time. He says—

"I saw him first at his uncle, Luke Freeman's. He then appeared to be a foolish man. I asked if that was Sally's son. I did not know him. They told me it was. I said, he is very much altered. They said, he had just come out of State Prison. He had altered very much in his looks and behavior. He was sitting down in a chair in the corner, sniveling, snickering and laughing, and having a kind of simple look. I spoke to him; he didn't speak; I saw nothing for him to laugh at. I staid three days and three nights at Laura Willard's, and slept with William in the same bed. At night he got up and talked to himself; I couldn't understand what he said. He appeared to be foolish. I gave him a dollar to go down to Bartlett's to get a quarter of a pound of tea and two pounds of sugar, and to the market and get a beef steak. He went to market and got it all in beef steak. He got a dollar's worth of beef steak. When I asked what that was for, he said nothing, but laughed at me. He got up nights two or three times, and I felt cold and told Laura I wouldn't sleep with him any more, and I went and slept in the other room. I got afraid of him, and I wouldn't sleep with him any more. He sung when he got up nights, but you couldn't understand what he sung. There was no meaning in what he sung."

DEBORAH DEPUY says, "After he came out of prison, there was a change. If I talked to him very loud he would talk, say very little only to answer me. He didn't act cheerful, but very stupid; never said anything until I talked to him. He never talked to me as he did before he went to prison. He had a strange smile. He would laugh very hearty without anything to laugh at. He wouldn't know what he was laughing at. He would knock at the door, and I would let him in, and he would sit down and laugh. I would ask what he was laughing at; he said he didn't know. When I asked questions, he would either answer yes, or no, or don't know. I asked him how his hearing was hurt. He said they struck him on the head with a board, and it seemed as if the sound went down his throat. I have asked him why he was so stupid. I don't think he is in his right mind now, nor that he has been since he came out. The reason is that he never used to act so silly, and sit and laugh so, before he went to prison."

His mother, SALLY FREEMAN, describes the change which had come over her child, in language simple and touching: "I never knew he was foolish or dumpish before he went to prison. After he came out of prison, he didn't act like the same child. He was changed and didn't appear to know anything. As to being lively after he came out, I didn't see any cheerfulness about him. He was either sitting or standing when I afterwards saw him, and when I asked him a question he would answer, but that is all he would say. He appeared very dull. He never asked me any questions after he came out, only the first time he saw me he asked me if I was well. From that time to this he has never asked me a question at all. He didn't come to see me more than half a dozen times. When he came, perhaps he would ask me how I did, and then sit down and laugh. What he laughed at was more than I could tell. He laughed as he does now. There was no reason why he should laugh. He was laughing to himself. He didn't speak of anything when he laughed. I never inquired what he laughed at. I didn't think he was hardly right, and he was so deaf I didn't want to. I asked him how he got deaf, and he told me his ear had fell down, or some such foolish answer he gave me. He would stay an hour or so. He generally sat still. I went to see him in the jail after he killed the Van Nest family, on the first day of the trial. He laughed when I went in, and said he was well. I talked to him. I asked him if he knew what he had been doing. He stood and laughed. I asked him how he came there. He didn't say much of anything, but stood and laughed. When I went away he didn't bid me good-bye nor ask me to come again. I have never been to see him since, and have never received any message from him of any kind since he has been in jail. I don't know that he noticed me when I was on examination before. I don't think he is in his right mind, or that he has been since he came out of prison. The reason is that he acts very foolish, and don't seem as though he had any senses."

You will remember that we have seen the prisoner a smart, bright, lively, cheerful, and playful youth, attending Deborah Depuy at balls, parties, and rides; for negroes enjoy such festivi-

ties as much and even more than white men. Deborah says he no longer attends. But from the testimony of JOHN DEPUY we find him at a dance in the house of Laura Willard, on the night before the slaughter of the Van Nest family. The scene was the same as before. There was music, and gallantry, and revelry, and merriment, and laughing, and dancing. But while all others were thus occupied, where was the prisoner, and how was he engaged? He was leaning against the wall, sullen, gloomy, silent, morose; pressing with his hand the knife concealed in his bosom, and waiting his opportunity to strike to the heart his brother-in-law and benefactor.

This is the change which had come over the prisoner when he emerged from the State Prison, as observed by the few of his kindred and caste, who had known him intimately before. How many white men, who knew him in his better days, have we heard confirm this testimony, by saying that they lost sight of him when he went to prison; that they met him in the street afterwards, downcast and sullen, with his saw in his hand, seeking casual occupation; that they spoke to him, but he did not hear or did not answer, and they passed on! Only two or three such persons stopped to inquire concerning his misfortunes, or to sympathize with him.

WILLIAM P. SMITH says: "The first time I saw him after he came out of prison, was in November. I asked him how he did. He made no answer. A little black boy with him told me he was deaf. I spoke to him to try and induce conversation, and finally gave it up; I couldn't make him understand. He appeared different from what I had known him before; appeared dumpish; didn't say much, and seemed to stand around. I met him once or twice in the street—merely met him—he noticed nothing."

DOCTOR HERMANCE did not know him before he went to prison. His peculiarities attracted the Doctor's attention, and he inquired the cause. The prisoner answered that he had been five years in the State Prison, and he wasn't guilty, and they wouldn't pay him. The Doctor says: "I discovered that he was very deaf, and inquired the cause of his deafness. He stated that his ears dropped. I thought his manners very singular and strange; and what he said about pay very singular and strange. He spoke in a very gloomy, despondent state of mind. There appeared to be a sincerity in his manner. The tone of his voice was a dull and monotonous tone. I thought at the time that he was deranged."

To complete this demonstration of the change, I have only to give you the character of the negro now, as he is described by several of the witnesses, as well on the part of the people as of the prisoner, who have seen him in prison, and as he is admitted to be.

WARREN T. WORDEN, Esq., an astute and experienced member of the bar, visited him in his cell in the jail, and says: "I formed an opinion then, that he knew nothing, and I expressed it. I do not believe him sane. I don't believe he understands what is going on around him. He would laugh upon the gallows as readily and as freely as he did in

his cell. He would probably know as much as a dumb beast who was taken to the slaughter house, as to what was to be done with him. If that state of mind and knowledge constitute insanity, then he is insane."

DOCTOR FOSGATE, one of the soundest and most enlightened men in our community, who was his physician in the jail, and dressed his wounded hand, describes him as "insensible to pain, ignorant of his condition, and of course indifferent to his fate; grinning constantly idiotic smiles, without any perceptible cause, and rapidly sinking into idiocy."

IRA CURTIS, who knew him in his youth, and has now carefully examined him in the jail, says: "He is incapable of understanding; he is part fool, bordering on idiocy; crazy and an idiot both, and crazy and insane both. If all the doctors in the world should say he was not a fool, I shouldn't believe them."

DOCTOR BRIGGS, who, it will be recollected, knew him at the age of eight or nine, examined him in the jail and says: "my opinion is and was, that he has less mind than when I knew him before—that his mind has become impaired."

WILLIAM P. SMITH, who knew him before he went to the State Prison and while there, patiently examined him in the jail, and says: "There was a change, a sensible change in the man. He didn't appear to know as much, to have as many ideas about him, as many looks of intelligence. I don't know as I could describe it very well. There was a slowness, a dullness; I thought what little intellect he had seemed to sink lower down, from some cause or other. His physical strength and vigor were good in the prison. He appeared active, strong and energetic. Now, his manner appears more dull, stupid and inattentive."

DR. VAN EPPS says: "Now he appears to have the intellect of a child five years old."

ETHAN A. WARDEN, the prisoner's earliest and fastest friend, says: "I look at him now and when he lived with me. He appears different. I could not get any thing that appeared like sorrow for what he had done, or feeling for the crime. I don't think him much above a brute."

JOHN R. HOPKINS says: "I think him in intelligence but little above the brute."

I need not pursue the parallel further. There is no dispute as to his present ignorance and debasement.

DR. DIMON, a witness for the people, although he pronounces the prisoner sane, says he should think "he has not as much intellect as a child of fourteen years of age; is in some respects hardly equal to a child of three or four," and in regard to knowledge compares him with "a child two or three years old, who knows his A, B, C, and can't count twenty-eight."

DR. BIGELOW, a leading witness for the people, declares: "I believe him to be a dull, stupid, moody, morose, depraved, degraded negro, but not insane;" and DR. SPENCER, swearing to the same conclusion, says: "He is but little above the brute, yet not insane."

I submit to you, Gentlemen of the Jury, that by comparing the prisoner with himself, as he was in his earlier, and as he is in his later history, I have proved to you conclusively that he is visibly changed and altered in mind, manner, conversation and action, and that all his faculties have become disturbed, impaired, degraded and debased. I submit also that it is proved: *first*, that this change occurred between the sixteenth and the eighteenth years of his life, in the State Prison, and that therefore the change thus palpable, was not, as the Attorney General contends, effected by mere lapse of time and increase of years, nor by the natural development of latent dispositions: *Secondly*, that inasmuch as the convicts in the State Prison are absolutely abstemious from intoxicating drinks, the change was not, as the Attorney General supposes, produced by intemperance.

I have thus arrived at the *third* proposition in this case, which is, that

THE PRISONER AT THE BAR IS INSANE.

This I shall demonstrate, *First*, by the fact already so fully established, that the prisoner is changed; *Secondly*, by referring to the predisposing causes which might be expected to produce insanity; *Thirdly*, by the incoherence and extravagance of the prisoner's conduct and conversation, and the delusions under which he has labored.

And now as to predisposing causes. The prisoner was born in this village, twenty-three years ago, of parents recently emerged from slavery. His mother was a woman of violent passions, severe discipline, and addicted to intemperance. His father died of *delirium tremens*, leaving his children to the neglect of the world, from which he had learned nothing but its vices.

Hereditary insanity was added to the prisoner's misfortunes, already sufficiently complicated. His aunt, Jane Brown, died a lunatic. His uncle, Sidney Freeman, is an acknowledged lunatic.

All writers agree, what it needs not writers should teach, that *neglect of education* is a fruitful cause of insanity. If neglect of education produces crime, it equally produces insanity. Here was a bright, cheerful, happy child, destined to become a member of the social state, entitled by the principles of our government to equal advantages for perfecting himself in intelligence, and even in political rights, with each of the three millions of our citizens, and blessed by our religion with equal hopes. Without his being taught to read, his mother, who lives by menial service, sends him forth at the age of eight or nine years to like employment. Reproaches are cast on his mother, on Mr. Warden, and on Mr. Lynch, for not sending him to school, but these reproaches are all unjust. How could she, poor degraded negress and Indian as she was, send her child to school? And where was the school to which Warden and Lynch should have sent him? There was no school for him. His few and wretched years date back to the beginning of my acquaintance here, and during all that time, with unimportant exceptions, there has been no school here for children of his caste. A school for colored children was never established here, and all the common schools were closed against them. Money would always procure instruction for my children, and relieve me from the responsibility. But the colored children, who have from time

to time been confided to my charge, have been cast upon my own care for education. When I sent them to school with my own children, they were sent back to me with a message that they must be withdrawn because they were black, or the school would cease. Here are the fruits of this unmanly and criminal prejudice. A whole family is cut off in the midst of usefulness and honors by the hand of an assassin. You may avenge the crime, but whether the prisoner be insane or criminal, there is a tribunal where this neglect will plead powerfully in his excuse, and trumpet-tongued against the "deep damnation" of his "taking off."

Again. The prisoner was subjected, in tender years, to severe and undeserved *oppression*. Whipped at Lynch's; severely and unlawfully beaten by Wellington, for the venial offence of forgetting to return a borrowed umbrella; hunted by the police on charges of petty offences, of which he was proved innocent; finally, convicted, upon constructive and probably perjured evidence, of a crime of which it is now universally admitted he was guiltless, he was plunged into the state prison at the age of sixteen, instead of being committed to a house of refuge.

Mere *imprisonment* is often a cause of insanity. Four insane persons have, on this trial, been mentioned as residing among us, all of whom became insane in the state prison. Authentic statistics show that there are never less than thirty insane persons in each of our two great penitentiaries. In the state prison the prisoner was subjected to severe corporeal punishment by keepers, who mistook a decay of mind and morbid melancholy for idleness, obstinacy and malice. Beaten, as he was, until the organs of his hearing ceased to perform their functions, who shall say that other and more important organs connected with the action of his mind did not become diseased through sympathy? Such a life, so filled with neglect, injustice and severity, with anxiety, pain, disappointment, solicitude, and grief, would have its fitting conclusion in a madhouse. If it be true, as the wisest of inspired writers hath said, "Verily, oppression maketh a wise man mad," what may we not expect it to do with a foolish, ignorant, illiterate man! Thus it is explained why, when he came out of prison, he was so dull, stupid, morose; excited to anger by petty troubles, small in our view, but mountains in his way; filled in his waking hours with moody recollections, and rising at midnight to sing incoherent

songs, dance without music, read unintelligible jargon, and combat with imaginary enemies.

How otherwise than on the score of madness can you explain the stupidity which caused him to be taken for a fool at Applegate's, on his way from the prison to his home? How else the ignorance which made him incapable of distinguishing the coin which he offered at the hatter's shop? How else his ludicrous apprehensions of being recommitted to the state prison for five years, for the offence of breaking his dinner knife? How else his odd and strange manner of accounting for his deafness by expressions all absurd and senseless, and varying with each interrogator: as to JOHN DEPUTY, "that Tyler struck him across the ears with a plank, and knocked his hearing off, and that it never came back; that they put salt in his ear, but it didn't do any good, for his hearing was gone—all knocked off;" to the Rev. JOHN M. AUSTIN, "the stones dropped down my ears, or the stones of my ears dropped down;" to ETHAN A. WARDEN, "got stone in my ears; got it out; thought I heard better when I got it out;" to Dr. HERMANCE, "that his ears dropped;" and to the same witness on another occasion, "that the hearing of his ears fell down;" to his mother, "that his ear had fell down;" to DEBORAH DEPUTY, "that Tyler struck him on the head with a board, and it seemed as if the sound went down his throat;" to Dr. BRIGHAM, "that he was hurt when young, it made him deaf in the right ear;" also, "that in the prison he was struck with a board by a man, which made him deaf;" and also, "that a stone was knocked into, or out of his ear."

It is now perfectly certain, from the testimony of Mr. VAN ARSDALE and HELEN HOLMES, that the prisoner first stabbed Mrs. Van Nest in the back yard, and then entered the house and stabbed Mr. Van Nest, who fell lifeless at the instant of the blow. And yet, sincerely trying to give an account of the dreadful scenes exactly as they passed, the prisoner has invariably stated, in his answers to every witness, that he entered the house, stabbed Van Nest, went into the yard, and then, and not before, killed Mrs. Van Nest. It was in this order that he related the transaction to WARREN T. WORDEN, to JOHN M. AUSTIN, to IRA CURTIS, to ETHAN A. WARDEN, to WILLIAM P. SMITH, to Dr. VAN EPPS, to JAMES H. BOSTWICK, to Dr. BRIGHAM, to NATHANIEL LYNCH, to Dr. WILLARD, to Dr. BIGELOW, and to Dr. SPENCER. How else than on the score of madness can you explain this con-

fusion of memory? and if the prisoner was sane, and telling a falsehood, what was the motive?

How else than on the score of a demented mind will you explain the fact, that he is without human curiosity; that he has never, since he came out of prison, learned a fact, or asked a question? He has been visited by hundreds in his cell, by faces become familiar, and by strangers, by fellow prisoners, by jailers, by sheriff, by counsel, by physician, by friends, by enemies, and by relations, and they unanimously bear witness that he never asked a question. The oyster, shut up within its limestone walls, is as inquisitive as he.

How else will you explain the mystery that he, who seven years ago had the capacity to relate connectively any narrative, however extended, and however complex in its details, is now unable to continue any relation of the most recent events, without the prompting of perpetual interrogatories, always leading him by known landmarks; and that when under such discipline he answers, he employs generally only the easiest forms, "Yes," "No," "Don't know."

Then mark the confusion of his memory, manifested by contradictory replies to the same question. WARREN T. WORDEN asked him: "Did you go in at the front door? Yes. Did you go in at the back door? Yes. Were you in the hall when your hand was cut? Yes. Was your hand cut at the gate? Yes. Did you stab Mrs. Wyckoff in the hall? Yes. Did you stab Mrs. Wyckoff at the gate? Yes. Did you go out at the back door? Yes. Did you go out at the front door? Yes."

ETHAN A. WARDEN asked him, "What made you kill the child?" "Don't know anything about that." At another time he answered, "I don't think about it; I didn't know it was a child." And again, on another occasion, "Thought—feel it more;" and to Dr. BIGELOW and other witnesses, who put the question, whether he was not sorry he had killed the child, he replied, "It did look *hard*—I rather it was bigger." When the ignorance, simplicity, and sincerity of the prisoner are admitted, how otherwise than on the ground of insanity, can you explain such inconsistencies as these?

The testimony of VAN ARSDALE and HELEN HOLMES proves that no words could have passed between the prisoner and Van Nest, except these, "What do you want here in the house?"

spoken by Van Nest before the fatal blow was struck. Yet when inquired of by WARREN T. WORDEN what Van Nest said to him when he entered the house, the prisoner said, after being pressed to an answer, that Van Nest said to him, "If you eat my liver, I'll eat yours;" and he at various times repeated to the witness the same absurd expression. To the Rev. JOHN M. AUSTIN he made the same statement that Van Nest said, "If you eat my liver, I'll eat your liver;" to IRA CURTIS the same; to ETHAN A. WARDEN the same; to LANSINGH BRIGGS the same; and the same to almost every other witness. An expression so absurd under the circumstances could never have been made by the victim. How otherwise can it be explained than as the vagary of a mind shattered and crazed?

The prosecution, confounded with this evidence, appealed to Dr. SPENCER for relief. He, in the plenitude of his learning, says, that he has read of an ancient and barbarous people, who used to feast upon the livers of their enemies, that the prisoner has not imagination enough to have invented such an idea, and that he must have somewhere heard the tradition. But when did this demented wretch, who reads "woman" for "admirable," and "cook" for "Thomson," read Livy or Tytler, and in what classical circle has he learned the customs of the ancients? Or, what perhaps is more pertinent, who were that ancient and barbarous people, and who was their historian?

Consider now the prisoner's earnest and well-attested sincerity in believing that he could read, when either he never had acquired, or else had lost, the art of reading. The Rev. Mr. AUSTIN visited him in jail, at an early day, asked him whether he could read, and being answered that he could, gave him a Testament. In frequent visits afterwards, when the prisoner was asked whether he had read his Testament, he answered "Yes," and it was not until after the lapse of two months that it was discovered that he was unable to spell a monosyllable.

IRA CURTIS says: "I asked him if he could read; he said, 'Yes,' and commenced reading, that is, he pretended to, but he didn't read what was there. He read, '*Oh! Lord—mercy—Moses*'—and other words mixed up in that way. The words were not in the place where he seemed to be reading, and it was no reading at all, and some words he had over I had never heard before. I took the book from him, saying, 'You don't read right.' He said, 'Yes, I

do.' I said, 'William, you can't read.' He said, 'I can.' I gave him a paper, pointed him to the word 'admirable'—he pronounced it 'woman.' I pointed to the word 'Thompson'—he read it 'cook.' He knew his letters, and called them accurately, but could not combine them. I asked him to count. He commenced and counted from one up to twenty, hesitated there some time, and finally counted up to twenty-eight, and then jumped to eighty. Then I started him at twenty, and he said 'one.' I told him to say 'twenty-one'; but he seemed to have difficulty in saying 'twenty-one.' He tried to go on. He did count up to twenty regularly, by hesitating; but never went higher than twenty-eight correctly. I asked him how much two times four was—he said, 'eighty.' How much two times three was—he said, 'sixty or sixty-four.'" Many other witnesses on both sides of this cause, Mr. AUSTIN, Mr. HOPKINS, Mr. HOTCHKISS, Mr. WORDEN, Mr. SMITH, Dr. VAN EPPS, Dr. BRIGHAM, Dr. MCCALL, Dr. COVENTRY, Dr. WILLARD, Dr. BIGELOW, Dr. CLARY and Dr. SPENCER, have with varied ingenuity, sought to detect a fraud in this extreme ignorance and simplicity, and have unanimously testified to you that the simpleton sincerely believes he reads accurately, and as honestly thinks he counts above twenty-eight correctly, while in truth he cannot advance above that number in counting, and cannot read at all. Yet he must, at least, have learnt in the Sunday School that he could not read, and the keepers of the prison show that he put up his daily manufacture of rings and of skeins of thread, in quantities accurately counted, to the number of several dozen.

I think you will agree with DOCTOR HUN, that there is not a sane man twenty-three years of age, brought up in this country, who does not know whether he can read, and who cannot count twenty-nine.

Mark his indifference and stupidity concerning his situation. ETHAN A. WARDEN asked him, "Do you expect to be hung? 'Don't think about it.' Do you like to be in jail? 'Pretty well.' Is it a good place? 'Yes.' Do you sleep well? 'Yes.' Do you think of what you've done? 'No.'"

WILLIAM P. SMITH asked him in the jail if he knew whether he was in jail or in prison. He hesitated some time, and finally thought he was in the jail, but wasn't sure. "Do you know what you are confined here for?" "No."

Dr. VAN EPPS asked him what he was put in jail for. "Don't

know." Afterward he seemed to recollect himself and said "horse."

Dr. BRIGHAM says, "I tried in various ways to ascertain if he knew what he was to be tried for. I tried repeatedly and never could get a distinct answer. It was often 'I don't know,' and sometimes 'a horse.' I asked him at one time, what his defence would be. Shall we say that you did not kill? He answered very quickly, looking up, 'No.' But may we not say so? 'No, that would be wrong; I did do it.' Some one asked him when others were there, May we not say you are crazy? 'I can't go so far as that.' I asked him if he had employed any body to defend him, and said, Mr. Seward is now here, you had better employ him and tell him what to say. Here is Mr. Seward, ask him. He said in a reading tone, 'Governor Seward, I want you to defend me,' repeating the words I had told him to use."

When on trial for stealing a horse, six years ago, he had counsel of his own choice, and was treated and tried as a man who understood and knew his rights, as indeed it is proved that he did. Here, his life is at stake. He does not know even the name of a witness for or against him, although his memory recalls the names of those who testified against him on his trial for stealing the horse, and the very effect of their testimony.

Dr. BRIGHAM says, "I asked him what he could prove in his defence. He replied, 'the jury can prove that I was in prison five years for stealing a horse, and didn't steal it.'"

When asked if he is not sorry for crimes so atrocious, he answers always, either, "No," or "Don't know."

On the very day when he was to be arraigned, he had no counsel; and, as Mr. AUSTIN testifies, was made to understand, with difficulty, enough to repeat like a parrot a consent that I should defend him. The Attorney General says, the prisoner "knew he was guilty, and that counsel could do nothing for him. If he was as wise and as intelligent as Bacon himself, he could give no instructions to counsel that would help him." Aye, but is he as wise and as intelligent as Bacon? Has he any intelligence? No, gentlemen, no man ever heard of a sane murderer in whose bosom the love of life and the fear of death were alike extinguished.

The accused sat here in court, and saw Dr. BIGELOW on the stand, swearing away his life, upon confessions already taken. Dr. BIGELOW followed him from the court to his cell, and there the prisoner,

with child-like meekness, sat down on his bench and confessed further for hours, all the while holding the lamp by whose light Dr. BIGELOW recorded the testimony, obtained for the purpose of sealing his fate beyond a possible deliverance.

He is asked about the Judges here, is ignorant where they sit, and can only remember that there is a good looking man on the elevated stage, which he is told is the bench. He is asked what they say in court, and he says "They talk, but I hear nothing;" what or whom are they talking about, and he says "Don't know;" whom he has seen here, and he recalls not his judges, the jury, the witnesses, or the counsel, but only the man who gives him tobacco.

From his answers to Mr. HOPKINS, Mr. AUSTIN, Mr. SMITH, and others, as well as from the more reliable testimony of his mother, of his brother-in-law, of Mr. LYNCH, Mr. WARDEN, Mr. HOTCHKISS, and others, we learn that in his childhood and in State Prison, he attended Sunday School and divine worship. Yet we find him at the age of twenty-three, after repeated religious instructions, having no other idea of a supreme being and of a future state than that Heaven is a place above, and God is above, but that God is no more than a man or an animal. And when asked by Mr. HOPKINS what he knew about Jesus Christ, he answered that he once came to Sunday School in the State Prison. What did he do there? "Don't know." Did he take a class there? "Don't know." Did he preach? "Don't know." Did he talk? "Don't know." The prisoner gave the same answers to the Rev. Mr. AUSTIN, to Mr. HOPKINS, his Sunday School teacher, and to Dr. BRIGHAM.

Mr. HORACE HOTCHKISS says: "I asked him in the jail, If you shall be convicted and executed, what will become of you? He answered, 'Go to Heaven.' I asked him why, and he replied, 'Because I am good.'" Dr. BRIGHAM inquired: "Do you know anything of Jesus Christ?" "I saw him once." "Did you kill him at Van Nest's?" The poor fool (as if laboring with some confused and inexplicable idea) said, "Don't know." I think, gentlemen, that you will agree with Dr. HUN, Dr. BRIGHAM, and the other intelligent witnesses, who say that, in their opinion, there is no sane man of the age of twenty-three, who has been brought up in church-going families, and been sent to Sunday

School, whose religious sentiments would, under such circumstances, be so confused and so absurd as these.

To the Rev. Mr. AUSTIN, he said after his arrest, "If *they will let me go this time*, I will try and do better." And well did that witness remark, that such a statement evinced a want of all rational appreciation of the nature and enormity of his acts, for no man twenty-three years old, possessing a sound mind, and guilty of four-fold murders, could suppose that he would be allowed to escape all punishment by simply promising, like a penitent child, that he would "do better."

Mark his insensibility to corporeal pain and suffering. In the conflict with Mrs. Wykoff, he received a blow which divided a sinew in his wrist, and penetrated to the bone. The physicians found him in the jail with this wound, his legs chained, and heavy irons depending unequally from his knees. Yet he manifested absolute insensibility. Insane men are generally very insensible to pain. The reason is, that the nervous system is diseased, and the senses do not convey to the mind accurate ideas of injuries sustained. Nevertheless, this passes for nothing with Dr. Spencer, because there was an ancient sect of philosophers who triumphed, or affected to triumph, over the weakness of our common nature, and because there are modern heroes who die without a groan on the field of battle. But in what school of philosophy, or in what army, or in what battle-ship was this idiot trained, that he has become insensible to pain, and reckless of death?

I proposed, gentlemen, at the close of the testimony, that you should examine the prisoner for yourselves. I regret that the offer was rejected. You can obtain only very imperfect knowledge from testimony in which the answers of the prisoner are given with the freedom and volubility of reporters. We often judge more justly from the tone, manner, and spirit of those with whom we converse, than from the language they use. All the witnesses agree that the prisoner's tone and modulation are slow, indistinct, and monotonous. His utterance, in fact, is that of an idiot, but on paper it is as distinct as that of Cicero.

I have thus shown you, gentlemen, the difficulties which attend you in this investigation, the law concerning insanity, the nature and characteristics of that disease, the great change which the prisoner has undergone, and some of those marked extravagances which denote lunacy. More conclusive evidence yet remains;

and *first*, the delusion by which the prisoner was overpowered, and under whose fearful spell his crimes were committed.

Delusion does not always attend insanity, but when found, it is the most unequivocal of all proofs. I have already observed that melancholy is the first stage of madness, and that it long furnished the name for insanity. In the case of Hatfield, who fired at the King in Drury-Lane Theatre, Lord Erskine, his counsel, demonstrated that insanity did not consist in the absence of any of the intellectual faculties, but in delusion; and that an offender was irresponsible, if his criminal acts were the immediate, unqualified offspring of such delusion. Erskine there defined a *delusion* to consist in deductions from the *immovable* assumption of matters as *realities*, either without any foundation whatever, or so distorted and disfigured by fancy as to be nearly the same thing as their creation.

The learned men here have given us many illustrations of such delusions; as that of the man who believes that his legs are of glass, and therefore refuses to move, for fear they will break; or of the man who fancies himself the King of the French; or of him who confides to you the precious secret that he is Emperor of the world. These are palpable delusions; but there are others equally, or even more fatal in their effects, which have their foundation in some original fact, and are thus described by Dr. Ray, at page 210 of his work:

"In another class of cases, the exciting cause of homicidal insanity is of a moral nature, operating upon some peculiar physical predisposition, and sometimes followed by more or less physical disturbance. Instead of being urged by a sudden, imperious impulse to kill, the subjects of this form of the affection, after suffering for a certain period much gloom of mind and depression of spirits, feel as if bound by a sense of necessity to destroy life, and proceed to the fulfilment of their destiny with the utmost calmness and deliberation. So reluctant have courts and juries usually been to receive the plea of insanity in defence of crime, deliberately planned and executed by a mind in which no derangement of intellect has ever been perceived, that it is of the greatest importance that the nature of these cases should not be misunderstood."

Our learned witnesses have given us various definitions of a delusion. Dr. HUN'S is perhaps as clear and accurate as any: "It is a cherished opinion, opposed by the sense and judgment of all mankind." In simple speech, it is what is called the predominance of ONE IDEA, by which reason is subverted. I shall now show you such a predominance of one idea, as will elucidate the progress of this maniac, from the first disturbance of his mind to the dreadful catastrophe on the shore of the Owasco lake. That delusion is a star to guide your judgments to an infallible conclusion, that the

prisoner is insane. If you mistake its course, and consign him to a scaffold, it will rest over his grave, indicating him as a martyr, and you as erring or unjust judges.

In April, 1840, Mrs. GODFREY, who resides in the town of Sennett, on the middle road, four miles north-east of Auburn, lost a horse. Jack Furman, a hardened offender, stole the horse. For some purpose, not now known, he put him into the care of the prisoner, who was seen with the horse. Both Furman and Freeman were arrested. The former was the real thief and Freeman constructively guilty. Freeman was arrested by Vanderheyden, taken into an upper chamber, and *there declared his innocence of the crime*. He was nevertheless committed to jail. *All* the police, and the most prejudiced of the witnesses for the people, have testified their entire conviction that the prisoner was innocent. Furman was selected by favor as a witness for the people. Freeman, while in jail, comprehending his danger, and conscious of his innocence, dwelt upon the injustice, until, having no other hope, he broke prison and escaped. Being retaken, he assigned, as the reason for his flight, that Jack Furman stole the horse, and was going to swear him into the state prison. The result was as he apprehended. He was convicted by the perjury of Furman, and sentenced to the state prison for five years. This was the *first* act in the awful tragedy of which he is the hero. Let judges and jurors take warning from its fatal consequences. How deeply this injustice sank into his mind, may be seen from the testimony of ARETAS A. SABIN, the keeper, who said to him on the day he entered the prison, "I am sorry to see you come here so young." The prisoner wept. Well would it have been, if this, the last occasion on which the prisoner yielded to that infirmity, had, ominous as it was of such fatal mischief, been understood and heeded.

A year passed away; and he is found in the prison, neglecting his allotted labor, sullen and morose.

JAMES E. TYLER, the keeper, says: "I had talked to him, and found it did no good. I called him up to punish him—told him I was going to punish him for not doing more work, and should do so repeatedly until he should do more work. When I talked with him about doing more work, he gave as an excuse, 'that he was there wrongfully, and ought not to work.'"

The excuse aggravated the severity of his castigation. Such was penitentiary cure for incipient insanity.

VAN KUREN, a foreman in one of the shops at the prison, represents the prisoner as sullen, intractable, and insolent. He caused him to be punished, although he then dis-

covered, on all occasions, that idiotic laugh, without cause or motive, which marks the maniac.

SILAS E. BAKER remarked the same idiotic laugh when the prisoner was at his work, in his cell, and in the chapel.

WILLIAM P. SMITH, a foreman in the prison, remarked his peculiarities, but unfortunately was not then led to their true cause.

THERON R. GREEN, as has been already seen, discovered the same peculiarities, divined their cause, held him irresponsible, and gave an unheeded warning against his enlargement.

The discipline of the prison forbids conversation between convict and convict, and between keepers and prisoners. The iron that had entered the prisoner's soul was necessarily concealed, but DEPUY, and WARDEN, and GREEN, who thought him changed then, as well as SMITH, VAN KUREN, BAKER, and TYLER, who regarded him only as ignorant and obstinate, give conclusive evidence that the ruin of his mind was betrayed in a visible change of his appearance, conduct and character.

The time at length arrived, when the secret could no longer be suppressed. The new chaplain, the Rev. ALONZO WOOD, was in the agent's office when the prisoner was discharged. Two dollars, the usual gratuity, was offered him, and he was asked to sign a receipt. "*I ain't going to settle so.*" For five years, until it became the ruling thought of his life, the idea had been impressed upon his mind, that he had been imprisoned wrongfully, and would, therefore, be entitled to payment on his liberation. This idea was opposed "*by the judgment and sense of all mankind.*" The court that convicted him pronounced him guilty, and spoke the sense and judgment of mankind. But still he remained unconvinced. The keepers who flogged him pronounced his claim unjust and unfounded, and they were exponents of the "sense and judgment of all mankind." But imprisonment, bonds and stripes, could not remove the one inflexible idea. The agents, the keepers, the clerk, the spectators, and even the reverend chaplain, laughed at the simplicity and absurdity of the claim of the discharged convict, when he said, "*I've worked five years for the state, and ain't going to settle so.*" Alas! little did they know that they were deriding the delusion of a maniac. Had they been wise, they would have known that—

"So foul a sky clears not without a storm."

The peals of their laughter were the warning voice of human nature for the safety of the family of Van Nest.

Thus closes the second act of the sad drama.

The maniac reaches his home, sinks sullenly to his seat, and

hour after hour relates to JOHN DEPUY the story of his wrongful imprisonment, and of the cruel and inhuman treatment which he had suffered; inquires for the persons who had caused him to be unjustly convicted, learns their names, and goes about drooping, melancholy and sad, dwelling continually upon his wrongs, and studying intensely in his bewildered mind how to obtain redress. Many passed him, marking his altered countenance and carriage, without stopping to inquire the cause. Doctor HERMANCÉ alone sought an explanation: "I met him about the first of December last; I thought his manner very singular and strange. I inquired the cause. He told me that he had been in the prison for five years, and that he wasn't guilty, and that they wouldn't pay him. I met him afterward in the street, again remarked his peculiarities, and inquired the cause. He answered as before, that he had been in State Prison five years wrongfully, and they wouldn't pay him."

The one idea disturbs him in his dreams and forces him from his bed; he complains that he can make no gain and can't live so; he dances to his own wild music, and encounters imaginary combatants.

Time passes on until February. He visits Mrs. Godfrey at her house in Sennett. He enters the house, deaf, and stands mute. "I gave him a chair," says Mrs. Godfrey; "he sat down. I asked which way he was travelling. He wanted to know if that was the place where a woman had a horse stole five years before. I told him it was. He said he had been to prison for stealing the horse, and didn't steal it neither. I told him I knew nothing about that, whether it was he or not. He said he'd been to prison for stealing a horse, and didn't steal it, and he wanted a settlement. Johnson, who was there, asked him if he should know the horse if he should see it. 'No.' 'Do you want the horse?' 'No. Are you the man who took me up? Where is the man who kept the tavern across the way and helped to catch me?' 'He is gone.' I asked him if he was hungry. He said he didn't know but he was. I gave him some cakes, and he sat and ate them."

Here was exhibited at once the wildness of the maniac, and the imbecility of the demented man. His delusion was opposed to "the sense and judgment of all mankind." Mrs. GODFREY and Mr. JOHNSON exposed its fallacy. But still the one idea remained

unconquered and unconquerable. The maniac who came to demand pay for five years' unjust imprisonment was appeased with a morsel of cake.

He was next seen at Mr. Seward's office, a week or ten days before the murder. He asked if that was a 'squire's office, and said he wanted a warrant. Mr. PARSONS, the clerk, says: "I didn't understand until he had asked once or twice. I asked him what he wanted a warrant for. He said for the man who had been getting him into prison, and he wanted to get damages. I told him the Justices' offices were up street, and he went away."

Next we find him at the office of LYMAN PAINE, Esq., Justice, on the Saturday preceding the death of Van Nest. Mr. PAINE says: "He opened the door, came in a few feet, and stood nearly a minute with his head down, *so*. He looked up and said: '*Sir, I want a warrant.*' 'What for?' He stood a little time, and then said again: '*Sir, I want a warrant.*' 'What do you want a warrant for?' He stood a minute, started, and came up close to me, and spoke very loud: '*Sir, I want a warrant.* I am very deaf, and can't hear very well.' I asked him in a louder voice what he wanted a warrant for. 'For a man who put me to State Prison.' 'What is your name?' '*William Freeman; and I want a warrant for the man who put me to prison.*' I said: 'If you've been to prison, you have undoubtedly been tried for some offence.' 'I have; it was for stealing a horse, but I didn't steal it. I've been there five years.' I asked who he wanted a warrant for. He told some name—I think it was Mr. Doty." [You will remember, gentlemen, that Mr. Doty, Mr. Hall, and Mrs. Godfrey, all of Sennett, and Jack Furman, of this town, were the witnesses against him.] "I told him if he wanted a warrant, it must be for perjury—he must give me the facts and I would see. He stood two or three minutes and then said: '*Sir, I want a warrant.*' I asked further information. He stood a little while longer, took out a quarter of a dollar, threw it on the table, and said: '*I demand a warrant*'—appeared in a passion, and soon after went out. He returned in the afternoon, said he would have a warrant, and gave the names of Mr. Doty and Mrs. Godfrey."

Mr. PAINE saw, in all this, evidence of stupidity, ignorance, and malice, only, but not of insanity. But, gentlemen, if he could have looked back to the origin of the prisoner's infatuation, and

forward to the dreadful catastrophe on the shore of the Owasco Lake, as we now see it, who can doubt that he would then have pronounced the prisoner a maniac, and have *granted*, not the warrant he asked, but an order for his commitment to the County Jail, or to the Lunatic Asylum?

Denied the process, to which he thought himself entitled, he proceeded a day or two later to the office of JAMES H. BOSTWICK, Esq., another justice. "I saw him," says this witness, "a day or two before the murder. He came, and said he wanted a warrant. I asked for whom. He replied: '*for those that got me to prison. I was sent wrongfully. I want pay.*' I asked him who the persons were. He mentioned a widow and two men. He mentioned Mrs. Godfrey as the widow woman, Jack Furman and David W. Simpson as the two men." (Simpson was the constable by whom he was arrested the second time for stealing the horse.) Mr. BOSTWICK declined issuing the warrant, and informed him there was no remedy, and again expounded to him the "sense and judgment of all mankind," in opposition to his delusion.

According to the testimony of JOHN DEPUY, the prisoner was agitated by alternate hope and despair in regard to his redress. At one time he told DEPUY, that he'd got it all fixed, and wanted him to go down to the justice's office and see that he was paid right. At another, he told DEPUY that the "Squires wouldn't do nothing about it; that he could get no warrant, nor pay, and he couldn't live so."

Then it was that the one idea completely overthrew what remained of mind, conscience, and reason. If you believe HERSEY, Freeman, about a week before the murder, showed him several butcher knives, told him he meant to kill Depuy, his brother-in-law, for trivial reasons, which he assigned, and said that he had found the folks that put him in prison, and meant to kill them. HERSEY says: "I asked him who they were. He said, *they were Mr. Van Nest*, and said no more about them. He didn't say where they lived, and nothing about any other man, woman, or widow." This witness admits that he suppressed this fact on the preliminary examination.

If you reject this testimony, then there is no evidence that he ever had any forethought of slaying Van Nest. If you receive it, it proves the complete subversion of his understanding; for John G. Van Nest, and all the persons slain, resided not in Sennett, nor

in Auburn, but four miles south of the latter place, and eight miles from the house of Mrs. Godfrey. The prisoner, within a week before the crime, named to the magistrates every person who was concerned in his previous conviction. We have shown that neither John G. Van Nest, nor any of his family or kindred, nor any person connected with him, was, or could have been, a party, a magistrate, a witness, a constable, a sheriff, a grand juror, attorney, petit juror, or judge, in that prosecution, or ever knew or heard of the prosecution, or ever heard or knew that any such larceny had been committed, or that such a being as the prisoner existed. Mrs. GODFREY and the witnesses on the former occasion, became known to the remaining family and relatives of Van Nest, here in court, for the first time, during these trials.

You will remember that Erskine's test of a delusion that takes away responsibility is—that *the criminal act must be the immediate, unqualified offspring of the delusion*. I shall now proceed to show, that such is the fact in the present case.

The first witness to whom the prisoner spoke concerning the deeds which he had committed was GEORGE B. PARKER. This was at Phenix, Oswego county, immediately after his arrest, within twenty hours after the perpetration of the crime. "I pushed very hard for the reasons," says the witness, "what he had against Van Nest. '*I suppose you know I've been in State Prison five years,*' he replied. '*I was put there innocently, I've been whipped and knocked and abused, and made deaf, and there won't any body pay me for it.*'"

VANDERHEYDEN arrived soon afterwards. He says: "I called the prisoner aside, and said to him: 'Now we're alone, and you may as well tell me how you came to commit this.' He says to me: '*You know there is no law for me.*' I asked him what he meant by that '*no law!*' He said, '*THEY OUGHT TO PAY ME.*'"

ETHAN A. WARDEN followed him into his cell in the jail, and asked him, "When you started from home what did you go up there for?—'*I must go.*' Why must you go? '*I must begin my work.*' What made you do it? '*They brought me up so.*' Who brought you up so? '*The State.*' They didn't tell you to kill, did they? '*Don't know—won't pay me.*' Did you know these folks before you went to prison? '*No.*' Was you there a few days before to get work? '*Yes.*' Did they say anything to offend you or make you angry? '*No.*' What made you kill them; what did you do it for? '*I must begin my work.*' Didn't

you expect to be killed? '*Didn't know but I should.*' If you expected to be killed what made you go; did you go to get money? '*No.*' Did you expect to get money? '*No.*' Did you intend to get the horse? '*No.*' How did you come to take him? '*Broke my things,* (meaning knives)—*hand was cut—came into my mind—take the horse—go—and—get so—could, do no more work.*' If you had not broke your things, what would you have done? '*Kept to work.*' Did you mean to keep right on? '*I meant to keep to work.*' Would you have killed *me* if you had met me? '*Spouse I should.*' What made you begin at that house? '*Stopped two or three places, thought it wasn't far out enough to begin.*' Are you not sorry you killed so many? '*Don't think anything about it.*'"

The prisoner has invariably given similar answers to every person who has asked him the motive for his crime.

WARREN T. WORDEN, Esq., says, "I asked him why he took the horse? He answered, '*My hand was hurt, and I couldn't kill any more.*' I asked him why he killed them? and he answered, '*Why did they send me to State Prison when I wasn't guilty.*' And in making this reply he trembled, and I thought he was going to weep. I told him they would hang him now; he showed no feeling."

Dr. FOSGATE says that Dr. Hurd asked him what he killed those folks for? He replied, "*They put me in prison.*"

JOHN R. HOPKINS says, "I turned his attention to the idea of pay—if he had got his pay for his time in prison? That question raised him up, and he looked comparatively intelligent, and brightened up his whole countenance. He said '*No.*' Who ought to pay you? '*All of them.*' Ought I? He looked up with a flash of intelligence, said nothing, but looked intently at me, and the answer was conveyed by the look. I asked if this man, (pointing to Hotchkiss) ought to pay him? He looked at him, as at me, and said, '*Do what's right,*' or '*we'll do what's right.*' We then spoke about his trial, and he was stupid and dull again."

The Rev. J. M. AUSTIN says: "I put questions to find his motive for killing that family. His answers were very broken and incoherent, but invariably referred to his being in prison innocently. Had the persons you killed, anything to do with putting you into prison? '*No.*' Did you know their names? '*No.*' Why did you kill that particular family? No-direct answer, but something

about being put in prison wrongfully. Do you think it right to kill people who had no hand in putting you in prison? He gave an incoherent reply. I gathered, *'shall do something to get my pay.'* How much pay ought you to have? *'Don't know.'* Was it right to kill those innocent persons for what had been done by others? *'They put me in prison.'* Who did—The Van Nest Family? *'No.'* Why then did you kill them? Did you think it right to kill that innocent child? I understood from his gestures in reply, that he was in a labyrinth, from which he was incapable of extricating himself. How did you happen to go that particular night? *'The time had come.'* Why did you enter that particular house? *'I went along out and thought I might begin there.'* I asked if he ever called on Mrs. Godfrey. He said, *'I went to Mrs. Godfrey to get pay, and she wouldn't pay me. I went to Esquaires Bostwick and Paine and they wouldn't do nothing about it.'*

Mr. IRA CURTIS, says: "I asked him how he came up there. *'I went up south a piece.'* How far? *'Stopped at the house beyond there.'* What for? *'To get a drink of water.'* What did you go into Van Nest's house for? *'Don't know.'* Did you go in to murder or kill them? *'Don't know.'* Was it for money? *'Didn't know as they had any.'* Did you kill the child? *'They said I killed one, but I didn't.'* What did you kill them for? *'You know I had my work to do.'* Had you anything against these people? *'Don't know.'* Why didn't you commence at the other place? *'Thought it wasn't time yet.'* He said, *'they wouldn't pay him. He had been imprisoned and they wouldn't pay him.'*"

Dr. HERMANCE says: "Dr. Pitney asked him how he happened to go up. *'It rained and I thought it would be a good time.'* Why did you go to Van Nest's, and not to some other family? No answer. Why didn't you come and kill me? He smiled but gave no answer. Don't you think you ought to be hung for killing Van Nest and his family? The same question was repeated authoritatively, and he replied: *'Sent to prison for nothing—ought I to be hung?'* Suppose you had found some other person, would you have killed any other as well as Van Nest? *'Yes.'* I asked why did you kill Van Nest and his family? *'For that horse.'* What do you mean by killing *'for that horse?'* *'They sent me to prison and they won't pay me.'* Had Van Nest anything to do with sending you to prison? *'No.'*"

Dr. BRIGGS says: "When I repeated the question, why did you

kill Van Nest? he replied, *'Why was I put in prison for five years?'*"

WILLIAM P. SMITH, asked: "Why did you kill those people? *'I've been to prison wrongfully five years. They wouldn't pay me. Who? 'The people, so I thought I'd kill somebody.'* Did you mean to kill one, more than another? *'No.'* Why did you go so far out of town? *'Stopped at one place this side; wouldn't go in—couldn't see to fight, 'twas dark, looked up street, saw a light in next house, thought I'd go there, could see to fight.'* Don't you know you've done wrong? *'No.'* Don't you think 'twas wrong to kill the child? After some hesitation, he said, *'Well—that looks kind o'h-a-r-d.'* Why did you think it was right? *'I've been in prison five years for stealing a horse, and I didn't do it; and the people won't pay me—made up my mind, ought to kill somebody.'* Are you not sorry? *'No.'* How much pay do you want? *'Don't know—good deal.'* If I count you out a hundred dollars, would that be enough? *'He thought it wouldn't.'* How much would be right? *'Don't know.'* He brightened up, and finally said he thought *'about a thousand dollars would be about right.'*"

It would be tedious to gather all the evidence of similar import. Let it suffice, that the witnesses who have conversed with the prisoner, as well those for the people as those for him, concur fully in the same statement of facts, as to his reasons and motives for the murders. We have thus not merely established the existence of an insane delusion, but have traced directly to that overpowering delusion, the crimes which the prisoner has committed.

How powerful that delusion must have been, may be inferred from the fact that the prisoner, when disabled, desisted from his work, and made his retreat to his friends in Oswego county, not to escape from punishment for the murders, but, as he told Mr. E. A. WARDEN, to wait till his wounded hand should be restored, that he might resume his dreadful butchery; and, as he told Dr. BIGELOW, because he couldn't "handle his hand." The intensity of this delusion exceeds that under which Hatfield assailed the king; that which compelled Henriette Cornier to dissever the head of the child entrusted to her care; and that of Rabello, the Portuguese, who cut to pieces with his axe the child who trod upon his feet.

The next feature in the cause which will claim your attention,

gentlemen of the jury, is the MANNER AND CIRCUMSTANCES OF THE ACT ITSELF.

In Ray's Medical Jurisprudence, at page 224, are given several tests by which to distinguish between the homicidal maniac and the murderer.

We shall best consider the present case by comparing it with those tests :

I. "There is the *irresistible motiveless* impulse to destroy life." Never was homicide more *motiveless*, or the impulse more completely irresistible, than in the present case, as we have learned from the testimony already cited.

II. "In nearly all cases, the criminal act has been preceded, either by some well marked disturbance of the health, or by an irritable, gloomy, dejected, or melancholy state ; in short, by many of the symptoms of the incubation of mania." How truly does this language describe the condition of the prisoner during the brief period of his enlargement !

III. "The impulse to destroy is powerfully excited by the sight of murderous weapons—by favorable opportunities of accomplishing the act—by contradiction, disgust, or some other equally trivial and even imaginary circumstance."

While we learn from HERSEY's testimony, that the prisoner kept a store of knives fit for such a deed, we find in the denial of his demands for settlement, for pay, and for process, by Mrs. GODFREY, and the magistrates, the contradiction and causes of disgust here described.

IV. "The victims of the homicidal monomaniac are either entirely unknown or indifferent to him, or they are amongst his most loved and cherished objects."

Freeman passed by his supposed oppressors and persecutors, and fell upon a family absolutely indifferent, and almost unknown to him, while he reserved the final stroke for his nearest and best friend, and brother-in-law.

V. "The monomaniac sometimes diligently conceals and sometimes avows his purpose, and forms schemes for putting it into execution, testifying no sentiment of grief."

The prisoner concealed his purpose from all but HERSEY. He purchased the knife which he used, in open day, at a blacksmith's shop, in the presence of persons to whom he was well known, and ground it to its double edge before unsuspecting witnesses, as

coolly and deliberately as if it were to be employed in the shambles. He applied at another blacksmith's shop where he was equally well known, to have another instrument made. He shaped the pattern in a carpenter's shop, carried it to the smith, disagreed about the price, and left the pattern upon the forge, in open sight, never thinking to reclaim it, and it lay there until it was taken by the smith before the coroner's inquest, as an evidence of his design. So strange was his conduct, and so mysterious the form of the knife which he required, that MORRIS, the smith, suspected him, and told him that he was going to *kill somebody* ; to which he answered with the nonchalance of the butcher, "*that's nothing to you if you get your pay for the knife.*" On the two days immediately preceding the murder, he is found sharpening and adjusting his knives at a turner's shop, next door to his own dwelling, in the presence of persons to whom he is well known, manifesting no apprehension, and affecting no concealment.

The trivial concerns of his finances and occupation are as carefully attended to, as if the murder he was contemplating had been an ordinary and lawful transaction. HYATT demands three shillings for the knife. The prisoner cheapens until the price is reduced to eighteen pence, with the further advantages that it shall be sharpened and fitted to a handle. Hyatt demands sixpence for putting a rivet into his knife. He compromises, and agrees to divide the labor and pay half the price. He deliberately takes out his wallet and lays down three cents for Simpson the turner, for the use of the grindstone. On the very day of the murder he begs some grease at the soap factory to soften his shoes, and tells AARON DEMUN that he is going into the country to live in peace. At four o'clock in the afternoon he buys soap at the merchant's for MARY ANN NEWARK, the poor woman at whose house he lived. He then goes cautiously to his room, takes the knives from the place of their concealment under his bed, throws them out of the window to avoid exposure to her observation, and when the night has come, and the bells are ringing for church, and all is ready, he stops to ask the woman whether there is any chore to be done. She tells him, none, but to fill the tub with snow. He does it, as carefully as if there were no commotion in his mind, and then salutes forth, takes up his instruments, and proceeds on his errand of death. He reconnoiters the house on the north of Van Nest's, Van Nest's house, and Brook's house on the south, and finally de-

rides upon the middle one as the place of assault. It does not affect his purpose that he meets Mr. Cox and Mr. PATTEN, under a broad bright moonlight. He waits his opportunity, until Williamson, the visitor, has departed, and Van Arsdale, the laboring man, has retired to rest. With an energy and boldness that no sane man, with such a purpose, could possess, he mortally stabs four persons, and dangerously wounds a fifth, in the incredibly short space of five minutes. Disabled, and therefore desisting from further destruction, he enters the stable, takes the first horse he finds, mounts him without a saddle, and guiding him by a halter, dashes toward the town. He overtakes and passes Williamson, the visitor, within the distance of three-fourths of a mile from the house which he had left in supposed security. Pressing on, the jaded beast, worn out with age, stumbles and brings him to the ground. He plunges his knife into the breast of the horse, abandons him, scours forward through the town, across the bridge and on the middle road to Burrington's; there seizes another horse, mounts him, and presses forward, until he arrives among his relations, the Depuys, at Schroeppel, thirty miles distant. They, suspecting him to have stolen the horse, refuse to entertain him. He proceeds to the adjoining village, rests from his flight, offers the horse for sale, and when his title to the horse is questioned, announces his true name and residence, and refers to the Depuys, who had just cast him off, for proof of his good character and conduct. When arrested and charged with the murder, he denies the act.

Now the sixth test given by Ray is, that "while most maniacs having gratified their propensity to kill, voluntarily confess the act, and quietly give themselves up to the proper authorities, a very few only, and those to an intelligent observer, show the strongest indications of insanity, fly, and persist in denying the act."

VII. "Murder is never criminally committed without some *motive* adequate to the purpose in the mind that is actuated by it, while the insane man commits the crime without any motive whatever, strictly deserving the name."

VIII. "The *criminal* never sheds more blood than is necessary for the attainment of his object. The *monomaniac* often sacrifices all within his reach to the cravings of his murderous propensity."

IX. The *criminal* either denies or confesses his guilt; if the

latter, he sues for mercy, or glories in his crimes. On the contrary, the *maniac*, after gratifying his bloody desires, testifies neither remorse, repentance, nor satisfaction."

X. "The *criminal* has accomplices, the *maniac* has none."

XI. "The murderer never conceives a design to murder without projecting a plan for concealing his victim, effecting his escape, and baffling pursuit. The maniac prepares the means of committing the crime with calmness and deliberation, but never dreams of the necessity of concealing it when done, or of escape, until his victim lies at his feet."

Dr. BIGELOW and others state that the prisoner told them, as obviously was the case, that he sought no plunder, that he thought not of escape or flight, until his *things* were broken, and his hand was cut, so that he could not continue his work. He seized the nearest and the most worthless horse in the stable, leaving two fleet animals remaining in their stalls. He thought only of taking Burrington's horse, when the first failed; all he cared for was to get out of the county, there to rest, until his hand was cured, so that he could come back and do more *work*. He rested from flight within thirty miles from the scene of his crimes, and in selling his horse, was depriving himself of the only means of making his escape successful. When the person of Van Nest was examined, his watch, pocket-book, money, and trinkets, were found all undisturbed. Not an article in the house had been removed, and when the prisoner was searched upon his arrest, there was found in his pockets nothing but one copper coin, the one hundredth part of a dollar.

Without further detail, the parallel between the prisoner and the tests of madness established by medical jurisprudence, is complete.

It remains, gentlemen, to conclude the demonstration of the prisoner's insanity, by referring to the testimony of the witnesses who have given their opinions on that question. CORNELIUS VAN ARSDALE and HELEN HOLMES, the survivors of the dreadful scene at Van Nest's house, did not think the prisoner insane. The latter had only seen him for a moment, during the previous week, when he called there and asked for work. The former had never seen him before that fatal night. Both saw him there, only for a moment, and under circumstances exhibiting him as a ruthless murderer.

WILLIAMSON thinks he was not insane, but he saw the prisoner only when he swept past him, fleeing from his crime.

JAMES AMOS, ALONZO TAYLOR, GEORGE BURRINGTON, and GEORGE B. PARKER, say they read no indications of insanity in his conduct when arrested; but neither of them ever saw him before, or has seen him since.

ROBERT SIMPSON, the turner, GEORGE W. HYATT and JOSEPH MORRIS, the blacksmiths, did not suspect him to be insane, when he purchased and sharpened his knives. Neither of them ever knew him before, or has known him since.

NATHANIEL LYNCH, though he furnishes abundant evidence of the prisoner's insanity, is himself unconvinced.

AARON DEMUN, a colored man, does not think him insane, but stands alone, of all who knew him in his youth.

ISRAEL G. WOOD and STEPHEN S. AUSTIN do not think him insane. They were his jailers six years ago, but they have not examined him since his arrest.

VANDERHEYDEN and MONROE think him sane, but each testifies under feelings which disqualify him for impartiality.

JONAS BROWN thinks him not insane, but never saw him, except when he was buying a pound of soap at his store.

JOHN P. HULBERT, and BENJAMIN F. HALL, had brief conversations with him in the jail, after his arrest, but made no examination concerning his delusion.

LEWIS MARKHAM and DANIEL ANDRUS think him not insane, but they have made no examination of the subject; while both give evidence that he was once as bright, active, and cheerful, as he is now stupid, senseless, and imbecile.

BENJ. VANKEUREN, ARETAS A. SABIN, SILAS E. BAKER, and JAMES E. TYLER, all keepers in the State Prison, and ALONZO WOOD, the Chaplain, did not suspect him of insanity in the State Prison.

Their conduct towards him while there, proves their sincerity; but his history under their treatment will enable you to correct their erroneous judgments. It was their business, not to detect and cure insanity, but to prescribe his daily task, and to compel him by stripes to perform it in silence.

MICHAEL S. MEYERS, the former District Attorney, who prosecuted the prisoner for stealing the horse, looks at him now, and can see no change in his personal appearance; but he has never thought the subject worthy of an examination, and has not in six years spoken with, or thought of the accused.

LYMAN PAINE, and JAMES H. BOSTWICK, to whom he applied for process, continue now as well convinced of the prisoner's sanity, as they were when he applied to them for warrants, which it was absurd for him to ask. Neither of them has examined him since his arrest, or stopped to compare his conduct in the murder with his application for a warrant, or with the strange delusion which brought him before them.

Such and so feeble is the testimony as to the prisoner's sanity, given by others than the medical witnesses. Nor is the testimony of the medical witnesses on the part of the people entitled to more respect.

Dr. GILMORE pronounces a confident opinion that the prisoner is sane; but the witness is without experience, or any considerable learning on that subject, and his opinion is grounded upon the fact, that the accused had intellect enough to prepare for his crime, and sense enough to make his escape, in the manner so often described. I read to the Doctor the accounts of several cases in Bedlam, and without exception he pronounced the madmen, sane criminals.

Dr. HYDE visited the prisoner twice in his cell, perhaps thirty minutes each time, and as the result of those visits, says he was rather of the opinion that he was sane. Dr. HYDE expressly disavows any learning or experience on the subject of insanity, and does not give the details of his examination.

Dr. DAVID DIMON visited the prisoner several times in jail, but could not discover anything that he could call insanity. He thinks there can be no insane delusion in this case, because he thinks that an insane delusion is the thorough conviction of the reality of a thing, which is opposed by the evidence of the sufferer's senses. The Doctor claims neither study nor experience; pronounces the prisoner to be of a grade of intellect rather small for a negro; thinks he has not as much intellect as a child of fourteen years of age, and in regard to knowledge, would compare him with a child two or three years old, who knows his A, B, C, but cannot count twenty-eight.

Those who seek the extreme vengeance of the law, will, if successful, need all the consolation to be derived from the sanity of the accused, if, at the age of twenty-three, he be thus imbecile in mind and barren in knowledge.

Dr. JEDEDIAH DARROW has read nothing on the subject of insanity for forty years, and has never had any experience. He declares that his conclusion is not to be regarded as a professional opinion. He talked with the prisoner *once* in jail, to ascertain his sanity and thought it important to *avoid all allusion to the crimes he had committed, their motives, causes, and circumstances.* He now thinks that it would have been wise, where monomania was suspected, to have examined into the alleged *delusion.* He contents himself with saying, he did not *discover insanity.*

Dr. JOSEPH L. CLARY visited the prisoner in jail: cannot give a decided opinion; his prevailing impression is, that the prisoner is not insane, but he has not had opportunities enough to form a correct opinion. He has never seen a case of Dementia, and knows it only from definitions in books, which he has never tested.

Dr. BIGELOW, Physician to the prison, discovered nothing in his examinations which led him to suspect insanity. The Doctor has a salary of five hundred dollars per annum; his chief labor in regard to insanity is to detect counterfeits in the prison; and although he admits that the prisoner has answered him freely, and unsuspectingly, and fully, he accounts for the condition of his mind, by saying that he regards him "*as an ignorant, dull, stupid, degraded, debased, and morose, but not insane person.*"

Dr. SYLVESTER WILLARD, without particular experience or learning in this branch, concurs in these opinions.

Dr. THOMAS C. SPENCER, Professor in the Medical College at Geneva, brings up the rear of the People's witnesses. I complain of his testimony, that it was covered by a masked battery. The District Attorney opened the cause with denunciations of scientific men, said that too much learning made men mad, and warned you therefore against the educated men who might testify for the prisoner. I thought at the time that these were extraordinary opinions. I had read

A little learning is a dangerous thing,
Drunk deep or taste not the Pierian Spring;
Those shallow drafts intoxicate the brain,
But drinking largely sobers us again."

What was my surprise to find that all these denunciations against learning and experience, made by the counsel for the people, were only a cover for Dr. SPENCER.

He heralds himself as accustomed to teach, and informs us that he has visited the principal hospitals for the insane in London, Paris, and other European capitals. How unfortunate it was that

on his cross-examination, he could not give the name or location of any asylum in either of those cities! Even the names and locations of the "Charenton" and "Bicetre" had escaped his memory.

But it is no matter. The doctor overwhelms us with learning, universal and incomprehensible. Here is his own map* of the mental faculties, in which twenty-eight separate powers of mind are described in odd and even numbers.

The arrows show the course of ideas through the mind. They begin with the motives in the region of the highest odd numbers in the southwest corner of the mind, marked A., and go perpendicularly northward, through Thirst and Hunger to Sensation, marked B.; then turn to the right, and go eastward, through Conception, to Attention, marked C., and then descend southward, through Perception, Memory, Understanding, Comparison, Combination, Reason, Invention, and Judgment, wheel to the left under the Will, marked D., and pass through Conscience, and then to V., the unascertained centre of Sensation, Volition, and Will. This is the natural turnpike road for the ideas when we are awake and sane. But here is an open shun-pike X. Y. Z., on which Ideas, when we are asleep or insane, start off and pass by Conscience, and so avoid paying toll to that inflexible gate-keeper. Now all this is very well, but I called on the doctor to show how the fugitive idea reached the will at D., after going to the end of the shun-pike. It appeared there was no other way but to dart back again, over the shun-pike, or else to go cringing, at last, through the iron gate of Conscience.

Then there was another difficulty. The doctor forgot the most important point on his own map, and could not tell from memory where he had located "the unascertained centre."

The doctor pronounces the prisoner sane because he has the chief intellectual faculties, Sensation, Conception, Attention, Imagination, and Association. Now, here is a delicate piece of wooden cutlery, fabricated by an inmate of the lunatic asylum at Utica, who was acquitted of murder on the ground of insanity. He who fabricated it evinced in the manufacture, Conception, Perception, Memory, Comparison, Attention, Adaptation, Co-ordination, Kindness, Gratitude, Mechanical Skill, Invention, and Pride. It is well for him that Dr. SPENCER did not testify on his trial.

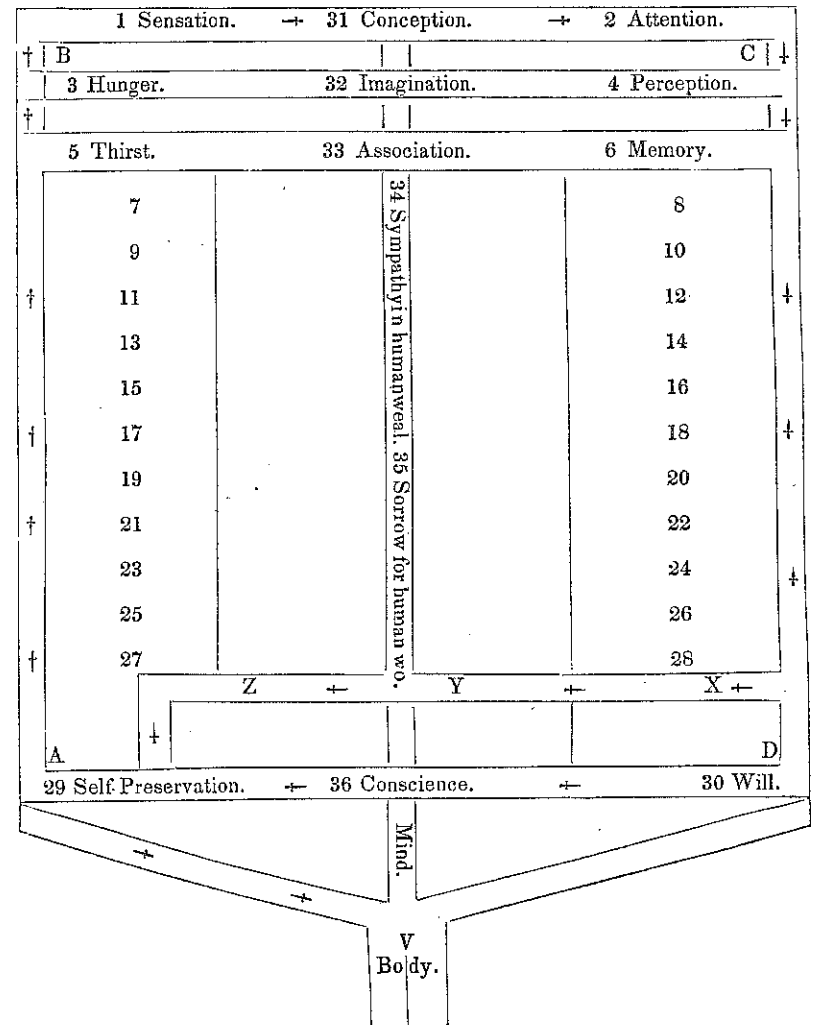
* See next page.

SPENCER'S INTELLECTUAL CHART.

THE BRAIN, LITTLE BRAIN, SPINAL MARROW AND NERVES, Are the Instruments or Media connecting the Mind with Material Things, and are the seat of Disease in Insanity.

THREE CLASSES—THIRTY-SIX FACULTIES.

I. Involuntary Faculties. Actions or Feelings of Mind. II. Intermediate Faculties. III. Voluntary Faculties.



EXPLANATIONS OF THE FOREGOING CHART

7 Love of society.	8 Understanding.
9 " children.	10 Comparison.
11 " money.	12 Combination.
13 " combat.	14 Reason.
15 " fame.	16 Invention.
17 " Nature's laws.	18 Judgment.
19 " Divine things.	20 Sense of justice.
21 Revenge,	22 Pleasure in right.
23 Anger,	24 Horror of wrong acts.
25 Joy, Hope, } And other passions, pro-	26 Intention, Co-ordination.
27 Fear, } pensities and motives.	28 Other volitions, mental and moral.
V. Unascertained centre of Thought, Sen-	V. A. B. C. D. Union of all the Mental
sation, and Volition.	Faculties, as if by electric wires, as
X. Y. Z. Dreaming or insane road of Thought	one whole.
around Conscience and Will.	

Opposed to these vague and unsatisfactory opinions is the evidence of SALLY FREEMAN, the prisoner's mother, who knew him better than any other one; of JOHN DEPUY, his brother-in-law and intimate friend; of ETHAN A. WARDEN, his employer in early youth; of DEBORAH DEPUY, his associate in happier days; of ADAM GRAY, who knew him in childhood, and sheltered him on his discharge from the state prison; of IRA CURTIS, in whose family he resided seven years ago; of DAVID WINNER, the friend of his parents; of ROBERT FREEMAN, his ancient fellow-servant at the American Hotel; of JOHN R. HOPKINS, an intelligent and practical man, who examined him in the jail; of THERON R. GREEN, who discovered his insanity in the state prison; of the Rev. JOHN M. AUSTIN, the one good Samaritan who deemed it a pastoral duty to visit even a supposed murderer in prison; of WILLIAM P. SMITH, who has corrected now the error of his judgment while in the state prison; of PHILO H. PERRY, a candid and enlightened observer, and of WARREN T. WORDEN, Esq., a lawyer of great shrewdness and sagacity.

Then there is an overwhelming preponderance of medical testimony. The witnesses are, Dr. VAN EPPS, who has followed the accused from his cradle to the present hour, with the interest of a humane and sincere friend; Dr. FOSGATE, who attended him in the jail for the cure of his disabled limb; Dr. BRIGGS, equal in public honors to Dr. BIGELOW, and greatly his superior in candor as well as learning, and who compares the prisoner now with what he was in better days; Dr. McNAUGHTON, of Albany, and Dr. HUN, of the same place, gentlemen known throughout the whole country for eminence in their profession; Dr. McCALL, of Utica, President of

the Medical Society of the State of New York; Dr. COVENTRY, Professor of Medical Jurisprudence in Geneva College, and one of the managers of the State Lunatic Asylum at Utica; and Dr. BRIGHAM, the experienced and distinguished Superintendent of that institution. This last gentleman, after reviewing the whole case, declares that he has no doubt that the prisoner is now insane, and was so when his crimes were committed; that he should have received him as a patient then, on the evidence given here, independently of the crime, and should now receive him upon all the evidence which has been submitted to you.

Dr. BRIGHAM pronounces the prisoner to have been a *monomaniac* laboring under the overwhelming progress of the delusion I have described, which had its paroxysm in the murders of which he is accused; and declares that since that time he has sunk into a deep and incurable *dementia*, the counter-part of idiocy. In these opinions, and in the reasons for them so luminously assigned by him, all the other medical gentlemen concur.

You may be told, gentlemen, that Dr. HUN and Dr. McNAUGHTON testified from mere observation of the prisoner without personal examination. Yes! I will thank the Attorney General for saying so. It will recall the strangest passages of all, in this the strangest of all trials. This is a trial for MURDER. A verdict of guilty will draw after it a sentence of DEATH. The only defence is insanity. Insanity is to be tested by examining the prisoner as he *now* is, and comparing him with what he *was* when the crime was committed, and during all the intervening period, and through all his previous life. Dr. HUN and Dr. McNAUGHTON were served with subpoenas, requiring them to attend here. They came, proceeded to the jail, and examined the prisoner on Wednesday night during the trial. Early on Thursday morning, they proceeded again to the jail to resume their examination, and were then denied access. It is proved that the attorney general instructed the sheriff to close the doors against them, and the attorney general admits it. Dr. HUN and Dr. McNAUGHTON are called to testify, and are ready to testify that the examination they did make satisfied them that the prisoner is insane now, and that he was insane when he committed the homicide. The attorney general objects, and the court overrules the evidence, and decides that these eminent physicians shall testify only from mere external observation of the prisoner, in court, and shall expressly forget and lay aside

their examinations of the prisoner made in jail, by conversations with him. Nor was the process by which the court effected this exclusion less remarkable than the decision itself. The court had obtained a verdict on the sixth of July, on the preliminary issue, that the prisoner was sufficiently sane to distinguish right from wrong. That verdict has been neither *pleaded* nor *proved* on this trial, and if it had been, it would have been of no legal value. Yet the court founds upon it a judicial statute of limitations, and denies us all opportunity to prove the prisoner insane, after the sixth of July. I tremble for the jury that is to respond to the popular clamor under such restraints as these. I pray God that these judges may never experience the consequences which must follow such an adjudication. But, gentlemen, Dr. HUN and Dr. McNAUGHTON bear, nevertheless, the strongest testimony that the prisoner is an *idiot*, as appears by observation, and that the evidence, as submitted to them, confirms this conviction.

There is proof, gentlemen, stronger than all this. It is silent, yet speaking. It is that *idiotic* smile which plays continually on the face of the maniac. It took its seat there while he was in the State Prison. In his solitary cell, under the pressure of his severe tasks and trials in the work-shop, and during the solemnities of public worship in the chapel, it appealed, although in vain, to his task-masters and his teachers. It is a smile, never rising into laughter, without motive or cause—the smile of vacuity. His mother saw it when he came out of prison, and it broke her heart. John Depuy saw it and knew his brother was demented. Deborah Depuy observed it and knew him for a fool. David Winner read in it the ruin of his friend, Sally's son. It has never forsaken him in his later trials. He laughed in the face of Parker, while on confession at Baldwinsville. He laughed involuntarily in the faces of Warden and Curtis, and Worden and Austin, and Bigelow and Smith, and Brigham and Spencer. He laughs perpetually here. Even when Van Arsdale showed the scarred traces of the assassin's knife, and when Helen Holmes related the dreadful story of the murder of her patrons and friends, he laughed. He laughs while I am pleading his griefs. He laughs when the Attorney General's bolts would seem to rive his heart. He will laugh when you declare him guilty. When the Judge shall proceed to the last fatal ceremony, and demand what he has to say why the sentence of the law should not be pronounced upon him, although

there should not be an unmoistened eye in this vast assembly, and the stern voice addressing him should tremble with emotion, he will even then look up in the face of the court and laugh, from the irresistible emotions of a shattered mind, delighted and lost in the confused memory of absurd and ridiculous associations. Follow him to the scaffold. The executioner cannot disturb the calmness of the idiot. He will laugh in the agony of death. Do you not know the significance of this strange and unnatural risibility? It is a proof that God does not forsake even the poor wretch whom we pity or despise. There are in every human memory, a well of joys and a fountain of sorrows. Disease opens wide the one, and seals up the other, forever.

You have been told, gentlemen, that this smile is hereditary and accustomed. Do you think that ever ancestor or parent of the prisoner, or even the poor idiot himself, was in such straits as these? How then can you think that this smile was ever before recognized by these willing witnesses? That chaotic smile is the external derangement which signifies that the strings of the harp are disordered and broken, the superficial mark which God has set upon the tabernacle, to signify that its immortal tenant is disturbed by a divine and mysterious visitation. If you cannot see it, take heed that the obstruction of your vision be not produced by the mote in your own eye, which you are commanded to remove before you consider the beam in your brother's eye. If you are bent on rejecting the testimony of those who know, by experience and by science, the deep affliction of the prisoner, beware how you misinterpret the hand-writing of the Almighty.

I have waited until now, gentlemen, to notice some animadversions of the counsel for the people. They say that drunkenness will explain the conduct of the prisoner. It is true that John Depuy discovered that those who retailed poisonous liquors were furnishing the prisoner with this, the worst of food for his madness. But the most laborious investigation has resulted in showing, by the testimony of Adam Gray, that he once saw the prisoner intoxicated, and that he, with some other person, drank spirits in not immoderate quantity, on the day when Van Nest was slain. There is no other evidence that the prisoner was ever intoxicated. John Depuy and Adam Gray testify that except that one time he was always sober. David Winner proves he was sober all the time the witness lived at Willard's, and Mary Ann Newark says

he was entirely sober when he sallied forth on his fatal enterprise. The only value of the fact of his drunkenness, if it existed, would be to account for his disturbed nights at Depuy's, at Gray's, and at Willard's. It is clearly proved that his mind was not beclouded, nor his frame excited, by any such cause on any of those occasions; and Dr. Brigham truly tells you that while the maniac goes quietly to his bed, and is driven from it by the dreams of a disturbed imagination, the drunkard completes his revels and his orgies before he sinks to rest, and then lies stupid and besotted until nature restores his wasted energies with return of day.

Several of the prisoner's witnesses have fallen under the displeasure of the counsel for the people. John Depuy was asked on the trial of the preliminary issue, whether he had not said, when the prisoner was arrested, that he was no more crazy than himself. He answered, that he had not said "in those words," and asked leave to explain by stating what he had said. The court denied him the right and obliged him to answer yes or no, and of course he answered no. On this trial he makes the explanation, that after the murder of Van Nest, being informed that the prisoner had threatened his life, he said, "Bill would do well enough if they wouldn't give him liquor; he was bad enough at any time, and liquor made him worse." By a forced construction, this declaration, which substantially agrees with what he is proved by other witnesses to have said, is brought in conflict with his narrow denial, made on the former trial. It has been intimated on this trial, that the counsel for the prosecution would contend that John Depuy was an accomplice of the prisoner and the instigator of his crimes. This cruel and unfeeling charge has no ground, even in imagination, except that twelve years ago Depuy labored for six weeks on the farm of the late Mr. Van Nest, then belonging to his father-in-law, Peter Wyckoff, that a misunderstanding arose between them, which they adjusted by arbitration and that they were friends always afterward. The elder Mr. Wyckoff died six years ago. It does not appear that the late Mr. Van Nest was even married at that time. JOHN DEPUY is a colored man, of vigorous frame and strong mind, with good education. His testimony, conclusive in this cause, was intelligently given. He claims your respect as a representative of his people, rising to that equality to which it is the tendency of our institutions to bring them.

I have heard the greatest of American orators. I have heard

Daniel O'Connell and Sir Robert Peel, but I heard John Depuy make a speech excelling them all in eloquence: "They have made William Freeman what he is, a brute beast; they don't make any thing else of any of our people but brute beasts; but when we violate their laws, then they want to punish us as if we were men." I hope the Attorney General may press his charge: I like to see persecution carried to such a length; for the strongest bow, when bent too far, will break.

DEBORAH DEPUY is also assailed as unworthy of credit. She calls herself the wife of Hiram Depuy, with whom she has lived ostensibly in that relation for seven years, in, I believe, unquestioned fidelity to him and her children. But it appears that she has not been married with the proper legal solemnities. If she were a white woman, I should regard her testimony with caution, but the securities of marriage are denied to the African race over more than half of this country. It is within our own memory that the master's cupidity could divorce husband and wife within this state, and sell their children into perpetual bondage. Since the Act of Emancipation here, what has been done by the white man to lift up the race from the debasement into which he had plunged it? Let us impart to negroes the knowledge and spirit of Christianity, and share with them the privileges, dignity and hopes of citizens and Christians, before we expect of them purity and self-respect.

But, gentlemen, even in a slave state, the testimony of this witness would receive credit in such a cause, for negroes may be witnesses there, for and against persons of their *own* caste. It is only when the life, liberty or property of the white man is invaded, that the negro is disqualified. Let us not be too severe. There was once upon the earth a Divine Teacher who shall come again to judge the world in righteousness. They brought to him a woman taken in adultery, and said to him that the law of Moses directed that such should be stoned to death, and he answered: "Let him that is without sin cast the first stone."

The testimony of SALLY FREEMAN, the mother of the prisoner, is questioned. She utters the voice of NATURE. She is the guardian whom God assigned to study, to watch, to learn, to know what the prisoner was, and is, and to cherish the memory of it for ever. She could not forget it if she would. There is not a blemish on the person of any one of us, born with us or coming from disease

or accident, nor have we committed a right or wrong action, that has not been treasured up in the memory of a mother. Juror! roll up the sleeve from your manly arm and you will find a scar there of which you know nothing. Your mother will give you the detail of every day's progress of the preventive disease.—SALLY FREEMAN has the mingled blood of the African and Indian races. She is nevertheless a woman, and a mother, and nature bears witness in every climate and in every country, to the singleness and uniformity of those characters. I have known and proved them in the hovel of the slave, and in the wigwam of the Chippewa. But Sally Freeman has been intemperate. The white man enslaved her ancestors of the one race, exiled and destroyed those of the other, and debased them all by corrupting their natural and healthful appetites. She comes honestly by her only vice. Yet when she comes here to testify for a life that is dearer to her than her own, to say she knows her own son, the white man says she is a drunkard! May Heaven forgive the white man for adding this last, this cruel injury to the wrongs of such a mother! Fortunately, gentlemen, her character and conduct are before you. No woman ever appeared with more sobriety, decency, modesty, and propriety, than she has exhibited here. No witness has dared to say or think that SALLY FREEMAN is not a woman of truth. Dr. CLARY, a witness for the prosecution, who knows her well, says, that with all her infirmities of temper and of habit, Sally "was always a truthful woman." The Roman Cornelia could not have claimed more. Let then the stricken mother testify for her son.

"I ask not, I care not, if guilt's in that heart,
I know that I love thee, whatever thou art."

The learned gentlemen who conduct this prosecution have attempted to show that the prisoner attended the trial of Henry Wyatt, whom I defended against an indictment for murder, in this Court, in February last; that he listened to me on that occasion, in regard to the impunity of crime, and that he went out a ripe and complete scholar. So far as these reflections affect me alone, they are unworthy of an answer. I pleaded for Wyatt then, as it was my right and my duty to do. Let the Counsel for the people prove the words I spake, before they charge me with Freeman's crimes. I am not unwilling those words should be recalled. I am not unwilling that any words I ever spoke in any responsible relation should be remembered. Since they will not recall those

words, I will do so for them. They were words like those I speak now, demanding cautious and impartial justice; words appealing to the reason, to the consciences, to the humanity of my fellow men; words calculated to make mankind know and love each other better, and adopt the benign principles of Christianity, instead of the long cherished maxim of retaliation and revenge. The creed of Mahomet was promulgated at a time when paper was of inestimable value, and the Koran teaches that every scrap of paper which the believer has saved during his life, will gather itself under his feet, to protect them from the burning iron which he must pass over, while entering into Paradise. Regardless as I have been of the unkind construction of my words and actions by my cotemporaries, I can say in all humility of spirit, that they are freely left to the ultimate, impartial consideration of mankind. But, gentlemen, how gross is the credulity implied by this charge! This stupid idiot, who cannot take into his ears, deaf as death, the words which I am speaking to you, though I stand within three feet of him, and who even now is exchanging smiles with his and my accusers, regardless of the deep anxiety depicted in your countenances, was standing at yonder post, sixty feet distant from me, when he was here, if he was here at all, on the trial of Henry Wyatt. The voice of the District Attorney reverberates through this dome, while mine is lost almost within the circle of the bar. It does not appear that it was not that voice that beguiled the maniac, instead of mine; and certain it is that, since the prisoner does not comprehend the object of his attendance here now, he could not have understood anything that occurred on the trial of Wyatt.

Gentlemen, my responsibilities in this cause are discharged. In the earnestness and seriousness with which I have pleaded, you will find the reason for the firmness with which I have resisted the popular passions around me. I am in some degree responsible, like every other citizen, for the conduct of the community in which I live. They may not inflict on a maniac the punishment of a malefactor without involving me in blame, if I do not remonstrate. I cannot afford to be in error, abroad, and in future times. If I were capable of a sentiment so cruel and so base, I ought to hope for the conviction of the accused; for then the vindictive passions, now so highly excited, would subside, the consciences of the wise and the humane would be awakened, and in a few months the

invectives which have so long pursued me would be hurled against the jury and the court.

You have now the fate of this lunatic in your hands. To him as to me, so far as we can judge, it is comparatively indifferent what be the issue. The wisest of modern men has left us a saying, that "the hour of death is more fortunate than the hour of birth," a saying which he signalized by bestowing a gratuity twice as great upon the place where he died as upon the hamlet where he was born. For aught that we can judge, the prisoner is unconscious of danger and would be insensible to suffering, let it come when and in whatever forms it might. A verdict can only hasten, by a few months or years, the time when his bruised, diseased, wandering and benighted spirit shall return to Him who sent it forth on its sad and dreary pilgrimage.

The circumstances under which this trial closes are peculiar. I have seen capital cases where the parents, brothers, sisters, friends of the accused surrounded him, eagerly hanging upon the lips of his advocate, and watching, in the countenances of the court and jury, every smile and frown which might seem to indicate his fate. But there is no such scene here. The prisoner, though in the greenness of youth, is withered, decayed, senseless, almost lifeless. He has no father here. The descendant of slaves, that father died a victim to the vices of a superior race. There is no mother here, for her child is stained and polluted with the blood of mothers and of a sleeping infant; and he "looks and laughs so that she cannot bear to look upon him." There is no brother, nor sister, nor friend here. Popular rage against the accused has driven them hence, and scattered his kindred and people. On the other side, I notice the aged and venerable parents of Van Nest and his surviving children, and all around are mourning and sympathizing friends. I know not at whose instance they have come. I dare not say they ought not to be here. But I must say to you that we live in a christian and not in a savage state, and that the affliction which has fallen upon these mourners and us, was sent to teach them and us mercy and not retaliation; that, although we may send this maniac to the scaffold, it will not recall to life the manly form of Van Nest, nor re-animate the exhausted frame of that aged matron, nor restore to life and grace, and beauty, the murdered mother, nor call back the infant boy from the arms of his Savior. Such a verdict can do no good to the living, and carry no joy to the

dead. If your judgment shall be swayed at all by sympathies so wrong, although so natural, you will find the saddest hour of your life to be that in which you will look down upon the grave of your victim, and "mourn with compunctious sorrow" that you should have done so great injustice to the "poor handful of earth that will lie mouldering before you."

I have been long and tedious. I remember that it is the harvest moon, and that every hour is precious while you are detained from your yellow fields. But if you shall have bestowed patient attention throughout this deeply interesting investigation, and shall in the end have discharged your duties in the fear of God and in the love of truth justly and independently, you will have laid up a store of blessed recollections for all your future days, imperishable and inexhaustible.

NOTE.—As has been already stated, a verdict of guilty was rendered, and the prisoner was sentenced to be hanged. But Mr. Seward's efforts to prevent the execution of a demented maniac did not end here. He appealed to the governor for a pardon, with what success the following correspondence will show:

AUBURN, August 17th, 1846.

DEAR SIR,—William Freeman, a negro, lies in the jail of this county under sentence of death for the crime of murder. I acted as his counsel on the solicitation of humane persons who believed him insane. I believe him absolutely and hopelessly insane, sinking from monomania into dementia. I believe he was a lunatic, and committed his crimes under the influence of an insane delusion. Thus believing, it seems to be a duty to appeal to you for pardon to the convict. The grounds of my opinion are the same which were submitted to the jury and overlooked by them. I beg leave, therefore, to transmit herewith a copy of my argument on the trial. You will, of course, know what allowance should be made for my prejudices and my zeal as counsel, and will know how much confidence ought to be reposed in the verdict of the jury. My own duty is finished when I express to you my sincere conviction of the truth of the plea which I unsuccessfully maintained. Fully believing that the subject will engage your most dispassionate consideration, I have the honor to be Your Excellency's most obedient servant,

WILLIAM H. SEWARD.

His Excellency SILAS WRIGHT, Governor, &c.

EXECUTIVE CHAMBER.

Albany, 7th September, 1846. }

DEAR SIR,—On my return to the city on the 22d ult., I found your letter of the 17th, relating to the case of William Freeman, and the copy of your printed argument which accompanied the letter. A large share of my time, since my return, has been devoted to the examination of the reports from the judge, and the other papers connected with the case, and I have come to the conclusion, that there is nothing in the testimony to warrant me in overruling the verdicts of the two juries, finding the fact of sanity. The case is a painful one in every aspect of it, and yet it would have been pleasant to my feelings to have found it in my power, consistently with my sense of duty, to have saved this man from the awful fate impending over him. I read your argument with attention and deep interest, but I did not find in it matter to obviate the force of the testimony upon the other side and the verdicts of the two juries. I am very respectfully, &c.,

SILAS WRIGHT.

His Excellency WILLIAM H. SEWARD, &c. &c.

Mr. Seward's next appeal was to the Supreme Court for a new trial, which was granted. The death of Freeman, however, relieved him of further labor in the case.—Ed.