

5.c.



# THE REPORTER

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

VOLUME IV,

CONTAINING

## TRIAL OF JOHN H. SURRATT,

IN THE

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SITTING FOR THE TRIAL OF CRIMES AND MISDEMEANORS,

ON AN INDICTMENT FOR

## MURDER OF PRESIDENT LINCOLN,

BEFORE HIS HONOR GEORGE P. FISHER,

ONE OF THE JUSTICES OF THE SUPREME COURT FOR THE DISTRICT OF COLUMBIA.

Continued from Volume III.

THE REPORTER

OF THE DISTRICT OF COLUMBIA

CONDUCTED BY

R. SUTTON, Chief of the Official Corps of Reporters of the United States Senate, and  
D. F. MURPHY and JAMES J. MURPHY, its Principal Members.

R. SUTTON,  
WASHINGTON CITY, D. C.

1867.



Law  
Office  
Trials  
(Case)  
Surratt

---

Entered according to Act of Congress, in the year 1867, by

R. SUTTON,

In the Clerk's Office of the Supreme Court of the District of Columbia.

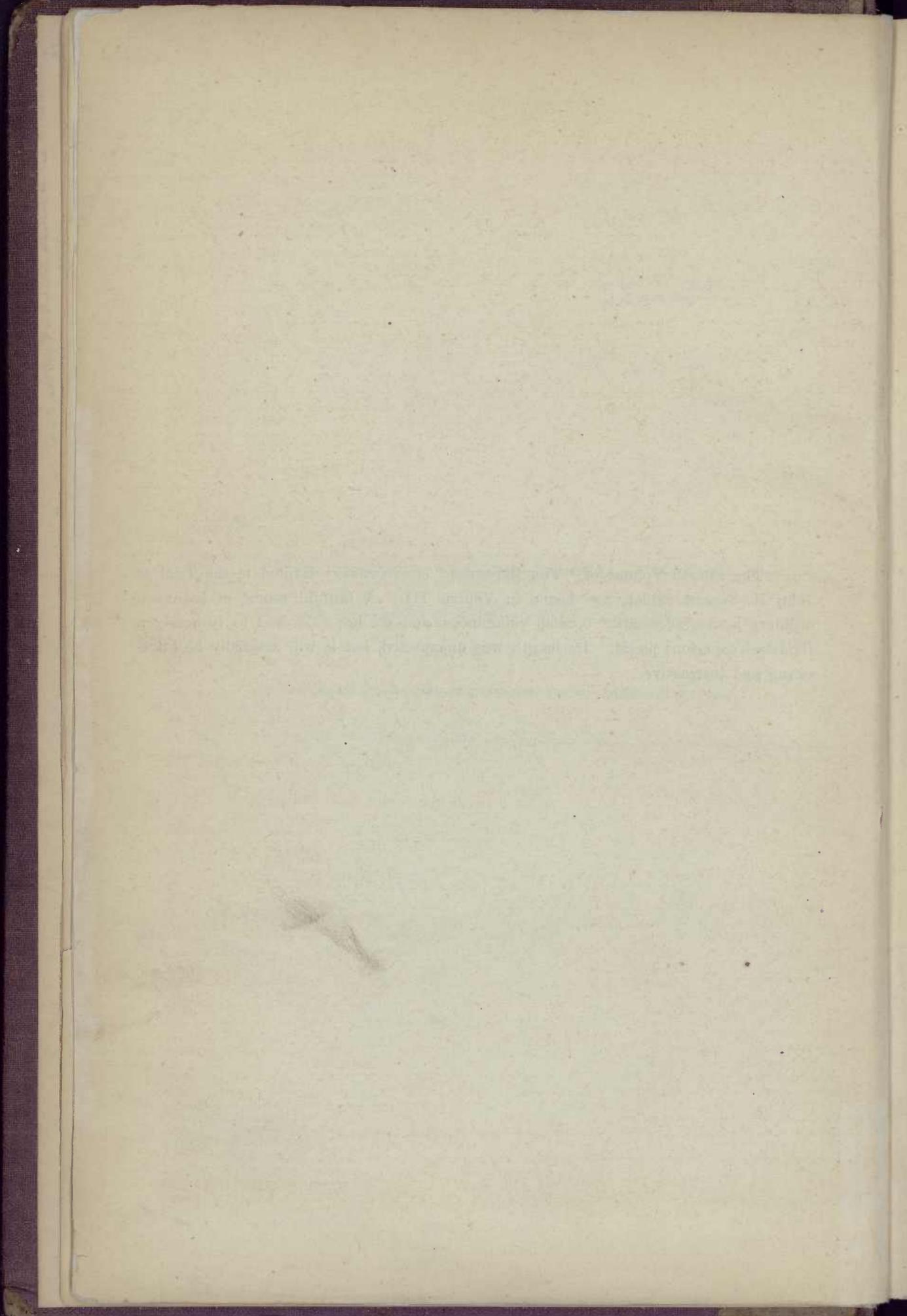
---



---

M'GILL & WITHEROW,  
PRINTERS AND STEREOTYPERS,  
WASHINGTON, D. C.

The Fourth Volume of "THE REPORTER" is exclusively devoted to the Trial of John H. Surratt, which was begun in Volume III. A faithful report of so extraordinary a case necessarily became voluminous, and we have devoted to it nearly a thousand capacious pages. Its length was unexpected, but it will assuredly be interesting and instructive.



# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 69. WASHINGTON, TUESDAY, AUGUST 6, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT,

IN THE

Supreme Court of the District of Columbia,

SITTING FOR

THE TRIAL OF CRIMES AND MISDEMEANORS,

ON AN

INDICTMENT FOR THE MURDER OF PRESIDENT LINCOLN,

BEFORE HIS HONOR GEORGE P. FISHER,

One of the Justices of the Supreme Court of the District of Columbia.

*Continued from No. 68.*

Twenty-Third Day.

SATURDAY, July 6, 1867.

The court re-assembled at ten o'clock a. m.

Mr. CARRINGTON. If your honor please, I learn from the assistant district attorney that he has used every exertion to secure the attendance of Mr. Duell, by whom we expected to prove the letter to which your honor's attention was called yesterday; but we do not desire to detain the court, and before announcing that we are ready to close the case, I would propose that this item of testimony may be offered after the counsel for the prisoner have commenced their defense, if they will agree to it.

Mr. BRADLEY. Certainly not.

Mr. CARRINGTON. I suppose we have no right to expect that of the court, without the permission of the counsel. Then, sir, that being the case, with no other alternative—

Mr. PIERREPONT. Is not a matter of this kind in the discretion of the court? Where we want to call a witness that cannot be found, would it not be in the discretion of the court, if he should come in during the course of the day, to allow him to be examined? If a witness is from any cause kept away, may he not be examined afterwards by permission of the court? We do not know what the cause of the absence of the witness is. Everybody supposed he lived here and could be found; but there seems to be some difficulty about it.

Judge FISHER. The regular order of presenting a case is, for the prosecution to present their side and conclude, and then for the other side to present theirs.

Mr. CARRINGTON. I know that has been the general practice; but it seems to me that my friend Judge PIERREPONT is right. I know, sometimes, if I have omitted to prove a formal fact, his honor the chief justice presiding in this court has called the witness as a witness of the court, and allowed me to use him to prove that fact. It is a matter addressed to the sound discretion of the court. If it should interfere with the defense, or if it should impose on them the necessity of summoning further witnesses, that is a matter for your

honor's consideration; or if, in view of all the circumstances, your honor thinks the privilege cannot be granted without endangering the rights of the prisoner or subjecting him to unnecessary inconvenience, you would not allow it.

Mr. PIERREPONT. Could not that be determined by the circumstances? Suppose, for instance, it should occur that when the counsel had finished the opening of their case, this witness was found and brought into court, and before it could have disturbed the order of their proof in the smallest degree, would it not be competent for the court to permit him to be examined?

Judge FISHER. I have never known any thing of the sort in my practice. It may possibly be all right, but it is something altogether new to me.

Mr. PIERREPONT. I asked for information.

Mr. CARRINGTON. At all events, if we find him we can make the application, and it will depend on the circumstances whether your honor grants it or not. We will, therefore, now close our case, with the understanding that we shall make the application when he comes in, and take our chances. The counsel for the prisoner can oppose the application, and unless we can satisfy your honor that we have a right to do it, you will not allow us to examine him. We close the case.

Judge FISHER. You close without prejudice to the application you intend to make hereafter.

Mr. CARRINGTON. Yes, sir.

Mr. BRADLEY. The Government having now closed their case, we desire to have the witness Susan Ann Jackson recalled, as by agreement she was to be, and the witness Lee, who was on the stand when the objection was interposed, in order that we may put certain inquiries to him. We understood distinctly from the district attorney, your honor having ruled we had no such right, that it was agreed that any witnesses in the city might be recalled. There is no written agreement of record, but your honor will find it on the notes, as taken by the officer of the court. You will find it was so distinctly stated to us, that the witnesses might be recalled if in the city of Washington.

Mr. PIERREPONT. Which one?

Mr. BRADLEY. The report says that the agreement was any witnesses in the city of Washington, so that we should not have to go abroad for witnesses and bring them back. But as to these two, Susan Ann Jackson and John Lee, it was distinctly stated that they should be here.

Again: Yesterday Rhodes was called for, who is still in the city of Washington, and it was by assent. Your honor will remember that he was to be recalled. These three witnesses are beyond controversy. As to other witnesses now in the city, whom we had no opportunity to cross-examine as to particular points which did not come to our knowledge until after they were dismissed, and of whom we had no knowledge otherwise than from their being placed on the stand, there is some disagreement between the counsel; but as to these three witnesses I apprehend there is no disagreement. We therefore desire that these three witnesses should be recalled, for the pur-

copy 2

pose of putting to them certain questions which we deem material to the ascertainment of the truth in the case. These three, Lee, Susan Jackson, and Rhodes, were specifically mentioned. Cleaver, also, we desire to have. We ask the court to have the notes of the reporter read, to see, under that agreement, how far we are entitled to ask that others be recalled.

Mr. PIERREPONT. I think we can recall to your honor's mind freshly—and surely to the counsel's mind, and certainly to Mr. MERRICK's mind, who made the proposition. The discussion arose on Lee, and your honor ruled that he could not be compelled to be called back. In the case of Susan Jackson, my learned friend Mr. MERRICK said that he understood that we said she might be called back; and we said we did say so, and that she should be called back. Any other than those I have not heard of. If there have been others, I am not aware of it.

Mr. BRADLEY. Yes; yesterday it was agreed that Rhodes might be called back.

Mr. PIERREPONT. I was not here at the time. I heard there was some talk about it.

Mr. CARRINGTON. Yes; I agreed to let Rhodes be called back.

Mr. PIERREPONT. But Mr. Lee the discussion arose upon, and your honor ruled it out. Then my learned friend Mr. MERRICK said, we had said that Susan Jackson might be recalled, and we said we had, and that she should be recalled.

Mr. MERRICK. My recollection of the matter is not entirely in accordance with the recollection of my learned brother on the other side, and yet it does not differ very materially from his. The discussion arose, not upon Lee's case, as my learned brother will recollect on a moment's reflection, but it arose on my motion to recall Blinn and Hobart, witnesses from the State of Vermont.

Mr. PIERREPONT. That was the first discussion; the second discussion arose on Lee.

Mr. MERRICK. I am coming to the second discussion. Upon a motion to recall Blinn and Hobart and Susan Ann Jackson the discussion arose. The counsel complained of the inconvenience to which witnesses would be subjected, if they were required to recall those who had been summoned here from a distance after they had been discharged and allowed to go home. The discussion then took a somewhat wider range upon the claim presented by us that the attorneys for the United States ought not to discharge any witnesses summoned by the Government without notifying the counsel for the defense of their purpose so to discharge them, and that it was the duty of the witnesses summoned to remain in attendance on the court during the entire trial. Your honor determined that that was not a correct rule, and the United States could discharge its witnesses whenever the attorneys thought proper. My learned brothers on the other side then said that so far as the witnesses in town were concerned, we could recall them at any time, but they could not recall them then. Your honor determined that we could not require them to recall the witnesses from abroad, and they agreed that they could and would recall the witnesses in town. I then stated, with regard to the particular motion, "Then, gentlemen, under this general proposition of yours to recall the witnesses in town, the case of Susan Ann Jackson is disposed of, and I will proceed to argue the question of recalling the Vermont witnesses." And now, that our recollections may be made certainly correct in regard to this matter, I ask the reporter to read the colloquy that took place between the counsel and the court on the morning of the 20th of last month.

The reporter read from his notes of June 20 as follows:

"Mr. BRADLEY. Do we understand that the United States will recall these witnesses, or not?"

"Mr. PIERREPONT. Not unless the court directs it."

"Mr. BRADLEY. I do not want to have any misunderstanding

about it, and therefore I think it is better to have a rule established. The witnesses, it seems, have been discharged without the knowledge of the court or the consent of the counsel on the other side. We propose to lay a foundation, addressed to your honor's judicial discretion, if the objection on the other side is persisted in, to induce your honor to order their recall.

"The DISTRICT ATTORNEY. May it please your honor, we have distinctly stated that we have no objection to the gentlemen recalling the witnesses if they are in attendance, but we object to your honor imposing upon us the obligation of retaining witnesses here during the continuance of the trial who have been fully examined on both sides. Now, I submit that it would be an improper and—your honor will pardon me for saying so—unwise exercise of the authority of the court to make any such order. The rule of law is, that after a witness has been examined fully in-chief and then cross-examined, the party is not entitled on either side to recall him, except with the permission of the court; and where there has been no intimation in the course of the examination that the witness will be desired for further examination, will your honor say that we are under the obligation of keeping the witness here at great personal inconvenience to him and at great expense to the Government.

"Mr. BRADLEY. I hold it to be the settled law.

"The DISTRICT ATTORNEY. I submit there is no rule of law requiring it.

"Mr. BRADLEY. We propose, if your honor please, to lay the foundation for this motion, addressed to the discretion of the court, and I think we will present a case appealing not only to the judicial discretion, but to every sense of justice that your honor can entertain.

"The COURT. Well, we will proceed now with the examination of witnesses; and if, when a witness is examined, you think you will want him afterwards—

"Mr. BRADLEY. Will your honor pardon me? If it is determined that the United States are not to recall these witnesses for further examination, it may be too late for us to summon them for the defense. Therefore it is absolutely essential, as to two of these witnesses especially, that that question shall be determined at the outset.

"The DISTRICT ATTORNEY. I insist that the gentlemen shall recall them if they want them.

"Mr. BRADLEY. We will have to summon them for the defense in that case, the very thing we wish to avoid.

"Mr. WILSON. I beg leave to say in explanation, that having received no intimation from the other side that these witnesses would be again desired, we thought it best, inasmuch as they were all business men and here at great personal sacrifice and very anxious therefore to get away, to let them go.

"The COURT. Of course, Mr. WILSON, it cannot be supposed that when witnesses come here, some of them at least voluntarily, I presume, from Canada and other places, that you shall say to them when their examination is concluded, they must remain during the whole progress of the trial.

"Mr. BRADLEY. No, sir; but, if your honor please, the practice has been, by the present district attorney to my knowledge, to say, 'Gentlemen, if you do not wish this witness, I shall discharge him.' He has always, I think, given notice to the other side. I submit our motion, and beg leave to hear what the gentlemen have to say.

"Mr. MERRICK. Do you decline to recall any of these witnesses?"

"Mr. PIERREPONT. We do, simply because they are not here.

"Mr. MERRICK. There is one of them here, Susan Ann Jackson. Will you recall her?"

"The DISTRICT ATTORNEY. I said distinctly that I had no objection to the gentlemen renewing the examination of any witness who is here in attendance, but that we reserve to ourselves the right, after a witness has been fully examined, of dismissing him and allowing him to return to his place of abode.

"Mr. MERRICK. That is a reply to a general question. I desire to know whether Susan Ann Jackson has been discharged or not.

"Mr. WILSON. The clerk says she has been; but, if so, it was with the information that was given to all the others, that if she was wanted again she would be sent for. She lives within the limits of the city.

"Mr. MERRICK. Will my brothers recall her for us to examine?"

"The DISTRICT ATTORNEY. We have no objection to her.

"Mr. PIERREPONT. We suggest we will have her recalled at some time, but we cannot do it now.

"Mr. MERRICK. Very well, so far as she is concerned then."

Mr. PIERREPONT. Now, I submit whether my memory was good or not.

Mr. MERRICK. Your honor will see that the district attorney stated that we might recall any witnesses living in the city.

Mr. PIERREPONT. No.

Mr. MERRICK. Or, "in attendance;" and Susan Ann Jackson's case was a special application of that general consent or general principle.

Judge FISHER. Yes, but when that general assent was made by Mr. CARRINGTON, you did not accept it.

Mr. MERRICK. Pardon me; you did not understand the case, your honor. I asked whether she had been discharged, not whether we could have her recalled; and my refusal was not to accept the general consent; but my inquiry was, "Has she been discharged? not 'Will you recall her?'"

Mr. PIERREPONT. If your honor please, these notes bring back surely what I said, and show that I do not overstate it. Mr. MERRICK pressed at the time that Susan Ann Jackson might be recalled, and we said

that at some time we would recall her. Now, if they wish us to recall Susan Ann Jackson, and put her on the stand again, we feel bound to do so, and will do so, and that is all, and that is the fullest extent to which we are bound to go; and the reason why is too apparent to require any sort of debate; and I do not mean to debate it. We have fully debated it already.

Judge FISHER. Recall her if you desire.

Mr. WILSON. We shall have to send for her.

Mr. BRADLEY. I understand, then, that though John Lee is in attendance on the court, he is not within the rule which your honor has prescribed. I do not understand that the man who was examined on the day before yesterday, who was in attendance yesterday, and paid off yesterday, and who was called, is within the rule.

Mr. CARRINGTON. In the case of Rhodes, application was made to me, and as he was here in court, I agreed that he might be examined, and I will stand by my word; but as for Lee and those other persons, I do not know any thing about an arrangement with regard to them.

Mr. BRADLEY. We only want to avoid the necessity of calling them as witnesses for the defense. We wish to call them for further cross-examination for the purpose of contradiction.

Mr. PIERREPONT. I want to have no misunderstanding about it, and if we put Susan Jackson on the stand again, if the counsel require it, we shall put to her some questions.

Mr. BRADLEY. Very well.

Mr. PIERREPONT. If they wish that, we shall certainly do so; and will not only do so, but will be glad to do so.

Mr. BRADLEY. Now, if the court please, the next point is as to certain evidence which was admitted with the distinct understanding that proof was to be given *aliunde* to connect it with the subject-matter of the prosecution in this case. I refer especially to all that evidence relating to Jacob Thompson. We understand from the counsel on the other side that they would, by evidence *aliunde* and over and above that which was offered, connect him with the alleged conspiracy. We have looked in vain for any such proof. I therefore shall ask your honor (as you said that unless they did connect it it should be stricken out of the record) now to strike out that proof.

Mr. PIERREPONT. Is there any other but that you propose to move to strike out?

Mr. BRADLEY. One case at a time.

Mr. PIERREPONT.—Your honor will remember what we said we proposed to prove in relation to that; and that was in relation to the money—nothing else—and we never asked a question about anything else, except to learn who Jake Thompson was and about the disbursement of his money. We, then, have had proof since of Surratt being in that place at that time, and of his taking \$100,000 from Richmond there. If that does not connect it, then nothing connects it, or tends to connect it.

Judge FISHER. It is not worth while to cut the case in pieces now. Go on, and give in your evidence for the defense, and we will review the whole matter afterwards.

Mr. BRADLEY. Your honor will pardon me; we wish to know what we have to rebut; and, unless we know what evidence is in, it is impossible for us to determine whether it is necessary for us to rebut proof which has been offered, and which was to be connected by evidence *aliunde* with this prosecution. We ask if the gentlemen maintain that they have made such a connection? I have the answer in that one case, and do not mean to discuss that question. I submit to your honor the single question for you to decide: whether the evidence to which they have referred is evidence tending to connect that with the prisoner or not. If so, it is in, and we know our course. I do not propose to disguise any of these points, if the court please. You have listened with great patience to the evidence in

the cause, and at once, upon the suggestion, will see whether they have made the connection necessary to lay a *prima facie* case. What I mean to say is, if I understood correctly, your honor has decided that there must be a *prima facie* case connecting the parties whose acts or declarations are given in evidence with the alleged conspiracy; and there must be something to show that that party, whose acts and declarations are those given in evidence, was cognizant of or participated in the conspiracy charged in the indictment. If there has been any such evidence offered, I have not a word to say.

Mr. PIERREPONT. If your honor please, I want to make but one single suggestion, and it will be but a word. Nothing, it seems to me, can be more plain than that any lengthened discussion upon this subject now, before the evidence is in on the other side, would be quite out of order; it seems to me so at least. As a single illustration of it, when we put in disjointed pieces of evidence, as we are obliged to do, people who sit here hear one part of the evidence and another part of it, and any men that hear the whole of it, who are not lawyers, will not see how the thing is going to be connected until it is put together, and then they will see. For instance, we called Judge Olin the other day to show that the plastering in that box, that was cut out to put in that bar, lay still on the carpet. My learned friends might just as well ask me to tell your honor how that is connected with the assassination of Mr. Lincoln and those parties who are charged with it. I hope before I am through to show how that is connected, as well as a thousand other things; but I do not think this is the time.

Judge FISHER. Counsel for the defense will go on, open their case, and put in their evidence. If they think this evidence, of which they have just spoken, is not connected with the case, they need not attempt to rebut it; if they think it is, and it is worth their while to do so, they can present with rebutting testimony. The whole matter will be left open for the consideration of the court after the testimony has been presented on both sides.

Mr. BRADLEY. That point is disposed of, and I understand the evidence is admitted under our exception.

Judge FISHER. Yes, sir.

Mr. BRADLEY. Then we must take it as admitted, and meet it as we can, and rely on our exception. There is another part of the proof to which I wish to call attention. It is the statement of Dr. McMillan as to the revelations made by Surratt to him. I understand your honor to have ruled that all that passed between Dr. McMillan and Surratt touching the subject of the conspiracy is evidence. Conceiving that to be so, we objected at the time to the anecdote or story which was told about the killing of the Union soldiers as the cars were going from Fredericksburg, and about the shooting of the people in crossing the Potomac river, and about the killing of the telegraphic operator. In what way they are connected with this alleged conspiracy I cannot imagine. The evidence was admitted, subject to our objection; and it was understood that it was to be connected by proof *aliunde*.

Mr. PIERREPONT. If I do not show that they are connected with this case, I shall not show that any thing is connected.

Mr. BRADLEY. Your honor, then, will rule the same way, I suppose.

Judge FISHER. Yes, sir.

Mr. BRADLEY. Next, as to the North Carolina letter that was read in evidence yesterday.

Mr. PIERREPONT. We have only asked permission that we may not be concluded as to that; that if, at a future stage of the case, we can find the witness to whom we referred, we may make application to your honor to call him.

Mr. BRADLEY. Therefore I understand it is conceded that that letter is not in the case.

Mr. PIERREPONT. That depends upon what we put in hereafter.

Mr. BRADLEY. Where is to be the end of this matter? If, at the end of our case, when we have concluded our witnesses, you are to make that evidence in the cause which is not now evidence, by extraneous testimony, where is to be the end? Are we to go on after that? Or is the case concluded now on the part of the prosecution? I ask your honor to decide that question, that we may know exactly where we stand.

Mr. PIERREPONT. I thought our proposition was very distinct. As we learned from the former record that the witness resided in the city of Washington, we supposed he could readily be obtained here; and Mr. WILSON, who had charge of it, did not give the same attention to that matter, because we intended at one time to put in the former record, and that would bring in the same thing. For that reason, the most strenuous efforts were not made to secure the witness as early as perhaps he might have been; and when the attempt was made to find him, although all diligence was used, he could not be found; and all we have asked is, that if, at such a stage in the cause that it would appear to your honor no injury, no evil, no hardship, could be worked to the other side, we may properly make that motion to your honor, addressed to your honor's discretion, to be judged of by all the circumstances then existing. That is all we have asked.

Judge FISHER. I so understand it. I do not think there will be any difficulty about the matter. You have concluded your case, with the understanding that there is to be no prejudice to your application to hear another witness to prove the finding of this letter, if you should be able to get him, and can convince the court that it would be proper to admit that evidence. I do not think there will be any difficulty about getting on with the case now.

Mr. BRADLEY. I understand your honor to rule, then, that all the evidence which has been offered on the part of the prosecution and gone to the jury, is now evidence before the jury; the effect of it is another thing.

Judge FISHER. No; I do not so understand.

Mr. CARRINGTON. Not this letter.

Mr. BRADLEY. Except that letter, which has gone to the jury, is not to be considered by them unless other proof is offered in regard to it, with the permission of the court.

Judge FISHER. All I understand is, that the judgment of the court in regard to what matters are to be stricken out of the testimony to go before the jury is postponed for future consideration.

Mr. BRADLEY. I wish to note an exception to that ruling.

Mr. MERRICK. May I ask your honor at what time in the progress of the case?

Judge FISHER. At any time before the jury are put in charge of the case.

Mr. CARRINGTON. They can make the objection when we make the application.

Mr. MERRICK. I had supposed the proper time was when they got through with their evidence and before we began ours; but I understand your honor to rule differently.

Judge FISHER. Yes, sir. Go on with your defense, gentlemen.

Mr. BRADLEY, Jr. May it please your Honor: Gentlemen of the jury, we have at last arrived at that stage of this case when an opportunity is afforded to the prisoner to say something by way of defense, not only of his own character, of his own reputation, of his life, and of his honor, but also, as it shall arise incidentally in the discussion of the evidence before you, something to vindicate the pure fame of his departed mother. Perhaps no case has ever arisen in the annals of any country presenting more extraordinary features than the one which you have under considera-

tion. Perhaps no jury ever was called upon to discharge a higher, more difficult, and more sacred duty than you are. Surely, gentlemen, our confidence in you is not misplaced, that you will do justice, whole justice, irrespective of the rank, position, and station of the parties interested in the issue of this case. And I may be permitted here to congratulate you that you are acceptable not only to the defense, but that you have also the endorsement of the learned gentlemen who represent the Government here. You will recollect that in the early stage of this case it took us one week to get a jury. We were willing to take any twelve honest men from this District, to lay our case before them, and trust the issue in their hands. We were willing, for the sake of a jury—anxious for a hearing—to take any twenty-six men that might be drawn from the box of talesmen, and let the gentlemen on the other side strike off their number, and we strike ours, and take the residue to represent the interests of the public and the prisoner, before whom to present his case. All those propositions failed; the learned gentlemen resisted every one of that sort, except a proposition by way of compromise; and they succeeded in satisfying the mind of your honor that the original jury which was summoned in this case—men as honest as yourselves—were not suitably summoned according to law. Thus we were compelled to call upon you to render us your aid and wisdom in this matter.

Gentlemen, I have stated that we are satisfied with this jury; and why are we satisfied? I see before me represented, not only the commonwealth itself, but men who represent the social interests of this District, its material wealth, its intelligence, and its honesty—men who in this case have a double duty to perform; not only to stand between the innocent and the accuser, but also to vindicate the reputation of this District, which has been so much defamed as to the disposition of its people to discharge the duty of good citizens. We have also a jury before us who cannot be charged with having the taint of any religious or any other bias, for you represent different preferences in modes of worship and opposite opinions upon the political questions of the day. When the verdict goes out to the world, sanctioned by the endorsement of the Government, the verdict of a jury constituted as they would have it to be, a jury entirely satisfactory to ourselves, it is to be hoped that, whether it be for or against the prisoner, it will go far towards settling this question, which has agitated the country to its very centre for two years past, and the mysteries, the doubts, the uncertainties which have covered the tragic event you are here to consider may be dispelled, and the people arrive at last at some settled and intelligent opinion as to who the really guilty parties were.

We come to you, gentlemen, under the profound conviction of the entire innocence of the accused; a conviction which is not one of sympathy, not such as counsel ordinarily feel for the parties whom they represent, but one at which we have arrived by sober, careful, pains-taking investigation, extending over a period of many weeks, covering a space of country extending from the Canadas to Mexico; by personal conference with witnesses whom we know will be believed by this jury; by conference with men of unimpeachable integrity; by conference with men who have no interest in this matter except to render to you the truth and nothing but the truth; men to whom the prisoner at the bar is a stranger; men who by reason of the marking hand of Providence have been pointed out to us, step by step, as the persons who could account for his absence from this place and his presence at a distant point at the time this tragic event is laid.

Surely, gentlemen of the jury, we may be pardoned for having some fervor on this subject, with such convictions upon our minds; and if, upon hearing the testimony, you arrive at the same conclusion that we do, all we ask is that you will give the prisoner the full benefit of what we shall adduce in his behalf.

I have said this case presents some of the most extraordinary features that were ever heard of. The maxim of the law is, that the prisoner at the bar is innocent of all offense until he is proved to be guilty; and the law casts the burden of proof upon the Government. When a man is brought into this court of justice, he is one of yourselves, of pure character and reputation, with all the presumptions of innocence about him. He stands, like any other citizen, upon that Constitution which secures to every man the right of a full, fair, free trial before a jury of his countrymen. He appeals to you as a fellow-citizen, not as a criminal, not as a felon. He appeals to you to render to him justice as you would have justice rendered to you. But what does the learned gentleman who opened this case do in his opening speech, before a single item of evidence was offered to you, before one of their eighty-odd witnesses is put upon the stand? He arraigns the prisoner at the bar as not a man who is simply charged with crime, but as one who is a felon of the deepest dye, for whom there is no adequate punishment this side of perdition; a man whom, he said, he would prove to be the party that was the main-spring, the main thought, and the guider of this infamous crime. He held him up to public abhorrence at a time when, according to my conceptions of the duty of a prosecuting officer, his mouth should have been sealed as to all oratorical flourishes. He calls upon you to behold the one who is a spectacle to be gazed at; as a man whose heart is black beyond expression; who, if he were a demon sprung from hell itself, could not be painted in more hideous colors. He represents him to you as being not only the "main thought" of this crime, but also the coward who put other people's hands to do the dangerous work, while he secured his own ignominious safety by flight; as he who was here on that occasion, who called out the fatal time three times in front of the theatre; who despatched his emissaries, desperadoes, equal in wickedness with himself, but not having the same "managing mind," to do their cruel work upon the head of this Government, which should shroud this whole nation in mourning. He depicts him as taking his flight, and tells you, gentlemen, that he will trace him from "station to station," "from place to place," from "nation to nation," in that flight; he will show you he was the man who "bought the disguises in which he was to escape on the very night of this affair;" he will follow him from here to Canada, leaving on his road traces of his flight which could not be mistaken; he will prove the length of time he was in Canada; and will follow him in his flight further, across the water to the Old Country, in England, in France, in Italy, with the shuddering thought ever with him that the avenger of blood was on his track. He said he would follow him into the Papal service, and show at least how the "friend of his youth, moved by honorable considerations," the desire to have a felon of such a caste brought to justice, excited by those lofty inspirations which would make a man sacrifice his own brother, informed on him, and he was at last brought in chains to this bar to be judged by you. This was the opening of my learned friend, and I hold him to it.

What is the condition of the case now? Has the learned gentleman kept his pledge? "I propose to show you, before taking my seat, that his pledge is not kept. Let him settle with his own conscience the responsibility of the course he has chosen. Nor do I propose, in the discussion of this matter, to enter into any debate, or indulge in any invective; but I have a simple duty to discharge; I shall endeavor to do it, I hope fearlessly, and with such degree of intelligence as will enable me to present this matter to you for your consideration preparatory to the introduction of all the evidence for the defendant. I have no further reproaches to cast upon the other side. If the evidence reproaches them, the fault is with them, not with me.

Gentlemen, heinous as this offense is, its moral qualities in the sight of the Almighty are no worse than

when the commonest vagabond in the street is slain in cold blood. I am well aware of the distinction that is drawn in Holy Writ between the head of a nation and a private individual, but in the sight of the Judge of the quick and dead, the life of the humblest man is as precious and sacred to Him as the life of the loftiest citizen. I am aware, also, that this crime struck at the very heart's core of this people. I need not recall to your minds, you citizens of the city of Washington, the shock, the thrill of horror which went through the community when, on the morning of Saturday, the 15th of April, this event was announced. You know as well as I do, that men's hearts stood still for fear, lest there should be such an outburst of indignation and wrath through this land that men would be swept away from all the bounds of reason. You know how people sprang to their feet to seek out the offenders who had outraged their most profound and sacred feelings. You know that old men prayed for vengeance, and that the minister of God in the pulpit invoked the judgments of Heaven upon the assassins. Yea, even tender women became changed in their natures, and longed to have the offenders brought to speedy and condign punishment. Nay, more; not only tender women, but people who should have had the attributes of tender women, shrieked for bloody vengeance upon this prisoner and thousands of others, in mad disregard of evidence against them. You know as well as I do how all these fierce passions spread through this broad land swift as lightning, until with one mighty cry its people gave themselves up to that madness which can only be sated in blood, either of the innocent or the guilty. You know what exertions were made to secure the arrest of the offenders; no step was left untried, no means unapplied, no money spared in the effort to secure the arrest of the guilty parties; and the heart of every good American citizen could not help approving from its inmost depths. Who among you would have failed to render justice to either of the persons concerned in the crime? Does the Government fear that a jury of the District of Columbia would fail to render back for punishment any man who could be lawfully arrested, tried, and proven to be guilty? We have no such fear: and we have no alarm for the prisoner on that score, inasmuch as, of all men now living, we have the best opportunities of knowing his innocence, and the best right to bear testimony thereto.

There are in this, as in every case, certain prominent features, which it is important for you, gentlemen, to keep in mind. There is a difference between us and the learned counsel on the other side with reference to the character of this indictment; but with questions of law I do not propose to perplex your minds at present. I will simply state, they contend there was a conspiracy to murder the President of the United States and certain members of his Cabinet; that that object was accomplished, and the prisoner at the bar was one of those conspirators, with John Wilkes Booth and others. On the other hand, we maintain this is an indictment for murder simply, and upon that issue, as we have been divided in opinion, his honor has at least allowed them the privilege, under their view of the case, of introducing a great deal of evidence which we understand is applicable to a correct legal view of the indictment. I propose, then, to take up the case in their view, for the sake of simplicity, and to treat it as a conspiracy to murder, its design accomplished, and this defendant charged as one of the conspirators. If he was one of such a conspiracy, he is as much guilty as the man who struck the fatal blow, provided he aided and abetted therein. We are, therefore, obliged to inquire into the question of who the conspirators were? There is no doubt that John Wilkes Booth was one of them, and Lewis Payne was another; as to Atzerodt and Herold, there may be some doubt; as to Mrs. Sumratt, we hope to satisfy you that a grave error has been made in her case. As to the prisoner at the bar, we take issue with

them openly here before you, and declare him to be innocent of that offense.

Now, gentlemen, what are the circumstances upon which they rely to show this conspiracy? The learned gentleman who leads and directs this prosecution, who is the head and mind of it, if his colleague will pardon me the expression, announced to you that he would trace back this conspiracy to 1863. So far as any evidence has gone, he has not fulfilled his promise to you and the court, except it be that you grope outside of this case to seek for suppositions and beliefs and apprehensions and suspicions that some such thing existed before 1864. So far as my memory now serves me, the witness who takes us further back is one John Tippitt, of whom we shall have something to say, the mail-carrier through Surrattsville. When did the conspiracy begin, is a point for you to inquire. They say the parties above named were all concerned in it. When did Surratt's introduction to Booth take place? In January, 1865, according to Mr. Weichmann, on Seventh street. So then, gentlemen, I maintain, that for the purposes of this case, you are not at liberty to go behind January, 1865, because Wilkes Booth, who originated this affair, the man whom you must believe from their own evidence was the person who planned and schemed it all, only made the acquaintance of the prisoner at the bar in January, 1865; and under what circumstances? The prisoner at the bar, even now only twenty-three years of age, left his college in 1863 or the early part of 1864, a youth just starting out into life, having no knowledge and experience of the world, leaving behind him at the college such a reputation as any young man might envy, coming to the city of Washington and losing his father, is thrown by that event into the position of husband for his mother and father for his sister. There were but three of them, for Isaac, his elder brother, was away in Mexico or Texas, and had been for years. He acts as friend of his mother, as her son, as her counsellor, her man of business. They moved to the city of Washington and took a house on H street, leaving what little property they have still in the State of Maryland. There were rents to be collected and the farm to be looked after; and he was to be the man who was to be her *factotum*. In any of the manifold relations of life, no witness has ever impugned him; no witness has ever intimated to you that he was otherwise than a faithful son; that he was not diligent in looking after his mother's interests; that he was not her protector, her friend, her companion, at all times, until suspicion is cast upon him by the witnesses before that tribunal which cruelly put his mother to death, and those here produced, that something went wrong with him after he made the acquaintance of John Wilkes Booth.

Who was John Wilkes Booth? One whose name and reputation will go down to the latest times associated with the most atrocious assassination that was ever committed. Let us hope that at the bar of that offended God to whom he has gone there will be found some mitigation of his offense. Let us hope that at least his mind was unhinged from its reason, and that he had become in the strictest sense such a fanatic as not to appreciate the enormity of the act which he contemplated and committed. But, until it was committed, Booth was of polished exterior, of pleasing address, highly prepossessing in appearance and manners, received into the most accomplished circles of society; his company was sought after; in conversation he was exceedingly agreeable; his disposition was bold, courteous, considerate, and generous to a fault; and a warm and liberal-hearted friend. Professionally he had attained a reputation upon the stage that was second to none of his age in this or any other country. He meets the prisoner, of all persons perhaps the most susceptible to the influences of such a man, and he was, of all men whom he could meet, the one most likely to ingratiate himself with him.

The very reputation of the man, his distinction as a public actor, was enough to draw the heart of the accused towards him. In evidence of it, we find him visiting at the house; we find them frequently together, complimentary tickets sent to go to the theatre and accepted; his society freely enjoyed; and these relations existing, from time to time, up to within a month or five weeks before the sad event occurred which has brought you together. There was nothing, surely, in this association calculated to be any reproach to the prisoner at the bar, except from subsequent events; and for those subsequent events the prosecution rely chiefly upon the testimony of Louis J. Weichmann and John M. Lloyd. As we propose to introduce counter-vailing testimony as to those two witnesses, I will direct your attention to some points upon which we shall contradict them—material points in this case.

Mr. John M. Lloyd is an avowed drunkard, and so intoxicated on the evening of the 14th of April as not to know whether he fell down at the feet of Mrs. Surratt or stood up like a man to converse with her—so as not to know whether he grovelled like a beast or retained the attributes of manhood. Mr. Lloyd tells you that on the 11th of April—Tuesday preceding the Friday of the murder—he met Mrs. Surratt on the road and had a conversation with her about some property. She was then on her way down to his house on business connected with her property. He tells you that on the fatal Friday, after he had been at the courthouse in Marlboro and indulged himself in drinking to excess, he returned and found her at the house. I shall not rehearse to you his testimony, because that is the business of the gentlemen who sum up; but he testified as to a certain package which was left at that house by Mrs. Surratt, left for him, the contents of which package, when he subsequently opened it, he described to you. Mr. Lloyd has no recollection that Mrs. Offutt was in the house, a witness summoned by the Government, but not, after his testimony, put upon the stand. He has no recollection of what transpired in the house. He does not recollect what did take place there, and which we shall show you: that when Mrs. Surratt arrived there with Louis J. Weichmann, she alighted from the carriage, was received into the house by Mrs. Offutt, and told Mrs. Offutt the object of her visit to that place, and handed her at the same time, as any one else would unsuspectingly deliver, a package which she had been requested by a friend as an accommodation to deliver at a certain place, handed her openly and casually a package to be given to Mr. Lloyd; for we do not shrink from the full issue of this case. Mrs. Offutt will tell you what transpired at that interview with reference to this letter to which Weichmann has testified. She will tell you who else was in the room with these parties. She will tell you that Mrs. Surratt met Mr. Lloyd, and what Mr. Lloyd's condition was, if it were necessary after his own statement upon the stand. She will tell you about how long Mrs. Surratt was there, and what transpired as the parties went around to the front door of the house and drove away. You will be able to see through the whole of it, that her testimony is entirely consistent with the theory of the entire innocence of Mrs. Surratt of any complicity in this affair.

Bear in mind, gentlemen, in the investigation of this case, that there is a principle of law running through it, from beginning to end, by which you will test all the evidence that they produce, and up to which standard they must come before you can convict. They must not only prove to your satisfaction a reasonable probability that the prisoner is guilty of the charge; but, more than that, they must prove to your satisfaction that you cannot account for the evidence upon any other reasonable theory than that of guilt.

I should here state to you that Mrs. Surratt's circumstances at that time were very much straightened, a fact which will appear in evidence, and that her object

in going to this place was to obtain money to provide for the necessary expenses of her family and meet payments due by her husband's estate.

I will show you moreover that Mr. John M. Lloyd, on the morning after the assassination, denied all knowledge of the parties to the offense, Booth and Herold, who had made their flight directly through Surrattsville. He conversed with them; he tells you that himself; but on the morning after the murder, when conjured by every consideration which ought to influence him to tell the truth about it, being approached by an old friend who had known him for years, he called God to witness that he knew nothing of these men. What his inducement was, whether it was fear of his own complicity, or what other considerations influenced him, are not proper subjects of inquiry at present.

The next witness in this connection is Mr. Louis J. Weichmann, a clerk in the War Department; a *quondam* student of divinity; a gentleman who stood in the relation almost of a son to that martyred mother; a man who lived in her house, enjoyed all the hospitalities and the close relations which are permitted to a person on such familiar terms with the inmates. Mr. Louis J. Weichmann, the principal witness for the Government on that other trial, the man whose dastard heart, being terrified by the position in which he found himself, was ready to sacrifice the innocent—what does he tell you upon the subject? He says he was with Mrs. Surratt on the 11th of April, that they met Mr. Lloyd, and Mrs. Surratt whispered to Mr. Lloyd; they had a whispered conversation; she leaned forward out of the buggy, and she and Mr. Lloyd whispered together. Mr. Lloyd has contradicted him on that subject. We shall contradict him by two other witnesses present at that interview. It was a suspicious circumstance, if it were true, connected with the events immediately preceding this tragedy, and introduced for that purpose by the learned counsel. As you well recollect, when he asked for the manner in which this was done, as he did with various other witnesses, it turned out that the conversation was in a natural tone of voice; there was no whispering between the parties. What next? He tells you that on the 14th of April he took Mrs. Surratt down to Surrattsville. He does not recollect seeing Mrs. Offutt there, nor Mr. Jenkins, nor anybody else but Mrs. Surratt and Mr. Lloyd. He did not even see the package delivered; but he tells you that "before we left Washington she was about to get into the buggy and she handed me a package, which she told me she was afraid would get wet, as it was of glass." Observe, he is a man who is a stranger to all these circumstances, an innocent party. He tells you that sitting at the tea-table the night of the assassination he heard the steps of a man coming up the outer stairs to the front door; the bell rang, and Mrs. Surratt went to the door. We shall prove to you that this is a distinct and positive falsehood; that Mrs. Surratt did not leave that table; she did not answer that bell; she did not, as he states, go up and answer the bell, and introduce a man into the parlor, where a conversation took place between them there, and where she remained until they came up from tea, when the man had gone. We will put upon the stand, if necessary, the person who answered that bell. We will show to you that that person who came to the door that night was not one of these conspirators, nor is he suspected of being such, but a respectable citizen; that he was introduced into the parlor, and his errand was of the most friendly and proper character. The inuendo was that the person who came up the steps was Wilkes Booth, or Atzerodt, or Herold, or Payne, and that Mrs. Surratt sat at the tea-table, with an expectant ear, waiting for the man whom Weichmann says she had told him on the road she was to see that night. That is the use they make of it. We shall prove to you further the exclamation with which he charges Mrs. Surratt when the officers came to the house early in the morning was not uttered; and that the conversa-

tion in the parlor, which took place after the detective officers left that night, in the presence of three or four ladies, exists only in the fiction of Weichmann's tongue. The parties were there together, but no such conversation ever took place, no such statement was ever made by Mrs. Surratt by way of consolation to her daughter, that she believed John Wilkes Booth was an instrument in the hand of God for the punishment of Abraham Lincoln; and that God had sent this as a visitation upon this people for their pride and licentiousness. We shall contradict him not by one witness, but by several on that point. We shall further prove that when he said on the morning of the 15th of April, when they sat at breakfast, he announced his purpose to disclose what he knew of this affair, and left the table for this purpose; and Anna Surratt remarked at that table, "Abe Lincoln is no better than a nigger in the army," he tells what is utterly false. We shall show you the persons who were present at that breakfast table, and the man who called for him and accompanied him out of the house down to the headquarters of the police; and, further, that his whole account of that affair is a wicked lie. All lies are wicked; but this is one which struck at the lives of his fellow creatures, and brings disgrace, ignominy, and such suffering and sorrow as the world has rarely seen upon upon the people sitting at that table, upon that innocent young woman, whose heart was wrapped up in her mother, and was of all lies the most wicked. We shall show you what transpired at the station-house, and leave you to judge whether the certificate which has been produced here, that he was a special detective detailed by the War Department to assist in the search, was intended for more, and was not known by this man to be nothing but a card for his transportation in that pursuit; and that he knew all the time, in his inmost heart, although the irons were not riveted on his feet or the manacles on his hands, that the hand of the law was on him, and he could not depart. We shall show to you he did not return to Mrs. Surratt's that night because he was not allowed to do so. We shall show to you the officers of justice never lost sight of him, and he never was finally discharged until after he had rendered his account to the military commission. As they returned from the station-house back towards the house, a certain gentleman who was with him will detail to you a most remarkable declaration made to him by this man Weichmann; he will describe the trepidation which he manifested at the time. We shall show to you there was occasion for this trepidation and this declaration. A man, who out of his own mouth, if in no other way, is known to have been in the habit of visiting these parties, of being on familiar terms with Atzerodt, lending him his hat, lending him his coat, being seen with him on the street—a man who went to see Booth several times, even on the very day of the assassination called upon him to borrow from him the use of a horse and carriage—had occasion to feel himself bound up with these parties. Further, independent of his being at that house, as a clerk in the War Department he obtained information which he furnished persons who ran the blockade, in order to inform the South with reference to the number of prisoners in the hands of the Government. Gentlemen, I know nothing of this matter; but there is a theory which to me is consistent with the innocence of all these parties, to which I do not allude now solely from reasons of prudence; but there is a theory, to which your attention will be directed at the proper time, which will enable you to see that all these circumstances may exist, and yet, at the same time, there be entire freedom from complicity with any design upon the life of the President or any other living being on the part of Mrs. Surratt or her son.

These are the principal witnesses as to the conspiracy. I think you will agree with me upon that point. The conspiracy being established, according to their view, the next step they take is the natural one of bringing

Surratt here on the night of the assassination and the day preceding, because the gentlemen are well acquainted with the rule of law, that unless he was here, aiding and abetting in that offense, in some way affording aid to the parties engaged in it, or where he could furnish them aid if necessary, acting for the purpose of carrying out their common design, he cannot be convicted of the offense with which he is charged. They are well aware of that rule, and therefore they find it necessary to prove what does not exist in reality, namely, John H. Surratt was here on the 14th of April, 1865, and on the night of the 14th, at the hour of the assassination. If he were in Europe at that time it will not be contended for a moment he could be guilty of this offense. If he were in Buffalo, and not acting in concert with them, it could not be pretended for a moment that he was guilty. He must have been near enough, if need arose, for his services to be called on to carry out the scheme.

To establish his presence here, whom do they produce? They produce first, in the early part of the case, Mr. Joseph M. Dye, an utter stranger to us, for the purpose of establishing perhaps the most material fact in the case. He was subjected to a long examination, and when dismissed after his cross-examination, disappeared like one of those phantoms which he saw in his dreams. Mr. Sergeant Dye described to you a tall man, and a genteel man, and a villainous man, whom he saw in front of the theatre that night. Assuming that Mr. Sergeant Dye was there, sitting on the platform and watching these men, and he saw suspicious circumstances about these three men whom he described, we will entirely destroy his testimony by producing to you the tall man, and we will show you the genteel young man, and we will show you further the villainous man. We will show to you further the man who went out and looked into the back of that coach. They say the tall man was the prisoner at the bar. You will see how much like him he looks. We will show to you he did not sit upon that platform, as he says he did. We will take a step further, and produce the man who called the time, "ten minutes past ten," in an audible tone of voice, in front of that theatre. Will you have any difficulty with that witness? If you still have, we can show to you the record of his indictment for passing counterfeit money, for which he was arraigned after he left this stand, and for some purpose that case was procured to be continued. We shall further, if necessary, produce to you witnesses from his own native town, who would not believe him upon his oath. We will do more, we will follow him up to H street that night, and introduce to you a person who was adjoining that house on the front stoop from half-past nine to eleven o'clock, wide awake, who will tell you not a soul passed Mrs. Surratt's house during that period, and no such conversation as he states took place with anybody at an open window in that house. Nay, more, we shall demonstrate to you by the records of the Smithsonian Institution, or by some record of equally scientific and reliable character, the condition of the moon at that time was such that it was impossible for any man to see what Dye says he saw on H street at that hour; and, in corroboration of this truth, the person who was near by says it was so dark at the distance of forty feet he could not tell whether a man was white or black.

Who else do they produce? David C. Reed, a notorious gambler for twenty years. If allowed, we shall contradict him out of his own mouth with reference to seeing Surratt. I shall produce to you the record of his indictment in this court for a penitentiary offense yet to be answered. We shall prove to you by respectable citizens in the city of Washington, men whom you know, and will believe as against him or any other man, that he is unworthy of belief upon oath.

Who is the next man? Robert H. Cooper, Sergeant Cooper or Corporal Cooper, who was with Dye. I think it only necessary, with reference to Mr. Cooper,

to state that his testimony is so indistinct with regard to Mr. Surratt it is unnecessary for us to pursue the inquiry any further in that direction; and, if he saw those men on the front pavement, a suspicious circumstance according to his notion, he will be contradicted by the parties themselves and by the person who says no such conversation took place with anybody at Mrs. Surratt's house on H street, and by the actual condition of the moon.

Who is the next man? John Lee. We shall contradict Mr. John Lee out of his own mouth, by showing he has stated to more than one person in this city he never saw John Surratt and did not know him; moreover, when he was in hot pursuit of the offenders, as a detective of the Government, down in the lower counties of Maryland, he on two occasions stated he did not know John Surratt, but he did know Atzerodt, and thought he would recognize Atzerodt if he saw him again, but he never saw John Surratt; and on the very day before he took his stand in the witness-box he made a similar declaration in this city to one of the very men to whom he says he narrated all he knew about this case.

You observe, gentlemen, I mention no names of witnesses on our part. I avoid doing so for politic reasons. But we have not done with Mr. John Lee. We will prove to you that the reputation which he has established for himself here in Washington among his associates, at the time he was acting for the Government, was so bad that he is not entitled to any credit upon his oath.

Who next? William E. Cleaver, just fresh from the jail, admitted to bail since you have been sworn in this case, committed there originally for murder by the most foul and cruel means that could be applied, and that, too, upon the person of a young and tender girl; such a crime as manhood would blush to mention in such a presence as this. He has had his trial. We can show to you he has had his conviction. We shall also show you that he had his motion for a new trial. We can show you that the motion was granted, and he was admitted to bail; but he is still to answer the charge of manslaughter. Mr. William E. Cleaver was so delicate about his honor, that he did not like to tell you where he had been for some time past; it finally turns out he is the friend and companion of that most infamous of men, Sanford Conover, alias Dunham; manipulated by him in jail, brought out for conference with certain dignitaries; taught his lesson what he was to swear; is produced, reeking with corruption, to testify that he saw John Surratt on the 14th of April, and gives other damaging testimony in the case, if he is to be believed. Mr. William E. Cleaver, we shall show to you, has stated that he never would be brought to trial again, because there was a strong arm stretched over him for his protection. He testifies without inducement! Mr. William E. Cleaver further states to another man that in all human probability he never will be tried again. It is a little modification of the other statement. Mr. William E. Cleaver, we shall prove to you by a host of witnesses taken from this community, is not to be believed upon his oath.

Who is the next? He is a fitting creature to be a successor to William E. Cleaver—Benjamin W. Vanderpoel, a gentleman anointed by the leading counsel for the Government, in his introduction, as a member of an old and distinguished family in the State of New York, and a member of the New York bar. Heaven save the mark, if he is a fair representative of the New York bar! He comes here, he says, a volunteer witness, to testify against Surratt. He recognizes him immediately, has a free conference with the learned and distinguished gentleman who leads this case on the other side, and swears positively that he saw John H. Surratt on the 14th of April at a certain concert saloon, which you all know, without proof, is Metropolitan Hall, on the south side of Pennsylvania avenue, between 11th and 12th streets—the only concert-room in

that locality, for there is none between 10th and 11th, and never was; that he knew Booth well, and in there he saw Booth and four others sitting at a round table; that there was a woman dancing; next to Booth was sitting a man who is the prisoner at the bar. He is sure of it. He identifies him distinctly and positively. He is very flippant about it. He is exceedingly confident about it. We shall prove to you that Mr. Vanderpoel has stated, in the city of Washington and elsewhere, he never knew Surratt, nor saw him that he knew of. We shall prove to you that, although he asserted he came here without any summons from the Government, spontaneously, from those influences which excite the heart of a good citizen to assist the Government in punishing the guilty, he received a telegram from this gentleman (pointing to Mr. Carrington) in the city of New York, calling him here; and the gentleman did not contradict him when he was on the stand. We shall show to you that, so far from being a partner, as he asserts, of Chauncey Schaffer, a gentleman of the highest character and reputation, he was simply allowed, after having before that been turned out of his office, to keep his desk in his office; and he was forthwith turned away from that office after he had delivered this testimony, because that distinguished gentleman knew of this telegram. We shall prove to you, if they will allow us, that Mr. Chauncey Schaffer, with the honor becoming a gentleman of character, addressed duplicate communications to the officers of the Government of the United States and to the counsel for the prisoner stating these facts, and yet they would not furnish such a statement to this jury. We shall show to you that Mr. Benjamin W. Vanderpoel is utterly infamous, if we need any other proof than this. We shall show to you—pardon me if I repeat the expression so often, it is because of the necessity of the case—that there never was a round table in that establishment at Metropolitan Hall, and there never was any entertainment there on Friday afternoon, the 14th of April, and on only two or three occasions, since that establishment has been in operation, have they had any entertainment on Friday afternoon. He tells you he was there between one and three o'clock. Do you wonder, gentlemen, that we have been at times betrayed into indignation and over-zeal, perhaps, in the eyes of those who were not acquainted with the facts resting in our knowledge? I think we will need no apology upon that subject after the facts are presented to you.

The next witness is a woman who, under the present existing state of things in this country, has been rescued from a condition of degradation and exalted to the highest position; but, as she is to be recalled, I shall pass her at present, only calling your attention to her name because she comes in this list; but you will have no trouble with her testimony.

There the Government stopped its proof of actual and constructive presence for a week or ten days, or two weeks—I do not know how long—and would not allow us to recall these witnesses. His honor would have extended us that privilege, but the Government interposed its objection to our having these witnesses recalled for the purpose of cross-examination, to lay the foundation for contradiction. Witnesses were produced from the witness-room, put upon the stand, interrogated, and dismissed before we could have an opportunity to inspect their histories—without a knowledge of their names, for the gentlemen would not furnish them to us, although often appealed to to do so. These witnesses they relied upon to establish that point of the case. What has followed within the last two or three days? They saw plainly that our character for sincerity in this subject was pledged to the destruction of one or more of these people; and lest, when they came to sum up this case, it should appear that their testimony was demolished, they set out to fortify it, and brought in some more witnesses on the same subject. The first of them is Charles H. M. Wood, the

barber. There is a certain investigation proceeding, which will make it evident to you, I think, not that Wood has knowingly sworn falsely—I am very far from charging it upon him—but that he is clearly mistaken; and, in the nature of things, the same person could not have been in two different places at the same time, and therefore he is wrong. This prisoner was not at his barber-saloon with John Wilkes Booth and his party at the time he mentioned. I pass him, because that matter will be fully reviewed before you; but his own testimony was candid in this, that he says he never saw either of those parties before, except John Wilkes Booth; and, after the lapse of two years and more, he sees a man whom he thinks he shaved that morning, is quite sure of it, and mark, he says, "I gave him a clean shave."

The next is Mr. Charles Ramsell, from Massachusetts, brought all the way here to prove what? That on the morning of the 15th, having been in town over-night with a comrade, he was going out to his camp, and about two miles out of town he saw a horse hitched. You recollect he described afterwards how a man came riding up behind him on the same horse, and inquired the way through the pickets, and whether there would be difficulty in passing them, and his reply. Then he recollects, also, that there was a courier seen coming from Washington, and the man, as soon as he saw the courier, cut off rapidly across the fields, saying he would try it anyhow. He talked with the man on horse-back. The prisoner was requested to rise, not to face the witness, but to show his back, and the witness says, "I think I have seen that back before on that horse."

Frank M. Heaton, a clerk in the Land Office, and I do not doubt a very highly respectable gentleman, saw no face that night, when he was out in front of the theatre, that attracted his attention; but there was a crowd there waiting to see the President, and last Thursday-week he came into this court-room and thought he saw a distinct resemblance between the prisoner at the bar and a face which he saw before Ford's Theatre that night. Whom would you hang upon that testimony?

The next is Theodore Benjamin Rhodes, itinerant clock-maker, etc., jack of all trades. Mr. Rhodes tells you he visited that theatre on the 14th of April, about mid-day. We shall show to you the front door during the day was always kept locked at that theatre, and it was locked on that day, and nobody was ever allowed to go in. We shall show you that from eleven o'clock to two or twelve to two the company there engaged were occupied in rehearsal, and if this man had been in the theatre or in that private box he would have been seen by them. The Government has shown you the stick which was used to bar the door. Rhodes describes it as broader in the middle and beveled down to the ends, and whittled down by Surratt, as he says. That stick is not the stick which was put up at that place, for the Government itself has produced the bar. We shall show you further that he was not in that box with the men who arranged it, because we shall put those men on the stand here to testify to it. Nay, more, you will recollect that out of his own mouth he is condemned, when he tells you that he sat in the front row of that dress-circle, and located the box in which the lamented President sat on that fatal night on the left-hand side as he faced the stage; and it is on the right-hand side. He did not learn his lesson well. There is another point. He tells you that while he was standing there looking at the theatre there was a person—somebody—he heard in the private-box, who opened the door about six inches, then closed it and went out, and he, thinking that he would like to look in there too—he has an inquiring mind—he walked around there, got into the box, and then he heard a person coming in there whom he supposed was the same person that had gone out; that he turned around and the man addressed some remarks to him—I will not trouble you with the details—and he found it was the prisoner at the bar, with the stick in his

hand! Gentlemen, we shall prove to you by the diagram of the theatre that, in order for a man to have gone out of that box—mark it well, for these are things that do not lie—he must have come out precisely the same way in which Mr. Rhodes walked in. There is no back staircase from that box. There was but one door that could be opened. That door leads into a little narrow passage not much wider than is sufficient to allow a person conveniently to walk through, runs into the box, and ends with a blind wall at the end of it. How could he have gone out to get this bar without the man meeting him? We shall show you the only way of getting up into that box is to walk down from the parquette and up around behind the dress-circle, through the little door and passage-way, and then into the box. We want Mr. Rhodes to be recalled. We do not know whether we shall get him or not.

I think, gentlemen, we have done with all the men and all the women who have testified to John Surratt being here on that day. If he was not here, I appeal to the gentlemen on the other side to know if there is any thing else in this case, any other testimony, that can affect him with guilt in this transaction.

Where was he? We shall show you in the course of time. Now, gentlemen, comes in our part of the case, what we shall prove to you. I have stated to you our conviction of this man's innocence. Pardon me while I briefly recite to you some of the reasons for that conviction.

John H. Surratt was in Canada in April, 1865, and from there he went to Europe, and after an absence of nearly two years he is found in the Papal service. He, a man who is said to have received from the Confederate Government the sum of \$100,000, is so driven by poverty as to take service as a common soldier in the ranks of his holiness the Pope. At that place he is discovered by a man, and charged with complicity in this affair, and he is followed to Egypt; he is brought in irons to this country, and, at the end of nearly two years, is lodged in the common jail of this county. He is there seen and talked with by the counsel in this case for the defense, not allowed to have any communication with the outside world except through his counsel and his sorrowing sister. He there from time to time narrates his story as we are able to get it from his own lips, a tale simple in itself, and which has been faithfully and perseveringly followed from that time to this. It is the chart by which his whole defense has been shaped and directed, and as one of those interested in having these developments made, let me say to you that never has it been my fortune to find a more simple tale so corroborated by facts over which he could have no control. Witnesses have been found to transactions which he supposed it would be impossible for us to verify, men of position and of standing in their own communities, whom you cannot doubt, who come for the single purpose of narrating, each one, the individual facts which he recollects. We will take him from some time in the month of March, 1865, down to the city of Richmond. We will bring him back from the city of Richmond to the city of Washington on the 3d of April. Lloyd and other witnesses say he passed through Surrattsville on that day, and arrived here in Washington on the night of the 3d of April. He went to his mother's house, as even Weichmann testifies. From there he went down to Pennsylvania avenue, and took lodgings at the Metropolitan Hotel, or some other hotel on the avenue, and went thence by the cars north on the morning of the 4th of April. He went direct to Montreal. He landed there and registered himself at the St. Lawrence Hall, according to their own proof, a conceded point on both sides, on the 6th of April. He settled his bill there on the 12th of April. That is conceded on all hands. There is no doubt about that. He went off on a certain mission. Here they tell us that he went in response to a telegram or letter received from J. Wilkes Booth summoning him to Washington. They put McMillan on the stand to prove it.

We shall show you he did not come near the city of Washington, and was not within about four hundred miles of it at any time until he was brought here in the Swatara. We shall show you further, that instead of making these trips from Richmond to Washington, and Washington to Montreal, and Montreal to Washington again, and to Richmond, weaving his web as a spider would, as my distinguished friend described him, he never was in Richmond but twice in his life—once on an innocent visit, and the second time on the occasion to which I have referred. Can you complain of us for feeling outraged at such representations?

We will show you where he went, who sent him, for what purpose he went, where he was on the 13th of April, on the night of the 13th of April, on the 14th of April, on the night of the 14th of April, on the 15th of April, and on the 16th, and so on back to the city of Montreal; and I pledge myself to show you that he was not within nearly four hundred miles of the city of Washington on any of those days; and he had, so far as we can ascertain, no communication with any parties who are charged with this offense. We will show to you, gentlemen, that he went to a certain town, there registered his name in his usual way, "John Harrison," as he did at Montreal, his first and middle name, leaving off the Surratt; that he remained there in discharge of a commission with which he was intrusted, on the 14th of April and the night of the 14th, and on the morning of the 15th, for the first time, heard of this tragedy; that he left that place and went to an adjacent town on Saturday, the 15th, in the afternoon or evening; arrived there at night and remained until Sunday afternoon. I stated to you he registered in his own name. I tell you now that the register of that hotel where he originally put up has most mysteriously disappeared, and cannot be found; even the proprietors and servants of the hotel are scattered in every direction; but we will show you certain telling facts connected with his stay in that town which indelibly fix him at that point at that time, by witnesses outside of the hotel, gentlemen of character. When he went to this adjacent town he stopped at a place which is on one of the great arteries of travel in this country, through which thousands of persons continually passed, and in direct communication with the city of Washington by telegraph. At that point I find his name registered in the same characters in which it was at Montreal. We shall show you when he left, and follow him back to the city of Montreal, where he arrived on the 18th of April.

Nay, more, gentlemen, they shall not be able to tell us that he might have been concerned in this affair and then have fled, taken the cars, and gone to this place for the purpose of making up his defense. We will prove certain facts and circumstances which rendered it physically impossible for him to do it. We shall show also that he could not take a carriage and drive to Baltimore, and then drive out of Baltimore across the country to tap the train between Baltimore and Harrisburg. And we will establish by proof, moreover, such an interruption in railroad travel as to preclude all possibility of his reaching these points, both interruptions from the elements and from the authorities to prevent the escape of any of the desperadoes concerned in the assassination.

After his arrival at the city of Montreal, it is not material to the purposes of this case what became of him; but in justice to him let me say, that while lying concealed in the city of Montreal and elsewhere, he was allowed no communication with any newspapers or any outside intelligence, and heard no report except that the trial here was progressing favorably in behalf of his mother, and he was driven frantic by grief when at last, on the eve of her execution, he discovered she was convicted and doomed to be immediately executed. By friendly force alone he was restrained from returning at once to the city of Washington to surrender himself; an act which could have ended only in his own destruction.

without benefit to his mother. Let no man who knows this history dare charge him with cowardice. Flight, say the gentlemen, is an evidence of guilt. Who would not fly on such an occasion as that? Who would not have been disposed to fly, if he had known John W. Booth, or been with him at all? The first intimation he had of his being charged with complicity in this affair was in the city of Albany, when he read it in a newspaper, and at once went to Canada from that point; not because he was a fugitive from justice; for you all know, as I do, that justice dropped her scales when called into that building at the other end of Four-and-half street. Such was the height of public excitement, such the agitation of this country, such the grief and desire for vengeance, that no man stood safe upon whose skirts rested the most remote suspicion of any connection with the parties engaged in that terrible crime.

I have said to you, gentlemen, that it was not necessary to follow him beyond Montreal. It may be for some purposes. We shall be able to produce upon this stand a credible witness who has seen and conversed freely with Dr. McMillan upon this subject—whose memory is not at fault about it, inasmuch as his recollection was long ago reduced to writing—who will tell you that, in the material points which were addressed to that witness by my colleague, [Mr. MERRICK,] he made statements directly the reverse of those to which he here testified.

We shall show to you that Mr. H. B. St. Marie, the man whom we dismissed, to their disappointment, without any cross-examination, is a person devoid of character and unworthy of belief; and, having thus disposed of those witnesses, we shall leave the matter, so far as the testimony is concerned, in your hands, with one or two exceptions.

I desire, gentlemen, before I conclude, to say a word or two with reference to other points. An effort has been made in this case, I fear very much for the honor of my country, to sacrifice justice and innocence for a purpose. An effort has been made here to cloud with fresh suspicion the escape of Surratt, as they call it, from this country to Canada, by certain testimony in regard to a handkerchief said to have been found at Burlington. We shall be able to show you that that handkerchief was not dropped by Surratt, but by another person, an emissary of the Government in pursuit of Surratt, carrying this as one of the tokens by which he might recognize him—a person who knew him in youth—and that the Government knows it was dropped in that way. I do not charge these gentlemen with it. I speak of the Government as the Government, but certainly they ought to be able to satisfy you, their fellow citizens, and their consciences, whether they can escape the responsibility of that knowledge.

Permit me simply to recapitulate the main points of the case. The Government must show to you that he is beyond all reasonable hypothesis guilty of the charge alleged against him. They must show you that he was one of a band of conspirators who sought and accomplished the death of the President; that he was aiding and abetting the commission of the crime in such a way as brings him into complicity with the tragedy itself; and, if we satisfy you that he was so far away from these parties as I have stated, and if he had no communication with them at that time, so far as can be ascertained by the diligence of the Government or the solicitude of the defense, we shall confidently expect a verdict at your hands acquitting him from this charge. We are satisfied we are able to show you conclusive testimony in reference to the "Lon" letter, by which we can bring home to the Department of Military Justice knowledge that it was a forgery, committed to gratify private ends; but I am advised it would not be evidence, and therefore pass it without further comment.

In conclusion, I will state that perhaps the most pregnant fact of all, one which will be most satisfactory to the human mind, is in our possession. Independent of the declarations of Booth made in his diary exoner-

ating Mrs. Surratt, and of the testimony of one of the other conspirators, Payne, exonerating Mrs. Surratt from all complicity, we shall produce to you testimony showing the contents of the articles of agreement between these men, by whom they were signed, and that Mrs. Surratt's name is not there nor John H. Surratt's name—testimony which comes to us directly from the mouth of the chief assassin immediately before the commission of the crime, but not discovered until too late. We shall prove the contents of the original articles of agreement, with the genuine signatures of the parties attached to that paper, pledging them to the commission of the offense. When we have done all this, gentlemen, we may safely ask you whether you believe the prisoner at the bar to be guilty or not guilty of the charge.

At the conclusion of the opening for the defense, the court took a recess till Monday morning at ten o'clock.

#### Twenty-Fourth Day.

MONDAY, July 8, 1867.

The court re-assembled at ten o'clock a. m.

Mr. BRADLEY. Before putting in any evidence for the defense, we desire to have the two witnesses whom we are allowed to recall examined. We wish one of them especially, for the purpose of identification.

Judge FISHER. Very well.

THEODORE BENJAMIN RHODES,

a witness for the prosecution, re-called for further cross-examination.

By Mr. BRADLEY :

Q. When you were examined the other day, I do not think you stated how you entered the theatre, what door you entered by, whether it was open or not. Explain to the jury how it was that you entered.

A. I went into the theatre afoot. I think there was an entrance near the ticket-box. It is seldom I have been in this theatre, though I was in it several times whilst it was being built. At this time I went in because, perhaps, I thought I might buy a ticket.

Q. Just state where you went.

A. I went in near the box; I think it is at the right-hand of the theatre going in. The door went up a small stair-way, I think; it was slightly ajar; I pushed, it open, and walked in up the stairs on the upper floor, where the audience was seated.

Q. Then you went into the main entrance of the theatre?

A. I do not know whether there is more than one entrance or not.

Q. The front entrance?

A. I went in at the right-hand corner near where the box is for selling tickets.

Q. Did you see the ticket-box as you went in?

A. I do not know that I did; but it is rather the impression on my mind that there was no one in the box at the time; but I am not certain.

Q. And then you went up a flight of stairs?

A. Yes, sir, then I went up stairs.

Q. Did you go up more than one flight of stairs?

A. In fact I could not tell for a certainty. I believe there is a little wind in the stairs, but I am not certain about that. I think you go up about five or six steps, and then the stairway turns off in another direction to get on to the second floor; I cannot tell you certainly.

Q. The door was open, however?

A. It was partially open.

Q. The door through which you entered the theatre?

A. Yes, sir; partially open.

Q. The outside door?

A. The outside door was open; but this was another door at the foot of the stairs, I think, which was partially open.

Q. Then you went up into the theatre to the place where you saw a man opening the door of the box?

A. Yes, sir; I went part way down amongst the seats, where I could see down on the stage.

Q. And then you saw that man opening the door?

A. And then I saw a door open and shut, and heard some one in the box.

Q. When you went into that door, did you go right into the box, or what?

A. Right into a box.

Q. You did not go into a little narrow passage?

A. I believe when I saw it first open I was partly down among the seats. I think I went up and then along the side of the wall to get into the box.

Q. When you got there, that door opened right into a box?

A. Yes, sir.

Q. As you went in, you saw a man going out at another door in front of you?

A. I heard him retreating back.

Q. I thought you said before that you saw his back as he went out?

A. I said he went out; that I heard a man, and saw the door work backwards and forwards. That was the reason I went down there; but as I came up to the box, I heard the steps retreating out of the box, going back. I do not know where they went to.

Q. Going further back?

A. Yes, sir; I went to the box, and he was not there when I got there.

Q. Can you give to the jury any idea of the size of that box which you went into?

A. I should think the front of it was about as wide as that window yonder. [One of the windows of the court-room.] It was tapering a little towards the stage.

Q. And where you stood there, you saw right on to the stage and into the theatre?

A. Yes, sir; there was a curtain down; or—I do not know what they call it. You could see a portion of the stage, five or six feet in front of the curtain.

Q. From where you stood you could see that plain enough?

A. Yes, sir.

Q. And you were there when the chair was brought up and fixed?

A. I was there when the chair was brought up.

Mr. BRADLEY. Now, if Susan Ann Jackson is here I should like to call her.

Mr. PIERREPONT. You can go on with some other witness until she comes in.

Mr. BRADLEY. With the permission of the court and the consent of the counsel on the other side, I will go on with the examination of a witness for the defense, with the understanding that when Susan Ann Jackson comes in, I may interrupt that examination, so as to have her cross-examined this morning. The great object of her examination must be this morning to accomplish any thing.

Judge FISHER. Very well.

JOHN T. FORD,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In the city of Baltimore.

Q. State whether you were or were not the proprietor of what was known as Ford's Theatre in Washington, in 1865.

A. I was.

Q. Was it built under your direction?

A. It was built under my direction and supervision.

Q. [Exhibiting to the witness a diagram.] Be good enough to look at that diagram, and state whether it is or not a correct representation of the tier of boxes in which what was called the President's box was situated.

A. It is correct as far as it relates to the dress-circle and the boxes in that circle, among which was the President's box.

Q. Does it show also the stage and where the curtain fell?

A. Yes, sir; the dotted line shows where the curtain fell.

Q. Which way does the stage front?

A. The stage faced Tenth street.

Q. And the theatre fronted on Tenth street?

A. Yes, sir.

Q. The theatre, therefore, runs, in depth, to the east, and the stage is at the eastern end of the theatre?

A. The stage is at the far end from Tenth street.

Q. The stage, therefore, would front on Tenth street, and the entrance to the theatre was on Tenth street?

A. Yes, sir.

Q. [Exhibiting another diagram to the witness.] State what that is.

A. That is a plan of the ground-floor and the stage of the theatre, representing the entrance from Tenth street, the lobby in front of the theatre, the seats in the parquette and orchestra, and lower private boxes, and the space for the scenery and stage.

Q. Does it also show the pavement out in front, and the carriage platform?

A. Yes, sir.

[Both diagrams were offered in evidence without objection.]

Q. Now, I ask you whether during the day the front doors of the theatre were left open at that time for any person to enter into the theatre?

A. The front door of the theatre is left open, of course, to give access to the ticket-office, where we reserved seats and sold tickets. The doors leading from the vestibule into the theatre were always closed, and it is the rule of every well-regulated theatre to keep them closed during the day.

Q. Was that the rule there?

A. Most certainly.

Q. Then the outside door was open so as to get into the ticket-office, but access to the theatre from the vestibule was always closed during the daytime?

A. That was the inflexible rule?

Q. What were the hours for rehearsal at that theatre?

A. Rehearsals vary, according to the play and the convenience of the stars that are then acting at the theatre. It seldom commences before ten o'clock. Usually—

Mr. PIERREPONT. Wait one minute.

Q. What day are you talking of now?

The WITNESS. I am inquired of generally.

Mr. PIERREPONT. Then I object to it.

Mr. BRADLEY. I will not press it. I will save time, sir. The matter will come out afterwards sufficiently perhaps. (To the witness.) Was the curtain of the theatre ever down during the daytime? State what was the rule and practice.

Mr. PIERREPONT. Do not answer that question. If the gentleman chooses to ask what was the state of the curtain on that day, I do not object.

Judge FISHER. That would be the proper question.

Mr. BRADLEY. I am aware of it, if the court please; but Mr. Ford was not in the city on that day.

Mr. PIERREPONT. We know he was not, and therefore he cannot testify on that subject.

Mr. BRADLEY. I think he can testify to the uniform rule, the inflexible rule of his theatre.

Mr. PIERREPONT. I submit that he cannot. It is not the slightest evidence of what occurred on that day. He was not in the city then.

Judge FISHER. I cannot see what the general rule has to do with the matter, unless you can prove something about this particular day.

Mr. BRADLEY. I desire to note an exception to your honor's ruling. (To the witness.) State whether, if a person entered that theatre in the daytime, or at any other time, and passed around into what was called the President's box—the first door leading into the double box—he could see the stage?

Mr. CARRINGTON. I object to that. That is a matter of opinion.

Mr. BRADLEY. We are asking for a fact. He has

shown to the jury a diagram, but I do not think your honor has seen it. To understand the question, you ought to look at it.

Mr. PIERREPONT. If the question is, whether the stage could be seen from the front of the President's box, I do not object to it.

Mr. BRADLEY. I have not asked any such question.

Mr. PIERREPONT. Very well; we do not object.

The WITNESS. Do you ask whether a man could see the stage when he opened the first door that he entered after being in the theatre?

Mr. BRADLEY. Yes, sir.

A. He certainly could not.

Q. Into what room or passage does that door open?

A. It leads into a passage leading to the President's box. The President's box comprised two boxes, with a portable partition dividing them, and for utility it was made portable, so as to change and throw the two into one box for state occasions, or when any large party wanted a large box.

Q. Then it opened into the narrow passage?

A. It opened into a passage, on which passage, on the side towards Pennsylvania avenue, was a brick wall. On the other side was the door leading to box seven, the first part of the President's box, and at the end of the passage was the door leading to box eight.

Q. Which door was used to enter that box when the President was there?

A. I was not there.

Q. After passing into what was called the President's box, is there any exit from that box except by the door which you enter?

A. None except out of the front of it on the stage.

Q. None without going over on the stage?

A. None without jumping.

Q. A man, then, who came to that door, opening out into the theatre from that narrow passage, who saw or heard any one passing beyond there and followed in, must have seen the person who was there, unless he jumped over on the stage?

A. Yes, sir.

Q. State whether you were in this city on the night of the 14th of April, 1865?

A. I was not.

Q. When did you reach here?

A. I reached here on the Tuesday evening after the 14th of April.

Q. You were at that time, by permission of the authorities, in Richmond, I believe?

A. I was, on Friday, Saturday, and Sunday. I left Richmond on Monday morning.

Q. Were you visiting some connections there?

A. My mother's brother.

Q. You say you returned on Tuesday?

A. Yes, sir.

Q. Now, state whether, by permission of the authorities, you made an accurate examination of the condition of that box, the doors, and the other premises, in reference to the assassination.

A. I did.

Mr. PIERREPONT. On what day was that?

A. During the trial at the Arsenal. I cannot be positive in regard to the day; but I think it was in the latter part of the month of May.

By Mr. BRADLEY:

Q. Did you yourself examine the condition of the door and the mark in the wall?

A. Yes, sir.

Q. State to the jury what you discovered in regard to the doors and the mark in the wall.

A. I found a hole in the wall. To tell the entire truth, I should probably state that I went there in company with Mr. Plant and Mr. Raybold who was occupied about the theatre. Mr. Plant was an upholsterer on E street, I think. I saw the bruise in the wall, and

examined it to see whether it had been cut by any tool by a practised hand, or had been gouged or bruised out. I found it merely a bruise, which had been dug out hurriedly, and found a mark around it indicating that paper had been glued on or pasted on over the hole. I found in the door opposite the hole, the door leading into box seven, a gimlet-hole bored in the lower corner of the panel, and cut around with a knife afterwards. I found the keeper of both locks loose, and especially of the lock of the door leading into box eight, at the end of the passage. That is about all I discovered.

By Mr. BALL, a juror:

Q. Was that hole bored into the door that led into the box, and not into the door of the passage?

A. The hole was bored into the door marked E on the diagram, the door that opened from the passage into the box.

By Mr. MERRICK:

Q. It was the box-door, and not the passage-door?

A. It was the box-door into which the hole was bored, and not the passage-door.

By Mr. BRADLEY:

Q. [Exhibiting to the witness the stick or bar of wood produced by Mr. J. M. Wright.] Look at that stick, see whether you have seen it, and explain all you know about it.

A. I remember seeing this at the military trial.

Q. Is that the stick exhibited there as the stick found in that place to fasten the door?

A. Yes, sir.

Q. Now state whether there were any such sticks used in that box at any time not long before that, and state in regard to it what you recollect.

A. As soon as I noticed this stick—I did not see it till the latter end of the trial at the Arsenal—I recognized its prior use at once, before it was used to fasten the door. It is the upright of a music-stand. If I am permitted to state, on the 22d of February previous the Treasury regiment—the regiment belonging to the Treasury Department—had a ball at the theatre, and up near that box in the dress-circle the band was stationed to play the cotillion music, near the President's box; on the outside of it, not in the box. At that time we found, late in the evening—I was there—that there were some music-stools needed; and some were made hurriedly for the purpose. I believe this to have been a part of one of those stools.

Q. Can you tell of what material it is?

A. Pine.

Q. What kind?

A. White pine.

Q. You are certain it is not oak or North Carolina pine?

A. I am not much of a judge of wood, but I venture an opinion upon that.

Q. You see that a portion of it has been sawed off?

A. Yes, sir.

Q. Explain how these music-stools were constructed.

A. This upright part fitted into a board six or eight inches wide at the bottom, to make a base, and on the front of the beveled part, at the top, a little edge or shelf was nailed to hold music. The upright was nailed to the board at the bottom, and nailed to the shelf on the top.

Q. Did you know John Wilkes Booth?

A. Well.

Q. How long did you know him?

A. I knew him from childhood up to the time of his death. I was raised in the same city with him, and knew his father and the family well.

Q. Can you describe his appearance to the jury, his figure and size, and whether there was any thing remarkable about him to attract any attention?

A. He was a man rather above the ordinary height, very graceful, and good looking. Do you wish me to speak of his face and color?

Mr. BRADLEY. As to his figure, and how he cultivated that figure; whether there was any thing peculiar about his hands?

A. He was known in the profession as one of the best gymnasts in the country; a man that took a great deal of exercise. In this city I knew him myself to visit very frequently the gymnasium kept by Brady; and he was a great swordsman, very remarkable on the stage for his extraordinary fights with the broadsword. His hands were quite large, large enough to attract attention, and to provoke remark from himself and from others. They were naturally large, and distended by exercise.

Q. You can, therefore, state distinctly whether he had a small, white, delicate hand, that looked as if it was not used to labor?

A. He certainly had not.

Q. You have said he was above the ordinary height. Now, describe the character of his face; his features, if you can?

A. He had dark, or what may be termed a black eye; very black, glossy hair; he usually wore a moustache—about the only beard he wore on his face. His face was esteemed generally as being remarkably handsome. It was what is usually known in the profession as rather dark.

Q. Was there any thing particular about his manner of conversing?

A. An extremely fascinating man in his manners.

Q. Very animated or not in talking?

A. He was a man very fond of company, and talked with a great deal of animation; a very interesting man in his conversation.

Q. Do you know whether he wore gloves or not? Did you ever see him wear gloves, and do you know whether his hand was very much tanned or not?

A. That I cannot answer. I cannot recall seeing him with gloves on, though he might have often worn gloves in my presence. I seldom take notice of articles of dress closely.

Q. Do you know his handwriting?

A. I do, well.

Q. [Exhibiting to the witness the telegram to M. O'Laughlin of March 13, 1865.] Look at that telegram, and see whether it is in the handwriting of Booth or not.

A. I believe that to be his handwriting.

Q. [Exhibiting the telegram of March 27, 1865, addressed to M. O'Laughlin.] How as to that?

A. That resembles Booth's handwriting; not so much so as the other, but it may have been his, written in a hurry. The signature is like his, though the word "Wilkes" does not appear to be perfect.

Q. [Exhibiting to the witness the telegram to "Wickman," dated March 23, 1865.] Examine that, and say whether it is Booth's handwriting.

A. That also looks like his handwriting.

Q. You think all these telegrams are in his handwriting?

A. Yes, sir.

Q. [Exhibiting to the witness the card, "Don't want to disturb you. Are you at home? J. Wilkes Booth."] Look at that, and see if it is his handwriting.

A. That is also his handwriting, in my opinion.

Q. How long have you been familiar with Wilkes Booth's handwriting?

A. He entered my employment some eight or nine years ago. I remember seeing him write then, and from that time up to the time of his death I was in the receipt of letters from him, and have seen him write frequently in my office—nearly all the years of his manhood; in fact from his boyhood, from the time he was eighteen years of age to his death.

Q. And from that you are familiar with his handwriting?

A. Quite familiar, I should think.

Q. [Exhibiting to the witness the "Charles Selby" letter.] Examine that paper carefully, and see whether

or not you believe that to be in his handwriting; I do not mean his natural handwriting, but a feigned or disguised handwriting, and written by him.

A. I should not think it possible for him to write this.

Q. State the reason why you do not think it possible for him to write it.

A. It strikes me as being unlike his handwriting in nearly every respect. The very condition of his hands would interfere somewhat with his writing a hand of this kind. He had, as I said before, a large, thick, clumsy hand.

Q. Are there any letters in that writing which you can select that bear any resemblance in character to his writing?

A. I cannot notice any thing now that resembles his writing. If this paper were handed to me without any reference to him, he would be the last man I should think had written it, even if I was told it was disguised.

Mr. BRADLEY. With the permission of the court, as Susan Ann Jackson is now here, we propose to suspend Mr. Ford's examination for a few minutes, in order to proceed with her.

Judge FISHER. Very well.

SUSAN ANN JACKSON,

a witness for the prosecution, recalled for further cross-examination.

By Mr. BRADLEY:

Q. Do you recollect, the morning after the assassination of the President, or during that night, some gentlemen coming to Mrs. Surratt's house and searching it?

A. Yes, sir.

Q. Did you see them?

A. No, sir, I did not.

Q. Were there any other colored persons in the house besides yourself?

A. There was not anybody else in the house besides myself and a small girl and a small boy.

Q. You did not see two gentlemen there, who were searching the house?

A. They came to my room.

Q. Look around, and say if you did not see that gentleman with the red moustache? [Pointing to J. A. McDevitt.]

A. No, indeed, sir. Upon my word, I never saw him. My head was covered up when the gentlemen came to my room. I heard them walking through the house, but when they came to my room I was lying down and covered my head up.

By Mr. PIERREPONT:

Q. Were you in bed?

A. Yes, sir; I was. No gentleman ever spoke to me, but I heard the gentlemen say, when they came into the room, that it was a very particular case, and they must be very particular about it.

Q. But you were in bed, you say?

A. Yes, sir; I was in bed.

By Mr. BRADLEY:

Q. Did any gentleman that night ask you where John Surratt was?

A. No, sir; no gentleman ever mentioned Mr. Surratt's name. No one at all mentioned his name to me.

Q. Nobody asked you anything about him?

A. No, indeed, sir.

Q. And you did not get up?

A. No, sir?

Q. All the time they were searching the house, you did not get up?

A. No, sir; I did not.

Q. Then you are sure you did not tell anybody that night that Mr. Surratt had not been there for two weeks?

A. No, sir; I give you my word no one ever asked me such a thing.

Q. And there was no other colored person in the house but a little girl and a little boy?

A. No, sir.

Q. Do you recollect ever telling anybody—

A. No, sir; I did not.

Q. You do not hear what my question is yet. Do you recollect ever telling anybody that Mr. Surratt had not been there for two weeks before this thing happened?

A. No, sir; I did not.

Q. Do you know a colored woman named Rachel?

A. Rachel who?

Q. Do you know a colored woman named Rachel?

A. No, sir; I do not think I know any one named Rachel.

Q. Do you know a woman named Eliza Hawkins?

The WITNESS. Where does she live?

Mr. BRADLEY. I cannot tell you where she lives.

A. No, sir; I was not acquainted with any one around there then, only a woman who lived next door with Mrs. Sweeny.

Q. Do you know a woman named Eliza Cephias, now named Eliza Hawkins?

A. No, sir.

Q. You never told any gentleman that night, and you never told any colored woman Rachel or Eliza, that Mr. Surratt had not been at that house for two weeks?

A. No, sir; I did not.

Q. Have you ever said that you were going to get any thing for the testimony you gave in this case—for being a witness here?

A. Me, sir! No, sir, I did not; and I never expect to get any thing.

Q. You never, at any time, either that night or afterwards, told Rachel or Eliza that Mr. Surratt had not been at that house for two weeks?

A. No, sir; I did not.

JOHN T. FORD,

a witness for the defence, recalled.

Mr. BRADLEY. Before continuing the examination we wish to understand, if your honor please, the rule which will be laid down in conducting it. Mr. Ford is a witness whom we shall desire to call for an entirely different part of this case, and our object is, if possible, to confine the examination to the incidents in the order in which they were introduced on the other side. If, however, your honor requires us to apply the exhaust rule, we shall have to go on now and examine Mr. Ford completely.

Judge FISHER. If you want to preserve the consistency of your case, you may do so according to your own notions.

Mr. BRADLEY. That is our object. Then I have nothing further to ask Mr. Ford at this time, but Mr. MERRICK asks permission to put some questions to him. We shall have to call him again to another part of the case.

By Mr. MERRICK:

Q. Mr. Ford, I wish you to explain to the jury the relative position of the entrance-door and the ticket-office and the wooden platform in the front of the theatre, which was erected for the purpose of facilitating persons coming in carriages in getting into the theatre.

A. The proportions, I suppose, are entirely correct on this diagram. It represents the platform used as a carriage landing in front of the theatre. That was constructed of two-inch boards, about eight feet in width, the inner edge resting upon the curbstone, the outer edge extending into the street. The letter A on the diagram represents the passage between the theatre and the restaurant adjoining.

Q. What was that passage used for?

A. As an entrance for the professional people to the stage.

Q. And that goes to the rear?

A. To the rear of the audience part; and there is a door there that leads to the stage.

Q. Who made this diagram?

A. Mr. Gifford, who built the theatre.

Q. You are familiar with all the positions and localities?

A. I think so.

Q. And you tell the jury that that is a correct plat, faithfully representing the relative positions of the places marked upon it?

A. I have examined it carefully before to-day, and I could find no mistake, no error in this plat. As far as I know, it is correct.

Q. Point to the jury the position of the entrance-door of the theatre.

A. The entrance-door at night is marked C.

Q. Where is the ticket-office?

A. Right on the right hand as you enter?

Q. Now tell the jury where is the clock?

A. The clock is about seven to eight feet high, on the wall between the door opposite to the entrance and the adjoining door. There are three doors in the vestibule leading into the theatre, used to allow the audience to come out more rapidly than they go in.

Q. In order to see that clock during the performance in the theatre what door would you enter?

A. To make myself understood, I had better state that there was a temporary door there, covered with oil-cloth or linen, an inner door, so as to preserve the warmth of the lobby, and it was used on all occasions, except at night, when the theatre was to be made secure. Then the large doors were closed. There was a frame placed in there, and inside of the frame this inner door was located, with a spring to it.

Q. I want to get at the doors on the outside, that lead from the street to the theatre?

A. The outer door was the large door which I have mentioned. That was always open during the time of the performance, and from the time we commenced the sale of tickets until the audience left the theatre. It opened against the walls of the theatre—spread open. Then there was an inner door, such as is used frequently in public buildings, churches, &c.

Q. And that inner door filled up the same aperture that the outer door did?

A. The whole frame filled up that aperture, but the inner door was only a part of that frame.

Q. Now, where is the door into which you go during the performance, in order to see that clock; through what opening marked on that plat would you go?

A. You would go through the opening marked C, through the temporary door.

Q. Now, please to tell me which way is Pennsylvania avenue.

A. On that side. [Indicating a southerly direction.]

Q. And the door fronted west?

A. About that, I believe.

Q. Now, tell the jury whether or not that wooden platform of which you have spoken is, relatively to Pennsylvania avenue, above the entrance-door, or below the entrance-door, or in what position does it stand to that entrance-door.

A. It stood between the entrance-door and the upper door, occupying a space, probably, one-third of the width of the theatre, and it was put immediately in the centre of the building, from the curb out.

Q. Then the entrance-door, as I understand you, is not immediately in the centre of the building?

A. The entrance-door is not.

Q. Is it nearer to Pennsylvania avenue?

A. Nearer to Pennsylvania avenue.

Q. How near to the entrance-door would the southern edge of that platform come—I mean on a straight line?

A. Presuming I was standing in the door, the platform would commence about where Mr. BRADLEY sits now, and move up in a direction towards E street from here.

Q. It then bore such a position to that entrance-door, as I understand you, that a man sitting on the southern side of the platform nearest to the avenue would be in such a position, that a person standing in the entrance-door and turning about one-third to the right would have his back directly to a man on the southern side of that platform, would he not?

A. Repeat the question.

Q. Suppose a man sitting on the southern side of the platform, and a man standing in the entrance-door and turning one-third of his person to the right, would he then not have his back directly to the front of the southern side of the platform?

A. He would.

By Mr. GITTINGS, a juror:

Q. Could a person see the clock without getting into the door?

A. Not unless the inner door, which I described as covered with canvas, was entirely away. Then you could see it, probably, by standing on the steps and looking directly up to it. You would have to stand up against the building, touching the building, before you could see the clock.

By Mr. MERRICK:

Q. If that door was entirely away, you could not see the clock without going in?

A. You could not, unless you went into the vestibule.

Q. Was that door there when you had charge of this theatre?

A. It was always at that season of the year.

Cross-examined by Mr. PIERREPONT:

Q. When did you leave Washington in April, 1865.  
A. My impression is that I left it on Monday or Tuesday before the Friday of the assassination.

Q. Where did you go to?

A. I went to Baltimore.

Q. Where then?

A. From Baltimore to Fortress Monroe, and from there to Richmond.

Q. When did you get back to Washington?

A. On the Tuesday evening following the assassination.

Q. Then you were gone a week?

A. About one week.

Q. During that whole week you did not see Ford's Theatre, nor any door of it?

A. No, sir.

Q. There was no process by which you could see it, was there?

A. None.

Q. You do not know what door was open or what was shut?

A. I am not aware that I do.

Q. The desk behind which his honor is sitting faces the same way that the theatre did, exactly, does it not?

A. Yes, sir.

Q. Now, calling the desk at which the clerk and crier sit the vestibule, and imagining a door in the wall behind the judge, point to the jury where the clock was.

A. Right over where Judge WYLIE now sits. [Judge WYLIE was sitting to the left of Judge FISHER.]

Q. When you got into the vestibule, if the door was open you could see the clock, could you not?

A. When you were in the vestibule.

Q. There was no difficulty about it, was there?

A. No trouble about it at all.

Q. [Exhibiting to the witness the bar of wood.] Do you know any thing about that? What it means, or the piece tied on to it?

A. I can only state what I have heard in regard to that. I know nothing.

Q. Do you know any thing more about the bar than you know about the end of it—the piece tied on?

A. I could explain fully if you would allow me.

Q. Do you know any more about the whole bar than you know about the piece tied to it?

A. I can recognize the bar better than the piece, but I can recognize the piece as very probably sawn from the bar.

Q. You think that was done?

A. I have no doubt of it.

Q. You believe that that piece, when the bar was against the door on the night of the murder, was on here, do you not?

A. Yes, sir.

Q. [Exhibiting to the witness Booth's diary.] Look at this book, examine the handwriting, and say whose handwriting you think it is?

A. The first line I recognize as Booth's immediately.

Q. What do you say of the second?

A. It all looks like his handwriting. I should think it was.

Q. You think that page is Booth's handwriting?

A. Yes, sir.

Q. Now, tell the jury how you think Booth, with his big, clumsy hands, could have written that.

A. I recognize characteristics of his handwriting through this.

Q. Do you recognize that as a clumsy hand?

A. It shows awkwardness and unformed letters in many respects.

Q. Do you think that looks like a clumsy hand?

A. It is not a perfect handwriting, I should think.

Q. My question is, Do you think that a clumsy hand?

A. To some extent.

Q. Do you think this (the "Charles Selby" letter) is less clumsy?

A. I think this is a better handwriting.

Q. Do you think it a less clumsy handwriting than the diary?

A. I do not know that it is.

Q. Do you say that the Charles Selby letter is a natural hand?

A. I am not an expert to pass an opinion upon it. It is very unlike any thing I have ever seen him write; but this writing in the diary is very similar to his.

Q. Now, Mr. Ford, you have given us a description of Booth, of his appearance and dress, and told us he was a very handsome man. Now, let me ask, was he vain of his appearance?

A. To some extent.

Q. Was he careful in his dress always?

A. Very fastidious.

Q. Was he ever a dandy in his dress?

A. Not to that full extent, but he was a very careful man in his dress.

Q. Was he not extreme in all the taste and care of his person?

A. I do not think so. He was not foppish at all.

Q. I do not say foppish. I ask was he not extreme in the taste and care of his person?

A. I did not think him extreme. He was within good taste always in his dress.

Q. And did he not dress in careful taste?

A. He did.

Q. Was he not careful and clean in his person?

A. Yes, sir.

Q. Was he careful of the kind of boot he wore, to have a nice, neat foot?

A. I know his foot was large.

Q. Was it a nice, neat foot?

A. I did not think it was. I think he was careful in his boots.

Q. Did he not wear a nice and careful boot?

A. He did. He appeared to be very careful in his boots.

Q. Was his tailor an artist apparently in taste?

A. He appeared to be appaerred by a fashionable tailor.

Q. Do you think that a man who took such care of every other part of him neglected his hands?

A. No, sir.

Q. Do you think his hands were black and rough like those of a laborer?

A. No, sir.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 70. WASHINGTON, WEDNESDAY, AUGUST 7, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 69.*

Q. Do you think they were white and soft like those of a gentleman?

A. No, sir; they were between the two, always clean of course.

Q. Do you think they were brown?

A. His hand was apparently half as large again as mine.

Q. I am not talking of the size, but the color. Was it a clean, carefully-preserved, white hand, or was it a rough, coarse, laborer's hand?

A. He kept his hands washed, I presume.

Q. He kept them carefully, did he not, as the rest of his person?

A. He kept his hands clean, as far as I know.

HENRY CLAY FORD,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Baltimore.

Q. In April, 1865, where were you and in what business engaged?

A. In Washington city, treasurer of Ford's Theatre, on Tenth street.

Q. In the absence of your brother, who had the superintendence and management of the theatre?

A. Myself and my brother James R. Ford.

Q. Did you know John Wilkes Booth?

A. Yes, sir; very well.

Q. Do you recollect to have seen him on the Friday of the murder of the President?

A. Yes, sir.

Q. Do you recollect at what time of the day and where you saw him; and, if so, state it?

A. I saw him about half-past eleven o'clock, in front of the theatre, as he was coming down Tenth street from F street to the theatre.

Q. Did he do any thing after he came there; and, if so, what?

A. I told him there was a letter in the office for him, and I believe Mr. Raybold went in and brought the letter out to him. He sat down, I suppose, and commenced reading it.

Q. About what time did you learn that the President was coming there that night?

A. My brother told me about that time, a little before that, in fact—about eleven o'clock, I think.

Q. Do you remember whether, while Mr. Booth was there, any thing was said on that subject in his presence?

A. I do not remember any one telling him. I suppose he heard it while he was there.

Q. You do not remember speaking of it?

A. No, sir.

Q. After that, were any orders given by yourself or any one else for preparing the boxes for the President?

Mr. PIERREPONT. His orders cannot be evidence.

Mr. BRADLEY. He had charge of the building.

Mr. PIERREPONT. Suppose he had; we have given no evidence about their giving any orders in regard to the boxes.

Judge FISHER. It may be that the evidence may become pertinent. I do not know yet. I think you had better let it go in.

Mr. PIERREPONT. Very well.

Mr. BRADLEY. I think the gentlemen will not object when they hear the answer. (To the witness.) You can state whether orders were given for preparing the boxes.

A. The order was given about two o'clock to prepare the box.

Q. Who was the person charged with the execution of that order?

A. Mr. Thomas J. Raybold.

Q. What was his position at the theatre?

A. He was a door-keeper there, and attended to most of the upholstering about the theatre.

Q. Who gave the order to prepare the box?

A. I gave the order.

Q. Did Mr. Raybold execute it; and, if not, who did, and why was it?

A. He was sick.

Mr. PIERREPONT. Any thing about Mr. Raybold's sickness, or any thing of that kind, certainly cannot be evidence in this case.

Judge FISHER. I do not know that that can be evidence, but I think it is competent for the defense to show at what time and by whom the President's box was put in preparation.

Mr. PIERREPONT. I am not on that now, but on what Mr. Raybold did not do in consequence of being sick. That is what I am objecting to.

Mr. BRADLEY. The question is why the thing was not done by the person regularly appointed to do it, and who did it.

Mr. PIERREPONT. That is reasoning. If you confine it to facts, I make no objection.

Mr. BRADLEY. I wish to show that Mr. Raybold was sick with neuralgia.

Judge FISHER. That is hearsay. You can show who put the box in preparation.

Q. (By Mr. BRADLEY.) Did Mr. Raybold prepare the box?

A. He did not.

Q. Who did it?

A. I did.

Q. About what time did you first go to work to prepare that box?

A. Somewhere between two and three o'clock.

Q. Were you up in the box yourself?

A. Yes, sir.

Q. State to the jury whether the curtain of the theatre was up or down at that time?

A. It was up.

Q. Can you state whether it had been up all day or not?

A. All day.

Q. While you were at work preparing the box for the reception of the President, was there any stranger there?

A. I did not see any.

Q. Did you have any conversation with any stranger who was there at that time?

A. No, sir.

Q. I suppose you knew Edward Spangler?

A. Yes, sir.

Q. Do you know where he was at that time?

A. He was on the stage fixing a scene.

Q. Do you remember any thing about the chair being brought in for the accommodation of the President?

A. Yes, sir. I ordered the colored man to bring the chair down from my room.

Q. You were in the box at that time?

A. Yes, sir.

Q. Did you have any conversation with any stranger at that time?

A. There was one gentleman there—I do not know his name—from the Treasury Department, who was helping me to fix up the box, who had loaned the flags.

Q. No one else?

A. No one else.

Q. Did you know any thing about the condition of the keepers of the locks of boxes number seven and eight?

A. No, sir, I did not.

Judge FISHER. What do you mean, Mr. BRADLEY, by the keepers of the locks?

Mr. BRADLEY. The hasps into which the bolts shut. (To the witness.) You do not know whether they were loose at that time in either of those boxes?

A. No, sir.

Q. Where were you on Friday night during the performance?

A. In the box-office.

Q. During the third act where were you?

A. There.

Q. Were you out in front of the theatre at any time?

A. I may have been, but I have no recollection of it.

Q. Have you any recollection of the rehearsal that day, or at what time it occurred?

A. There was a rehearsal.

Q. Was it before or after that box was fitted up?

A. Before. The box was fitted up after the rehearsal.

Q. Do you recollect at or about what time the rehearsal commenced?

A. I am not positive. Rehearsal was generally called at eleven o'clock.

Q. You do not know any difference on that day?

A. No, sir.

Q. Was it possible for a man entering the door marked D on the plat—the door leading from the body of the theatre to the passage leading to the private boxes—to see the stage?

A. No, not unless he should go around into the box.

Q. But just going in the outside door he could not see the stage?

A. No, sir.

Q. Who assisted you in fitting up that box besides the gentleman from the Treasury, do you remember?

A. Mr. Buckingham, another door-keeper there.

Q. Is there any means of getting out of those two boxes into the body of the theatre except through that door D?

A. No, sir, no other means.

Q. Is there any door at all in the back wall of that box?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. How many doors are there in the entrance to what formed the two boxes that were turned into one; how many entrances?

A. Three entrances.

Q. Three doors?

A. Yes, sir.

Q. At the time you went there, the doors were all there, were they not?

A. Yes, sir.

Q. Could you not go into any one and out at any one?

A. Yes, sir; but you would have to go into the first door before going into any of the others.

Q. But when you got in there you could go in or out at any one of the two box-doors?

A. Yes, sir.

Q. You could likewise go out where Booth went on the stage?

A. Yes, sir.

Q. Where did you take breakfast the morning of the day of the murder?

A. At the National Hotel.

Q. What did you do next after breakfast?

A. I walked right up to the theatre.

Q. At what time?

A. About eleven o'clock.

Q. Where did you go?

A. Right up to the theatre.

Q. What part of the theatre?

A. To the box-office.

Q. Did you stay there?

A. No, sir; my brother told me—

Q. Never mind what your brother told you. Did you stay there?

A. Yes, sir.

Q. How long?

A. All the afternoon, but not in the box-office.

Q. I am speaking now of the box-office; how long did you stay in the box-office?

A. I stayed about an hour there.

Q. That brought you to twelve o'clock; after twelve o'clock where did you go?

A. I went back on the stage.

Q. How long did you stay on the stage?

A. I suppose about half an hour or an hour.

Q. Which do you think?

A. I cannot remember positively.

Q. That brought you to one o'clock?

A. Yes, sir.

Q. What did you then do?

A. I was in the box-office again.

Q. How long did you stay in the box-office then?

A. I suppose I stayed there an hour.

Q. That brought you to two o'clock. Now, what went on up in the room while you were in the box-office you do not know, do you?

A. Up in the private boxes they were taking the partition out. That is all I know.

Q. Do you know of your own knowledge what went on in those boxes while you were in the box-office?

A. No, sir, I do not; I am not certain.

Q. Did you say that the partition was taken out while you were in the box-office?

A. Yes, sir.

Q. You did not know any thing about the preparation to bar the door for the purpose of preventing people from getting in did you?

A. No, sir.

Q. When you went up there after two o'clock, was that the first time you went there?

A. Yes, sir.

Q. Did you know then that anybody had been there?

A. No, sir.

Q. Did you examine the wall?

A. No, sir.

Q. Did you examine the door?

A. No, sir.

Q. Did you see any mortar lying on the carpet?

A. No, sir.

Q. Did you see any chips of the wall on the carpet?

A. No, sir.

Q. Did you look for such things?

A. No, sir.

Q. Had you heard any thing about these preparations?

A. No, sir.

Q. When did you first learn that the President was coming there that night?

A. It was at eleven o'clock in the morning.

Q. Who told you?

A. My brother.

Q. That was the first you heard of it?

A. Yes, sir.

Q. You never got to the box until two o'clock?

A. No, sir.

Q. When you went there you found that the partition had been taken out?

A. Yes, sir.

Q. Was there any difficulty in seeing the stage when you got into this box?

A. No, sir.

Q. Do you say the curtain was up all day?

A. Yes, sir.

Q. Tell the jury how you know, when you were not in the box, whether the curtain had been hoisted or not.

A. I do not remember if it had been hoisted.

Q. You say you were not there—you were not in the box; how could you tell? It might have been hoisted twenty times, and you not know it.

A. It might have been.

Q. Might it not have been let down twenty times, and you not know it?

A. Yes, sir.

By Mr. BRADLEY:

Q. You say you were on the stage sometime—an hour or more?

A. Yes, sir.

Q. And you were in the box preparing the box?

A. Yes, sir.

Q. And during those times the curtain was up?

A. Yes, sir.

Q. Did not the hoisting and lowering of that curtain make a very considerable noise?

A. I do not remember whether it went up easy or made a noise.

Q. It was up whenever you were there during that day, at any rate?

A. Yes, sir.

Q. Who took down that partition?

A. Spangler.

Q. Do you know who assisted him?

A. One of the hands, named Jacob Ritterspaugh.

Q. About the doors after you get into the vestibule—the entrance-doors into the theatre—were they locked that day or not?

A. They generally are locked. They might have been open to pass through and fix up the box. That door is always locked and the key kept in the office.

JAMES J. GIFFORD,

recalled as a witness for the defense.

By Mr. BRADLEY:

Q. You stated, when on the stand before, that your position at Ford's Theatre was that of stage carpenter?

A. Yes, sir.

Q. Do you remember being at the theatre on Friday, the 14th of April, 1865, the day of the assassination of the President?

A. Yes, sir.

Q. Do you know the box he occupied?

A. Yes, sir.

Q. Had you these diagrams made, or did you assist in making them?

Mr. PIÉRREPONT. We do not question the diagrams; and, as they are in evidence, I do not see that they need any proof.

Mr. BRADLEY. Very well. (To the witness.) Did you build the theatre?

A. Yes, sir.

Q. And these diagrams are an accurate representation?

A. They are correct. They were made from memoranda I had.

Q. State whether there is any outlet from boxes seven and eight into the body of the theatre except through the door marked D?

A. There is no other exit or entrance to the boxes.

Q. Were you engaged about the theatre that day?

A. Yes, sir.

Q. Did you assist in the preparations for the reception of the President?

A. No, sir; I did not assist in the preparation of the boxes. I was attending to my duties on the stage.

Q. You were at work on or about the stage?

A. Yes, sir.

Q. State, if you please, whether the curtain was down during that day, or whether it was up?

A. The curtain was generally lowered about half past five or six. It was not done before that time.

Q. How much light is thrown into these boxes when the theatre is closed in the day time?

A. Very little, if any. Unless the doors of the boxes were open, you could not see at all in the passage leading to the boxes; it was perfectly dark.

Q. Is that where the hole was found in the wall?

A. The hole was found in the wall back of the entrance-door into the passage.

Q. And there it was quite dark?

A. Yes, sir, unless the doors were open.

Q. Did you make any examination there on the morning after the assassination to see whether you could find any of the marks of the plaster, and so on, which had fallen from that hole?

A. I did not know that there was any hole cut in the wall until two or three days afterwards. I did not know it until Sunday.

Q. Did you make an examination then?

A. I did.

Q. Did you find any thing there showing recent marks?

A. Nothing at all. I found the hole in the door on Saturday, and I thought the President was shot through it—a small hole.

Q. On that night, and during the performance, were you out upon the front of the theatre at any time?

A. Yes, sir; I was out the first, second, and third acts—all the acts.

Q. Were you out there at the commencement of the third act?

A. Yes, sir.

Q. Who was with you?

A. Louis Carland.

Q. Who was Mr. Carland?

A. A costumer and actor, engaged on the stage.

Q. Did you see Mr. Booth out there?

A. No, sir.

Q. How long did you remain there?

A. During the first act; some twenty to twenty five minutes.

Q. During the third act?

A. I was out there at the commencement of the third act.

Q. Which way did you go from the theatre out to the front?

A. I went through the stage entrance; from the stage out the side next to E street.

Q. The stage entrance is on the south side of the theatre?

A. Yes, sir.

Q. Did you see Mr. Booth then?

A. No, sir; I did not see him that night at all.

Q. When you came out on the front, and were there with Mr. Carland, state where your position was, as well as you recollect.

A. It was between the stage entrance and the second door in the building, which was used for the audience going in and out to buy tickets, etc. There is a small door that went inside of this door, a single door, three feet wide. It is not represented on the diagram. The

opening was six feet one or two inches. I stood between the stage entrance and this platform. That is the door which Mr. Ford described as inside the framework.

Q. Did you know John Wilkes Booth well?

A. Yes, sir; I knew him from his boyhood.

Q. Did you ever see the prisoner at the bar before you saw him here?

A. No, sir; I never saw him.

Q. That night, when you and Mr. Carland were out in front of the theatre, did you see him or anybody that resembles him come down to the place there?

A. No, sir.

Q. Did you see any one come there and call or ask what the time was?

A. Yes, sir.

Q. State who it was.

A. A gentleman by the name of Hess.

Q. Was he connected with the theatre?

A. He was connected with the theatre.

Q. Was he on that night or not?

A. He had not been on in the first piece. He was to go on in the second in a national song.

Q. What direction did he come from when he came down?

A. He came from F street.

Q. And what passed?

A. He came and asked what time it was. Carland stepped in the door and said it was ten minutes past ten.

Q. Was Booth anywhere about there then, so far as you know?

A. Not that I know. I did not see him.

Q. Did you see anybody sitting on the carriage platform in front of the theatre that night?

A. I did not.

Q. You can state whether persons were allowed by the rules to sit there or not, and what your duty was in that respect. If anybody had been there, would it have been your duty to remove him or not?

A. We allowed no person to sit in front of the theatre, or loaf about in front of the theatre. It would have been my duty to see that they were put away if they had been there.

Q. Was there a policeman there for that purpose?

A. A city policeman used to be detailed in front.

Q. What became of Mr. Hess after he asked what time it was?

A. He stood there awhile and went in the stage entrance; left Carland and me standing there.

Q. Did any thing further occur before you heard the alarm of the shooting of the President?

A. Nothing that I remember.

Q. Can you state with distinctness whether or not there were two persons standing near the same place where you were for some time before this calling of the time?

A. There might have been; I did not take notice of them.

Q. If Mr. Booth had been close there?

A. I should have seen him. A stranger I would not take notice of.

Q. What signal was given on the stage of that theatre in shifting the scenes?

A. A whistle.

Mr. BRADLEY. (To the counsel for the prosecution.) Gentlemen, if you have that whistle here which you blew, let us have it. [The whistle was produced.] I do not know whether I can blow it or not. You blew it the other day. [The counsel blew the whistle.] Was the sound any thing like that?

A. It was a shrill whistle.

Q. That was the signal for changing the scenes on the stage of that theatre?

A. Yes, sir. In some theatres they have gongs. There they had a whistle.

[Mr. MERRICK handed it to the witness, upon which he blew a long, shrill whistle, and said: "Sometimes we blew a long, shrill whistle like that."]

By Mr. MERRICK:

Q. I wish to ask you one question about the plat of the exterior of the theatre. I think it has been sufficiently explained; but, as you were architect of the building, you might explain it more satisfactorily. Explain to the jury the relative position of the stand built near the curbstone for the benefit of persons in carriages to the entrance-door of the theatre.

A. The stand was placed on the curb, one edge, and the other edge reaching out into the street. It was from twenty to twenty-four feet long. It was exactly in the centre of the theatre. The lamp stood right in the centre of the platform, on the curb. The platform reached out from the street until it rested on the curb.

Q. Take the plat and show to the jury the relative position of the extreme southern side of that platform and the entrance-door, inside of which was the clock.

A. The clock hung up on this pier, right in the centre of the pier. Here is the extreme southern end of the platform; it does not reach quite as far as the door, but on a line with the door. [Pointing out the different positions on the diagram.]

Q. The entrance-door, then, is between the end of the platform and Pennsylvania avenue?

A. Yes, sir. It did not quite reach to the door.

By Mr. BIRTH, a juror:

Q. How wide is the space between the outer wall of the theatre and the wall on which the clock was?

A. The vestibule was about seven feet and the wall was three feet. The pavement to the platform was about sixteen feet.

By Mr. MERRICK:

Q. Give the general dimensions of the vestibule all around, if you can, and the width and depth.

A. I suppose the length of the vestibule was in the neighborhood of thirty or thirty-two feet. It was only seven feet in the centre; at the entrance-door I suppose it was ten. You see by the plan there was a sweep there.

Q. How far was that clock from the door-sill?

A. About nine feet from the inside edge—between eight and nine feet.

Cross-examined by Mr. PIERREPONT:

Q. What was your business on the 14th of April, 1865?

A. My business was carpenter of the theatre.

Q. Were you a laboring man?

A. I am a working man.

Q. Were you then?

A. Then and now.

Q. What time did you take your dinner?

A. A little after two.

Q. Did you take any on that day?

A. Yes, sir.

Q. Where did you get it?

A. Around on F street.

Q. You do not know all that occurred while you were gone, do you?

A. No, I do not know what occurred when I was gone.

Q. Are you a married man?

A. Yes, sir.

Q. Were you then?

A. Yes, sir.

Q. Where was your house?

A. My house was in Baltimore.

Q. You did not live here?

A. No, sir.

Q. Did you use to go to Baltimore every night?

A. No, sir.

Q. On the night before the murder where did you stay?

A. I stayed in the theatre.

Q. Slept in it?

A. Yes, sir; I had a room in the back part of it.

Q. What time did you begin your work on the morning of the 14th?

A. The men got there between seven and eight.  
 Q. I speak of yourself.  
 A. I did not work much; I only attended to it.  
 Q. What time did you get there?  
 A. I got up perhaps at five or half past five.  
 Q. Did you go to the theatre?  
 A. I was at the theatre.  
 Q. How long did you stay?  
 A. I stayed until the men came to work, and got to work, and then I went to breakfast.  
 Q. What time did you go to breakfast?  
 A. I suppose between eight and nine o'clock.  
 Q. Where did you get it?  
 A. On F street.  
 Q. The same place that you got your dinner?  
 A. I do not know exactly how it was that day.  
 Q. Do you not remember that day?  
 A. I judge that I got it on F street, just around the corner from the theatre, on the same block.  
 Q. When did you leave your breakfast?  
 A. I cannot tell; I did not look at the time.  
 Q. Where did you go from breakfast?  
 A. To the theatre.  
 Q. How long did you stay?  
 A. Till rehearsal was over.  
 Q. When was that?  
 A. About two.  
 Q. What then did you do?  
 A. Went and got my dinner.  
 Q. How long were you gone?  
 A. An hour and a half perhaps.  
 Q. You do not undertake to tell us what occurred while you were away?  
 A. Only what I saw myself.  
 Q. Up in that room where the box was, and where these doors were, and where the partition was taken away, it was very dark, was it not, so that you could not see any thing?  
 A. When the doors were shut you could not see any thing.  
 Q. Suppose they were open?  
 A. There would be a dim light from the front of the box.  
 Q. When the doors were open there would be some light?  
 A. The door fronting the audience would let in some light.  
 Q. When they took away the partition had they any lights there?  
 A. I do not know whether they had or not. I did not see them take it away.  
 Q. They took that away in the day-time, did they not?  
 A. Yes, sir, in the day-time. It was between two and three o'clock.  
 Q. You did not hear, did you, of their having any lights there then?  
 A. If I had gone up to fix a lock I should have taken a light.  
 Q. We do not ask you what you would have done, only what you did. You did not go up there?  
 A. No, sir.  
 Q. When you stood in the box, and looked upon the stage that day, could you see any thing?  
 A. If I had been there I could have seen the stage.  
 Q. And you could see the box, could you not?  
 A. No, sir; because I would have been looking into a dark place from the light.  
 Q. That would be the reason?  
 A. Yes, sir; I could not see any person in the back part of the box.  
 Q. If a person were in the box, and you on the stage, you could not see him?  
 A. No, sir.  
 Q. If a person were in the box, and you were in the box, you could see him then?  
 A. I judge so. There was light enough for that.  
 Q. When you went out, you could not see John Wilkes Booth in front?

A. I did not see him.  
 Q. You did not see him go into the drinking-house and get a drink?  
 A. No, sir.  
 Q. You did not see him come out?  
 A. No, sir.  
 Q. You did not see him go up the steps?  
 A. No, sir.  
 Q. You did not see him go up to the President's box?  
 A. No, sir.  
 Q. And you did not see him shoot and kill the President?  
 A. No, sir; I did not see any thing of that.  
 Q. But you do not want us to infer that he did not do it?  
 A. No, sir.  
 Mr. BRADLEY. I do not think this is a proper cross-examination.  
 Judge FISHER. That is hardly a fair question.  
 Q. (By Mr. PIERREPONT.) You did not see Booth there at all that night?  
 A. Not that night. I saw him at eleven o'clock that day.  
 Q. You did not see him in the theatre?  
 A. No, sir.  
 Q. You did not see him in front of the theatre?  
 A. No, sir.  
 Q. You did not see him in the drinking-house?  
 A. No, sir.  
 Q. You did not see him at all?  
 A. Not that night.  
 Q. You saw some people, did you not?  
 A. Oh, yes.  
 Q. Whom did you see?  
 A. I saw a number of people.  
 Q. Whom?  
 A. I saw a number of people there.  
 Q. Whom did you see?  
 A. I cannot recollect the particular persons I saw.  
 Q. How long were you out there in front?  
 A. From twenty to twenty-five minutes. I went to the front of the house to look at the scene. That is what I first went out for, and then I stayed.  
 Q. You did not go to order people off the platform?  
 A. No; but that was my business.  
 Q. Was that what you went for?  
 A. No, sir; I did not go particularly to put them off, but I could have put any one off that was there.  
 Q. Did you see anybody there?  
 A. No, sir.  
 Q. Did you see the President's carriage?  
 A. Yes, sir; I saw a man in livery on the box.  
 Q. Did you see a man look into it?  
 A. No, sir.  
 Q. Did you see a man go up towards H street?  
 A. No, sir; I did not.  
 Q. Did you see a man come down from there afterwards?  
 A. No, sir; I saw one come from F street.  
 Q. Whom did you see?  
 A. I saw Hess come from there.  
 Q. Who is Hess?  
 A. An actor.  
 Q. What did he do?  
 A. He was a performer.  
 Q. Did he say any thing to Booth?  
 A. I did not see Booth.  
 Q. Then he could not have said any thing to Booth in your presence, could he?  
 A. Not without I saw him he could not.  
 Q. You are sure that Hess did not speak to Booth there, are you not?  
 A. No; I am not.  
 Q. You did not see it?  
 A. He did not speak to him while I was present.  
 Q. Could he have done so without your seeing him?  
 A. No, sir.  
 Q. Then he did not do it, did he?

A. I do not know whether he did or not.  
 Q. Did you know Atzerodt?  
 A. No, sir.  
 Q. Did you see him there that night?  
 A. No, sir.  
 Q. Did you know Payne?  
 A. I have seen him since.  
 Q. Did you see him that night?  
 A. No, sir.  
 Q. You did not see one of the conspirators that night?  
 A. No, sir; not that I know of.  
 Q. Either in the theatre or out of it?  
 A. No, sir.  
 Q. Did Hess come down the street with you?  
 A. No, sir.  
 Q. Did he speak to you?  
 A. Yes, sir.  
 Q. What did he say?  
 A. I do not recollect; he asked me the time, and some few words passed.  
 Q. What words?  
 A. I do not know what they were.  
 Q. What were they about?  
 A. That it was about time for him to go on, and whether he had time to dress, or something to that effect.  
 Q. What did you tell him?  
 A. I did not tell him any thing.  
 Q. What were you telling to Carland and him together?  
 A. Nothing.  
 Q. Did he ask you whether he had time to dress himself?  
 A. He said something about dressing.  
 Q. What did he say about dressing?  
 A. He said, "I believe I have time to dress," or something to that effect.  
 Q. What did you say to him;  
 A. Nothing at all. It was not my business.  
 Q. What made him ask you if he had time to dress?  
 A. He said, "I have time to dress."  
 Q. Where did he go to then?  
 A. He went into the theatre.  
 Q. Did he dress?  
 A. I suppose so; but I do not know.  
 Q. When you moved the scenery in the theatre, did you have a signal-whistle stationed out up towards H street, and likewise in the back alley, to signalize the moving of the scenery?  
 A. Not that I know of.  
 Q. You did not have any there for that purpose?  
 Mr. BRADLEY. I submit if this is a regular course of cross-examination.  
 Mr. PIERREPONT. I submit that it is a regular course. The whistle relates entirely to the outside. We have given no evidence of inside whistling.  
 Judge FISHER. I suppose the idea is, whether more than one whistle was used, and whether used inside or outside.  
 Mr. PIERREPONT. That is what I am at.  
 Mr. BRADLEY. They have given no evidence of any whistling towards H street or F street.  
 Mr. PIERREPONT. Yes.  
 Mr. BRADLEY. I should like to see that evidence.  
 Mr. WILSON. The evidence of Mr. Pettit.  
 Mr. BRADLEY. That was as to a vacant lot between the house where he was and the theatre, and not on F street.  
 Mr. PIERREPONT. (To the witness.) They did not make any signal-whistles outside to move the scenery with?  
 A. No, sir.  
 Q. You never heard of such a thing?  
 A. No, sir.  
 Q. Did you see Hess again?  
 A. After the assassination I saw him.  
 Q. Did you see him again that night?

A. I saw him after the assassination that night.  
 Q. At what time?  
 A. I cannot exactly tell; there was a great deal of confusion at that time.  
 Q. Where did you go that night after the assassination?  
 A. I stayed about the theatre there.  
 Q. Where did you go first?  
 A. When I heard of the assassination I rushed in on the stage.  
 Q. Where next did you go?  
 A. I went to the alley.  
 Q. Did you find any thing there?  
 A. No, sir.  
 Q. Where did you stay that night?  
 A. I stayed about the theatre. The police had possession of the theatre. I was about there all night.  
 Q. You did not go to examine the box that night?  
 A. No, sir.  
 Q. You did not go until some days afterwards?  
 A. I went on Saturday morning.  
 Q. Did you see when the partition was taken away?  
 A. No, sir. I saw that it had been taken away; but I did not see when it was taken away.  
 Q. You do not know what was the condition of the drop-curtain when you were not there?  
 A. I am certain—  
 Q. Do you know the condition of it when you were not there?  
 A. I cannot say when I was not there to see?  
 Q. You do not know its condition when you were not there?  
 A. I only know its condition when I was present.  
 Q. How many curtains were there that dropped down?  
 A. One drop-curtain.  
 Q. Was there not one other curtain?  
 A. Not in that theatre.  
 Q. Was it only one curtain, or had they two?  
 A. We had two, but we did not use but one.  
 Q. Was one a painted curtain?  
 A. They were both painted.  
 Q. Had pictures on them?  
 A. One of them had a bust of Skakspeare, I believe, and a landscape.  
 Q. That is the one which was used?  
 A. Yes, sir.  
 Q. Do you know where Hess is?  
 A. He is here.  
 Q. What is his first name?  
 A. I do not know his first name.  
 Q. What is the name of the other man?  
 A. Louis Carland.  
 Q. Do you know where Carland went?  
 A. No, sir; I do not.  
 Q. Did Carland talk to you any?  
 A. I placed him at the stage-door as we went in together, and told him to let nobody in or out.  
 Q. That was before the murder?  
 A. No, sir; after the murder.  
 Q. Before the murder where did he go?  
 A. He stayed in front until after the assassination, and we went in together. I went in ahead.  
 Q. You were standing there when the assassination occurred?  
 A. Yes, sir.  
 Q. You did not see Booth go in?  
 A. No, sir.  
 By Mr. BRADLEY:  
 Q. You have been asked as to the time when you were at the theatre and when absent. Did you not say you were in the theatre at twelve o'clock?  
 A. Yes, sir.  
 Q. And if the curtain had been down at twelve o'clock when you were on the stage you would have known it?  
 A. It could not have been down at twelve, because rehearsal lasted from eleven to two.

Q. As to the light which was received in that box in the day-time, where did the light come from that got into the box?

A. It came from the front of the boxes.

By Mr. MERRICK:

Q. Through what place was the light admitted into that box?

A. From the theatre.

Q. And where was the light admitted to the body of the theatre?

A. From the openings in front.

Q. And all the light in that box was admitted from the main body of the theatre, passing through in that way?

A. Yes, sir.

By Mr. PIERREPONT:

Q. You have just stated that there was a rehearsal from eleven until two; were you there all the time?

A. Yes, sir.

Q. Where?

A. On the stage?

Q. All the time?

A. Yes, sir; it was my business to be there.

Q. You were there all the time, from eleven to two?

A. Yes, sir, and an hour after that.

Q. Are you sure of that?

A. I did not leave the theatre.

Q. Did you leave the stage from eleven to two?

A. I may have left the stage, but not the theatre. I may have been called in front.

Q. Why do you say the curtain could not have been down?

A. Because there was not room for the rehearsal with it down. They always want the first entrance. The curtain takes up the first entrance, and shuts off the part of the stage that ran out in front of the private boxes.

Q. That is the reason, is it?

A. Yes, sir.

Q. When they are playing in the theatre the curtain does drop, does it not?

A. Yes, sir.

The court took a recess for half an hour, reassembling at one o'clock.

#### C. V. HESS,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. What is your residence?

A. 520 North Fifth street, Philadelphia.

Q. In the month of April, 1865, were you or not in any manner connected with the theatrical company performing in Ford's Theatre in this city?

A. I was.

Q. As an actor, or how?

A. As an actor.

Q. Do you remember the night of the assassination of the President?

A. I do.

Q. Had you any part in the performance that night, and at what time were you to appear?

A. I was not in "The American Cousin," but was in a song that was to be sung after "The American Cousin."

Q. A national song?

A. A national song, written expressly for the President.

Q. And who was to sing with you?

A. There was a Miss Gourlay, Mr. H. B. Phillips, I think, and myself, and the entire chorus company.

Q. That was to be after "The American Cousin?"

A. Yes, sir.

Q. State whether you were in front of the theatre in the course of that evening?

A. I was in and out of the theatre several times during the evening.

Q. Do you remember at any time having seen Mr. Gifford and any one else out in front of the theatre?

A. When I was talking with Mr. Gifford and Mr. Carland there was a gentleman standing out on the curbstone. I thought he was an officer. He had a military coat or something on.

Q. You were talking with Mr. Gifford and Mr. Carland?

A. Yes, sir.

Q. Do you recollect at or about where you were standing talking to them?

A. It was at the entrance leading to the stage, called by actors "back-door."

Q. Can you state whether they were there before you, or were you there first, or whether you three came there together?

A. Mr. Carland and Mr. Gifford were there before I was.

Q. From what direction did you come to them?

A. I came out of the theatre and met them at the door.

Q. Did you leave them?

A. I left them.

Q. Which direction did you take then?

A. I went right back into the theatre.

Q. Did you see them afterwards?

A. I did not.

Q. When you came out and spoke to them, was any thing said about the time?

A. Yes, sir.

Q. State what passed.

A. I asked them what time it was. Mr. Carland walked as far as the first door leading to the front of the theatre, the audience department, looked at the clock, and came back and told me it was ten minutes past ten. I then said, "Ten minutes past ten; I will be wanted in a few minutes," and left them and went back into the theatre again. When I got there, it was not, I believe, two minutes before I heard the discharge of a pistol. What happened afterwards I do not know, as there was an uproar all over the house.

Q. At any time in the course of the evening, and shortly before this, had you come from the direction of F street down to where they were standing?

A. Yes, sir; I walked up as far as F street, as far as Ferguson's, I believe it was, and got a cigar, and walked back again to the back door.

Q. Was that announcement of the time in an audible tone, or was there any thing private about it?

A. I asked in a very loud tone myself, knowing that I had, at least I supposed, about a quarter of an hour or so to dress up. I had to put on a black dress-suit to appear before the President.

Q. Do you remember how you were dressed that evening when you came out in front of the theatre?

A. Yes, sir; I had a light, spring overcoat on, and a kind of darkish pants.

Q. Was the overcoat what is called a raglan?

A. Yes, sir, a raglan.

Cross-examined by Mr. PIERREPONT:

Q. Did you ever think you looked like Surratt?

A. No, sir.

Q. When you asked what the time was and they told you, you then pronounced it, did you?

A. Yes, sir.

Q. Which tone of voice was the loudest, the way you asked it or the way you reiterated it after they told you?

A. The way I asked it.

Q. Then you announced it lower?

A. Yes, sir.

Q. Will you give the jury a specimen of how it was done, as near as you can?

A. I said, "Mr. Carland, what time is it?" He walked up to the door and said, "It is ten minutes past ten." Then said I, "Ten minutes past ten; I will be wanted in a few moments."

Q. That is exactly what you said?  
 A. Yes, sir.  
 Q. And you said it in about that tone?  
 A. Yes, sir.  
 Q. You did not turn pale at all?  
 A. No, sir.  
 Q. You did not think there was any thing to cause you to be agitated in that?  
 A. No, sir, nothing at all.  
 Q. And you were not agitated?  
 A. No, sir.  
 Q. What sort of a hat did you wear on that occasion?  
 A. A kind of dark hat—not a high hat?  
 Q. A low hat?  
 A. A low hat.  
 Q. What shape?  
 A. Round at the top.  
 Q. How was the rim?  
 A. A stiff rim. It had no wire around in the rim; it is the same style of hat as that before me.  
 Q. So far as appearance was concerned it was the same, was it not?  
 A. Yes, sir.  
 Q. Did you wear a moustache then?  
 A. Yes, sir.  
 Q. The same as now?  
 A. Yes, sir.  
 Q. As heavy as it is now?  
 A. Very near.  
 Q. And as black as it is now?  
 A. Yes, sir; about the same.  
 Q. And your hair?  
 A. My hair was longer.  
 Q. As black?  
 A. Yes, sir; and always has been.  
 Q. Was your fullness of face about the same?  
 A. Yes, sir.  
 Q. You were no paler then than now?  
 A. No, sir.  
 Q. And no more agitated than now?  
 A. I do not think I was.  
 Q. When you said that, you said it just as you have said it to the jury, in that same tone of voice, did you not?  
 A. Yes, sir.  
 Q. Did you go down the steps, and go and range yourself along with anybody?  
 A. No, sir.  
 Q. Did you go to look into the President's carriage?  
 A. No, sir.  
 Q. Did you speak to Booth at that time?  
 A. No, sir; I did not see him at all.  
 Q. Did you see Booth?  
 A. I saw him in the afternoon.  
 Q. Did you see him in front of the theatre that night?  
 A. No, sir.  
 Q. You did not see Atzerodt?  
 A. No, sir.  
 Q. You did not see Booth go into the drinking place?  
 A. No.  
 Q. Nor come out?  
 A. No.  
 Q. Nor did you see him drinking?  
 A. No.  
 Q. Did you see him when he went up to the President's box?  
 A. No, sir.  
 Q. Where were you at that time?  
 A. I cannot tell, because I was in and out several times.  
 Q. After you made use of this expression, you did not hasten up the street?  
 A. No, sir; I went right in the theatre.  
 Q. And did not hasten up at all?  
 A. No, sir.  
 Q. Did you call the time before that night?  
 A. No, sir; that was the only time.

Q. And it was done without any excitement, or paleness, or agitation?  
 A. Yes, sir.  
 Q. And you looked then as now?  
 A. About the same—a kind of laughing. I am always in a laughing humor.  
 Q. How do you happen to remember that it was ten o'clock and ten minutes at this distance of time—over two years?  
 A. It was a night that no person could help but recollect.  
 Q. How do you remember that you said, "Ten o'clock and ten minutes" at this distance of time?  
 A. Because Mr. Carland mentioned it to me and read it to me.  
 Q. When?  
 A. That very evening.  
 Q. Have you ever told any body of it before?  
 A. Yes, sir; I mentioned it to Mr. Ford.  
 Q. Where?  
 A. At Philadelphia.  
 Q. When?  
 A. Last year; and also to Mr. Carland in Boston.  
 Q. The Mr. Carland who is here?  
 A. Yes, sir.  
 Q. Did you mention it to anybody else?  
 A. Not that I know of.  
 Q. Did you think there was any thing very extraordinary in it, that it was ten minutes past ten?  
 A. No, I did not until they spoke about it.  
 Q. And you added that you had to hurry?  
 A. Yes, sir; I had to hurry. I had nothing else to do but linger outside, and I thought it would be better to be inside than outside.  
 Q. The play was not near over then, was it?  
 A. No, sir; I think the second scene was on.  
 Q. You were not to go on until the play was over?  
 A. No, sir.  
 Q. Then there was no great hurry?  
 A. There were only about two scenes afterwards.  
 Q. You took fifteen minutes to dress, and there was no great hurry?  
 A. There was no very great hurry.  
 Q. Did you not say there was?  
 A. No, sir; I walked in leisurely.  
 Q. You were not startled by that announcement?  
 A. No, sir.  
 Q. You did not see anybody in front of the theatre you knew but these men?  
 A. I saw no person but a gentleman standing by the curbstone, near the President's carriage, and his driver, except Mr. Carland and Mr. Gifford and myself. There was a gentleman passing on the other side.  
 Mr. BRADLEY. Do you say those were all you knew, or all you saw?  
 A. Mr. Carland and Mr. Gifford were all I knew.  
 Q. (By Mr. PIERREPONT.) Would you know this other man if you were to see him?  
 A. I do not think I would. I was a stranger in Washington; I had not been here more than two or three months.  
 Q. Which way did you go into the theatre after you made the statement?  
 A. I went right in the entrance leading to the stage.  
 Q. Are you quite sure you did not go down and speak in a low tone to anybody?  
 A. I did not.  
 Q. Are you quite sure that you did not range yourself along between the theatre and the President's carriage, with two other men?  
 A. Yes, sir, I am sure I did not.  
 Q. As soon as you uttered those words you walked in the back-door of the theatre?  
 A. Yes, sir.  
 Q. Where did you go to then?  
 A. I went on the stage, and the minute I got on the stage I heard the report of a pistol.  
 Q. Did you see Booth go through?

A. I did not. He had by that time jumped, and was out of the theatre, I expect.

Q. He came on to the stage from the President's box and crossed the stage before you got there. What happened afterwards?

A. I do not know what happened after the report of the pistol.

Q. You were on the stage when you heard the report?

A. Yes, sir.

Q. Did you see him leap upon the stage?

A. No, sir.

Q. Did you see anybody running?

A. I did not see or hear anybody at all.

Q. That is all you know about it?

A. That is about all.

Re-examined by Mr. BRADLEY:

Q. Did you ever see the prisoner before?

A. No, sir, never.

Q. You did not see him at all there that night?

A. No, sir.

Q. You did not see him go up and come down and speak to Carland and Gifford while you were out there?

A. No, sir; not while I was there.

Q. As well as you recollect, how many persons were out there besides Carland, Gifford, yourself, and the man you saw standing by the curbstone? Did you see anybody else?

A. No person but Mr. Lincoln's carriage man.

Q. You were asked how you fixed this time of calling, "Ten minutes past ten;" I understand you to say that you went immediately into the theatre, and by the time you got upon the stage almost, you heard the explosion of the pistol?

A. I did.

Q. Do you connect the two things together—the announcement of the time, "Ten minutes past ten o'clock," with the fact that this must have been at that time?

A. This must have been twelve or thirteen minutes afterwards—after the time I walked in.

Q. Have you any doubt in your mind that one of them did say in a loud tone of voice, that it was "Ten minutes past ten?"

A. I am sure of that.

Q. And, so far as you now recollect, there was nobody else present except the persons you have mentioned—the man standing on the curbstone and the others?

A. That is all.

By Mr. PIERREPONT:

Q. It was you that said in the tone of voice you gave to the jury, "Ten minutes past ten?"

A. Yes, sir: I repeated it to Mr. Carland.

LOUIS J. CARLAND,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Boston, Massachusetts.

Q. Were you in any way connected with Ford's theatrical company in this city in April, 1865?

A. Yes, sir; I was costumer there.

Q. Do you recollect whether you were at the theatre during the day of Friday, on the night of which the President was assassinated?

A. I was there from eight o'clock in the morning until after the assassination, with short intervals, going on little business from the theatre between those times.

Q. Do you remember at what time of the day you first heard of the President's coming there that evening?

A. It was near twelve o'clock.

Q. Did you know John Wilkes Booth?

A. Yes, sir.

Q. Did you see him there that day?

A. I did.

Q. Where?

A. In front of the theatre.

Q. What was he doing?

A. He was walking up and down, talking to the people occasionally that were about there.

Q. What time of the day was it?

A. The first time it was about twelve, not quite one. The second time, I think, it was between five and six; and the third time it was still later than that. I did not speak to him then; I only saw his back a short time.

Q. You were there during the rehearsal that day?

A. Yes, sir; all through the rehearsal.

Q. State to the jury at what time the rehearsal commenced.

A. The rehearsal commenced between ten and eleven o'clock. It was after ten and not quite eleven; and the rehearsal kept up until near two o'clock on account of the piece we were to play afterwards, which we did not know before we heard that the President was to be there that night. There was a song written in honor of our soldiers that was to be sung the next night for Miss Gourlay's benefit. When word came that the President was coming, Mr. Withers and Mr. Phillips—Mr. Withers the author of the music, and Mr. Phillips the words—proposed—

Mr. PIERREPONT. You need not tell what was proposed by them.

Mr. BRADLEY. (To the witness.) It was determined that day to have that song sung that night?

A. Yes, sir.

Q. And that lengthened the rehearsal?

A. Yes, sir.

Q. You say it extended from about ten to two o'clock?

A. Yes, sir.

Q. Where were you during the rehearsal?

A. Up in the paint gallery part of the time, and on the stage, and in front of the theatre.

Q. During that rehearsal, at any time, did you see the curtain down?

A. No sir.

Q. Have you any recollection at what time they began to fit up the President's box?

A. It was after twelve o'clock. I was in the paint gallery, when Pea-nut John came up for Spangler to take the partition down, and he was asleep up in the paint room at the time.

Q. That night you were out in front of the theatre after the end of the second act?

A. Yes, sir, I was.

Q. State at about what time you went, and how long you stayed there, and who went with you, if any one.

A. After the curtain went down on the second act, I was behind the scenes. I got over to what we call the O. P. side of the stage, opposite to the prompter—stood there for a moment. Mr. Gifford was giving some directions to Spangler, who was standing in his shirt-sleeves by the scene. While we were standing there, Mr. Dyott, an actor, and one of Miss Keene's company, and Mr. Withers, came along; they were going into the saloon next door, and asked Mr. Gifford and me to go out and join them in a drink.

Mr. PIERREPONT. You need not state any thing about that.

Mr. BRADLEY. [To the witness.] You did go?

A. We went out, and went in the side-door. We did not go out the street-door.

Q. When you went in the saloon, did you see anything of Mr. Booth?

A. Mr. Booth was going out of the front door as we got in the side door. I saw his back just going out of the door, and Mr. Taltavul was wiping the bar off, I supposed, after him.

Q. How long did you remain in that saloon?

A. We remained until we had our drink, and then Mr. Withers and Mr. Dyott passed into the theatre through the same door. We passed out the front door, and stood at the back-door entrance of the theatre, the entrance that the *attachés* of the theatre go in by.

Q. After that time was Booth in front of the theatre, or did you see him at any time after?

A. No, sir, I never saw him after that.

Q. How long were you out there? Up to what time?

A. Ten or fifteen minutes; I cannot exactly state how long we were there. Mr. Gifford and I stood there talking some time.

Q. Did you leave the front of the theatre before you heard of the assassination?

A. No, sir; we stood there until we heard of it.

Q. State to the jury where you and Mr. Gifford stood.

A. Mr. Gifford and I stood a little near the back door, near our private entrance, more out into the sidewalk towards the carriage platform that was in front of the theatre. Mr. Gifford was looking up at the theatre, talking about improvements which he was going to do during the recess in the summer. We were standing there for some time. While we were standing there, Mr. Hess came out and joined us and asked what time it was. Mr. Gifford was going to pull out his watch, and then he said to me, "I have fixed the clock in the vestibule by the ball to-day; she is right." Then I stepped up to the door—stepped into the vestibule—and then told Mr. Hess what time it was.

Q. What time was it?

A. It was ten minutes after ten.

Q. Now, state in what direction Mr. Hess went—whether up or down the street—at any time?

A. He stood a moment; I did not pay any particular attention which way he went—whether he went out, or turned back and went into the theatre, or not. I have no recollection of that.

Q. At the time you went out towards that platform, was there any one sitting on the platform?

A. I do not think there was. There might have been, but I have no recollection of it. If there had been, Mr. Gifford was certain to have spoken of it, and made them get off.

Q. After this cry of "Ten minutes past ten," how long did you remain there?

A. We remained there till a man came down and said to us that somebody had shot the President. Mr. Gifford made rather a pleasant remark, saying, "Oh, that will do for a story," or something of that kind. The man passed down the street, and in an instant afterwards we saw two or three people coming out, and one of the ushers of the theatre, Mr. Raybold, came out with his hands up and came to Mr. Gifford and told us.

Q. It was a very few minutes after this crying of the time "Ten minutes past ten?"

A. A very few minutes afterwards, this man, Mr. Raybold, came to us and said somebody had shot at the President, jumped on the stage, and ran behind the scenes.

Mr. BRADLEY What he said would not be evidence. Did you ever see the prisoner at the bar before you saw him here?

A. No, sir, I never saw him until I saw him in the prisoner's dock here, or he was pointed out to me.

Q. While you were standing out thus in front of the theatre, did you see him, or a man of his height, come down from F street, and go to two men standing by the theatre, and call the time?

A. No, sir; there was not any one came down then and called the time while we stood there.

Q. Do you remember how Mr. Hess was dressed that night?

A. Yes, sir. He had on a spring overcoat—a new one that he had got. I know, because I had worn it to Philadelphia two weeks before that.

Q. What color was that?

A. Light gray or slate color. He had on a pair of pantaloons of almost the same color, but not quite.

Q. Do you remember the shape of his hat or the color of it?

A. I remember the shaped hat he wore that winter. I do not know what he had on that night. He wore a hat with a stiff rim and a little soft crown.

Q. When you announced the time as ten minutes past ten, did Mr. Hess look pale and appear particularly anxious?

A. I did not pay any attention whether he looked pale or not.

Q. You did not see Mr. Booth in front of the theatre?

A. No, sir; I saw him go out.

Q. I ask you, is it possible, in the nature of things, that two men could have stood by that door of the theatre for twenty minutes after you went out there, without your seeing them?

Mr. PIERREPONT. Do not answer that question. You can answer as to any fact, but not as to a possibility.

By Mr. BRADLEY:

Q. Can you say positively or not whether Mr. Booth was standing for a number of minutes in front of that door of the theatre while you were out there?

A. Mr. Booth was not standing in front of the theatre.

Cross-examined by Mr. PIERREPONT:

Q. What was the color of Hess's hat that night.

A. It was dark.

Q. Was it black or what was it?

A. It was very near black—a mixture, I believe.

Q. A mixture of what?

A. Of wool,

Q. But as to the color, what sort of a mixture was it?

A. White and black.

Q. A check?

A. Not a check.

Q. Tell the jury what the color of that hat was.

A. It was a hat, the material of which was of different colors; no decided pattern, but a mixture of colors.

Q. All sorts of colors?

A. Not all sorts of colors.

Q. How many sorts?

A. Black and white.

Q. [Exhibiting to the witness a slate-colored felt hat.] Was it about that color?

A. Not that color.

Q. Was it black?

A. It was a darker color than that. The two colors ran together and were mixed.

Q. Much darker?

A. Two or three shades, I think.

Q. Not black or brown?

A. No, sir.

Q. But a mixture of white and black?

A. Yes, sir, that was it. That is the hat he wore. I am not so very certain about the hat, but I am certain about the other part of his costume.

Q. After you told him what the time was, did he say any thing?

A. He said it was pretty near time for him to go in and get ready.

Q. Was that all he said?

A. I believe that was all. I do not remember any thing else.

Q. He did not say any thing about the time except to ask the time, did he?

A. I think he made the remark that it was pretty near time for him to get ready for the scene.

Q. Is that all he said?

A. I do not remember any more.

Q. That is all that you remember he said?

A. Yes, sir.

Q. And that is every word you remember that he said?

A. Every word I can call to memory now.

Q. Which way did he go after he said it was time for him to dress, that being all he said?

A. He went up the street a little ways, and then turned and went into the theatre, as far as I recollect.

Q. Let us have what is your best recollection about it. Did he go up the street, or did he go into the theatre directly?

A. I cannot call that to memory.

Q. What is your best recollection?

A. I have no recollection at all about it, except his being there.

Q. What do you want the jury to understand about it? You have told two things; which is it?

Mr. BRADLEY. If the court please, I think it is time to interpose. The counsel says to the witness, "Which do you want the jury to understand; you have told two things." He has said, from the first, he did not know which way Hess went.

Mr. PIERREPONT. He said from the first that he went up towards H street.

The WITNESS. I have not spoken of H street.

Mr. PIERREPONT. And then that he went back and came into the theatre; and the reporter has it.

Mr. BRADLEY. Read the notes.

Mr. PIERREPONT. Let the reporter read, and I will agree to abide by that.

Mr. BRADLEY. I want the gentleman to put his finger on that part of the testimony.

The REPORTER. I do not recollect his saying that.

Mr. MERRICK. Read your notes, and we will see what he did say.

Mr. PIERREPONT. I am cross-examining now, and I want to know what the witness said.

The REPORTER read, "He went up the street a little way, and then turned and went into the theatre, as far as I recollect."

Mr. PIERREPONT. (To the witness.) You said he went up the street?

A. Yes, sir.

Q. Do you think he went up the street?

A. He may not have gone very far.

Q. Do you think he went up the street?

A. I cannot say whether he went up the street or not.

Q. What do you wish the jury to understand that you say—that you think he did go up the street, or that he did not?

A. He walked up a little ways, backward and forward or so, for a minute, and then turned away from us.

Q. Did he go up the street?

A. He went up above where we were standing on the street.

Q. What did he then do?

A. I do not know; he came back then.

Q. How far did he go up?

A. He may have gone ten feet or fifteen.

Q. Which?

A. I do not know which.

Q. Did he go directly then into the theatre?

A. I have no recollection whether he went into the theatre or not. He was one of the *attachés* of the theatre, and could go in.

Q. I am not speaking about that, but simply asking whether he went into the theatre?

A. I do not know whether he did or not. I was not interested in where he went.

Q. You do not remember?

A. No, sir; I do not.

Q. Are you from Boston?

A. Yes, sir.

Q. Were you bred there?

A. No, sir.

Q. Where?

A. In New York.

Q. What has been your business?

A. Costumer at the theatre; and I kept a costuming place up on C street.

Q. That has been your business?

A. Yes, sir.

Q. Did you know Hess before?

A. Yes, sir.

Q. Did you know Booth?

A. Yes, sir.

Q. Did you see Booth when he went into the theatre?

A. No, sir.

Q. You did not see him go in?

A. No, sir.

Q. Did you see him standing on the pavement?

A. No, sir.

Q. Did you see anybody go to the President's carriage?

A. No, sir.

Q. Did you see anybody go into the drinking-house?

A. No, sir. Do you mean after we came out?

Mr. PIERREPONT. Before you came out.

A. I cannot say.

Q. You have been examined before?

A. Yes, sir.

Q. Before the military commission?

A. Yes, sir.

Q. Did you tell any thing there about this calling of the time?

A. No, sir.

Q. Why not?

A. It never was asked of me.

Q. Was your attention not called to it; was that the reason?

A. No, sir; my attention was on it then as now. At the other trial they tried to make Spangler the man; and my attention was called to it then as much as now.

Q. Was your attention called to Spangler?

A. At that time, when I read Sergeant Dye's testimony, I understood it touched Spangler.

Q. I ask you whether your attention was called to Spangler on that trial by anybody?

A. Yes, sir.

Q. Who called your attention to that?

A. The lawyers—General Ewing and Judge Bingham.

Q. Did you see Spangler that night?

A. Yes, sir.

Q. Where?

A. In the theatre.

Q. Did you see him in there?

A. No, sir.

Q. Did you see Atzerodt?

A. No, sir.

Q. In what places did you see Booth after six o'clock that night?

A. I only saw him going out of that door.

Q. At six o'clock, or about that time?

A. It was not six; it was some time between five and six that I saw him passing up the street on foot.

Q. Who was with him?

A. No person was with him.

Q. Which way was he going?

A. Up towards F street.

Q. Did he pass the theatre?

A. Yes, sir; he passed the theatre.

Q. Where were you?

A. Sitting on the steps of the theatre.

Q. What doing?

A. Nothing but amusing myself.

Q. Was anybody with you?

A. No, sir.

Q. Did you see him before, that day?

A. Yes, sir.

Q. Where?

A. In front of the theatre.

Q. Where did you take breakfast that morning?

A. In the restaurant, next door.

Q. When you saw him in the morning, who was with him?

A. He was standing in front of the theatre, with some people.

Q. Who?

A. I do not know who they were.

Q. Was he talking?

A. He seemed to be standing in company with them. I did not pay any attention to what he was doing.

Q. Who was with him?

A. I have no recollection.

Q. You say he was with the company; what company do you mean?

A. Our company consisted of forty people.  
 Q. Did you not know any of them?  
 A. I cannot remember all the individuals that he was talking with.  
 Q. Do you remember what individual was standing with him?  
 A. I do not think it was any individual whatever.  
 Q. Of the whole number, can you not remember one person?  
 A. I could remember all, if I called them to mind.  
 Q. Who were they? Give them all.  
 A. John Evans was there.  
 Q. That is one; who else?  
 A. John Matthews was there. Debonay was there. Ferguson was there.  
 Q. Go on with them.  
 The WITNESS. Do you want the entire company?  
 Mr. PIERREPONT. Every one that was there with Booth in front of the theatre.  
 A. I cannot remember all that were with Booth.  
 Q. I am only asking as to those particular men who were in front of the theatre in company with Booth that morning?  
 A. I cannot tell all that were there. I am only giving the names of some of the company.  
 Q. Can you not recollect the people who were with Booth?  
 A. I cannot give them.  
 Q. You said you could remember them?  
 A. I said I knew the names of the company.  
 Q. Can you not tell the name of one person that stood talking with Booth in front of the theatre?  
 A. No, sir, I cannot remember.  
 Q. But you knew them?  
 A. Yes, sir.  
 Q. What time did you take your breakfast that morning?  
 A. From nine to ten.  
 Q. After breakfast what did you do?  
 A. I went to work in the wardrobe.  
 Q. How long did you stay there?  
 A. I stayed in the wardrobe until rehearsal commenced, and was backward and forward on the stage.  
 Q. You stated in your direct examination that you had to leave on some business. What time was that?  
 A. That was after rehearsal; it was, I suppose, between one and two o'clock.  
 Q. Where did you go?  
 A. I went with the stage-manager down to get the bills for that evening altered; to put in a line for that night.  
 Q. Where did you go for that?  
 A. To Polkinhorn's. We called at several places before we got there, though.  
 Q. Several places on the avenue?  
 A. No, I did not go the first time on the avenue. I called at the *Republican* office, and the telegraph office next door, on Ninth street; and we went to a milliner's, where they sold ribbons, on Ninth street. I went also to a milliner's on E street, a little way from the corner of Seventh.  
 Q. For the purpose of getting the things to decorate the box, was it?  
 A. No, sir, for the purpose of getting ribbons to make badges for the gentlemen who were going to sing in the national anthem, or whatever it was.  
 Q. This was the 14th of April that you went out on this expedition?  
 A. Yes, sir, in company with Mr. G. B. Wright.  
 Q. How long were you gone?  
 A. I suppose we were gone an hour.  
 Q. Did you go anywhere else?  
 A. I do not remember that we did go anywhere else at that time. We went up there, and then he found he had to go to dinner.  
 Q. Where did he go to dinner?  
 A. He went to dinner at the Herndon House.  
 Q. Where did you go to dinner?

A. I started to go back to the theatre. I took dinner next door to the theatre, in the restaurant.  
 Q. During all this time you were out, and during the time you were taking your dinner, you were not in the theatre, I suppose?  
 A. No, sir.  
 Q. At what time did you eat your dinner?  
 A. It was about two, or somewhere about that time.  
 Q. That was after you came from this other expedition, was it?  
 A. Yes, sir; but before that, I went out again, though.  
 Q. How does it happen that you remember these exact words about the time, and do not remember one person that Booth was talking with that day? And yet you say you knew them.  
 A. Because, on the Monday following, I gave pretty much a full statement of every thing I knew, before Judge Olin.  
 Q. You did not give in any of these statements.  
 A. Not in that book. [Referring to *Pitman's Assassination Trial* in counsel's hands.]  
 Q. Did you state before Judge Olin about calling "Ten minutes past ten?"  
 A. No, sir, there was nothing asked about that. It was not connected with that.  
 Q. Did you not state a good many things before Judge Olin that you were not asked?  
 A. Judge Olin asked me for an entire synopsis of my business from morning up to that time.  
 Q. And in that entire synopsis you did not tell Judge Olin this?  
 A. I told him about my being in front of the theatre, and who I was standing with.  
 Q. Did you tell him about Mr. Hess?  
 A. No, sir. He did not ask me any questions about that.  
 Q. Nothing was said about that?  
 A. I merely answered Judge Olin's questions.  
 Q. You have told the jury all the words you can remember that Hess said to you after you told him the time?  
 A. Yes, sir, I have.  
 Q. He said nothing else?  
 A. I do not remember that he did.  
 Re-examined by Mr. BRADLEY:  
 Q. You do not mean to say that he did not say any thing else?  
 A. No, sir; only I do not recollect any thing else.  
 Q. You have been asked about Atzerodt; did you ever see him?  
 A. No, sir; I never saw Atzerodt until I saw him in the Penitentiary, when on the stand there.  
 Q. Did you ever see the prisoner before you saw him here?  
 A. No, sir; and never heard of him.  
 Q. You were asked about fixing the precise moment of the calling out of the time, and so on; what happened after the calling of the time? Any thing until the announcement of the President's death?  
 A. Nothing; the street was perfectly quiet; there was not a soul, that I can remember, that was about there.  
 Q. Had or had not that time, thus called out, any connection, in your mind and in your memory, with the time the President was shot? Was it fixed in that way or in any way?  
 A. No, sir; it has not been fixed in any way.  
 Q. You recollect the fact that Hess came and said this, independently?  
 A. Yes, sir.  
 Mr. MERRICK. We are disappointed in the attendance of two witnesses who were to be here from Baltimore, and we cannot go on further to-day without breaking the continuity of the case.  
 Judge FISHER. The jury are getting a little anxious that we shall press the investigation as rapidly as our health and strength will permit.

Mr. MERRICK. I am very glad to know the desire of the jury, and we will conform to it.

Judge FISHER. We propose to sit from ten o'clock to three at least, and longer, if our strength will permit. We will now take a recess.

The court took a recess until to-morrow morning at ten o'clock.

**Twenty-Fifth Day.**

TUESDAY, July 9, 1867.

J. N. EASTMAN,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. How are you at present occupied?

A. I am a professor of mathematics at the United States Naval Observatory.

Q. Were you there in April, 1865?

A. Yes, sir.

Q. State whether you were engaged on the night of the 14th of April, 1865, in making observations?

A. I was engaged from about seven o'clock until twenty minutes past eleven in observing stars and planets.

Q. State at what time the moon rose that night?

A. At two minutes past ten.

Q. In what part of the heavens—how far south, or east, or north?

A. It was eighteen degrees and a few minutes south.

Q. At eleven o'clock what was the elevation of the moon above the horizon?

A. It must have been about fifteen degrees. The moon being eighteen degrees south, and its motion being slower than that of the planets, it would have been about fifteen degrees above the horizon at eleven o'clock.

Q. State, if you please, nearly about what the arc of the circle of the course of the moon was—how high her highest southern elevation was that night.

A. It would have been about thirty-six degrees above the southern horizon—less than half way between the zenith and the horizon.

Q. Were or were not the heavens obscured by clouds that evening?

A. At six o'clock in the evening it was perfectly clear. The wind changed to southwest soon after, and the western southwest portion of the sky was somewhat obscured when I commenced to work. At half-past seven it was somewhat hazy. At nine o'clock the sky was about one-third cloudy. I recollect that it was about one-third cloudy on account of missing one of the planets that I wished to observe at that time, and also because of the observations that were made by the watchmen under my observation. At twenty minutes past eleven o'clock it was so cloudy that I could not see stars of the third magnitude.

Q. During the evening was there or not a steady increase of the earthy haze up to eleven o'clock?

A. I think there was. There was a steady increase of the cirrus clouds.

Q. Can you state whether at eleven o'clock it was or was not dark?

A. It was comparatively so, because the moon was so much obscured by the haze that the stars were not to be seen with a glass, excepting perhaps those of the first magnitude. You could just see their position, not very much of their form.

Q. At that time I understand the moon was only fifteen degrees up, and, reaching that elevation, the moon would have been very near the horizon; is that so?

A. Yes, sir. It was within fifteen degrees.

Q. Can you convey to the jury an impression of the shadow thrown by a three-story house standing on the south side of a street running east and west, fronting to the north?

The WITNESS. At what time?

Q. At any time between ten and eleven o'clock;

whether it would or would not have been in deep shadow. That is what I want to get at?

A. There would have been a shadow on the north side of any house all the time during the night. The moon rising eighteen degrees south of the equator would not illuminate the north side of any building that night, and as it moved in an arc eighteen degrees south of the equator, for the first hour there would have been no light. If the house was a corner house there would have been no light within ten or fifteen feet of the opposite corner of the house. It would depend on the position of the house how much shadow it would be in.

Q. If the house stood west of the corner, I understand you it would all have been in shadow?

A. It would all have been in shadow then.

Cross-examined by Mr. PIERREPONT:

Q. At twelve o'clock to-day, this house standing east and west, will there be any sun striking on the north side of it?

A. No, sir.

Q. You could see a man there pretty easily, though, could you not?

A. Yes, sir.

Q. Tell the jury what you mean by cirrus clouds?

A. Light, thin clouds, that have very much the appearance or outline of curled hair.

Q. And they are called the "horse-tail" sometimes, are they not?

A. Yes, sir.

Q. That is what you mean by these clouds?

A. Yes, sir.

Q. You could see the stars through them, could you not?

A. No, sir.

Q. No part of the time?

A. No, sir. You cannot see stars through cirrus clouds unless they are stars of the first magnitude.

Q. Cirrus clouds are not uniform, as I understand it, are they?

A. No, sir.

Q. You can see stars between the cirrus clouds, can you not?

A. You can see between them, but not through them.

Q. And when the sky is covered with cirrus clouds there are spaces between, are there not?

A. Sometimes.

Q. And when there is a moon on such a night as this it gives some light, whether there are cirrus clouds or not?

A. It depends upon the density of the clouds. Sometimes the clouds are more dense than others.

Q. On this night, at ten o'clock or half-past ten, how was it?

A. On this night, at half-past ten or sometime between ten and eleven o'clock, I do not remember the exact time, I went outside of the building to look at the moon, to see whether there was any probability of my observing it when it came to the meridian, at three o'clock in the morning, and I could just see the form of the moon.

Q. Was not this the Friday before Easter Sunday?

A. It was the 14th day of April, because I have notes of my observation that night.

Q. Was it not the Friday before Easter Sunday?

A. I am not well enough posted on that.

Q. Tell the jury what is the condition of the moon at Easter always, as to its full?

A. I do not know.

Q. What makes Easter at all? Has it nothing to do with the moon?

A. I am not posted in regard to that matter.

Mr. MERRICK. It is a theological question.

Mr. PIERREPONT. And an astronomical question too. (To the witness.) Were you not aware of the fact that Easter had reference to the condition of the full moon?

A. No, sir.

Q. Can you tell the jury the fact as to what was the condition of the moon as to its full then?

A. Yes, sir.

Q. Tell them.

A. The moon was full on the morning of the 11th of April, at four o'clock in the morning. At the time I am speaking of, it was about three days past the full, towards the last quarter. It was two-thirds full.

Q. [Handing to the witness the *Tribune Almanac* for 1865.] Take this almanac, look at the dates, and see whether it gives a correct account of the condition of the moon as to its full on the 14th of April, 1865, in Washington.

A. This almanac states that the moon rose at three minutes—

Q. I am asking you about the full. I asked whether that almanac gives the true condition of the moon as to its full, giving the date of its full.

A. It says it was full on the 10th, 11 hours and 21 minutes.

Q. Was it the 10th?

A. The National Almanac, which I take as authority, says it was the 11th.

Q. I understand that almanac to say the 11th, but I am not sure that I am right. Look and see when the moon rose according to that almanac.

A. It rose at three minutes past ten.

Mr. PIERREPONT. I read it 9:59. I ask you to look at it again; it is calculated for different places, for New York and for Washington. Look at the calculation for Washington, and see what it is.

Mr. BRADLEY. I submit whether this is exactly germane. I have no objection, if they want to make that book evidence, to their examining about it.

Mr. PIERREPONT. I do not care about its being evidence. I only asked whether these dates are correctly laid down.

Mr. BRADLEY. I agreed that the gentleman might bring in any almanac that was correct.

Mr. PIERREPONT. That is all I want.

The WITNESS. I find that the calculation for Washington here says that the moon rose at 9:59.

Q. How many minutes different from that did you make it?

A. Three minutes.

Q. Where do you calculate it?

A. I calculate it from the latitude of Washington.

Q. When did you calculate it?

A. I calculated it yesterday.

Q. Did you get it from any almanac?

A. I took the position of the moon from the Nautical Almanac.

Q. Did you find in any almanac that it stated that the moon rose three minutes different from that?

A. No, sir; the Nautical Almanac does not give the time of rising, and I computed it.

Q. You could have made a mistake of three minutes, could you not?

A. Yes, sir; I suppose I could.

Mr. PIERREPONT. I guess you did.

Mr. BRADLEY. I think not.

Mr. PIERREPONT. All the almanacs give it differently.

Judge FISHER. Gentlemen, do you think three minutes' difference in the rising of the moon is worth quarreling about?

Mr. PIERREPONT. I do not.

Mr. BRADLEY. I do not; but counsel has no right to make such remarks to a witness, a scientific man—to tell him that he makes mistakes.

Mr. PIERREPONT. No, sir; I ask him if he cannot make a mistake, and he says he can.

Mr. BRADLEY. I did not say a word till the gentleman said, "I think you made a mistake," or "I guess you did," or something of that kind.

Mr. PIERREPONT. I do say so.

By Mr. MERRICK:

Q. Professor, are you satisfied that your calculation is correct?

A. It was made twice, and checked by another man?

Q. You are satisfied that it is correct?

A. Yes, sir.

By Mr. PIERREPONT:

Q. And you are satisfied that it might have been incorrect?

A. I am not satisfied that it was incorrect.

Q. But it might have been?

A. It might have been, if I had intended to make a mistake—not otherwise.

JAMES R. FORD,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Baltimore.

Q. Were you at any time connected with the dramatic establishment of Mr. John T. Ford, in the city of Washington, in 1865?

A. Yes, sir, I was; from the 1st of January up to after July.

Q. What was your position there in April, 1865?

A. I was business manager.

Q. On the 14th of April were you in charge of the theatre?

A. Yes, sir.

Q. Where was your brother then?

A. In Richmond.

Q. Where did you board at that time?

A. At the National Hotel.

Q. Where did you lodge?

A. I lodged over the theatre, in the adjoining house.

Q. Did you know Mr. John Wilkes Booth?

A. Yes, sir.

Q. How long had you known him?

A. I knew him for about ten years.

Q. Can you state whether he was or not boarding at the National Hotel at that time?

A. He always boarded at the National Hotel when in Washington, as far as I remember.

Q. State whether on the morning of the 14th of April you were at the office of the theatre, and received any information of the President's intended visit.

A. Yes, sir; I was at the office from ten o'clock until half-past eleven. The President's messenger came about half-past ten, and inquired if he could get the box for that evening; that himself and lady and General Grant were coming to the theatre.

Q. You say that about half-past eleven you left the theatre. Before leaving the theatre, did you make any arrangements for the decoration of the box?

A. No, sir.

Q. Where did you go when you left the theatre?

A. I went to the Treasury building to see Col. Jones, to see about getting some flags to decorate the box with.

Q. Do you remember how long you were absent?

A. I was absent from the theatre about an hour, I should judge.

Q. Can you state whether, on your return, there was any rehearsal going on, or whether it had not begun, or what?

A. The rehearsal began before I left the theatre.

Q. Was it going on when you returned?

A. I cannot exactly state; I do not know whether it was or not. It should have continued on.

Q. Who prepared the advertisements of the President's visit?

A. I did.

Q. Was that your ordinary duty?

A. No, sir; Mr. Phillips, the stage manager of the theatre, ordinarily did it; but he was busy with the rehearsal at that time, and could not attend to it until it was too late.

Q. Were the advertisements prepared before you went for the flags, or after you returned?

A. They were prepared before I went. I took one of them as I went to the Treasury building.

Q. Before you left, and when you returned, was or was not the curtain up?

A. When I left the theatre the curtain was up.

Q. Rehearsal was going on?

A. Yes, sir; it had just commenced to begin.

Q. Did you see Mr. Booth that day?

A. Yes, sir.

Q. Do you recollect when and where?

A. I saw him about half-past twelve o'clock, at the corner of E and Tenth streets.

Q. Which way were you going then?

A. I was going down E street towards the theatre.

Q. And he was going up Tenth street, was he?

A. He was going up E street.

Q. Were you in Washington that night?

A. No, sir. I was here after half-past ten.

Q. Previous to that time, where were you?

A. I went to Baltimore with Mrs. John T. Ford's sister, at three o'clock.

Q. At what time did you return?

A. I left Baltimore at 8:30 p. m.

Q. Getting here at what time?

A. At twenty-five minutes past ten.

Q. State whether or not you went to the theatre on your return.

A. Yes, sir. I got into an F-street car at the depot, and rode up to the theatre.

Q. Did you ride in the car?

A. No, sir; I rode out on the front platform.

Q. Now, state what was the character of the night as you came from the depot to the theatre, whether light or dark, or what.

A. It was a cloudy evening.

Q. Do you recollect whether the moon was visible or not?

A. I did not see it.

Q. What time did you get to the theatre; do you remember?

A. About twenty-five minutes to eleven, I should judge, I got to the theatre.

Q. That was after the assassination?

A. Yes, sir.

Q. How do the doors opening from the vestibule into the theatre open; do you push or pull to open them?

A. They all open outward towards the street. You pull out.

Q. You could not open that door then by pushing against it?

A. No, sir.

Q. Do you recollect whether Mr. Booth had engaged either of the boxes numbers seven or eight any short time before the assassination?

A. Yes, sir; he engaged a lower private box some two or three weeks, I should think, before the assassination, and afterwards changed it for an upper box—took box seven up stairs—the box he generally occupied when he came to the theatre.

Q. Do you remember whether there were ladies there with him that night?

A. He said that he engaged the box for ladies.

Q. Did he come himself?

A. Yes, sir.

Q. Were ladies with him?

A. Yes, sir.

Q. Do you know where any of them were from?

A. They came from the National Hotel, I believe.

Q. Do you know any of the ladies?

A. I did not know any of them personally.

Q. Were they ladies that you knew by seeing them at the National Hotel or elsewhere?

A. Yes, sir.

Q. Who were they?

A. The Miss Hales, I believe.

Q. None of the Surratt family; that is what I want to get at?

A. I never knew any of the Surratt family?

Q. Did you ever see the prisoner at the bar before you saw him here?

A. Not to my recollection.

Cross-examined by Mr. PIERREPONT:

Q. Did you ever know Miss Hale?

A. No, sir, not personally.

Q. You say "the Miss Hales;" what do you mean by that?

A. There were two.

Q. Did you see two Miss Hales there?

A. Yes, sir; I saw two ladies said to be of that name.

Q. Did you see two Miss Hales there?

A. Yes, sir.

Q. What were their names?

A. I do not know what their names were.

Q. Did you ever see them before?

A. I saw them at the hotel before.

Q. Were they both the same size, or were they different sizes?

A. One of them was a little larger than the other.

Q. What colored hair had they?

A. I think they had dark hair.

Q. Which had dark hair?

A. I cannot exactly state which one had dark hair.

Q. Had one of them light hair?

A. No, sir.

Q. Both dark hair?

A. Yes, sir.

Q. Both dark eyes?

A. I never took notice of their eyes. I cannot say.

Q. Were they large or small?

A. One was an ordinary-sized lady and the other was a little larger. Neither of them was very large, nor extremely small.

Q. Were they tall or the contrary? I am speaking of altitude merely now.

A. The largest of them was a medium-sized lady.

Q. Was she thin or stout?

A. I do not remember exactly.

Q. Had she black eyes?

A. I do not remember her eyes.

Q. Had she black hair?

A. Dark hair.

Q. Was it quite dark?

A. I cannot exactly tell you the shade of the hair.

Q. What sort of hair had the short one?

A. She had dark hair.

Q. Dark eyes, too?

A. I do not remember her eyes at all.

Q. Was she small?

A. Not very.

Q. Was she short?

A. She was a medium-sized lady; she was not very short.

Q. The other was medium-sized, too, you said; I am speaking now of the one that was not medium-sized.

A. They were nearly of one size.

Q. Was she stout or thin?

A. I do not know whether she was stout or thin.

By Mr. CARRINGTON:

Q. How often did you see Booth occupy this box with ladies?

A. I do not remember seeing him there more than twice.

Q. You are sure he did twice?

A. Yes, sir.

Q. Did he have the same ladies on both occasions?

A. I do not remember both occasions.

Q. What interval was there between the two, do you recollect?

A. I cannot recollect that.

Q. Could you give any description of the ladies he had on the other occasion?

A. No, sir.  
 Q. How many did he have?  
 A. I do not know; he merely said he was going to bring some ladies, and I saw him coming in with some; I do not know whether he had two or a dozen.  
 Q. Did you know Miss. Fitzpatrick, of this city?  
 A. No, sir.  
 Q. Do you know a Miss Dean, of this city?  
 A. No, sir.  
 By Mr. PIERREPONT:  
 Q. During the rebellion, what side did you take?  
 Mr. BRADLEY. I object to that question. I do not know that what side Mr. Ford took has any thing to do with this case.  
 Mr. PIERREPONT. I propose to ask him this question, and I shall probably ask several other witnesses the same question; and I submit that as a matter of law on cross-examination I have a right to ask this question, for the purpose of showing the witness's temper or standing in relation to the murder of the President of the United States. That is the object of it. We have a right, as a matter of law, to show the witness's temper and feeling on the subject which is on trial.  
 Mr. BRADLEY. I supposed it was on the ground that it would bring him into some discredit.  
 Judge FISHER. Do you ask the question as to whether he took sides with the rebels or with the Union?  
 Mr. PIERREPONT. Yes, sir; that is the question.  
 Judge FISHER. And not as to his political opinions?  
 Mr. PIERREPONT. No, I do not care any thing about his opinions. I want to know whether he went in favor of the Government whose President was murdered, or whether he was a traitor to that Government; and that, I submit, I have a right to ask.  
 Judge FISHER. You may ask it.  
 Mr. MERRICK. I suppose the witness may answer it or not, as he pleases.  
 Judge FISHER. The witness may answer it or not, as he likes.  
 Mr. PIERREPONT. (To the witness.) What is your answer to my question, or do you decline to answer?  
 The WITNESS. I decline to answer. [The witness left the stand, and, after speaking with the prisoner's counsel, was called back.]  
 Mr. MERRICK. The witness desires to answer your question.  
 Mr. PIERREPONT. I do not wish to ask him any more questions. He has been discharged, retired from the stand, goes to consult with counsel, and then comes back.  
 Judge FISHER. (To the counsel for defense.) Call another witness.  
 Mr. BRADLEY. If the court please, this witness did not understand his rights or privileges.  
 Judge FISHER. You cannot ask the witness any question after having taken him off the stand.  
 Mr. PIERREPONT. And especially if they bring him back after he has conferred with the counsel.  
 Mr. BRADLEY. All I proposed to say to the court was, that the witness himself is desirous to make an explanation, lest his refusal to answer should be misunderstood, and he has that right, I suppose.  
 Judge FISHER. The witness had the question fairly put to him, and it is for him, and not for the counsel on either side or the court, to dictate what answer he shall make. He has made his answer, and that is the end of it. Let him go.  
 Mr. MERRICK. There was no dictation from the counsel. Counsel stated to him, in explanation of the question, what the counsel knew to be the fact, in order that the witness might further understand.  
 Judge FISHER. You ought to have asked him before he left the stand.  
 Mr. PIERREPONT. He has left the stand.  
 Mr. BRADLEY. He cannot be recalled, then, even at his own instance, to explain. Make a note of our exception,

WILLIAM DIXON,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. State your business and occupation.

A. I am chief engineer of the United States Fire Brigade—the Government Fire Department.

Q. What position did you hold in April, 1865?

A. The same.

Q. Do you recollect any thing about the condition of the night of Friday, the 14th of April, 1865?

A. I do. About half-past nine on that night an alarm of fire was struck from box 25. The fire proved to be a bonfire in the direction of Kendall Green. I rode a horse to that fire; I usually do—

Mr. PIERREPONT. Never mind that; come to the night.

Mr. MERRICK. He is speaking of the night, of his riding a horse.

Mr. PIERREPONT. That has nothing to do with it.

Mr. MERRICK. Let him state it in his own way.

Mr. PIERREPONT. I submit that his horse has nothing to do with it.

Judge FISHER. Let him go on and tell about the night. He may state the fact whether he did ride a horse or not, though I do not see that that makes any difference.

Mr. MERRICK. If he happened to ride a horse, and the horse stumbled because the night was dark, it might throw some light on the gloom. (To the witness.) Go on and tell what occurred that night, showing your observation of it.

A. Going to the fire, the route I took was down H street. I struck H street at New York avenue, where New York avenue crosses it, and kept down H street to Fourth. It was a dark night, cloudy, so much so that I was obliged to ride slowly along the street. I returned the same route. The fire proved to be a bonfire. I turned out H street, took the same route home. I also noticed that it was dark and cloudy.

Q. What time did you get back?

A. I cannot exactly state the hour; it was after ten o'clock. On my return to my office, after cleansing my hands, washing myself off from dirt, an officer of the War Department was in front, and I was sent for and directed to have the engine and apparatus ready for service at a moment's notice. They were afraid arson would be perpetrated, and he told me that he was directed at the War Department to give me these orders. I reported at the War Department, but the guards would not allow me to enter the building.

Q. At what hour of the night was that?

A. That was nearing eleven o'clock.

Q. Go on.

A. I remained about the office on Pennsylvania avenue, and between that and the War Department, waiting further orders, until nearly one o'clock the next morning.

Q. You received some directions at your office after you returned, which led you to go on down towards the War Department?

A. Yes, sir.

Q. At what hour did you hear of the President's assassination?

A. I heard it from the officer that gave me the orders.

Q. And in conformity with these instructions you went out?

A. I went out to report to General Hardie.

Q. What was the condition of the night at the time you went down to report to the War Department?

A. It was dark.

Q. Did you see any thing passing whilst you were down there at any time—horses, troops, or any thing else?

A. A squadron of cavalry passed me when I was near Eighteenth street, going at a very fast rate down Pennsylvania avenue.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 71. WASHINGTON, THURSDAY, AUGUST 8, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 70.*

Q. Can you fix approximately the time of night that was?

A. Near eleven o'clock; I cannot say how near; close to eleven o'clock.

Q. Now, tell us, as near as you can, any thing that occurred that showed you how dense the darkness was, whether it was very dark or not. Could you recognize the color of the horses?

A. I could not recognize the color of the horses. The apparatus that night came near running into a wagon passing to the fire at Fourth street and New York avenue. The driver remarked to me that it was so dark that he came near driving into me.

Cross-examined by Mr. PIERREPONT:

Q. What apparatus do you ride?

A. The Government fire-engine.

Q. Was there any light on it?

A. There were two lights, one on each side.

Q. It had then?

A. Yes, sir.

Q. Those lamps gave some light, did they not?

A. Yes, sir; on the street passing along, on the sides; not before the driver.

Q. They gave some light on the sides?

A. Yes, sir; on the sides and the wheels.

Q. Did you look to see whether there was any moon up—full moon an hour high—at eleven o'clock?

A. In going to the fire I noticed the sky. There was no moon then.

Q. When was that?

A. At the time the alarm was given.

Q. What time was there no moon up?

A. Between half-past nine and the time I returned from the fire, which I placed at half-past ten.

Q. Do you know what time the moon did get up that night?

A. No, sir.

By Mr. BRADLEY:

Q. I understand you to say that you did not see any moon, and you looked at the heavens?

A. I looked at the heavens and saw no moon; or, if there was, it was obscured by clouds.

A. KIESECKER,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In the city of Washington, at the corner of Sixth and H streets.

Q. Where did you reside in April, 1865?

A. At the same place.

Q. What house is the next house to yours on H street west?

A. No. 541.

Q. Do you know whose house it is?

A. No, sir.

Q. State to the jury how your house runs and fronts, and how near to 541 H street the wall of your house goes.

A. My house at that time fronted on Sixth street, towards east, the yard running back towards west, on H street, for seventy-five feet, I think the depth of the lot the house stood on at that time; but since then I have been building, and changed the front on H street.

Q. I want it as it was at that time. You say it ran back from Sixth street seventy-five feet?

A. Yes, sir.

Q. How near did the end of the seventy-five feet come to the house 541 H street?

A. I suppose about nine feet.

Q. Then the front of your house on Sixth street was about eighty-four feet from No. 541 H street?

A. Yes, sir.

Q. How were the steps of your house arranged?

A. The steps to my house ran from Sixth street, from the corner up to the second story in front.

Q. Did they run towards H street?

A. Towards H street, within twelve or fifteen inches of the corner of the building-line.

Q. Do you recollect the night of the President's assassination?

A. I do.

Q. Where were you on that night?

A. I was at my place of business until about half-past nine or fifteen minutes to ten o'clock, the usual time of closing it.

Q. Where did you go then?

A. I went to my place of residence.

Q. What did you do?

A. I was sitting, from about ten until near eleven, before the door, smoking.

Q. Whereabouts before the door?

A. On the lower step, or partly walking the pavement. I do not exactly know whether I was sitting all that time, but I was on the pavement, probably, walking backwards and forwards; but most of the time I was sitting there.

Q. Sitting on the lower step, whereabouts would you be relatively to H street—near it or far from it?

A. I would be sitting very near to it, of course. The lower step was not more than fifteen inches, I think, from the building corner.

Q. Is that a quiet neighborhood at that hour of the night, and was it quiet about there that night?

A. Yes, sir; after ten o'clock it is generally very quiet there.

Q. What kind of night was it as to light or darkness?

A. To the best of my recollection it was clouded over. It was pretty dark.

Q. Whilst you were sitting there, did you hear any conversation between any parties on the street and any parties in 541 H street, speaking from the window?

A. No, sir; not to my hearing.

Q. Were you near enough to have heard an ordinary tone of voice, such as would be used from the window to the street?

A. I think so.

Q. Had there been a conversation there in an ordinary tone of voice, do you think it likely you would have heard it?

A. I should think I would, at that distance and at that time of night.

Q. I understood you to say it was very quiet?

A. Yes, sir.

Q. How far could you see a man that night? Did you observe?

A. I could not on that side of the street. Probably I could see a man from forty to fifty feet, but could not tell who it was. It was too dark to tell. I would not know a person.

Cross-examined by Mr. PIERREPONT:

Q. Do you know any thing more about this case?

A. No, sir.

Q. This is all you know.

A. Yes, sir.

Q. Now, let us see if you do not know something more. Did you go to bed that night?

A. Yes, sir.

Q. Did you hear of the murder of the President that night?

A. Not until next morning, when I got to my store.

Q. You went to bed in pretty good season, did you not?

A. At eleven o'clock.

Q. But was not this noised all over this town, and was not the city in the greatest excitement before eleven o'clock?

A. No, sir. I remarked the next morning that I had been sitting up as late as eleven o'clock, and never heard a word of it. I remarked so to my clerk.

Q. If there had been a great deal of excitement through the streets, and the fact had been stated, you would have heard something about it, would you not?

A. I would.

Q. Do you infer, therefore, that there was none; that they kept the news of the assassination pretty still that night?

A. I did not know any thing about it.

Q. They kept it entirely from you, did they not?

A. I did not hear any thing of it while I was on the sidewalk.

Q. And you never heard of it after you went in?

A. Not until next morning, when I went to my store. That was about seven o'clock.

Q. Did you look at the clock when you went to bed?

A. No, sir.

Q. Were you not a little surprised next morning, considering that you were out of doors there, that you had not heard about it?

A. Yes, sir, and made that remark to my family.

Q. H street runs one way, and Sixth street at right angles to it, and your house fronted on Sixth street?

A. Yes, sir.

Q. And it was on your front that you were sitting?

A. I was sitting at the front, on the corner, on the lower step, within twelve or fifteen inches of the corner.

Q. Were you there all the time?

A. From about ten until within a very short time of eleven o'clock.

Q. What were you doing?

A. Smoking.

Q. Was anybody with you?

A. No, sir.

Q. Did you see anybody passing?

A. I have seen persons pass.

Q. Did you that night?

A. Yes, sir.

Q. Who?

A. I did not pay attention.

Q. You say the night was dark?

A. Yes, sir.

Q. And you were sitting in front of your house on Sixth street?

A. Yes, sir.

Q. How many feet is it from the front of your house to the rear of your lot?

A. Seventy-five feet.

Q. And then between that and 541 H street is an alley, is there not?

A. Yes, sir; an alley three feet.

Q. And a brick wall between the alley and the house?

A. Yes, sir.

Q. Do you want to tell this jury that, situated as your house was, if there had been an ordinary conversation back at that house you could have heard it?

A. Not an ordinary conversation, but I should think I would have heard it if anybody had talked to a person out of the window on the street.

Q. You think they could not do it without you hearing it?

A. Unless I should be talking to somebody else.

Q. If you were smoking, you think you would certainly have heard it?

A. I was sitting there by myself.

Q. And you did not hear a thing?

A. No, sir.

By Mr. MERRICK:

Q. I understand you to say you were sitting at the front of the steps?

A. Yes, sir; at the corner where the steps come down. The steps run all the way across the house, going into the second story—high stairs. The steps came down, and the lower step was, I suppose, within twelve inches of the corner. The stairs went into the second story from the outside, and went all the way across nearly. The lower step was within twelve or fifteen inches of the corner.

By Mr. BRADLEY:

Q. And you were sitting on the bottom step?

A. Yes, sir.

Q. Your feet and knees were towards the corner?

A. My feet were on the pavement. I was sitting on the lower step.

Q. You cannot tell whether you were leaning back or sitting forward?

A. No.

Q. But you were sitting where you could look up H street without any trouble.

Mr. PIERREPONT. He did not say that.

Mr. BRADLEY. I asked the question whether he was sitting so that he could look up H street?

A. I was generally sitting in a straight position, and I do not think it was very convenient where I was sitting to look up H street. I sat mostly in a straight position; but I might in that time have been standing up some, which I do not recollect.

Q. I understand you to say that you sat the greater part of the time, and you might have got up and walked about?

A. Yes, sir.

By Mr. MERRICK:

Q. Do you recollect about the time of your going to bed?

A. Mrs. Kiesecker told me it was time to go to bed; it was most eleven o'clock. She was sitting in the room reading. I told her to let me finish my segar first, and I would come in.

By Mr. PIERREPONT:

Q. How many segars did you finish?

A. One.

Q. How long did it take you?

A. I can smoke a segar in an hour or half an hour?

Q. How long did that segar take you?

A. I lit it before ten o'clock, and I suppose I smoked on it until near eleven.

Q. Did you walk about when you were smoking?

A. I do not recollect that distinctly. I may have done so.

Q. Did you sit on that front step of yours all the time?

A. Yes, sir, mostly.

Q. All the time?

A. Yes, sir, I am in the habit of doing it now.

Q. The question is not as to your habits now, but what you did then?

A. I was sitting on the steps. I might have been part of the time walking on the pavement.

Q. It was your front step you were sitting on, and that was on Sixth street?

A. Yes, sir.

By Mr. MERRICK:

Q. With your face to H street?

A. Towards H street. I could not sit backward on the step.

JAMES LAMB,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. What is your profession?

A. Scenic artist, or scene painter.

Q. Were you in any manner connected with Ford's Theatre in the month of April, 1865?

A. I was engaged then in my profession.

Q. Was that theatre in Washington, on Tenth street?

A. Yes, sir.

Q. Do you remember the 14th of April, 1865, the day on which the President was assassinated?

A. Yes, sir.

Q. Do you remember where you were occupied during the greater part of the day? State at what time you began, and when you left the theatre.

A. Yes, sir; I was engaged in the painting-room of the theatre from nine o'clock in the morning until six in the evening, or a little after on that day.

Q. Describe to the jury the situation of the painting-room.

A. It occupies a position in the rear of the theatre, facing the rear wall, and at an elevation of thirty-six or thirty-seven feet—the floor from the stage commanding an entire view of the stage, right and left.

Q. State whether the side of that room next to the stage is open or not.

A. Open. There is a mere railing at the back.

Q. So that it commands a full view of the stage and the auditorium?

A. Of the stage, but not of the auditorium; because you are too high—the flies intervene; but you can see into the orchestra, of course, and into the parquette.

Q. Who was assisting you in your painting-room that day?

A. I had a black boy there for the purpose of grinding colors, raising the paint-frame up and down, and doing such other work as I might require of him.

Q. What were the other duties of the black boy, when not waiting on you?

A. He was engaged by me during the day. In the evening he was employed in assisting another boy about his own size in raising and lowering the curtain.

Q. State whether one person could raise and lower that curtain, or whether it required more force than one?

A. I never saw one person raise it or lower it—always two. Two were employed especially for that purpose.

Q. State whether, from your position, you could see when the rehearsals were going on?

A. Yes, sir, I had a full command of the stage.

Q. On that day, the 14th of April, was there a rehearsal?

A. There was.

Q. Can you recollect the time of the day?

A. It commenced at or about 10 o'clock, the usual time of commencing rehearsal.

Q. How long did it continue?

A. Till two or half-past two, or somewhere there along.

Q. During that time was that curtain up or down?

A. Up the whole time, most decidedly.

Cross-examined by Mr. PIERREPONT:

Q. What countryman are you?

A. I was born in England. I have been in this country some twenty-seven or twenty-eight years.

Q. Did you take any part in the struggle that we have been going through?

A. No part whatever.

Q. Did you express any sympathy with the rebel side in the late war?

Mr. MERRICK. I submit, your honor, that we might as well have a ruling about this matter, as I perceive the counsel proposes to press this character of questions.

Mr. PIERREPONT. I do mean to press it whenever I learn a fact to justify it.

Mr. MERRICK. And to speculate when you do not.

Mr. PIERREPONT. Very likely I shall do so.

Mr. MERRICK. I submit to your honor that the question is not proper in this case, and I desire that your honor may rule upon it. I do not propose to make any argument upon the subject, however. The prisoner at the bar is indicted for murder, and no other offence—not for treason; and I cannot perceive what pertinency the inquiry has in this case, or how it can affect the mind of any individual who is called to decide the issue to be tried in this case. If the question is permitted, it may lead to the most elaborate and unending inquiry addressed to every witness summoned, and might have led to a similar inquiry addressed to all the witnesses that have already been examined. I submit to your honor, as I said, without argument, that I think the question is not proper, and we desire to have a ruling made upon it. Your honor has already decided that they may ask whether a witness took one side or the other. To that ruling I do not know that I have any material objection to make; but an exception has been saved to it, as a matter of form as well as a matter of substance; but more as a matter of form. But when the counsel asks whether he has expressed any sympathy with one side or the other, I think it is carrying it a little too far. If we are to go into the sympathies of individuals on one side or the other in this war, I cannot see where the inquiry would end. Sympathies have been felt and sympathies have been expressed on both sides, and by people on the one side contrary to that upon which they actually were. Events have transpired in the southern States during this war that caused the expression of decided sympathy there against the rebel government. Feelings were engendered by the exercise of power and authority there which caused the expression of sympathy with this Government, and against that, and a desire for the overthrow of that government. Similar circumstances have transpired here, and even among those who claim to be *par excellence* the most patriotic and the most loyal. Some found, in some emergencies during the war, their patriotism sufficiently pliant to wish the overthrow of particular generals at the head of the Union army. I submit to your honor, in view of all these circumstances, the inquiry is not proper.

Mr. PIERREPONT. I wish, as my learned opponent wishes, to have a ruling upon this subject, and we might just as well have it now; for, as I announced before, I still announce, that in every instance where information is brought to me in relation to a witness on this subject, I do intend to propound these questions; and I submit to your honor that they would be proper, even if it were a civil suit. You have always in cross-examination a right to learn the feelings, partialities, and hostilities of any and every witness whom you cross-examine in relation to the subject-matter which is under discussion and which is on trial.

Judge FISHER. You may put the question, and the witness will answer it or not, as he sees proper. If you can put the question as to whether a witness took sides one way or the other, I do not see the difference between that and the question as to whether he ex-

pressed sympathies on the one side or the other. It is identically the same thing.

Mr. MERRICK. We shall, of course, follow the ruling of your honor and ask these questions. I wanted to avoid that, because, in illustration of what I said just now, I saw, not long since, the expression of a wish in a loyal paper that the hand of Booth had been less steady and Atzerodt's more sure; and it might apply to some of the witnesses on the other side.

Mr. PIERREPONT. Then it ought to apply. Let this jury understand, wherever the witnesses come from, who they are.

Mr. BRADLEY. We note an exception to your honor's ruling.

Mr. PIERREPONT. (To the witness.) Now, answer the question. Did you express any sympathy with the rebel side in this late war?

A. I did.

Q. You felt it, did you not?

A. I felt sympathy on occasions when I saw men on either side butchered.

Q. And you feel it now?

A. I feel it now, sir, on both sides. I am a peace man.

Q. Your peace feelings rather ran against the North, did they not?

A. No, sir; by no means.

Q. Did your peace feelings run to make you in favor of putting down the rebellion by arms?

A. They did not.

Q. You thought it ought not to be done, did you not?

A. I did think so.

Q. You thought the rebels ought to have their way?

A. No, sir; I think that thing could have been arranged differently altogether.

Q. But you say you thought that the rebellion ought not to have been put down by arms?

A. I did.

Q. Now, tell us, did you take any dinner on the 14th of April?

A. No, sir. I never dine while I am at work.

Q. Did you take any thing to eat, by whatever name you may call it?

A. I do not know, but I think it very unlikely that I did.

Q. Did you take any thing to drink?

A. That I might have done.

Q. You do that sometimes?

A. I do that sometimes.

Q. Did you go out of the theatre that day?

A. No, sir; not until after I left at six o'clock to go home.

Q. When did you go into it?

A. Possibly a little before nine.

Q. When did you leave it?

A. A little after six, or about six.

Q. Where was your room?

A. My room was on the highest floor of the theatre, away from everybody.

Q. Back of the stage?

A. Yes, sir.

Q. In the rear?

A. Yes, sir.

Q. Very high up?

A. Yes, sir.

Q. What were you doing that day?

A. Painting.

Q. What were you painting?

A. I was painting a scene for *Enoch Arden*, a piece which Mr. Ford contemplated bringing out. It was left undone.

Q. Was it a thing that occupied your mind?

A. Entirely.

Q. You were greatly absorbed in that scene of *Enoch Arden*, were you not?

A. I had all the thing in my mind, and was mechanically working on it.

Q. Then it did not absorb your mind?

A. Yes, it did, on some occasions; on others it did not.

Q. On the whole, did it or did it not absorb your mind? Have it either way.

A. About the same as usual.

Q. How is that? My point is, Did it absorb your mind?

The WITNESS. The whole time?

Q. Did the work you were at absorb your mind?

A. Not to the exclusion of other matters.

Q. Do you understand the meaning of the word "absorb?"

A. I do.

Q. Can you answer the question?

A. I say it did not, entirely.

Q. It did not much; did it at all?

A. On some occasions, some portions of the painting required more attention—more study than others.

Q. Did you give it that attention?

A. While working on that portion I did. The other was a mechanical operation, which you or any inexpert could do just as well as I could.

Q. Oh, no, I could not. During that part, do you mean that you gave no attention to it?

A. While I was painting on particular portions, I gave attention to it.

Q. Did you do the work well?

A. I believe I did.

Q. Does it not require attention to do it well?

A. Sometimes—not very great attention either. You see, I have been employed on this thing a number of years, and it is a mere matter of form in painting some things.

Q. But this was a new thing, was it not?

A. Rather new.

Q. I want you to tell the jury whether it did occupy your mind or did not; you may have it either way.

A. If you had been reading a newspaper, I could have heard every word that was read to me, and at the same time probably have painted a very good scene.

Q. Do you not think that you might have stopped me sometimes to ask me to read again some passage? Would not that have been natural?

A. If I had not heard it.

Q. Which way was your scene that you were painting?

The WITNESS. Do you mean the position that I occupied?

Mr. PIERREPONT. I mean exactly that.

A. The scene was placed against the wall with the face towards me.

Q. Which wall?

A. The rear wall of the theatre.

Q. Easy as you could paint it, you could not paint it without looking at it?

A. I sometimes painted without looking.

Q. Did you paint that without looking at it?

A. Not all the time. The wall was at the rear of the theatre, and the canvass was on the wall, and my face was to it.

Q. Your room was high up in the rear of the theatre, and the canvas you were painting was on that wall?

A. Yes, sir; on that wall, rising up and down in a frame.

Q. You do not mean to say that you could paint that without looking at it?

A. Occasionally I could. For instance, I have been painting a long while, and some one would probably come, and I would still keep pushing on and talking.

Q. Was that your general style of painting?

A. Not my general style—by no means; an exception to the general rule.

By Mr. BRADLEY:

Q. Did your sympathies lead you to wish the overthrow of the Government of the United States?

A. By no means.

Q. In regard to your position while painting, was it

possible for the curtain to have been let down without your knowing it from the sound and shake and hearing?

A. No, sir; it made too much noise. Another thing: the boy who raised it was all the time in my presence, waiting on me, raising up and down my paint-frame, attending me, and he dared not leave.

Q. When that curtain was down, was the auditorium of the theatre quite dark or not?

A. No, sir.

Q. Where did it get its light?

A. The light of the auditorium was received from the windows in the auditorium.

Q. Were the windows in the auditorium usually open?

A. Usually.

Q. What would have been the effect if the curtain had been down upon you?

A. It would not have inconvenienced me at all.

Q. Because you received the light from the east?

A. From the roof, from the sky-light.

Q. You had, then, enough light for your painting?

A. Enough light from the sky-light in the roof.

Q. But the curtain could not have been let down without your knowing it?

A. No; I am certain of it. It would have drawn my attention particularly, because I was there by it, and any little foot-step or noise would have attracted my attention while painting.

Q. You were asked about eating and drinking. Do you recollect taking any thing but a glass of beer sent up to you there?

A. I think it is very likely I did; I have no distinct recollection about it. My usual way of sustaining myself on these occasions is by bringing along a little crust of bread and cheese, or something of the kind, and sending down to get a pint of ale, or a glass of ale, and taking that. I get very dirty up there painting, and I do not care about going out. I generally take my dinner or lunch, or whatever you call it, in the paint-room.

Q. And you dine regularly after you go home?

A. Yes, sir.

By Mr. PIERREPONT:

Q. You tell us now, that it was so still that the least noise would have attracted your attention?

A. Yes, sir; on ordinary occasions.

Q. How was it on this occasion?

A. On this occasion the lowering of the curtain would have been unmistakable.

Q. Was it so still on this occasion that the least noise would have attracted your attention?

A. No; I do not think it was. There was a rehearsal going on.

Q. Then, what you say does not apply to this occasion?

A. No.

Q. Then it had better not have been said in relation to it?

A. It was not unusual.

Q. Then it was nothing but usual that the rehearsal should make some little noise?

A. That would be a usual noise. I would be like a miller hearing the drum of the wheel, without paying attention to it.

Q. Then rehearsal is all in one tone, is it, like the drum of a wheel?

A. One tone; and any thing unusual would have attracted my attention; the lowering of the curtain would have been a very unusual thing.

Q. What was the piece they were rehearsing?

A. It was "The American Cousin" or "The Female American Cousin," I do not know which.

Q. In that there is some little amount of noise, is there not?

A. Yes.

Q. Considerable?

A. Nothing very particular.

Q. Is it not just as much as when you exhibit it to us on the stage?

A. Oh, no; they walk on and walk off quietly.

Q. They do not go through with any of those things they show us?

A. Oh, no, sir.

Q. Then the rehearsal is not very much like the exhibition?

A. Not at all. You would not recognize it.

Q. Is it still, silent?

A. It is quiet.

Q. Now, tell us about this curtain. Did you look at it that day?

A. No, sir.

Q. Did you know which curtain it was? We have learned that there were two there?

A. The curtain I presume to be the drop-curtain.

Q. Do you know any thing about it?

A. The drop-curtain is what I am alluding to.

Q. Did you know any thing about which curtain was up or down that day?

A. I am sure neither of them was up; because if it had been the green curtain, it goes down with a rattle—makes more noise than the other curtain.

Q. Suppose it was the drop-curtain: that had pictures on it, had it not?

A. Yes, sir.

Q. Was it drawn entirely tight up that day, or was it partly drawn down?

A. It was not partly dropped. It was away up.

Q. How do you know? Did you examine?

A. No.

Q. Did you ever have any thought turned to that subject that day?

A. No, sir.

Q. You never thought of it until this trial, did you?

A. No, sir.

Q. It is more than two years ago, and you never thought on that subject until to-day?

The WITNESS. What subject?

Mr. PIERREPONT. The subject of the curtain.

A. No, sir.

Q. You tell us that if the curtain was down it would not be dark in the boxes?

A. It could not interfere with them.

Q. And the boxes would be light with the curtain down on the stage?

A. The boxes received their light, if any, as far as I can recollect, from the windows in the auditorium.

Q. And did not receive it from the stage?

A. No, sir.

Q. And the curtain being down did not darken the boxes?

A. No, sir; but darkened the stage. The boxes were always dark.

Q. But you told us they were lighted from the windows?

A. If they got any light at all, it was from the windows.

By Mr. BRADLEY:

Q. If they were going through rehearsal with the curtain down, what space would the curtain occupy which would interfere with the rehearsal?

A. It would go down immediately on the very spot where they had the rehearsal. The rehearsing is usually or always, in a piece like that, carried on from the foot-lights, probably as far back as the first or second entrance.

Q. Does not the curtain come down into the first entrance?

A. It comes into the tormentor entrance. You may call that the first entrance. It is the first entrance, certainly.

Q. Where the prompter stands?

A. Certainly.

CHARLES M. SKIPPON,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. What is your position?

A. Lieutenant of police.

Q. In 1865 were you connected with the police?

A. I was then sergeant of police.

Q. What was your district?

A. It consisted of the third ward, sixth precinct.

Q. Did it embrace the square on which Ford's Theatre stands?

A. Yes, sir.

Q. State if there is any oyster-house on the south side of that square; that is, on E street, between Ninth and Tenth?

A. No, sir.

Q. Was there any oyster-house—unless Miller's saloon may be called such—on the north side of that square; that is, on F street, between Ninth and Tenth?

A. I have no recollection of any oyster-house being there, with the exception of an eating-saloon, kept by a man by the name of Gilbert.

Q. That was up a flight of stairs?

A. Yes, sir. He might have served oysters out, for all I know.

Q. Was there any oyster-house on that side of the square which opened on a level with the street?

A. Not to my knowledge.

Cross-examined by Mr. WILSON:

Q. Where is the Tontine House?

A. On D street, between Ninth and Tenth.

WILLIAM A. BOSS,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In the city of Washington, No. 489 Fourteenth street.

Q. How long have you lived here?

A. All my life.

Q. Do you know John Lee?

A. I do.

Q. Do you know his reputation for truth and veracity?

A. I never heard it questioned until after he testified in this case.

Mr. CARRINGTON. Do not speak of it then.

Mr. PIERREPONT. That ends that business.

Mr. MERRICK. (To the witness.) Did John Lee ever say to you that he did not know John H. Surratt?

A. Yes, sir—

Mr. CARRINGTON. Wait a minute. I do not think the question was asked Mr. Lee, whether he had ever had any such conversation with Mr. Boss, stating the time and place.

Judge FISHER. I do not recollect any such question having been put to Mr. Lee; but you can ascertain that by referring to the record kept by the reporter.

Mr. CARRINGTON. I am quite sure no such question was asked.

Mr. PIERREPONT. The record will certainly prove that no such thing was asked.

Judge FISHER. I have no recollection of it, and I suppose it was not put.

Mr. CARRINGTON. I ask your honor, then, to state to the jury that what Mr. Boss has said is not evidence.

Judge FISHER. (To the jury.) Gentlemen, whatever answer Mr. Boss made, in reply to that question, cannot be testimony, because the witness, whose testimony he is called to impeach, had no opportunity of answering in reference to the subject. The time, place, person, and circumstances ought all to be specified to the witness whom it is intended to impeach before a witness can be called to contradict him.

Mr. MERRICK. Your honor orders that answer to be stricken out?

Judge FISHER. Yes, sir.

Mr. MERRICK. We reserve an exception.

Mr. BRADLEY. Your honor will recollect that John Lee was called back, and was about to go on the stand, when the question was raised whether we could recall him for the purpose of putting these interrogatories to him, and it was ruled that we could not have him recalled for that purpose. We were not aware, at the time Lee was on the stand, of any thing affecting his character in any possible shape; and it was only after he left it that we ascertained that he had made these repeated—as we expect to show—contradictory statements. Your honor then said it was not the proper time. We now ask that he may be recalled for the purpose of putting these questions to him, in order directly to contradict him by a series of witnesses.

Mr. PIERREPONT. It seems that this man Lee had lived in the city, as my learned adversary has lived in the city, and nobody seems to have ever heard, until he testified here, any thing against him. Of course he cannot be called back now for this purpose. And, besides, I think it proper, if I state it correctly, that your honor should tell the jury that I do state it correctly, that no wrong inference may be made, that when a witness is to be called in relation to a statement which another witness has made, which seems to differ from the one that he has made here, the witness himself has a right to have the time, place, and circumstances called to his attention, in order that he may give such explanation as the circumstances and facts will warrant. Otherwise there is no honest man who may not have said a thing from which a wrong inference might have been drawn, and it be inferred that he said a thing which, when it is understood in its true sense, he never did say.

Mr. BRADLEY. Your honor will pardon me; we make the motion to recall Lee now, because we were told it was not the proper time to recall him then, and because we propose to put to him precisely the interrogatories which have been thus suggested on the other side. Mr. Lee was brought here from Mississippi. We had no notice of his being a witness in this case until he came upon the stand. We had no opportunity to see any one, or to inquire as to his *status* from any one, until after his examination; for while the examination was going on we were necessarily occupied in court. The prisoner at the bar was in close custody; he would have had no opportunity to ascertain any thing in regard to Lee. The question is now addressed to the discretion of the court, and only to that, whether or not we have a right to show not only discordant, but directly contradictory statements made by the witness out of court, before he was called as a witness, when we had no opportunity to ascertain the fact, and no information in regard to it. If it be necessary, we shall lay before your honor the affidavits of, I think, five witnesses in regard to the statements made by Lee to them, with time, place, circumstances, and person, all fully stated. If that should be deemed necessary as the foundation of our motion, we shall be prepared to do it in a very few minutes. The only question is, whether it addresses itself to the judicial discretion of the court. That we have not a right to bring witnesses to show contradictory statements out of court without laying that foundation which your honor has so clearly indicated, is unquestionably true. The right to recall him is not conceded by the court; the court say we have no right to recall him; but it is conceded on all hands that it is within the judicial discretion of the judge whether he shall be recalled or not for that purpose. The ends of justice, in our judgment, require that we should have an opportunity to present before this jury the history of the witnesses, and each witness as put upon the stand, so far as legal rules will allow us to go. We hold that this is entirely within the rules of law, as well established. It only remains for the

court to determine, in its discretion, whether it will permit the party to be recalled now for the purpose of laying the foundation for his cross-examination.

Mr. PIERREPONT. He was examined by the military commission, and the gentlemen had the record before them.

Mr. CARRINGTON. It seems that there is to be no end of the discussion of this question. It seems to me it has already been twice discussed before your honor. Lee was examined before the military commission—

Mr. PIERREPONT. And here is his printed testimony.

Mr. BRADLEY. True; but that was not any notice to us that they were going to call him as a witness here.

Mr. MERRICK. The gentlemen say there will be no end to the discussion of this question. It has been up two or three times, it is true; but, being a question addressed to the discretion of the court, as new facts are developed, it presents itself in new phases to your honor; and what your honor, in the just exercise of your discretion, at one period of the trial would allow, at another period you might not allow. And it is our duty, to ourselves and our client as well as to your honor, to ask for the intervention of your discretion in our behalf whenever we think a new condition has arisen which would demand its exercise more imperatively than was required in the previous portion of the examination.

Judge FISHER. I cannot see that there is any need for the exercise of any discretion in this matter. On the contrary, I see that great trouble will arise out of it. If we open the door in this instance, we have got to throw the door wide open in the case of every witness on the one side and on the other; and, as I remarked before when this question came up, and I was asked to rule upon it generally, if we begin this matter there is no knowing when the case ever will end. Anybody can see at a glance that if this witness is to be called back for the purpose of laying the ground-work of contradicting him, the very witness that is now called for that purpose, Mr. Boss, or any of the five or half-dozen that may be called for the purpose—it is said that five are to be called—may all be contradicted in the same way, and it would go on multiplying *ad infinitum*, and there is no knowing when this case ever would terminate. I do not see that, unless we lived a hundred or a thousand years, a case of this magnitude ever would be ended under this rule.

Mr. PIERREPONT. We have nothing to ask Mr. Boss.

Judge FISHER. The witness, Mr. Ford, who declined to answer a question a while ago, sends me a note, stating that he wishes to explain. I have no objection to hearing his explanation.

JAMES R. FORD

again took the stand.

Mr. MERRICK. The court says you can explain your declining to answer when you were on the stand before.

A. I was always a thorough loyal man, always on the side of the Government.

Mr. PIERREPONT. Is that all you have to say?

A. Yes, sir.

Q. You refused to state it before, did you not?

A. I did not see the bearing that it had on the case?

Q. Was that your reason?

A. Yes, sir.

Q. Have you always been in sympathy with the North, and against the South, in the war?

A. Yes, sir.

Q. Entirely?

A. Yes, sir.

Q. Where have you lived?

A. In Baltimore, and in Washington part of the time during the war.

Q. You have been connected with Ford's Theatre?

A. Yes, sir.

Q. You never expressed any sympathy with the South, but always in favor of the North and against the South?

A. Yes, sir.

Q. That has been your course?

A. Yes, sir.

Q. But you did not like to tell it just now?

Mr. BRADLEY. If the court will allow me, I should like to ask Mr. Ford one question: Whether they have not shown a most substantial interest in support of the Government by a great benefit which they contributed to the United States?

Mr. PIERREPONT. You need not answer that. We are on the subject of feelings—of personal sentiment.

Judge FISHER. The witness has only been called back for explanation.

Mr. BRADLEY. I have no right to ask the question but by the consent of the court. I think they contributed some \$2,000 towards the Government.

DAVID H. BATES,

recalled as a witness for the defense.

By Mr. MERRICK:

Q. Have you any telegram addressed to Jacob W. Vanderpoel from any of the authorities in Washington city?

A. Yes, sir.

Mr. PIERREPONT. We object to the admission of any such paper.

Mr. MERRICK. Your honor will recollect that Mr. Vanderpoel testified that he came here of his own accord, without a suggestion or summons from anybody.

Mr. PIERREPONT. He did not say "suggestion."

Mr. MERRICK. Turn to his testimony.

Mr. PIERREPONT. Turn to it, and you will not find those words.

Mr. MERRICK. Possibly not, but you will find the substance.

Mr. PIERREPONT. It is certain that there is not in this record any such thing as would contradict that paper, and counsel I think will admit it.

Mr. MERRICK. I refer your honor to page 125 of the record.

Mr. PIERREPONT. That is the very place.

Mr. MERRICK. On that page you will find this in Mr. Vanderpoel's testimony:

"Q. How was it known that you knew any thing about it?

"A. I saw the trial of John H. Surratt in the paper, and came on myself. I saw that the trial was progressing, and read an editorial in the *New York Herald* about it, and came on.

"Q. When you came on, what did you do?

"A. I reported myself to Mr. Carrington.

"Q. Without a summons?

"A. Without a summons."

That is the passage. He says that he came on without a summons.

Mr. PIERREPONT. All of which is true.

Mr. MERRICK. All of which is true, but somewhat inconsistent with his having been called here, if he was so called, by direction from any officer in charge of the case, and authorized to call him. He says that he came on reading of the trial of John H. Surratt and reading an article in the paper; he came on himself, of his own motion. If that does not mean without suggestion—instigated to come by what he saw in the paper—I cannot understand it. Then comes, following it up, "without a summons." Instigated to come by what he saw in the paper and by the knowledge that the trial was going on, he says he came of himself.

Mr. PIERREPONT. All of which, so far as I understand, is strictly true.

Judge FISHER. The gentlemen need not argue the question. Was there any question put to the witness Vanderpoel calling his attention to Mr. CARRINGTON, or calling his attention to Mr. PIERREPONT, or Mr. RIDDLE, or Mr. WILSON, or Mr. anybody-else, and asking him whether he had received any notice from him to come? If there was, you can contradict him.

Mr. MERRICK. The question was put to him if he came without summons, and he answered, "Without summons."

Judge FISHER. It seems he did come without summons.

Mr. MERRICK. Without a summons. He came by summons, as I understand it, or it is proposed to prove that he did—not by a subpoena. If he had been asked was he not subpoenaed, he might have said, "I was not subpoenaed;" but here the question was put, "Did you come without summons," and he says he came of his own motion.

Judge FISHER. There would be the least fairness I ever heard of in contradicting a witness in that way. You put to him a technical phrase; you asked him if he came without a summons. He is a lawyer, and knows what it means. You did not ask him if he came without a telegram being sent, or a letter being written to him by anybody; and *non constat* (even admitting that paper in evidence) but that he may have come on here before, and then afterwards the parties conducting the prosecution, finding out that he had gone back, may have sent for him.

Mr. MERRICK. That supposition is excluded by his examination.

Mr. BRADLEY. This is only part of the proof. We propose to follow up the proof by showing that, in consequence of the receipt of that telegram, he did come in response to it, and had not been here before.

Mr. PIERREPONT. Well, suppose he did?

Judge FISHER. It is not worth while to argue it.

Mr. PIERREPONT. I want to call your honor's attention to this fact, because to my mind this is an abuse of the privilege of counsel. It is known to my learned associate the district attorney, and to the assistant district attorney, that we have had more than a dozen witnesses here, several of whom, as many as five or six, have come on of their own motion, have gone back, and then we have telegraphed for them to come here. Several are in that condition now, to whom Mr. WILSON telegraphed yesterday. Could it be attempted to discredit such a witness because he said he came on here without a summons?

Judge FISHER. Oh, no.

Mr. BRADLEY. But, if your honor please, I say it is no abuse of the privilege of counsel. On the information we received from Mr. Schaffer—and I suppose the gentlemen received it, for Mr. Schaffer wrote to them as well as to us—we have taken this step. It was our right and our duty, if this man did come here under that telegram, (as he said he came without a summons, not using the word in any technical sense,) to contradict him if we could. We have not transgressed any privilege of counsel. Certainly there is no abuse of it.

Judge FISHER. It is enough to say that the testimony is not admissible.

Mr. BRADLEY. So I understood, and I would not have said a word but for the unnecessary assault of the gentleman on the other side.

Mr. MERRICK. I offer the telegram, and ask that an exception be taken to the ruling of the court refusing to admit it.

The telegram ruled out is as follows:

"WASHINGTON, June 20, 1867.  
"B. W. VANDERPOEL,  
"Care CHAUNCEY SCHAFER,  
"Attorney-at-Law, 243 Broadway, New York City:  
"Come on immediately. Shall be paid.  
"E. C. CARRINGTON,  
"U. S. Attorney for the D. C."

The court took a recess for half an hour, re-assembling at 12.30.

SAMUEL W. OWEN,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. 212 Pennsylvania avenue,

Q. How long have you resided in this city?

A. About thirty years.

Q. Do you know a person by the name of John Lee?

A. Yes, sir.

Q. The man who was examined in this case?

A. I presume he is the same man.

Q. Do you know his general reputation for truth and veracity—what people say of his character in that respect?

Mr. PIERREPONT. Before this trial?

Mr. MERRICK. Or after it either.

Mr. PIERREPONT. No, before this trial.

A. I have heard it before and since too.

Q. (By Mr. MERRICK.) What do people say of him as a man of truth and veracity?

A. He is not a truthful man, I think, from his reputation.

Q. From his general reputation as a truthful man, would you believe him on oath?

A. I do not think I would.

Judge FISHER. Would you believe him on his oath, is the question?

Mr. MERRICK. From his general reputation would you believe him on his oath?

A. It is a pretty tight place to put a man in, on his oath. I think if he was interested in a case it would be very doubtful. I should hate to take his oath myself.

Cross-examined by Mr. PIERREPONT:

Q. Do you know Mr. Lee personally?

A. Yes, sir.

Q. The man who testified here?

A. I presume it is the same man—John Lee, who was a police magistrate in this town. He was a detective at one time.

Q. How long has he lived in Washington?

A. When I returned from the army I found Mr. Lee here. I never saw him before that. That was about 1862.

Q. Do you know how long he had lived here?

A. No, sir. He was a detective when I first knew him.

Q. When was he a police magistrate?

A. He certainly was a police magistrate two years ago last June.

Q. Tell the jury whom you heard say that they would not believe him under oath before this trial.

A. I cannot, because I have heard so many.

Q. Can you not tell one?

A. I do not think I could. I would not like to say.

Q. Can you not tell some one whom you heard say so?

A. I would not if I could, because I do not remember one now.

Q. Do you not think he could tell the truth on oath?

A. He might do so if he had no object the other way.

Q. Do you tell these gentlemen that you would not believe him testifying under oath?

A. I certainly would not take his oath if I thought he was interested.

Q. Do you tell these gentlemen you would not believe him under oath?

A. I shall answer the question to suit myself.

Q. Wait one minute; perhaps you will not; you may have to answer it as the court directs you.

A. That may be; but I shall not do any thing that will commit me.

Q. I do not want you to do so, certainly. Do you say to the jury that you would not believe him under oath?

A. If I was a juror, I would not take his oath.

Q. You say you would not believe him under oath?

A. Yes, sir.

Q. Before this trial whom did you hear say they would not believe him under oath?

A. I cannot tell you.

Q. Can you not tell any one?

A. No, sir.

Q. You do not know of any one?

A. I cannot name any. I know Mr. Lee, met him often and in various companies.

Q. Have you been at all intimate?

A. I met him every day for a good many years, at least for a year or two, when he was about in the neighborhood where I resided.

Q. You cannot give us the name of a man you heard say this of him?

A. No, sir; I cannot.

By Mr. MERRICK:

Q. I understand you to say you cannot give the name of a man, but that was generally said of him?

A. Yes, sir.

By Mr. PIERREPONT:

Q. But you cannot tell now one man that said it, can you?

A. No, sir; I do not know that I can.

T. G. CLAYTON,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. On Massachusetts avenue, between Fourth and Fifth streets.

Q. How long have you resided in this city?

A. I have resided here since 1854.

Q. What is your present business?

A. During the winter and this spring I have been connected with my son in the patent business. Prior to that time I had been acting as a justice of the peace in the second ward.

Q. How many years had you acted as a justice of the peace?

A. I was appointed on the 14th of February, 1862, by Mr. Lincoln, and have continued, with a slight intermission when my commission ran out, until the present time. I am still in commission.

Q. Do you know a person by the name of John Lee, who was a witness in this case?

A. I do.

Q. Do you know his general character for truth and veracity?

A. I knew Mr. Lee by reputation during the greater part of the time that I was in that ward, until 1865—the commencement of the year, say on the 14th of February, when my commission ran out. I only knew him then by reputation, and perhaps had seen him, but not to know him. Since then I have known him personally.

Q. What do the people generally say of him as a man of truth?

A. I have heard a good many speak unfavorably of John Lee, or Jack Lee, as they familiarly call him, during that period.

Q. What would you say his general character was, from what you have heard people say of him? What verdict do the community in which he lives pronounce upon him as a man of truth?

A. I have heard a great many say they would not believe him.

Q. From what you have heard said of him as a man of truth—not from your own knowledge of him, but from the verdict that the people among whom he lives have passed upon him as a man of truth—would you believe him on oath?

A. If I took his reputation I should say not.

Cross-examined by Mr. PIERREPONT:

Q. Tell us whom you have heard say they would not believe him under oath?

A. I do not know whether I could point out individuals, because it was a general thing in my office during the time I was presiding there.

Q. Among those numbers can you not tell us the names and residences of some four or five?

A. I might perhaps mention correctly, but I might make a mistake and give the name of a party that I would not wish to implicate, because I never expected such a thing as to be called here.

Q. But we want to know them and where they live, in order that we may see what they think about it; and if you can give us their names we shall be obliged to you. We may want to call them, and I do not know how to call them without knowing their names and places of residence.

A. I should not like to risk giving names, because I might make a mistake, although I might give some names that would be correct ones. I never supposed for a moment that such a case as this would come up.

Q. Can you give us the name of anybody whom you heard say that he would not believe Lee under oath—I mean before this trial?

A. The only one person that I remember, that I could give positively, is Mr. William Magee.

Q. Where does he live?

A. His place of business is on E street?

Q. What is his business?

A. He keeps a restaurant and bowling saloon.

Q. Do you know whether he had any difficulty with Lee?

A. I do not know that he had any difficulty with Lee personally?

Q. You did not hear of it?

A. No.

Q. Is that all?

A. I would not like to be definite, because I might give half a dozen names and perhaps be mistaken in the remembrance of the men.

By Mr. MERRICK:

Q. I understand you to say, that although you cannot give the particular names, yet such was the general talk about him?

A. Yes, sir; in my office frequently.

JOSHUA LLOYD,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. On Capitol Hill.

Q. What have you been engaged in during the past five years, or since the war?

A. During the war I was under Colonel O'Bierne, the provost marshal here, as a detective at the depot.

Q. Were you a member of that force at that time?

A. Yes, sir.

Q. Do you know John Lee, who testified in this case?

A. Yes, sir.

Q. Was he a member of that force at that time?

A. Yes, sir.

Q. Did John Lee ever state to you, just after the assassination of the President, at the Kirkwood House, in the city of Washington, that he did not know Surratt, and had never seen him? You need not answer the question unless the court tells you to do so.

Mr. PIERREPONT: Do not answer.

Mr. MERRICK. Your honor, I suppose, rules it out. Judge FISHER. The question is objected to and ruled out, because the foundation for it has not been laid.

Mr. MERRICK. We reserve an exception. (To the witness.) Do you know John Lee's general character, what people said of him in the force where he was, as a man of truth?

A. Yes, sir.

Q. Now, tell the jury what those people said about him, whether he was a truthful man or a man who would lie?

A. I do not think there was a man on the force who would believe him on his oath.

Q. From what the men on that force said about him as a man who would tell the truth or a lie, would you believe him on his oath?

A. I do not think I would.

Cross-examined by Mr. PIERREPONT.

Q. Do you not suppose he could tell the truth?

A. I suppose he could.

Q. Do you suppose that, if he was called to speak in a matter in which he had no interest to speak falsely, he would be more likely to speak falsely than truly?

A. I think he would.

Q. Then if he should come to you and make a statement of any fact, you would take it for granted it was false, would you?

A. Yes, sir; I have done so.

Q. And always did so, did you not?

A. Yes, sir.

By Mr. CARRINGTON:

Q. Were you on the same force with him?

A. Yes, sir.

Q. How long were you brother officers together?

A. I cannot exactly say; perhaps a year, perhaps more.

Q. You acted together a year or more?

A. Yes, sir; I was on the force before Mr. Lee was there.

Q. Did you then entertain the same opinion of him that you have expressed here?

A. I caught him in so many falsehoods—

Q. That is not exactly responsive to my question. I ask did you have the opinion of him then that you have now and that you have now expressed?

A. Yes, sir.

Q. Did you make complaint of him?

A. I did.

Q. To whom?

A. To Colonel O'Beirne.

Q. After you made complaint to Colonel O'Beirne, did he remove him from office?

A. No, sir.

Q. He continued him in his service notwithstanding your complaint?

A. Of course he did.

Q. Were you a witness before the military commission?

A. Yes, sir.

Q. Was Lee a witness there?

A. I believe he was.

Q. Was Lee employed by the authorities to aid in the investigation of the assassination of the President?

Mr. BRADLEY. I do not know how that can affect either the inquiry or the character.

Mr. CARRINGTON. Certainly it seems to me to be responsive. The other side are assailing his general reputation for veracity. The witness was co-operating with him, continued in service with him, and he was endorsed, notwithstanding the complaints of this witness, by Colonel O'Beirne, and was employed by the Government in one of the most important duties which could be devolved upon a public officer. (To the witness.) Now, I ask you if you and he did not act in this matter? Were you not engaged in searching out the persons who were suspected of being the assassins of the President?

A. Yes, sir.

Q. And Lee at the same time?

A. Yes, sir; in different parts of the country. We met at Bryantown.

Q. Has there ever been any difficulty between you and Lee?

A. Never in our lives.

Q. Did not Lee complain of you to Colonel O'Beirne?

A. He may have.

Q. Did he not charge you with falsehood before Colonel O'Beirne?

A. I never heard of that.

Q. Did you not know that he did make complaint against you of any kind?

A. I never heard of it.

By Mr. PIERREPONT:

Q. You have spoken of his trait of never speaking the truth when he came to you; did he prove to be a truthful man in the business he was engaged in?

A. Not that I know of.

Q. It was not necessary that you should have such a man as detective, was it?

A. It might have been, but it did not come under our notice.

Q. Was it not important as a detective to bring useful information, or was false better?

A. Truthful information was desirable.

Q. He never told any truth, did he?

A. He never told any to me that I know of.

By Mr. MERRICK:

Q. You say that you reported him to Colonel O'Beirne?

A. Yes, sir.

Q. Was he not removed by Colonel O'Beirne?

A. Yes, sir.

Q. What was he removed for?

A. Something about a horse in Maryland, I believe.

Q. What about a horse?

Mr. PIERREPONT. That will not do.

Mr. MERRICK. I am answering your cross-examination.

Mr. CARRINGTON. We said nothing about a horse.

Mr. MERRICK. You said he was not removed, and I want to show that he was removed, and why.

Mr. PIERREPONT. You cannot ask him about that here.

Mr. CARRINGTON. Unless you go into the trial of the horse case, and that is usually very exciting.

Judge FISHER. The question is not in reply to the cross-examination.

Mr. MERRICK. The question was as to Lee's removal by Colonel O'Beirne.

Mr. CARRINGTON. I showed that he had continued him in office, notwithstanding the complaint of this witness.

Judge FISHER. Now, the defense may show that he was removed by Colonel O'Beirne; but that is the end of it.

Mr. MERRICK. And for what cause. The question was, Did he remove him because of his complaint.

Mr. CARRINGTON. Not at all. I simply asked whether he had not been continued in office and trusted, notwithstanding the complaint of this witness. Now, all that would be responsive to the cross-examination would be, whether in point of fact he was removed. As for the cause, your honor will see at once that would introduce a collateral issue.

Judge FISHER. As to the cause, you had better inquire of Colonel O'Beirne.

Mr. MERRICK. Then I will send for Colonel O'Beirne.

CHARLES KEMBEL,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Washington city.

Q. How long have you lived here?

A. All my life.

Q. What is your occupation?

A. Constable.

Q. How long have you been in that office?

A. Fifteen or twenty years.

Q. Do you know a man by the name of John Lee, who has testified in this case?

A. I know him.

Q. Do you know what people say of him, as a man who tells the truth or tells lies?

A. Some people speak pretty hard about him.

Q. What is the general opinion?

Mr. CARRINGTON. Stop a moment. The first

question is, whether he has heard his general character for veracity discussed.

A. I have heard several speak of him pretty rough.

Mr. PIERREPONT. Do you mean before this trial?

A. Yes, sir.

Mr. BRADLEY. And since, too.

A. More people since than before.

Mr. CARRINGTON. You need not speak of anything you have heard since.

Mr. MERRICK. From what you have heard said of him, what is the general opinion which makes his character in the community in which he lives—his reputation before this trial as to truth and veracity?

Mr. PIERREPONT. I suppose the simple question to be whether he knows his character for truth and veracity.

Judge FISHER. The first question is, Whether he has heard his character and reputation for veracity discussed among the people who are acquainted with him.

Mr. MERRICK. Very well, I will put that question: Have you ever heard John Lee's character for truth and veracity discussed among the people among whom he lives, or who are acquainted with him?

A. I never paid any particular attention, but I have heard some people speak very hard about him. I was never very intimately acquainted with Mr. Lee until he got his appointment as magistrate.

Q. I do not ask about your personal acquaintance; I want to know what other people say of him. Suppose he was a man that you did not know any thing about, and had never seen; the question is, What do people whom you know say generally of John Lee? Does he tell the truth, or does he lie? I ask the question in regard to what you heard before this trial?

A. I have not heard it so frequently spoken of before the trial as I have since.

Q. Did you hear it spoken of before the trial?

A. I have heard some people speak hard of him before the trial.

Mr. PIERREPONT. What "some people" said is not the question.

Judge FISHER. We want to come at his general reputation.

Mr. MERRICK. (To the witness.) You say you have heard his character discussed?

A. I have heard people speak casually of John Lee.

Q. What was the general opinion, thus casually expressed, in regard to his being a man of truth or a man of falsehood?

Mr. PIERREPONT. Do not answer. This witness has not yet stated that he knows what the general opinion was. He seems only to have heard two or three people speak about it.

Judge FISHER. Answer the question.

A. Some people say he is a damned rascal—

Judge FISHER. Do not speak of what some people say, but what the general opinion is.

Mr. MERRICK. I think I can explain the question to the witness to the satisfaction of the court; if I do not, the counsel and the court will stop me. We only want to know what was generally said when the question of his truth or veracity arose.

Mr. PIERREPONT. We do not want that, and I submit that your honor has twice ruled upon it.

Mr. MERRICK. If I depart from what your honor has ruled, I do it in ignorance. I desire to follow your honor's ruling.

Mr. PIERREPONT. This witness should be asked if he does know the general reputation that this man bore for truth and veracity; and as yet he has said he does not; that is, so far as he has said any thing. He has only heard particular persons speak.

Mr. MERRICK. It is not necessary that a whole and entire community should express such an opinion. It is enough if a dozen persons, or a half-dozen, in a community, at different times, casually discussing an individual upon this subject, pronounced that opinion.

Mr. PIERREPONT. "General repute" is the law.

Mr. MERRICK. General repute is formed by what is the general opinion expressed when the subject is discussed. It is scarcely ever the case that a man without taint has his veracity questioned in a community. That being so, when the veracity is questioned in a discussion, the inquiry to know how far you can rely upon that man's oath is what is the verdict pronounced when this thing is discussed.

Mr. PIERREPONT. Have not these questions been settled a great many times over, and is not the first question Whether he knows the man's general reputation for truth and veracity? And must not that necessarily be answered before he can say any thing else?

Judge FISHER. That is the first question, and it is very easy for a witness to answer it.

Mr. MERRICK. Very well; then I will ask him again. Mr. Kembel, state to the jury if you know what was generally thought of John Lee as a man of truth and veracity.

Mr. CARRINGTON. I object to that. What was thought of him is not the question, but what was said of him.

Mr. MERRICK. Very well. What was said of him?

Mr. PIERREPONT. The first question is, Whether he knows Lee's general reputation.

Judge FISHER. That is the preliminary question.

Mr. BRADLEY. The Supreme Court of the United States, I think, three years ago, settled the form of the question.

Judge FISHER. Let us see what the decision is.

Mr. BRADLEY. With the indulgence of the court, I will go to my office and get it.

Mr. MERRICK. Then we will suspend for the present, or I can go on with Colonel O'Beirne, who I see is here.

Mr. PIERREPONT. Does this subject of the mode of examining a witness to impeach require any new discussion? Is it not an old, settled matter?

Judge FISHER. It seems to me it is so; but Mr. BRADLEY thinks there is some new light thrown upon it by a recent decision of the Supreme Court of the United States in the last two or three years, and of course we must bow in deference to that authority if there is any such decision.

Mr. PIERREPONT. Certainly, if there is any new light thrown upon it.

Mr. CARRINGTON. Your honor will observe that any detective or any executive officer is very apt to have something said against his character by persons casually. I suppose there is no officer charged with the duty of arresting parties for crime that has not had something said against him.

Judge FISHER. That argument had perhaps better be addressed to the jury than to the court. Suppose you go on in the ordinary way with this witness, and if the recent decision of the Supreme Court of the United States should be found to vary from what I conceive to be the established rule, I will conform myself to it. The first question to be put is, Are you acquainted with the general character or reputation of the witness sought to be impeached for truth and veracity in the neighborhood in which he resides, or has resided at any time?

Mr. MERRICK. Or among the people where he lives.

Judge FISHER. Yes, general reputation among those who know him.

Mr. MERRICK. I wanted that in, because policemen are sometimes nomadic.

Judge FISHER. His neighborhood is wherever he circulates. Then, if the witness answers that question in the affirmative, the next question is, What is the man's general reputation for truth and veracity?

Mr. MERRICK. (To the witness.) You hear the question now. Do you, or not, know John Lee's general reputation among the people who know him, or where he resides, as a man of truth and veracity?

A. Well, sir, when he was first appointed magistrate—

Judge FISHER. That is not it. State what you know about his reputation.

A. I am going to explain. I have heard people speak of him in that way pretty hard.

Judge FISHER. You are to answer what is the general reputation which he has in the community that know him.

Mr. PIERREPONT. The question is whether you know what that general reputation is.

Mr. MERRICK. (To the witness.) You know what general reputation means?

A. From what I have heard, I should not think it was very good.

Q. Do you know it?

A. Only from other people's say-so.

Mr. MERRICK. Of course reputation is made up of what other people say; and when you are asked, "Do you know his general reputation for truth and veracity," it is asking you in another shape. Do you know what people generally say about him?

Mr. CARRINGTON. Not what a few may have said, but what people generally say.

A. I have heard people say he was pretty hard; that is all.

Mr. PIERREPONT. Then you do not know what his general reputation is—what people generally say.

A. I cannot answer that. I do know. I only know what I have heard other people say.

Mr. MERRICK. That is general reputation. You know what other people say, do you not?

A. I do.

Q. (By Mr. PIERREPONT.) Do you know what they generally say, or what only a few say?

A. I have had people's business to do, and I have spoken about carrying their business before Lee, and they said no, they would not trust him.

Mr. PIERREPONT. That is not reputation for truth.

Judge FISHER. Oh, no; that will not do.

Q. (By Mr. MERRICK.) Have you heard people speak of him as a man of truth or falsehood?

A. I have heard people say they would not believe him.

Mr. MERRICK. Now, I submit, that will do.

Mr. PIERREPONT. No; that is not answering the question of his general reputation. You can find people who would say they would not believe anybody; but that does not make general reputation.

Mr. MERRICK. My colleague has brought in the authority to which he referred. I have not had the opportunity of looking at the opinion very carefully; but I will read what the court says on the subject, as it may serve to enlighten us on this question. I read from the decision in the case of *Teese et al. vs. Huntington et al.*, in the 23d volume of Howard's Reports:

"After the defense was closed, the plaintiffs offered evidence to impeach one of the witnesses, who had given material testimony for the defendants. When called, the impeaching witness stated that he knew the witness sought to be impeached, and knew other persons who were acquainted with the witness, and that they both resided in the city of Sacramento; whereupon the counsel of the plaintiffs put the question, 'What is the reputation of the witness for moral character?' To that question the counsel of the defendants objected, on the ground that the inquiry should be limited to the general reputation of the witness for truth and veracity, with the right to put the further inquiry, whether the witness testifying would believe the other on his oath; and the court sustained the objection and rejected the testimony.

"No reasons were assigned by the court for the ruling; and of course the only point presented is, whether the particular question propounded was properly excluded.

"Courts of justice differ very widely whether the general reputation of the witness for truth and veracity is the true and sole criterion of his credit, or whether the inquiry may not properly be extended to his entire moral character and estimation in society. They also differ as to the right to inquire of the impeaching witness whether he would believe the other on his oath. All agree, however, that the first inquiry must be restricted either to the general reputation of the witness for truth and veracity, or to his general character; and that it cannot be extended to particular facts or transactions; for the reason that, while every man is supposed to be fully prepared to meet those general inquiries, it is not likely he would be equally so without notice to answer as to particular acts.

"According to the views of Mr. Greenleaf, the inquiry in all cases should be restricted to the general reputation of the witness for

truth and veracity; and he also expresses the opinion that the weight of authority in the American courts is against allowing the question to be put to the impeaching witness, whether he would believe the other on his oath. In the last edition of his work on the law of evidence, he refers to several decided cases, which appear to support these positions; and it must be admitted that some of these decisions, as well as others that have since been made to the same effect, are enforced by reasons drawn from the analysis of the law, to which it would be difficult to give any satisfactory answer."

The learned judge from whose decision I read then quotes a large number of authorities in various courts in the United States, many of them from New York.

"On the other hand, a recent English writer on the law of evidence, of great repute, maintains that the inquiry in such cases properly involves the entire moral character of the witness whose credit is thus impeached and his estimation in society, and that the opinion of the impeaching witness, as to whether he is entitled to be believed on his oath, is also admissible to the jury." 2 Taylor Ev., secs. 1082, 1083.

"That learned writer insists that the regular mode of examining into the character of the witness sought to be impeached is to ask the witness testifying whether he knows his general reputation; and, if so, what that reputation is, and whether, from such knowledge, he would believe him upon his oath. In support of this mode of conducting the examination, he refers to several decided cases, both English and American, which appear to sustain the views of the writer."

Then reference is made to a number of decided cases in England, South Carolina, and Mississippi.

Judge FISHER. The view of Mr. Taylor is precisely the view I entertain myself, and shall continue to entertain, unless it shall be modified by a decision of the Supreme Court of the United States. The first question is as to the knowledge of the witness about to be examined in reference to the general reputation for truth and veracity of the witness who has heretofore been examined, and whose testimony is sought to be impeached. If he answers that in the affirmative, that he is acquainted with his general reputation for truth and veracity, then he is allowed to give in evidence what that general reputation is; but it must be a general reputation. It cannot be a reputation with a few individuals, for there is scarcely a man in this land of whom the tongue of defamation has not spoken. It is so as to our most distinguished men. Some people will always be found who, even in regard to Washington or Lincoln, would not believe either of them, perhaps, on his oath. I have heard the thing said of Henry Clay and Daniel Webster.

Mr. MERRICK. Your honor's remarks are very just on that subject.

Judge FISHER. It will not do to give what some people say: you must have the general reputation, the preponderant weight of reputation that is given to the individual among the people who know him.

Mr. MERRICK. Taylor's view, however, is, I think, a little bit different, if I do not misunderstand it, in this respect, that he allows the character generally to be inquired into, and does not restrict it to character for truth and veracity.

Judge FISHER. I know the English rule is somewhat different from ours.

Mr. MERRICK. There is a difference in that particular, but I think our courts are now progressing very rapidly over all the barriers of evidence towards the English rule.

Mr. BRADLEY. The rule is different in different States, but this controls us.

Mr. MERRICK. I will read further:

"Both Mr. Greenleaf and Mr. Taylor agree, however, that the impeaching witness must be able to state what is generally said of the other witness by those among whom he resides and with whom he is chiefly conversant, and in effect admit, that unless he can so speak, he is not qualified to testify upon the subject, for the reason, that it is only what is generally said of the witness by his neighbors that constitutes his general reputation."

Conforming very much to what your honor has suggested.

"To that extent they concur, and so, as a general remark, do the authorities which on the one side and the other support these respective theories; but beyond that, the views of these commentators, as well as the authorities, appear to be irreconcilable.

"In referring to this conflict of opinion among text-writers and judicial decisions, we have not done so because there is any thing presented in this record that makes it necessary to choose between them, or even renders it proper that we should attempt at the pres-

ent time to lay down any general rule upon the subject. On the contrary, our main purpose in doing so is to bring the particular question exhibited in the bill of exceptions to the test of both theories, in order to ascertain whether under either rule of practice it ought to have been allowed. Under the first mode of conducting the examination, it is admitted that it was properly rejected, and we think it was equally improper, supposing the other rule of practice to be correct. Whenever a witness is called to impeach the credit of another, he must know what is generally said of the witness whose credit is impeached by those among whom the last-named witness resides, in order that he may be able to answer the inquiry either as to his general character in the broader sense, or as to his general reputation for truth and veracity. He is not required to speak from his own knowledge of the acts and transactions from which the character or reputation of the witness has been derived, nor indeed is he allowed to do so, but he must speak from his own knowledge of what is generally said of him by those among whom he resides, and with whom he is chiefly conversant."

Mr. PIERREPONT. We all agree then?

Mr. MERRICK. I do not know that we differ, except upon terms. I find, however, that this opinion goes further than I had supposed the Supreme Court went, for although it is not decided as a question directly arising in the record, this opinion evidently indicates that the judges are inclined to adopt the English rule, and allow the inquiry to be as to the witness's general character. I did not suppose this decision went so far as that.

Judge FISHER. I think we are agreed on this point.

Mr. MERRICK. (To the witness.) Now, Mr. Kembel, can you tell whether or not you can say what is generally said with regard to Lee as a man of truth and veracity? I suppose I can put it in that way?

Judge FISHER. I do not know that that makes any difference. (To the witness.) What is his reputation for truth and veracity among those who are acquainted with him? If you can speak of that, speak; if not, not.

A. I only heard people speak badly of him.

Q. (By Mr. MERRICK.) What is generally said?

Mr. PIERREPONT. He seems not to know his general reputation.

Mr. MERRICK. The witness, I think, misunderstands me in this particular: he seems to think that I am asking whether he has heard people say what Lee's general reputation is. That is not the question. We do not ask what other people have ever said as to what his general reputation was, but we are asking whether or not this witness knows what people generally say. Do they generally say he lies, or do they generally say that he tells the truth?

Mr. PIERREPONT. If he has heard but two or three persons, or three or four, that is not general reputation. If he knows the man's general reputation, he can say so; and if he does not know it, he cannot speak of it.

The WITNESS. I have heard a great many since the trial has been going on.

Mr. MERRICK. Before this?

A. I have heard several speak of him since the trial very hard; more since the trial than before.

Q. You have heard several speak of him before this trial. Who were those you heard speak of him; persons in his own company in the police force?

Mr. PIERREPONT. Wait a minute. Let us find out first whether he knows the general reputation.

Mr. CARRINGTON. I submit that this witness has already stated enough to satisfy the court that he cannot speak of the general reputation of the witness Lee. He says since the present trial he has heard him frequently spoken of; but previous to the trial he only heard several persons speak—

Mr. MERRICK. He did not say "only;" he said "several."

Mr. CARRINGTON. I submit that according to the decision of the Supreme Court, reported in the case to which the counsel has referred, the witness cannot speak to the general reputation of the person whom he is called to impeach. Of course the witness does not know the technical meaning of the term "general reputation" without some instruction from the court.

I understand this witness to say distinctly that previous to this trial he heard several persons speak of John Lee. If so, it is not general reputation.

Mr. MERRICK. I do not know about that.

Mr. BRADLEY. I understand him to say that wherever he has heard the subject spoken of, it has been in one direction; and, although not generally spoken of, yet he has heard it spoken of in one direction. I suppose that is admissible.

Judge FISHER. There is one of three things that must be set down as certain. Every man who is known at all in any community either has a general reputation for truth and veracity, or he has a general reputation for want of truth and veracity, or else he has got no reputation at all. If he has no general reputation in that respect, it cannot be spoken about. If he has a general reputation for the want of truth and veracity, it can be spoken of; or if, on the other hand, he has a general reputation for truth and veracity, that may be spoken about; not otherwise. And it must be a general reputation—that is, a reputation which the community at large have put forth concerning him in that particular. (To the witness.) Now, you can speak of that—what the community at large, who were acquainted with him, say about him for truth and veracity.

The WITNESS. Well, sir, I heard but very few people speak of him before this trial.

Mr. PIERREPONT. That ends the inquiry.

The WITNESS. Since this trial I have heard a great many—

Mr. CARRINGTON. Stop, sir.

Judge FISHER. If you heard very few people speak of him before the trial, you cannot speak as to his reputation generally among the community.

Mr. MERRICK. Now, I propose to ask if the witness knows what is generally said of Lee since this trial commenced.

Mr. CARRINGTON. We object to that, of course.

Mr. MERRICK. I submit this consideration only, and shall not take up the time of the court in arguing it. A man living in a community may have a general reputation for truth because it is never questioned. He really has no reputation one way or the other, and wherever he has no reputation one way or the other it is a reputation generally for truth, because a man must be a bad man before the community begin to question him, unless he be some public character like those to whom your honor has referred, and in those cases, because of bitterness of feeling on account of party relations, expressions of hostility and comment were evoked which the parties making them did not really feel, but made to produce results. A private individual never has his reputation assailed for truth and veracity in a community until it is really gone. He may not have it assailed at all until some event occurs that causes it to be discussed. When that event occurs, it is discussed, not in connection necessarily with that event, and the event which produces the discussion does not found the basis of the opinion which is entertained; but the event simply evokes the opinion previously formed, but not previously expressed. A man must have some occasion to speak of an individual, or else he will say nothing. The occasion arises in a trial, if you choose. An individual is examined in that trial, and that gives rise to a discussion. That discussion is not founded simply on what he says in the trial; the opinions expressed are not founded on what the witness has testified to at the trial; but the discussion goes back and investigates his previous character, and the opinion is founded on what was previously thought of him, and the whole community may be surprised by a sudden expression of an opinion, entertained by all, but previously silent as to the witness. Such may be the case here. Now, I ask this witness if he knows what is said of John Lee since this trial, and then we may go on to investigate whether the opinion thus expressed was founded exclusively on what was said in the trial, or whether it was an opinion that had relation back,

and people said they always knew that he was not a man of truth.

Mr. PIERREPONT. I wish to say a word—

Judge FISHER. I do not want to hear any argument on the subject. Whilst I preside in this court I do not intend to allow any man's character to be damned or sanctified simply by the rumors or talk that may be had in relation to any testimony he may have given in any particular case. It will not do to tear down the barriers of justice, and there would be no truth or justice arrived at in any case by such a course. That is my opinion, and I shall entertain it until I am overruled by some paramount authority. There is no use in discussing it further.

Mr. MERRICK. I only wanted to present our views on the subject, and I take an exception to your honor's ruling. Now, I will ask of the witness this question: Did John Lee say to you at the office of Edgar Bates, in this city, within a year past and before Surratt was brought here, that he did not know Surratt, and had never seen him?

Mr. CARRINGTON and Mr. PIERREPONT. We object.

Judge FISHER. That same question was put to another witness and ruled out because no foundation had been laid for it.

Mr. MERRICK. We except to your honor's ruling. We have no other question to ask Mr. Kembel.

Mr. PIERREPONT. We have none.

#### FREDERICK CALVERT,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. 115 Pennsylvania avenue, in this city.

Q. How long have you lived here?

A. I have lived in Washington all my life.

Q. Where are you employed now?

A. In the War Department—the Adjutant General's office.

Q. How were you engaged during the war?

A. In the forefront of the war I was in the service; after leaving the service, I was employed as quartermaster for the engineer department at Fort Ethan Allen.

Q. Do you know a man by the name of John Lee, who has testified in this case?

A. I do.

Q. Do you know what his general character is among those who know him for truth and veracity?

A. As far as I know—

Mr. PIERREPONT. Wait. The question is whether you know his general reputation.

Mr. BRADLEY. Among those with whom he associated.

Mr. PIERREPONT. Not whether you know yourself.

Mr. MERRICK. Let me ask another question first. Was Mr. Lee employed under O'Beirne?

A. He was.

Q. Were you in that occupation also?

A. I was.

Q. Now, state whether you know what Lee's general reputation among the men that he associated with was for being a man of truth or being a man of falsehood.

A. Yes, sir; I know it.

Q. Now, be so good as to state what that general reputation was.

A. He seemed to be doubted in almost every thing he did up there. His reputation was generally bad among the men.

Q. Would you believe him on his oath, from his reputation, not from what you know yourself?

Mr. CARRINGTON. I object, unless your honor has decided that question.

Judge FISHER. What is the question?

Mr. CARRINGTON. Whether the witness can ex-

press the opinion that he would not believe the person whom he is called to impeach on oath. Is not that a question for the jury?

Judge FISHER. The ruling to which I have always been accustomed is to allow this to be asked: Whether, from the reputation and character of the witness for veracity, you would believe him upon his oath?

Mr. CARRINGTON. I am familiar with your honor's ruling on that subject. I remember making the point before your honor on a previous occasion and you decided against me, stating that it was competent, if the witness knew the general reputation of the person he was called to impeach and had heard it assailed, to express his opinion whether he would believe him under oath. I made the point that that was transferring the witness from the witness-stand to the jury-box, because it was for the jury to see whether they would believe the witness on oath in view of all the facts. Now, it seems to me that in the very case to which the gentleman has called attention, the Supreme Court of the United States, if they have not expressed, have intimated that opinion.

Mr. MERRICK. If you will take what that court has intimated, I will agree to it. I will be very glad to take the intimation there.

Mr. CARRINGTON. It strikes me that upon principle that is the correct view of it. It seems to me that upon authority at least it is a question worthy of the consideration, because according to the analogies of the law—

Judge FISHER. The fact which you wish to arrive at and which you wish the jury to know is, whether this man has possessed such a reputation among the community where he lives as that people would generally believe him on his oath; and you can only do it by witnesses.

Mr. CARRINGTON. Your honor will pardon me. The point I make is this: It is for the jury to say whether they believe the witness Lee upon oath; and, in order to decide that question, they must determine upon the testimony of the witnesses who have been examined to that point. Whether the jury, in forming their opinion, can be enlightened by the opinion of the impeaching witnesses, is the question. I submit that it is contrary to the general rule of evidence that a witness should express his opinion upon any subject. The exceptions to the rule are as well established as the rule itself. An expert may express his opinion upon subjects with which he is familiar; and a witness, it has been held, may express his opinion whether a person is insane or not, having testified to facts within his own personal knowledge; but whether it is proper, whether it is an exception to the general rule of evidence, that a witness who is called to impeach another may not only state to the jury facts tending to impeach his testimony before the jury, but his own opinion as to whether that witness is worthy of credit or not, your honor will see is a matter worthy of very grave consideration. Surely, when we undertake to assail the reputation of a witness for truth and veracity, when the avowed purpose is to make the impression on the mind of the jury that he has sworn falsely in regard to a question of life or liberty, it seems to me that we should adhere strictly to the rules of evidence. Where is the reason for allowing an exception to the general rule? If a witness cannot be permitted to express an opinion for the purpose of depriving a man of his life or his liberty or of his money, where a question of dollars and cents is concerned, why should a witness be allowed to express his opinion in regard to the character of another witness in regard to his moral qualities, which are the most important and of which all men raised in a christian community are most sensitive! If this jury, from all the facts, should say that they do not believe John Lee upon oath, it is their province to do so; but I submit that neither this gentleman nor any other witness, whatever his standing in this community, should be allowed to express to the

jury an opinion formed upon general reputation as to the veracity of any man who has been forced to come here to testify in behalf of the Government. What man's character is safe, if not a jury, but any witness, whatever his feelings may be towards the person that he is called to assail, is allowed not only to give facts within his own personal knowledge as to general reputation, but, having given those facts, is not required merely to submit them to the jury for their calm and impartial investigation, but is permitted to say "I would not believe the witness upon oath." His opinion is permitted to go before the jury and the public for the purpose of assailing the reputation of a witness in regard to a moral quality which every man holds dear as life itself. I submit it to your honor upon general principles.

Judge FISHER. It has been the established rule, so far as my practice has been concerned always, and I do not see where it differs at all from what is every day done in civil as well as in criminal cases. Take the case, for instance, of an issue of *devisavit vel non*. A will is called in question on the ground of the insanity of the alleged testator. Witnesses are called up who knew the man, were intimate friends of his, who knew all about him, who saw him every day. They are asked for their opinions. The jury take those opinions, but after all the jury have got to form their own opinion after they have heard the opinions of the witnesses. So it is in the case of an expert. A man is called upon to testify in regard to the good or bad qualities of a piece of machinery; he is intimately acquainted with the nature of that machinery; he knows all about it; he knows how it works—how it operates. He is asked his opinion; but after all the matter is left to the jury to decide—to make up their own opinion about it. There may be opinions both ways. Proceed with the examination.

Mr. MERRICK. (To the witness.) Mr. Calvert, state to the jury whether or not, from what you know of Lee's general reputation, from what people say who know him, you would believe him on oath.

A. No, sir; not if my life was at stake.

Cross-examined by Mr. PIERREPONT:

Q. You would not believe any man that was taking your life on his oath?

A. A man with a better reputation than him I would.

Q. On your own life?

A. Yes, sir.

Q. Do you know the Secretary of War?

A. I am not personally acquainted with him.

Q. You know him by sight?

A. I do.

Q. Did Lee know him by sight?

A. I cannot say; I suppose he did.

Q. Tell us some officer in Washington that Lee did know by sight?

A. Colonel O'Beirne.

Q. We will take him, then: if you had gone to Colonel O'Beirne's office to see him and were looking for him with some earnest message, and Mr. Lee should come in and tell you he had just seen him going into the President's House, would you believe it?

A. That would depend altogether on circumstances.

Q. Take just the circumstances I am narrating?

A. If I was tried in that case, I might decide. I cannot tell positively now whether I would or would not.

Q. What do you tell this jury is your honest opinion: if you were going over to Colonel O'Beirne's office from your bureau to deliver a message, and you were in earnest pursuit of Colonel O'Beirne to deliver it immediately, and you were inquiring for him, and Mr. Lee should say, "I have just passed the President's House and saw him go in there," would you believe it?

A. If I could not satisfy myself otherwise I might believe it.

Q. Would you go to the President's House to see?

A. If I could not find him anywhere else I would go there and try.

Q. Would you go somewhere else or there first?

A. I cannot say. If I thought the man was about the building, I might look all over the building first.

Q. My case is this: you are looking for Colonel O'Beirne in his office to deliver an earnest message; now, I want to have you tell this jury whether, if Lee should come in there and say, "I have seen Colonel O'Beirne go into the President's House," you would go to the President's House to find him or not?

A. Certainly, if he was not about the office.

Q. Then you would believe what Lee said, would you not?

A. Of course, in that case.

By Mr. CARRINGTON.

Q. You have expressed the opinion that you would not believe Mr. Lee on oath. Is your opinion of him such that you would not believe his sworn statement in a matter where he had no earthly interest to misrepresent the truth?

A. Not if there was prejudice; if I thought there was prejudice, I would not.

Q. Suppose there was no prejudice?

A. It is hard for me to state.

Q. Do you believe, from your opinion of Mr. Lee, since you have given your opinion, that he is such a hardened villain that he would come into this court, and, before the judge and jury, swear to what he knew to be untrue, to take away the life of a man?

Mr. MERRICK. I object to the question.

Mr. CARRINGTON. Your honor will say whether it is not strictly responsive.

Judge FISHER. I think it is; you may put the question.

Mr. CARRINGTON. (To the witness.) You believe he would come into this court, and, before this judge and jury, for the purpose of taking away the life of a man who had never harmed him and against whom he could have no prejudice, swear to what was not true? Do you say you would not believe him under oath under such circumstances?

A. Not from his general reputation.

Q. You say you would not under those circumstances.

A. Not from his general reputation.

Q. Suppose that, under the circumstances which I have supposed, he should swear to one fact in which he was confirmed by twelve other witnesses, do you say that from general reputation you would not believe him?

Mr. MERRICK. I object to that.

Judge FISHER. That is another question.

Mr. MERRICK. Mr. CARRINGTON thinks he has got to the jury.

Judge FISHER. The question is whether he believes this man, not whether he believes other men.

Mr. CARRINGTON. He has said to the jury that he believes Lee would come in here and swear to a lie for the purpose of taking away the life of a man against whom he had no prejudice.

Mr. MERRICK. He has not said that; he has said that from what he knows of Lee's general character, if he was swearing where a man's life was involved he would not believe him.

Mr. CARRINGTON. (To the witness.) Since you have expressed so strong an opinion, I will ask you how often you have heard Lee's reputation for truth discussed?

A. Well, I heard his reputation discussed nearly every day during the drafting.

Q. By whom?

A. I cannot name particular parties, but by men who belonged to the force.

Q. Can you name any of them?

A. I have heard him talked off by Lloyd, I think.

Q. The same one who was a witness here this morning?

A. I do not know who was a witness here.

Q. Do you mean Joshua Lloyd?

A. Yes, sir.  
 Q. Who else?  
 A. Gavacan, I think, is another.  
 Q. Who else?  
 A. I cannot enumerate all of them. I have given the matter such little thought since the time the office broke up, that I have not kept the thing in my mind.  
 Q. I should think from the opinion you have expressed you have given it a good deal of attention.  
 Mr. BRADLEY. Is that proper?  
 Judge FISHER. Oh, no.  
 Q. (By Mr. CARRINGTON.) Now, go on and state any others whom you recollect having discussed Lee's character.  
 A. I think Michael O'Callaghan was another.  
 Q. Who else?  
 A. That is all I can remember now.  
 Q. These three are all you can remember; how often have you heard these three speak of his reputation for truth?  
 A. I cannot say how often positively.  
 Q. Give me some idea of it, for it is a serious matter.  
 A. I have heard them on several occasions.  
 Q. What do you mean by "several occasions?"  
 A. Probably half a dozen different times.  
 Q. Not more than half a dozen different times?  
 A. It might have been more.  
 Q. Where was it?  
 A. At the office of the provost marshal.  
 Q. Anywhere else?  
 A. That is all; I had no business anywhere else, and never came in contact with him on any other occasion.  
 Q. Can you state exactly what they said?  
 A. No, sir; I cannot.  
 Q. You have heard him discussed by these three men on six different occasions, and you cannot recollect what they said, and upon that evidence you base the opinion which you have expressed to the jury?  
 Mr. MERRICK. He does not say so.  
 Mr. BRADLEY. He says he has heard others that he does not recollect now.  
 Mr. CARRINGTON. Let the witness answer for himself.  
 Mr. MERRICK. But you must not put words in his mouth.  
 Judge FISHER. I understood the witness to say—I may have been mistaken—that he had heard a number of persons speak on the subject, but those three are all he can remember.  
 Mr. CARRINGTON. (To the witness.) Very well, you cannot recollect any others. Can you state to the jury the substance of what was said by the other persons whose names you do not recollect?  
 A. No, sir, I cannot positively.  
 Q. Then I understand you to say that you are not able to state to this jury what they said in reference to this man's reputation for truth, and yet you express this opinion to the jury. Now, how long was this man in service?  
 The WITNESS. At the provost marshal's?  
 Mr. CARRINGTON. Yes, sir.  
 A. I do not remember the date Colonel O'Beirne took charge there, but he came there, I think, a little after Colonel O'Beirne, and was there till the office broke up.  
 Q. How long were you in service at the provost marshal's office?  
 A. I went there under Captain Putnam, just prior to Colonel O'Beirne's coming there.  
 Q. Did you have any difficulty with Lee?  
 A. No, sir.  
 Q. Did these parties have any difficulty with him?  
 A. Not that I know of.  
 Q. Did you not know of their making complaints against him?  
 A. Not either of those I have mentioned.

Q. At the time you heard these persons speak ill of Lee, did you not hear by some of them something said derogatory to the character of the others?

Mr. MERRICK. I object to the question.

Mr. CARRINGTON. Surely, upon every principle, I have a right to all that was said at the time.

Judge FISHER. All that was said touching the character of the witness impeached.

Mr. CARRINGTON. Suppose at the time it was a part of the conversation, a general conversation; that these men were quarreling, contending with Lee; that it was a case of crimination and recrimination: may I not show that?

Judge FISHER. You may prove whether it was a case of crimination and recrimination.

Q. (By Mr. CARRINGTON.) At the time you heard these men who were connected with the same force with Lee speak of him, did you not hear them contending with each other, and were they not complaining of some official act of Lee? Was there not crimination and recrimination between those parties?

A. Not that I can remember.

Q. Try and refresh your memory. You know Joshua Lloyd, do you not?

A. Yes, sir.

Q. Was there any contest between him and Lee at that time, and spoken of at that time between the parties?

A. Not in my hearing that I know of.

Q. I do not think you have answered my question as to how long Lee was kept in the service?

A. I do not know whether he went there immediately on Colonel O'Beirne's taking charge of the office or soon after.

Q. How long was he there—a year, or six months, or two years?

A. It was between six months and a year, I guess. I cannot state positively.

Q. Was he not connected with the service after the assassination of the President?

A. He was.

Q. Did he not aid in gathering evidence against the alleged conspirators?

A. He did.

Q. Did you co-operate with him at that time?

A. I was on duty at the Kirkwood House, taking evidence of parties who were arrested and brought there. I wrote the statements down. I wrote his statement also.

Q. You saw him then at the Kirkwood House. That was Mr. Lee's field of labor particularly, was it not?

A. No more than any person else. Colonel O'Beirne was there on duty, and the whole force was ordered to report there.

Q. You were at the Kirkwood House?

A. Yes, sir.

Q. In what capacity were you employed at that time?

A. I was employed as a clerk, taking statements.

Q. What was Lee doing?

A. Lee was there as a detective, and he was ordered by Colonel O'Beirne to go into a room where I was to make a statement connected with the case.

Mr. BRADLEY. He was there in his office as detective. That is sufficient.

Mr. CARRINGTON. The question I ask is, whether you were there as a clerk?

A. Yes, sir.

Q. Were you acting together?

A. Merely in taking statements.

Q. Did you take the statements he gave you?

A. I did.

Q. Did you question the integrity of the statements he made to you at that time?

A. I had no right to.

Q. Did you doubt the integrity of the statements he then made to you?

A. I cannot say.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 72.

WASHINGTON, FRIDAY, AUGUST 9, 1867.

PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 71.*

Q. Why can you not say? You can state whether you did or not.

A. I cannot state that I doubted at all.

Q. Did you not find the information he gave you to be correct?

A. Only from what I have seen in the newspapers afterwards.

Mr. BRADLEY. I submit whether this is proper cross-examination, to go into particulars, find whether the party did not at one time or another state the truth, and did not ascertain it, and whether this witness acted upon it, and so on. General reputation is what the witness is called to speak about, and not his individual knowledge. I understand that Mr. Calvert has confined himself to the fact of general reputation, and not gone into his individual knowledge, and your honor has already ruled that it is that by which he is to be governed; not whether he knows personally of the acts and declarations of the party, but what is generally said of him. Now, is it competent for them to go on and show individual instances in which he may have relied upon him or take his statements or any thing else? When he says that he would not believe him upon oath, the question is simply upon what does he found that. It must be upon general reputation; you have excluded his personal knowledge altogether.

Mr. CARRINGTON. When we force a witness to come here and testify, and an attempt is made to assail his general reputation for veracity, I know your honor too well to suppose that any apology is necessary if we do all in our power to protect his character. This witness has not only stated the general reputation of Lee for veracity, but he has boldly expressed the opinion before this jury that he would not believe him on oath.

Mr. BRADLEY. We limited it to general reputation expressly in terms.

Mr. CARRINGTON. And upon cross-examination it turns out that the opinion which he expressed is based upon a general reputation, derived how? From conversations which he cannot recollect, and the substance of which he cannot now give before this jury. When a witness undertakes to express an opinion so defamatory to the character of a man who has been brought into court to testify, it is my solemn duty to test that opinion, and to see to what credit this witness is entitled with the jury. Then, have I not a right to ask how can you express this opinion before the jury, in view of the fact that, having been detailed to co-operate with him in a matter of the greatest importance to the public, and exciting the public attention, you trusted him, you acted upon the information which he gave you; in making your reports to the Government you did not question the integrity of his statements, and since then, although this matter has been fully investigated by the military commission, and Lee there appeared to give his testimony, you did not question

the integrity of his statements. Now, for the first time, this man who co-operated with Lee, who trusted him, who never dared to question the integrity of his statements or the honesty of his conduct, when as an honest man he should have done it if he entertained this opinion of him—now, when he is here before this jury, after this case has commenced, he for the first time expresses his opinion. We have a right to test the integrity of the opinion expressed by this witness, and to ask all that may have occurred between him and Lee during their official connection.

Judge FISHER. You may ask him whether he has not entertained a different opinion at some time; whether he has not acted upon information that this man has given to him, believing it to be true at that time.

Mr. CARRINGTON. And not only what he has expressed, but may not the jury determine that from his conduct?

Mr. BRADLEY. Will your honor pardon me for saying that the gentleman has already asked the question, and it has been answered. He says he was merely clerk to record, not to act upon what was said to him. He did not act upon it. He has answered twice.

Mr. CARRINGTON. Certainly this is a competent question, and your honor will see the bearing of the question to which objection was made. (To the witness.) Did you not act as an officer of the law, and did you not associate with him constantly?

A. No, sir; I did not.

Q. Did you not act with him at the Kirkwood House?

A. I went there under Colonel O'Beirne, and was clerk to Colonel O'Beirne. I was placed there to take any statement that he might bring before me, to put it on paper. I was not an officer in the detective force.

Q. And you did take his statements?

A. Yes, sir.

Q. Did you go and make a personal examination, to see whether the returns he made to you were correct or not?

A. I did not.

Mr. MERRICK. I object to this; it was not his duty to go and make it, and he had no right to go and make it.

Judge FISHER. He has answered.

Mr. CARRINGTON. (To the witness.) Do you know the prisoner?

A. No, sir; I never saw him until I came into court.

By Mr. BRADLEY:

Q. You were summoned about twelve o'clock to-day?

A. Yes, sir.

By Mr. PIERREPONT:

Q. How came you to come here as a witness?

A. I was at my office to-day, and received a summons there.

Q. Was that the first time you heard of it?

A. Yes, sir.

Q. Had anybody ever told you any thing about it?

A. No, sir; not a word that I was summoned, or any thing of the kind

Q. You never spoke of it to anybody, and nobody did to you?

A. No, sir.

Q. You had never written it to anybody?

A. No, sir, I did not.

Mr. MERRICK. I can tell my brothers on the other side how I came to summon this man.

Mr. PIERREPONT. I am not asking the counsel to testify; I am simply examining the witness.

Mr. MERRICK. I thought you wanted to know.

Mr. PIERREPONT. When I want you as a witness I shall have you summoned.

Mr. MERRICK. I am much obliged to you.

JAMES R. O'BEIRNE,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Washington.

Q. You are now register of wills?

A. Yes, sir.

Q. State what you were engaged in during the war?

A. I was an officer in the army until January, 1865.

Q. I believe you now hold the commission of brevet brigadier general?

A. I have been so informed, but the official notice has not yet reached me.

Q. Were you provost marshal here, or connected with that office?

A. I was provost marshal of the District of Columbia. I had charge of the enrolment here for about six months from January, 1865, but I shall not be positive as to the dates. I could tell by reference to my records.

Q. Do you know John Lee, who has testified in this case?

A. I do.

Q. Was he under your command at any time?

A. Yes, sir. He was my chief detective from the time I took charge of the office until some few months previous to my closing up the office.

Q. Were you engaged in endeavoring to find the assassins of President Lincoln?

A. Yes, sir; I was directed by Mr. Stanton to employ myself and my detective force in the pursuit of the assassins.

Q. State whether or not you discharged John Lee from your service?

Mr. CARRINGTON. Stop, if you please.

Mr. MERRICK. I want to bring out the horse.

Mr. CARRINGTON. We object to it.

Mr. MERRICK. The question was raised on the other side upon cross-examination. I having interrogated Mr. Lloyd in regard to the reputation for truth and veracity of John Lee, on cross-examination Mr. CARRINGTON asked him if he had not complained to Colonel O'Beirne, and whether Colonel O'Beirne had not, notwithstanding that complaint, still retained him in his service. I want to show by Colonel O'Beirne that he discharged him from his service and why he was discharged.

Judge FISHER. You had better confine your testimony to the question of character.

Q. (By Mr. MERRICK.) When did Lee leave your service?

A. I do not remember the date exactly. It was some few months prior to my closing the office.

Q. Did he resign?

Mr. CARRINGTON. Stop, if you please.

Mr. MERRICK. May I ask the question?

Judge FISHER. I do not suppose there will be any objection to it.

Mr. CARRINGTON. It seems to me it is objectionable. Whether he resigned or how he left is not material to this case.

Judge FISHER. It may be. I do not know.

The WITNESS. He was discharged from the service of the Government by me.

Q. (By Mr. MERRICK.) For what?

Mr. PIERREPONT. There is no such issue up here. Judge FISHER. Confine the question to his character.

Q. (By Mr. MERRICK.) Do you know what his reputation was as a man of truth or falsehood among the men with whom he associated and among whom he was known?

A. Yes, sir.

Q. State whether that general reputation among the men among whom he was known was good or bad as to his being a man of truth and veracity.

A. Bad.

No cross-examination.

SAMUEL K. BROWN,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Washington, at the corner of Twentieth street and Pennsylvania avenue.

Q. Were you connected with Colonel O'Beirne's command?

A. Yes, sir.

Q. In what position?

A. As deputy to Colonel O'Beirne.

Q. Do you know John Lee, who has testified here in this case?

A. Yes, sir.

Q. Was he connected with that command?

A. Yes, sir.

Q. Do you know what his general reputation for truth and veracity among the men with whom he associated was?

A. Yes, sir.

Q. Was it good or bad?

A. Bad.

Q. From what you know of his general reputation for truth and veracity, would you believe him on oath?

A. With many grains of allowance.

No cross-examination.

Mr. MERRICK. May it please your honor, we now offer in evidence the record of the trial and conviction of the witness William E. Cleaver. We have not got a copy of it. Mr. Middleton can bring in the record.

Mr. CARRINGTON. We object to the admissibility of that. As I understand the rule of evidence, where a person has been convicted and sentenced for an infamous crime, then, upon the production of the record and upon testimony identifying the party, he is not permitted to testify; but where he has been tried simply, and not sentenced, particularly where a new trial has been granted, certainly these facts are not admissible in evidence for any purpose. All that could be done was upon cross-examination to ask the witness whether he had been tried for a certain offense. It is collateral, and they are bound by his answer; and he has the privilege, under the instruction of the court, of answering or declining to answer, if the court sees that it may tend to degrade him and the witness declines to answer upon that ground. But for what purpose should they give in evidence a record showing that a party had been tried for an offense for which he had never been sentenced. He stands just as any party. The most innocent man may be indicted; the most innocent man may be tried; and he is not a guilty man in legal contemplation until the sentence of the court has been pronounced upon him. And if the object is to affect his competency before the jury, I submit that the only way in which that can be done is upon cross-examination, asking him that as you would any other collateral question.

Mr. MERRICK. I do not propose to affect his competency. The object is to affect his credibility, not his

competency; and I will say to your honor now, that as my distinguished senior associate has been suffering very much all day, unless it is trespassing too much upon the determination of your honor and the wish of the jury, I should like that your honor would adjourn the court. Still, if there is any objection to that, I will go on. My learned brother is sick, and although he is disposed to go on and wishes to go on, I see that he needs repose; he is suffering very much.

Mr. CARRINGTON. Certainly, if Mr. BRADLEY is sick we will not urge proceeding.

Mr. BRADLEY. I would rather go on with the case, and get through with it.

Mr. PIERREPONT. We shall at no time have any disposition to press the gentlemen unduly.

Judge FISHER. We shall not push the case when one of the counsel is sick, as Mr. BRADLEY evidently seems to be to-day.

Mr. PIERREPONT. I suppose we may as well dispose of this question of the record.

Mr. MERRICK. We will look into the authorities by to-morrow morning.

Mr. PIERREPONT. I suggest that the only purpose of putting any such record in is in order to prevent the witness from testifying, and it cannot be produced after he has testified. Besides, the record, if produced, would show on its face that it had been reversed. It cannot be produced for the purpose of showing that he is not of good character, because he showed all about that on the stand; he was fully examined on that subject.

Mr. MERRICK. I will look into the authorities to-night, if the question goes over until to-morrow. It will not need any time for debate in the morning. I do not offer it as to his competency.

Mr. PIERREPONT. I think it cannot be offered at all.

Mr. MERRICK. I am aware that on the first point it is a question whether it can go to his competency or not, but as to the credibility, I think it can go. In the first place, I shall offer the indictment and his conviction. Then the gentlemen may rebut it by whatever else the record may show.

Mr. PIERREPONT. You cannot offer part of a record; but our point is that it cannot be offered at all.

Judge FISHER. We will now take a recess.

The court took a recess until to-morrow morning at ten o'clock.

#### Twenty-Sixth Day.

WEDNESDAY, July 10, 1867.

The court re-assembled at ten o'clock a. m.

THOMAS J. RAYBOLD,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. No. 6 North Howard street, Baltimore.

Q. In the month of April, 1865, were you in any manner connected with Ford's Theatre in the city of Washington?

A. I was.

Q. Were you there on the 14th of April, the day of the assassination of the President?

A. I was there on that day.

Q. What was your position in that theatre?

A. I had charge of the front of the house; did all the out-door business for the house; bought every thing; ordered all repairs to be done.

Q. Was it also a part of your duty to fit up the boxes for the President or private parties?

A. Either to do it myself or have it done.

Q. Do you remember, on that day, at what time information was received of the President's intended visit that night?

A. Yes, sir, very distinctly. It was in the morning, about ten o'clock. I was in the act of giving the ticket

to the messenger myself, when Mr. James R. Ford came into the office, and he gave him the ticket. I was in the act of doing so myself, knowing it was customary.

Q. Was there not any rehearsal that day?

A. There was.

Q. Do you know at what time it began and how long it continued?

A. I think it began about eleven o'clock. Eleven was the hour of the call of the rehearsal. I think it began at eleven o'clock, or a few minutes before it. The way I know is, that I went to the *Star* office to put an advertisement in of the coming of the President, General Grant, and party that night.

Q. How long were you absent?

A. I was absent about fifteen minutes—time enough to walk to the *Star* office and back.

Q. And then you returned?

A. I returned right to the theatre, to the office; it was my duty to be there.

Q. Was the rehearsal going on then?

A. It had just commenced when I returned.

Q. Now, state whether the doors leading from the vestibule into the theatre were open or closed, secured or not.

A. There is one door leading from the vestibule into the theatre, the main door; that door was locked after I opened the office in the morning. I first gave the keys in the morning to a colored woman; or rather she got the keys from Mr. Gifford in the morning. I think that morning she got the keys from Mr. Gifford and cleaned the place up.

Mr. PIERREPONT. Did she get the keys from you that morning or from Mr. Gifford?

A. From Mr. Gifford.

Mr. PIERREPONT. Do not state what she got from Mr. Gifford unless you saw it.

Mr. BRADLEY. Go on and state whether you got the keys, and from whom and when?

A. I locked the door when she was done cleaning, which was about nine o'clock, when I opened the office, and placed the key in the drawer where it was generally kept in the office—in a money-drawer in the office. After I had locked the door it remained there; no one was in the office but myself until I returned from the *Star* office. About some half hour after that Mr. Lutz, Miss Laura Keene's husband, came to go in. They were then at rehearsal, and I let him in, as is customary.

Mr. PIERREPONT. Do not state the custom, but what you did that day.

A. Mr. Lutz came there to have entrance to the theatre, and I took the key from the drawer, let him pass in, locked it, and went back to the office again with the key. The door was then locked again. It was open, I suppose, two or three minutes' time for him to pass in and out and for me to lock it again.

Mr. BRADLEY. After that it was locked, and you kept the key?

A. I put the key back in the office. I stood in the door with the key in my hand some time, talking with a gentleman who was then there with me, and afterwards put it back in the place.

Q. What other mode of access was there to the auditorium of the theatre except through that door?

A. None, except through a stage-door, coming in off the stage. There are four doors, but those doors are all locked on the inside, and there was no way to open them from the outside. They are large doors; they are not very handy to open and close, have no handles to them, and just close with a lock.

Q. You say that you had charge of all the front part of the theatre. Explain what you mean by the front part.

A. The auditorium is the front part of the house.

Q. Do you mean all except the stage?

A. Except the stage. I had nothing to do with that, unless if there was something wanted to be bought for it, for the purpose of being used there, I was called upon to get it.

Q. The private boxes, as I understand, were under your charge?

A. They were.

Q. Do you know any thing about the locks or catches of boxes seven and eight being out of order?

A. Yes, sir, I do; and so of four and six.

Q. State to the jury what you know on the subject of those locks, and how you know; when they got out of order, and when they were out of order.

A. It was sometime in the month of March, I think; I disremember whether it was the month of March exactly, but it was during Mrs. Bowers's engagement—some few weeks before the occasion of the assassination of the President. Mr. Merrick, of the National Hotel, while I was at dinner, asked me to secure some seats for him at the theatre, which I did. He failed to come in time—before the falling of the curtain at the end of the first act. It is generally customary in theatres, if the person does not claim a place which has been reserved—

Mr. PIERREPONT. Never mind the custom.

A. I cannot get at it, to explain the matter, otherwise.

Mr. PIERREPONT. If you cannot get at it in a legal way, you cannot get at it at all.

Judge FISHER. You can tell how the locks got out of order.

Mr. BRADLEY. It is not material to the issue.

The WITNESS. I placed Mr. Merrick in box eight, or went to box eight to place him in it, and it was locked. The usher had the key, and he was out of the theatre. I put my back against the wall and my feet against the lock, and burst the keeper off, and Mr. Merrick and his company passed in.

Q. Now, how was it about the lock of box seven?

A. Lock seven had been broken off previous to that. I cannot say when; I cannot give the time when it was done; but it was done previous to that.

Q. Can you state whether the screw of the keeper of lock seven had been forced or unscrewed?

A. It had been forced.

Q. State your reasons for saying that it had been forced.

A. Because the screws could be pushed backward and forward in again, and would not hold in the woodwork of the door. There was not sufficient hold.

Q. And that had been out of order some time before the lock of box eight was broken?

A. Yes, sir.

Q. Do you recollect whether you went out in front of the theatre during that night at any time?

A. Oh, yes; several times.

Q. Between the second and third acts, or during the first scene of the third act, do you remember whether you were out there or not?

A. I was not; I was in the office selling tickets.

Q. Do you know any thing of your own knowledge of the placing of the rocking-chair in the box occupied by the President that night? Did you have any thing to do with it? I do not ask what anybody told you, but your own knowledge.

A. I ordered a black man we had in the theatre to go to a room and get the rocking-chair and put it in the box. It was my custom to do so.

Mr. PIERREPONT. Do not tell about the custom.

The WITNESS. Well, sir, I did on that day.

Mr. BRADLEY. And you know that it was placed in the box?

A. I cannot say that he placed it there. I did not follow him up, but I told him to do so. Whether he did so or not, I cannot say. It was put there, however; I saw it there myself.

Q. That was what I wanted to know, whether you saw the chair in the box.

A. Yes, sir; I saw the chair sitting in the corner.

Q. State to the jury why the chair was placed in that position.

A. The part of the box where the chair was placed

was very narrow; it is what is called box seven. When the partition is in, it makes box seven quite small. The partition being out, seven and eight make one box—what was called the President's box. The rocking-chair was always placed in the position it was, because the rockers were very long, and the box was so narrow that there was no other place for it. There was a sofa in the box, and a small arm-chair, a rocking-chair, and four or six cane-seat chairs. That was the reason why the rocking-chair was placed behind that door. It was put in a kind of recess.

Q. When did you first examine the condition of that box, or those two boxes thrown into one, after the assassination?

A. After I had been on the stand at the trial.

Q. You did not examine it the next day or a few days afterwards?

A. No, sir. I was sent there by the court to examine it, in company with other gentlemen.

Q. Did you ever see the prisoner at the bar before?

A. Not to my knowledge.

Q. We understand that there was an outer door leading into a small passage, and in that passage were two doors leading to boxes seven and eight?

A. Yes, sir.

Q. Did that outer door have any fastening on it?

A. It never had any lock on it.

Q. Do you remember whether it had any latch, or any thing to catch?

A. It had no catch.

Q. Was it moved by a spring or not?

A. No, sir. It was merely a plain door, hung upon hinges.

Cross-examined by Mr. PIERREPONT:

Q. You think the fastening of that lock was not unscrewed?

A. I know it was not unscrewed.

Q. Do you think that a bar was fitted into the mortar there, or do you think that was not done, too?

The WITNESS. Where do you speak of its being fitted in—to that door that leads to the box?

Mr. PIERREPONT. To fasten the door.

The WITNESS. The box-door?

Mr. PIERREPONT. The door where the bar was said to be fastened for the purpose of securing the door and preventing entrance to the box. Do you think that was done?

A. I cannot say. I never saw the bar; but I saw the hole in the wall. I was sent there to see that.

Q. When did you see that?

A. After I had testified to the court.

Q. Did you look at the lock then?

A. I looked at the lock then; was sent there for that purpose.

Q. How did you find the screws then?

A. In the keeper, hanging on the door.

Q. And these, you think, had not been unscrewed; no preparation had been made in them?

A. No, sir.

Q. The bar you did not see?

A. No, sir.

Q. At what hour did you say the rehearsal commenced?

A. I think it was eleven o'clock, as near as I can tell.

Q. Then it did not commence at ten that day?

A. No, sir.

Q. You are pretty sure of that?

A. I am not sure of any thing positively.

Q. Let us see how sure you are, as we have had some evidence on that point?

Mr. BRADLEY. Never mind about the evidence, that is not regular.

The WITNESS. I am sure of this—though I suppose what I say will not be taken as evidence—I say it is customary to call rehearsal for eleven o'clock. That was our custom.

Mr. PIERREPONT. No, that is not evidence. I

ask you, did not this rehearsal commence that day at ten o'clock?

A. No, sir.

Q. You are sure about that?

A. I am sure about that, for Mr. Phillips was sitting in the office with me—

Q. I am not asking you a reason. I am merely asking you if you are sure that rehearsal did not commence at ten o'clock that day?

Mr. BRADLEY. He has a right to give his reason.

Mr. PIERREPONT. He has not.

Mr. BRADLEY. I submit it to the court.

Mr. PIERREPONT. He has not that right until I ask him his reasons. When I ask him a simple fact, it is not necessary for him to reason.

Judge FISHER. It is not proper for a witness to give reasons unless there is something requiring explanation.

Mr. BRADLEY. I only desired to understand the rule.

Mr. PIERREPONT. That is clearly the rule. (To the witness.) Now, what time did you go into the theatre that morning?

A. Between eight and nine o'clock.

Q. What did you do when you went in?

A. I went to the office and dusted it out, as I generally did every morning.

Q. I do not care about what you generally did; what did you do this morning?

A. That was my work to do, and that is what I did.

Q. Do you remember that fact?

A. Yes, sir.

Q. And you remember having done it?

A. Yes, sir.

Q. When was your attention first called to these things that you have been now testifying about?

The WITNESS. What particular things do you speak of?

Mr. PIERREPONT. Any of them. When was your attention first called to any one of the things of which you have testified this morning?

A. Before Judge Burnett, I think.

Q. Did you testify to these things at the military court?

A. Yes, sir; I think I testified to them.

Q. Did you testify at that court that the rehearsal commenced at ten o'clock?

A. I was not asked.

Q. I ask, did you testify to that fact?

A. No, sir; I was not asked.

Mr. BRADLEY. He has not said that here.

Mr. PIERREPONT. He has stated that it commenced at eleven o'clock.

The WITNESS. Yes, sir.

Q. Did you ever state so before?

A. No, sir.

Q. Did you ever state before at what time it did commence?

A. No, sir; I never was asked.

Q. Where were you at ten o'clock.

A. I cannot tell you that. I was in the theatre, but I cannot state the particular part.

Q. Where were you at eleven o'clock?

A. In the office.

Q. Do you remember that?

A. Yes, sir.

Q. You saw the rehearsal commence?

A. I cannot positively say that I saw it commence. The rehearsal had not commenced when I went to the Star office.

Q. Did you see it commence or did you not?

A. Not particularly.

Q. What is the fact? Did you see the rehearsal commence?

A. I saw the rehearsal going on.

Q. Did you see it commence?

A. I cannot say that I saw it commence. I might

have been standing looking on and turned my head as it commenced.

Q. When did you see it going on?

A. The time I told you—at eleven o'clock, or fifteen minutes after eleven.

Q. What was the rehearsal?

A. The rehearsal was "The American Cousin."

Q. How long did that take?

A. About two hours, I think, that rehearsal took. It was a three-act play.

Q. Do you know how long it took?

A. Yes, sir; I know generally. I am accustomed to these things.

Q. Do you not know that it did not take more than exactly an hour and a half?

A. No, sir; I do not know any thing of the kind.

Q. Do you know that it took more than that?

A. I do not know that, because I did not time it.

Q. When did you go out of the theatre?

A. I went out of the theatre about four o'clock that afternoon to my dinner.

Q. Was that the first time you went out of the theatre to dinner?

A. Yes, sir. I was sick at the time, and not able to do much. I had the neuralgia in the back of my head.

Q. Where did you place yourself when you were sick and had the neuralgia?

A. I was in the office attending to my business, and through the theatre attending to my business.

Q. The management of the rehearsal was no part of your duty?

A. No, sir; I am not an actor.

Q. And that was not in the office?

A. No, sir.

Q. You had nothing to do with the machinery, with the parts, or the prompting, or any thing of that kind, had you?

A. None of it.

Q. You stayed in the office in consequence of your being so sick, did you?

A. No, sir; I did not.

Q. Why did you stay?

A. That was my place to stay.

Q. You did stay, then?

A. Yes, sir.

Q. You did stay there, and you were sick?

A. Yes, sir; I was as I told you, if you call it sickness. I had the neuralgia.

Q. I do not call it any thing. Now, will you tell us whether you looked on to the stage that day?

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir.

Q. You remember looking on the stage?

A. Several times.

Q. Did you look on the stage while the rehearsal was going on?

A. Yes, sir.

Q. Did you look there before the rehearsal began?

A. Yes, sir.

Q. Did you look on the stage after it had ceased?

A. Yes, sir; for I was on it after it ceased.

Q. Then you know how it looked? Now, tell us what was in the rear of the front of the stage.

A. A big door, back on an alley.

Q. Where the rehearsal was going on?

A. The big door was back on an alley.

Q. Nothing else?

A. Yes, sir; when it was required to be changed the scenes were brought forward, leaving room enough for persons to pass between, leaving a space probably of six feet.

Q. The scenes were brought forward on each side, that is, they were slid together, while rehearsal was going on?

A. Yes, sir; but not close.

Q. When rehearsal ceased, what then?

A. They were pushed back in their places, and remained there until the play commenced at night.

Q. Were not some of those scenes shifted several times?

A. They were slid backward and forward in the groove; not shifted.

Q. What were those scenes made of?

A. Canvas.

Q. Were they painted or plain?

A. Painted.

Q. What had they on them? It was "The American Cousin" they were rehearsing. Now, tell us what it was those scenes had on them that you say were shoved backward and forward?

A. It would rather puzzle me to do that. I cannot tell you.

Q. They were paintings of some kind, were they not?

A. Yes, sir, chambers, &c. We used them not only for "The American Cousin," but for various plays.

Q. They were paintings of some sort?

A. Yes, sir.

Q. And they were moved according to necessity?

A. Yes, sir.

Q. Did you see them moved?

A. I saw them moved frequently.

Q. I mean that day?

A. I cannot say that I did then.

Q. You do not know how often they were moved forward or backward that day?

A. No, sir. I could tell you by taking the book.

Q. I am not talking of the book, but I am asking your knowledge.

A. That is the only way I could tell.

Q. You do not know any thing about it?

A. Not how often they shifted them.

Q. Understand, I am not finding fault; I am merely trying to show that you do not know. I agree with you fully on that. Now, tell us how near the front of the stage those scenes were brought together or slid?

A. From the foot-lights to the first scene, I judge, was about twenty feet.

Q. And the foot-lights are close to the front of the stage?

A. Yes, sir. I cannot say that I ever measured the distance.

Q. And from those foot-lights back to the first scene, was how many feet?

A. About twenty feet from the centre of the stage at the foot-lights to the first scene; but I am not positive as to the distance.

Q. Now, tell the jury how many doors that theatre had in front?

The WITNESS. Do you mean the entrance to the lobby or to the auditorium?

Q. Entrance to any part of the inner building; how many doors?

A. There were three.

Q. To go in and out?

A. No, sir.

Q. How many to get in?

A. But one.

Q. Was that all?

A. That was all.

Q. Did they go in and out at one door?

A. Yes, sir.

Q. Solely one door?

A. Solely one door to go in and out of. They went in and out at one door during the play, and when the play was over, they went in and out at four; that is, if there was any going in then.

Q. I asked you how many doors there were. Now, tell us.

A. There are four doors; but there was but one used for the entrance.

Q. I simply ask you now how many doors there are?

A. There are four.

Q. Now, tell how many side doors there are that enter upon the stage?

A. One.

Q. Where is that?

A. That was in a long alley, about sixty feet from the front, on Tenth street—a narrow alley that entered on the stage.

Q. An alley on which side—towards Pennsylvania avenue, or the other way?

A. Towards Pennsylvania avenue.

Q. Is that the same alley that is there now?

A. I do not know. I have not been there recently, and do not know whether it is there or not.

Q. You enter an alley towards Pennsylvania avenue, and, stepping into the alley, you can go on to the stage?

A. Yes, sir.

Q. When you go on through, is there any door?

A. No, sir.

Q. Is there any in the rear?

A. Yes, sir; one small door, and one large one that opens the whole back of the theatre.

Q. Did you remove the partition in the box or help to do it?

A. No, sir.

Q. Did you see it done?

A. No, sir; I ordered it to be done.

Q. I did not ask you what you ordered. When I ask you that, you can answer it. Did you understand me when I asked you whether you saw it done?

A. I answered that I did not see it done.

Q. Did you see the chair placed there?

A. No, sir.

Q. Did you see the hole made in the plaster where the bar was put in to fasten the door?

A. No, sir; I did not.

Q. Did you see any thing done to the lock?

A. I did not.

Q. What was the first time you went out of your office that day when you had the neuralgia?

A. To let Mr. Lutz in; that was the first time I entered the theatre after going into the office.

Q. What was the next time you went out?

A. The first time I went out was to go to the *Star* office.

Q. You went into the city then?

A. Yes, sir.

Q. Where was the *Star* office from the theatre?

A. On the avenue, above Eleventh street.

Q. What time of the day did you go to the *Star* office, and what did you take with you to the *Star* office?

A. I think it was about half-past ten, or along towards eleven. I rather think I walked there and back by eleven o'clock.

Q. What did you have with you?

A. An advertisement that was written of the coming of the President.

Q. Now, tell the jury when you first heard that the President was coming?

A. I first heard it in the morning. I should judge it was as late as ten o'clock.

Q. Was it not after eleven when you went to the *Star* office?

A. No, sir.

Q. At what time was it when you came back from the *Star* office?

A. I came immediately back.

Q. What time was it when you came back?

A. I cannot tell you that, because I did not look at the clock. I only say it from rehearsal commencing at eleven o'clock.

Q. I am not asking you about rehearsal; but I ask you if you remember, or did look at the clock to know what time you came back from the *Star* office?

A. I did not.

Q. You went to the *Star* office for the sole purpose of taking the advertisement?

A. Yes, sir.

Q. You did not take the advertisement there before you heard of the President coming there?

A. No, sir.  
 Q. Where do you live?  
 A. No. 61 North Howard street, Baltimore.  
 Q. How long were you connected with this theatre?  
 A. I went there on the first Monday in December, a year previous to the assassination.  
 Q. What was your sole business there?  
 A. My business there was to take charge of the wardrobe and the front of the house; that is, to purchase articles for the wardrobe and take charge of the front of the house.  
 Q. What do you mean by taking charge of the front of the house?  
 A. Seeing to the repairs of it, and all the duties required for a business of that kind.  
 Q. Were you in this war?  
 A. Yes, sir.  
 Q. Whose company were you in?  
 A. I commanded a company myself.  
 Q. Where did you go?  
 A. In the Valley, under General Pope.  
 Q. Were you with him?  
 A. A portion of the time.  
 Q. When did you return from the war?  
 A. Shortly after his retreat.  
 Q. Did you continue in the service afterwards?  
 A. Until I got sick, and was taken home sick.  
 Q. When were you taken home sick?  
 A. After the battle of Cedar Mountain.  
 Q. Did you go to the theatre after that?  
 A. The December following. The 9th of August, 1862, was the battle of Cedar Mountain; and I went to the theatre the first Monday in December afterwards.

By Mr. BRADLEY:

Q. You were not fighting on the rebel side?  
 A. Me, sir! Not much.

WILLIAM O. BALDWIN,

a witness for the defense; sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?  
 A. On Pennsylvania avenue, between Nineteenth and Twentieth streets.  
 Q. You are a practising physician in this city?  
 A. I am.  
 Q. What were you engaged in during the late war?  
 A. I was a medical officer in the army of the United States from 1862 until 1865.  
 Q. Do you know John Lee, a witness who testified in this case?  
 A. I know a John Lee who was a detective in the provost marshal's office at the time I was examining surgeon. I have not been present at the trial, and do not know that he testified here.  
 Q. Do you know John Lee's general reputation for truth and veracity among the people among whom he associates?  
 A. I think I do.  
 Q. What is that reputation, good or bad?  
 A. It was bad among the gentlemen around the office—the employees and those who had business there.  
 Q. From that general reputation, would you believe him on his oath?  
 A. I would not.

Cross-examined by Mr. PIERREPONT:

Q. If he should tell you that a man you were looking for had gone into the office of the Secretary of War, would you believe him?  
 A. I might possibly believe that.  
 Q. If you were looking for such a man, and you met Lee, and he said to you that he saw him going in there, would you be likely to act upon that information?  
 A. I dare say I would.  
 Q. Now, give us the names of the men employed where you were that you heard speak ill of Lee.

A. Really I do not remember now. It was a common report there.

Q. Can you give us the names?

A. I do not know that I can.

Q. How many? Can you not give some of the names?

A. I do not know that I can. I cannot tell the number I have heard speak of Mr. Lee.

By Mr. CARRINGTON:

Q. Was he chief detective at that time?

A. I do not know that he was chief detective at the time. I know that he was a detective.

Q. Was he not chief detective at one time?

A. He was at one time, under Major O'Beirne, I think.

By Mr. PIERREPONT:

Q. How many men were then connected with that office?

A. That I do not know.

Q. How many men in that force in that office?

A. There was a large number of clerks and a good many employed as detectives. The number I do not know. I was examining surgeon.

Q. You cannot tell any of those men?

A. I do not know their names.

Q. And you do not know whether they had any rivalries, jealousies, or quarrels?

A. I do not know. I am sure there was never any thing between Mr. Lee and myself. There was no rivalry or jealousy between him and me. He tried to make fond of me.

JOHN H. WISE,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. At No. 699 New Jersey avenue, in this city.

Q. Do you know John Lee, who testified in this case?

A. I do.

Q. Do you know his general reputation for truth and veracity among the people with whom he associates?

A. I have never heard that questioned until this trial.

Mr. PIERREPONT. That is all, then.

Mr. MERRICK. That is all.

Mr. CARRINGTON. Wait a moment, Mr. Wise; I wish to ask you a question: Are you an officer here?

A. Yes, sir.

Q. You have been living here for a long time?

A. I have been.

Q. You are very well acquainted in the city?

A. Yes, sir.

By Mr. PIERREPONT:

Q. Did you know Lee well?

Q. I never knew him until he got into the provost marshal's office. I knew him there. I can tell you what he told me.

Mr. PIERREPONT. We do not want that.

Mr. MERRICK. I will ask you this question: During the pursuit of the men charged with the assassination of the President, did you meet Lee in the lower part of Maryland, or in Prince George's county?

A. I did.

Q. At that time did Lee say to you that he did not know John H. Surratt and had never seen him?

Mr. CARRINGTON. We object to that. We have had this up before.

Mr. MERRICK. I do not care if we had it up before. I am addressing the court, and desire simply to suggest, that it is a question that goes to the discretion of the court. After a witness's general character has been impeached by testimony, I wish merely to suggest to your honor that it would seem to address the appeal more forcibly to the court to allow his statements to be proved, or to recall him and lay the foundation for it.

Judge FISHER. Does having had his character impeached give him any better chance to explain in

regard to any question of that sort than he would have if his character had not been impeached?

Mr. MERRICK. If your honor asks me the question, I will reply that it does not; but having had his character impeached shows to the court—

Judge FISHER. That decides the question.

Mr. MERRICK. —shows to the court more satisfactorily that he might be proved to have made contradictory statements.

Mr. PIERREPONT. He does not seem to have had his character impeached by this witness, but the contrary.

Judge FISHER. The question cannot be answered.

Mr. PIERREPONT. If your honor please, I want to say a word on this subject. This is now the fourth time that your honor has formally ruled upon this point, as will appear by the notes, on this very same question. And for the counsel to get up, when they know that your honor will be likely to abide by the ruling you have laid down, to ask every witness such a question, is conveying the idea to the jury that the witness would answer the question. They can go on and ask that question of any witness in the same way. Now, I submit whether, when your honor has ruled upon it so many times, it is proper that such a question should be asked again for your honor to continue to rule upon it, for the purpose of making insinuations, or for any purposes? I submit whether it is proper.

Mr. MERRICK. I submit, your honor, that we have the right to present such evidence as we think is proper, and to make the record of our exceptions in such manner as we think most expedient, especially with a view to a new trial under the law organizing this court, which allows the question of a new trial to go before the court at general term. It is a motion for a new trial on the record or on the minutes; and wherever a question is addressed to the discretion of the court, we may raise that question from time to time, whenever we think we can appeal most forcibly to the discretion which we invoke, and the exercise of that discretion is of course a ground for a new trial. I have not presented this question, except as I regarded it in different aspects and under circumstances where I thought it would appeal more forcibly to your honor. I shall certainly not, in the course of this trial or any other trial, before your honor or any court, annoy and harass the court by asking it to decide the same identical question repeatedly, and over and over again. But, in the discharge of my duty, where the question in my judgment assumes a different aspect, I feel that I ought to ask the court to regard it in that different aspect, and I ought to put it upon the record in that shape.

Mr. PIERREPONT. I did not know that the exercise of discretion was error.

Mr. MERRICK. I did not say it was error. I say it is ground for a motion for a new trial.

Judge FISHER. The court has no discretion in regard to questions of evidence which are settled law. There is no discretion about this question. The law is distinct and positive, that, if you wish to impeach a witness by proving that he has made declarations contrary to what he has stated upon the stand as testimony, you must direct his attention in cross-examination, while on the stand, to the time, the place, the person, the occasion, about which you wish to produce evidence with a view to contradict him. And I must say, that I do think that when counsel are satisfied that they have not done that, it is not a fair course to catechise a witness in this way when they know that the foundation has not been laid. That is all I can say now.

Mr. MERRICK. The discretion was with your honor to recall the witness.

V. B. MUNSON,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Washington. I board at the corner of Four-and-a-half street and Missouri avenue.

Q. What is your business?

A. Clerk in the War Department.

Q. What were you engaged in during the war?

A. I served three years in the army, and served in the provost marshal's office of the District of Columbia as clerk.

Q. Do you know John Lee, a witness who testified in this case?

A. I do, slightly.

Q. Do you know his reputation among the men among whom he associates for truth and veracity?

A. I know his general reputation. I know nothing positively myself.

Q. What is that general reputation as a man of truth?

A. It is bad.

Q. Would you, from that general reputation, from what people generally say of him, believe him on his oath?

A. Not in a case of life and death. In trivial matters I might accept his word even.

Cross-examined by Mr. PIERREPONT:

Q. What office at the War Department are you in?

A. The Adjutant General's office.

Q. Do you know Mr. Calvert, who testified here the other day?

A. I do.

Q. Are you in the same Department with him?

A. Yes, sir.

Q. Did you ever talk with him about this subject?

A. No; not particularly.

Q. Did you generally?

A. Yes, sir; a few words passed now and then.

Q. You knew Mr. Lee?

A. I knew him from a limited acquaintance at the office.

Q. What business have you done with him?

A. I was engaged in general business with him in the same office.

Q. What business?

A. My business was the paying of rewards for the arrest of deserters. Mr. Lee was a detective, and at one time was supposed to have nominal control over the detectives in the office.

Q. He came there, did he?

A. He came to the office, of course.

Q. How long did you see him coming to the office on that business?

A. I don't recollect whether Mr. Lee was there at the time I went into the office or not; but I was there employed as a clerk some nine months, from August 10, 1864, until May, 1865.

Q. During this time you were doing this business with him so long, had you heard of this bad reputation?

A. I had.

Q. When he came there to make report, or do anything, did you believe what he said—he was not on oath then; did you believe what he said?

A. That was none of my business.

Q. I ask you did you believe what he said?

A. That was not for me.

Q. I ask you again whether you did believe it?

A. I cannot answer that question positively, because it was not my business to take what he said either as truth or not.

Q. I ask you whether you did believe it?

A. I believed him generally in business matters.

Q. Was he under oath?

A. No; he was not.

Q. Do you think he would be most likely to tell the truth when he was under oath or when he was not under oath?

A. Well, I do not know.

Q. What do you think about it?

A. His character, his general reputation, being bad, I should say he would.

Q. Do you say he would be more likely to be false under oath than he would when not under oath?

A. No, sir; I do not say that.

Q. Then why did you say so just now?

A. I said that under oath I would not believe him myself.

Q. You would believe him when he was not under oath?

A. In trivial matters, perhaps.

Q. What do you mean by "perhaps?"

A. I would accept his word, perhaps, in trivial matters.

Q. What do you call "trivial matters?"

A. Common every-day affairs. But if I was a member of a jury—

Mr. PIERREPONT. I am not asking you about that.

Mr. MERRICK. He has a right to explain.

Judge FISHER. He has no right to put himself in the shoes of the jury.

Mr. MERRICK. He was going on to explain.

Judge FISHER. He said that if he was a member of the jury, he would do so and so. That he has no right to say.

Mr. MERRICK. I only want to ascertain what the witness's rights are.

Judge FISHER. His rights are, first, to answer the questions; and then if he wishes to make any explanation he can do so.

Mr. MERRICK. I supposed the witness could state what would be a responsibility upon him that would prevent him from believing him. He says that if there was no responsibility upon him, with regard to trivial transactions he might believe him; but if there was a responsibility upon him he might not.

Mr. PIERREPONT. When I ask him about his responsibilities it will be time enough for him to answer upon that point. I have not asked upon that subject. (To the witness.) You say that in ordinary matters you would believe him, would you?

A. Perhaps I would.

Q. Do you think you would?

A. In general business; I would if he was concerned in business with me.

Q. In general business, then, you would believe him?

A. If I was placed in that position—if I had business with him—I would.

Q. That is, if he was not on oath?

A. If I thought he had no occasion to tell an untruth.

Q. If he was on oath, would you then believe him on general business matters?

A. Of course I would.

Q. Now, if you were in careful pursuit of one of the officers of your Department, General Townsend, for instance, and you wanted to find him—you had urgent business with him—and you were passing the Treasury Department, and you should meet John Lee, and he should tell you that he had come by the White House, and that he had seen General Townsend go into the President's house, would you believe him?

A. No other evidence to the contrary, I would.

Q. And you would go in there to find him, would you not?

A. I would.

Q. If he should tell you that he saw your horse ridden by some other person through the avenue this morning, would you not believe him?

A. I would.

Q. If he should tell you that he saw General Townsend at Willard's this morning, talking with the Secretary of War, would you not believe him?

A. Generally I would.

By Mr. MERRICK:

Q. I understand you to say that you would believe him in the general transactions of every-day life?

A. General transactions that had no weight.

Q. If there was any responsibility resting upon your

shoulders to be certainly right in the conclusions to which you should come, would you take his word?

A. I would not.

Q. Whether under oath or not?

A. No, sir.

By Mr. BRADLEY:

Q. If two years ago Mr. Lee was in pursuit of certain persons, and never said anything about one of them until two years afterwards, never said that he had seen him or known him at all, and two years afterwards was to come forward and say he knew that man very well at that time, would you believe him?

Mr. PIERREPONT. Do not answer that question.

Mr. BRADLEY. I think it is the very same question you put about the horse; but it has a different color, to be sure.

Mr. PIERREPONT. We object to the question.

Judge FISHER. That is one of the very questions that the jury are called upon to decide, I presume.

Mr. BRADLEY. I have not asked him about Sur-ratt, or any thing of that kind. However, as the question is objected to, I shall not press it.

LEMUEL L. ORME,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Prince George's county, Maryland.

Q. What is your business?

A. I am a farmer and merchant both.

Q. Do you know John T. Tibbett, who was a witness in this case?

A. I know John T. Tibbett.

Q. Did he reside in Prince George's county?

A. Yes, sir.

Q. How long did he reside there?

A. I knew him when he was a boy. He resided there up to about 1862 or 1863, I think.

Q. Has he been about there since then?

A. Yes; he was there from some time in 1865 up to last fall.

Q. Do you know what his reputation for truth and veracity is among the people with whom he is acquainted down there?

A. I know what it is.

Q. What is it—good or bad?

A. It is very bad.

Q. From his general reputation for truth and veracity, would you believe him on his oath?

A. No, indeed, sir.

Cross-examined by Mr. PIERREPONT:

Q. When did you first become acquainted with Tibbett?

A. When he was but a boy. I do not know whether he was eight or ten.

Q. How near you did he live?

A. He was born, I think, about six miles from where I was raised.

Q. What side did he take in the war?

A. He first took sides one way and then the other. He first started as a sympathizer with the southern people, and then afterwards turned out to be a strong Union man, as he termed it.

Q. Which side did you take?

A. I tried to stand as near between the two as I could.

Q. Were you able to stand that way?

A. I was.

Q. When he was taking the southern side his reputation was pretty good, was it not?

A. Since he has grown I never heard of his having a good character at all.

Q. Had you ever heard anybody speak against his character for truth before he took the Union side?

A. Oh, yes. I knew worse of him, or I believe as bad, before that as I have since.

Q. Then he has been better since he took the Union side?

A. I say that he was just as bad before as he has been since. I do not know that that makes him any better.

Q. Before he took the Union side, state who you heard speak against his character for truth?

A. I heard my brother, for one.

Q. What is his name?

A. George E. Orme.

Q. Who else before he took the Union side?

A. That is sometime ago, you will recollect. I know a business transaction which he had with him which makes me recollect that so well. I was a witness in the transaction myself.

Q. Your brother spoke in relation to the transaction, did he not?

A. Yes, sir.

Q. He spoke about that transaction?

A. I do not know that it was generally about the transaction, but I have heard him say, for one, he was a very bad man.

Q. Did your brother speak about the transaction?

A. He might have spoken about the transaction in particular; I cannot say positively whether he did or not.

Q. Did your brother say that Tibbett was not a man of truth?

A. He said he was a man he could not depend on for any thing. I heard him speak of him in that way.

Q. Who else did you hear speak of him?

A. If you confine it to before he professed to be a Union man, I do not know that I can speak of any person outside of my brother, to be positive about it.

Q. Did not your brother have a difficulty with him?

A. No, never had a word's difference with him in my life.

Q. Was there not a transaction in which they disagreed?

A. He would not pay him what he owed, and he had to get that the best way he could; he tried to swindle him, as I term it.

Q. That is the extent of his reputation before he joined the Union party?

A. I never heard of him until he was grown up. Just let me explain about it.

Q. I am afraid you will take up too much of our time. We are trying to get through. Your explanation, no doubt, would be satisfactory, but I ask you to tell us the name of any man whom, before he joined the Union side, you heard say he was a liar or not a man of truth, except your brother?

A. I would not like to call any man's name unless I was certain of it; but I never heard him spoken of as the right kind of a man in my life—never heard a man say he was a gentleman.

Q. I do not know whether he claims to be a gentleman, but tell us any man except your brother who before he joined the Union side you heard say would not believe him on oath?

A. I do not know that I could name anybody.

Q. Then his reputation in your mind was made up of what your brother said?

The WITNESS. You are asking me now before the war, I understand.

Mr. PIERREPONT. Yes, before he joined the Union side—his general character.

A. I judge from the company he kept and the way he acted.

Q. But you never heard anybody say any thing against his truth?

A. I do not want to say positively that I did not before the war. I cannot recollect back that far except as to my brother. I recollect that well.

Q. And he would not pay your brother what he owed him, you say?

A. No, sir. If you allow me to go on I will tell you what I heard, to the best of my recollection.

By Mr. BRADLEY:

Q. Do you mean to state to the jury that you never heard anybody speak of his reputation for truth, except your brother, before the war?

A. I cannot at this time recollect individuals; but I never heard a man speak well of him since he has been grown up outside of a boy, and I always looked upon him myself, if you want to know my opinion—

Mr. BRADLEY. No; that will not do. Give us his general character, what was generally said about him, though you cannot recollect individuals?

A. That is too far back for my recollection. I would not like to call a man's name out unless I could recollect it.

Mr. BRADLEY. It is not material about that. What we want to know is what was his common reputation.

The WITNESS. Before the war no man in business would trust him.

Q. Has he stood the same ever since?

A. So far as I know any thing of the man, that is the way his character stands. I do not think, positively speaking, that the fact of his going into the army or becoming a Union man changed the opinion of the people one iota.

Mr. PIERREPONT. What was the general opinion of the people down there in relation to his joining the Union side? Was it favorable or hostile?

Mr. BRADLEY. That is rather too wide a range.

The WITNESS. I can answer it.

Mr. MERRICK. We do not want you to answer it. It is an improper question.

Q. (By Mr. PIERREPONT.) Did you testify on the conspiracy trial?

A. I did.

Q. Were you not called there by the defense?

A. I was called there, and from the way they examined me I judge I was called about something concerning Mr. Thomas.

Q. Were you not called by the defense, and were you not examined by Mr. Ewing?

A. Yes, sir; that is the gentleman.

Q. For the defense?

A. I suppose it was for the defense.

Q. And you then swore against a man's character for truth?

A. I came there to testify—

Mr. BRADLEY. Stop a moment. I do not see how that can possibly relate to this matter.

Mr. MERRICK. Or affect his credit in any way.

Mr. PIERREPONT. I think it can. If he came before on that trial for the purpose of swearing against a man's character for truth, who was a Government witness, I want that fact out.

Mr. MERRICK. A Government witness?

Mr. PIERREPONT. Yes, sir; a Government witness.

Judge FISHER. You can ask what he swore to.

Mr. BRADLEY. In reference to this matter. Can he ask in regard to any thing else?

Mr. PIERREPONT. It relates to these very persons—the very conspirators on trial.

Judge FISHER. It may show his temper.

Mr. MERRICK. Your honor admits the question, and we reserve an exception.

Q. (By Mr. PIERREPONT.) Did you know who was on trial when you were called as a witness?

A. I did not know any one of the men personally; never saw them personally.

Q. Did you know their names?

A. I heard their names.

Q. Did you hear Mrs. Surratt's name?

A. Yes, sir.

Q. She was there, was she?

A. Yes, sir.

Q. What did you testify to on that trial?

A. I cannot recollect word for word.

Q. Did you testify against the good character of a Government witness, Mr. Thomas?

A. I was not asked for the good character of anybody.

Q. You were asked for bad character, were you?

A. Yes, sir.

Q. Did you testify to bad character?

A. Indeed, I had to testify that way. It was a very bad character concerning which I was called.

Q. Who was it?

A. Daniel J. Thomas.

Q. You did swear against his character?

A. I did.

Q. And that was on the trial of the conspirators?

A. Yes, sir; I suppose that was it. They had me to testify concerning his evidence and the character of the man generally. That was the idea.

Q. And you did testify?

A. I did, indeed.

WILLIAM J. WATSON,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Horsehead district, Prince George's county, Maryland.

Q. What is your business?

A. Farmer and planter.

Q. Do you know John T. Tibbett?

A. I know a man of that name; he is the son of my nearest neighbor.

Q. Are you his uncle?

A. No, sir; neither by the ties of blood or affinity.

Q. Is there any other William J. Watson living in Prince George's?

A. If there is any other, I do not know him. I know of none other in the county. There may possibly be.

Q. You say Tibbett's father is your nearest neighbor?

A. Yes, sir.

Q. You are acquainted throughout that neighborhood?

A. Yes, sir.

Q. How long have you been living there?

A. I was born there. I am not living now more than two miles from the place I was born.

Q. You say that Tibbett is no relation to you by blood or affinity?

A. I am not his uncle by blood or affinity. I have understood that my grandmother and his great-grandmother were cousins, but I do not know.

Q. Did John T. Tibbett ever tell you that Mrs. Surratt said she would give a thousand dollars to any one who would kill Lincoln?

A. Never to my knowledge—

Mr. PIERREPONT. On what ground can you put that question?

Mr. BRADLEY. Tibbett swore that he did say so, and swore that he did tell Mr. Watson so.

Mr. MERRICK. And that Mr. Watson was his uncle.

Mr. PIERREPONT. If he said so I have nothing to say.

Mr. MERRICK. Here it is on page 61.

Mr. PIERREPONT. Very well.

Mr. MERRICK. Now answer the question.

A. If he ever told me any such thing, it has entirely escaped my memory. I know nothing about it, and have tried in every way to jog my memory to see if I could remember it.

Q. Have you ever had any conversation with Mr. Tibbett about Mrs. Surratt?

A. The next to the last time he was down in my neighborhood—

Mr. BRADLEY. What was the conversation?

Mr. PIERREPONT. He cannot give a conversation to which you have not called attention.

Mr. BRADLEY. The only conversation to which he referred is this one.

Judge FISHER. You have asked him whether Tib-

bett ever told him that he heard Mrs. Surratt say she would give a thousand dollars for the murder of Lincoln.

Mr. PIERREPONT. I do not object to that if it was asked of Tibbett.

Judge FISHER. Now, what is the other question?

Mr. MERRICK. The question is, Whether he had any conversation with Tibbett about Mrs. Surratt?

Judge FISHER. I think it is a fair question: Did he on any occasion have such a conversation?

Mr. PIERREPONT. I do not object to that.

The WITNESS. We had, I think, somewhere about the first of April of the present year, next to the last time that he was down in the neighborhood. The last time I did not see him at all.

Q. (By Mr. MERRICK.) What did he say about Mrs. Surratt?

Judge FISHER. Any thing that he said about Mrs. Surratt to this witness I will admit.

Q. (By Mr. MERRICK.) What did Tibbett say to you about Mrs. Surratt at that time?

A. There was a conversation. That conversation took place in regard to a quarrel that was going on in the House of Representatives between General Butler and Mr. Bingham, of Ohio. He took sides with General Butler in the argument, and I took sides with Mr. Bingham, and I said that I—

Mr. PIERREPONT. Oh, this will not do.

Mr. MERRICK. [To the witness.] Just state what Tibbett said to you about Mrs. Surratt?

A. I think in the course of the argument he remarked that she was innocently executed. That is the impression on my mind: I would not be positive.

Mr. BRADLEY. Is that the best of your recollection?

A. To the best of my recollection that is what he said—that she was innocent. He coincided with General Butler, and said she was innocent.

Mr. PIERREPONT. Does your honor see any thing in the examination of Tibbett to warrant this?

Judge FISHER. I think, inasmuch as his attention was directed to this particular conversation and he denied that he had said thus and so, it is a fair method of contradiction.

Mr. PIERREPONT. Very well.

By Mr. MERRICK:

Q. Do you know Tibbett's general character?

Mr. BRADLEY. Wait a moment. I promised not to ask him that question.

Mr. PIERREPONT. Let it either be asked or not asked.

Mr. BRADLEY. It is not asked.

Mr. PIERREPONT. I submit that stating what was said to him is not evidence.

Mr. BRADLEY. The court will say.

Judge FISHER. If the counsel do not choose to ask the question, they can refrain from doing so—if they choose to ask it, they can ask it.

Mr. BRADLEY. I desire to explain. Mr. Watson requested me, as he was a personal friend of Tibbett's father, not to interrogate him as to that point, and I said I would not. Mr. MERRICK was not present, and was not aware of it. That being the understanding, I stopped Mr. MERRICK's question.

Mr. MERRICK. Very well, I will not press it.

Cross-examined by Mr. PIERREPONT:

Q. Were you here on the trial of the conspirators?

A. Yes, sir.

Q. You testified there, did you not?

A. Yes, sir; I testified there.

Q. Did Tibbett ever call you uncle?

A. Not that I know of. He always called me Mr. Watson. There are other young men in the country who have called me uncle, but I have no recollection that he ever did.

Q. Men to whom you were uncle?

A. Yes, sir; and men to whom I was not uncle.

Q. Do they not pretty generally down there call you "Uncle Watson?"

A. No, sir; they generally call me "Major Watson."

Q. And some of them call you "uncle?"

A. Some few.

Q. Which is your general title "uncle" or "major?"

A. "Major" is my general title. I am known by that name.

Q. Are you a major?

A. No, sir; never was a major.

Q. In this conversation that you speak of, you say you took the side of Bingham?

A. I did.

Q. You said you thought that Mrs. Surratt was guilty, did you?

A. Yes, sir; and I think so yet; not from any thing I know about it, but only so far as the testimony was brought out in the case on trial.

By Mr. MERRICK:

Q. Do you know Tibbett's general character for truth and veracity in your neighborhood?

A. I have asked, and the court has excused me from answering that question. Mr. Tibbett's father is an intimate friend of mine; we were born within two miles of each other.

Judge FISHER. I thought you had waived asking that question.

Mr. MERRICK. I waived it, and the witness comes back to me after the cross-examination, and now I ask it.

Mr. PIERREPONT. I have examined the witness to my entire satisfaction.

Judge FISHER. This question is not in reply to any cross-examination. You waived this very question in the examination-in-chief.

Mr. MERRICK. Let me ask your honor, as the same thing arose the other day, not in reply to any thing in the cross-examination, where I have a witness on the stand, having examined him in chief and turned him over, and they having cross-examined him, when he comes back to me have I not the right again to go on with my examination-in-chief?

Mr. PIERREPONT. If you have forgotten any thing; not otherwise.

Mr. MERRICK. If he has left the stand can I not recall him?

Judge FISHER. Yes, you can recall him.

Mr. MERRICK. He can step down, and I can call him back.

Judge FISHER. That can be done.

Mr. MERRICK. You can retire, Mr. Watson.

[Mr. Watson retired from the stand and was immediately called back.]

Mr. MERRICK. Now, Mr. Watson, answer my question: Do you know Tibbett's general reputation for veracity?

A. I know it, but do not wish to state it here.

Q. That cannot be helped; public duty is superior to private feeling.

The WITNESS. I do not wish, on account of the feelings of his father, to state it here.

Mr. MERRICK. I cannot help it. You must answer the question. Do you know his reputation for truth and veracity?

A. Well, I must say that it is bad.

By Mr. PIERREPONT:

Q. You know his father pretty well?

A. Yes, sir. I know him to be a very fine man, too.

Q. Do you know his mother?

A. Yes, I know his mother, too; am intimately acquainted with the family. I see them nearly every day.

Q. Do you want to say any thing about her, too?

A. No, sir; not a word.

Q. I mean about her good character.

A. The same about her character as about his father's.

Q. Now tell us whom you have heard say that Tibbett's character for truth and veracity was bad?

A. I have heard Mr. B. J. Naylor state it, and I have heard the Ormes say it, and I believe I have heard pretty nearly every man in the neighborhood say it. His uncle told me here in the city, last Saturday evening, at his own door, that he would not believe any thing that he said.

Q. That was since the trial?

A. Since the trial commenced.

Q. This uncle was not on the same side with him, was he?

A. He was in the federal army, I believe; but whether he was on the same side in politics or not, I am not prepared to say.

Q. In this conversation you had with Tibbetts, you told him that you believed Mrs. Surratt was guilty?

A. I did so. I told him I believed she was guilty, and I have told every man so.

Mr. MERRICK. No matter what you said outside; just confine yourself to that conversation.

By Mr. BRADLEY:

Q. Although Mr. Tibbett's father is a most excellent man and his mother an excellent woman, that does not affect your judgment of his character, I understand?

A. No, sir; not at all.

BENJAMIN J. NAYLOR,

a. witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Prince George's county; the lower part of the fourth district.

Q. How far from William J. Watson's?

A. In the same neighborhood, about half a mile or three-quarters of a mile.

Q. What is your business?

A. Farmer.

Q. Do you know J. T. Tibbett, who was a witness in this case?

A. Yes, sir.

Q. Did he live down in your neighborhood?

A. He formerly lived there, a short time ago; I do not know what time.

Q. Is his father living in your neighborhood now?

A. Yes, sir.

Q. Do you know what John T. Tibbett's general character for truth and veracity is among the people who know him down there?

A. It is said to be bad in my neighborhood.

Q. From his general character for truth and veracity, from what people say of him as a truthful man, would you believe him on oath?

A. From what other people say of him I would not.

Cross-examined by Mr. PIERREPONT:

Q. If he should come and tell you of any fact that had occurred, would you believe him?

A. No, sir, on his general character I would not.

Q. If he should come and tell you of any fact that had occurred, would you believe him?

A. I would not.

Q. If he should come and tell you he had seen Mr. BRADLEY, and that Mr. BRADLEY wanted you to come here to be a witness, would you not believe him?

A. No, sir; I would not. I would not believe any thing he should say.

Q. If you were away from home anywhere, for a mile in the country, and Mr. Tibbett should come to you—

Mr. MERRICK. If counsel will allow me a single moment I wish to ask your honor in regard to the form of these questions. I think they ought to assume, under the ruling of the court, some definite form. The counsel is putting a great many. I am required in the examination of an impeaching witness to ask him

whether or not, from the general character, he would believe the person on oath, not from his private opinion, whatever that private opinion may be; and I submit to your honor whether the learned counsel on the other side shall not be limited in his speculative inquiries to the same character of question, and be required to ask, "If he told you Mr. BRADLEY sent for you to come here as a witness, would you, from his general character, believe him, judging by his general character and nothing else."

Judge FISHER. I suppose this witness certainly understands it so.

Mr. MERRICK. He answered it so.

Judge FISHER. That is the proper form.

Mr. MERRICK. I am glad to have the ruling.

Judge FISHER. General character is what we are inquiring into, and the questions should be put with reference to that.

By Mr. PIERREPONT:

Q. If you were in the country a mile from your house, and Mr. Tibbett were down there, and should come to you and tell you that your wife had been taken suddenly very ill, from what you know of him and his general reputation, would you believe a word of it, go home, or would you not pay any attention to it?

A. Well, if I was as near by as that, it would not be much trouble to go and see, and I would go.

Q. Suppose you were two miles off?

A. I would not go.

Q. Suppose he were to tell you that your house had taken fire at the same distance from home?

A. If it was two miles from home it would not be worth while to go at all, because the house would burn down before I got there.

Q. Suppose you were half a mile from home and he should tell you that fact then, from what you know of him, would you go home?

A. If I was half a mile from home, I could certainly see the flames that distance.

Q. Suppose you happened to be behind a hill where you could not see the flames, then what would you do?

A. It would not be much trouble to walk up the hill and see.

Q. Do you think you would take the trouble to walk up the hill?

A. Probably I would take that trouble.

Q. On what he told you?

A. It would not be much trouble to walk to the top of the hill to see whether it was so or not?

Q. It might be a high hill?

A. The biggest story-teller in the world may sometimes tell the truth.

Q. You think, notwithstanding what you know of his reputation, in the ordinary affairs of life, if he should tell you any thing, you would act upon it?

A. I do not think I would, from his general character.

GEORGE E. ORME,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. Prince George's county, Horsehead district.

Q. Do you live near to Mr. William J. Watson?

A. Yes, sir.

Q. How long have you lived there?

A. I was born and raised there, and lived there until 1847. I lived in Washington from that time till 1857, and I have lived down there since.

Q. Do you know a man named John T. Tibbett, a witness in this case?

A. Yes, sir; he was raised not far from my house.

Q. Does his father live near you?

A. Yes, sir.

Q. Do you know Tibbett's character for truth and veracity; what people generally say of him?

A. Well, it is very bad—the general talk of the neighborhood last fall, before he left there.

Q. From his general character for truth and veracity, would you believe him on oath?

A. I do not think I would.

Cross-examined by Mr. PIERREPONT:

Q. Did you have any difficulty with him?

A. No, sir.

Q. Did you never have any trade with him?

A. Yes; I used to deal with him when I kept store.

Q. Did he not refuse to pay you?

A. I got my money.

Q. Did he refuse to pay you?

A. He always said he would pay me.

Q. Did you have any trouble about it?

A. I attached the money after he left there the first time. That was some four or five years ago. It was a small bill. He never owed me much.

Q. Did you have any trouble about it?

A. Nothing, only I gave it to an officer.

Q. Did you talk any about it to your brother.

A. I attached the money in his hands.

Q. Did you talk to your brother about that transaction?

A. When it happened I talked to the neighborhood about it. I recollect that John Tibbett was the general talk in the neighborhood last fall. I talked about Tibbett.

Q. Did you and Tibbett take the same side in the war?

A. No, sir; Tibbett was in the army. I was not.

Q. Which side did you sympathize with?

A. Well, sir, I was opposed to secession very much, but I was opposed to coercion.

Q. That is, you were against putting down the rebellion by arms?

A. Yes, sir; I did not like to see fighting go on.

Q. You objected to that?

A. I did. I thought they had better settle it some other way.

Q. After Tibbett took the Union side you felt more hostile towards him?

A. No, sir.

Q. Did you not feel more hostile towards him after he took the Union side?

A. Not for that; I did not.

Q. You did for something?

A. Nothing; only I had disrespect for the man for his meanness. A man who did so bad in our neighborhood I could not respect as a gentleman.

Q. When did he take the Union side?

A. I believe he was that way all the time; I do not know whether he was or not. Tibbett was a blacksmith, and his father is a blacksmith; a very nice old fellow, I believe, and a good citizen. This boy learned the trade with his father, and used to work down there. He was living in the neighborhood. I never heard of his being out of the neighborhood till the war. I think he was driving stage a little while.

Q. I am not asking you about his being out of the neighborhood; but I ask now whether you entered into either army?

A. No, sir; I never was in either army.

Q. Your sympathies were against coercion?

A. Well, I was opposed to it; if I had my say, I think I should have settled it without fighting. I was opposed to secession, and spoke so, as much so as anybody in the neighborhood.

Q. And you were then opposed to coercion?

A. Yes, I was opposed to secession, and spoke against it bitterly.

Q. And you were opposed to coercion?

A. I was opposed to fighting; I thought it would do harm; I always believed so, from the first commencement.

Q. And you continued so?

A. Yes; and do to this day believe it would have been better to settle without any fighting.

Q. You were not a witness on the conspiracy trial?

A. No, sir; I was not down there; I think I was summoned.

Q. You did not testify?

A. No, sir; but I heard some one say my name was called.

By Mr. BRADLEY:

Q. The counsel on the other side has asked you whether, after Tibbett took the Union side, you did not have unkind feelings towards him, and you answered no, that you did not consider him a gentleman. Now, let me ask you, did that make any difference in the estimation of the neighborhood? Was he not just as bad before as after?

A. Mr. Watson and Mr. Naylor, who have both given evidence, never differed in politics; but, so far as Tibbett being friendly with me is concerned, he was just as friendly with me as my brother. We never had any difference politically. He never said any thing to me, and I believe if I was a candidate in the neighborhood Tibbett would vote for me.

Mr. MERRICK. No matter about all that.

Mr. BRADLEY. I only want to know whether there was any change in his character, whether there was any change in the estimation of the neighborhood after he went off with the Union party; did they not think just the same of him before as after?

A. The longer he stayed there the worse his character was. It was all the time getting worse as long as he stayed there.

By Mr. PIERREPONT:

Q. How did it get worse?

A. He kept doing bad things.

Q. Telling lies?

A. He was telling lies, getting money on lies, and so on.

Q. Now, tell us to whom he told lies to get money.

A. Jack Watson, Lem. Orme.

Q. Did you hear them say he was not a man of truth?

A. Yes, sir.

Q. You have just told us in reply to counsel on the other side that he was as friendly to you as a brother?

A. We never had a word's difference according to my recollection.

Q. That is true that you and he were friendly as brothers?

A. Well, he was just this friendly: he was going to a dance the night before he left, and he came to me for a dollar. What he had in his heart against me I cannot say. He came up and asked me to give him a dollar for a dance the night before he left.

Q. Answer the question. If you do not understand it, I will put it over again until I get an answer. Were you and he friendly as brothers?

A. I did not think as much of Mr. Tibbett as my brother but I would not do him an injury more than I would my brother.

Q. Were you and he friendly as brothers?

A. When we would meet each other we would meet just as friendly as brothers; he would come up and shake hands with me and speak to me.

Q. Did you meet often?

A. We met very often. He did my blacksmith work, shod my horses.

Q. How long did this friendship of brothers continue; to what day?

A. Until the night before he left there.

Q. When did he leave there?

A. It was sometime last fall, I think.

Q. Up to that time he and you were friendly as brothers—till last fall?

A. Yes, sir.

By Mr. BRADLEY:

Q. When you say friendly as brothers, do you mean that you associated as brothers, or that there were kind feelings between you?

A. We often met at the post office, our general place of meeting, and we met at the blacksmith shop.

By Mr. MERRICK:

Q. There was no ill-feeling?

A. No, sir. When meeting me, he would come up and speak to me as you would. We had no personal difference.

The court took a recess for half an hour, re-assembling at 1:15.

FRANCIS A. WARD,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In the lower part of Prince George's county, Horsehead district.

Q. In the neighborhood of Mr. Watson?

A. Yes, sir.

Q. Do you know John T. Tibbett, a witness in this case?

A. I do.

Q. Tell us whether or not you know what his general character is among the people with whom he associates for truth and veracity?

A. It is bad.

Q. Confine yourself to what is said of him, and what you hear said of him, and state to the jury whether or not, from his general character as a man of truth, you would believe him on his oath.

A. I should not like to do it.

Cross-examined by Mr. PIERREPONT:

Q. Were you examined before at the conspiracy trial?

A. Yes, sir.

Q. What were you examined there upon—what subject?

A. In reference to the character of Thomas.

Q. You swore against his character, did you not?

A. I could not swear otherwise.

Q. You did swear against it?

A. Yes, sir.

Q. Did you know any of those persons who were being tried at that trial?

A. I was slightly acquainted with Dr. Mudd.

Q. Was he the only one you knew?

A. The only one.

Q. How near did you live to Tibbett's father?

A. About two miles.

Q. From his reputation, you would not believe any thing Tibbett said?

A. No, sir.

Q. If he should come and tell you that your horse had got out of your lot into your neighbor's lot, you would not go after it, would you?

A. If he did tell me that, I should not know whether it would be true or not.

Q. That would not induce you to go after it, would it?

A. It would not.

Q. You would not have any regard to what he said on any ordinary matter?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Then, if he were to tell you of any fact of ordinary occurrence, you would not believe it?

A. No, sir.

BERNARD HENZE,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Washington, at Metropolitan Hall.

Q. Do you manage that Metropolitan Hall?

A. Yes, sir.

Q. Do you own the property?

A. No, sir, I do not; I lease it.

Q. Where were you residing, and what were you doing in April, 1865?

A. I was carrying on the same business I do now in April, 1865.

Q. What is that business?

A. Concert saloon.

Q. Whereabouts is Metropolitan Hall located?

A. It is right next door to the *Star* office, on D street, between Eleventh and Twelfth.

Q. Does D street there front on the avenue?

A. The front is on the avenue.

Q. Does Metropolitan Hall look out immediately on the avenue?

A. Yes, sir.

Q. What sort of business is done at Metropolitan Hall?

A. It is a theatrical performance; the same style as the *Canterbury* used to be.

Q. Had you charge of Metropolitan Hall on the 14th of April, 1865?

A. No, sir; I was not in the city that day; I was in Philadelphia.

Q. But was the hall in your possession?

A. Yes, sir.

Q. And being run under your control?

A. Under my control.

Q. In whose charge did you give the direction of the hall when you left to go to Philadelphia?

A. Three men; my own brother, Martin Henze, the leader of the orchestra, George Nachman; and a police officer, August Voss.

Q. Do you recollect what time you went to Philadelphia?

A. I went to Philadelphia on the Sunday before.

Q. When did you come back?

A. I believe it was the 17th or 18th; I am not quite sure; but it was in the week after.

Cross-examined by Mr. PIERREPONT:

Q. What was the number of the entrance on D street?

A. I do not know the number.

Q. There was no entrance on the avenue?

A. Yes, sir; D street runs kind of crooked there. There is no house in front of it. D street right faces the avenue.

Q. What number on D street was the entrance to Metropolitan Hall?

A. As far as I know the house has not got any number.

Q. But the entrance is on D street?

A. Yes, sir.

Q. On what street does the hall front?

A. On D street.

By Mr. MERRICK:

Q. But there is nothing between the hall and Pennsylvania avenue?

A. Nothing between the hall and Pennsylvania avenue. It is a kind of square there; the point is right on the corner of the avenue.

Q. As I understand you, it is a place somewhat similar to D street and Louisiana avenue, at the end of the lot where the court-house stands?

A. Yes, sir; it runs pretty much the same way.

MARTIN HENZE,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. I have resided in Philadelphia, and also in Washington, and also in the South.

Q. Where were you residing and doing business in April, 1865?

A. At my brother's place, in the city of Washington.

Q. Where was that place in April, 1865?

A. Metropolitan Hall, between Eleventh and Twelfth streets.

Q. Fronting on what street?

A. On D street.

Q. Does it front any other street, or is there any

thing between that place and the avenue; does it look out on the avenue?

A. It looks out to the avenue.

Q. Do you recollect your brother going to Philadelphia, or going North anywhere, in April, 1865?

A. Yes, sir.

Q. In whose charge did he leave the hall when he went away?

A. He left it to Mr. Nachman and me and the officer who had charge to keep order there.

Q. State whether or not there was any performance in that hall on the afternoon of Friday, the 14th of April, 1865?

A. No, sir; not to my knowledge.

Q. Could there have been any there without your knowing it?

A. No.

Q. Were you there all the time?

A. I was there all the time.

Q. What time does that performance generally begin at the hall?

A. There is rehearsal three times a week—Monday Wednesday, and Saturday; and in the evening the show commences at eight o'clock, or a quarter to eight, and lasts till a quarter to twelve, when we close.

Q. Now, tell the jury whether or not, between the hours of two and five, on the afternoon of Friday, April 14, 1865, there was any dancing or performance going on at that hall?

A. No; there never was any dancing going on on Fridays in the afternoon.

Q. What kind of tables have you in that hall?

A. All square tables, like that before you.

Q. You have no round tables?

A. No; we never used round tables there to my knowledge.

Q. Had you any music there in the afternoon?

A. No, sir.

Q. Any women dancing there in the afternoon?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. Did any woman dance there at any time?

A. No.

Q. You say no woman danced there?

A. Not that day—that afternoon.

Q. Any time, any day?

A. Any day? No.

Q. You never had any dancing there?

A. Oh, yes; when the show was going on, and when there was rehearsal.

Q. Then you did have a woman dance at rehearsal?

A. Yes.

Q. When did you have rehearsal—when did the woman dance?

A. From eleven to twelve o'clock.

Q. What time of the day?

A. In the morning—in the forenoon.

Q. Did any ever dance there in the afternoon?

A. No, sir.

Q. What else did you do besides having women dance at rehearsal?

A. We did business there?

Q. What business?

A. Show business.

Q. What show?

A. Performing.

Q. What performance?

A. Like a theatre.

Q. Did you have any drink there to sell?

A. Yes.

Q. And you sold drinks?

A. Yes.

Q. People sat at the tables and drank?

A. Yes.

Q. Do you remember a torch-light procession in Washington after you heard the news of the fall of Richmond?

A. Yes.  
 Q. When was it?  
 A. I do not recollect.  
 Q. Do you remember whether there were any gaieties or rejoicings here after you heard of the fall of Richmond?  
 A. Yes, sir.  
 Q. When was that?  
 A. It was on the 3d of April.  
 Q. Do you know whether there were any after that in April?  
 A. I do not recollect.  
 Q. Between the 3d and the 20th of April you do not remember of any torch-light procession?  
 A. Not to my knowledge.  
 Q. Was there any to your knowledge?  
 A. I cannot think of it.  
 Q. You do not think there was any on the 14th of April—Friday?  
 A. Yes, sir.  
 Q. Do you think there was one that day?  
 A. No, sir.  
 Q. No torch-light procession on the evening of the 14th?  
 A. No.  
 Q. Are you sure about that?  
 A. Yes, I think so.  
 Q. As sure about it as about the rest of what you have stated?  
 A. Yes, from my knowledge.  
 Q. Did you take any sides in the war?  
 A. No, sir.  
 Q. Did you express any sympathy for the one side or the other?  
 A. I never did interfere.  
 Q. Did you express any sympathy for the one side or the other?  
 A. No; I did not.  
 Q. You were neither for the Union nor for the rebellion?  
 A. I kept neutral.  
 Q. What kind of dancing did you have there?  
 A. Different kinds of dancing.  
 Q. The object of your concert saloon was to make money, was it not?  
 A. Yes; to make a living.  
 Q. When you found people in excitement or any great holiday you were more likely to wish to have an exhibition, were you not—you would get more people in, would you not?  
 A. Yes; that is generally the case; but we did not look after that.  
 Q. You looked after getting the most people you could, did you not?  
 A. Well, they all came in by themselves.  
 Q. But they came in by themselves more when there were a good many to come in, did they not?  
 A. Yes; that is generally the case.  
 Q. On a holiday or celebration there were more people to come in?  
 A. Yes; generally.  
 Q. But on this Friday, the 14th, you say there was no torch-light procession, and nothing excited the people at all?  
 A. No. There was no show that afternoon.  
 Q. Was your place open that day?  
 A. Yes; it was open for the inside people to come in and go out.  
 Q. You are quite sure there was no excitement and no torch-light procession?  
 A. Yes; I think so.  
 Q. And your memory is as good upon that as upon any fact you have testified to, is it not?  
 A. Yes, I believe so.  
 By Mr. MERRICK:  
 Q. You say there was no torch light procession on the

day of the 14th. Do you recollect whether there was any torch-light procession on the night of the 14th of April, 1865—the night the President was assassinated?

A. Yes.  
 Q. You said there was none during the day, but there was one that night.  
 A. Yes.  
 Q. I understood you to say that there was no performance there on the afternoon of that day, but you had a performance there that night?  
 A. Yes, sir, that night.  
 Q. Do you know whether or not, when you have a performance in the afternoon, it is advertised?  
 A. Yes, sir, always advertised, especially if there is any *matinée* going on.  
 Q. In what paper?  
 A. We always advertised in the *Star*.  
 Q. Do you recollect of any afternoon performance or *matinée* after April, in 1865—in the summer or fall of 1865?  
 A. Yes, several of them.  
 Q. Was that advertised?  
 A. Yes, sir. If there was any *matinée* going on, it was always advertised.

By Mr. PIERREPONT:

Q. You now think you did have a performance there on Friday night?

A. Yes, on Friday night, but not in the afternoon.  
 Q. Tell the jury what performance you had on Friday night.

A. Just like usual—dancing and singing.  
 Q. And that was Friday, the 14th of April, was it not?

A. Yes, sir.  
 Q. Now, you remember that on Friday, the 14th of April, in the evening, you did have dancing?

A. Yes; but not in the afternoon.  
 Q. Did you have people dance there Friday evening?

A. Yes.  
 Q. And you now remember that there was a torch-light procession, do you?

A. Yes.  
 Q. Did you think I was asking you about a torch-light procession in the day-time?

A. No.  
 Q. You did not think I meant any thing like that, did you? Did you understand, when I asked about a torch-light procession on the 14th of April, that I meant the day-time?

A. I did not understand you that minute.  
 Q. Did you think I meant the day-time?

A. I did not think so.  
 Q. Did you have any drinking there that night?

A. Yes, sir.  
 Q. Did anybody come in that afternoon and drink?

A. Some few people.  
 Q. Did you know who they were?

A. No.  
 Q. Did you know John Wilkes Booth?

A. No.  
 Q. Never knew him?

A. Never saw him.  
 Q. Do you know this prisoner?

A. I never saw him before now.  
 Q. Did you know Atzerodt?

A. No.  
 Q. You do not know whether they came in and drank?

A. No.  
 Q. But somebody did?

A. Yes.  
 By Mr. MERRICK:

Q. When did your dancing and singing begin at night?

A. At a quarter before eight o'clock.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 73. WASHINGTON, SATURDAY, AUGUST 10, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 72.*

GEORGE NACHMAN,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Washington.

Q. What is your business?

A. I am in the dry goods business now.

Q. What were you engaged in in 1865?

A. Music.

Q. Had you charge of a band of musicians?

A. I was leader at Mr. Henze's place, Metropolitan Hall.

Q. Where is Metropolitan Hall?

A. On D street, fronting the avenue, between Eleventh and Twelfth streets.

Q. Were you engaged in Metropolitan Hall, as leader of that orchestra, in April, 1865?

A. I was.

Q. Do you recollect Mr. Bernard Henze going to the North in April, 1865?

A. Yes, sir; he went to Philadelphia.

Q. In whose charge did he leave the hall at that time?

A. In charge of his brother, myself, and the police officer, Mr. Voss.

Q. What were your duties as leader of the orchestra, in connection with the performances at that hall?

A. I was business manager in general for some time during the month of April for Mr. Henze. Mr. Henze was very often absent out of town, and always gave me charge of his place.

Q. Were you or not present at the time the performances were going on?

A. All the time.

Q. What kind of performances did you have there?

A. The same performance as the Canterbury—dancing, music, singing.

Q. What time did your performance begin at night?

A. The music played at half-past seven; but the performance commenced at eight, and ended at half-past eleven or a quarter to twelve.

Q. Do you recollect Friday, the 14th day of April, 1865, the day of the night when the President was assassinated?

A. I do.

Q. State to the jury whether or not that afternoon of April 14th, 1865, there was any music and performance at that hall before seven o'clock.

A. No, sir.

Q. Are you positive?

A. Positive.

Q. Could there have been a performance at that hall on the afternoon of the 14th of April, 1865, without your knowing it?

A. No, sir; there could not have been.

Q. Were you there?

A. I was there all the time Mr. Henze was away; I was all the time in the hall.

Q. Do you know whether or not there was any performance in the afternoon at any subsequent time in 1865?

A. Yes, sir.

Q. At what time?

A. There was a performance there for my benefit in September.

Q. A matinée?

A. A matinée; the first matinée that ever was given in that hall.

Q. Was that advertised in the papers?

A. Yes, sir; I could not have made any thing out of it if I had not advertised it well.

Q. I understand you, then, that the regular performances were at night?

A. Yes, sir.

Q. Are you positive that was the first matinee ever given while you were connected with that hall?

A. Yes, sir, since January 1, 1865.

Cross-examined by Mr. PIERREPONT:

Q. What country are you from?

A. I am from Germany.

Q. What part of it?

A. On the Rhine.

Q. What place?

A. Mayence?

Q. I notice you put your hat on while the oath was being administered; why was that?

A. Well, sir, I believe in the Old Testament; I swear to that.

Q. You do not believe in the New?

A. No, sir.

Q. Were you in Washington on the 14th of April, 1865?

A. I was.

Q. Where were you in the morning?

A. At the hall.

Q. What were you doing there?

A. General business always called me there.

Q. I do not ask what called you. I ask what you did there on that morning.

A. I stepped in there.

Q. At what time?

A. Generally in the morning at ten o'clock.

Q. I do not ask you what you did generally; I ask what time you stepped in there that morning?

A. That I cannot exactly tell you.

Q. How long did you stay there that morning?

A. That I cannot tell you, either.

Q. When did you come out that morning?

A. When I went to my dinner.

Q. Where did you get your dinner?

A. I cannot say, because I took my meals wherever I felt like it.

Q. What performance was there in the evening?

The WITNESS. Do you mean at night?

Mr. PIERREPONT. I mean in the evening.

A. There was no performance in the evening.

Q. I ask what performance there was in the evening?

The WITNESS. Do you mean the afternoon or night?

Mr. PIERREPONT. I mean exactly what I say, and probably you understand me.

The WITNESS. I do not understand you.

Q. I will repeat the question: Was there in the evening?

A. There was no performance in the afternoon.

Q. Was there in the evening?

A. There was at night.

Q. When, on your theory, does night begin?

A. When it is dark.

Q. You say the music commenced at half past seven?

A. Yes, sir, I commenced to play there at half-past seven.

Q. How do you know you commenced to play at half-past seven?

A. Because it was the customary rule at Metropolitan Hall, and every other concert saloon and theatre.

Q. You did commence that night at half-past seven o'clock?

A. Yes, sir; and every night.

Q. I am asking you about that night.

A. I say that night, and every other night.

Q. What else did you do? Remember, I do not ask you about any other night but that night. Confine your answers to the questions, and you will get along faster. On the 14th of April, 1865, what performance was there there at half-past seven o'clock?

A. There was singing and dancing—Ethiopian performance.

Q. Was there any woman dancing?

A. Yes, sir, certainly; ladies danced there.

Q. Then ladies were dancing?

A. Yes, sir.

Q. And the music began at half-past seven o'clock?

A. Yes, sir.

Q. The dancing too?

A. No, sir; at eight o'clock the dance commenced.

Q. Was there any drinking there?

A. Certainly; we kept a public bar-room.

Q. Were there any tables there where people sat and drank?

A. Certainly.

Q. Did they sit down and drink at them?

A. They generally sat down.

Q. Did anybody come in that night and drink?

A. I suppose they did; the hall was crowded.

Q. Did anybody come in that afternoon and drink?

A. I cannot tell you whether anybody did or not.

Q. You do not know whether they did or did not?

A. No, sir.

Q. Were you there in the afternoon?

A. No, sir.

Q. Where did you go?

A. That is what I cannot tell you—where I went.

Q. Do you not remember?

A. Indeed, I cannot.

Q. You got your dinner somewhere?

A. Yes, sir; I got my dinner, and I might have gone back to the place afterwards, and I might not.

Q. Did you?

A. I cannot tell you that.

Q. Can you not tell whether you did go back or not?

A. Not positively.

Q. Can you not tell where you were between one o'clock and seven o'clock?

A. Indeed, I cannot.

Q. And you do not know how many people came in in the afternoon?

A. No, sir.

Q. This was not at all a holiday?

A. It was Good Friday, to my knowledge.

Q. Was it in any way a holiday?

A. Not that I know of.

Q. Was there any procession that evening?

A. I cannot tell you that. I cannot recollect it.

Q. Did you hear of any that evening?

A. Not to my knowledge.

Q. Was there no torch-light procession to your knowledge?

A. I cannot recollect it.

Q. When there was a holiday or a rejoicing you had more people to come in and drink than usual, had you not?

A. Certainly.

Q. And your performance was better attended then, was it not?

A. I do not know. The business has always been alike at Metropolitan Hall.

Q. Always exactly alike?

A. Always alike.

Q. Just as good in April, 1865, when there were few people in town, as when there were many?

A. Yes, sir. I do not know what you mean by "few people." I know the place was always crowded.

Q. The more people there were in town, and the more it was a holiday and a day of rejoicing, the more people would be likely to happen in?

A. I do not know that. They could not do more than fill the hall, and the hall was always filled.

Q. When people came in to drink in the afternoon, was it always full then?

A. I never recollect the place being full, or half full, or quarter full, in the afternoon.

Q. Have you never seen anybody there in the afternoon drinking?

A. Certainly I have.

Q. Any great number?

A. There might have been five, or ten, or fifteen sometimes coming up to the bar to drink. Very seldom have I ever seen any gentlemen sitting at any table in the afternoon to drink.

Q. Did you ever see it?

A. I have seen it.

Q. On the 14th you were not there?

A. I was there in the morning.

Q. How about the afternoon?

A. I may have been there; I am not sure.

Q. What is your memory about it?

A. I cannot recollect.

Q. You cannot recollect whether you were there or not?

A. No, sir.

By Mr. MERRICK:

Q. You say there were tables in that room? What sort of tables?

A. Exactly like the table you are sitting at now—square tables.

Q. Any round tables?

A. Not a round table had ever been in that place.

Q. You say you do not recollect about a torch-light procession that night?

A. I do not.

Q. What were you doing at night?

A. I was playing the violin in the orchestra from half-past seven until eleven.

Q. Which end of the hall is the orchestra?

A. Right in front of the stage.

Q. Which end is the stage?

A. Right in front of the orchestra.

Q. Was it at the back end or the front end of the hall—nearest or farthest from the street?

A. Farthest from the street.

Q. And your orchestra, like all orchestras, I suppose, made some noise on its own account?

A. We tried to make a noise. We got people in to make a noise.

Q. I understood you to say, in reply to a question on the other side, that at night, when the performance was going on, the Metropolitan Hall is almost always crowded?

A. Always.

Q. But in the afternoon, before the performance begins, you never saw as many as fifteen or twenty people sitting around at the tables?

A. I never saw ten sitting around at the tables.

## AUGUSTUS VOSS,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. At 302 Tenth street, in this city.

Q. What is your business?

A. Policeman.

Q. What was your business in April, 1865?

A. Policeman.

Q. What part of the city had you charge of in your official capacity?

A. The lower portion of the second ward.

Q. How long have you lived here?

A. Some thirty years.

Q. Do you know where Metropolitan Hall is?

A. I do.

Q. Was that within the portion of the city given in charge to you?

A. Yes, sir.

Q. Where is Metropolitan Hall?

A. On the south side of D street, between Eleventh and Twelfth.

Q. Does it look out towards the avenue?

A. Yes, sir; it faces the avenue.

Q. There is nothing to intercept its front between the hall and the avenue, is there?

A. No, sir.

Q. Do you recollect Mr. Bernard Henze going North in the month of April, 1865?

A. I recollect that he was absent on the day that the President was killed.

Q. Did you have any thing to do with Metropolitan Hall?

A. I was employed there to keep order at night by Mr. Henze.

Q. Were you there on the day the President was assassinated?

A. I was in that neighborhood in the afternoon.

Q. State whether or not, on the afternoon of the 14th of April, the day the President was assassinated, there was any music or dancing at Metropolitan Hall before half-past seven o'clock?

A. No, sir.

Q. Are you positive there was none?

A. I am perfectly satisfied of it.

Q. What sort of tables have they at Metropolitan Hall?

A. Tables about the size of the table you are sitting at.

Q. How are they made?

A. Square tables, something like that.

Q. Are there any round tables there?

A. None.

Q. What time did the performance at Metropolitan Hall begin on the night of the 14th of April, 1865?

A. I was not there that night.

Cross-examined by Mr. PIERREPONT:

Q. At twelve o'clock on the 14th of April, 1865, where were you?

A. I was at dinner at that time.

Q. Where did you go from dinner?

A. Down that portion of the city.

Q. Were you on patrol?

A. Yes, sir; on patrol duty.

Q. On the afternoon of the 14th of April, between twelve and five o'clock, did you go into the Metropolitan Hall?

A. I did not go in that I know of; I may have done so, but I do not recollect it.

Q. I suppose you remember the torch-light procession that evening?

A. No, sir; I was in Grover's Theatre at that time, I think.

Q. Were you at Metropolitan Hall at all in the evening?

A. I was in that neighborhood in the afternoon; I was not in the hall that night; I sent somebody else in my place.

Q. Between twelve o'clock at noon on the 14th of April, 1865, and twelve o'clock at night on the same day, were you once in Metropolitan Hall?

A. I cannot say that I was.

By Mr. BRADLEY:

Q. I understand you were in the neighborhood; and if there had been music and dancing there, you would have known it?

A. Yes, sir; I was along that square pretty much all the afternoon.

THOMAS GEARY,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In this city, on D street, between First and Second?

Q. How long have you lived in Washington?

A. About eighteen years.

Q. What is your occupation?

A. I keep a livery stable.

Q. Do you know William E. Cleaver, a witness in this case?

A. Yes, sir.

Q. Do you know his general reputation for truth and veracity among the people with whom he associates and in the community where he lives?

A. Yes, sir; I do.

Q. What is his reputation as a truthful man or otherwise?

A. It is generally bad, from what I have heard.

Q. From his general reputation among the people among whom he lives—not from your own opinion or feelings—would you believe him on oath?

A. No, sir; I would not.

Cross-examined by Mr. PIERREPONT:

Q. Who have you heard say they would not believe him on oath?

A. I have heard a good many.

Q. Who?

A. I cannot name any particular one.

Q. Have you ever heard any one say it till since he was on trial for fornication?

Mr. MERRICK. He was not on trial for fornication.

Mr. BRADLEY, Jr. For rape and murder.

The WITNESS. I have heard a great many speak bad of him before this trial.

Mr. PIERREPONT. But before that trial did you ever hear any persons say they would not believe him on oath?

A. I never heard his oath tested?

Q. Did you ever hear anybody say before that trial that he would not believe Cleaver on oath?

A. I have heard a good many say he was a liar.

Q. Did you ever hear any person say he would not believe him on oath before that trial?

A. I never saw his oath tested.

Q. Who did you ever hear say, before Cleaver was put on trial, that he was a liar?

A. I cannot particularly say. It is the general, ordinary case.

Q. Name one?

A. I cannot name any one in particular.

Q. Can you not name a single one?

A. No, sir.

Q. Can you not name two?

A. No, sir.

Q. You do not know anybody whom you heard say he was a liar?

A. No, sir. It was an ordinary remark.

Q. But the point they were talking about was not of his being a liar so much as his being something else, was it?

The WITNESS. What about something else?

Q. Was the talk on the subject of his being a liar?

A. Yes, sir, it was pretty much so.  
 Q. Who was it that it was pretty much so with?  
 A. The community at large that knew him.  
 Q. Who?  
 A. I cannot call anybody's name in particular.  
 Q. You cannot name a man?  
 A. No, sir.  
 Q. Not one?  
 A. No, sir.  
 Q. Have you had any difficulty with Cleaver?  
 A. No, sir.  
 Q. Any rivalry with him?  
 A. None at all.  
 Q. He is a horse-doctor, is he not?  
 A. Yes, sir.  
 By Mr. CARRINGTON:  
 Q. Where was it that you heard these conversations?  
 A. Ordinarily through the city.  
 Q. Can you name any particular place where you have heard that?  
 A. I cannot.  
 Q. You cannot tell either the person or the place. Now, can you state the time when you ever heard any such thing?  
 A. I have heard it on the race-track.  
 Q. Which race-track?  
 A. The Union Course over here.  
 Q. Is that the only place you recollect?  
 A. Yes, sir.  
 Q. Now, having fixed the place, can you give us the name of a person you heard speak of him in that way?  
 A. No, sir; it was in a crowd.  
 Q. Can you not recollect a single person who was in the crowd?  
 A. No, sir.  
 Q. Can you tell the jury the substance of what was said on that occasion?  
 A. It was on account of throwing a race off on his friends; he deceived his friends.  
 Q. State, as near as you can, what was said?  
 A. I cannot tell exactly, because there were a great many around. There may have been two or three hundred.  
 Q. I do not ask you to state the precise words, but state now, as near as you can, what was said in regard to his truth?  
 A. I cannot tell exactly what was said.  
 By Mr. PIERREPONT:  
 Q. With which side did you sympathize in the late war?  
 A. I did not sympathize with either side particularly.  
 Q. You did not sympathize with the Union side generally, did you?  
 A. Yes, sir; I made my living here, and I expected to stay here; all I had was here.  
 Q. Which side did you sympathize with particularly?  
 A. With the Union side.  
 Q. You have always been so?  
 A. Yes, sir.  
 Q. What did you mean when you said you did not sympathize with either side particularly?  
 A. I did not think I was very deeply interested on either side?  
 Q. You did not think you were deeply interested in preserving the country?  
 A. I said that all I had was here, and I stayed here with it.  
 By Mr. MERRICK:  
 Q. I understand you to say that, although you cannot name the persons, it was the general talk that Cleaver was a liar?  
 A. Yes, sir.  
 Q. And it was so common that you cannot name any one individual?  
 Mr. CARRINGTON. I do not think that is a proper interrogatory.

Judge FISHER. Oh, yes; that is fairly in reply to the cross examination.  
 Mr. MERRICK. The counsel asked you if you had heard any thing before Cleaver's trial for fornication; do you know when he was tried?  
 A. Some two months ago, I believe.  
 Q. What was he tried for; do you know of your own personal knowledge; were you in the court-room at the time he was tried?  
 A. No, sir; but I read it in the papers.  
 Judge FISHER. Do not state any thing from hearsay.  
 Mr. MERRICK. Do you know, of your own knowledge, what he was tried for?  
 A. Yes, sir.  
 Q. Were you here in the court-room?  
 Mr. CARRINGTON. The witness has already stated that he was not in court. He is not allowed to state what he heard.  
 A. I was not in court.  
 Mr. MERRICK. Not at all during that trial?  
 A. No, sir.  
 Q. Did you ever hear Cleaver say what he was tried for?  
 Mr. CARRINGTON. Do not answer that.  
 Judge FISHER. The best way to prove what he was tried for is by the production of the record.  
 Mr. MERRICK. Gentlemen, do you consent that the record may come in?  
 Mr. CARRINGTON. When it is offered we shall tell you.  
 Mr. WILSON. You may offer it, and we shall see.  
 Mr. MERRICK. Although that is the best evidence of it, I presume I may on re-examination ask these questions. That was a new matter developed in the cross-examination, entirely new matter, to which I had made no reference in my direct examination. It was not my province, and I could not be allowed to ask whether he was tried or not.  
 Mr. PIERREPONT. We did not ask him any questions about Cleaver being tried.  
 Judge FISHER. The question was, whether before a certain trial he had heard certain things.  
 Mr. PIERREPONT. It merely related to the dates.  
 Judge FISHER. The question was, whether before that trial he had heard any thing said against the character of the witness whom it is sought to impeach.  
 Mr. MERRICK. That was all; and I propose to fix the time of that trial, and what the trial was for, by ascertaining the facts about it. I supposed that, being new matter brought out by the other side, I might pursue the inquiry.  
 Mr. PIERREPONT. Any thing that relates to the time of that trial I admit the gentlemen can bring out. That was the point of inquiry.  
 By Mr. MERRICK:  
 Q. Have you, within the last six or eight months, missed Cleaver from the community?  
 A. Yes, sir.  
 Q. When did he appear again upon the theatre of action?  
 A. Some two weeks ago, as near as I can recollect; somewhere about that time.  
 Mr. PIERREPONT. Is this in order, your honor?  
 Judge FISHER. No, it is not in reply.  
 Mr. MERRICK. The counsel said I might fix the date of the trial.  
 Mr. PIERREPONT. That does not fix the date of the trial, and has no tendency to fix it. It is easy to get at the date of the trial; it is a matter of record.  
 Mr. MERRICK. But this is upon the examination; and I have rights in the examination which I may not have in the record. If the counsel will consent that the record may come in, I will stop the examination.  
 Mr. PIERREPONT. I will consent that whatever date the counsel himself will say was the date of that trial may be put in evidence.  
 Mr. MERRICK. If the counsel will consent that the record may come in, that will fix it.

Judge FISHER. You may ask the witness about the date of the trial, if he knows it.

Mr. MERRICK. (To the witness.) Do you know from your own knowledge, or what Cleaver told you, what was the date of the trial?

Mr. CARRINGTON. He cannot say what Cleaver told him about it.

Judge FISHER. Oh, no; that is hearsay.

Mr. MERRICK. Very well; I will not press it. He does not know of his own knowledge.

WILLIAM HORNER,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. On Fourth street, between G and H.

Q. How long have you lived in this city?

A. Forty-seven years, is what my father and mother told me.

Q. Do you know William E. Cleaver, a witness in this case?

A. I do.

Q. How long have you known him?

A. Ever since he came to Washington.

Q. Do you know his general reputation in the community as a man of truth and veracity?

A. It has been pretty bad.

Q. You know his reputation?

A. Yes, sir.

Q. And you know it is bad?

A. From what I have always heard people speak.

Q. Now, from what you have heard people say of William E. Cleaver's character as a man of truth or falsehood, would you believe him on his oath?

A. I would not.

Cross-examined by Mr. CARRINGTON:

Q. What is your business now?

A. I make medicine.

Q. What sort of medicine?

A. Horner's Mixture.

Q. For what kind of diseases?

A. For any kind you can name, inwardly.

Q. Will it cure any disease?

A. Any inward disease.

Q. How long have you been engaged in that business?

A. I have been making it for different people for thirty years; I just gave it away to different people. I went into it regularly about two years ago.

Q. Have you devoted yourself during these thirty years exclusively to that business?

A. No, sir.

Q. What was your business before that?

A. I used to own carriages; I followed hacking. When the war broke out I sold the carriages, or a few months after the war broke out, and quit that business.

Q. Did you keep a livery stable?

A. I was with Mr. Geary awhile, superintending his stable.

Q. The Mr. Geary who has just been examined as a witness here?

A. Yes, sir.

Q. When did you quit Mr. Geary?

A. I cannot exactly tell you; about a year or so ago. I guess a little over a year ago.

Q. Was Cleaver in the habit of attending to Geary's horses and your horses?

A. No, sir; I always attended to my own horses.

Q. Did he ever doctor your horses?

A. No.

Q. Did you ever employ him for that purpose?

A. No, sir. I always doctored my own horses.

Q. You never employed Cleaver at all?

A. Never in my life.

Q. Are you in the habit of furnishing your "mixture" for horses?

A. No, sir.

Q. Did you ever doctor horses yourself?

A. Yes, sir.

Q. Were you and Cleaver engaged in that business at the same time, doctoring horses?

A. I did it only for a few friends, who used to come for me.

Q. Did you charge for it?

A. Sometimes, and sometimes not; according to the circumstances the man was in.

Q. Was Cleaver engaged in the same business?

A. I believe he was.

Q. Did you know Cleaver personally yourself?

A. Oh, yes; I have been in his company.

Q. Were you in the habit of associating with him?

A. No, sir.

Q. Did you speak to him?

A. I spoke to him when I met him.

Q. Were you on friendly terms?

A. Yes, sir; we never had a word in our lives.

Q. Do you recollect the first time you ever heard his reputation for truth questioned?

A. I cannot; I heard it at different stables. I heard it once at Mr. Flemming's stable. Some man's horse was sick; I cannot fix the time.

Q. Can you not give us some idea of it?

A. I cannot give you any idea; I cannot fix the time when it was.

Q. State what was said.

A. Some one said, "Send for Cleaver." I think they were Marylanders; and some gentleman spoke up and said, "No, don't send for Cleaver; I would not believe Cleaver on nothing."

Q. What did they want to send for Cleaver about?

A. I believe a horse was sick, as near as I can come at it.

Q. What was done with the horse?

A. I do not know.

Q. Did you know those gentlemen?

A. No.

Q. How long did you stay there on this occasion?

A. I do not suppose I stayed there that evening more than ten, fifteen, or twenty minutes.

Q. A horse was sick, and some one spoke of sending for Cleaver. Then tell us what remark was made.

A. I cannot exactly mention the words.

Q. Give them as near as you can.

A. Some one mentioned about Cleaver, and one gentleman said, "Damn Cleaver! I wouldn't believe Cleaver on nothing." That is as near as I can get at it.

Q. And you thought that was an imputation on his veracity, did you?

A. Oh, I have heard it often.

Q. But you have stated only one time.

A. I have stated one time; but I have heard it again and again. I cannot recollect how often.

Q. You cannot recollect any other place or time?

A. That is so.

Q. You do not recollect either the time, or the place, or the persons, except this one?

A. No, I do not recollect the place, except at Mr. Flemming's stable.

Q. You think, from that conversation, his general reputation is bad?

A. No; I have heard it before. I am a man that has been all over the city. A man that follows my business is first one place and then another. I did not pay much attention to it, anyhow.

Q. You go to all sorts of places in the city?

A. Yes, the same as you do, I reckon.

Q. Notwithstanding you are in the habit of going to all sorts of places in the city here, you do not recollect of a single person you heard speak of Cleaver, except the one you have mentioned?

A. I cannot, and I do not know him. I would not know the man if I saw him now.

Q. But from that you say his general reputation is bad?

A. Yes.

Q. Had you any conversation with Geary this morning in reference to Cleaver?

A. No, sir.

Q. Have not you and Geary been speaking about this man Cleaver?

A. Yesterday morning I went around to him. I got a letter from a doctor to send him some medicine, and another one from Chicago; and I went around to see Geary; he is a partner of mine. We got to talking. He said he was summoned up here to court. I asked him what it was about. He said about Cleaver; and said I "Cleaver? I would not believe him on his oath." Those are the words I said.

Q. You said that to Geary?

A. Yes.

Q. What did Geary say to that?

A. Geary said nothing but "I will have you summoned." I told him not to do it, because I wanted to have nothing to do with the thing.

Q. Did you have any conversation with anybody else about it?

A. Not until I knew I was summoned here; not till after I went away, and the court adjourned.

JAMES W. PUMPHREY,

recalled as a witness for the defense.

By Mr. MERRICK:

Q. How long have you lived in this city?

A. All my life.

Q. Do you know William E. Cleaver, who has been examined as a witness in this case?

A. I do.

Q. How long have you known him?

A. From twelve to fifteen years.

Q. Where did he come from?

A. He is an Englishman by birth, I believe. So he always told me.

Q. Do you know Cleaver's general reputation for truth and veracity throughout the community?

A. I have heard it spoken of frequently.

Mr. CARRINGTON. Before this trial?

A. Yes, sir; a good many years back. His general reputation is very bad.

Mr. CARRINGTON. I wish you to confine yourself to truth and veracity.

The WITNESS. That is what I am trying to do, and I am not telling any thing but the truth.

Mr. CARRINGTON. You do not understand me. Confine yourself to the truth and veracity of Cleaver. I am not alluding to your veracity.

The WITNESS. His character is very bad.

By Mr. MERRICK:

Q. From his general reputation as to truth and veracity, would you believe him on his oath?

A. I would not like to.

Cross-examined by Mr. PIERREPONT:

Q. How long have you known him?

A. From twelve to fifteen years; it may be a little longer.

Q. Tell the jury whom you have heard say that he was a liar or a bad man.

A. I cannot tell any particular one, but it is a universal thing all over. I never heard a man speak good of him in my life.

Q. Where a thing is universal, can you not tell some man that said he was a liar?

A. I have heard plenty of men say they would not believe him on his oath. I never heard a man speak well of him in my life.

Q. Can you not name one of those men?

A. I cannot remember one at present. You have got some witnesses here that I have heard say so.

Q. Anybody but the witnesses?

A. I do not remember anybody at present.

Q. Have you talked with him?

A. Not lately.

Q. Within two years?

A. Yes; within two years I have.

Q. What have you talked with him about?

A. About nothing particular; first one thing and then another.

Q. You have had conversations with him about horses?

A. Yes; a little of everything.

Q. Did you place any reliance upon what he said, in consequence of this bad character for truth?

A. He is a man I never placed any confidence in at all.

Q. Did you place any reliance on what he said?

A. When he and I were talking it did not amount to any thing.

Q. Did you believe he was telling the truth?

A. If he was to tell me any thing of account I would not believe him.

Q. If it was any thing in regard to ordinary matters—that he had seen a person, for instance, would you believe it?

A. From his general reputation I would not.

Q. If he told you he had seen a friend of yours at Willard's Hotel, you would not believe it?

A. I should doubt it very much.

Q. You would not believe it any more likely to be true because he said so?

A. Not at all.

Q. And you would not go there to see that friend if you wanted to see him?

A. I would not go across the street on account of any thing he said. I would not pay any attention to any thing he said.

Q. None whatever?

A. None whatever.

Q. His reputation with you is such?

Mr. MERRICK. Pardon me. "His reputation with you is such," says the counsel. These questions are not fairly addressed, with all deference. I suggest the counsel should say to the witness, "His reputation in the community is such."

Mr. PIERREPONT. Your reason is the reputation that you have learned about him?

A. That is it exactly.

Q. Therefore, in any ordinary matter, if he told you that he saw a person, and you wanted to see that person, you would not go to find him?

A. Not at all.

By Mr. CARRINGTON:

Q. Can you state some persons that you have heard speak of his reputation? Give us the names.

A. I cannot think of any one just now, but I never heard a man speak good of him in my life.

Q. Will you name some person who has given him this character?

A. I cannot do that.

Q. Can you state the time and place when you have heard his reputation for truth and veracity discussed?

A. I have heard it for the last eight or nine years.

Q. Having heard this matter so frequently discussed, can you not name any particular time and place?

A. I cannot.

Q. Can you state to the jury the substance of what you have heard said?

A. I have heard men say that he was a bad man to have any dealings with; that they would not believe him on his oath.

Q. You recollect distinctly having heard that; but you cannot tell the name of a single person, and you cannot state the time and place when and where you heard it?

A. I have heard a great many say so at my stables.

Q. But you do not know the names of any of them now?

A. No.

Q. And cannot state them?

A. I suppose I know the names of a good many.

By Mr. PIERREPONT:

Q. You keep a livery stable?

A. Yes, sir.

Q. And he kept one?

A. I believe he did. I do not know that.

By Mr. CARRINGTON:

Q. Did you not know his partner?

A. Mr. Rainey, I understood, was partner with him at one time. I heard that, but I do not know it to be a fact.

By Mr. MERRICK:

Q. I understand you now to say in reply to counsel that this opinion expressed by the public was so universal that you cannot pitch upon any particular individual?

A. That is it exactly.

Q. No one particular man made any impression on you, because they all said the same thing.

A. I have heard everybody say the same thing.

By Mr. PIERREPONT:

Q. But of that everybody you cannot name one?

A. I cannot think of one just now.

JOHN C. COOK,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Washington city.

Q. How long have you resided here?

A. Since 1843—twenty-four years ago.

Q. Do you know William E. Cleaver, who was a witness in this case?

A. Yes, sir; I do.

Q. Do you know his general reputation in this community as a man of truth and veracity?

A. I do.

Q. State whether that reputation is good or bad.

A. Very bad.

Q. From that general reputation, and from that only, not from your own feelings or belief, maybe, but from what people say of him, would you believe him on oath?

A. I would not.

Cross-examined by Mr. CARRINGTON:

Q. What has been your business in this city?

A. I have been in a heap of different businesses since I have been in town.

Q. State what they have been.

A. I was in the hotel business once; I was buying and selling negroes at one time; I am now in the livery business, and I was in the livery business at the time I was buying and selling negroes.

Q. While you were buying and selling negroes and were in the livery business, what business was Cleaver engaged in?

A. He was veterinary surgeon—a horse-doctor.

Q. Did you have him in your employ during that time?

A. He used to come to my stable a good deal.

Q. Did you not know Mr. Rainey, the partner of Cleaver?

A. Yes, I know all the Raineys. He was reputed to be his partner; I do not know that he was.

Q. Was not his stable immediately opposite to yours?

A. Mr. Rainey was no partner of Cleaver when my stable was opposite his. Rainey & Cleaver bought out a stable that I built on Sixth street, some two or three years ago, as I understand; I do not know it to be so, but they were there together. My stables now are on Eighth street; I sold out on Sixth street.

Q. Who bought you out?

A. They did not buy me out; but a couple of years after I was bought out, they were there together at the stable; I do not know whether they were partners or not. They were there together on Sixth street.

Q. Where is Mr. Rainey's stable now?

A. I do not know that he has any.

Q. Is Cleaver interested in any stable now?

A. Not that I know of.

Q. Do you know when he quit that business?

A. I do not.

Q. Did you ever employ him as a veterinary surgeon?

A. I think he has given medicine sometimes to horses that I had.

Q. Did you not employ him?

A. I do not think I ever employed him myself. I may have asked him to look at a horse, perhaps. I think, on reflection, he went to the Navy Yard once to look at a horse for me.

Q. How long has Cleaver been living in this city?

A. I do not know exactly, but it seems to me he has been here about fifteen or sixteen years.

Q. How long have you known him personally?

A. Ever since he came to the city. I was about the first, I think, that did know him. I do not suppose he had been here more than a short time when I knew him. Dorsey and myself were then keeping stable.

Q. When was the first time you ever heard any imputation upon his veracity?

A. It has been so long ago that I cannot tell. I never heard any good of him in my life. I never heard a man that knew him speak well of his character.

Q. You have heard it so frequently spoken of that you can probably tell us some particular time when you heard his reputation for truth and veracity questioned?

A. I have frequently been sitting in the office when something would transpire. I recollect on one occasion that there was a man taken up for riding across the pavement. It was at the time John L. Smith had his office below there. An officer took him up, and as general remarks were made some one hallooed out, "Send for Cleaver; he'll swear him out."

Q. Who made that remark?

A. It was spoken in the stable; I do not recollect exactly by whom.

Q. What stable was it?

A. In the stable on Eighth street. Dorsey was attending to the stable, and I had an office there.

Q. You recollect hearing that remark by some one. How many persons were present at that time?

A. I do not know; perhaps five or six.

Q. Did you know any of them?

A. No, I did not.

Q. Can you not tell the name of one of that company?

A. I do not know that I can of that company at that time.

Q. Who was it made this remark?

A. I might have said so; perhaps it was a general remark. It was said.

Q. Were you not the person who did make that remark on that occasion?

A. I do not think I was; I am not apt to make remarks of that kind about anybody; I am not apt to trifle with anybody's feelings; I never was a man of that kind.

Q. You cannot state who the person was that made that remark?

A. I do not know that I can.

Q. You cannot state the name of a single person composing the company at the time that remark was made?

A. I do not know that I can, but I think Mr. Owen Sheckells was present.

Q. Did he say it?

A. I do not know that he did.

Q. Are you satisfied that Owen Sheckells was present at that time?

A. I think so, but I am not certain; I think Mr. Dorsey was present, but I am not certain.

Q. Which Dorsey do you allude to?

A. Allen Dorsey.

Q. Did he make that remark?

A. I do not know that he did.

Q. Who else were present besides Mr. Allen Dorsey and Mr. Owen Sheckells?

A. I do not know that they were present; I think they were there, but I do not know positively; it has been ten years ago, I guess.

Q. Now, state some other occasion when you heard Cleaver's character for veracity talked about.

A. I have heard it often talked about. I never heard a man speak well of him in my life.

Q. I am asking in relation to his character for truth?

A. I never heard him spoken of as truthful.

Q. Give us any other time you recollect.

A. It was general conversation, when men would get together and talk about the merits and demerits of people. When men get together they are very apt to speak of the merits and demerits of persons.

Q. And when discussing a man's character, I should think you would be apt to recollect the names of those who were present?

A. I have heard Mr. Sheckells for one frequently state that he would not believe Mr. Cleaver under oath.

Q. Who else?

A. Mr. Henry Middleton.

Q. Do you recollect when you heard him speak of it?

A. I do not; I have heard them speak in that way.

Q. When did you hear Mr. Henry Middleton speak of Mr. Cleaver, and what did he say of Cleaver's reputation for truth and veracity, and where was it?

A. I have heard him speak of it at the club-room, perhaps.

Q. What was it Mr. Middleton said?

A. He said he would not believe Cleaver upon his oath.

Q. You are positive that you heard him say that?

A. Yes, sir.

Q. Where was that said?

A. At the club-room, where I told you.

Q. And when was it?

A. I cannot state exactly. I do not think it has been more than a couple of weeks ago; I do not know how long.

Q. When was it that you heard Owen Sheckells say he would not believe him on oath?

A. I heard him say so frequently.

Q. State some time and place.

A. I cannot do it; I have heard him say so frequently.

Q. State some other persons in this community you have heard speaking in that way.

A. It is general talk; I have heard so many that I cannot specify.

Q. State some other persons, in addition to those whom you have already mentioned, who made such remarks.

A. I tell you that I cannot recollect persons' names, it has been such a general talk all over the community. I have never yet heard any man speak in his favor—not a single one. If you send out and send all over Washington city and summon men here and put them on their oaths to know his reputation, I doubt whether you can get one single man to say that he would believe him on his oath.

Q. That is your idea?

A. That is my idea.

Q. I am very anxious that, in assailing character, you should, if you possibly can, state the names of the persons you have heard speak so.

A. I have told you a dozen times I cannot.

Mr. BRADLEY. I think that question has been asked often enough.

Mr. CARRINGTON. I think so, too; I will not ask it again.

JOHN RAINEY,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. On the Island, between Seventh and Eighth streets.

Q. How long have you lived in this city?

A. I was born in Georgetown, and have lived here sixteen years.

Q. Do you know William E. Cleaver?

A. Very well.

Q. Do you know his general character for truth and veracity?

A. Very well.

Q. What is his general character?

A. Very bad.

Q. From his general character—not from your own opinion, but from what people speak of him as a man of truth and veracity or as a liar—would you believe him on his oath?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. Were you a partner of Cleaver?

A. No, sir.

Q. Are you connected by blood with Sam. Rainey?

A. He is my uncle.

Q. Whom have you heard speak of Cleaver?

A. I have heard several—a great number.

Q. But whom?

A. Mr. Henry Middleton for one.

Q. When did you hear him say it?

A. Sometime before Cleaver was arrested.

Q. Where was he when he said it?

A. Down at the Sixth-street stable.

Q. Did you ever hear anybody else say so?

A. I heard some others.

Q. Who?

A. Mr. John O'Brien.

Q. Where did you hear him say it?

A. At his restaurant, on Four-and-a-half street.

Q. When?

A. I heard him say so last night, and I heard him say so over a year ago.

Q. Whom else have you heard say so?

A. I have heard a great many; I cannot think of all I heard.

Q. Can you think of any others?

A. Not at present.

Q. In consequence of that reputation, you say you would not believe any thing he said?

A. I would not.

Q. Whether he was under oath or not?

A. Whether he was under oath or not.

Q. And if he told you any fact, you would not pay any attention to it, would you?

A. No, sir.

Q. No matter what?

A. No, sir.

Q. Though relating to any ordinary matter?

A. No, sir.

Q. If he told you there was a horse for sale at a stable, you would not believe it, would you?

A. I would not believe it until I went there and saw him.

Q. You would not go there and look, would you?

A. That would depend on circumstances; if I was going that way I would; if I was not I would not.

Q. But you would not go to look in consequence of his telling you so?

A. No, sir.

Q. You would not go to do any thing or look at any thing because he said so?

A. No, sir.

HENRY MIDDLETON,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. On Louisiana avenue.

Q. How long have you lived in Washington?

A. Eighteen years.

Q. Do you know William E. Cleaver, a witness in this case?

A. I do.

Q. Do you or not know his general character in this community as a man of truth and veracity?

A. I do.

Q. What is his general character as a man of truth?

A. Very bad.

Q. Would you, from his general character for truth and veracity, believe him on his oath?

A. I would not.

Cross-examined by Mr. PIERREPONT:

Q. What is your business?

A. Restaurant-keeper on Ninth street.

Q. How long have you kept the eating-house?

A. I have been in the business fifteen years.

Q. Do you sell liquor there?

A. Yes, sir.

Q. And things to eat?

A. Yes, sir.

Q. Now, tell us whom you have heard say they would not believe Cleaver under oath.

A. I have heard Mr. Sam. Rainey say so, for one; Mr. Michael Crogan.

Q. When did you hear Mr. Rainey say this?

A. I do not think it was more than three weeks ago the last time.

Q. Who else did you hear say it?

A. I heard Mr. Benter say he would not believe him on his oath.

Q. When did you hear him say so?

A. Some four or five weeks ago.

Q. Whom else did you hear say it?

A. I disremember now.

Q. In consequence of this reputation, you would not believe any thing he said, would you?

A. I would not.

Q. Do you know him personally?

A. I do.

Q. Have you ever had any dealings with him?

A. Some little.

Q. What sort of dealings?

A. No further than keeping my horse at livery in his stable.

Q. Did you have any difficulty about that?

A. No, sir.

Q. When you went to put your horse there, and he told you he would keep your horse, did you in consequence of this reputation believe that he would?

A. I supposed that he would.

Q. What made you think so?

A. Because he had a partner with him.

Q. That was the reason?

A. Yes, sir.

Q. It was not because he told you he would?

A. No, sir.

Q. There was not any thing, even down to the keeping of the horse, that you would believe because he told you he would do it?

A. No, sir.

Q. If he told you that he would take the horse on livery, would you believe it?

A. I presume I should, because I would deliver the horse, but as to his coming for it, I would not put dependence in him.

Q. But if you wanted him to take your horse on livery, from his reputation you would not believe that he would come for it because he said so?

A. I would not.

Q. If he told you there was a horse for sale in another stable, and you wanted to buy one, you would not go to see it?

A. No, sir.

Q. In any other ordinary matter you would not pay the least heed to what he said?

A. No, sir.

Q. Which side did you take in the rebellion?

A. I stood neutral.

Q. Did you sympathize with either side?

A. Well, some.

Q. How did the "some" go?

A. Being rather southern raised, I could not help feeling that way.

By Mr. MERRICK:

Q. You have been asked to name the persons whom you heard say this about Cleaver, and you have named over two or three. I want to understand whether this was the general talk among all that knew him and all who discussed him.

A. Among all that knew him.

By Mr. PIERREPONT:

Q. But you cannot give any more names than you have given?

A. No, sir.

Q. Where were you born?

A. In Maryland.

Q. What part of it?

A. Prince George's county.

JOHN HOLLORAN,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. I live in Washington city.

Q. How long have you lived here?

A. About fourteen years.

Q. Do you know William E. Cleaver, a witness in this case?

A. I do.

Q. Do you know his general reputation for truth and veracity in this community?

A. Yes, sir.

Q. What is it, good or bad?

A. Pretty bad.

Q. Would you, from that general reputation—from what you have heard said of him—believe him on his oath?

A. I should not like to do so.

Cross-examined by Mr. PIERREPONT:

Q. Do you come from the same country with Cleaver?

A. I do not know, sir; I was born in Ireland, and I understand he says he was born in England.

Q. You do not know whether they are the same country?

A. No, sir; I have never been in England.

Q. What is your business in this country?

A. I have been working at every kind of work, pretty much.

Q. What kind?

A. I have been working in all the Departments, pretty much; I worked in the Treasury; I worked in the Patent Office; I worked a while at the Capitol; I worked a while at the Insane Asylum, and many other places.

Q. Where do you work now?

A. I have never worked any for five or six months; the last place I worked at was the Government Printing Office.

Q. Did you leave that?

A. I was discharged, I believe.

Q. Why were you discharged?

A. The Superintendent told me the work was very scarce.

Q. That was the reason, was it?

A. That was all the reason I knew of.

Q. And for the last six months you have not done any thing?

A. I have.

Q. I thought you said you had not.

A. I did not; I said I was not at work. I do a little grocery business—very little of it.

Q. What is that?

A. I sell a little tea and sugar.

Q. Where do you sell it?

A. Here on F street.  
 Q. Do you sell any thing else?  
 A. I do—a little bread.  
 Q. Any thing else?  
 A. A great many things in the line of groceries.  
 Q. Do you sell liquor?  
 A. I used to sell a little of it some time ago.  
 Q. Do you sell any now?  
 A. No, sir.  
 Q. What is the trouble; is there any difficulty about it?  
 A. No; I have not a license for it.  
 Q. Did you sell some without license and got into trouble about it?  
 A. No, sir; I have not been in trouble about selling liquor.  
 Mr. BRADLEY. The witness has answered now, but I object to such questions.  
 Mr. PIERREPONT. Were you acquainted with Cleaver?  
 A. I knew him a little.  
 Q. Whom did you hear talk against his character for truth?  
 A. I have heard a great many; I cannot bring any one's name to memory now.  
 Q. Do you remember the place where it was?  
 A. I do.  
 Q. Where?  
 A. I have heard it often down at his stable in Sixth street, and I have heard it in the neighborhood where he lived.  
 Q. Whose stable?  
 A. The one that he kept in partnership with Mr. Rainey on Sixth street.  
 Q. Whom did you hear say it there?  
 A. I cannot bring it to memory now.  
 Q. You cannot remember one you ever heard say it?  
 A. No, sir.  
 Q. You would not believe a word he said on any subject?  
 A. I would not like to do so.  
 Q. From his reputation you would not have any sort of faith in what he said in any ordinary matter?  
 A. I should not like to do it.  
 Q. You do not believe he would tell the truth under oath?  
 A. I do not believe he would; for he told me once he did not care about an oath.  
 Q. Did he?  
 A. Yes, sir.  
 Mr. BRADLEY. What did he say?  
 A. He said he had no scruples as regards taking an oath if it suited his purposes—that is, in case he made any thing by it.  
 By Mr. PIERREPONT:  
 Q. When did he tell you that?  
 A. In the latter part of August, 1865.  
 Q. Where was that?  
 A. Down at his stable on Sixth street.  
 Q. How came he to tell you that?  
 A. We were in conversation, some few of us; I disremember how many now.  
 Q. Who was along?  
 A. Well, it came around about this trial. He made a remark that he was a witness in the trial at the Arsenal—the conspiracy trial.  
 Q. It was about that time?  
 A. It was the latter part of that trial.  
 Q. Who was with you?  
 A. I disremember their names.  
 Q. Do you not remember any of them?  
 A. I believe I cannot say positively.  
 Q. Was that at his stable?  
 A. Yes, sir; in Sixth street.  
 Q. How happened you to be there?  
 A. I used to go there pretty often.  
 Q. What for?  
 A. I used to go there generally—  
 Q. Generally for what?

A. When I was walking down that way.  
 Q. Who did you go there to see, this bad man?  
 A. I had no particular business, as far as that was concerned, any more than I would walk in.  
 Q. You knew then that he was a very bad man?  
 A. I had no dealings with the man; I would not like to trust him.  
 Q. You knew it, then.  
 A. I had no dealings with him.  
 Q. You knew, then, that he was a very bad man?  
 A. I thought so by his own acknowledgment to me.  
 A. Why did you go there?  
 A. Not to keep company with him.  
 Q. What did you go there for?  
 A. To see friends of mine that used to be there.  
 Q. Who?  
 A. Mr. William Hussey.  
 Q. Did you see him there?  
 A. Yes; very often.  
 Q. Was he there when you had this talk with Cleaver?  
 A. I cannot say.  
 Q. Can you tell me anybody that you heard say that Cleaver was a liar, and not to be believed?  
 A. I heard a good many. I cannot remember them.  
 Q. Can you give any name?  
 A. I disremember them.

By Mr. MERRICK:

Q. I understand you to say it was the general talk that he was a liar, and not to be believed?  
 A. That was the general belief.  
 Q. Tell us what he said himself about his own oath on that occasion of which you have spoken.  
 A. He said, as regards an oath being put to him, he had no scruples; provided it suited his own purposes, and he could make any thing by it, that he would take any oath.  
 Q. And that was in a conversation about the conspiracy trial at the Arsenal, where he had been sworn?  
 A. Yes, sir.

By Mr. PIERREPONT:

Q. He said that freely before them all, did he not?  
 A. Yes, sir.  
 Q. There was no secrecy about it?  
 A. None that I know of.  
 Q. It was openly avowed?  
 A. Yes.  
 Q. But you cannot tell any of the men who were there?  
 A. I cannot bring them to memory.  
 Q. What was he talking about?  
 A. He said he was a witness down there.  
 Q. Did he say he had sworn falsely there?  
 A. I cannot remember now whether he did or not.  
 Q. Do you know what he swore to there?  
 A. No.  
 Q. Do you know whether he said he had sworn falsely there?  
 A. No, sir.  
 Q. You do not know what he did swear to there?  
 A. No; I never read it.  
 Q. How happened this conversation that you speak of?  
 A. It was late in the afternoon. Some parties were reading the paper outside, and I believe that was how the conversation came about.  
 Q. Who was reading the paper?  
 A. I disremember.  
 Q. Who first spoke?  
 A. I cannot say. I heard Cleaver make this remark.  
 Q. What led him to make such a strange remark?  
 A. I do not know who was in conversation with him, but I heard him express himself so.  
 Q. Was he saying it to you?  
 A. He was saying it to the party.  
 Q. Was he saying it to you?  
 A. I believe he remarked it to me.  
 Q. Did he repeat it over to you?  
 A. I cannot exactly say that. I heard him express it.

Q. Was he addressing you?

A. He was addressing those who were there.

Q. Was he addressing you?

A. I cannot say hardly whether he was addressing me or not.

Q. Did you think at the time that he was addressing you?

A. I do not know. There were others there as well as me.

Q. Did you hear him make the remark twice?

A. I cannot say whether I did or not.

Q. Do you ever go there now?

A. Yes.

Q. Do you speak to him now?

A. Yes.

Q. Frequently?

A. Yes.

Q. You continued to go there after that?

A. Sometimes. I had no dealings with him.

Q. But you continued to visit there?

A. I continued to visit there for certain business. There was a man owed me some money, and I went after it on several occasions.

Q. Who owed you the money?

A. William Hussey.

Q. Was he in the stable?

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

Q. Did you get the money?

A. I did not; I got part of it.

Q. Where is William Hussey now?

A. He is here in town.

Q. Did he ever pay you?

A. Yes, sir; pretty much paid me.

Q. Did he pay you at Cleaver's?

A. I had no dealings with Cleaver.

Q. Did Hussey pay you at Cleaver's?

A. No, sir.

JAMES FOY,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Do you reside in Washington?

A. Yes, sir.

Q. How long have you lived here?

A. Thirty-six or thirty-seven years.

Q. Do you know William E. Cleaver, who was a witness in this case?

A. Yes, sir.

Q. Do you know his general reputation for truth and veracity in this community?

A. Very bad.

Q. You know what people say of him generally?

A. Yes, sir.

Q. From what is generally said of him, from his general reputation as a man of truth or as a liar, would you believe him on oath?

A. That would depend on circumstances. If he had any thing to make by it, I would not believe him. In ordinary transactions I would have to believe him.

Q. Have you had any conversation with William E. Cleaver in regard to this case, or the case in which he was himself?

Mr. CARRINGTON. Stop; do not state any conversation.

Mr. BRADLEY. The question is as to any advantage he was to derive in the former case from testifying in this case.

Mr. CARRINGTON. They must lay the foundation to ask such a question.

Mr. MERRICK. We can turn to the evidence.

Mr. BRADLEY. On the 93d page of the record, your honor will find, in the cross-examination of Cleaver, this:

Q. Have you received any offer of favor or reward for the testimony you have given in this case?

A. I have not from anybody.

Q. You are quite sure of that?

A. Yes, sir; I have not from anybody.

Now, we propose to show by this witness what Cleaver said to him about a promise of favor or reward that he was to have for testifying in this case.

Mr. PIERREPONT. I do not believe the counsel thinks that is legitimate under your honor's ruling.

Mr. BRADLEY. I do not know or care what you believe. I propose it to the court as a question of law to be decided by the court.

Mr. PIERREPONT. I object to it.

Mr. BRADLEY. That is another matter altogether. Object with courtesy, and do not say that you do not believe I am in earnest when I make a proposition to the court.

Mr. PIERREPONT. I object to the proposition made to the court.

Mr. BRADLEY. That you have a right to do. This is an entirely different thing from calling a witness as to contradictory statements, and rests on an entirely different principle.

Mr. PIERREPONT. I should like to know what the difference of principle is.

Judge FISHER. The witness sought to be impeached makes a statement in court that he never did have any such offer. If you want to contradict that statement, it is just like contradicting any other statement. He states here that he saw a man at a given time and place. If you want to contradict that statement, you have got to ask him if he did not state to somebody else, at a certain time and place, that he did not see that man. This is on exactly the same footing. I cannot see a hair's breadth of difference.

Mr. BRADLEY. The difference is this, if your honor please: that the proof of a man's having received an offer of reward or compensation of any kind is a substantive fact, and that may be proved either by his own admission or by the statement of other parties; and his own admission is perhaps the strongest evidence against himself. It is not that he has given contradictory statements as to any material fact relating to the issue, but it is that he himself has stated out of court that he had received compensation, or was to receive compensation, or favor, or a promise, or any thing of that kind, which is best proved by the party's own admission. Now, it would be competent for us, wholly independent, I suppose, of asking Cleaver that question, to prove that in point of fact he had received compensation or an offer of reward for testimony which he has to give in this case. If so, the question is as to the nature of the proof by which that fact may be known. I agree that your honor's ruling has settled all the other questions in this case, and that as to attempting to prove that he has made statements out of court in matters material to the issue of the trial, we are concluded; but that is not a substantive fact; that is for the purpose of going to the credit. This is for the purpose of showing a corrupt motive in the party, not that he has stated differently, not affecting his credit because he has stated differently, but showing that he had received pay or offer of reward. I suppose it will not be contended on the other side that it is not competent for us to prove in point of fact that Cleaver had received compensation. I understand it to be conceded that if we had that evidence, it would be competent for us to offer it. Now, it is simply a question as to the mode of proof; and whether or not a man's own admission that he has received or is to receive compensation is not the best evidence of the fact, is the matter to be determined. Proof of the fact *abundante* and independent of the matters in issue is a totally distinct matter from that which your honor has already ruled. I bow with entire submission to what the court has said already; but as I understand this to be a fact outside entirely of the testimony he has given, and to show that he has been operated on by inducements or promises of compensation, as that is a totally independent fact, I do not conceive it is within the ruling laid down by the court.

Judge FISHER. Let us test it now by what I think is a parallel case. Suppose Mr. Cleaver had come here

and sworn that he saw John H. Surratt at Ford's Theatre; that he was there himself and saw him with his own eyes. It would be possible for you to prove that William E. Cleaver was in Richmond at that very moment; but you could not ask a witness whether Mr. Cleaver had not told him that he was in Richmond, without first putting Cleaver on his guard by asking the question yourself.

Mr. BRADLEY. I concede it; but that would be a fact material directly to the issue in the case; that he saw him, and was present himself at Ford's Theatre. In order to lay the ground for contradiction there, I should be obliged to ask him whether he had not stated, in reference to that fact, material to the issue, that he was not at the theatre, but was somewhere else. That is a totally distinct question, in my judgment, from the other. Would it not be competent for us to show that Mr. Cleaver had been paid \$1,000 for the testimony he was to give in this case, without asking that question of him? If it would be competent for us to show that he had received \$1,000 for the testimony he was to give in this case, then, as that is a totally independent fact, having no relation to the issue, and not bearing upon the issue; the only question is, as I submit with deference, whether we cannot prove it by his direct admissions of the fact, and, instead of bringing the party who paid him \$1,000, prove that Cleaver stated that he had received \$1,000 for giving that testimony, or was to receive it, because it is not a fact pertinent to the issue, but an outside fact totally irrelevant, having no bearing on the issue. The outside fact is to be proved *alunde*. Now, I suppose it will not be denied that it would be competent for us to bring the party who made this offer to him, if he did make any offer, (I do not say he did,) and prove that, as he had promised Mr. Cleaver in the event of his giving testimony unfavorable to the prisoner, he would pay him so much money. I have stated the principle. I do not mean to enlarge upon it.

Judge FISHER. I cannot see the difference.

Mr. BRADLEY. In order to save our exception in the form we desire, I will put the question in form and ask your honor to pass upon it. (To the witness.) Have you had any conversation with William E. Cleaver, a witness examined in this case, in reference to his having received any offer or promise of benefit, advantage, or reward for the testimony he should give in this case; and, if yea, state what that conversation was?

Judge FISHER. The question is overruled.

Mr. BRADLEY. I reserve an exception.

No cross-examination.

Mr. BRADLEY. It is not necessary for us to produce any other witnesses on the same point; we have the exception under the present ruling, and therefore we will not call other witnesses to that fact. That leaves us without witnesses for the present; but, as the hour fixed by your honor has not yet arrived, we propose now to offer in evidence the record to which we referred yesterday, so as to raise that question and have it decided by the court.

Mr. MERRICK. If your honor please, I offer the record of the Supreme Court of the District of Columbia, holding criminal court, March term, 1867.

Mr. CARRINGTON. Do not read it.

Mr. MERRICK. No, I will hand it to the court, if you do not desire me to read it; I will read it if you wish.

Mr. CARRINGTON. I say no; it is not the practice.

Mr. MERRICK. I did not know but that you wanted to have it read; it is case No. 4851.

Judge FISHER. You need not pass it up to me; I have seen it.

Mr. MERRICK. Your honor is familiar with the case, but I offer the record in the book which I submit and wish you to look at. I offer this record of the Supreme Court of the District of Columbia, sitting in

criminal term, and I ask your honor to look at the entries in the record.

Mr. WILSON. We object, and I can state our objection in a very few words. In the first place, it is not a record of a conviction. Your honor, of course, will take judicial notice of the record that is in the book which I have last sent up to you, as well of the record in the first book to which the gentleman has referred. In the second place, even if it were the record of a conviction, it would not be admissible now for the purpose of injuring or impairing the credibility of the witness. If it had any effect whatever, it would go to his admissibility, and not to his credibility, which cannot be affected or impeached in the way proposed. I do not propose to argue the question, but simply to read to your honor from a case which I have in my hand, where the question is discussed, and where it is definitely settled by reference to all the authorities, and laid down in language so clear that there need be no further discussion or comment on the case. The case to which I allude is the case of *The Commonwealth vs. Samuel Green*, 17th Massachusetts, 515, as found in the second volume of Bennett & Heard's Leading Criminal Cases, page 464. One of the questions decided in that case is stated in the syllabus, thus:

"The conviction of an infamous crime in a foreign country, or in any other of the United States, does not render the subject of such conviction an incompetent witness in the courts of this State."

Then, in the foot-notes, which are very lengthy and very learned, this language is held:

"That the record of a conviction cannot be offered with the avowed purpose of impeaching the credit of a witness, where the conviction was within the same government, seems to be evident. So far as our examination has extended, no elementary writer, in treating of the effect of such conviction and the admissibility of the record, has suggested that the party against whom the witness is produced has an election to treat the conviction as a ground of exclusion or as an impeachment of the credit of the witness; nor has any case been found which sustains such a position. On the contrary, the conviction, with the exception of the cases in Massachusetts, where the convictions were in other States, has been treated as an objection to the competency of the witness alone. The record of the conviction is to be offered before the witness is heard."

And here is contained the germ of the principle:

"The record of the conviction is but evidence of the commission of a particular crime; and the authorities are express, that the character of a witness for truth can be impeached by general evidence only, and not by evidence as to particular facts. 3 Starkie's Ev., 1753; 1 Ib., 146; *Sharp vs. Seoging*, Holt's N. P. C., 541; 1 Phillip's Ev., 212, [229]; *Comyn's Digest*, Test., A. 4. The record furnishes evidence of the highest nature of the fact that the witness committed the crime; but it is no more than conclusive evidence as to particular facts, and seems, therefore, to come within the principle just stated. The credit of a witness may be impeached by his cross-examination; or by evidence of his general bad character; or by testimony that he has said or done that which is inconsistent with his evidence on the trial; or by contrary evidence as to the facts to which he testifies." 1 Starkie's Ev., 145; 1 Phillip's Ev., 212, [230.]

"If the conviction is not deemed sufficient to establish the infamy of the witness, and thus prevent his being heard, in accordance with the general rule admitting such evidence, there seems to us to be no substantial ground for making it an exception to the other general rule, that particular facts, having no connection with the cause, are not to be given in evidence for the mere purpose of affecting the character of the witness, and thus impeaching his credit."

So that, in any view of the case, even if this were a record of a conviction, which it is not—even if it were a record of a conviction of an infamous crime—it would not be admissible or proper to offer it in evidence now, the objection not having been interposed at the proper time and for the purpose of casting general discredit upon the witness's character.

Mr. MERRICK. I shall not take up time in arguing this subject. My learned brother on the other side, I think, is under an error in supposing that this is not the record of a conviction. The record which I offer to your honor is a record of a conviction and a sentence. The party was not only convicted, but he was sentenced to five years' imprisonment in the Albany penitentiary according to this record. This record stands in this court to-day as the record of this court. The learned counsel says that if it is a record of conviction, however, it cannot be offered as affecting the credibility of the party, but must be offered as affecting his competency. I think the rule is that a record may be offered

to affect the competency of a party, or it may, at the option of the party offering it, be produced to affect his credibility; and in England they have, within the last few years, adopted the rule that these records, whatever they were, should go entirely to the credibility of the party, and in that particular they have followed out the general rules of evidence, which rules in their modification now tend to relieve all impediments and disqualifications, and allow whatever heretofore destroyed qualification to go to the jury as affecting credibility. I think, therefore, the record is admissible as a record of conviction. Although it may be of an infamous crime which would affect his competency, it may be offered as affecting his credibility. We offer it generally, however; but, if your honor should deem the record admissible for the purpose of affecting this competency and not of affecting his credibility, when the record is in before your honor, the conclusion of law must be attached to it, whatever that conclusion is. I will read upon that point an authority from New York—the case of *Carpenter vs. Nixon*, in 5 Hill. There the court decided, although the statute did not provide any thing with regard to a conviction for such an offense, and the party was perfectly competent, although convicted of petit larceny, yet that the court below ought to have admitted the record as affecting the credibility of the witness. In New York, although a party was found guilty of petit larceny, he was still a competent witness, and in a case in which the record of the conviction of a witness for petit larceny was offered, the court below rejected it, upon the ground, in the first instance, that it did not destroy his competency, and in the second instance, that as it did not destroy his competency it could not be allowed to go to the jury as affecting his credibility; but the court above said:

“The record of conviction, however, was admissible for the purpose of affecting the credit of the witness, and the court erred in refusing to receive it for that purpose.”

To sustain this position, reference is made to 2d Hale, 5th Moody, 1st Starkie, Phillips on Evidence, Archbold's Criminal Law, and to Cowan and Hill's Notes to Phillips on Evidence. I have not had the opportunity of looking at 2d Hale's Pleas of the Crown, because I did not find it in my office during the recess, where it should have been.

I submit to your honor, then, these two propositions: In the first place, if this is a record of a conviction of an infamous crime, I have a right to offer it to the court, either for the purpose of destroying his competency or for the purpose of affecting his credit. If I do not choose to ask that he shall not be sworn because of this record, his competency being destroyed by it, I may still ask the court that the record should go to the jury to affect his credit, and certainly that privilege cannot be denied to the party offering the record, for it would be extending a benefit to the party offering the witness to which he would not be entitled if the witness was really incompetent. I did not choose to object to his competency, but I chose to allow him to go to the jury, to be judged by the jury as the jury may please. It is not for the other side to complain of it. I say, although I could keep him away from the jury, although I could prevent him from being allowed to be heard by the jury, yet I may allow the jury to hear him and then affect his credit.

Judge FISHER. In this view of it, Mr. MERRICK, you might hold back your record, and not put it in as to competency; and, after you hear the witness through, if his testimony suits you, you will not put in the record as to his credibility; and, if it does not suit you, you will. It is giving you an advantage.

Mr. MERRICK. That is an advantage which a party has in all cases. I may hear Mr. John Lee testify, and, if his testimony suits me, I do not choose to destroy his reputation for veracity; but, if it does not suit me, I will destroy it. That is the advantage of a party, and either side has the same. If the gentlemen, on the other side introduce witnesses whose testimony

suits me, I am not going to quarrel with them about it; but, if they introduce a witness whose testimony does not suit me and who is infamous, I will prove that he is infamous, and if I have a record against him, I will produce the record. If his testimony suits me, I will not produce the record. So the other side may deal with my witnesses. Hence they cannot complain. I did not understand the gentleman to make any objection to this record, further than that it was not a record of a conviction. I do not know what is the reason why he said it was not a record of conviction.

Mr. WILSON. Because the records of the court show differently.

Mr. MERRICK. Then the learned counsel takes the ground that the other record shows differently. That is the record of the Supreme Court of the District of Columbia, sitting at general term. That is not the record I offer. I offer the record of the Supreme Court of the District of Columbia, sitting at the criminal term of March, 1867. If my learned brother wanted to affect this particular record by that record, he should have had the record made out, and the mandate of the Supreme Court of the District of Columbia, sitting at general term, executed upon the Supreme Court sitting at criminal term. If they want to offer that record afterwards to modify the effect of this record upon the credibility of the witness, they have the right to offer it; but as this record stands solitary and alone, a complete thing within itself, it is all I offer and all the court sees from my offer. There is another record granting a new trial in the case, and the whole record shows that, in the opinion of the court, a new trial was granted because your honor, who sat in the case, inadvertently commented on some of the evidence. I believe that was the opinion delivered at the general term, if I heard it aright.

Judge FISHER. No, it was this: that there was testimony admitted which ought not to have been admitted; the testimony of a colored woman, who spoke about the out-cries and the complaints of the deceased named in the indictment.

Mr. MERRICK. That was one of the grounds. I understood also that the other was one of the grounds. I thought I heard the opinion, but I may have misconstrued it.

Judge FISHER. That was my ground, and my Brother Wylie, I believe, took that same ground, as well as the other.

Mr. MERRICK. Judge Wylie put it on both grounds, he speaking the opinion of the court. I remember that point distinctly, because I happened to be in court when the learned counsel were arguing it, and I was sitting beside my friend Mr. Fendall, and was talking to him about that part of the opinion of your honor, and I thought from the appearance of the bench that your honor appreciated that you had, inconsiderately probably, commented on the testimony to the jury, and I understood from Judge Wylie's opinion that that was the view he took. The motion was then granted for a new trial in that court. That record is another record. It is the record of this court sitting at a different term, or rather of another court. The gentlemen may offer that record if they please. This is all I offer; and this being all that I now offer, and no other record being offered, it is a record of conviction for infamous crime, and I offer it first to go to his credibility; and, if not that, for such purpose as the law will necessarily attach to it.

I would refer your honor also on this subject generally, if you desire to look at the authorities this evening, to Sharswood's Starkie, page 118, where the subject is discussed. I am not going to read it.

But if it should be true that the record which my learned brother on the other side refers to is a record of which this court must take judicial cognizance; that is, the record of the Supreme Court sitting at general term is to be considered by you, and there is a new trial, I still maintain that, although there is a new trial,

this record is competent to go in evidence. Here is a conviction by a jury; a new trial has been granted; but a party has been found guilty of the crime by the decision of a jury, and the case stands as if the party had taken the benefit of clergy, or as if he had served out his term, or as if it was the record of a foreign country. Now, I apprehend that the law is well settled that where a party under the English law is convicted of a crime, and is entitled to the benefit of clergy, and thus avoids the penalty which attaches to the crime of which he is convicted, although the operation of the penalty is destroyed and the conviction is a practical nullity so far as the visitation of the penalty is concerned, the record is evidence to affect his credibility. That I believe to be the law of England. There is some doubt upon the question where a party has served out the period of his time in the penitentiary, answered to the vengeance of the law, and is paying the penalty which it has inflicted upon him; and there are authorities, and numerous authorities, to the effect that where a party has served out his term the record is then admissible against him. There are also authorities to the effect that where a party has been pardoned the record is admissible, and the pardon does not operate as an entire obliteration of the offense. I think that in a case which came before your honors—an application for the admission of a member of the bar without taking the oath—your honors indicated that a pardon could not necessarily operate to destroy all the consequences of an offense previously committed; that it relieved the party from the penalty, but did not reinstate him in all the rights that he would have had if he had never committed the crime; and, from the decision then made, I should infer, as a logical consequence, that where a party has been convicted of an infamous offense and been pardoned, the pardon will not operate as an entire obliteration of the offense of which he was convicted, and will only have the effect of staying the punishing hand of the law, and leaving his character stained by the infamy of the conviction. It restores the competency without restoring the credibility. In the case instanced, of where a party took the benefit of clergy, or where he served out his time, or where he has been pardoned, the serving out the time, the benefit of clergy, or the pardon restores his competency; but, although the competency is restored, the record stands to affect his credibility; and if there is a new trial granted in this case, I say that the new trial operates like a pardon, or the benefit of clergy, or the serving out the time—the competency is restored, but the record stands to affect his credibility. I submit the question upon these grounds, without going into any elaborate argument on the subject.

Mr. PIERREPONT. If your honor please, I want to say but a word. The record I have not read. I am told by both sides what it is, or what it is about. It is not a record in any way affecting the character of the man for truth, nor touching his moral character in any shape, except so far as relates to one single and particular passion, as I understand. My learned friend who opened this matter to your honor has cited the authorities which cover this thing fully, and my learned brother who has now cited a case from the State of New York, in 5 Hill, will find, and your honor will find, if you will look at it, that it turns entirely upon the construction of a statute of the State of New York, which I propose to hand up, and it is all I need to say upon the point.

Mr. MERRICK. I understand the statutes of New York did not provide in any way for petit larceny.

Mr. PIERREPONT. Yes, sir.

Mr. MERRICK. I understand that they left it to the common law. The common-law rule applied to petit larceny.

Mr. PIERREPONT. I think no case can be found where a record which could be used for the purpose of excluding a person from testifying, if there was such a record, could be reserved to be used afterwards to discredit him.

Judge FISHER. I will state my view of this question. In the first place, the court will take cognizance of its own record, and it will not take cognizance of part and ignore the residue. Whether the record is completed—drawn out at length in the book provided for that purpose—or whether it is in part still resting *in gremio judicis* makes no difference, the court will take cognizance of it. I cannot ignore the fact that I helped to reverse my own ruling on the original trial of the case referred to. Brother Wylie and I on the one side and Brother Olin on the other reversed the ruling in reference to one point at least, and that was a very material question of evidence in the case. Then, since that reversal, and since the granting of a new trial, the former witness, Cleaver, the party defendant in that indictment, has been bailed out, and is awaiting now his trial whenever the court shall be ready to try the case. It stands, then, just exactly as though he had never been tried at all, because *non constat* but that in another trial he may prove his entire innocence. I cannot, therefore, see that there is any record of conviction to offer as to his credibility or as to his competency as a witness.

Besides, the conviction was a conviction of manslaughter, which is not a crime that the law denominates *crimen falsi*, not one of those which go to the character and credit of a witness for veracity. You could no more bring in evidence the fact that an indictment was pending over a man for murder or manslaughter, than you could that he was a general roué, or that he was a horse-racer, or any thing else. You must direct the testimony towards his credibility, towards his veracity; and, inasmuch as the law presumes every man innocent until he is finally convicted, and there being no conviction in this case, the man being at large on bail awaiting his new trial, the presumption is that he is innocent until he shall be duly convicted. I therefore hold that this record cannot be admitted in evidence.

The court took a recess until to-morrow morning at ten o'clock.

#### Twenty-Seventh Day.

THURSDAY, July 11, 1867.

The court re-assembled at ten o'clock, a. m.

THOMAS W. WILLIAMS,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. State where you reside.

A. I reside in Washington, on H street.

Q. How long have you lived in Washington?

A. All my life. I was born and raised here.

Q. Do you know William E. Cleaver, a witness in this case?

A. Yes, sir.

Q. Do you know his general reputation in the community for truth and veracity?

A. Yes, sir.

Q. What is that reputation?

A. It is generally bad, as far as I have heard.

Q. From his general reputation as a man of truth or a common liar, would you believe him on oath?

A. I should not think I would.

Cross-examined by Mr. CARRINGTON:

Q. How long have you known Cleaver?

A. About ten or eleven years.

Q. You are engaged in the livery business here?

A. Yes, sir; I am now at present.

Q. Did you see much of Cleaver?

A. I have seen a good deal of him for three or four years.

Q. Were you in the habit of employing him as a veterinary surgeon?

A. No, sir.

Q. Do you recollect when he was engaged with Mr. Rainey in business?

A. I recollect seeing him on Sixth street, but I do not recollect whether he was engaged with Mr. Rainey.

Q. Do you know how long he was in partnership with Rainey?

A. I did not know he ever was.

Q. Do you know how long he was engaged in the livery business in connection with his business as veterinary surgeon?

A. I do not recollect. I recollect seeing him on Sixth street, about the stable, in passing and re-passing. I never went there often.

Q. Tell us who it was you heard so speak of his character for truth. You are confined to that, not any other moral quality.

A. I have heard a great many say they would not believe him on his oath.

Q. When was this?

A. I have heard it here lately.

Q. Had you ever heard of it previous to this trial or the trial against Cleaver?

A. I do not know that I ever did hear anybody say they would not believe him on his oath before the trial.

Q. You know there was a great deal of prejudice excited against him on account of this trial. Now, I will ask you, because I am sure you will state exactly as your memory serves you, if at any time you ever heard any one speak of Cleaver's reputation for truth previous to this trial and the trial against him?

A. Oh, yes, I have.

Q. Will you state when it was?

A. I heard persons speak of him at the time he was putting horses in for the Government. He was employed over on the other side of the river inspecting horses.

Q. He was employed by the Government as an inspector of horses?

A. Yes, sir.

Q. How long was he acting in that capacity?

A. I do not recollect how long it was, but I recollect of putting in a few horses while he was over there.

Q. You put in horses while he was acting as Government inspector?

A. Yes, sir.

Q. And that was the time when you heard his character for truth assailed?

A. I have heard persons—

Mr. CARRINGTON. Confine yourself to the question.

Mr. MERRICK. Let him answer the question.

A. When he was over there putting horses in, persons came to me and remarked that Cleaver was over there inspecting horses, and, if I had any, to take them over, and I could get them through very handy.

Q. Who told you that?

A. I disremember; gentlemen who were putting horses in at the time.

Q. It is a question which of course must have attracted your attention at the time. Did you take any horses over?

A. I did.

Q. Did you put your horses through?

A. Yes, sir.

Q. How did you manage to get them through?

A. Well, I put them through.

Q. Do you mean to say that you paid Cleaver any thing for it?

A. Well, I would not like to answer.

Q. Did you give him a bribe? You say he was a Government inspector.

Mr. MERRICK. You can answer that or not, as you please.

Mr. CARRINGTON. I should like to know; the court will say; I do not say you are bound to answer.

Judge FISHER. He is not bound to answer that unless he chooses.

Q. (By Mr. CARRINGTON.) Did you bribe Cleaver to get your horses through?

Mr. BRADLEY. [To the witness.] The court has told you you can answer that or not as you see fit.

The WITNESS. I decline to answer.

Q. (By Mr. CARRINGTON.) Why do you decline to answer?

Mr. MERRICK. I object to that question. The witness has said he declines to answer, and the counsel cannot investigate the reasons why.

Mr. CARRINGTON. As I understand the rule, the witness is not the sole judge, but he is a judge under the instructions of your honor.

Mr. PIERREPONT. The witness cannot decline to answer from any whim.

Mr. MERRICK. Of course he cannot. Let him turn around to the court and give the reason, and the court may tell him whether or not he must answer.

Judge FISHER. No; it is not necessary for him to tell the court; that is a matter for him to judge, whether it is going to degrade him or not.

Mr. CARRINGTON. Your honor will observe that that is the point of the inquiry: do you decline to answer the question under the belief that it would degrade you in public estimation, or merely because you are averse to answering the question?

Mr. MERRICK. I submit it is not a proper question.

Judge FISHER. It is a matter for him to judge of. In putting a question of this sort you know necessarily—it is very evident—the reason why any person declines to answer it. The question itself furnishes the reason.

Q. (By Mr. CARRINGTON.) Now, sir, that is a thing, it strikes me, which would make an impression on your mind. Can you state who it was that gave you this information upon which it seems you acted?

A. Some of the contractors; I disremember now. There were a good many of them at the time.

Q. Cannot you state the name of one?

A. No; I do not think I can.

Q. You cannot state the name of one?

A. There were a good many putting horses in at that time, and they were putting them in and coming back.

Q. Where was it that you first received this information?

A. At my stable.

Q. You recollect what they said to you; you recollect what you did in consequence of it; you recollect where it was; you recollect that this information was given to you by several persons; and yet you cannot state to the jury the name of a single person with whom you had this conversation?

A. No; I do not recollect just who they were at this time.

Q. I would be glad if you would endeavor to give us the names?

Mr. MERRICK. The witness has answered half a dozen times. How often is the counsel to be allowed to put it.

Judge FISHER. (To Mr. CARRINGTON.) He says he cannot give you the names.

Mr. MERRICK. We have had enough of that repetition.

Q. (By Mr. CARRINGTON.) When you got this information how long did you wait before you acted upon it? Did you hesitate, or act upon it immediately?

A. I went over there directly with my horses.

Q. How long was that before this trial? You have not fixed the time accurately.

A. Since we were putting horses in over there? It is four years, or in that neighborhood.

Q. Was that the first time you ever heard his reputation assailed?

A. I have heard a great many persons speak loose of him.

Q. In what respect?

A. I have heard people say he was not an honest man, he was a liar, and they could not believe any thing he would say.

Q. Now, I want to know when it was, where it was, and who it was you heard say that? Give me the name of a single person.

A. I cannot tell exactly when it was or who it was. So many persons have said so that I could not state exactly. I have heard a great many persons say so since the trial.

Q. The court has told, or will tell you now, that that is not evidence. I mean previous to the trial?

Mr. MERRICK. That is, previous to this trial, not previous to his trial.

A. I have heard it from persons around the streets before the trial, on H street.

Q. When?

A. Before the trial.

Q. How long ago? Give an approximate idea.

A. Two or three years ago, along there.

Q. State the names of the persons.

A. Mr. Sheckells is one.

Q. Who else?

A. I have heard Mr. Cook say so.

Q. John C. Cook?

A. Yes, sir.

Q. The one who was on the stand yesterday?

A. Yes, sir. I have heard it from a great many around the neighborhood.

Q. Give us some one else. We want to ascertain how this is. Give us some other names if you can; or can you?

A. I do not know that I can recollect back.

By Mr. PIERREPONT :

Q. You thought pretty well of him when you found he would take your horses, did you?

Mr. MERRICK. Wait a moment. Do not answer that question. The inquiry to this witness is the reputation of the witness being impeached, not what this witness himself—

Mr. PIERREPONT. He has given as one of the reasons he would not believe him that he took his horses.

Mr. MERRICK. He has not given it as a reason at all.

Mr. PIERREPONT. That was the statement.

Mr. MERRICK. No, sir. He stated this: that at the time Cleaver was acting for the Government in taking horses he heard men speaking of him, and then Mr. CARRINGTON asked him how, and the reply was, saying that you could get horses in there without any difficulty if you took them over, and also saying he was not a man of truth and veracity, as I understood him, and that he did take his horses over, and did get his horses in; but he never stated that that was the foundation of the opinion he has expressed on this question.

Mr. PIERREPONT. I submit to your honor that he gave that as one of the reasons of his bad character.

Judge FISHER. He said this: He was questioned as to the time and person, the time when and the person who made the statement about his bad character, and he instanced that as the time and person. That is the way I understood him.

Q. (By Mr. PIERREPONT.) Now, I ask you whether that had any influence on your judgment about his bad character for truth?

Mr. MERRICK. Do not answer that question.

Mr. PIERREPONT. My question is—

Mr. MERRICK. That is it exactly.

Mr. PIERREPONT. I know, and I want the question definite. (To the witness.) Had that any influence on your judgment as to his bad character for truth?

Mr. MERRICK. Do not answer.

Judge FISHER. Put the question in this form: Whether he forms his opinion as to his bad character from general reputation, or whether it is founded on that circumstance.

Mr. PIERREPONT. Very well.

Mr. MERRICK. I withdraw the objection to that question.

Q. (By Mr. PIERREPONT.) Had that fact anything to do with his general reputation in your opinion?

Mr. MERRICK. I object to that question. The court has put the question in proper shape, and in that shape I do not object to it.

Mr. PIERREPONT. I choose to put it in my shape, giving the substance of what the court said.

Mr. MERRICK. I choose to object.

Judge FISHER. I think that that may be fairly asked of him, whether or not that matter entered into the formation of his opinion as to Cleaver's general reputation; that is to say, whether he has formed his opinion from general reputation or from this fact or other facts, or this and other facts together.

Mr. PIERREPONT. That is what I do ask, Whether those matters about receiving and passing horses entered into forming your opinion of his bad reputation?

A. I did not think he was fit for the place at the time he was there.

Q. I am not asking whether you thought him fit for the place, and your opinion is not important on that subject. I ask you whether the fact of his passing horses entered into your judgment of his reputation for truth?

A. I should think it did.

Q. You thought then it was damaging to his character for truth, did you?

A. Yes, sir.

Q. When you found that out, you immediately quit going there, did you not?

A. I stopped going there when I got my horses through.

Q. You did not until then, did you?

A. No, sir.

Q. Did you take any side in this late rebellion?

A. No, sir.

Q. Neither side?

A. No, sir.

Q. Did you express or have sympathies on either side?

A. Yes, sir. I was in the three months' service on this side.

Q. Did you continue your sympathies on the Union side?

A. Yes, sir, and was under the Government employ on this side.

Q. I ask if you continued to have your sympathies with the Union side?

A. Yes, sir.

Q. And you had them at that time you were putting horses through?

A. Certainly I had.

Q. They were quite keen then, were they not?

A. Yes, sir.

Re-examined by Mr. MERRICK :

Q. I understand you to say that Cleaver was employed by the Government to examine horses?

A. Yes, sir.

Q. And that it was generally understood that horses could be got through by his inspection very easy?

A. Yes, sir.

Q. And that that fact, which was stated as a part of his public character, among other facts, entered into your estimate of his general character for truth?

A. Yes, sir.

Q. Did you not understand that, as a man of truth, he was bound to pass no horses but good horses?

A. Yes, sir.

Q. In addition to that fact, you have been asked by Mr. CARRINGTON to state some individual whom you heard speak of him as a man of truth or a man of falsehood, and you say you cannot distinctly name any parties except those you have named. Now, tell the jury whether or not it was not almost universally said of him, when his veracity was discussed, that he was not a man of truth?

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 74. WASHINGTON, MONDAY, AUGUST 12, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 73.*

Mr. CARRINGTON. I object.

Judge FISHER. What is the question?

Mr. MERRICK. Mr. CARRINGTON asked him to name some parties who said that Cleaver was not a man of truth and could not be believed. I now ask him to say whether or not it was not such a common thing for everybody who spoke of his character for veracity to say that he was a man of falsehood, that he cannot give any one particular individual; that it was universal.

Mr. CARRINGTON. You honor will see that the form of the question is objectionable; it is leading. The gentleman is examining his own witness, and certainly he is not a witness necessary to be led.

Mr. MERRICK. This is a re-examination.

Mr. CARRINGTON. But it is not a cross-examination of a witness introduced by us.

Mr. MERRICK. It is a cross-examination on all its ruling.

Mr. CARRINGTON. It is an examination simply for the purpose of explaining any matter brought out by cross-examination.

Judge FISHER. You asked him whether he could name any persons, did you not?

Mr. CARRINGTON. Certainly.

Judge FISHER. Now, the other side can ask him why it is he cannot remember.

Mr. CARRINGTON. Unquestionably.

Q. (By Mr. MERRICK.) Why is it that you cannot remember the names of persons who said he was a man who lied?

A. There were so many said it that I do not recollect any one person.

By Mr. PIERREPONT:

Q. Cannot you give us one out of the many?

Mr. MERRICK. He has been asked that a dozen times. I object to it.

Judge FISHER. He has given you two, I believe, Mr. Cook and Mr. Sheckells.

Q. (By Mr. PIERREPONT.) Now, I want one you have not given.

Mr. MERRICK. I object to the question.

Judge FISHER. I think the examination is over myself; let him go.

JACKSON PUMPHREY,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. State where you reside.

A. I live on Seventh street.

Q. How long have you lived in the city of Washington?

A. About fifty-three years.

Q. What is your business?

A. I carry on a carpenter's business.

Q. Builder and carpenter?

A. Yes, sir.

Q. Do you know William E. Cleaver, who was examined as a witness in this case?

A. I think I do.

Q. Do you know his general reputation for truth and veracity in this community?

A. It never has been considered very good so far as my knowledge of him goes. I think I have known him twenty years or upwards.

Q. How long has it been considered as bad?

A. I never heard him spoken of as being a very correct good man in my life.

Q. How have you heard him spoken of in regard to his being a man who would tell the truth, or a man who would tell a lie?

A. The first time that my attention was called to that, I think, was some twelve years ago. I had purchased a horse—

Q. Do not go into the facts.

A. I was going to state that my brother, who keeps a livery stable, stated to me that there was no confidence to be placed in any thing Mr. Cleaver told me.

Q. From his general reputation, that is, from what people generally said of him after that, as a man of truth and veracity, would you believe him on his oath?

A. I do not think I would in any—

Q. Supposing there was a responsibility resting upon your shoulders for the accuracy of the conclusion to which you came, would you take his oath as justifying a conclusion?

Mr. CARRINGTON. We object to that question.

The WITNESS. No, sir.

Mr. MERRICK. I think it is perfectly proper.

Mr. CARRINGTON. The court will say.

Mr. BRADLEY. The witness has answered the question.

Mr. MERRICK. Let my question be read.

[The reporter read the question.]

Mr. PIERREPONT. We must get the ordinary question of testing.

Mr. MERRICK. I have had the ordinary question.

Mr. PIERREPONT. That is not ordinary or proper.

Mr. MERRICK. Very well, let the court say.

Judge FISHER. You are putting him into the shoes of a juror by that question. Just ask him the ordinary question as to his knowledge of Cleaver's reputation for veracity, and then, if he answers that in the affirmative, what that reputation is, and whether upon that general reputation he would believe him on his oath.

Mr. MERRICK. He has answered all those—that it was bad and he would not believe him.

Cross-examined by Mr. PIERREPONT:

Q. How long have you lived in Washington—all your life?

A. Yes, sir; I was born and raised here.

Q. This talk that you say you had with your brother about his not being reliable related to horses, did it?

A. Yes, sir; and my brother said he would not take his word for any thing.

Q. Did you ever know any thing generally said on the subject of men dealing in horses?

A. Yes, sir; I think so.

Q. You have heard some talk on that general subject, have you not?

A. I have.

Q. There is a pretty good understanding among people on the subject of horse-trading, is there not, down here and all over the world, as far as you know?

A. I never dealt much in horse-trading myself, and therefore I am not prepared to answer that question.

Q. Your brother kept a livery stable, did he not?

A. He did.

Q. Did you know any thing about the way people talk in selling horses and buying them?

A. I should suppose, if I was allowed to say it, that men ought to talk as honest there as in any other transaction.

Q. I am not asking your opinion how they ought to deal.

A. I have dealt some in horses and I have found men—

Q. Have you bought and sold horses?

A. And found them to be very honest.

Q. I am not asking you what you found.

A. You asked the question.

Q. No; I have simply asked you whether you dealt in horses?

A. Some little—only for my own use.

Q. What is your business now?

A. House-building.

Q. Did you take any part in the rebellion, one side or the other?

A. If I took it either way, I took it in defense of my country.

Q. Did you take part on either side?

A. I advised my children to go into the war to put down the rebellion. I had three sons, and I advised them all to go, and they did go.

Q. Did you take any other part?

A. No, sir; no further part than that.

Q. Have you ever been up in relation to the question of an oath for a juror?

A. I have been a juror.

Q. Has the question of your ability to take the juror's oath been brought before you?

A. I never was questioned as to my loyalty.

Q. Your sympathies went with the Union side?

A. They did strongly, and do yet.

Q. And have been so?

A. Yes, sir, all the time.

Q. Have you ever had any business with Cleaver?

A. No more than talking with him casually in the street.

Q. Have you often talked with him?

A. I have, I suppose, talked with him perhaps a dozen times in my life.

Q. Did you ever trade with him?

A. No, sir.

Q. Was it your brother alone who had horse dealings with him?

A. My brother, as I have stated, kept a livery stable. What his dealings with Cleaver were I do not know.

Q. I thought you had dealings, and that was the origin of what he said?

A. No; I told you I was about to have some transaction with Cleaver, and my brother advised me against it.

Q. What sort of a transaction?

A. I was going to get him attend a horse which I had traded for, and which I thought it was desirable some one should attend to.

Q. In what way?

A. As a horse-doctor.

Q. And your brother advised against it?

A. Yes, sir.

TALMADGE A. LAMBERT,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. State to the jury where you reside in Washington city.

A. I at present reside on H street, between Twenty-First and Twenty-Second, No. 176.

Q. What is your occupation?

A. Clerk in the office of the Paymaster General.

Q. How long have you been in that office?

A. Since October 11, 1863.

Q. Where did you reside in 1865?

A. I resided on H street, between Fourth and Fifth, No. 587.

Q. On which side of the street did you reside?

A. On the south side.

Q. How far were you from house No. 541?

A. At most, one square and three-quarters.

Q. Will you be so good as to describe to the jury the external structure of the house you were then living in—the front on H street.

A. The house, as I said before, is situated on the south side of H street, a little to the east of the centre of the square, between Fourth and Fifth. It is a brick house, three-story and a basement, having high steps winding off the ground.

Q. What kind of a basement is it—a basement under ground or what is known as the English basement?

A. On the level—an English basement.

Q. How high are the steps?

A. There are eight steps, I believe; the precise height in feet I do not remember.

Q. Now, go on?

A. The house has marble facings, the window sills and cappings. The steps have an iron railing running up on either side. To the west of the house is an open lot. Immediately adjoining the lot on the west is a brick house, belonging formerly to Mr. Donn, formerly justice of the peace. To the east of the house there is, and was at that time, a brick building, very little higher—scarcely perceptibly higher—than my own, having a different front upon the street, the steps letting out immediately upon the street.

Q. Who was living with you in that house in April, 1865?

A. My mother and a servant girl, and the front floor was occupied by a gentleman and lady.

Q. Not the front parlor?

A. Not the front parlor.

Cross-examined by Mr. PIERREPONT:

Q. Which way from 541 is 587?

A. To the east.

Q. After you leave 541 what is the first street you come to?

A. Sixth street.

Q. Where is 587 in relation to Sixth street?

A. 587, as I said before, is between Fourth and Fifth.

Q. Then, after you leave 541, you first come to Sixth street, do you not?

A. Yes, sir.

Q. And then the next street is Fifth street?

A. Yes, sir.

Q. And 587 is between what streets?

A. Between Fourth and Fifth.

Q. And it is on the right-hand side as you go east?

A. Yes, sir.

Q. Will you not tell how wide the lot is?

A. It is twenty-five feet, if I remember correctly.

Q. Do your steps run up both ways or one way?

A. One way.

Q. It is an English basement, you say?

A. Yes, sir.

Q. Is it of brick?

A. Of brick.

Q. Is it painted?

A. Yes, sir.

- Q. When was it painted?  
 A. Not since it was built, some eight or ten years ago.  
 Q. What kind of finishing has it; the architecture and the sills?  
 A. They are of marble.  
 Q. White?  
 A. Yes, sir.  
 Q. Which way do the steps start to go up?  
 A. Their tendency from the top to the bottom is eastward.  
 Q. And how high are they? You say there are eight steps.  
 A. As near as I can remember, eight steps.  
 Q. And it is an English basement?  
 A. Yes, sir.  
 Q. The house is there now just as it was in 1865, is it not, exactly?  
 A. Precisely.  
 Q. There is no difference?  
 A. There is some little difference in the painting of the wood-work.  
 Q. But no other difference in the house?  
 A. No, sir, not the slightest.  
 Q. On the west side of your house there was an open lot, was there?  
 A. Yes, sir.  
 Q. And the same now?  
 A. Yes, sir.  
 Q. On the east side of your house?  
 A. Was a brick house.  
 Q. Which came close up to yours?  
 A. Immediately adjoining.  
 Q. No alley between?  
 A. No, sir.  
 Q. How high is the parlor floor from the basement floor?  
 A. The exact height of the steps? That I could not precisely determine.  
 Q. When you enter the basement, do you enter on a level from the pavement or do you step in?  
 A. You step down two steps.  
 Q. Then the floor of the basement is below the pavement—the side-walk?  
 A. Somewhat below.  
 Q. Two steps below, you say?  
 A. Yes, sir.  
 Q. And above you go to the parlor floor by ascending the steps?  
 A. Yes, sir.

MRS. FREDERICKA R. LAMBERT,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

- Q. Do you reside in Washington city?  
 A. I do.  
 Q. Were you living in Washington city in 1865?  
 A. I was.  
 Q. Will you tell the jury whereabouts in Washington city you were living in April, 1865?  
 A. At 587 H street, between Fourth and Fifth.  
 Q. Which side of H street?  
 A. The south side.  
 Q. This side?  
 A. The house fronting north.  
 Q. Do you recollect the night of the President's assassination?  
 A. I do.  
 Q. Were you residing in that house on that night?  
 A. I was.  
 Q. Will you be so good as to tell the jury if any thing occurred that night after ten o'clock; say and specify the time; and if you conversed with any one from the parlor window of your house, state the conversation, and who they were, as far as you could judge from their dress. Just begin and state what occurred.  
 A. Between eleven and twelve o'clock I heard a voice indistinctly from the street calling out that the

President was shot. I was in the rear room of my house, in my bed-room; and I immediately took my shawl, a large, dark shawl, threw it over me, and went down to the front door with the intention of going out, but found it was too damp and dark. I then returned and went into my parlor, the front room on a line with the portico, and there opened the window. There were two soldiers passing, and I immediately asked what was the matter, the cause of the excitement. One of them said the President was shot, and I asked by whom, and he said by John Wilkes Booth. I asked him if he saw him. He said he did not, that he was not in the theatre, but was about the theatre. I then asked him what the soldiers were doing in the city, so many of them; I thought probably there was a mob or some disturbance; and he said no, they had all come in to a torch-light, and were now returning to Camp Barry.

Q. Did they say they were returning to Camp Barry?  
 A. Yes; that those I had seen go by had gone to Camp Barry, and we are on our way there.

Q. As I understand you, you asked them what was the matter down town?

A. Yes.

Q. And they told you the President had been shot?

A. Yes.

Q. You asked them by whom, and they replied by Booth?

A. Yes, sir.

Q. You were wrapped in your shawl, as I understand you?

A. Yes, sir.

Q. From what window was it that you spoke to them; your parlor window?

A. My parlor window.

Q. Will you please describe the location of your parlor relatively to the ground-floor. How high is it from the ground-floor?

A. The steps, I suppose, run up about eight or ten steps, and I could not very well say how high it was.

Q. That is definite enough. Did the two who were walking there remain together when they replied, or did any one step forward and make any reply?

A. One stepped a little forward from the other and spoke to me.

Q. You knew they were soldiers?

A. They told me they were soldiers, and I could see it from their dress; I could only see indistinctly, because the gas in my parlor was very indistinct.

Q. Was it quite dark outside?

A. Yes, and very damp.

Q. But you could see with sufficient distinctness to see that they were soldiers?

A. Certainly, they were under the reflection of my light.

Cross-examined by Mr. PIERREPONT:

Q. It was quite dark outside, was it not?

A. Yes.

Q. Hazy, damp, drizzly weather?

A. Yes, sir.

Q. What made you go to the front window at that hour of the night.

A. To hear if the President was really shot.

Q. What made you think about it?

A. Because I was in my room in the rear of the house and indistinctly heard a voice on the street say, "The President is shot."

Q. You were in the rear of the house?

A. Yes.

Q. The voice then was pretty loud?

A. Certainly; he was calling out to know where some one lived; he wanted to find some one; I do not know who it was.

Q. And they exclaimed the President had been shot, did they?

A. Yes, sir.

Q. It must have been very loud if you could have heard it in the rear of your house?

A. Oh, I do not know.  
 Q. Were your windows open?  
 A. No; my window was not open.  
 Q. It was in the middle of April, was it not; and a very dark, damp, drizzly night?  
 A. It was not a very dark night, because I think the moon at that time would have given light had it not been very cloudy and damp.  
 Q. It was cloudy and drizzly, as you say?  
 A. Yes.  
 Q. Where did you first go after you heard that call?  
 A. I went first to the head of my steps to listen.  
 Q. You opened the door?  
 A. Hearing the voice very indistinctly, I called for my shawl.  
 Q. Did you open the door?  
 A. I went down stairs and opened the door, and found it too damp to go down on the portico.  
 A. You did, after you heard this call that the President had been killed, did you?  
 A. Yes.  
 Q. When you went to the door, did you see anybody?  
 A. No one at all.  
 Q. Did you hear anybody?  
 A. No; there was not a soul stirring on the street.  
 Q. But you heard this cry before you went to the door?  
 A. Yes, sir.  
 Q. After you went to the door it was still?  
 A. Certainly.  
 Q. And then you went back to your room and got a shawl?  
 A. No; I got my shawl before I came down.  
 Q. You then went into the parlor?  
 A. I went to the front door.  
 Q. When you got to the front door, there was nobody in the street?  
 A. Not that I am aware of.  
 Q. And it was dark and drizzly. Then what did you do?  
 A. Finding it too damp for my health to go on the portico, I walked into my parlor.  
 Q. After you got into the parlor, what did you hear?  
 A. I heard my own voice, and then I raised the window.  
 Q. To whom were you speaking?  
 A. To my servant, or some one in the house.  
 Q. What did you say?  
 A. I do not remember what I said except that. I was discussing whether it was dangerous for me to go in the damp.  
 Q. Did you say so to your servant?  
 A. I really do not recollect, but my purpose was to go and open the window.  
 Q. I do not ask your purpose. You heard a voice. I want to know what that voice said?  
 A. I said if I heard a voice, it was my own.  
 Q. You know what you said?  
 A. No.  
 Q. You were discussing whether you should go into the damp. Your health was delicate, was it?  
 A. Yes. If my voice was sounding, I was certainly asking the question of the propriety of my going to the front door.  
 Q. Do you know who you were asking as to the propriety of going to the door?  
 A. Yes; my servant.  
 Q. Which servant?  
 A. Margaret.  
 Q. What did Margaret say as to the propriety of going to the door?  
 A. She insisted upon it that it was improper; that I was always susceptible to cold, and I had better go to the window.  
 Q. She remonstrated with you?  
 A. Yes, sir.  
 Q. She said you had better go to the window?  
 A. Yes, sir.  
 Q. After Margaret insisted on that, where did you go?

A. I opened my parlor window.  
 Q. You remember distinctly about Margaret insisting that it was dangerous for you to go to the door?  
 A. I presume so. It was not a matter of much importance, but still she did say so.  
 Q. She remonstrated with you, and you agreed with her that it was unsafe. That is so, is it?  
 A. Yes, sir.  
 Q. After this conversation with Margaret on the subject of the safety of it, then you went where?  
 A. I opened my window.  
 Q. While you were talking with Margaret, did you hear anybody out of doors?  
 A. No; I heard nobody out there then; but I opened the window for the purpose of—  
 Q. I am speaking now of before you got to the window; while you were talking with Margaret, did you hear any more calls about the President being shot?  
 A. No; I never heard it afterwards.  
 Q. While you were in your rear room, and before you went to the front door, and before you had this discussion with Margaret about the safety of your health, you had heard that the President had been shot?  
 A. I heard it from the voice on the street when I was in my bed-room.  
 Q. After that you never heard it at all—no cry?  
 A. I heard no cry of it after I came down.  
 Q. Then you went to the parlor, did you?  
 A. Yes, sir; to the door first.  
 Q. After you got in the parlor what did you do?  
 A. I hesitated whether I would open the window until I heard some one coming; but I did open the window.  
 Q. Then you did open the window?  
 A. I did.  
 Q. How does it open? Does it raise or open on hinges?  
 A. It raises.  
 Q. Was there a blind to your window?  
 A. Oh, yes; outside blinds.  
 Q. Do you remember whether it was closed or shut?  
 A. I think they were open.  
 Q. And you lifted up the window?  
 A. Yes, sir.  
 Q. Was Margaret in the room with you?  
 A. Yes.  
 Q. Did she lift it up?  
 A. No; I think I did it myself.  
 Q. After you lifted it yourself, what did you see?  
 A. I saw just above a good many soldiers going up.  
 Q. A large number?  
 A. Yes.  
 Q. Which way were they going?  
 A. East of my house.  
 Q. A large number?  
 A. I suppose about a dozen.  
 Q. Had they guns?  
 A. I could not say. I do not believe they had. As this party afterwards told me—  
 Q. But they were soldiers, you say?  
 A. They were dressed in soldiers' clothes.  
 Q. Were they marching slow or fast?  
 A. They were walking.  
 Q. An ordinary march, was it?  
 A. Yes.  
 Q. No hurry?  
 A. None that I could discover.  
 Q. Nothing different from ordinary marching?  
 A. No.  
 Q. What did this one that you talked with out of the window tell you about those soldiers?  
 A. I asked him what they were doing in town.  
 Q. What the soldiers were doing?  
 A. Yes.  
 Q. What did he tell you?  
 A. That they came in to a torch-light, and that they were now going to Camp Barry, and they were also going there—himself and companion.

Q. Did he tell you who his companion was?  
 A. Oh, no.  
 Q. What more did you say to him?  
 A. I asked him if he saw Booth.  
 Q. What did he say?  
 A. That he had not; he was not to the theatre, but was there about the theatre.  
 Q. Did you ask him any thing more?  
 A. I have stated what I asked him.  
 Q. Did you ask him any thing more than this?  
 A. Not more than what I have stated.  
 Q. What more did you ask him?  
 Mr. MERRICK. She has answered your question.  
 The WITNESS. I asked him what I have stated. Let the gentleman ask about them.  
 Q. (By Mr. PIERREPONT.) Now, I ask you if they stated any thing more to you?  
 A. They only answered my questions.  
 Q. Did you put but two questions?  
 A. I put just as many as I have presented here to the jury.  
 Q. Did you ask them where Booth was?  
 A. I did not.  
 Q. Did you ask them where those soldiers were going?  
 A. I asked him what the soldiers were doing in the city.  
 Q. And they told you?  
 A. I remarked: "What are the soldiers doing here?" I was alarmed; thought it was a mob.  
 Q. Did you tell them you thought it was a mob?  
 A. I did. I thought there was something of a mob spirit after hearing of the President's assassination.  
 Q. And you think you told them so?  
 A. I think I did.  
 Q. Which one talked to you, or did both talk?  
 A. But one spoke to me.  
 Q. Would you know him if you saw him?  
 A. I could not; there was too indistinct a light. The night was dark.  
 Q. How long did they talk with you there?  
 A. I suppose about from three to five minutes, perhaps not so long.  
 Q. Did they seem very much excited?  
 A. Not at all; I remarked that they all seemed to be very cool upon the occasion.  
 Q. You thought it remarkable, did you not, that they were so cool?  
 A. Yes.  
 Q. Those two men did not seem in any hurry?  
 A. Not at all.  
 Q. And when they walked off, did they go in a hurry?  
 A. I did not observe their motions when they left; I had no further business with them and took no note of it.  
 Q. They answered you deliberately?  
 A. Deliberately and very respectfully.  
 Q. Had they guns?  
 A. I presume not.  
 Q. Do you remember whether they had guns or not?  
 A. I presume they had not, as I saw none.  
 Q. What had they on their heads?  
 A. I presume they had caps.  
 Q. They had caps?  
 A. I presume so.  
 Q. Will you not tell the jury what your memory is about whether they had soldiers' caps on?  
 A. They told me they were soldiers, and I took no note of their dress, as I did not suppose I would ever be called upon to identify them to you.  
 Q. Can you tell whether they had soldiers' caps on?  
 A. I made no close observation.  
 Q. Can you tell whether they had soldiers' clothes?  
 A. Yes, they had.  
 Q. What colored clothes?  
 A. They were blue, of some kind.  
 Q. Were they capes or officers' clothes?  
 A. I could not see sufficiently; they were not officers' clothes.

Q. Had they capes?  
 A. I think they were soldiers; I am not certain; I know their general appearance was that they were soldiers.  
 Q. Had they the same general appearance as those that marched before them?  
 A. I did not see those that marched before them.  
 Q. Did those that marched before them show any excitement?  
 A. My window was not open when they passed.  
 Q. You saw them, you say?  
 A. I heard them; they were going up the street.  
 Q. They manifested no excitement?  
 A. Not that I am aware of.  
 Q. When did you first hear you were to be called here?  
 A. I came of my own accord.  
 Q. When did you come of your own accord?  
 A. Yesterday.  
 Q. And you told them you could testify this?  
 A. I was reading the paper, and the testimony of some man was given, and my remark was, "I do not know whether this is a false report or a singular and strange coincidence; this conversation certainly took place at my house, and I was the one that asked the questions and put the questions to the soldier."  
 Q. You thought it a strange coincidence?  
 A. Very strange.  
 Q. Will you tell us whether these persons that you talked with were dressed in ordinary soldiers' clothes?  
 Mr. MERRICK. She has answered that a dozen times.  
 Mr. PIERREPONT. I say now ordinary soldiers' clothes.  
 Mr. MERRICK. I object.  
 Mr. PIERREPONT. I propose to ask as to the different dresses of soldiers.  
 Mr. MERRICK. The question has been submitted to the court, and I now suggest to your honor that this cross-examination has, I think, been conducted with a little irregularity, or at least pressed a little far. Mrs. Lambert has been repeatedly asked how these men were dressed; whether they had on capes; whether they had on caps; whether they had on officers' clothes; whether they had on soldiers' clothes. She has replied she could not recollect whether they had caps on or what; she supposed they had. All she recollects is, the general appearance was the dress of soldiers, and they said they were soldiers. I think if the reporter will turn to his notes, he will find that she has said that at least five times. How far is it to be pressed? How often is the same inquiry to be repeated to this witness in, if you please, different words? I submit to your honor that it has been answered fully, and it ought to be satisfactory.  
 Mr. PIERREPONT. It is not satisfactory yet, and I will not stop until it is more satisfactory, if I am permitted to ask it; and my next question is, and the one I now ask, Whether they had the clothes of artillerymen. That is my question.  
 Judge FISHER. That is a fair question.  
 A. I have no knowledge of the different suits they wear.  
 Q. (By Mr. PIERREPONT.) Will you tell me whether it was a light blue or dark blue?  
 A. I cannot remember.  
 Q. Will you tell us whether it was a jacket or a long coat?  
 A. I did not observe the men sufficiently to know how the suit was cut.  
 Q. Can you tell whether it was a jacket or long coat?  
 Mr. MERRICK. She has answered.  
 Mr. PIERREPONT. I did not hear the answer, and I have the right to hear it.  
 Judge FISHER. I did not hear it myself.  
 Mr. MERRICK. Let the answer be read.  
 The reporter read as follows: "I cannot tell whether he had a long coat or not."

The WITNESS. Perhaps the gentleman is deaf.

Q. (By Mr. PIERREPONT.) Will you state whether you can tell any thing about the color of the clothes?

A. I have already told you that the light was not sufficient for me to observe their clothes, nor would my attention have been directed to their clothes even if the light had been bright as day, unless by accident.

Q. I understood you to say they were in soldiers' clothes and in blue clothes, and I was trying to find out whether they were light blue or dark blue?

A. I cannot tell.

Q. Can you now tell, on recalling your mind to it, whether they were long coats, loose coats, or short jackets?

Mr. MERRICK. I object to the question.

A. I have already told you it was too dark for me to see.

Mr. MERRICK. I object to the question. I cannot sit by and allow this examination to go on.

Q. (By Mr. PIERREPONT.) At what time did you read the testimony of the witness you have spoken of?

A. A few days ago.

Q. How long ago?

A. I would not say how many days.

Q. About how many?

A. I suppose about three or four days ago; it might have been five days; I do not know.

Q. Do you think it was five?

A. I do not know.

Q. What paper did you find it in?

A. The *Evening Express*.

Q. And when you did that, how did you make it known?

A. I remarked in the presence of those who were in the room—

Q. Did you send information to anybody?

Mr. MERRICK. Let her finish her answer.

A. To those who were in the room I made the remark that it was either a misrepresentation or a very strange coincidence; that here was a conversation that certainly occurred at my house, now purporting to come from another.

Q. (By Mr. PIERREPONT.) After they had passed, did you hear any more that night?

A. Yes; there were a great many passing. There was a man across the street relating to some one at home—I do not know who he was or what his home was—that the President had been shot; that he was there and saw it. I heard him say so.

Q. Was this that you are now giving before or after?

A. It was after.

Q. You have told what occurred before already. Now, did you hear any thing else that occurred after these soldiers left?

A. No; I do not remember.

Q. How long did you stay by the window?

A. Not very long.

Q. Can you tell about how long?

A. No.

Q. Do you think it was ten minutes?

A. I was looking in and out occasionally. I do not know that I remained there ten minutes, but I was backwards and forwards to the window several times.

Q. As you were backwards and forwards to the window several times, did you see any other people passing?

A. Oh, yes; I saw a great many soldiers afterwards going along.

Q. Were they passing slowly or hurriedly?

A. Some were in a hurry and others slow, as they usually are at night.

Q. Did they say any thing?

A. They were talking to themselves. I did not ask them any thing.

Q. Did you hear them say any thing of the killing of the President?

A. They were speaking of the matter, but I did not hear what they said. I had already heard sufficient to convince me that it was so.

Q. Did you see anybody but soldiers passing?

A. There might have been. The light was too indistinct. The darkness—

Q. It was still dark, was it?

A. Oh, yes.

Q. That is, it was cloudy and misty, or drizzly?

A. Yes.

By Mr. BRADLEY:

Q. You said after this occurred in your mind, you came and spoke of it. Did you come down to my office about it?

A. Yes. You were not at home.

Q. How long have you known me?

A. Ever since I knew myself.

MARGARET WILLIAMS,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Whom do you live with?

A. Mrs. Lambert.

Q. Who were you living with when the President was killed?

A. Mrs. Lambert.

Q. Have you been living with her ever since?

A. Yes, sir.

Q. Do you recollect the night the President was killed?

A. Yes, sir.

Q. Do you recollect Mrs. Lambert calling upon you for a shawl or any thing that night after she went to retire?

A. Yes, sir.

Q. State what happened. What did Mrs. Lambert do when she called for the shawl?

A. She went in the room over the passage and overheard loud talking out there.

Q. Did she go to the front door?

A. No, sir; she did not.

Q. Did she go into the parlor?

A. She went to the window of the parlor.

Q. Was the window up or down?

A. It was down. She hoisted the window.

Q. She hoisted the window. Did she speak to anybody?

Mr. PIERREPONT. I submit that the counsel should ask the questions in the usual way, and not have every one of them leading, so that the answer is yes or no.

Mr. MERRICK. She said she hoisted the window, and I repeated it.

Mr. PIERREPONT. You must ask the questions in the usual way.

Mr. MERRICK. Wherever there is any objection, interpose it to the court.

Judge FISHER. The answer is out.

Q. (By Mr. MERRICK.) Did she have any conversation?

A. There were some soldiers went along first, and then there were two came along, and she asked them what was the matter, and they said that the President was shot. She asked them who had done it, and they told her Booth had done it.

Cross-examined by Mr. PIERREPONT:

Q. Mrs. Lambert did not go to the front door, did she?

A. Yes, sir; she did go to the front door; but I told her to come in, because it was too damp out there.

Q. She opened the front door, did she?

A. Yes, sir; but it was too damp out for her.

Q. Was she standing in the front door?

A. Yes, sir; out on the portico.

Q. When she stood on the portico at the front door, did you see anybody?

A. No, sir.

Q. Were any soldiers passing after she stood on the portico?

A. I am not certain.

Q. How long did she stand on the portico?

A. She did not stand there long.  
 Q. About how long—five or ten minutes?  
 A. No, sir, not that long.  
 Q. Did you advise her to come off the portico?  
 A. Yes, sir.  
 Q. Did she come?  
 A. Yes, sir.  
 Q. What did you tell her about the portico?  
 A. I told her it was too damp out there for her to stand.  
 Q. Was it damp?  
 A. Yes, sir.  
 Q. Was it raining?  
 A. It was raining or drizzling—very drizzling.  
 Mr. MERRICK. About drizzling?  
 The WITNESS. About drizzling.  
 Q. (By Mr. PIERREPONT.) Did it drizzle? Did it succeed in that?  
 A. I do not remember whether it did or not.  
 Q. Was it light or dark?  
 A. I know it was a very dark night, because I wanted to go to the theatre and she would not let me go.  
 Q. Did you want to go to the theatre after that time?  
 A. No, sir; before that time.  
 Q. She then went into the parlor, did she?  
 A. Yes, sir.  
 Q. Did you stand by the window when she was in the parlor?  
 A. No, sir; I was not with her at the window.  
 Q. You were not in the parlor?  
 A. Yes, sir; I was in the parlor.  
 Q. Did you stand by the window?  
 A. Close by Mrs. Lambert, but not at the window.  
 Q. Were you at the window?  
 A. I was right behind her.  
 Q. How many soldiers passed while you stood there?  
 A. I could not say exactly how many passed. I know a great many passed. There were two passed when she asked those questions.  
 Q. A great many passed, and two passed and stopped?  
 A. Yes, sir.  
 Q. Those two that stopped had a conversation?  
 A. Yes, sir.  
 Q. How were those dressed?  
 A. I do not know; I could not say.  
 Q. Had they guns?  
 A. I do not remember.  
 Q. Had they caps on?  
 A. I know they had caps on their heads.  
 Q. Soldiers' caps?  
 A. Yes, sir.  
 Q. Do you know whether they had soldiers' clothes, with caps, on?  
 A. I do not remember whether they had or not.  
 Q. But you know they had soldiers' caps?  
 A. Yes, sir.  
 Q. Was there any thing on the cap—any ornament?  
 A. I could not tell. It was too dark; I could not see.  
 Q. Did they seem to be in a hurry?  
 A. Yes, sir.  
 Q. Were the other soldiers in a hurry, too?  
 A. Yes, sir.  
 Q. How long did these men talk there?  
 A. I do not know how long it was.  
 Q. Had you heard any thing before they came there?  
 A. Yes, sir; we heard loud talking. We were up stairs when we heard it, but came down stairs.  
 Q. While Mrs. Lambert was up stairs, you heard it?  
 A. We were both up stairs.  
 Q. In what room up stairs were you and Mrs. Lambert?  
 A. When the soldiers passed?  
 Q. Yes.  
 A. She was in her room.  
 Q. Where is her room?  
 A. The back room.  
 Q. The back chamber up stairs?  
 A. Yes, sir.

Q. Not on the parlor story?  
 A. No, sir.  
 Q. Then she was on the story above the parlor, in the back room, at the time?  
 A. Yes, sir.  
 Q. Were you with her?  
 A. Yes, sir.  
 Q. What were you doing?  
 A. I do not know exactly what I was doing.  
 Q. Was she preparing to go to bed?  
 A. Yes, sir.  
 Q. And you say you were with her?  
 A. Yes, sir.  
 Q. Now, tell the jury what you heard in that back room up stairs from the parlor?  
 A. About the President being shot?  
 Q. About any thing.  
 A. I heard loud talking out there.  
 Q. What did the loud talking say?  
 A. I heard it mention that the President was shot; that was all I could hear.  
 Q. The loud talking was that the President had been shot, was it?  
 A. Yes, sir.  
 Q. As she was preparing to go to bed, what then did she do?  
 A. After we heard that we went in the room next to it, over in the little room.  
 Q. And then what did you do, after you got in the little room?  
 A. She went there, and she was going to say something, but she thought they would not hear her, and she came down.  
 Q. Came down to the parlor?  
 A. Yes, sir.  
 Q. Then did she go on the porch?  
 A. Yes, sir; she went on the porch.  
 Q. She opened the door and went to the porch?  
 A. Yes, sir.  
 Q. And you went there and told her it was too damp?  
 A. Yes, sir.  
 Q. The first you heard of it was up in that story in the back room when she was going to bed?  
 A. Yes, sir.  
 Q. After you came down there, did you hear any more calling about the President being killed?  
 A. Yes, sir; I heard the soldiers going by talking of it.  
 Q. Did you hear them say so?  
 A. Yes, sir.  
 Q. As they went by?  
 A. Yes, sir.  
 Q. A great many of them?  
 A. Yes, sir.  
 Q. A large number?  
 A. Yes, sir.  
 Q. Did they seem excited?  
 A. Yes, sir.  
 By Mr. MERRICK:  
 Q. Were you present when Mrs. Lambert the other day mentioned about this conversation, saying that a witness had testified here?  
 A. Yes, sir.  
 Q. You heard her speak of it?  
 A. Yes, sir; she read it in a paper.  
 Q. Did you tell her then you recollected it?  
 A. Yes, sir.  
 Mr. PIERREPONT. Wait; you need not tell that.  
 Mrs. FREDERICKA R. LAMBERT  
 recalled.  
 By Mr. MERRICK:  
 Q. I merely called you back to ask a single question, whether or not you are satisfied that this conversation—  
 Mr. PIERREPONT. Do not ask what she is satisfied about; just ask the fact.

Mr. MERRICK. She has stated that this conversation was after eleven o'clock. (To the witness.) You are satisfied about that?

A. Certainly; it was between eleven and twelve o'clock.

JOHN T. HOLAHAN,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside now?

A. In Baltimore.

Q. What business are you engaged in now?

A. I carry on the stone-cutting business.

Q. Making tomb-stones and marble work?

A. Marble work.

Q. Where were you living in April, 1865?

A. On H street, between Sixth and Seventh, at Mrs. Surratt's.

Q. You were boarding at Mrs. Surratt's?

A. Yes, sir.

Q. Had you your family there or not?

A. Yes, sir; my family was there with me.

Q. Do you recollect when you went to board there?

A. About the 7th of February—the first week in February; I would not locate the date.

Q. February, 1865?

A. Yes, sir.

Q. While you were there, state who else boarded in the house beside yourself?

A. Louis J. Weichmann boarded there, and Miss Dean, or a girl that was eleven or twelve years old; they were the only parties that boarded in the house.

Q. Who else lived there and formed a part of the family at the time you were there? Was Miss Fitzpatrick there?

A. Yes; Miss Fitzpatrick was there. She boarded in the house.

Q. Do you remember Miss Lee Jenkins coming there also?

A. Yes; she was stopping there for about a week, I think.

Q. While you were there, did you form the acquaintance of Mr. Louis J. Weichmann?

A. Yes, sir.

Q. Did you ever see a man there named Atzerodt?

A. Yes, sir.

Q. Was Weichmann there before you, or did he come after?

A. He was there before me. He was the gentleman that opened the door when I went there to inquire for board.

Q. Do you know whether Atzerodt went to the house before you came there or after?

Mr. PIERREPONT. Do not answer that; because the witness cannot know whether he was there before he was there or not.

The WITNESS. I can answer that very easily, because I do not know any thing about it. I know nothing about what happened there before I went there.

Q. (By Mr. BRADLEY.) After that, and after you went there to board, state whether there was any degree of intimacy between Atzerodt and Louis J. Weichmann or not?

A. They appeared to be very intimate.

Q. State whether you ever saw them coming there together or not?

A. Frequently.

Q. Do you know of any other evidence of their intimacy, in regard to clothing or any thing of that kind?

A. One day I saw Atzerodt with Weichmann's military cape. Weichmann had a military cape and hat. I was coming home to dinner and they were coming from the house; I met them on the street between Sixth and Seventh. Atzerodt had Weichmann's coat and cape on, and Weichmann was with him at the time.

Q. When they were in the house together, can you state whether there was any intimacy between them or not?

A. Whenever I saw Weichmann and Atzerodt there, they were always the same as friends could be.

Q. What room did you occupy in the house?

A. I occupied the room over the parlor; the front room.

Q. Any other?

A. My daughter occupied the adjoining room over the passage.

Q. Your daughter was how old?

A. She is now sixteen years old.

Q. Then she was about fourteen?

A. Yes, sir.

Q. What room did Weichmann occupy?

A. The room back of my room.

Q. Have you any means of knowing whether or not Atzerodt was up in Weichmann's room?

A. I have seen him in Weichmann's room several times when I was passing up to my room and down.

Q. Did you ever see Herold there?

A. No, sir; he was never at the house to my knowledge.

Q. Did you ever see Booth there?

A. Frequently.

Q. In whose company did you find him, in reference to Atzerodt?

A. He was generally in the parlor with Mrs. Surratt and the ladies.

Q. In reference to Atzerodt and Weichmann, can you state whether he was associating with Atzerodt and Weichmann or not?

A. On, I might say, four occasions, I saw them in company.

Q. Atzerodt, Booth, and Weichmann?

A. Yes, sir.

Q. Where were you on the night of the 14th of April?

A. At what time?

Q. Were you at home all the evening or out?

A. At seven o'clock that night I laid on the settee or the sofa in my room—

Q. Let me stop you there one moment. Before you come down to the 14th, where were you on the night of the 3d of April?

A. I was in my room.

Q. Do you recollect seeing the prisoner that night?

A. Yes, sir.

Q. What interval of time had passed since you had last seen him before then?

A. About, maybe, ten days previous to the night of the 3d.

Q. Now, state all that passed in your presence with the prisoner on the night of the 3d of April.

A. Very well; I will make a statement of that. About nine o'clock, or a quarter past nine, I would not judge any time, I had gone to bed quite early. I had just got in my bed when there was a rap came to my room door. I got up and opened the door, and the prisoner was outside. Said he, "I would like to see you for a minute." I put on my pants, and went into his room or Weichmann's room. They both slept together in the back room.

Q. Weichmann and Surratt occupied the same room and slept together?

A. Yes, sir. Said he to me, have "you any money?"

Q. Was Weichmann present?

A. Yes, sir. Said he, "I would like to have some money." I asked him how much he wanted. Said he, "I should like to have \$50." Said I, "Well, you can have it." I went in my room and got it out of my pocket-book, which I carried in my vest pocket, carried it in, and said I, "Is that enough for you?" Said he, "I would like to have \$10 more;" making \$60. I went back and got \$10 more, and gave it to him, and turned and had opened the door and was going out, when he said, "Mr. Holahan, here, take this"—two twenty dollar gold pieces. Said I to Mr. Surratt, "I do not want it at all; you can keep that; you are good enough to me for that amount of money." He insisted on my taking it, and I took it. That was the last I saw of him until I saw him here in court.

Q. Did Mr. Weichmann at that time, the night of the 3d of April or at any time afterwards, say any thing to you about that money that you let Surratt have?

A. Yes, sir; on the Sunday following.

Q. State what he said.

A. We went in company with Mrs. Surratt, Miss Anna Surratt—

Mr. CARRINGTON. Stop a moment.

Mr. BRADLEY. I am not asking it for the purpose of contradicting the witness Weichmann as to any statement he has made directly, or on the ground of laying a foundation. I propose to show an intimate knowledge by Weichmann of Surratt's movements and association with him; and I propose to show that on this occasion he told Mr. Holahan where Surratt was, when they were speaking about this matter.

Mr. PIERREPONT. When?

Mr. BRADLEY. On the Sunday following, Sunday the 16th, that Weichmann told Holahan.

Mr. PIERREPONT. But you did not ask him any thing on that subject.

Mr. BRADLEY. It was not necessary. It is an independent fact.

Judge FISHER. What is it you propose to show on the Sunday following the assassination?

Mr. BRADLEY. Your honor will recollect that Weichmann stated in his examination that Surratt exchanged some gold on the 3d of April with Mr. Holahan for paper. I brought out the testimony in regard to that, and have nothing further to say. I ask this witness whether at that time, or any time afterwards, Weichmann said any thing to him in reference to that gold. I did not choose to put the question more directly, but I will do so, and will state to your honor what I propose to prove: that on Sunday, the 16th of April, when they started in pursuit of Surratt, Weichmann then spoke to Mr. Holahan in regard to that gold, and told him where Surratt had gone. Weichmann has sworn here he did not know where he was gone; he did not know any thing about it. I want to show he did know at that time. I want to show the intimate relation between Weichmann and Surratt.

Mr. CARRINGTON. If they want to prove the intimate relation, they must prove that fact as any other, if it is a material fact, and not by what the witness Weichmann said. The admission of the party to the suit of course is always admissible in evidence; but what Weichmann or any other witness may have said is not admissible for the purpose of proving any fact, and it is only admissible for the purpose of contradicting the witness.

Mr. PIERREPONT. So far as the intimacy is concerned, your honor will remember the questions that I myself put to the witness Weichmann on that point. We proved the closest intimacy that we possibly could, and, in direct reply to my own questions, I proved that they slept in the same bed and occupied the same room. The intimacy is proved, it seems to me, closely enough. Now, the object is not to contradict the intimacy, but to show something that Weichmann said in relation to somebody else, without ever calling his attention to it at all.

Mr. BRADLEY. Not in relation to somebody else. It is in relation to the prisoner at the bar, showing that Weichmann was not only thus intimate with him, but he was aware of where he had gone.

Mr. CARRINGTON. In other words, to prove what they consider a material and important fact in the case, they wish to give what was stated, and hearsay evidence of what was stated.

Judge FISHER. That is hearsay evidence, according to my judgment. It is exactly upon the same ground as the question that was put yesterday.

Mr. PIERREPONT. Of course he might prove it by Weichmann, if he wanted to prove it.

Mr. BRADLEY. He has been asked about it twice over, and said he did not know where he went or where he was.

Judge FISHER. You ought then to have asked him whether he ever told Mr. Holahan so.

Mr. BRADLEY. But still that would not be evidence. It would only go to his credibility, and would not be evidence in itself. I propose to give this as substantive proof that this man Weichmann, who now comes to fasten this accusation upon the prisoner, was himself as deeply concerned in all that transaction as any one concerned in it, and to show that he knew where that party was.

Mr. PIERREPONT. Then the counsel propose to prove what somebody else said, when the man himself is here.

Judge FISHER. It is ruled out.

Q. (By Mr. BRADLEY.) Now, beginning early in the evening of the 14th of April, state all that you recollect of the occurrences of that night.

A. Yes, sir. There was a procession from the Arsenal; the workmen in the Arsenal turned out that night; had a torch-light procession. At seven o'clock that night I was lying on the sofa in my room. I looked at my watch, and recollect the time. I asked my wife to go down and see the procession, but she declined, and I said, "I will go down myself." I went as far as Seventh street and the avenue, at Seldner's corner, the clothing-store there, and waited until the procession passed. After it passed, I walked up Seventh street.

Q. Come back to the house now. What time did you get back to the house?

A. I was going to tell you. I turned into D street, walked as far as Eighth, to Baker's corner there. He keeps a hotel.

Q. The old Franklin House?

A. Yes, sir. I had made up my mind to go to the theatre, but I turned back, and I got home about a quarter to nine.

Q. Do you know whether Mrs. Surratt had got back from Surrattsville?

A. She was home when I got back.

Q. How long had she been home?

A. I could not say.

Q. Now, did you hear or see John Surratt that night about that house?

A. No, sir.

Q. Or anywhere else?

A. No, sir.

Q. What time did you retire?

A. I went up to my room, I suppose, about a quarter past nine o'clock.

Q. Were you aroused during the night; and, if so, state how and what passed?

A. About half-past two my wife heard the rapping at the door, and she told me, "There are men rapping at the door, and they want to get into the house, and they look like policemen." They were right down at the door, and she saw the uniforms, I suppose, and told me they looked like policemen. I jumped up and put my pants on, and by the time I got my pants on McDevitt and Clarvoe were at the door, in the entry outside of my room.

Q. Up stairs?

A. Yes, sir; upstairs, in the second story.

Q. Mrs. Surratt's room was where?

A. She slept back of the parlor with Miss Fitzpatrick.

Q. You had the room over the parlor?

A. The front room over the parlor.

Q. When you got to the door, Clarvoe and McDevitt were outside?

A. Were outside in the entry.

Q. State what passed.

A. I opened the door and said, "What is the matter?" I do not know whether McDevitt or Clarvoe answered me; one of them did, and said, "Why, have not you heard the news?" Said I, "No; what is it?" Said he, "The President has been assassinated." Said I, "My God, is that so!" or something to that effect, or words similar. He said, "Yes;" and Clarvoe showed me a

piece of his necktie. Said he, "This is a piece of his necktie;" and he said he had picked it up in the theatre. I invited them in my room, and they made a statement to me concerning the assassination, and all they heard about it. I went through the house with them; searched the house.

Q. State whether they searched the house or not. Did you see them search the house and accompany them?

A. I went with them.

Q. And saw them search the house thoroughly?

A. Yes, sir; they went through the whole house, and even went out in the stable—every room and cupboard.

Q. Do you remember either of them going up to the room over the room occupied by your daughter?

A. That was the adjoining room, where my daughter was, to my own room.

Q. Do you remember going up to the room over that?

A. Yes, sir.

Q. By whom was that room occupied?

A. By Miss Anna Surratt and by Miss Olivia Jenkins.

Q. I mean the little room over the passage.

A. That was the servants' room.

Q. You went up with them to that floor?

A. Yes, sir.

Q. Did you see them go into the room where Miss Jenkins and Miss Surratt were sleeping?

A. Yes, sir.

Q. Did you see Clarvoe go to the servants' door?

A. He went to the door of the room, and I told him, "The servants are in this room," and opened the door. I do not think he went in; I will not be satisfied about that, whether he went in or not, but he opened the door, or at least I opened the door.

Q. Just at that time do you recollect telling him to stop a moment while you apprized the young ladies that you were coming?

A. Previous to going into the young ladies' room I went into the room myself, and told the ladies the room was to be searched.

Q. Now, come down to the next morning, after you got up; when and where did you first meet Mr. Weichmann?

A. On the morning of the 15th I met him in front of the Patent Office—I was reading the *Chronicle*—about six o'clock.

Q. Did you accompany him from there to Mrs. Surratt's or separate from him?

A. We went from there to breakfast.

Q. State if any thing passed between you and Weichmann which induced you to keep him under your charge.

A. Yes, sir; Mr. Weichmann—

Mr. PIERREPONT. Wait, if you please.

Judge FISHER. (To the witness.) Do not state any conversation.

Q. (By Mr. BRADLEY.) In point of fact, from the time of your meeting him opposite the Patent Office until he was in custody, did you lose sight of him?

A. No, sir; he was in my company all the time.

Mr. BRADLEY. I now offer to give in evidence what Weichmann said to the witness, which led him thus to take charge of him.

Judge FISHER. That is subject to the same ruling which has been just had.

Q. (By Mr. BRADLEY.) Were you at breakfast with him?

A. I was.

Q. Do you recollect whether you and your wife, Mrs. Surratt, Miss Jenkins, Miss Dean, and Miss Surratt were all at breakfast that morning or not?

A. I do.

Q. Do you remember what time Miss Anna Surratt came in, whether late or not?

A. We were pretty near through breakfast when she

came in. I think we were done breakfast when she came in.

Q. Do you know whether she had been unwell or not the night before?

A. She had been unwell.

Q. That morning at breakfast did Mr. Weichmann say to you and Mrs. Surratt that he had his suspicions about this business, and was going to the Government to state his suspicions about it?

A. No, sir; he made no such declaration at all.

Q. He made no such statement at all?

A. No, sir.

Q. Did he state that he would go and state who he had seen in Booth's company, and do all he could to bring those parties to justice?

A. No, sir.

Q. Did he say any thing of the kind?

A. No, sir; the only thing was, I had bought the paper that morning—

Mr. PIERREPONT. Wait one minute. You have answered the question, and that is all you can do on that subject.

Mr. BRADLEY. I ask him whether he stated any thing of the kind.

The WITNESS. I want to bring in the connection.

Mr. PIERREPONT. If he did not, you can say so.

The WITNESS. I bought the paper that morning—

Mr. PIERREPONT. You are not asked about the paper. We shall insist that you confine yourself to the question.

Q. (By Mr. BRADLEY.) State, if you please, whether any thing was said on that subject; and, if any thing, what was said, and by whom.

Mr. PIERREPONT. Do not answer that question until the court tell you.

Judge FISHER. Is it objected to?

Mr. PIERREPONT. Yes, sir.

Mr. MERRICK. The ground of the proposition, your honor, is this: the foundation for contradicting Weichmann in the first instance was laid.

Mr. BRADLEY. In his examination-in-chief.

Mr. MERRICK. I know; and it may be introduced for that purpose. The conversation was also proved in which Mrs. Surratt is alleged to have participated, that she made some remark at that breakfast-table about this killing. Now, I take it we are entitled to all of that conversation on the two grounds.

Judge FISHER. Let me interrupt you. First, on the examination-in-chief, the witness Weichmann said, "I said to Mrs. Surratt and Mr. Holahan at the table that I had my suspicions about this business and I was going to the Government to state my suspicions about it, and tell who I had seen in Booth's company and do all I could to bring these parties to justice." You refer to something else.

Mr. BRADLEY. No, sir. At that same conversation we ask him, was any thing said on the subject of informing the Government, and what was said.

Mr. PIERREPONT. I object to any thing except what has been said in the testimony.

Judge FISHER. What is the ground of the objection?

Mr. PIERREPONT. There is no foundation laid for it whatever.

Mr. MERRICK. It lays itself. You prove a conversation with Mrs. Surratt by one witness, and then say we cannot prove what it was.

Mr. PIERREPONT. That is what the witness said: "I said to Mrs. Surratt."

Judge FISHER. This is in reference to the witness himself.

Mr. PIERREPONT. "I said to Mrs. Surratt and Mr. Holahan at the table that I had my suspicions and I would state who I had seen in Booth's company, and do all I could," &c. That is what the witness stated, not what anybody else stated.

Judge FISHER. I think it is competent for this witness to state whatever was stated in reference to this

subject contained in the answer of the witness Weichmann, as to what he said at the table in reference to his suspicions and his giving information.

Mr. PIERREPONT. As to what Weichmann said?

Judge FISHER. As to what Weichmann said.

Mr. PIERREPONT. We do not object to that.

Q. (By Mr. BRADLEY.) Was any thing said by Weichmann himself as to his suspicions?

The WITNESS. If you will allow me, I will give a statement of what happened at the table.

Mr. PIERREPONT. No; we do not allow it.

The WITNESS. What I am getting at will not interfere with either side, I think.

Mr. PIERREPONT. We cannot tell, you know, any thing about it; that is the difficulty.

The WITNESS. I think I know enough to know that it will not interfere either way.

Mr. PIERREPONT. We do not know what is coming; and, therefore, we want to confine it in legal rules.

The WITNESS. I want to give the subject of conversation, that is all.

Mr. BRADLEY. I want to give substantive proof of what the conversation was at the breakfast-table that morning in relation to this subject. Weichmann has given it.

Mr. PIERREPONT. We have already stated that we do not object to any thing Weichmann said at the breakfast-table.

Mr. BRADLEY. I am not speaking of that. I am speaking of a conversation at which Weichmann was present and took part.

Mr. PIERREPONT. We do object to any thing else.

The WITNESS. I will make a statement, and then you may object to what I say.

Judge FISHER. (To the witness.) Just state what Weichmann said when he attempted to talk about this subject.

A. Very well. I bought a paper, and he read the paper at the breakfast-table—

Mr. PIERREPONT. Never mind that.

The WITNESS. He read the proceedings, you know, in relation to the assassination.

Mr. PIERREPONT. He did not say he read it at the breakfast-table.

The WITNESS. I say he did.

Mr. PIERREPONT. You cannot give that evidence.

Q. (By Mr. BRADLEY.) What did he say then?

A. He said nothing at all.

Mr. BRADLEY. Now, can I give in evidence what Holahan said on that subject in his presence?

Mr. PIERREPONT. Certainly not.

The WITNESS. He made no remarks at all about it.

Q. (By Mr. BRADLEY.) Nor you either?

A. No, sir.

Q. Now, at that time and in your presence did you hear Anna Surratt say that "The death of Abraham Lincoln was no more than the death of a nigger in the army?"

Mr. PIERREPONT. Wait—

A. No, sir.

Mr. PIERREPONT. Do not answer that question. You cannot answer in this way, and I ask the court to tell this witness that he cannot answer in that style.

Judge FISHER. [To the witness.] You must not answer when objection is made.

Mr. PIERREPONT. If your honor will look at the testimony, you will find that they brought out that remark themselves in their cross-examination, and we never asked one word about it until they brought it out on cross-examination, and they cannot now undertake to contradict it.

Mr. BRADLEY. We will see. I read from page 334 of the record:

"Q. Then, when you went to breakfast, you said you intended to go out and disclose all you knew about it?"

"A. I said I intended to tell all I knew, but I did not say I intended to disclose any thing, because I did not know any thing of this murder."

"Q. You are confident you said at the breakfast table what you have stated here you did?"

"A. Yes, sir; and Mr. and Mrs. Holahan heard me."

"Q. Mrs. Holahan, Mr. Holahan, Miss Fitzpatrick, Miss Jenkins, and Miss Dean were all there?"

"A. I do not know whether Miss Dean was there or not. I know Anna Surratt was there, and I know very well, too, what remark was made there."

"Mr. BRADLEY. Bolt it out."

"A. That the death of Abraham Lincoln was no more than the death of a negro in the army."

Mr. PIERREPONT. Your honor sees who ordered it to be bolted out; that we did not.

Mr. BRADLEY. It makes no difference.

Mr. PIERREPONT. We simply say they cannot contradict it.

Judge FISHER. Let me look at it.

The record was handed to Judge FISHER.

Mr. PIERREPONT. Your honor will note that all on that page and many pages preceding is cross-examination. It is a very plain offer. They cannot tell a witness on cross-examination to say a thing and then call another witness to contradict it.

Judge FISHER. In my opinion this testimony ought not to be admitted. It is something that was collateral and irrelevant, but as it was brought out on cross-examination, you must accept the answer.

Mr. BRADLEY. Note an exception.

Judge FISHER. Certainly.

Mr. BRADLEY. I now ask your honor to turn to page 333 of the record:

"Q. You have stated that on the morning after the assassination you met Mr. Holahan."

"A. Yes, sir."

"Q. Where did you meet him?"

"A. At the corner of Seventh and F streets, right in front of the post office. He was coming from the direction of Tenth and F streets."

"Q. Do you recollect what passed between you and him at that time?"

"A. We talked together. I told him of my suspicions and everything else. He told me he thought it was Atzerodt who had assassinated the Secretary of State. We then went round to breakfast."

(To the witness.) Now, I ask you did any such conversation occur?

Mr. PIERREPONT. Do not answer that question. That is in the same condition precisely as the other. We asked nothing about that—not a word. They cannot make testimony by asking it and then contradicting it.

Judge FISHER. That question seems to be liable to the same objection.

Mr. BRADLEY. Note an exception.

Judge FISHER. Certainly.

Q. (By Mr. BRADLEY.) We will start, then, after breakfast. Where did you go after breakfast, and in company with whom?

A. Mr. Weichmann.

Q. Where to?

A. We went to the police headquarters, Superintendent Richards, and I delivered him up. I told McDevitt and Clarvoe—(Mr. PIERREPONT. Wait.)—that I was satisfied he knew everything about it.

Mr. PIERREPONT. Wait one moment. You must stop when you see we are asking the court to correct you on your evidence. We submit to your honor, he cannot tell what he said to Mr. Clarvoe and Mr. McDevitt.

Judge FISHER. That is a conversation *inter alios*.

Mr. BRADLEY. It is not a conversation; it is a charge upon which he put the man in custody.

Mr. PIERREPONT. He cannot tell what he said to anybody.

Mr. BRADLEY. Weichmann has sworn that he was not in custody.

Judge FISHER. You may state about this man being in custody, I suppose, but not conversations which led to it.

Mr. BRADLEY. All we propose is to give the charge on which he was put in custody.

Mr. PIERREPONT. You cannot do that unless you give it in a legal way.

Mr. BRADLEY. If your honor rules out that portion I take an exception.

Judge FISHER. Very well; note the exception.

Q. (By Mr. BRADLEY.) In point of fact, was Mr. Weichmann put in the custody of the officers?

A. Yes, sir.

Q. From that time forth, until as late as the 18th or 20th of April, were you in company with the officers, and was Mr. Weichmann in their custody or not?

A. Yes, sir; he was under arrest all the time.

Q. Do you know any thing, or did Mr. Weichmann state any thing, about his clothes being in the wash?

Mr. CARRINGTON. Stop—

A. His clothes were in the wash.

Mr. CARRINGTON. Stop one moment. I hope your honor will state to this witness that he must stop when objection is made.

Judge FISHER. I have stated that whenever objection is made he must stop. What is the question now?

Mr. BRADLEY. Whether Weichmann told him any thing about his clothes being in the wash at Mrs. Surratt's at that time.

Judge FISHER. That is subject to the same objection.

Q. (By Mr. BRADLEY.) Go on and give to the court now a statement of where you were with Mr. Weichmann from the morning of the 15th for ten days following?

A. On the morning of the 15th I left Mrs. Surratt's house about seven o'clock. I went down with him to the office of the Superintendent of Police—

Mr. PIERREPONT. You must not say what passed, but what was done.

A. I say I went down there with him.

Judge FISHER. (To the witness.) The objection is to the conversation; state the facts.

A. While we were there, the officers took Weichmann to get a horse to take him down in the country; when they came back Mr. McDevitt—

Mr. PIERREPONT. Not what he told you.

The WITNESS. I am only stating—it has no bearing I think—

Mr. PIERREPONT. It must not be stated. That is the very reason it should not be stated, because it has no bearing.

Q. (By Mr. BRADLEY.) You can state whether you got a horse and went down in the country.

A. No, sir; they came back and had horses; one of the parties, Mr. McDevitt, could not ride a horse, and he went in a wagon or carryall; when he came back to the office, I told him—

Mr. PIERREPONT. Do not tell what you told.

Q. (By Mr. BRADLEY.) Then, did you get a carriage and horse and go down the country?

A. That is just what I was going to say. I went and hired a buggy; I had to give \$100 dollars security for a buggy.

Q. Did you go with them or not?

A. I overtook the party five miles below the Eastern Branch. I paid for the buggy, and went down as far as Piscataway; some fifteen or twenty met there at Piscataway.

Q. Was Weichmann among them?

A. Yes, sir. I paid the whole bill for dinner.

Mr. BRADLEY. Never mind that.

Mr. PIERREPONT. That is not in controversy.

The WITNESS. I only want to make the statement.

Q. (By Mr. BRADLEY.) Go on and state what you did.

A. We went down about five or six miles below Piscataway, and came back, and Mr. McDevitt and Weichmann; we arrived here between nine and ten o'clock on Saturday night; we drove to the third-ward police station, which was near the corner of H, at that time. After McDevitt went in there, and in going down from there to the station-house, McDevitt told Weichmann—

Mr. PIERREPONT. Do not tell what he told.

Q. (By Mr. BRADLEY.) What did they do with him?

A. Kept him there all night Saturday night.

Q. (By Mr. MERRICK.) Where did he sleep?

A. At the station-house.

Mr. CARRINGTON. If your honor please, I think it is proper to object to this. How can all that occurred between him and Mr. Weichmann, his going down to the police office, and every thing of that sort, be competent? Any fact that is material to the issue I do not object to.

Judge FISHER. Have you not given in evidence about Weichmann and this witness going together?

Mr. CARRINGTON. He spoke of their going together, I believe, after Surratt.

Judge FISHER. Now they may state it on their side so as to see how the two correspond.

Mr. CARRINGTON. I do not see that it is material at all.

Mr. PIERREPONT. They do correspond exactly. Mr. Weichmann stated that he slept in that house.

Mr. BRADLEY. Whether they correspond or not, it is not competent for the gentleman to say, and I think he had better wait until that matter is discussed before the jury. Commenting upon the testimony of witnesses, I think, is not to be allowed. I say they do not correspond, and the record will show that they do not. In some particulars there are variances.

Mr. CARRINGTON. We will discuss that after a while.

Mr. BRADLEY. Exactly.

Q. (By Mr. BRADLEY.) He was detained in custody that night at the station house, you say?

A. Yes, sir.

Q. What did you do next after that?

A. That night, at a quarter after ten, I left McDevitt at the station-house. I told him I would go home.

We talked the thing over, and he said, "You go home." Mr. PIERREPONT. You need not tell what he told, but what you did.

The WITNESS. I am going to.

Q. (By Mr. BRADLEY.) Was it arranged that you should do any thing more?

A. I was to meet him at ten o'clock. I went home, and met him again at ten o'clock at the station-house. I went and hired a carriage, and we went up to Secretary Stanton's, to get a special train to go to Baltimore.

Q. Did any thing happen as you were going to Secretary Stanton's, or in coming back from there; or did you go back home until after you went North?

A. I did not go home until we got through and found we failed in our mission. At three o'clock I left McDevitt at Seventh and H streets. He took the carriage and went home, and I went to Mrs. Surratt's house.

Q. What I want to get at is, whether, when you went back to the house, you got any clothes or not, and when?

A. My wife was at the house still then. I slept there until Sunday morning.

Q. Now, go on?

A. On Sunday morning, at six o'clock, I went to the Superintendent of Police's office, and met McDevitt there.

Q. Did you see Weichmann there?

A. Yes, sir; he was still there. I was there pretty much all the morning, and at 11:15, I think, the train left, and we went to Baltimore, Weichmann, McDevitt, and myself.

Q. How long did you stay there?

A. Until Monday morning. We came here from Baltimore on the first train Monday morning.

Q. When did you leave again?

A. Monday evening, at three o'clock.

Q. Before you left, did you go home again?

A. Yes, sir.

Q. Did you get any article there?

A. I did.

Q. Now, state to the jury what you got when you went home before you left here to go to the North?

A. I changed a shirt and took a couple of handker-

chiefs off the bed. The wash had come in Sunday morning. It did not come in on Saturday. The clothes were brought in Sunday morning just about the time my wife was leaving. The bed was made up, and everything was spread on the bed—the pieces and different articles, shirts, handkerchiefs, and so on, piled up by themselves.

Q. You say you got a couple of handkerchiefs?

A. Yes, sir.

Q. State whether either of those handkerchiefs was marked; and, if so, how it was marked?

A. One was, "John H. Surratt."

Q. Do you remember whether there was any number or not?

A. I could not state positively. I did not recognize the number.

Q. You do not know whether it was numbered 1, 2, 3, 4, or 5?

A. No, sir, nothing but the name that I recollect of.

Q. Was the other one marked?

A. No, sir, it was my own.

Q. One was yours and the other had the name of John H. Surratt on it?

A. Yes, sir.

Q. Now, state where you went?

A. At three o'clock, or it might have been 3:15, I am not positive about the time; the afternoon train from here to the North—we took that. Clarvoe, one of the detectives of the Metropolitan Police, went to the house with me and saw me take the handkerchief off the bed. We went in a carriage there. I went after my overcoat. It was cold weather, and I thought I might want it on the road. We took the train and went to Philadelphia. We got to Philadelphia about half-past eleven or twelve o'clock. We stopped all day Tuesday in Philadelphia, and Clarvoe arrested a man by the name of Celestine.

Q. What time did you get to New York?

A. Wednesday morning.

Q. Where did you go from there?

A. We went on our way to Canada.

Q. Where did you stop that night?

A. In Burlington, Vermont.

Q. State whether you rested at all in the depot, and at what time?

A. We stopped at the hotel there in Burlington and got supper. I then went out and bought some things. I recollect buying a shirt, a couple of handkerchiefs, a pair of socks, and comb. I came back and went to bed.

Q. That was the evening of the 20th or 19th, which?

A. It was Wednesday evening.

Q. It was Wednesday, the 19th, that you got there?

A. Yes, sir.

Q. Did you stay there until morning?

A. Stayed until we were woke up by the watchman or porter in the hotel. We went to the depot, and we were ahead of time or the train was late. I rested on the settee there, laid down on the settee until the train started.

Q. Was there anybody with you?

A. Weichmann, McDevitt, and Bigley.

Q. Did you discover afterwards that you had lost that handkerchief; and, if so, when and where did you discover it?

A. I discovered I lost it at Essex Junction.

Q. The first stopping-place above Burlington, is it, or White River perhaps?

A. I cannot say it is the first stopping-place, but it was after sunrise, or just a little after sunrise, when we got there, between five and six o'clock in the morning; somewhere about that time.

Q. And there you found out you had lost the handkerchief. What handkerchief or handkerchiefs had you lost?

A. The way I came to miss it was, that I had my tobacco in my overcoat pocket and went to search for the tobacco, and I found my handkerchief and tobacco gone.

Q. What handkerchiefs were gone. You say you lost handkerchiefs, but not stated what ones?

A. They were dirty, because I had used them. I took two handkerchiefs.

Q. Was either of those handkerchiefs marked; and, if so, how?

A. Yes, sir, one of them was marked John H. Surratt.

Q. You went on then?

A. To Canada.

Q. And you returned how long after that?

A. I could not say how long. We were gone about ten days altogether. We arrived on Saturday morning. I guess we were gone ten days altogether.

Mr. MERRICK. Your honor, it is now half-past twelve o'clock, and it is likely you would like to have a recess.

Judge FISHER. Will you not be through with this witness soon?

Mr. MERRICK. It will take some time to get through with this witness.

Judge FISHER. We will take a recess until one o'clock.

After a recess of half an hour, the court re-assembled at one o'clock.

#### JOHN T. HOLAHAN'S

examination continued.

By Mr. BRADLEY:

Q. I want to understand what you said in reference to that handkerchief, whether it had a mark and number on it or not.

A. There was a number on it.

Q. But you could not recollect the number?

A. No, sir.

Mr. BRADLEY. Then I was right, and Mr. MERRICK misunderstood you. I want to put that right.

Mr. PIERREPONT. We all probably misunderstood.

Mr. MERRICK. The misunderstanding was owing to the shape of Mr. BRADLEY's question.

Mr. PIERREPONT. Probably.

Mr. BRADLEY. I understood him to say that there was a mark and number, but he did not recollect the number, but Mr. MERRICK understood him differently.

Mr. PIERREPONT. We understand it now, then.

Q. (By Mr. BRADLEY.) Another word of explanation; you say that you obtained that handkerchief from the bed in your room?

A. Yes, sir.

Mr. BRADLEY. There we differed again; Mr. MERRICK thought you said in the other room. (To the witness.) When in the week and where was your washing done?

A. I think it was done the last week or two in the house; I am satisfied about that. The washing was given out on Monday or Tuesday.

Q. Were you about the house on the Saturday after the assassination?

A. Not after seven o'clock; I might have been there at half-past six on Saturday; I did not enter the house until ten o'clock on Saturday night.

Q. You say that towards morning, while you were at Burlington, you went into the depot before it was time for the cars to start, or they were detained, or something of that kind?

A. Yes, sir; we waited for the train.

Q. Have you any recollection how long you remained there?

A. Probably twenty minutes or half an hour.

Q. You say John Surratt was at his mother's on the 3d of April?

A. Yes, sir.

Q. State whether there was any concealment about his being there, or whether it was a matter known that he was about the house.

A. There was no concealment at all.

Q. Were you confined in the Carroll Prison at the same time that Weichmann was?

A. I was.

Q. Did you have any conversation with Weichmann in regard to what had passed between him and Mr. Stanton as to any statement he should make in regard to the assassination?

A. I did.

Q. Do not state what it was yet. You did have such a conversation with him in prison?

A. Yes, sir.

Mr. BRADLEY. Now, I offer to give in evidence, if the court please, what was said on that subject. I interrogated Mr. Weichmann, I think, very fully in regard to it, but I am looking to see— [After an examination of the record.] I will not detain the court in reference to that single point. I may be permitted to ask the question afterwards, if I find I have laid the foundation; there will be no objection, I suppose.

Mr. PIERREPONT. No.

Mr. BRADLEY. I find here the question only in reference to Mr. Ford and Mr. Carland. I did ask him about Holahan, but the court took a recess then, and after the recess I did not put that question to him, at least not at that time.

Mr. MERRICK. Suppose the place was named, is it necessary to name the individuals?

Mr. PIERREPONT. If you find it during the cross-examination, I consent that it shall be offered the same as now.

Cross-examined by Mr. PIERREPONT:

Q. Will you not tell those gentlemen of the jury what occurred in this short recess that we have just had that changed your mind about the handkerchief being numbered, if any thing?

A. Nothing has changed my mind. It was numbered, but I had no recollection of the number.

Q. Did you have your attention called to the fact of whether it had a number?

A. No, sir; I knew there was a number on the handkerchief.

Q. Did you have your attention during the recess called to that?

A. No, sir.

Q. By nobody?

A. No, sir.

Q. Nothing was said about it?

A. No, sir.

Q. You have not said a word on the subject, and nobody said a word to you?

A. No, sir.

Q. Before the recess you stated twice, did you not, that it had no number on it?

A. No, sir; I did not state any thing of the kind. There was no question asked me about a number at all.

Q. Was there not?

A. No, sir.

Mr. PIERREPONT. We will leave that to the notes and the memory of men.

The WITNESS. Very well.

Q. You now say it had a number on it?

A. There was a number on it?

Q. What number?

A. I do not know.

Q. How do you know it had a number?

A. There was a figure. I cannot say what it was.

Q. What figure?

A. I tell you I cannot say; I do not recollect.

Q. What besides a figure?

A. There was something after the name.

Q. What was it?

A. A number.

Q. What was it?

A. I told you once before there was a number—  
n-u-m-b-e-r.

Q. Was that what was on it?

A. No; I could not tell. There was something after the name; it was a figure.

Q. I want to have you tell those gentlemen what it was? Mr. MERRICK. He said it was a figure.

Mr. PIERREPONT. I am examining the witness. The WITNESS. You are getting too fast now.

Q. (By Mr. PIERREPONT.) I ask you if you know the name of the number?

A. I did not say "number" at all.

Q. Was there an "N-o"?

A. I did not say what it was. There was a figure after the name.

Q. Was there an "N-o." before the figure?

A. I have told you distinctly; it is no use for you now to try to put me out on that point; I told you distinctly, in plain English.

Q. I shall continue to ask it until you answer the question.

A. I have answered your question.

Q. Was there an "N-o." before the figure?

A. I have answered the question.

Q. You will have to answer that.

Judge FISHER. (To the witness.) You have not said whether there was an "N-o." there.

A. I said there was a number or figure or something after the name.

Q. (By Mr. PIERREPONT.) My question is, whether there was an "No.?"

Judge FISHER. (To the witness.) Standing for number before the figure.

A. I say I do not know any thing about it. There was something after the name. I told him that.

Q. (By Mr. PIERREPONT.) Was there any thing beside a figure after the name?

A. I have told you the name, and told you before there was something after the name, but I do not know what it was.

Q. Was it on the same line following it, or under it?

A. On the same line, I think.

Q. It was on the same line?

A. I think so.

Q. Now, we will come to another subject. Did you not say Weichmann was arrested?

A. I did.

Q. Who arrested him.

A. He was put under arrest by McDevitt and Clarvoe.

Q. Which?

A. Both were standing on the steps of the Metropolitan Police headquarters.

Q. Did they tell him that they arrested him?

A. No, sir.

Q. Did he know that he was arrested?

A. He did not know it until a quarter to ten o'clock on Saturday night.

Q. Do you know how he found it out?

A. He found it out after leaving the third-ward police-station on Saturday night. McDevitt told him he would have to go to headquarters and stay there all night; that he was under arrest. I knew it though in the morning.

Q. Where did he tell him so?

A. After we left the third-ward police-station.

Q. You heard him?

A. Yes, sir.

Q. That was the first time Weichmann discovered it?

A. Yes, sir.

Q. You knew it before?

A. Yes, sir.

Q. But he did not know it?

A. He did not.

Q. Were you under arrest?

A. No, sir.

Q. You went with Weichmann to Canada?

A. I did.

Q. Were you in his charge?

A. I do not think I was in his charge.

Q. [Exhibiting the special order, No. 68, identified by Louis J. Weichmann.] Did you ever see that paper before?

A. It is not correct.

Q. Did you ever see that paper before?  
 A. I saw the original. This is not correct.  
 Mr. BRADLEY. When it was offered? I thought it was the original.  
 Mr. PIERREPONT. It is certified from the records. The WITNESS. It is not the original paper.  
 Q. (By Mr. PIERREPONT.) Did you ever see that paper before?  
 A. I know the substance of the paper. That is sufficient. My name is wrong there.  
 Q. Spelled wrong, you mean?  
 A. My Christian name is wrong. It is there George Holahan, and my name is "John T."  
 Q. With that exception, it is right?  
 A. Yes; I think it is.  
 Q. Then you and Weichmann and some others went as specially detailed together.  
 A. Allow me to make an explanation about this.  
 Q. Answer the question. I want no explanation until you first answer my question. Were you detailed?  
 A. I think I have a right to make an explanation about this paper.  
 Judge FISHER. Answer the question first, and then make the explanation afterwards.  
 Mr. PIERREPONT. My question is, Whether you went in obedience to this order?  
 A. I did. Now, I will make an explanation about it.  
 Q. Where?  
 Mr. BRADLEY. The court will let him make an explanation.  
 Mr. PIERREPONT. There is no explanation on the subject. If they want to re-examine him, or have an explanation, they may do so. I am not asking for any explanations. My simple question is, Whether he went in obedience to this order. It does not require any explanation.  
 Mr. BRADLEY. I think the witness has a right, when a paper is shown to him and he is asked if he went in obedience to that paper, to explain what his connection was with it.  
 Mr. PIERREPONT. I submit he has no right to explain until I am through with him. I have simply asked whether he went in obedience to this order.  
 Mr. BRADLEY. It is the right of the witness to explain.  
 Judge FISHER. Yes, he can explain.  
 The WITNESS. I want to make free and fair and public statement about this transaction. I do not want to be cut off in this way.  
 Mr. BRADLEY. The court says you have the right to make the explanation.  
 Mr. PIERREPONT. Explain what you mean.  
 The WITNESS. I mean this: that on Monday morning, after we came back from Baltimore—McDevitt, Weichmann, and myself—McDevitt went, I think, to General Baker, or Colonel Baker at that time, and he got transportation.  
 Mr. PIERREPONT. That is not explaining this order, is it?  
 A. Yes, sir. I am explaining that order. He went and got transportation. If he had told Baker and the provost marshal that Weichmann and myself had boarded in that house, we would never have gone to Canada.  
 Mr. PIERREPONT. How is that an explanation.  
 The WITNESS. I will show you.  
 Mr. PIERREPONT. That is the explanation, is it?  
 The WITNESS. I am not through yet. He represented to the Department that he wanted us to go with him. If he had told who we were, and that we boarded in that house, we would never have gone there.  
 Mr. PIERREPONT. Are you through with the explanation?  
 A. Yes, sir.  
 Q. That is all, is it?  
 A. Yes, sir.  
 Q. Then I will proceed with the examination.  
 A. Very well; go ahead.

Q. Did you go under this order with Weichmann?  
 A. I did.  
 Q. And he with you?  
 A. Yes, sir.  
 Q. Where did you go?  
 A. We went from here to Baltimore and from there to Philadelphia. We stopped at Philadelphia on Monday night.  
 Q. You told us on the direct examination that you went back to the house, before you left, and got a handkerchief?  
 A. That was on Monday.  
 Q. What time of the day?  
 A. Between one and three o'clock, just before leaving for the cars.  
 Q. What time did you take the cars on Monday?  
 A. We took the three o'clock train, or it might have been the 3.15; whatever the train was at that time. I would not designate the time.  
 Q. Where did you go to get these clothes that you spoke of, in which were two handkerchiefs?  
 A. In my own room.  
 Q. Where were the clothes?  
 A. On the bed.  
 Q. Spread on the bed?  
 A. Yes, sir.  
 Q. Do you know how long they had been there?  
 A. I think they were brought in on Sunday morning. They must have been, because the bed was made up.  
 Q. What morning was this?  
 A. It was not morning at all; it was evening.  
 Q. The evening of what day?  
 A. The evening of Monday.  
 Q. You had slept there Sunday night, had you not?  
 A. No, sir.  
 Q. Had not your wife?  
 A. No, sir. My wife left Sunday morning.  
 Q. Do you know when the clothes were put there?  
 A. It must have been—  
 Q. I asked if you know?  
 A. It must have been on Sunday morning.  
 Q. Why must it have been?  
 A. Because I slept there Saturday night and left Sunday morning, at six o'clock, and my wife and children were in the room on Sunday morning, and my wife went to her mother's on Sunday morning. The bed was made up when I came back.  
 Q. When you left the clothes were not on the bed?  
 A. No; my wife was in the room then.  
 Q. These clothes that were not washed were not on the bed?  
 A. I guess not.  
 Q. They were on Monday afternoon?  
 A. Yes, sir, they were.  
 Q. Was not that the first time you ever saw them on the bed?  
 A. It was.  
 Q. On Monday afternoon?  
 A. Yes.  
 Q. You do not know whether they had been put there five minutes or two days before you got them?  
 A. They had been placed there between Sunday morning and the time I got them.  
 Q. You do not know what time?  
 A. No, sir.  
 Q. For aught you know, they might have been placed there two minutes before you got them.  
 A. Possibly.  
 Q. After you got those handkerchiefs, what did you do with them?  
 A. Put them in my pocket.  
 Q. Where did you go next?  
 A. Went North.  
 Q. What was the first place you went after you got the handkerchiefs on Monday afternoon?  
 A. To the cars.  
 Q. What time did the cars leave?  
 A. About three o'clock.

Q. Where did you go to on Monday afternoon?  
 A. I have just told you I went to the cars.  
 Q. After you got to the cars, where did you go?  
 A. The cars took us to Baltimore.  
 Q. After the cars took you to Baltimore, where did you go?  
 A. On to Philadelphia.  
 Q. That night?  
 A. That afternoon.  
 Q. Did you?  
 A. Yes, sir, we did.  
 Q. You did not stop in Baltimore that night?  
 A. No, sir.  
 Q. You are sure about that?  
 A. Positive.  
 Q. Who was with you?  
 A. McDevitt, Clarvoe, Bigley, Kneass, and Weichmann.  
 Q. You are sure you did not stay that night in Baltimore?  
 A. Yes, sir.  
 Q. None of you?  
 A. No, sir.  
 Q. You all went on to Philadelphia?  
 A. We all went on to Philadelphia.  
 Q. Tell us what time you got in Philadelphia.  
 A. About half-past eleven o'clock—whatever is the usual time.  
 Q. Where did you go to?  
 A. We went to a hotel at the corner of Market and Eleventh streets.  
 Q. Did you all go together?  
 A. We did.  
 Q. Did you stay there that night?  
 A. We did.  
 Q. What did you do the next day?  
 A. Clarvoe arrested a man by the name of Celestine.  
 Q. What did you do the next day? That is my question.  
 A. I was in company with Clarvoe all the morning.  
 Q. Did you go out of Philadelphia the next day?  
 A. I was through the town with Clarvoe.  
 Q. Did you go out of the city of Philadelphia?  
 A. No, sir.  
 Q. Where did you sleep on Tuesday night?  
 A. It might be that we did not sleep anywhere Tuesday night; in the cars, if anywhere.  
 Q. What time did you leave Philadelphia?  
 A. I think it was twelve o'clock; somewhere about midnight.  
 Q. Midnight of what night?  
 A. Tuesday night.  
 Q. You left Philadelphia on Tuesday night at midnight?  
 A. I did; whatever time the train leaves.  
 Q. Where did you go to?  
 A. To New York.  
 Q. When you got to New York, what time was it?  
 A. It was daylight; somewhere about that time.  
 Q. Then you got to New York on Wednesday, the 19th?  
 A. Yes, sir; it was Wednesday, and that was the 19th.  
 Q. It was Wednesday, the 19th of April?  
 A. Yes, sir; that is right.  
 Q. What did you do after you got to New York on Wednesday, the 19th of April?  
 A. We took something to eat.  
 Q. Did you leave there?  
 A. We did in the morning about 7 o'clock.  
 Q. Where did you go to?  
 A. Up the Hudson-river road.  
 Q. To what point?  
 A. We did not go to any particular point, because we were going to Canada.  
 Q. Where did you stop that night?  
 A. In Burlington.  
 Q. Then you got to Burlington on that night, did you?

A. Yes.  
 Q. On the night of Wednesday, the 19th?  
 A. We did.  
 Q. You were all together there?  
 A. We were.  
 Q. Where did you go to?  
 A. To a hotel.  
 Q. What hotel?  
 A. I could not say; I did not go out to look at the sign.  
 Q. Did you enter names?  
 A. We did.  
 Q. Did you enter your real names?  
 A. No, sir.  
 Q. You all entered false names?  
 A. Mr. Bigley, I think, registered the names.  
 Q. You all entered false names?  
 A. I think we did.  
 Mr. BRADLEY. He says Mr. Bigley registered the names.  
 The WITNESS. I think Bigley did the whole of it.  
 Mr. BRADLEY. He says Bigley did it. He does not know it of his own knowledge.  
 The WITNESS. No; I do not know.  
 Q. (By Mr. PIERREFONT.) You understood they were all false?  
 A. I did. We went under assumed names. I know that Bigley's name was Porter.  
 Q. What was your name?  
 A. I do not remember. McDevitt's name was McCoy. Those are the only two names that I recollect.  
 Q. What was Weichmann's name?  
 A. I have no recollection. One of the party was named Thompson; I do not know whether it was Weichmann's or my name; my name, I think.  
 Q. They were all false names?  
 A. Yes, sir.  
 Q. What time did you get to the hotel?  
 A. It was about dark, or after dark maybe.  
 Q. What did you then do?  
 A. We got supper and washed and went out, and I bought some clothes. I bought a shirt, and I bought one for Weichmann.  
 Q. Who went with you?  
 A. I am not certain whether Bigley went with me or McDevitt; one of them did.  
 Q. Did not Bigley go with you?  
 A. I do not know whether Bigley went with me or not.  
 Q. What time did you and Bigley, or whoever went with you, return to the hotel?  
 A. We had not been out more than about an hour.  
 Q. What time did you go to bed?  
 A. As soon as we returned.  
 Q. Do you remember the number of your room?  
 A. I could not say.  
 Q. Who slept in the room with you?  
 A. That I could not say.  
 Q. Cannot you tell which of your number?  
 A. No, I could not; because I made no memorandum of it.  
 Q. Do you not remember who slept in your room that night?  
 A. I could not say.  
 Q. One of them did?  
 A. Yes, sir; one of them did.  
 Q. Did not two?  
 A. I could not say whether two or all slept there. I would not say positively.  
 Q. You think some of them slept in the same room with you?  
 A. I think so.  
 Q. You did not go out that night again?  
 A. No.  
 Q. Where did you have that handkerchief that night?  
 A. I guess I had it in my overcoat pocket.  
 Q. Where did you have it the next morning when you dressed yourself?

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 75. WASHINGTON, TUESDAY, AUGUST 13, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 74.*

A. I guess it was in my overcoat pocket.  
Q. You think it was, the next morning?  
A. Yes, sir.  
Q. That was the morning of Thursday, the 20th?  
A. It was.  
Q. Then you think that handkerchief was in your overcoat pocket on Thursday, the 20th?  
A. It was.  
Q. Are you sure of that?  
A. I am positive.  
Q. You are positive then that on Thursday, the 20th, it was in your overcoat pocket?  
A. I am.  
Q. You took the cars that day, the 20th?  
A. That morning.  
Q. And you got to Essex Junction sometime?  
A. I did.  
Q. Was it there you discovered the loss of the handkerchief?  
A. I did.  
Q. But you know you had it in the morning?  
A. I knew I had it the night previous in my overcoat pocket, and I knew I had it in my overcoat pocket in the morning, because my tobacco was in my overcoat pocket.  
Q. You have told us that the tobacco was there, and all those things make you positive about that time, no doubt?  
A. Yes, sir.  
Q. When you got to Essex Junction how did you happen to find out it was gone?  
A. Well, there was a house about two hundred yards—or it maybe more, I would not measure it exactly—from the junction. I asked some of the men on the cars if it was not a drinking-house. I wanted to get a drink there. It was early in the morning and I did not feel well.  
Q. Who went with you?  
A. Myself.  
Q. Nobody with you?  
A. No, sir.  
Q. You went alone?  
A. Yes.  
Q. What time in the morning?  
A. Between four and five o'clock—after sunrise. It was early in the morning. The sun had been up no time.  
Q. You went alone and got a drink. What then happened?  
A. I wanted a chew of tobacco, and my tobacco was in my overcoat pocket. When I came back and got my overcoat from those parties who were with me and who had charge of it, I searched my overcoat, and there was no tobacco and no handkerchief there.  
Q. How much tobacco had you in it in the morning?  
A. I guess I had about three ten-cent plugs; I had bought a piece to carry on the road.

Q. Was the handkerchief wrapped around them?  
A. No, sir.  
Q. But they were in the same pocket?  
A. The same pocket.  
Q. And you supposed they both fell out together?  
A. Yes.  
Q. What sort of weather was it that day—early in the morning of the 20th?  
A. A bright, clear morning.  
Q. Was it cool up there in Vermont or warm?  
A. Pretty cool.  
Q. Did you wear your overcoat?  
A. No, sir.  
Q. What did you do with it; did you carry it?  
A. I carried it.  
Q. You did not wear it?  
A. I had thick winter clothes on, and had no need for it.  
Q. I do not ask whether you had need for it, but merely ask the fact of whether you did carry it.  
Mr. BRADLEY. He has a right to state the reason.  
Mr. PIERREPONT. No, he has not.  
Judge FISHER. It does not make any difference.  
A. I had thick winter clothes on.  
Q. I have not asked you about your clothes, but whether you wore the overcoat.  
A. I did not.  
Q. You did not wear it?  
A. No, sir; but I carried it along for convenience.  
Q. When you were up there at Essex Junction and put your hand into the overcoat pocket for your tobacco, you discovered the tobacco gone?  
A. I did.  
Q. Then you discovered the handkerchief was gone?  
A. I did.  
Q. Was any thing left in the pocket?  
A. No.  
Q. Was there any thing in it on the morning of the 20th except the tobacco, except that handkerchief?  
A. That is all.  
Q. Did you ever see that handkerchief since?  
A. No, sir.  
Q. Do you think you would know it if you were to see it?  
A. Possibly I might recognize it.  
Q. But you have never looked at it since?  
A. No, sir; I have never seen it since.  
Q. And that was the morning of Thursday?  
A. Thursday morning.  
Q. And the 20th of April?  
A. The 20th of April.  
Q. You are sure about the date?  
A. I am as positive as that I am looking at you now.  
Mr. PIERREPONT. I think you are right.  
The WITNESS. I can locate the date from the time of leaving here.  
Q. Where did you go after you left there on the 20th of April?  
A. We continued on our road to Canada.  
Q. And that was Thursday you went to Canada?  
A. Yes, sir.

Q. What time did you get to Canada?  
 A. It was early in the afternoon. It might have been one or two o'clock, I think.  
 Q. What hotel did you go to?  
 A. Let me see. We went to the Ontario, I think. It is on the main street.  
 Q. You went to some hotel?  
 A. I will tell you the name: There are only three hotels of any account in the town. It was the Ontario, or some such name as that.  
 Q. It was at a hotel there?  
 A. Yes, sir; we only got dinner there.  
 Q. How many days did you stay there?  
 A. We only got dinner there, and moved, I think, to the Oswego Hotel, or some such name as that.  
 Q. You know Bigley well, do you not, who was with you?  
 A. Yes, sir; I know him.  
 Q. Is he in the room?  
 A. I do not know; he may be. I know him very well.  
 Q. Did you tell Mr. Bigley that you lost that handkerchief at St. Albans?  
 A. No, sir.  
 Q. You did not at any time tell Mr. Bigley that you lost it at St. Albans?  
 A. No, sir.  
 Q. Do you know Mr. Weichmann, who was with you?  
 A. Very well.  
 Q. Did you tell Mr. Weichmann that you left it under your pillow at the hotel?  
 A. No, sir.  
 Q. You did not tell him so?  
 A. It is a falsehood.  
 Q. You did not tell him so at any time?  
 A. It is a falsehood.  
 Q. What is a falsehood?  
 A. That I left it under my pillow.  
 Q. I did not ask you whether it was a falsehood, but whether you told him so?  
 A. I say emphatically it is not so.  
 Q. I did not ask you whether it was a falsehood or not?  
 A. I say I am positive how I lost it.  
 Q. I do not know but it is a falsehood. I merely ask you whether you said so?  
 A. I never did say so.  
 Q. Were you with Weichmann all the time in Canada?  
 A. No.  
 Q. He was away from you a good while, was he not?  
 A. He might have been a day and a night. I think it might have been the first night we got there or the second night. He went to Quebec.  
 Q. You and Clarvoe were both away from Weichmann in Canada?  
 A. Clarvoe did not go to Canada when we first went there.  
 Q. Then neither you nor Clarvoe were in Canada with Weichmann?  
 A. Yes; Clarvoe was there at the last stage of our being there.  
 Q. Were you and Clarvoe with Weichmann all the time or not?  
 A. No; Bigley and Weichmann were together.  
 Q. Did not Weichmann go to Quebec?  
 A. He did.  
 Q. Who did he go with?  
 A. With Bigley.  
 Mr. BRADLEY. That is hearsay; you do not know where he went.  
 The WITNESS. I know that—I know that they left to go to Quebec. I went to Three Rivers with a detective from Montreal.  
 Q. (By Mr. PIERREPONT.) You were examined before, were you not?  
 A. I was, at the Penitentiary.

Q. At the trial of the conspirators?  
 A. Yes, sir.  
 Q. Let me read from the report of that trial and see whether you stated the following; I will read it *verbatim*: "The last day on which I saw him (referring to Surratt) was on the night of the 3d of April, the day on which the news of the fall of Richmond was received." You stated that, did you?  
 A. I did.  
 Q. "He knocked at the door of my room at about ten o'clock, after I was in bed, and wished me to exchange some gold for greenbacks." Did you say that?  
 A. I will give you a statement about that. They would not allow me to make a statement on that trial.  
 Q. I do not ask you about that.  
 A. I want to put it just as he asked me the question.  
 Q. You must stop now. You will have to stop. My question simply is, Did you say this on that trial, as I have read it?  
 A. Yes.  
 Q. You say you did?  
 A. But I want to put it in this way—  
 Q. Did you say it? That is all my question.  
 Judge FISHER. (To the witness.) First answer the question, and then make your explanation.  
 A. I did give him the money.  
 Q. (By Mr. PIERREPONT.) Did you say what I have read?  
 A. Yes, I said that.  
 Q. Now, what do you want to say?  
 A. I want to put in this right here: Surratt came to my room door—  
 Mr. BRADLEY. What passed down there at the other trial?  
 A. They would not allow me to say any thing. They put questions just as they felt like it. Surratt came to my room door, and he wanted to see me. I put my pants on and went in the back room. Weichmann was in the room at the time. Surratt had his shirt off; he was undressed. Said he, "Have you any money with you?" Said I, "I have; how much do you want?" Said he, "I want \$50." Said I, "You can have it;" and I turned around and went to my room and got it and handed him the \$50. Said I, "Is that enough?" Said he, "I would like to have \$10 more;" and I went back in my room and got \$10 and handed it to him. I was turning out of the room and into the passage when he handed me two twenty-dollar gold pieces, and insisted upon my taking them. I wanted to make a full explanation of the whole thing.  
 Q. (By Mr. PIERREPONT.) Is that all you want to say?  
 A. All on that point.  
 Q. Then, did you say what I have read to you before the commission?  
 A. I did.  
 Q. Was it true?  
 A. Yes.  
 Q. "I gave him \$60 in paper for \$40 in gold. He said he wanted to go to New York, and that he could not get it exchanged in time to leave by the early train in the morning." Did you say that?  
 A. Yes, sir.  
 Q. Was that true?  
 A. That is right.  
 Q. "I never knew any thing of Mrs. Surratt's defective eye-sight?"  
 A. That is right.  
 Mr. BRADLEY. We have asked nothing about Mrs. Surratt's defective eyesight.  
 Mr. PIERREPONT. I do not care any thing about that.  
 Mr. BRADLEY. What did you read it for then?  
 Mr. PIERREPONT. To know if he said it.  
 The WITNESS. That question was asked me on that trial.  
 Q. (By Mr. PIERREPONT.) I read again from that trial: "During the winter and spring, and up to the

time of the assassination, I boarded with Mrs. Surratt. While there I saw Atzerodt several times, though I did not know him by that name. He seemed to be with John Surratt most of the time." Did you say that on the trial?

A. I did.

Q. Was it true?

A. It was true; and I saw him with Weichmann, too.

Q. I did not ask that?

A. With the whole party.

Q. This was true?

A. Yes, sir; the whole party together.

Q. "I also saw Payne there once at breakfast. The name by which I knew him was Wood." Is that true?

A. That is right.

Q. "John Wilkes Booth I have seen there frequently. I have seen him in the parlor with Mrs. Surratt and the young ladies." Did you say that?

A. I did.

Q. And that was true?

A. Yes, sir, that is true.

Q. On your direct examination, you told us of a "mission," as you said, up at the office of the Secretary of War?

A. No.

Q. A "mission," you said. That was the word, was it not?

A. I do not recollect using such a word.

Mr. BRADLEY. I do not recollect it.

Q. (By Mr. PIERREPONT) Do you remember saying about going to the office of the Secretary of War?

A. I did, on Saturday night.

Q. Did you use the word "mission," which you said failed?

A. We failed to get an engine or a special train to go to Baltimore.

Q. Was that what you meant?

A. I think it was.

Q. What were you going to Baltimore for?

A. It was at the suggestion of McDevitt.

Q. What were you going to Baltimore for?

A. McDevitt was going there, thinking possibly Atzerodt and parties would be in Baltimore.

Q. What parties?

Q. Atzerodt and parties.

Q. What parties?

A. Atzerodt.

Q. What parties?

A. I say Atzerodt.

Q. No, you said Atzerodt and parties.

A. Booth and Payne.

Q. Anybody else?

A. No.

Q. Nobody else.

A. No.

Q. When you said "parties," and were so reluctant to tell—

A. Who was reluctant?

Q. Did you mean Surratt?

A. No; because I know what I was at.

Q. You did not mean Surratt?

A. No, sir.

Q. These "parties in Baltimore" did not comprehend Surratt?

A. Parties in Baltimore did not comprehend Surratt? I do not understand that question. You are not speaking intelligibly.

Q. Then I will not press it, if you do not understand it.

A. Put it in other language.

Q. If you do not understand that, probably it would not be plain in other language.

A. I understand, but probably you do not understand, the English language very well.

Q. Will you tell us what day you got back from Canada?

A. It was on Saturday morning.

Q. What day of the month?

A. I have no recollection of the day. It was about eight or ten days after the assassination. I recollect distinctly it was on Saturday morning.

Q. Do you remember what day of the month?

A. I have just told you it was Saturday morning. You can figure it up.

Q. How many days after you left here?

A. I was away about eight or ten days.

Q. You were gone about ten days?

A. Eight or ten days. It was on Saturday morning.

Q. You spoke of being in prison?

A. I did.

Q. What were you in prison for?

A. That is more than I am able to say. Mr. Stanton can explain that better than I can.

Q. You do not know?

A. No.

Q. When you went to the depot that morning from Burlington, the others went along with you, did they not?

A. No, sir.

Q. None of them?

A. None of them.

Q. You went alone?

A. I went alone.

Q. You went alone that morning?

A. I did; I am positive.

Q. Who were at the hotel with you that stayed back?

Who stayed back?

The WITNESS. What hotel?

Mr. PIERREPONT. The hotel at Burlington.

The WITNESS. Who stayed back?

Mr. PIERREPONT. Yes, who stayed back when you went alone?

The WITNESS. I do not think you have got the right point.

Mr. PIERREPONT. Maybe not.

The WITNESS. I do not think you have. I think your informer is not upon the right point. I want to put you right.

Mr. PIERREPONT. You will have to put yourself right pretty soon, and you will have to answer these questions in a very different style from the way you are doing.

The WITNESS. Then you must put your questions different to me.

Mr. PIERREPONT. I appeal to the court that this witness cannot go on in this style any longer.

Judge FISHER. The witness must answer the questions put to him. If he has any explanations to make after the answer is given he will make those explanations, but he must make the answers first.

Mr. BRADLEY. Your honor will pardon me if I remind you that the other day you reproved counsel for their manner towards witnesses. I think the counsel on the other side has pressed this witness in a manner quite as severe as any thing that has occurred during this trial, and more so.

Mr. PIERREPONT. I will submit to the court, and to any censure if your honor thinks I have been unjust to this witness.

The WITNESS. I want to make a remark.

Judge FISHER. No, not now.

The WITNESS. I am a citizen of this country.

Judge FISHER. I cannot see any thing improper in the manner of the examination, and if I could I should certainly not fail to reprimand the counsel; but there seems to be an unwillingness on the part of the witness to make answers. He first makes explanations. He must make the answer first, and then the explanation afterwards.

Mr. PIERREPONT. He tells me that I have not got the right point.

The WITNESS. I say you have not the right point. You are asking me the questions too fast. You will have to consider that.

Judge FISHER. Answer the questions first.

Q. (By Mr. PIERREPONT.) Now, will you tell, when you went from the hotel at Burlington, who you left behind of your party? That is my question.

A. I did not leave anybody behind.

Q. Did they all go with you?

A. No.

Q. Did anybody?

A. One.

Q. Who?

A. I am not positive whether it was Bigley or McDevitt. There was one went with me and one with Weichmann. The four of us separated.

Q. Did not Bigley go with you?

A. I think it was Bigley.

Re-examined by Mr. BRADLEY:

Q. Tell the jury how many pockets your great coat had in it?

A. Six.

Q. In which pocket was your tobacco and the pocket-handkerchief?

A. The outside right-hand pocket.

Q. When you took up the handkerchief off your bed, were you aware—

A. Mr. Clarvoe was aware that I took it up. He saw me pick it off the bed.

Q. Were you aware it had a name on it at that time?

A. Yes, sir. Mr. Clarvoe saw me pick it off the bed, and said, "Keep that handkerchief; we will want to use that," or something of that kind.

Mr. BRADLEY. (To the counsel for the prosecution.) Gentlemen, will you give me that handkerchief that you offered in evidence here?

[Mr. WILSON handed to Mr. BRADLEY the handkerchief identified by the witness Charles H. Blinn.]

Q. (By Mr. BRADLEY.) [Exhibiting the handkerchief.] You were asked if you would recognize that handkerchief again. Please look at that, and say whether you think that is it or not?

Mr. MERRICK. And read the name, and see what it is.

A. That is the handkerchief.

Q. (By Mr. BRADLEY.) Now, state to the jury by what you identify that as the handkerchief; whether you used it or not, and became familiarized with it; how you identify it?

A. Yes, sir; I used it, and it became dirty. I used it the same as my own handkerchief.

Q. You observe that handkerchief now. Is the number where you supposed it to be or not?

A. Yes, sir.

Q. Look at the handkerchief?

A. I have seen it.

Q. Is the number at the end of the line or under it?

A. Under the line.

Q. Not at the end of the line, as you supposed?

A. No, sir.

Q. Now, you were asked if you told Mr. Weichmann that you left it under your pillow at the hotel; you say you did not tell him so. Did you at any time say to Mr. Weichmann that you lost that handkerchief?

A. I never stated to him any thing about it. The only statement I made was in Montreal. McDevitt or Clarvoe, one of the detectives, told me the handkerchief was found in Burlington.

Mr. PIERREPONT. Wait; you cannot state that.

Q. (By Mr. BRADLEY.) I ask you if you communicated to any one the fact of the loss of that handkerchief, and when it was and where? You can answer whether you did, yes or no; but do not say to whom. Did you communicate to any one the fact of the loss of the handkerchief?

A. I did not communicate to anybody about it until they told me it was found.

Q. Then you heard a handkerchief had been found?

A. The party who told me said, "It is the handkerchief you had; have you got it?" Said I, "I lost it."

Q. That was after you had reached Montreal?

A. Yes, sir; after coming back from Three Rivers.

Q. The gentleman read to you from your examination before the military commission as to whether you had ever seen Payne or not. Did you ever know Payne by any other name than Wood?

A. No, sir.

Q. While you were in the house he was there, as I understand you, at breakfast or some meal with you?

A. At breakfast.

Q. Did you see him about the house at other times besides that time at breakfast?

A. No, sir.

Q. Do you recollect about what period of time that was; how long after you went to board at Mrs. Surratt's?

A. It might have been two or three weeks; I would not locate the time.

Q. Was that the only time you ever saw him there?

A. The only time.

Q. You never knew him by any other name?

A. He was introduced to me at the breakfast-table as Wood. Mr. Weichmann introduced him to me.

Q. He introduced him to you as Mr. Wood?

A. Yes, sir.

By Mr. PIERREPONT:

Q. When did you first mention the loss of the handkerchief to anybody?

A. Montreal.

Q. What day?

A. I could not locate the day.

Q. Do you remember the day of the week?

A. No, sir.

Q. Do you remember the day of the month?

A. No, sir.

Q. Do you remember the person to whom you told it?

A. Yes.

Q. Who?

A. I think it was McDevitt.

Q. Will you not look at this handkerchief and tell us whether you think that number is on the same line with the name?

A. I can see from here; it is not on the same line.

Q. You do not think it is?

A. No; if my eye-sight is good.

Q. It is good enough to see that?

A. Yes.

Q. It is not very much on the same line?

A. No, not quite.

Q. Is this the handkerchief you lost?

A. That is asking too much, I think.

Mr. PIERREPONT. I supposed it was.

The WITNESS. I cannot say positively, but I had a handkerchief there, and there was a number on it.

JOHN A. W. CLARVOE,

a witness for the defense, sworn and examined,

By Mr. BRADLEY:

Q. State to the jury your name and occupation.

A. John A. W. Clarvoe, detective Metropolitan Police.

Q. State to the court and jury whether you were at the house of Mrs. Surratt on the night of the 14th of April, 1865, and, if so, what time you got there and who went with you?

A. I judge about half-past two o'clock on the night of the 14th, in company with McDevitt, my partner, Lieutenant Skippon, Detective Donaldson, an officer by the name of Maxwell, at that time, and several others whom I do not recollect, I went to the house of Mrs. Surratt, on H street.

Q. Was that in consequence—do not state the information, but was it in consequence of information you had received; and for what purpose did you go?

A. I went for the purpose of capturing Booth and also to arrest John H. Surratt.

Mr. BRADLEY. We have not begun the examin-

ation of this witness scarcely; but will your honor permit me now to examine Mrs. Holahan, who is away from her family, and who has been detained here for two days.

Judge FISHER. Yes, sir. Mr. Clarvoe, you will stand aside for the present.

MRS. ELIZA HOLAHAN,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. You are the wife of Mr. John T. Holahan, who has just been examined?

A. Yes, sir.

Q. State, if you please, whether you boarded at Mrs. Surratt's in the year 1865?

A. I did, from the 7th of February until the 17th of April.

Q. During that time did you mingle socially in the family of Mrs. Surratt or keep yourself secluded?

A. I mingled with them freely; met them at all times and at any time.

Q. Do you recollect to have seen there at any time Mr. Weichmann, or whether he was a boarder or not?

A. He was a boarder in the house while we were there. He was there when we first went there to board.

Q. Did you see at any time a man named Atzerodt there?

A. I saw a person that came to the house sometimes. We called him, generally, "Port Tobacco."

Q. His familiar name was "Port Tobacco?"

A. Yes, sir.

Q. State, if you please, whether you observed any intimacy between him and Weichmann or not?

A. I saw him oftener with Mr. Weichmann than any gentleman in the house.

Q. Have you ever seen them coming to the house or going from the house together?

A. Yes, sir; on two occasions I saw them together.

Q. Do you know any thing of the fact of Mr. Atzerodt's wearing Mr. Weichmann's clothes at any time?

A. I remember once of seeing Mr. Atzerodt leaving the house with Mr. Weichmann's cloak and hat on; a tall black beaver and a military cloak.

Q. During that time did you ever see a man named Herold there?

A. Never.

Q. Did you see John Wilkes Booth?

A. Yes, sir; I saw him two or three times.

Q. Did you ever see a man there named Payne or Wood?

A. I met a man calling himself Wood there. I never knew him by the name of Payne; I never heard the name of Payne until after the assassination.

Q. In the latter part of the time you were there where did you have your washing done?

A. In the latter part of our stay in the house we had it done by Mrs. Surratt's washerwoman.

Q. What time did you put out your clothes for the wash and when were they returned?

A. Monday morning, generally, and the clothes were delivered to us about Wednesday evening.

Q. Do you remember on the day after the assassination of the President whether there was any washing done, or whether it was all done before that time?

A. No, sir; I think there was none after the assassination. I am sure I had no washing done after the assassination until the Monday following. Then I put my clothes in the wash on the Monday following.

Q. Monday or Sunday?

A. On Monday.

Q. When did you go home to your mother's?

A. I went home on Sunday at twelve o'clock and returned on Monday, and remained until after twelve o'clock in the day, and then I left and was never back again to Mrs. Surratt's.

Q. Do you remember assorting the clean things at that time?

A. I do not.

Q. You do not remember whether it was Sunday or Monday or when?

A. No, sir.

Q. Or whether you left them lying on the bed?

A. I gave my soiled clothes to the colored woman.

Q. I mean the clean clothes?

A. I do not know. The clean clothes were always put away.

Q. You do not remember where they were on Sunday or Monday?

A. I do not.

Q. Were you at Mrs. Surratt's on the day the news of the surrender of Richmond was received?

A. Yes, sir.

Q. Did you see Mr. John Surratt then?

A. I did not see him; I heard his voice. He knocked at our room door, and asked Mr. Holahan to come out in the hall.

Q. Had he not been absent for some days before?

A. He had.

Q. Do you remember how long?

A. Six or eight days, I believe; it may have been a little longer; I do not think it was.

Q. Did you see him when he left home, prior to the 3d of April?

A. Yes, sir.

Q. Who went with him?

A. When he left home?

Q. Yes; and how did he go?

A. Before his visit to Richmond, do you mean?

Q. At that time.

A. I think he left in company with his mother and a lady, in a carriage, with a white and a dark horse.

Q. In a buggy with two horses—a white and a dark horse?

A. Yes, sir; in a carriage with two horses.

Q. Were you at home on the evening and night of the 14th of April?

A. I was.

Q. Were you at home when Mrs. Surratt arrived that evening?

A. I was.

Q. Now, state to the court and the jury what followed immediately after Mrs. Surratt's arrival, on Friday evening, from Surrattsville.

A. I did not see Mrs. Surratt for some time after she returned—some twenty or ten or fifteen minutes; and then I called her and asked her if she was ready to go out with me; she had promised in the morning to go to church with me at night. She said she was. She took her bonnet and shawl, which were lying on the chair in the hall, and put them on, and we went as far as Dr. Evans's house—that is, two doors above Mrs. Surratt's—the adjoining house to Mr. Sweeney's. I said to her, "Mrs. Surratt, it is a heavy, disagreeable night, suppose we do not go." She said, "Well;" and we turned and came back to the porch and stood for some five or ten minutes, and then I went to my room and Mrs. Surratt to the parlor, and I did not see her again.

Q. After her return from Surrattsville you and she started to go to church, according to an arrangement made that morning?

A. Yes, sir.

Q. And, in consequence of the dampness of the evening, you went but a short distance and returned?

A. Yes, sir; two doors.

Q. You remained at the door for some ten minutes and then retired?

A. Yes, sir; then she went to the parlor and I to my room.

Q. You did not see her again?

A. Not until the next morning.

Q. When did you see her next?

A. In the morning, about seven or half-past seven o'clock. I am not sure about the hour; it was early though—sometime before we had breakfast.

Q. You did not see her during the night when the officers were there making search?

A. I did not see her until the time I speak of.

Q. At breakfast, do you remember at what time Miss Anna Surratt came in?

A. She came in when we were nearly through breakfast; quite late. She went to bed very early that evening, leaving the parlor the first one; so I understood; I was not in the parlor myself. And she entered the breakfast-room when we were nearly through with breakfast.

Q. Was Mr. Weichmann at breakfast.

A. He was.

Q. Did you hear Mr. Weichmann at breakfast—

Mr. PIERREPONT. Do not answer that question—because we want to make objection to it—till the court tells you.

Mr. BRADLEY. (To the witness.) You will not answer the question. I put this question, if the court please: Whether, while breakfast was going on, they talked together—the persons at the table. It is the same question I put to Mr. Holahan.

Mr. PIERREPONT. Is it on the same subject?

Mr. BRADLEY. The same subject; that is, what he said at table about his suspicions, and what he was going to do—the conversation between him and Mr. Holahan; that is in evidence.

Mr. PIERREPONT. It is the same question, Mr. BRADLEY says, and we make the same objection.

Mr. BRADLEY. But you did not make any objection before to this.

Mr. PIERREPONT. Maybe not. Then we will not now.

Mr. BRADLEY. Here it is on page 275. There was no objection made to the question which was put to Mr. Holahan.

Judge FISHER. What is the question now propounded?

Mr. BRADLEY. The question now is, Whether he heard Weichmann say to Mrs. Surratt and Mr. Holahan at the table that he had his suspicions about this business, and was going to the Government to state his suspicions about it, and state who he had ever seen in Booth's company, and do all he could to bring these parties to justice? I put the question to Mr. Holahan, because at page 334 Weichmann says, Mrs. Holahan, Mr. Holahan, Miss Jenkins, and Miss Dean were all at breakfast. He first said, "Yes, sir; and Mrs. Holahan and Mrs. Surratt heard me." I will read it:

"Q. You are confident you said at the breakfast-table what you have stated here you did?"

A. Yes, sir; and Mrs. Holahan and Mrs. Surratt heard me.

Q. Mrs. Holahan, Mr. Holahan, Miss Jenkins, and Miss Dean were all there?

A. I do not know whether Miss Dean was there or not; I know Anna Surratt was there, and I know very well, too, what remark was made there."

Now, he says Mrs. Holahan heard these remarks.

Mr. PIERREPONT. Which remarks do you allude to?

Mr. BRADLEY. The remark on page 275, at the bottom of the page—what I have just read.

Judge FISHER. Is there any objection to that?

Mr. PIERREPONT. Not any.

Mr. BRADLEY. (To the witness.) Then I will ask you, Did you hear Mr. Weichmann say at the breakfast-table that morning that he had his suspicions about this business and was going to the Government to state his suspicions about it, and to state who he had ever seen in Booth's company, and do all he could to bring the parties to justice?

A. No, sir; I never heard any such expression made use of.

Mr. BRADLEY. I am not allowed, I understand, by the ruling of the court, to ask whether she heard any such remark as is imputed to Miss Anna Surratt.

Judge FISHER. No.

Q. (By Mr. BRADLEY.) I understand you to say you did not go into the parlor after you returned from the walk with Mrs. Surratt on that night?

A. No, sir; I did not go into the parlor.

Q. Could you state with any confidence about what time of the evening it was that you and Mrs. Surratt walked out?

A. I should suppose it was about nine, or it may have been later; probably a quarter after nine.

Q. Did you observe any thing in her manner to excite your surprise at all or attention?

A. No, sir, I did not. She seemed as calm as I ever saw her in my life.

Q. Any nervousness?

A. None at all.

Q. Or excitement?

A. No, sir.

Q. You spoke of going that evening with Mrs. Surratt—intending to go to church. State whether you had ever been to church before, and what her habit was as to church?

Mr. PIERREPONT. Wait one moment. We object to that.

Judge FISHER. I think the court has ruled that the habit about going to church is not a matter relevant here to any of the parties concerned.

Mr. BRADLEY. Your honor before objected that it was not the proper time to speak of character. I only put it in this form now to raise the question.

Mr. PIERREPONT. She is not on trial.

Judge FISHER. The character of Mrs. Surratt is not in question here at all.

Mr. BRADLEY. We have had Mrs. Surratt's acts and declarations given in evidence, and we propose to show what her character was.

Judge FISHER. Only so far, though, as relates to the conspiracy.

Mr. BRADLEY. It is in reference to that. If she were on trial, we might put her character in issue, I suppose, to show amiable temper and disposition; and, as those facts and statements in relation to the conspiracy are involved in the issue, and this party is to be affected by the facts and statements of Mrs. Surratt, or else they are not admissible, is it not to the same effect to him as if she were on trial? Could we not put in issue the character of the co-conspirators, although they were not on trial themselves, when their acts and declarations are given in evidence, to affect the prisoner?

Judge FISHER. I am not exactly prepared to decide that question; but that is not this question. This question is now about people going to church. I do not think that proves any thing about character, so far as my experience goes.

Mr. BRADLEY. I put the general question, then. While you were living at Mrs. Surratt's, had you opportunities to learn her character?

Mr. PIERREPONT. Do not answer that question until the court says so.

Judge FISHER. I did not hear that.

Mr. BRADLEY. The question is, Whether, while she was living at Mrs. Surratt's, she had opportunities to learn and know her character?

Mr. PIERREPONT. Of course it raises the question, and we might just as well settle it now.

Judge FISHER. You object?

Mr. PIERREPONT. Yes, sir.

Mr. MERRICK. I understood in the early part of this case you consented.

Mr. PIERREPONT. That was when talking of persons on trial.

Mr. MERRICK. I thought you acquiesced that we might go into her character.

Mr. PIERREPONT. Whenever any person is on trial for crime, his character may be brought in question, and evidence may be brought for or against it; but when a person is not on trial, and when a person has had her trial, you cannot bring in a question about her character. It seems to me your honor would reproach me if I should argue such a question, and I do not propose to do so.

Judge FISHER. I will hear the other side.  
 Mr. BRADLEY. I do not want to say a word. It is objected to, and the question is overruled.  
 Judge FISHER. Yes, sir, the question is overruled.  
 Mr. BRADLEY. And an exception reserved.  
 Judge FISHER. The exception will be noted.  
 Q. (By Mr. BRADLEY.) There is one question I forgot to ask you, and that is, Whether you know any thing of Mrs. Surratt having any defective eye-sight?  
 A. I do not think her eye-sight was very good. I often threaded needles and read notes for her, and I never saw her read or sew by gas-light.  
 Cross-examined by Mr. PIERREPONT:  
 Q. I shall only ask you a very few questions. What time did the church begin in this month of April; what time did it commence?  
 A. About half past seven o'clock.  
 Q. Will you not tell the jury about what time it was in the evening that you started to go to church?  
 A. It was about nine, or it may have been fifteen minutes after nine.  
 Q. How many houses did you pass towards church before you turned back?  
 A. Mr. Sweeney's and Dr. Evans's.  
 Q. Two houses?  
 A. Yes, sir.  
 Q. And they were adjoining?  
 A. Yes, sir.  
 Q. And you turned immediately back?  
 A. Yes, sir.  
 Q. And after you came back you went to your room?  
 A. We stayed in the door for a few minutes.  
 Q. And then you went to your room?  
 A. Yes, sir.  
 Q. And she went to the parlor?  
 A. Mrs. Surratt went to the parlor.  
 Q. You went directly to your room?  
 A. Yes, sir.  
 Q. And you saw no more of her until the next morning?  
 A. No, sir.  
 Q. Did you know of your husband going to the theatre, or your going with him and a party, a while before that?  
 A. I think Mr. Holahan was down town, and he went to the theatre.  
 Mr. BRADLEY. What you heard will not do; the question is whether you went with him.  
 A. I did not.  
 Q. (By Mr. PIERREPONT.) You did not know about that?  
 A. No, sir.  
 Q. You know nothing of your own knowledge of any of them going to the theatre?  
 A. No, sir.  
 Q. You spoke of a lady who went with Surratt, in March sometime, to Richmond. Who was the lady?  
 A. I do not know.  
 Q. You did not give the name?  
 A. I did not know the lady.  
 Q. Did you ever see her before?  
 A. No, sir.  
 Q. Did you ever see her since?  
 A. No, sir.  
 Q. Did Mrs. Surratt tell you who she was?  
 A. No, sir.  
 Judge FISHER. Not what Mrs. Surratt said.  
 Mr. PIERREPONT. I do not think your honor understood my question.  
 Judge FISHER. I think I did; perhaps not.  
 Mr. PIERREPONT. I was asking what Mrs. Surratt said.  
 Judge FISHER. About what?  
 Mr. PIERREPONT. About Mrs. Slater.  
 Mr. BRADLEY. No; about some woman that left with her and her son.  
 Mr. PIERREPONT. I suppose I can give any thing he said.

Judge FISHER. Going to Richmond with her and her son, or left in company with John H. Surratt and with Mrs. Surratt to go to Richmond?  
 Mr. BRADLEY. I do not think she says they went to Richmond.  
 Mr. PIERREPONT. She said so, I think.  
 The WITNESS. No, sir.  
 Q. What did you say?  
 A. I said Mr. Surratt left home the morning of the 3d of April, I think it was, and he went in company with his mother and a lady in a two-horse carriage.  
 Q. Now, my question is, Can you tell who the lady was?  
 A. I say I cannot.  
 Q. I know you cannot of your own knowledge; did Mrs. Surratt tell you who the lady was?  
 A. No, sir.  
 Mr. MERRICK. The court says you cannot give what Mrs. Surratt said.  
 Q. (By Mr. PIERREPONT.) What time in the night was it?  
 A. I think it was the 3d of April.  
 Q. You do not probably mean the 3d of April; that was the night that you said he came back from Richmond. I do not want to misunderstand you in any way.  
 The WITNESS. What day did Richmond fall?  
 Mr. PIERREPONT. About the 3d of April—the 2d or 3d.  
 A. It was before that, then; it was some ten or six days previous to that.  
 Judge FISHER. She said some six days before that.  
 Mr. PIERREPONT. She is right about that entirely, and agrees with all of us; but I did not want her to be mistaken, and she is not. (To the witness.) Now, will you tell us, madam, when you put the clothes in the wash that you have been asked about?  
 A. We put our clothes in the wash on Monday.  
 Q. This murder of the President having occurred on Friday, you did not put them in the next Monday?  
 A. I did.  
 Q. The next Monday?  
 A. Yes, sir; on Monday morning.  
 Q. You put them in on Monday morning?  
 A. I left Mrs. Surratt's on Sunday, at dinner-time, and returned next morning and put my clothes in the wash.  
 Q. Do you know when they came out of the wash?  
 A. I do not know any thing further about the clothes. I never saw them for three or four weeks afterwards.  
 Q. When you left, the clothes that had been washed, you say, had been put away?  
 A. I do not know any thing about them. I do not recollect.  
 Q. Do you know where they had been put?  
 A. We found some up stairs and some down stairs.  
 Q. You do not know where they were put?  
 A. I do not know any thing about them.  
 Q. When did you see the clothes that you put in the wash on Monday?  
 A. Never until I was allowed permission to go and get my clothes at Mrs. Surratt's house.  
 Q. How long after?  
 A. I presume it was fourteen days, or it may have been longer.  
 Q. Some two weeks?  
 A. Yes, sir.  
 Q. You did not see them until then?  
 A. No, sir.  
 Q. You were examined on the conspiracy trial, I think?  
 A. Yes, sir.  
 Q. Let me call your attention to the report of that trial, and see if you made this statement:  
 "I boarded with Mrs. Surratt from the 7th of February until two days after the assassination. I know the prisoner at the bar, who calls himself Wood, (Payne); I met him at Mrs. Surratt's in February, and the second time I think about the middle of March. He was introduced to me as Mr. Wood, but I never exchanged a word with him on either visit. I asked Miss Anna Surratt who he was, and she

said he was a Mr. Wood, a Baptist minister. I said I did not think he would convert many souls; he did not look as if he would."

Did you state that before the commission?

A. Yes, sir.

Q. Again:

"I have seen the prisoner Atzerodt at Mrs. Surratt's, though I never heard of him by that name; he called himself, and the young ladies called him, 'Port Tobacco.' I saw him come in at times, and he dined there once or twice."

Did you state that?

A. Yes, sir.

Q. Did you state this:

"I have seen John Wilkes Booth at Mrs. Surratt's three or four times. When he called, he spent most of his time in company with Mrs. Surratt, I believe."

Mr. MERRICK. Wait a moment, Mr. PIERREPONT. I cannot follow you; you skip.

Mr. PIERREPONT. This is down towards the end of the testimony.

"When he called, he spent most of his time in company with Mrs. Surratt, I believe. He would ask for Mr. John Surratt, as I understand; if he was not there, for Mrs. Surratt."

Mr. BRADLEY. You cannot read what she understood.

Mr. PIERREPONT. I merely ask if she said this on the trial.

A. Pretty much about that.

Mr. BRADLEY. You cannot ask her if she understood so and so.

Mr. PIERREPONT. I suppose I can ask what she said; I do not ask her what she understood, but whether that is what she said. (To the witness.) Will you not tell what church you were proceeding to go to that night?

A. St. Patrick's.

Q. How far is it from the house?

A. I presume about five squares.

By Mr. MERRICK:

Q. How long do the services of that church take up on Good Friday night?

A. Generally ten o'clock or after. They are usually very long services.

By Mr. BRADLEY:

Q. I will ask you whether on the same trial to which the gentleman has referred you did or not also say:

"Q. Were any objections made on the part of any member of the family to Atzerodt's coming there?"

A. Yes; I heard Mrs. Surratt say she objected to Mr. Atzerodt. She did not like him, and did not wish him to come there. I do not know about his coming there, but she would not board him. I heard her say at the table she would rather he would not come there to board."

Did you make that statement?

A. Yes, sir; I heard Mr. Weichmann ask Mrs. Surratt if she would board him, and she said "No."

Mr. PIERREPONT. Do not state that. The question is, Whether you said that, and we do not object to that.

ELIZA HAWKINS,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Tell these gentlemen what your name is, and what it used to be.

A. My name is Eliza Hawkins.

Q. Were you ever called Rachel Semus?

A. Yes, sir; I was called that, but they called me Eliza for a short name; and it has been so long since they called me Rachel, that I never go by that name at all.

Q. Do you know a colored woman named Susan Ann Jackson, who used to have some other name, who lived at Mrs. Surratt's?

A. Yes, sir.

Q. What was her name then?

A. She was Susan Mahoney then; she was not married when I saw her, until the last time, when I saw

her last fall. Then she was married; but when she was living at Mrs. Surratt's she was not married.

Q. You recollect when the President was murdered?

A. Yes, sir; on Good Friday night.

Q. Now, tell me how long after that it was before you saw Susan Mahoney.

A. I saw her on Tuesday morning. Mrs. Surratt was taken prisoner on Monday night, and I saw her Tuesday morning.

Q. Where were you living at that time?

A. I was living with Mr. John Lloyd.

Q. At Surrattsville?

A. Yes, sir. But I came up on a visit to see my children at Mr. Wildman's. I used to belong to him.

Q. When did you come up?

A. On Good Friday, in the evening.

Q. And took your Easter holiday?

A. Yes, sir; took my Easter holidays. I always

did it.

Q. You say you saw Susan?

A. On Tuesday morning I went there with the intention of seeing Mrs. Surratt; but she was taken prisoner on Monday night, and I saw Susan Mahoney on Tuesday morning.

Q. When you saw Susan did you have any talk with her about John Surratt?

A. Yes, sir.

Q. What did she tell you about Mr. John Surratt?

A. She told me—

Mr. PIERREPONT. Wait a moment.

Mr. BRADLEY. I asked the question of Susan Jackson by both names, whether she said so to Rachel Semus or Eliza Hawkins, her present name.

Mr. PIERREPONT. If you named the person, I do not object.

Mr. MERRICK. She was recalled just before the opening of the defense, three days ago.

Mr. BRADLEY. I have a pencil memorandum of it.

Mr. PIERREPONT. If there was any thing to fix the person, that it was the one that came from Surrattsville, or in any mode, I would not care any thing about the name.

Mr. BRADLEY. I asked her distinctly as to Rachel Semus or Eliza Hawkins.

Judge FISHER. The inclination of my memory is that the question was put to Susan Ann Jackson as to whether she had any conversation with a person named Rachel Semus, or Eliza Hawkins, or Eliza Semus, or Rachel Hawkins.

Mr. MERRICK. That was it. I suggested it myself.

Mr. PIERREPONT. That was so. That is my recollection; but I supposed at the time, and until this moment, that they were different persons.

Judge FISHER. I supposed they were the same.

Mr. BRADLEY. Just as Susan Mahoney is now Susan Jackson.

Q. (By Mr. BRADLEY.) Now state what she said to you about Mr. John Surratt?

A. I was sitting on a chair by the window, and she was sitting in the basket, which had some ironed clothes in it, and she was talking about the bad luck she had had in the last homes she got; she was afraid she would not get her money; that Mrs. Surratt was arrested and she would not get her money. Said I, "Ann, how long have you been here?" Said she, "I have been here two weeks; and," says she, "I am afraid I will never get it." Says I, "She will pay you, I believe, if it took the last cent she had." Says she, "The night the President was killed they were here looking for her son John. He was here the first week that I came here, and I went then to take some tea in, and Mrs. Surratt remarked to me, 'Was n't he very much like her daughter Anna,' and I told her 'Yes, he was.'" Says I, "Havn't you seen him since?" Says she, "No, I have never put my eyes on him since, and that has been about two weeks ago." That is so, before my God, and I would not say any thing in this court that I did not believe.

Cross-examined by Mr. PIERREPONT :

Q. What time in the day did you come up from Mr. Lloyd's, at Surrattsville?

A. I came up after dinner.

Q. Did you know Mrs. Surratt?

A. I lived with Mrs. Surratt for six years.

Q. Were you a slave at any time?

A. Yes, sir; I was always a slave.

Q. Were you a slave of Mrs. Surratt's?

A. I was hired to Mrs. Surratt. Mr. Wildman hired me.

Q. And you lived there six years?

A. Yes, sir; I lived with her six years.

Q. And you came up here to see her that night?

A. I came up to see my children and Mr. Wildman's children.

Q. And you went to her house?

A. I did not go to her house that night. I went to Mr. Wildman's, on the Island.

Q. What night?

A. It was Tuesday morning that I went to the house.

Q. That was the first time you went?

A. That was the first time I went.

Q. Where did you see Susan?

A. On Tuesday morning, when I went there; and I stayed there all day long. My little child was there at Mrs. Surratt's, and, after I found the soldiers there, I said I would not leave the child behind, and I could not take it away with me; and I had to stay there all day until eight o'clock, and then me and Susan Jackson and a colored man there—I suppose he was the one she married—all went down to the provost marshal's together that night.

Q. Was the colored man that she married there when you had this talk?

A. No, sir; he came in afterwards; and then the soldiers said all that came in the house had to stay in the house.

Q. They told you so while you were there?

A. Yes, sir. Miss Anna Ward came and she stayed, and another lady.

Q. The soldiers came in that morning?

A. The soldiers were there when I went there.

Q. What time in the morning was it—how early?

A. It was after breakfast when I went there from Mr. Wildman's.

Q. And the soldiers came in while you were there?

A. The soldiers were there when I went there; they were passing in and out all day.

Q. Did they say any thing to you about staying there?

A. They told me I had to stay. I wanted to go as soon as I got there and found she was not there, and they said no, I would have to stay all day.

Q. How long did you stay?

A. Until eight o'clock that night.

Q. How did you get away then?

A. They carried me to the provost marshal's, and then they let me off.

Q. Who carried you there?

A. Two soldiers; I do not know who they were.

Q. She told you that Mrs. Surratt said John looked like Anna?

A. Was very much like Anna Surratt.

Q. Did you know Anna?

A. Certainly I knew Miss Anna Surratt; when I lived there six years I think I ought to know the family.

Q. You knew them all?

A. Yes, sir.

Q. Were you attached to them?

A. Very much attached to them, and I would have been with them to this day if I could.

Q. You are very much attached to them now?

A. Yes, sir, I was very much attached to them.

Q. Your feelings were strongly interested in them, were they?

A. Oh, yes, sir. They treated me well, and certainly I had a right to be so.

By Mr. BRADLEY:

Q. But your feelings are not strong enough to make you tell a lie?

A. No, indeed. I would not tell a lie. Before God, I would not tell a lie.

Q. Now, let me ask you another question. You say you lived at Mrs. Surratt's six years, down at Surrattsville?

A. Yes, sir.

Q. Now, tell me how Mrs. Surratt behaved towards any Union soldiers that came there?

Mr. PIERREPONT. Wait one moment.

Judge FISHER. Do you object to that?

Mr. PIERREPONT. Yes, sir.

Judge FISHER. I will hear the other side, if they have any thing to say.

Mr. BRADLEY. I only want the objection noted and an exception made to it. My offer of proof is, that she succored them, sustained them, furnished every thing she had in the house to them.

By Mr. PIERREPONT:

Q. Will you not tell these gentlemen when you first told anybody about this matter?

A. About what Susan Jackson told me?

Q. Yes.

A. I went on the Island, and I told my young mistress about it as soon as I got there.

Q. When did you tell your young mistress that?

A. That was the very night I got there. I do not know what day of the month; but it was on Tuesday night.

Q. Who was she?

A. She married a Mr. Henry Queen.

Q. Who did you tell now, since this trial commenced, about it?

A. I heard it read in the papers; and I told different persons, "Certainly Susan could not go and tell such a tale as that; she knows full well what she told me, and she could not go on the stand and swear to such a story."

Q. You said that?

A. Yes, sir, I did say it.

Q. Did you say it to several people?

A. I said it to any one who would read the paper to me.

Q. Who did you say it to first?

A. The first one I said it to was a man who lives with Mr. Barry; his name is Richardson; he was reading the paper to me, and I said it to him.

Q. When did you last see Susan?

A. I saw Susan last fall. She was going down to see her mother.

Q. That was the last time?

A. Yes, sir.

Q. Are you and Susan good friends?

A. Yes, sir; been very good friends.

Q. You never had any quarrel?

A. No, indeed, I never had a word's difference with her.

Q. Are you married?

A. Yes, sir.

Q. What is your husband's name?

A. My husband was named Tom Semus.

Q. When did he die?

A. He is not dead yet.

Q. You said he "was named," and I supposed he was dead.

Q. When the colored people were going away, he went too. But he was with a man that he had no call to leave, because he did better then than he does now, I know. But he went away.

Q. And he has not come back?

A. No, sir, he has never come back. I said he was lazy; he might go and welcome; I had my children to

work for, and I would just as lief remain and keep what little I had around me, as to come here and suffer.

Q. Now, tell us the place where you last saw Susan Jackson?

A. She came down to Surrattsville. She was going down to see her mother. She and her husband were together last fall. She stopped there.

Q. That is the place you saw her?

A. That is the place I saw her last fall.

Q. What were you and she doing then.

A. I was down there fixing for Mr. Roby's daughter to get married, doing up some clothes.

Q. What was Susan doing?

A. She was going down to her mother's, down to T. B., and her horse gave out, and they stopped there to stay all night. Says I, "Susan, Mr. Roby is not home; he left everything in my care; if Mr. Roby chooses to let you stay all night, you can stay. I will send for him, and if he chooses to let you stay, you can stay; but where I sleep you can't sleep, that is up stairs." When Mr. Roby came he told her to let the horse rest and go on; she could not stay there.

Q. What was the reason you would not let her stay there?

Mr. BRADLEY. I beg your pardon; she said she would let her stay.

A. I would; but Mrs. Roby left the house in my care.

Mr. BRADLEY. And you were responsible?

A. Yes, sir; and I would let no stranger in a lady's house without leave from her.

Q. (By Mr. PIERREPONT.) She was a stranger to you?

A. Not a stranger, but she was no intimate acquaintance of mine.

Q. You did not like last fall to take a stranger into the house?

A. She was welcome to my house, but I could not take her into Mrs. Roby's house. I did not want to take a stranger in there. I liked her well enough, but I could not take her into Mrs. Roby's, a white lady's house. If it had been my house, she would be welcome to stay all night.

Q. But as it was you could not take any stranger in?

A. No stranger at all. If it had been my mother, I could not have done it.

Q. Was this a tavern?

A. Yes, sir; Mr. Roby kept it.

Q. Did they not take strangers in that tavern?

A. Yes, sir; they took strangers in.

By Mr. MERRICK:

Q. Speaking of strangers, you mean strangers to Mrs. Roby?

A. Mrs. Roby was not there; she was in the city.

By Mr. BRADLEY:

Q. They took strangers in who paid for their night's lodgings?

A. Oh, yes.

Q. And she wanted to stay without paying?

A. Yes, sir, she wanted to stay; but I could not tell her to stay when Mrs. Roby was not there.

By Mr. PIERREPONT:

Q. They took all sorts of strangers that came into the tavern?

A. No, sir, they did not; they did not take anybody except those they knew; they very seldom took in colored people to stay all night; they had no place for them to stay.

Q. Did they take in any persons, strangers, except those they knew, in the tavern?

A. Certainly, they took in more than they ever knew; if they had not, the tavern would be of no service to them.

Mr. MERRICK. It is now ten minutes to three o'clock.

Judge FISHER. Could you not get through with the examination of another witness to-day?

Mr. BRADLEY. Clarvoe is the only witness here, and we could not get through with him in three quarters of an hour; he will take quite as long as Holahan did.

Judge FISHER. We will now take a recess.

The court took a recess until to-morrow morning at ten o'clock.

### Twenty-Eighth Day.

FRIDAY, July 12, 1867.

The court re-assembled at ten o'clock a. m.

JOHN A. W. CLARVOE'S

examination continued.

By Mr. BRADLEY:

Q. When you were interrupted yesterday you had proceeded so far as to state that you went with a number of others to the house of Mrs. Surratt to capture Booth and arrest John H. Surratt. Now state, taking up your narrative there, all that you recollect that passed after you reached Mrs. Surratt's house?

A. It was agreed when we arrived at the house that Mr. McDevitt and myself and Lieutenant Skippon should enter the house. After putting a guard on the back and up at each corner, I went up and knocked at the door. The door was opened by a young man bare-footed, in shirt sleeves, and bare-headed. I asked him if John Surratt was in.

Q. Who was that young man?

A. He gave his name as Weichmann. Said he, "No, sir, he is not in the city." I then asked, "Is his mother in; does she live here?" He said "Yes." I told him I should like to see the lady. He said she was in bed. I told him it made no difference, I must see her. Said he, "I will speak to her." As he moved from the door I pushed in and the rest followed.

Q. Did you follow him?

A. Yes, sir; I followed Mr. Weichmann. He went to the second door in the passage to the left, which I supposed to be the back parlor. He went to the door and knocked, I think, when he first went. He held a conversation there a few moments, and I walked to the door. I saw a lady standing there, and asked if that was Mrs. Surratt. She said it was. I told her I wanted to see John. Said she, "John is not in the city, sir." I asked her when she had seen him last.

Mr. PIERREPONT. Just wait; you cannot give that.

Mr. BRADLEY. I rather think we can. The gentlemen have given part of it in evidence by Mr. Weichmann, who was present and heard what passed. I want to give the whole conversation.

Mr. PIERREPONT. You cannot give in evidence what Mrs. Surratt said. That we did not ask about.

Mr. BRADLEY. I beg your pardon; we can give the whole conversation relating to that subject.

Judge FISHER. You can give in evidence whatever conversation there Mr. Weichmann spoke about.

Mr. PIERREPONT. That we do not object to.

Q. (By Mr. BRADLEY.) Was Mr. Weichmann present all the time?

A. He was by my side.

Mr. BRADLEY. Then proceed.

Mr. PIERREPONT. We have not asked, and he has not testified in relation to any such subject—where her son was.

Mr. BRADLEY. I know; but in answer to our question whether she did not say that he answered that, he did not recollect any such thing. I want to show that it was said in his presence and hearing.

Mr. PIERREPONT. You will find that there was no such thing in our questions.

Judge FISHER. But you have given evidence in regard to the conversation that was had when Mr.

Clarvoe and Mr. McDevitt came there, and the entire conversation, as far as it could be recollected, was given in testimony.

Mr. PIERREPONT. No, sir; your honor will find that is not so.

Judge FISHER. Is it not so?

Mr. MERRICK. My recollection accords with his honor's entirely.

Mr. PIERREPONT. The notes will prove whether I am right or not.

Judge FISHER. Let us see what the notes say.

Mr. PIERREPONT. The notes will show exactly what was said. He went to the door and told her that Government detectives were there.

Mr. BRADLEY. And had come to search the house.

Mr. PIERREPONT. Yes.

Mr. BRADLEY. I want that whole conversation. I put it on that ground.

Mr. PIERREPONT. Turn to the notes.

Mr. BRADLEY. I depend upon my memory. I do not want any report about it.

Mr. MERRICK. Your honor will find the place on the middle of page 274, beginning:

"Did any thing occur in regard to your health that night requiring you to get up."

Mr. PIERREPONT. That is it exactly.

Judge FISHER. The conversation the witness Weichmann speaks about is a conversation which took place after the detectives and he had gone up stairs to search his room and then come down.

Mr. BRADLEY. Previous to that.

Mr. MERRICK. On page 274 you will see, in reply to the question I have just read, he said:

"The next morning, about two o'clock, I had been to the yard, had gotten to my room again, gone to bed, and was just about falling asleep, when I heard the door-bell ring very violently. It rang several times in very quick succession. There were only two gentlemen in the house at that time, to my knowledge, Mr. Holahan and myself. I drew on my pants, and, with my night-shirt open in front, bare-foot, I went down to the front door. I rapped on the inside of the front door and inquired who was there. 'Government officers,' was the reply, 'come to search the house for J. Wilkes Booth and John Surratt'."

"Q. What did you say?"

"A. I told them that neither of them were at home."

"Q. What occurred further?"

"A. 'Let us in anyhow,' said they, 'we want to search the house.'"

By the Court:

"Q. Was this on the morning of Saturday?"

"A. Yes, sir; about two or half-past two on the morning of April 15. I then told them it would first be necessary for me to ask Mrs. Surratt's permission. In order to do so, I went to her bed-room door, which was immediately in the rear of the parlor, and rapped, saying, 'Mrs. Surratt, here are Government officers who wish to search the house.' 'For God's sake let them come in,' said she; 'I expected the house would be searched.'"

Now, we want that whole conversation.

Mr. PIERREPONT. That was before they got in.

Mr. MERRICK. Mr. Clarvoe says he followed him in.

Mr. PIERREPONT. I do not know what Mr. Clarvoe says. I am speaking of what our witness said.

Judge FISHER. There were two conversations—one between the detectives outside and Weichmann inside. Any thing relating to that conversation may be given in evidence.

Mr. PIERREPONT. We do not object to that.

Judge FISHER. Before Weichmann let them in, he testifies that he went to Mrs. Surratt and had a conversation with her as to whether they should be let in or not. Any thing in relation to that conversation may be given in evidence.

Mr. BRADLEY. We propose to prove that, in point of fact, the incidents did not occur as Weichmann has stated them; but that, when he was at the door and the detectives told him they wanted to see Mrs. Surratt, Mr. Clarvoe followed him to Mrs. Surratt's door, and the conversation which passed, to which he refers, was at Mrs. Surratt's door, in Weichmann's presence; that, in point of fact, they were not outside when Weichmann had this conversation, but were close by. The object is to contradict him there.

Mr. PIERREPONT. You cannot do it in that way, that is very clear, I should suppose, as matter of law.

Mr. BRADLEY. We shall see about that.

Judge FISHER. You may prove by this witness whether this conversation was had in his presence that Weichmann speaks of when he went to ask whether they should be let in. You may prove whether that is so or not.

Mr. BRADLEY. This witness testifies so far that Weichmann opened the door, and the witness told him that he wanted to see Mrs. Surratt—not that he came to search the house; and Weichmann said he would have to speak to her first, walked back to Mrs. Surratt's room door, which was the back parlor, and the witness followed him. Weichmann knocked on Mrs. Surratt's door, she came and opened it, and they had a brief interchange of words in a low tone of voice, and then in Weichmann's presence the conversation was continued. Can we not give it in evidence, is the question.

Mr. PIERREPONT. If your honor will look at this evidence, you will see very clearly what it is, and you will see that we were not so incautious as to ask a single word about what she said of her son or any thing of the kind, and this occurred before the officers were let in, according to the evidence.

Mr. BRADLEY. I have not said that the gentlemen were so incautious as to ask the question which I propose to put to this witness. They were so cautious as to guard themselves, they thought, against the possibility of our getting in the whole conversation, and I admired the ingenuity of it at the time; but the question is, whether the court will prevent the whole conversation coming out because the counsel only asked for a part of it.

Mr. PIERREPONT. It does not relate to a part of the conversation, as your honor will clearly see by looking at the testimony.

Judge FISHER. You may ask this witness all about the conversation that occurred in regard to letting him in, that Weichmann spoke of; and if he heard the conversation between Weichmann and Mrs. Surratt, when Weichmann testifies that he went to ask her whether he should let them in, he may testify about that. Then he may testify about any conversation which occurred, after they had come down from searching Weichmann's room, in Weichmann's presence.

Mr. BRADLEY. According to the account which this witness has given it was all one conversation.

Mr. MERRICK. We ask him to state all that passed in that conversation in Weichmann's presence.

Mr. PIERREPONT. Weichmann never said a word on the subject of when she had seen her son last, and it cannot be found in the book.

Mr. BRADLEY. I desire to know whether they can ask for part of a conversation and not allow the residue of it to come in?

Mr. PIERREPONT. But we have not asked, and Weichmann has not testified to one word in relation to what Mrs. Surratt said about her son in any conversation or at any time. We have asked no question and he has not stated a word on the subject, and they cannot give in evidence what Mrs. Surratt said in her own defense.

Mr. BRADLEY. Her defense!

Mr. PIERREPONT. Or in anybody's defense connected with her or her son's defense.

Mr. BRADLEY. All we want to know is that it is her defense. Yesterday it was her son's defense.

Mr. PIERREPONT. Or any other conspirator's defense.

Mr. BRADLEY. Yesterday it was not Mrs. Surratt's defense; to-day it is her defense and her son's defense. I want to know where we are.

Mr. PIERREPONT. You will probably discover in the course of time.

Mr. BRADLEY. I do not know that I shall ever discover what it is.

Judge FISHER. I do not think I can admit any of the testimony, except as it relates to the conversation that occurred after they had come down, whatever Mr. Clarvoe may have heard going on between Mrs. Surratt and Mr. Weichmann, which the latter has undertaken to detail in his testimony.

Mr. BRADLEY. (To the witness.) Was Mr. Weichmann standing by the door when this conversation passed between you and Mrs. Surratt?

A. Mr. Weichmann was to my left. I was on the right of him. Behind me was Mr. McDevitt.

Q. And he could hear every word that passed?

A. I should think so, certainly; I could.

Q. Was it or not a direct continuation of the former part of the conversation he had with Mrs. Surratt?

A. He had a conversation with Mrs. Surratt before I got to the door.

Q. Was that completed before you got up, or was it still going on?

A. I do not recollect whether he was through with his conversation or not when I went to the door.

Mr. BRADLEY. I now offer to give in evidence what passed between Mr. Clarvoe and Mrs. Surratt, in Mr. Weichmann's presence, at that time. The court overrules the offer, and I ask leave to note an exception.

Judge FISHER. Very well; it is overruled, and the exception will be noted.

Mr. BRADLEY. Now proceed with your narrative, but you cannot state any thing that Mrs. Surratt said.

Judge FISHER. You must not detail any conversation between you and Mrs. Surratt that occurred before you went up stairs and made the search and came down again.

The WITNESS. I asked Mr. Weichmann then if he belonged in the house. He told me he did. Said I, "I want to see in your room." I left McDevitt at the door in conversation with Mrs. Surratt and went up stairs with him; Lieutenant Skippon was also with him, and another officer behind.

Q. (By Mr. BRADLEY.) What did you do?

A. He carried me into a room over the back parlor, which was occupied by Mrs. Surratt. I went into the room and asked him if that was his room. He said it was. I saw a trunk there, and asked if it was his trunk; he replied that it was. He then put his hand on my shoulder and said, "Will you be kind enough, sir, to tell me the meaning of this?" Said I, "That is a pretty question for you to ask me; where have you been all night?" Said he, I have been here in the house. I then asked him, "Have you been here all the evening?" He said no, he had been down the country with Mrs. Surratt. Said I, "Do you pretend to tell me that you have not heard that the President has been murdered?" Said he, "Great God! I see it all now," or "I see it all." He then asked me if it was true; I told him it certainly was. I pulled out the bow of a neck-handkerchief I had got out of the box, saturated with blood, showed it to him, and told him that that was the President's blood; that John Wilkes Booth had done it, and that it was supposed Surratt had assassinated the Secretary of State. I remained in his room a few moments, and started down stairs, Mr. Weichmann in company. When we got below I met McDevitt and called him aside. I told him—

Mr. PIERREPONT. Never mind what you told Mr. McDevitt.

Q. (By Mr. BRADLEY.) Before you went down stairs, did you or not go into the upper part of the house, where the young ladies' chamber was, and where there was another chamber?

A. Not at that time.

Q. What did you do when you came down stairs?

A. I went and had a conversation with Mrs. Surratt.

Mr. BRADLEY. I believe you can state that: was Weichmann with you?

A. I do not know.

Judge FISHER. Weichmann says in his testimony

that he went down stairs with Mr. Clarvoe and Mr. McDevitt; Mrs. Surratt just then came out of her bedroom, and he said to her, "What do you think, Mrs. Surratt, Abraham Lincoln has been murdered," etc.

Q. (By Mr. BRADLEY.) Were you present at that conversation?

A. I did not hear Mr. Weichmann tell Mrs. Surratt.

Q. State what passed; we will ask you about Mr. Weichmann directly.

The WITNESS. Do you wish me to tell the conversation?

Mr. BRADLEY. Certainly.

Mr. PIERREPONT. No; you say you do not know that Weichmann was present.

Judge FISHER. You can state the conversation that occurred after you and Weichmann came down stairs and got into company with Mrs. Surratt. State that conversation.

Mr. BRADLEY. Weichmann says he was present; what passed then?

The WITNESS. I do not exactly understand. Do you want me to state what I said to Mrs. Surratt?

Mr. MERRICK. The court has stated what Mr. Weichmann said; that he went down stairs with you and Mr. McDevitt, and Mrs. Surratt then came out of her room, and he made the statement to her about the killing of the President. Did you go down with Mr. Weichmann?

A. Mr. Weichmann came down behind me.

Q. Was Mrs. Surratt just coming out of her bed-room?

A. Mrs. Surratt was standing in her room, and had changed her dress in the time I had been up stairs.

Q. Had Weichmann come down stairs before that, after going up with you?

A. No, sir.

Q. (By Mr. BRADLEY.) Now, go on and state the conversation. Did you hear Mr. Weichmann say to Mrs. Surratt, "What do you think, Mrs. Surratt, Abraham Lincoln has been murdered?"

A. I did not hear him.

Q. Did you hear her reply to any observation he made, "My God, Mr. Weichmann, you do not tell me so?"

A. I heard her make use of it, but not to him.

Q. State the conversation of Mrs. Surratt at that time.

Mr. PIERREPONT. What conversation?

Mr. BRADLEY. Between the witness and Mrs. Surratt in Weichmann's presence at that time.

Mr. PIERREPONT. We have not given any thing about his conversation.

Judge FISHER. Any conversation that occurred between this witness and Weichmann and Mrs. Surratt, the whole three, or McDevitt besides, when they were together, is admissible.

Mr. BRADLEY. I have not asked any thing else but when they were together, when they went down to see Mrs. Surratt. I ask for that conversation.

Judge FISHER. The conversation is to be confined to what was said when you were all together.

The WITNESS. I am almost satisfied that Mr. Weichmann was with me, but I do not recollect. I do not think he came down stairs with me.

Mr. MERRICK. He says he was with you.

Mr. PIERREPONT. Never mind what he says.

Mr. BRADLEY. I do not much mind it, but I thought you did.

Mr. PIERREPONT. You seem to be trying to mind it and telling the witness what Weichmann said. The object is to have what the witness knows, and not to have counsel tell the witness what some other witness may have said.

Mr. MERRICK. Then you had better lecture the court for having read it.

Mr. PIERREPONT. I am not speaking of the court, but of counsel interrupting the witness when he was saying, "I do not know that Mr. Weichmann was present."

Judge FISHER. (To the witness.) You can only

speaking of conversations at which you and McDevitt and Mrs. Surratt and Weichmann were present.

Mr. PIERREPONT. And I will ask your honor to say to the witness: at which he himself recollects that Weichmann was present.

Judge FISHER. Oh, yes, certainly.

Mr. BRADLEY. He has stated that Weichmann followed him down.

Judge FISHER. It is understood now that the conversation to which this witness may testify is any conversation which occurred after they had come down from the search of Weichmann's room, at which conversation Messrs. McDevitt, Clarvoe, and Weichmann, and Mrs. Surratt were present, taking part in the conversation.

Mr. BRADLEY. And I was leading to that very thing when I was interrupted.

Judge FISHER. And the witness must testify whether Weichmann was there or not, according to his recollection.

Mr. BRADLEY. I am about to inquire whether or not when Weichmann came down stairs—followed them down stairs—the witness missed Weichmann or Weichmann separated from them.

Mr. MERRICK. You honor will allow me to make a suggestion, that we may clear this subject as we go along. I do not think, and I submit it respectfully to your honor, that it is necessary that the witness should say positively that he recollects that Weichmann was present. We may prove *aliunde*, outside of this witness, that Weichmann was present at that conversation. We can prove a conversation at a time and at a place at which certain parties were present, and although the witness may not recollect that A was present, we may still prove *aliunde* that A was present, and give the conversation in evidence by reason of A's presence. If we identify the conversation, we are not required to rely alone on the memory of the witness as to who was present; but we may identify that conversation as the conversation to which another witness has referred, and when we have done that, we have laid the basis for the introduction of the conversation.

Mr. PIERREPONT. Now, I submit there is no great mystery about this rule. I thought it was perfectly well settled. If they can prove by this witness, or if they can prove by somebody else, that at the conversation which he is giving Weichmann was present, it is not important how it is proved; but they have proved no such thing. Weichmann has given no testimony in relation to it, and this witness says he does not remember that Weichmann was present. When this witness says that he speaks of a conversation at which he remembers that Weichmann was present, I shall make no objection.

Mr. MERRICK. The counsel says that Weichmann has given no evidence that he was present at the conversation. I beg to refer to page 275 of the record, where your honor will see that Weichmann says he came down stairs with Clarvoe and McDevitt, and on their reaching the landing found Mrs. Surratt standing in her bed-room door, and that the conversation took place then and there. It is that conversation that we want. I think the conversation is identified by Weichmann's testimony already. But, again: McDevitt is another witness, and we expect to establish by him the fact that Weichmann was there.

Mr. PIERREPONT. The conversation, as given on page 275, is in these words:

"I said, 'what do you think, Mrs. Surratt, Abraham Lincoln has been murdered?' I did not say Abraham Lincoln, I said, 'President Lincoln has been murdered by John Wilkes Booth, and the Secretary of State has been assassinated.' I did not bring her son's name out from respect to her feelings; she raised her hands and exclaimed, 'My God, Mr. Weichmann, you don't tell me so.' She seemed astonished at the news."

Now, any thing relating to that I do not object to.

Mr. MERRICK. It seems to me that this is a mere trifling with words. He says some things that passed in the conversation, and indicates that those are the

only things by which you can identify the conversation. I identify the conversation by place, and time, and circumstance, and persons—all the persons whom he mentions, except himself, proved to be present by this witness—time proved the same by this witness—place proved the same by this witness—circumstance the same. Is not the conversation identified?

Mr. PIERREPONT. No.

Judge FISHER. You may go on and give the conversation, and you can afterwards connect Weichmann with it.

Mr. MERRICK. Very well, I will prove by McDevitt that he was there.

Mr. BRADLEY. (To the witness.) I was about to ask a question when I was interrupted, and I will repeat it. I understood you to say that you came down stairs with McDevitt and followed by Weichmann?

A. I did not say I came down stairs with McDevitt. McDevitt was below. He did not go up stairs at that time.

Q. But you were followed by Weichmann?

A. Weichmann followed me down.

Q. When you got down stairs where McDevitt was, do I understand you to say that you saw Mrs. Surratt through her bed-room door?

A. Yes, sir.

Q. And then the conversation passed?

A. Yes, sir.

Q. Was that immediately on your coming down?

A. I spoke to McDevitt when I got down. I recollect now Weichmann being on the steps when I spoke to McDevitt. I left him and then went to speak to Mrs. Surratt.

Q. How far off was it?

A. The stairs ran by the side of the door.

Q. How many feet off?

A. I do not recollect how many feet.

Q. Then you did not miss him from your company, although you cannot say that he was there while this conversation was going on; you did not see him go away?

A. I did not.

Q. Now state the conversation.

Mr. PIERREPONT. I object to that. He says he left Weichmann on the stairs.

Mr. MERRICK. The court has decided the question.

Judge FISHER. You may state the conversation; and, if you prove by some other witness that Weichmann was present, it will stand; otherwise not.

Mr. BRADLEY. (To the witness.) Go on and state what passed.

A. I went to her and said, "Mrs. Surratt, I want to ask you a couple of questions, and be very particular how you answer, for a great deal depends upon it." I then asked her; "When did you see John Wilkes Booth?" She replied that she had seen him at two o'clock on that day. Then I asked, "When did you see your son John last; where is he?" Said she, "I told you, sir, I had not seen John for over two weeks." I asked her then if she could tell me where he was at. She said that the last she heard from him he was in Canada. Then said she, "Gentlemen, what is the meaning of this?"

Q. Did she say any thing more about his being in Canada?

A. She said she had heard from him that day, as I understood.

Mr. CARRINGTON. Or was it that she had a letter that day?

A. She said either that she had received a letter or had heard from him that day, I do not recollect which.

Q. (By Mr. BRADLEY.) Did any thing further pass?

A. She asked me what is the meaning of this, and she said that there were a great many mothers who did not know where their sons were. Said I, "Mac., you tell her," and then I started up the steps.

Q. When you started up stairs, where did you go?

A. I went to the little room over the passage. I tried the door; it was locked. I heard a female voice

inside, and at that time John Holahan came out of the door opposite. I said to him, "John, how do you do; what are you doing here?" Said he, "How are you, John; I am boarding here; what is the matter?" Said I, "How long have you been here?" Said he, "Some time." Said I, "Where have you been to-night?" Said he, "I took a walk around, got in early, about nine o'clock; what is the matter?" I told him the President had been murdered, and he replied, "Good God Almighty," and seemed to be surprised. I then took hold of the knob of the door and said, "Open this door." Said he, "That is my little daughter in there." Said I, "Come this way." We went up the steps and got on the platform turning. Said I, "You had better go back; I want to go in that room." Said he, "That is my wife in there, and I will notify her to let you in." Said he, "Is it true what you are telling me?" Said I, "It is so." We then started up to the upper story in the front room facing H street. I went to the door, and he told me it was occupied by two young ladies, and would I have any objection to his letting them know I wanted to go into the room. I said, "Certainly, by all means let them know it." He went to the door, knocked at the door, opened it and went in. I then slipped in the passage—there is a little room there—opened the door and went in. That door was not locked.

Q. Where was the little room; over the passage—at the top of the house?

A. Yes, sir.

Q. Was that the servants' room?

A. When I came out Holahan met me and said, "There are servants in that room." I told him, "There is nobody there now."

Q. Did you search that room?

A. I looked in it all over.

Q. Was it a small room?

A. Very small.

Q. If there had been anybody lying in bed covered up in that room you would have seen the person?

A. I certainly would. I was searching.

Q. Was there or not a woman rolled up in the bed-clothes there?

A. No, sir; not in that room.

Q. What followed next?

A. I stood there a moment or two, and Holahan went to the door and told me the ladies were ready. I went into that room and searched it. The ladies were covered up. I told them they must excuse me, but I would have to see their faces. I pulled the cover off their faces, and saw that they were two young ladies. I then came out of the room and came down stairs.

Q. You are certain they were not colored women?

A. There was no colored woman there. I have seen one of the ladies since, I think.

Q. Was there any colored woman in the bed in Mr. Weichmann's room?

A. No, sir.

Q. Now, come down stairs, if you please?

A. I went down stairs, told McDevitt that I thought it was best—

Mr. PIERREPONT. Never mind what you told him. Tell what you did.

A. After I came down I went into the basement. Going down the stairway I met Lieutenant Skippon, I think. He followed down behind me. At the back door of the kitchen I saw a black woman. Said I, "Aunt, is John Surratt in this house?" Said she, "I do not know him, sir." Said I, "Don't be too fast now; I want to talk to you." Said she, "Who do you mean, Mrs. Surratt's son?" Said I, "Certainly, I did not know Mrs. Surratt had a husband; I mean her son." Said she, "I have not seen him for over two weeks."

Q. (By Mr. BRADLEY.) She did not tell you that she had been covered up in bed up stairs somewhere?

A. No, sir.

Q. After that what did you do?

A. I went up stairs and had a conversation with the men. After searching around the cupboards and different places I left there.

Q. When did you see Mr. Louis J. Weichmann again?

A. I saw Mr. Louis J. Weichmann the next morning, about nine o'clock.

Q. Where?

A. In front of our office—on Tenth street at that time.

Q. Was anybody with him?

A. Yes, sir; Mr. Holahan. Mr. McDevitt was in conversation with Mr. Weichmann when I came up.

Q. Now, go back to your first entrance into that house; when Mr. Weichmann opened the door, did you, or anybody else in your hearing, tell him, when he inquired who was there, "Government officers, come to search the house for John Wilkes Booth and John Surratt?"

A. Some one, I think it was Mr. McDevitt, replied, "We are officers, and wish to come in."

Q. Did you tell him you had come there to search for John Wilkes Booth and John Surratt, or did any of you tell him that in an audible tone of voice?

A. I did not.

Q. Did you hear any one else?

A. No, sir.

Q. You did not, nor did any one in your hearing, say, "We are Government officers, come to search the house for John Wilkes Booth and John Surratt?"

A. No, sir.

Q. Now, taking him up after the time you saw him on the pavement in front of the police headquarters, state what followed in his presence after that?

A. I had very little conversation with Mr. Weichmann; we were getting up a party, and he went with us.

Q. What was done with him?

A. He was with Mr. McDevitt.

Q. After that, when you went into the police office, was he put in charge of somebody?

A. I do not know. I left that morning.

Q. State where you went and what you did that morning in reference to this matter.

A. I went to the first ward, got some horses, and went to Surrattsville.

Q. Did you see John M. Lloyd at Surrattsville?

A. I did.

Q. Did you inquire of John M. Lloyd for Booth or anybody else?

A. I did.

Q. State what passed between yourself and John M. Lloyd.

Mr. PIERREPONT. Wait a moment. Is the object to impeach Mr. Lloyd?

Mr. BRADLEY. My object is to put in the conversation, as Mr. Clarvoe and others heard it, as different from the recollection of John M. Lloyd; I have laid that foundation plainly enough.

Mr. PIERREPONT. Mr. Lloyd was asked if he did not tell the officers that he did not know who those men were, and he said he did, and gave his reasons for doing it.

Mr. BRADLEY. I asked him if that was all that passed, and he said yes. Now, I want to see what else passed.

Mr. PIERREPONT. Your honor will find the point in Lloyd's testimony, at page 174 of the record.

Mr. BRADLEY. I will read what we refer to from Lloyd's testimony.

"Q. Do you recollect when the police officers came out there?"

"A. I recollect when Clarvoe came.

"Q. Did you tell Clarvoe that Herold had not been there?"

"A. I do not recollect distinctly the question that Clarvoe put to me. The soldiers had been there before he got there.

"Q. Why cannot you recollect? Were you drunk?"

"A. I had been drinking that morning, and then I became frightened after the soldiers told me what had been done. I did not know what to do or how to act.

"Q. Try and recollect what Clarvoe said to you.

"A. As well as I recollect, he told me there was money enough in this thing to make both of us rich, if I would give him any information I possessed.

"Q. Didn't you tell him then that neither of these men had been there?"

"A. I may have done so.

"Q. Don't you recollect that you did do it?"

"A. I have not the least doubt I did do it. I did not want to be drawn in as a witness in the affair at all. I knew that Mrs. Surratt's name would be drawn in if any thing was said, and I did not want to say any thing about it.

"Q. What did you tell him?"

"A. I really cannot tell you any more. All these men were coming there that morning and applying for information.

"Q. What did you tell Clarvoe and McDevitt?"

"A. I think I told them I knew nothing about the circumstances at all."

It is in relation to that conversation that we propose to inquire.

Mr. PIERREPONT. He stated it very fully, as has been read.

Mr. BRADLEY. I think he did not.

Mr. PIERREPONT. You cannot contradict it when the witness tells you he did say it.

Judge FISHER. The witness Lloyd there seems to have made a full statement in his answer of all he recollected.

Mr. BRADLEY. We say that he did not. In reply to the last question but one, "What did you tell him," he said, "I really cannot tell you any more."

Judge FISHER. You are offering this now for the purpose of contradicting Mr. Lloyd, and Mr. Lloyd tells you that he has no doubt that he told them he knew nothing about the circumstances, and had not seen any of the men.

Mr. BRADLEY. I want to know whether that is what he told Clarvoe.

Judge FISHER. You can ask whether he told him that.

Mr. PIERREPONT. I do not object to that.

Mr. BRADLEY. Then I can ask what he did tell them.

Mr. PIERREPONT. No, I submit that the gentleman cannot.

Mr. MERRICK. One question at a time.

Judge FISHER. You asked Lloyd what he told Clarvoe and McDevitt, and he said, "I think I told them I knew nothing about the circumstances at all." Now, you can ask this witness whether he did tell them that, and there your question and the answer will end.

Mr. BRADLEY. (To the witness.) Did Lloyd tell you that he knew nothing about the circumstances at all?

The WITNESS. The circumstances of what? He mentioned Herold's name there in what you read. I never mentioned Herold's name to him.

Mr. BRADLEY. He says you told him, "There was money enough in this thing to make both of us rich if I would give them any information I possessed," and that he may have told you that neither of these men had been there. Now, I ask you in the first place, was McDevitt with you?

A. No, sir; and there was nothing said about money or getting rich.

Q. Did he tell you that he knew nothing about the circumstances at all?

A. Not in that way.

Mr. BRADLEY. Now, I propose to ask what he did say.

Judge FISHER. You may give his answer, if he knew any thing about them.

Q. (By Mr. BRADLEY.) What did he say?

The WITNESS. Do you want the whole conversation arriving at the house?

Mr. BRADLEY. Yes, sir.

The WITNESS. Well, sir, I went up to the house alone. He was standing in his door. There were several on his porch. Said I, "John, how do you do." I recognized him as a man I had formerly known as a police officer here, under Mr. Berrett, I think. Said he, "Clarvoe, how are you." Said I to him, "John, I would rather see you now than anybody else I know of, except two men." Said he, "Come in." We went

into a side room—a sitting-room. Said I, "John, have you heard any thing." Said he, "Yes, I heard that the President had been shot in the theatre." I asked him, "Where did you hear that from?" Said he, "I heard it early this morning from some soldiers." Said I, "Early this morning?" Said he, "Yes." Said I, "Who did they tell you did it?" Said he, "A fellow they called Booz, or something like that—a circus actor." Said I, "Get back, John, that won't do." I then said to him, "Mrs. Surratt was down here yesterday; who was in company with her?" Said he, "A young man by the name of Weichmann." At that time Mr. Bigley came in. I went out to meet Bigley, and I went back to the room again, and said I, "John, give me the trail; which way have those men gone?" Said he, "Clarvoe, they have not passed here; I do not know who you are talking about." Said I, "John, don't you know Booth." He said, "I do not." About that time Bigley came in, and we had a drink. I said to Mr. Lloyd in the presence of Mr. Bigley, "John, you know me and I know you. Your experience as an officer will tell you that these men are bound to be caught. Give me the trail, and you are a made man and so am I." He raised his hands up and said, "God strike me dead if they passed here," and he said he had been up all night.

Q. Was he drunk or sober?

A. He was sober.

Q. After leaving Surrattsville, where did you go?

A. Then I asked him, if he was in pursuit which road he would take. He gave me the Piscataway road, and we went down the Piscataway road till we got to Piscataway.

Q. Was the Piscataway road the road towards T. B. and Leonardtown and so on, or was it a branch road?

A. It was my intention to take the Beantown road, but he put me on the Piscataway road, which would carry me back towards the river and to Washington. There we met with Mr. Weichmann, Mr. Holahan, Mr. McDevitt, Mr. Keyes, and several others.

Q. Did you return to Washington, or go further on?

A. We went further on, and Mr. Bigley and myself did not return to Washington until about two o'clock on Monday morning. The horses failed, and we came back Sunday night or Monday morning.

Q. On Monday what did you do?

A. On Monday we were preparing to leave the city to go to Canada.

Q. Did you go to Canada, or how far did you go?

A. I went as far as Philadelphia and returned, and then started on to catch up.

Q. Did you afterwards go to Canada?

A. Yes, sir.

Q. For what purpose, and by whose order?

A. I went by my own order, I judge, from the time I started. I went twice to Canada.

Q. Did you go to Canada while Holahan, McDevitt, and others were there?

A. No, sir. I left the party—Mr. Bigley, Mr. McDevitt, Mr. Holahan, and Mr. Weichmann—in Philadelphia, and returned with a prisoner, and then I started again.

Q. Did you go to Canada while they were in Canada?

A. Yes, sir.

Q. State for what purpose you went there, and whether under any promise of reward or not?

A. My first trip to Canada I went to catch up to the party that was ahead of me. I arrived in Canada, but I could get no tidings of the gentlemen I was looking for—Weichmann, Holahan, and McDevitt—except from the mayor's office. I returned to Washington. I wanted money. I then started again.

Q. The first time you got out of money, and you came back and started again?

A. Yes, sir.

Q. State what was the purpose of your going on that second time, and state whether you had any promise of reward for that service?

A. I will explain what caused my trip the last time. The last time I started to Canada was on a dispatch received—

Q. A dispatch from where?

A. The dispatch was from New York. It was from McDevitt. I had a promise of reward that evening, leaving for Canada. I will state to you the circumstances in connection with that reward. It was in this way: I asked Major Richards to go with me—

Mr. PIERREPONT. I do not know what this is about. I do not see how it can be proper. It is their witness, not our witness.

Judge FISHER. I did not see myself why you did not object to it. I thought perhaps you had some reason.

Mr. BRADLEY. What is the objection?

Mr. PIERREPONT. Because it has no propriety in the case, so far as I can see.

Mr. BRADLEY. You have given in evidence the party going to New York in search of Surratt. I have followed up that same party, and I want to show by Mr. Clavoe that he went on and joined them.

Mr. PIERREPONT. I do not object to your showing that he joined them.

Mr. BRADLEY. And the circumstances under which he went.

Judge FISHER. That is all very well, but what has the reward got to do with it?

Mr. PIERREPONT. It is not cross-examining a witness for the purpose of weakening him. He is their own witness.

Mr. BRADLEY. (To the witness.) Whom did you go after?

A. I started to go and assist the men who were there.

Q. What else besides that?

A. I wanted to get Weichmann and Holahan back into the States.

Q. If you were offered a reward—

Mr. PIERREPONT. Wait a moment. I ask your honor's definite ruling on that subject.

Judge FISHER. I have ruled that the reward has nothing to do with the case.

Mr. MERRICK. Weichmann has testified that he was not under arrest and was not under constraint. We propose to show by this witness that he was authorized by the Government to go and bring Weichmann home, and offered a large reward if he would bring him home.

Mr. PIERREPONT. That is not contradicting Weichmann.

Mr. MERRICK. It is a circumstance going to show his arrest.

Judge FISHER. I cannot see that there is any relevancy to the issue in that.

Mr. BRADLEY. (To the witness.) Do you know anything about Holahan getting any clothes from Mrs. Surratt's when he was about to go away on that trip?

A. Yes, sir.

Q. State what you know about that?

A. It was on the 17th, Monday. I was in a hack, going to see a lawyer to get the directions of a party. He asked me to drive to his boarding-house. We went to Mrs. Surratt's house.

Q. What did you see there about a handkerchief?

A. He went up stairs, and we went into his room. On the bed he picked up some things. Amongst them were two handkerchiefs.

Q. Did you see those handkerchiefs, or either of them?

A. I saw one of them.

Q. Was one of those handkerchiefs marked?

A. He said, "Here is one of John Surratt's handkerchiefs," and showed me one with a name on it. I told him to keep them, that we would want them.

Q. What name was on it?

A. "John H. Surratt" was on the handkerchief.

Q. Do you know whether it had a number or mark on it besides the name?

A. I did not examine it closely. I merely took a

glance at it. That was my first knowing that his name was John H. Surratt.

Q. Do you recollect how the name was put there, whether straight across, or across the corner, or in what way?

A. I do not recollect. The handkerchief was folded up when he showed it to me, and I read the name.

Q. All that you recollect about it is that you picked up a handkerchief with the name of John H. Surratt on it, and you saw that name on the handkerchief?

A. Yes, sir; I saw the name John H. Surratt.

Q. Whether it had any other mark or number on it you do not remember?

A. I do not.

Cross-examined by Mr. PIERREPONT:

Q. What is your business?

A. Detective.

Q. How long have you been in that business?

A. Since 1863.

Q. It was Mr. Weichmann who came and opened the door, with his shoes off, was it not?

A. Yes, sir.

Q. It was not Mr. Holahan?

A. No, sir.

Q. You are sure of that?

A. I am satisfied of it.

Q. You say Mr. Holahan told you he went to bed that night about nine o'clock?

A. Yes, sir; or a little after.

Q. Will you take a paper and pencil and draw the rooms of the story in which these young ladies were that you locate in the bed-room, and likewise the room you went into where there was nobody?

A. I am not much of an artist.

Q. You may draw it roughly, so that I can present it to the jury.

Mr. MERRICK. You may also designate Mrs. Holahan's room and the room where there was no person.

The WITNESS. Do you mean what is called the servants' room?

Mr. MERRICK. Yes.

[The witness drew a diagram of the upper story of Mrs. Surratt's house.]

Q. (By Mr. PIERREPONT.) Which was Mrs. Holahan's room?

A. In the story over the parlor—the front room.

Q. Was Mrs. Holahan's room and the servants' room in the same story?

A. No, sir.

Q. She was in the story below?

A. The story below.

Q. Then you did not go out from Mrs. Holahan's room to the servants' room on the same story?

A. No, sir.

Q. In the servants' room in which you were was there a bed?

A. Yes, sir.

Q. Tell the jury what time of night it was.

A. I judge it was between the hours of two and three.

Q. What time did you get to the house?

A. About half-past two or a little earlier—between two and half-past two.

Q. How long after you got to the house did you go to this servants' room where there was a bed?

A. Within, I suppose, half an hour.

Q. Did you put your hand upon the bed?

A. I did not.

Q. Do you know whether the bed was warm or not?

A. I do not.

Q. Then you do not know whether there was a person in there covered up in it?

A. I know there was no person there with their head covered up.

Q. How do you know?

A. The cover was thrown back and I could see.

Q. That was the reason?

A. Yes, sir.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 76. WASHINGTON, THURSDAY, AUGUST 15, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 75.*

Q. Did you put your hand at all on the bed—any part of it?

A. Not to my recollection.

Q. You did not feel whether it had just been left or not?

A. No, sir.

Q. And it was at three o'clock at night?

A. About that time.

Q. If a person had been there and got up, they had got up pretty early that morning?

A. I do not know what time they got up. They were not there when I was there.

Q. What time did you and the others who were with you leave the house?

A. We were back at our office very soon after three o'clock.

Q. You say you went below and saw a colored woman. Where did you see her?

A. Down in the first story.

Q. The basement, do you mean?

A. I do not know whether it is a basement; I think not. It is what we call the first story.

Q. Was it the parlor story?

A. No, sir.

Q. Was it under the parlor story?

A. Yes, sir.

Q. Where was she?

A. She was at the door.

Q. The front door?

A. No, sir; the back door.

Q. Was the door open?

A. No, sir.

Q. Was there any light there?

A. I had a candle.

Q. What kind of a candle?

A. A piece of spermaceti candle that I had in my own pocket.

Q. Was that the only light you had?

A. No, sir.

Q. What other light?

A. The house was lit up.

Q. Was that part of the house lit?

A. Yes, sir.

Q. What was that lit with?

A. I do not recollect.

Q. Was the colored person you saw there dressed?

A. She had on a kind of calico dress. It was not a dark, but a kind of slate-colored dress, open in the bosom.

Q. You think that you are not mistaken about that?

A. I do not think I am.

Q. You say you called her "Aunty;" how old a person was she apparently?

A. I do not know.

Q. Did she look old or young?

A. She looked to be a woman twenty-five or thirty years old, I guess.

Q. Do you know her age?

A. I do not.

Q. Do you know her name?

A. I do not.

Q. Have you seen her since?

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

Q. You say you went to Canada; what did you go to Canada for?

A. To look for John Surratt.

Q. Who sent you, the Government?

A. Partly the Government.

Q. Government officers?

A. Yes, sir.

Q. You have told us that in your talk with Mrs. Surratt that night she told you her son was in Canada; is that so?

A. Yes, sir; I heard her say he was in Canada.

Q. She said so that night, the night of the murder?

A. Yes, sir.

Q. And what did she state to you about mothers and sons; I do not know that I understood you distinctly?

A. Said she, "What is the meaning of this." Said I, "I would like you to answer these questions, Mrs. Surratt." Said she, "There are a great many mothers that do not know where their sons are."

Q. When you told her you would like her to answer you, had she been evasive in answering?

A. Not at all.

Q. Why did you tell her that you wanted her to be careful in her answers?

A. Because she asked me what was the meaning of it.

Q. You went down to Lloyd's and saw him?

A. I did.

Q. When did you see Lloyd?

A. I saw him before twelve o'clock on Saturday, the 15th, the next day after the murder.

Q. Was he drunk?

A. To my knowledge he was not drunk.

Q. Was he perfectly sober?

A. Apparently.

Q. Did he tell you he knew nothing about it?

A. He did not.

Q. Did he try to mislead you?

A. I know he did.

Q. Did he not take great pains to try to mislead you and put you on the wrong road?

A. I do not know whether he tried to take great pains; but he put me on a wrong road.

Q. Did he not put you on a wrong road?

A. He told me what road he would take if he was me.

Q. And that was a wrong road, was it not?

A. Yes, sir.

Q. Did you not think that in your conversation with him he was trying to conceal from you—

Mr. MERRICK. No matter what he thought.

Judge FISHER. You must not substitute inferences for facts.

Mr. PIERREPONT. (To the witness.) Did he say any thing as though he did not know any thing about

it; did he use words conveying to you the idea that he knew nothing about it?

Mr. BRADLEY. He can state what words were used.

Judge FISHER. He may state what was said substantially.

Mr. PIERREPONT. Just state substantially what Lloyd said to you?

A. Lloyd told me they had not passed there and could not pass there.

Q. Did he tell you why?

A. He said he had been up all night.

Q. What more did he tell you?

A. He told me that he had heard it that morning from some soldiers, and that some man named Booz, a circus actor, did it.

Q. What did you tell him about the making of him; give the exact words as nearly as you remember?

A. I said to him that his experience as an officer would tell him that these men were bound to be caught, and if he gave me the trail he was a made man and so was I.

Q. You told him that?

A. I did.

Q. Did you get him to give you the trail even on that offer?

A. I wish he had.

Q. But he did not?

A. No, sir.

Q. He carefully concealed it, did he not?

Mr. MERRICK. Do not answer that question.

Mr. BRADLEY. State what he said and did.

Mr. PIERREPONT. Well, I will ask, which way did the Piscataway road lead?

A. It led to the right.

Q. And if you followed it where did it bring you to?

A. It brought me up to Piscataway.

Q. If you had gone on further, where would it have carried you to?

A. I judged I should have followed on to Washington.

Q. Then it led towards Washington, did it?

A. I do not know whether it did or not.

Q. But it would have brought you to Washington, you say?

A. It was the river road.

Q. You did not get information from Lloyd that put you on the trail of the murderers?

A. No, sir.

Q. Did you get information or statements from Lloyd that put you off the trail of the murderers?

A. Yes, sir; from what I learn.

Q. (By Mr. MERRICK.) Do you know by your own personal knowledge?

A. No.

Mr. MERRICK. Do not answer, except what you know of your own knowledge.

Mr. PIERREPONT. He will probably answer sundry things on cross-examination.

Mr. MERRICK. Not except where he knows of his own knowledge.

Mr. PIERREPONT. (To the witness.) Do you know when Holahan went back to Mrs. Surratt's for clothes?

A. I went with him on one occasion. It was on the 17th.

Q. What time of day?

A. About one or two o'clock in the afternoon, I judge.

Q. When you got to the house where did you go to?

A. We went up stairs.

Q. What story?

A. The story over the parlor.

Q. What did you find there?

A. I did not find anything. He picked up some clothing.

Q. Where did he pick that from?

A. Off the bed.

Q. Were there any other clothes than the pocket-handkerchiefs?

A. Yes, sir.

Q. What other clothes?

A. I do not know. They lay spread on the bed.

Q. Clean apparently?

A. Yes, sir; ironed and folded.

Q. Had both the handkerchiefs Surratt's name on?

A. I do not know.

Q. Did he show you one that had?

A. He did.

Q. What did you tell him when he showed it to you?

A. To stick to them; that we would want them.

Q. You thought it would be some clue, did you?

A. I thought so.

Q. Did he put it in his pocket?

A. Yes, sir.

Q. I suppose you would know the handkerchief if you were to see it?

A. No, sir?

Q. You have known Mr. Holahan pretty well, have you not?

A. No, sir; I knew Mr. Holahan only when he was in the substitute business. I made his acquaintance then.

Q. What is the substitute business?

Mr. BRADLEY. Stop; I do not see any harm in that, but I want to know where it is going.

Judge FISHER. I cannot see any harm in it, but it is lumbering up the case.

Mr. PIERREPONT. Very well; I will not press the substitute business, then. (To the witness.) You went to Canada, and saw Mr. Holahan there?

A. I did.

Q. Did you talk with him?

A. Yes, sir.

Q. Did you talk with him about the handkerchief?

A. I did.

Q. Did Holahan tell you any thing about losing the handkerchief?

A. Yes, sir.

Q. Where did he tell you that he lost it?

A. He told me that he lost the handkerchief in the depot.

Q. Where?

A. I do not recollect the depot.

Q. Did he not tell you that he lost it at St. Albans?

A. I do not recollect the depot.

Mr. BRADLEY. The witness has answered the question; but my objection is, that the witness had said before he did not tell me at what depot he lost it.

Mr. PIERREPONT. Now I call his attention to a particular place.

Mr. MERRICK. Has the foundation been laid for any of this examination?

Mr. BRADLEY. No question of that kind was put to Mr. Holahan.

Mr. MERRICK. He was asked if he had told Weichmann, but not Clarvoe.

Mr. PIERREPONT. We asked about two; one was Weichmann.

Mr. WILSON. And the other was Bigley.

Judge FISHER. I think it was Bigley.

Mr. PIERREPONT. Very well; I will not press it.

By Mr. BRADLEY:

Q. You say you do not know that you have seen that colored woman since that night. Were you here when Susan Ann Jackson was examined on her recall?

A. Yes, sir.

Q. State whether, according to the best of your recollection, she is the woman.

A. I thought she was the colored woman; I saw her in the court-house; and when I saw her coming across the commons I thought she looked like her; but I would not say it was the woman, because I do not know.

Q. To the best of your recollection, is she the woman?

A. It was a woman of her stature—a square-shouldered woman.

JAMES A. McDEVITT,

a witness for the defense, sworn and examined.

By Mr. BRADLEY :

Q. What is your business?

A. I am a detective officer of the Metropolitan Police of Washington.

Q. State whether, on the night of the 14th of April, 1865, or the morning of the 15th, you took any steps to discover and arrest the assassins of President Lincoln?

A. I did. I received information that John Wilkes Booth had fired the shot.

Q. Did you go to the house of Mrs. Surratt?

A. I did.

Q. Who went with you?

A. Lieutenant Charles M. Skippon, sixth district, then sergeant of police, and a squad of his men, and Mr. Donaldson, one of our detective officers, and Mr. Clarvoe.

Q. State about what time you reached there; and go on and give the narrative as well as you recollect—the incidents in the order in which they followed.

A. I think the bell was rung, and a lady put her head out of the second-story window—that is, the story over the parlor—and asked who was there. We inquired if Mrs. Surratt lived there. She said she did. We said we wished to go in, and immediately afterwards the door was opened by Mr. Weichmann; he was dressed in his shirt sleeves, I think he was in his stocking feet and his shirt open in the bosom; I think he had one suspender on, but he may not have had any.

Q. What passed then?

A. We asked for John Surratt, and he said he was not at home. We found a shawl lying on a chair in the passage, and asked whose shawl it was. It was covered with mud.

Mr. BRADLEY. Do not state what Mr. Weichmann said. I do not object to bringing it out, but I do not know but that the gentlemen may object.

Mr. PIERREPONT. No, we do not.

Mr. BRADLEY. State the fact, then—what you found there. I want every thing to come out. I do not want to keep a word back that was said or done.

Mr. PIERREPONT. We do not oppose the shawl.

Mr. BRADLEY. What you think will make for your interest you do not oppose. Let it come in?

A. Mr. Clarvoe went up stairs with Mr. Weichmann, and asked Mrs. Surratt—

Mr. PIERREPONT. But about this shawl?

A. I thought I was stopped on that question. We asked Mr. Weichmann whose shawl it was. He said it was a shawl he had used going to Surrattsville with Mrs. Surratt that day.

Mr. BRADLEY. Proceed now; state what next followed.

A. I went to the door of the room occupied by Mrs. Surratt. I think there were some other ladies—one lady, anyhow—in the room with her. The question was asked her where her son was. She said she had not seen him since the fall of Richmond.

Mr. PIERREPONT. Who was present then?

A. Mr. Weichmann and Mr. Clarvoe. She turned to Mr. Weichmann and said, "How long has that been?" Mr. Weichmann said, "About two weeks."

Mr. BRADLEY. What next followed?

A. I then went to Mr. Holahan's room, saw himself and wife, and was told by him that his daughter was in a small room just at the passage-way. The room was rather a hall-way—a small room. He said his daughter was there.

Q. Who was with you?

A. I think I was in company with Mr. Clarvoe at

that time, but am not positive. I have not given this matter a great deal of attention, and never thought to be called here, and I may not be able to give as accurate an account of it as I could have done at the time. I think I myself asked Mrs. Surratt when she heard from her son.

Mr. PIERREPONT. Who was present then? Was that after you came down?

A. I think it was before, but I am not positive whether it was before or after.

Mr. BRADLEY. Asked who?

A. I rather think I asked Mrs. Surratt when she heard from her son.

Mr. PIERREPONT. Do not give that.

Mr. BRADLEY. Yes, if Mr. Weichmann and Mr. Clarvoe were present.

Judge FISHER. He says he thinks it was before they went up stairs.

A. I am not very positive about it.

By Mr. BRADLEY :

Q. Were Mr. Weichmann and Mr. Clarvoe present at the conversation?

A. I will not swear positively whether they were or not. I cannot say, but I think they were present when I asked where a letter was that she had received.

Mr. PIERREPONT. Wait; do not tell about a letter.

Mr. BRADLEY. Why not?

Mr. PIERREPONT. Because it is not good evidence; that is all.

Mr. BRADLEY. Were they present, and was it a part of the conversation?

A. I think they were present when I asked where was the letter they received. She said, "It is somewhere about the house; some one find it for me." I went down—

Mr. PIERREPONT. I submit that what she said about a letter, without a letter being produced, or any thing of the kind, is not evidence.

Mr. BRADLEY. We are giving no contents of the letter.

Judge FISHER. If she said this in the same conversation you have been speaking about, it is evidence; if not, it is not.

Mr. PIERREPONT. But he does not say Mr. Weichmann was there?

The WITNESS. I think he was there.

By Mr. BRADLEY :

Q. Is that the best of your recollection and belief?

A. Yes, sir. I am not going to say any thing but what is correct.

Judge FISHER. If it is the same conversation you may state it, if you believe so, according to your best recollection. But if you do not so believe, you will not state it.

A. I asked where the letter was that she had received from him that day; she said, "It is about the house somewhere; some one find it for me." Search was made for this letter, but I did not see it.

By Mr. BRADLEY :

Q. After that did you go down into the basement at all?

A. This was in the basement that we were searching, or I supposed it to be. I do not know where their dining-room was; but it was the basement-room, generally used for a dining-room in other houses. After searching there for the letter, we started toward the kitchen door, and there saw two colored females.

Q. Describe them as well as you can.

A. It is rather impossible for me to describe them.

Q. Tell whether one was a girl and one a woman; or both women, or what they were?

A. They were two females—one of them appeared to be darker than the other.

By Judge FISHER :

Q. Were they both grown?

A. I cannot recollect. The question was asked, "Where is John Surratt; is he secreted about the house?" One of those women said, "I do not know him;" and I think Mr. Clarvoe said, "You do not know him!" Said she, "Do you mean Mrs. Surratt's son?" Said he, "I did not know Mrs. Surratt was married; I did not know there was but one John Surratt." She then said, "If you are speaking about Mrs. Surratt's son, I have not seen him for sometime—about two weeks." I unbolted the door that led into the yard, to the best of my recollection, and with others went out and searched the stable.

Q. (By Mr. BRADLEY.) According to the best of your recollection and belief, have you seen that woman since then?

A. I will not swear positively whether I saw her or not.

Q. To the best of your recollection and belief?

A. The other day I was standing out there. I had been subpoenaed for the defense by Mr. Kirby. I said that I was going away, and I wanted to know what I was wanted for. He said they did not want me long, but just wanted me to see a party. I was standing in company with Mr. Clarvoe and Mr. Boss, when this woman came up the stairs. Mr. Clarvoe remarked, "There goes a woman who looks like the woman that was at the Surratt house that night." But I cannot swear that she is the woman. I would not like to swear to it.

By Mr. MERRICK:

Q. What do you think about it yourself, to the best of your recollection?

A. I have only one answer to make on that point, and that is, I will not swear whether she is the woman or not.

By Mr. BRADLEY:

Q. Have you no opinion about it?

Mr. PIERREPONT. It is not a matter of opinion.

A. All I can say is, there were two of them there. One, to my recollection, was a dark woman, and the other was light-complected. You, gentlemen, must remember that a man in my position, looking after such a matter on such a night—

Mr. PIERREPONT. Certainly, we do remember; we know it very well.

Mr. BRADLEY. Go on and tell what you did?

A. After we searched the house thoroughly, I ordered Mr. Weichmann and Mr. Holahan to report at our office at nine o'clock next morning. They reported before nine.

Q. What was done then? Did you or not put either of those parties in charge of anybody?

A. I took charge of Mr. Weichmann and told him to consider that he was under my charge; and Mr. Weichmann went with me to my house and had breakfast with me Sunday morning.

Q. State whether or not he was kept under arrest, or whether he was allowed to go at large after that up to the time that you reached Canada?

A. Up to the time that we reached Canada I think Mr. Weichmann was in my custody, except when he was at the police headquarters. This is the best of my knowledge. I went down to the country with Mr. Weichmann and returned with him on Saturday evening. He asked me, when we got to the police headquarters that night, what was going to be done with him. I told him he would have to remain there. He said, "Are you going to hold me?" I said, "Certainly, we will have to hold you." I left him then at the police headquarters, and went out with Mr. Holahan on business.

Cross-examined by Mr. PIERREPONT:

Q. [Exhibiting to the witness the order detailing officers to proceed to Canada.] Do you know any thing about this order which has been given in evidence?

A. That is not correct, if you want me to state on my oath.

Mr. BRADLEY. Have you got the original?

A. I have.

Mr. PIERREPONT. What is the difference?

A. The difference is, that John Holahan is in the original—

Mr. PIERREPONT. Let us have the original, if you have it. Read it.

A. It is in these words:

"HEADQUARTERS, DEPARTMENT OF WASHINGTON,  
"OFFICE OF PROVOST MARSHAL, DEFENSES NORTH OF THE POTOMAC,  
"Washington, D. C., April 16, 1865.

"SPECIAL ORDER, }  
"No. 88. } Extract.

"Special officers James A. McDevitt, John Holahan, and Louis J. Weichmann are hereby ordered to proceed to New York city on important Government business, and, after executing their private orders, to return to this city and report at these headquarters.

The Quartermaster's Department will furnish the necessary transportation.

"By order of Maj. Gen. AUGUR:

"T. INGRAHAM,  
"Col. & Pro. Mar. D. N. P.

Q. Did you and Weichmann go as special officers under that order?

A. We went under this order.

Q. Where did you go?

A. To the city of New York, and from there to Canada.

Q. Were you with Weichmann in Canada?

A. Yes, sir.

Q. You were not with him all the time in Canada?

A. I was not.

Q. Did he go to Quebec without you?

A. He went with Mr. Bigley, one of our detective officers.

Q. How long was he away from you in Canada?

A. I do not know that I ever saw Mr. Weichmann any more until we returned to New York. I left Canada ahead of anybody else.

Q. Did he come back afterwards?

A. He came back afterwards.

Q. He came to Washington?

A. Yes, sir; from New York to Washington with me.

Q. And remained here?

A. Yes, sir.

Q. Was he in the performance of his duty in Canada in searching for Surratt with you?

A. I believe he was doing what he could to get Surratt. He said he was, and I believed it.

Q. And you were doing all you could to find Surratt?

A. Of course I was.

Q. And you did not succeed; you did not find him?

A. I did not.

Q. You told us something about a letter in the Surratt house; you did not find the letter, did you?

A. No, sir.

Q. Never saw it?

A. No, sir.

Q. Could not find it in the house?

A. No, sir.

Q. Did you search for it?

A. No extraordinary search.

Q. But you made search?

A. Yes, sir.

Q. And could not find it?

A. We made a search in one room—a basement-room.

Q. You went into the basement and saw two colored women?

A. Into the passage-way.

Q. It was rather dark, you said?

A. We had a light.

Q. What light?

A. I think Mr. Clarvoe had a candle; somebody had.

Q. What was the condition of the light in that entry; was it dark or light?

A. It was light enough to distinguish a negro from a white person.

Q. You could tell the difference between a negro and a white person in that entry?

A. I could.

Q. It would not require a very high light for that, would it?

A. You all know what light it would require to tell whether a person was white or colored.

Q. It would not require much for that, surely?

A. We had sufficient light for that.

Q. Had you sufficient light to tell how these colored women were dressed?

A. No, sir; I did not take particular notice how they were dressed.

Q. Could you tell how either of them was dressed?

A. I could not.

Q. Was one of them dressed in a lead-colored calico dress?

A. That would be very difficult for me to swear to, because at night I would not know whether a lady had on a calico dress or not. I see a great many calicoes that look like silk on the street, but they do not bear examination.

Q. Were these two colored women both the same height?

A. I will not swear to that.

Q. What time of the night was it?

A. I judge we got to the house in the neighborhood of two; or it may have been a little before or a little after two.

Q. You did not see either of these women in any bed?

A. I did not go into that room at all.

Q. Could you tell which of the two was the taller?

A. I could not. I only say there were two colored females there; and one of those two made use of this language.

Q. But you cannot tell which of the two—whether it was the taller or the shorter?

A. No, sir.

Q. And you could not tell the ages of either.

A. No, sir.

Q. You were examined once before, were you not?

A. Yes, sir.

Q. Did you give any statement at that time in relation to seeing these two colored women?

A. No, sir; because persons were not allowed at that trial to state only certain matters.

Q. You did not give any such statement then about it?

A. Not that I remember. I might or might not have said it.

Q. Did you state this on the former trial: "Mr. Weichmann accompanied me to Canada. I took him to identify John Surratt. He went with me willingly in pursuit of the assassins, and was zealous and earnest in performing the part allotted to him in the pursuit?"

A. I say so here.

Q. And did you say further: "Although he had every opportunity to escape, he did not. I left him in Canada when I returned to New York." Did you state that?

A. I did state that.

Q. All that I have read?

A. All of it.

Q. And it is all true?

Mr. BRADLEY. When a witness has made a statement here, I ask whether counsel are to read all the testimony he gave at the conspiracy trial to the same effect, not for the purpose of contradicting him, but to show that he gave the same testimony then as now. I submit whether it is regular or not. Having made the objection, I ask your honor to determine whether the gentlemen are at liberty to do that except for the purpose of contradiction.

Mr. PIERREPONT. I did not know that he had stated here that Weichmann went willingly in pursuit of the assassins, and that he was zealous and earnest; I had not heard him state that.

Mr. BRADLEY. It is very extraordinary to me if the gentleman did not hear him, for he emphatically put the question to him and he emphatically answered.

The WITNESS. I said Weichmann did all he could to capture John Surratt.

Mr. PIERREPONT. "And though he had every opportunity to escape, he did not." I did not hear the witness say that.

Mr. BRADLEY. I do not think it is competent. It is not for the purpose of contradiction. He did state that he went from Montreal to Quebec and was not with him during that time, and he left him in Canada. All that has been said. Now, I want to know whether we are to read the testimony the witness gave at the other trial as confirmatory.

Mr. PIERREPONT. If there is objection to reading it, I would as soon ask it directly. (To the witness.) Did he have an opportunity to escape in Canada?

Mr. BRADLEY. I object. The question has been asked and answered.

Judge FISHER. I think, gentlemen, you are quarreling about nothing.

Mr. BRADLEY. It is time that is important; time is of great importance.

Judge FISHER. Time is of great importance to us, and I shall be very glad if counsel will be satisfied with one statement from a witness. But I did not hear this witness say any thing in his testimony now like that which has been read from the book about Weichmann's having every opportunity to escape.

Mr. PIERREPONT. I did not ask him any such question, and it is not on the notes.

Mr. BRADLEY. I did not say the counsel did ask it. I said we asked facts, and the witness gave facts.

Judge FISHER. We are losing time.

Mr. PIERREPONT. The waste of time is in debate.

Mr. BRADLEY. I am forced to it.

Mr. PIERREPONT. (To the witness.) What I have read is correct, is it?

A. I think my statement on the former trial is correct.

Q. When Susan Ann Jackson was recalled the other day, did you not come in and stand by the side of the foreman of the jury?

A. I did.

Q. You looked at her then?

A. I did.

Q. Did you talk with Susan after she left the stand?

A. I did.

Q. Did you not ask her if she was the woman?

A. No, sir.

Q. Did you not ask her if she was not the woman?

A. No, sir.

Q. You said something to her?

A. I did.

Q. But you did not ask her that?

A. No, sir.

Q. Nor words to mean that?

A. Here is what I asked her:—

Mr. BRADLEY. Never mind.

The WITNESS. I would as lief tell it as not.

Mr. BRADLEY. I do not doubt it; but it is not admissible in evidence.

Mr. PIERREPONT. (To the witness.) Did you ask her the words I have stated, or the substance of those words?

Mr. MERRICK. Is this admissible?

Judge FISHER. I do not think it is. You may ask him whether he identified her on that occasion as being the woman.

The WITNESS. I have already stated that I did not. I would not swear that she is the woman.

Mr. MERRICK. But what is your best recollection and belief on that subject?

Mr. PIERREPONT. It is not belief, but best recollection.

Mr. MERRICK. I put the question; let the court decide.

Judge FISHER. He may state according to his best recollection.

A. I will not swear that I believe her to be the woman or not to be the woman. She swears there was no other woman in the house but herself and another woman. It is for the defense to make the point on that.

Mr. BRADLEY. You have produced the special order from the Department to you and others to go to Canada. State the circumstances and objects for which that order was procured?

Mr. PIERREPONT. The order must show for itself. I submit that the written order shows for itself what it is for.

Mr. BRADLEY. Was it any thing more than an order for transportation for these other two men?

A. I have read the order. The order is not like the one produced in court.

Judge FISHER. What is the difference?

A. They differ in this: one says "John Holahan," and the copy is "George Holahan."

By Mr. PIERREPONT:

Q. Is that the only error?

A. That is all I see.

By Mr. BRADLEY:

Q. Did you not obtain that order?

A. I did. It was written under my instructions; that is, I dictated it.

Q. Did you ask them to appoint, and is there any appointment of Holahan and Weichmann as special officers?

A. I asked that we might all be designated as special officers, for fear that we might have trouble on the road with them if they were not mentioned some way in this order.

Q. You were asked about the light in the passage down there, and the counsel on the other side understood you to say it was a dim light, hardly enough to distinguish between the colors of persons. Did you say it was a dim light in that passage?

A. I said there was light enough to distinguish a white person from a colored person.

Q. You did not pay any attention to the dresses. Was there light enough, if you had examined the dresses, to see what the dresses were?

A. If there had been as much light again, I would not have paid any attention to the dresses.

Q. Was there light enough to see the dress, if you had paid attention to it?

A. I suppose so.

C. M. SKIPPON,

a witness for the defense, recalled.

By Mr. BRADLEY:

Q. Were you engaged with other officers in the examination of Mrs. Surratt's house on the night of the assassination?

A. I was.

Q. State whether you saw any negro women there?

A. I saw two colored women down in the basement.

Q. Describe them as well as you can.

A. To the best of my recollection, one of them was a rather stout woman, rather dark. The other was slightly built, about the same height, and a mulatto.

Q. Did you hear any conversation between Mr. Clarvoe and the colored woman or not?

A. I heard one of the detectives—I cannot say positively which—ask one of the colored women when she last saw Mr. John Surratt; as I understood her, she said she had not seen him for several days.

Q. I asked you the other day if you had seen that woman since.

A. I would not know her if I was to see her.

No cross-examination.

E. H. WYVILL,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Prince George's county, Maryland.

Q. Is there any other gentleman of your name, a physician, there?

A. No, sir.

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

A. I did.

Q. Did you ever drive home to her house, in the month of March, 1865, a buggy and pair of horses, one gray and the other white?

A. No, sir; horses of no color—no horses at all.

Cross-examined by Mr. PIERREPONT:

Q. Were you in Washington in March, 1865?

A. I think it very possible I was, for I was here very frequently.

Q. Were you at Mrs. Surratt's house in the month of March?

A. I was never in Mrs. Surratt's house in my life.

Q. Were you ever at Howard's stable?

A. Yes, sir; I kept my horses there.

Q. Were you there in the month of March?

A. I cannot say positively, but possibly it was so; I do not know whether I was or not; I was frequently in Washington city about that time; I think I put my horses at Howard's.

Q. Do you know Mrs. Slater?

A. No, sir.

Q. You knew Mrs. Surratt?

A. Certainly.

Q. Did you see her in the month of March?

A. I do not think I did; I very seldom saw her.

Q. Did you ever see her down in the country after that?

A. No, sir.

Q. Did you see her son in the country in the month of March?

Mr. BRADLEY. I object; the witness is called to a single fact; Mr. Weichman swore that Dr. Wyvill drove those horses here; I offer him to contradict it.

Mr. PIERREPONT. The question is, Did you see her son in the country in the month of March?

Judge FISHER. If you can connect the son with those horses and the doctor, it is admissible.

Mr. PIERREPONT. That is the very thing. If your honor will recall the testimony, you will remember that he went with his mother and Mrs. Slater, according to the evidence.

Mr. BRADLEY. If that question is put, I withdraw my objection to it. But you asked the general question, whether he saw her son in Prince George's county during the month of March.

By Mr. PIERREPONT:

Q. Did you see John Surratt about the 25th or 26th of March, 1865?

A. No, sir.

Q. Did you see him between the 20th and 28th of March?

A. No, sir.

Q. When did you last see him down there?

A. To the best of my recollection, the last time I saw John Surratt was either in December, 1864, or the early part of January, 1865.

Q. You saw him down there then?

A. Yes, sir.

Q. Did you ever see him after that?

A. No, sir.

Q. Did you see Mrs. Surratt there afterwards?

A. I did not; either before or after.

Q. You did not see any horses then?

A. No, sir.

Mr. BRADLEY. I interpose an objection. I hope the gentleman will stop.

Mr. PIERREPONT. You have not objected to my asking about the horses.

Mr. BRADLEY. I objected in the most decided terms, but you go on utterly regardless of it, and have done it ever since the opening of the case.

Mr. PIERREPONT. I will put the question in this

shape: Did you see her or John with any horses in the month of March?

A. I did not. I never had any thing to do with horses of hers. I always had horses of my own.

Q. I am not asking you about your horses, but whether you saw them with any horses?

A. I did not.

Q. Have you any memory of coming up at any time in the latter part of March, 1865, to the city, to the stable?

A. I do not. I was attending market very frequently, and was here perhaps every week.

Q. Do you know about any horses coming up?

A. None in the world.

MISS HONORA FITZPATRICK,

recalled as a witness for the defense.

By Mr. MERRICK:

Q. You have stated before, in your examination, that you resided with Mrs. Surratt. Did you occupy her room with her?

A. Yes, sir.

Q. Did you sleep with her?

A. Yes, sir.

Q. What room was it that she occupied?

A. The room back of the parlor.

Q. What kind of doors are between the two rooms?

A. Folding doors.

Q. Do you recollect the night of the President's assassination?

A. Yes, sir.

Q. Had you seen John Surratt about the house on that day?

A. No, sir.

Q. What time had elapsed at that period since you had seen him?

A. It had been two weeks before the assassination.

Q. At what time of day did he come to the house on that occasion?

A. I think it was between eight and nine o'clock.

Q. Where did you see him on that occasion—in the parlor or where?

A. I met him in the parlor.

Q. Who was present with him?

A. Mr. Weichmann, Miss Surratt, Mrs. Surratt, Miss Jenkins, and myself.

Q. Do you recollect any thing about his taking supper that night?

A. Yes, sir.

Q. What had you to do with it?

A. I was in the parlor, and his mother asked me if I would not go down and see if I could not get something for John. I was in the parlor, and she said to me, "Honora, see if you cannot get something for John to eat." I went down, and when supper was ready I called Mrs. Surratt, and John and his mother came down together.

Q. Now, go on and state what occurred?

A. While I was there, the colored woman, Ann, came in and brought the tea.

Q. What colored woman; the one who testified here—Susan Ann Jackson?

A. Yes, sir.

Q. How long had this colored woman then been living at the house?

A. I do not remember how long; but I know that she came during the week Mr. Surratt was absent from home.

Q. Was that the week preceding this supper?

A. Yes, sir.

Q. Now, go on and state whether she came in; and, if she did, what passed?

A. She came in, and Mrs. Surratt turned to her and said, "Here is my son John; don't you think he resembles his sister Anna?"

Q. Have you any recollection of any supper that

John ate there the night of the assassination, or any conversation of that sort?

A. No, sir.

Q. Can you state positively that nothing of the kind occurred on the night of the assassination?

A. I know that Mr. Surratt was not in the house that night.

Q. Did you ever see Atzerodt coming to that house?

A. Yes, sir.

Q. In whose company was Atzerodt generally when he came there?

A. I generally saw him more with Mr. Weichmann than any other gentleman in the house.

Q. Did you ever see him wearing Weichmann's clothes?

A. Yes, sir; I met him and Mr. Weichmann on H street one evening, and Mr. Atzerodt had Mr. Weichmann's blue coat and hat on at that time.

Q. Did you ever see Mr. Weichmann dressed in Mr. Atzerodt's clothes more than once?

A. I never saw Mr. Weichmann in Atzerodt's clothes, but I saw Atzerodt dressed in Mr. Weichmann's clothes.

Q. More than once?

A. No, sir.

Q. Did you see a man who visited that house by the name of Wood?

A. Yes, sir.

Q. Did you ever hear him called in that house by any other name than Wood?

A. No, sir; I only knew him by the name of Mr. Wood.

Q. Was he ever introduced in your presence by Weichmann by the name of Payne?

A. No, sir; I never remember hearing any name but Wood.

Q. Did you ever see that man afterwards under the name of Payne?

A. No, sir.

Q. Did you see that man at the assassination trial?

A. Yes, sir; I saw him there; that was the first time I knew his name was Payne.

Q. Who brought him to the house and introduced him?

A. I received an introduction to him through Mr. Weichmann as Mr. Wood.

By Mr. BRADLEY:

Q. Was he ever introduced to you by Mr. Weichmann under the name of Payne?

A. No, sir.

By Mr. MERRICK:

Q. Do you recollect who drove home the pair of horses that John went away with on the 25th of March, 1865?

A. I think they were driven home by Mr. David Barry.

Q. Do you recollect, sometime in March, taking a walk with Mrs. Surratt, Miss Jenkins, and Miss Anna Surratt, and Mr. Weichmann, when Mrs. Surratt stopped at the Herndon House?

A. Yes, sir.

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

A. No, sir; I never heard her mention whom she was going to see.

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

A. No, sir.

Q. I understand you had never heard of a man by the name of Payne at that time?

A. No, sir.

Q. Did Anna Surratt go in with her mother?

A. Yes, sir.

Q. State, as near as you can recollect, who the party were and what occurred.

A. Mrs. Surratt, Mr. Weichmann, Miss Surratt, Miss Jenkins, and myself went down to St. Patrick's church to service in the evening. When we were returning, Mrs. Surratt stopped at this house, and her daughter went in with her.

Q. Where did you go?

A. Mr. Weichmann, Miss Jenkins, and myself walked up not far from the house and then returned, and Mrs. Surratt came out, and we went home.

Q. Did you go down to E street, and then down to Tenth street, before Mrs. Surratt rejoined you?

A. No, sir; we did not leave the square that the house was on.

Q. I understand that you parted with her at the front door of the house, and then walked along down the street that the house is on, and then returned, and she and Anna rejoined you?

A. Yes, sir.

By Mr. BRADLEY:

Q. And you did not leave either the street or the square on which the house was?

A. No, sir.

By Mr. MERRICK:

Q. You were at supper at Mrs. Surratt's on the night of the assassination?

A. Yes, sir. Miss Jenkins, Miss Anna Surratt, and myself were down there when Mr. Weichmann and Mrs. Surratt took their supper.

Q. Was that after he and she came back from Surrattsville?

A. Yes, sir.

Q. What time of night do you suppose it was?

A. I think it was between eight and nine o'clock.

Q. Did Mrs. Surratt leave the table at any time during that night?

A. Not to my knowledge.

Q. Were you there all the time that the party was there?

A. Yes, sir. I do not remember Mrs. Surratt leaving the table.

Q. While you were at supper, did you hear any foot-steps going up the outer stairs?

A. Yes, sir.

Q. Was the bell rung at the door?

A. Yes, sir.

Q. Was it answered?

A. Yes, sir.

Q. Did the foot-steps that came up the stairs go into the parlor?

A. No, sir. I do not remember.

Q. Did Mrs. Surratt answer that bell?

A. I do not remember Mrs. Surratt leaving the dining-room while I was there.

Q. Who answered that bell at that time?

A. Miss Anna Surratt.

The court took a recess for half an hour, re-assembling at one o'clock p. m.

#### MISS HONORA FITZPATRICK'S

examination continued.

By Mr. MERRICK:

Q. Did you go anywhere in company with Mrs. Surratt on the Thursday morning preceding the day of the assassination?

A. Yes, sir. Mrs. Surratt and myself went to early mass at St. Patrick's church.

Q. Why did you go to early church?

A. To go to confession and holy communion, and also to make my Easter at the same time.

Q. Did she do so also?

A. Yes, sir.

Q. You say you were at supper with Mrs. Surratt, Mr. Weichmann, Miss Jenkins, and Anna Surratt, after Mrs. Surratt and Mr. Weichmann came back from Surrattsville on Friday night. What did you all do after supper, and where did you all go?

A. After supper Mrs. Surratt, Miss Jenkins, and myself returned to the parlor, and Miss Anna Surratt retired to her room. She did not feel very well that evening.

Q. Was Mr. Weichmann in the parlor?

A. Yes, sir.

Q. You all, then, went into the parlor except Miss Anna, who went to bed feeling badly?

A. Yes, sir.

Q. Can you recollect what time you went up into the parlor?

A. I do not recollect exactly.

Q. What occurred after you went up into the parlor? Did you talk generally?

A. Yes, sir; engaged in general conversation.

Q. Who was the first of the party that left the parlor to retire after Miss Anna?

A. Mr. Weichmann.

Q. How long did Mr. Weichmann remain with your party in the room after you went up there from supper?

A. He remained there some time. Miss Jenkins and myself were teasing him.

Q. Did you remain there as long as an hour or half an hour?

A. I suppose it to have been about an hour.

Q. He then left the parlor to retire, and left you and Miss Jenkins and Mrs. Surratt in the parlor?

A. Yes, sir.

Q. Did you leave the parlor at any time after you went there from the supper-room before Mr. Weichmann left?

A. No, sir.

Q. Did you observe any thing peculiar on that occasion in Mrs. Surratt's manner?

A. No, sir; I did not notice any change in her conduct more than usual.

Q. Was there any apparent nervous excitement about her manner?

A. No, sir; she did not appear to me to be nervous.

Q. Do you recollect her walking up and down the room with a pair of beads in her hand, and asking Weichmann to pray for her intentions?

A. I remember that she was walking up and down the room, but I do not remember her asking Mr. Weichmann to pray for her intentions.

Q. Do you remember any thing about his reply, that he never prayed for anybody's intentions unless he knew what they were?

A. No, sir; I do not remember any conversation of the kind.

Q. I understand you to say that you and Miss Jenkins were conversing together during the greater part of the time you were in the parlor together with Weichmann?

A. Yes, sir.

Q. How long after Weichmann left did Miss Jenkins leave the room?

A. I suppose it to have been about half an hour.

Q. Did you or Miss Jenkins bid Weichmann good-night at his room door?

A. No, sir; I never did.

Q. At what hour of the night did you retire to bed?

A. I think it was about ten.

Q. Do you recollect being awakened that night by persons coming to the house to search the house?

A. Yes, sir; I remember being awakened about two o'clock in the morning by the door-bell ringing.

Q. Did you get up when the bell rang?

A. Yes, sir, I got up.

Q. Did Mrs. Surratt get up when the door-bell rang?

A. She got up in a few minutes after I did.

Q. Do you recollect Weichmann's coming to the door to speak to her?

A. Yes, sir.

Q. Did you hear their conversation?

A. I remember Mr. Weichmann rapped at the door and said, "Mrs. Surratt, there are detectives who have come to search the house, and would like to search your room." She remarked, "Mr. Weichmann, ask them to wait a few minutes, and I will open the door for them."

Q. What else was said?

A. I remember nothing else being said at all; Mrs. Surratt opened the door, and Mr. McDevitt came.

Q. Did she say to him at that time, "I expected the house to be searched?"

A. No, sir; I never heard her make any such remark.

Q. Did you hear the conversation that took place then between the detectives who came, Mrs. Surratt, Weichmann, or any person?

A. Mr. McDevitt came to Mrs. Surratt's door and bowed, but did not enter, and said he would like to search the other rooms of the house.

Q. Do you recollect Mr. Clarvoe's coming in there?

A. No, sir; I do not remember any but Mr. McDevitt.

Q. Were you at breakfast the next morning after the assassination—Saturday morning?

A. Yes, sir.

Q. At what time in the course of your breakfast did Miss Anna Surratt appear at the table?

A. We had nearly finished breakfast when Miss Anna Surratt entered the dining-room.

Q. Who was at the table at that time?

A. Mr. Weichmann, Mrs. Holahan, Mr. Holahan, Mrs. Surratt, Miss Jenkins, and myself.

Q. State whether or not you heard Miss Anna Surratt say that the death of Lincoln was no more than the death of a negro in the army.

Mr. PIERREPONT. You need not answer that.

Judge FISHER. What is the ground of the objection?

Mr. PIERREPONT. The same as before. It has been up two or three times before and ruled upon.

Mr. BRADLEY. I was not aware it had been up but once.

Mr. MERRICK. Not exactly in this shape.

Mr. PIERREPONT. Yes, more than once. It was a matter that they drew out in cross-examination; we asked nothing about it.

Judge FISHER. Yes, that has been decided. It was a matter collateral and irrelevant; you are bound by the answer. It is ruled out.

Mr. MERRICK. We take an exception. (To the witness.) Did Weichmann state at the table that morning that he had his suspicions about this business, and was going to the Government and state his suspicions about it—state whom he had ever seen in Booth's company, and do all he could to bring them to justice?

A. No, sir; I never heard Mr. Weichmann make any such remark.

Q. Were you at table all the time Weichmann was there?

A. Yes, sir.

Q. Did Weichmann leave the table before you did?

A. Yes, sir.

Q. Do you recollect the night that Mrs. Surratt was taken to the provost marshal's office?

A. Yes, sir.

Q. At what hour of the night did the parties who took you there come to the house?

A. I think it was about half-past ten o'clock when they came.

Q. Do you recollect who was in the parlor at the time Captain Smith came in?

A. Miss Jenkins, Miss Anna Surratt, and myself.

Q. Do you recollect anything about Mr. Weichmann asking Miss Ward, on the night of the assassination, to let him see a letter?

A. No, sir; I do not remember it.

Q. You say that you and Anna Surratt and Miss Jenkins were in the parlor when Captain Smith came there the night you were taken to the provost marshal's office?

A. Yes, sir.

Q. Where was Miss Anna Surratt sitting at the time Captain Smith came?

A. I think Miss Surratt was sitting on a chair near the sofa.

Q. Where were you sitting?

A. Miss Jenkins and myself were sitting on the sofa together.

Q. Near Miss Anna Surratt?

A. Yes, sir.

Q. Did Mrs. Surratt whisper any thing to Anna?

A. I do not remember it.

Q. Did you hear Anna Surratt say on that occasion, "Oh, mother, to think of being taken down there for such a crime?"

A. No, sir; I do not remember hearing Miss Surratt make such a remark.

Q. On the night of the assassination, when they were talking about the matter, do you recollect hearing Miss Surratt say, "Oh, mother, to think of that man's having been here only an hour before;" and about the disgrace to the house?

A. No, sir; I do not remember her saying it.

Q. Did you hear Mrs. Surratt say in reply that she thought John Wilkes Booth was only an instrument in the hands of Providence to punish this proud and licentious people?

A. No, sir; I never heard such a remark from Mrs. Surratt.

Q. You were present all the time with Mrs. Surratt that night in the parlor?

A. I was present there all the time Mr. Weichmann was there.

Q. On the night the officers came to arrest Mrs. Surratt, and took her to the provost marshal's, did you see Wood at the house?

A. I saw a man there, but I did not recognize him until I got to General Augur's office.

Q. Were you not very intimate with Mrs. Surratt?

A. Yes, sir; I was in Mrs. Surratt's company very often.

Q. State whether or not her eye-sight was very good, or defective.

A. Her eye-sight was very bad.

Cross-examined by Mr. PIERREPONT:

Q. What was the matter with her eye-sight?

A. I think Mrs. Surratt was near-sighted. I remember once, when I was on the street with Mrs. Surratt, Mrs. Kirby passed us on the same side of the street, and Mrs. Surratt did not recognize her.

Q. You think she was near-sighted?

A. I think she was.

Q. Did she ever wear glasses?

A. No, sir.

Q. Did she wear an eye-glass?

A. No, sir.

Q. What makes you think her near-sighted? Did she ever tell you so?

A. I thought so from her not recognizing Mrs. Kirby on the street. I heard her say her eye-sight was bad.

Q. She did not do any thing to make it better, by way of glasses, did she?

A. She never wore glasses; but I remember often threading a needle for Mrs. Surratt during the day. She said she could not do it.

Q. But you never saw her use any eye-glasses or spectacles?

A. No, sir.

Q. You have told us about the horses; will you tell us if you are sure of the name of the man who brought them back?

A. I think it was Mr. David Barry.

Q. Then somebody brought them back?

A. Yes, sir.

Q. Were those the same horses that Mrs. Surratt and John and Mrs. Slater went away with?

A. I did not see the horses when Mr. Barry returned them.

Q. What were the horses that were brought back that you told about?

A. Mr. Barry came and said he returned the carriage Mrs. Surratt had.

Q. Do you remember when that was?  
 A. I do not.  
 A. Do you remember whether John's note accompanied them, dated March 26, that we put in evidence?  
 A. I do not remember any note. There might have been one, but I do not remember seeing it.  
 Q. You saw Colonel Smith at the house the night of the arrest?  
 A. Yes, sir.  
 Q. And Colonel Morgan?  
 A. I do not remember any name but Colonel Smith's.  
 Q. Did you see Captain Wermerskirch?  
 A. I do not remember.  
 Q. Or Mr. Morgan, who was on the stand?  
 A. I do not remember.  
 Q. Was Mr. Weichmann there the night you were arrested?  
 A. No, sir.  
 Q. Who was there that night besides Colonel Smith?  
 A. I do not remember any of them by name.  
 Q. There were more persons there, were there not?  
 A. Yes, sir; I remember there were many more.  
 Q. Was Colonel Morgan one?  
 A. I do not remember any of the names, except Mr. Smith's.  
 Q. Have you read Captain Wermerskirch's testimony or that of Colonel Morgan, or heard it read?  
 A. I do not remember; I have read all the evidence, but I do not remember the names.  
 Q. Did you notice the evidence of Colonel Smith, Colonel Morgan, and Captain Wermerskirch in relation to what was said by Mrs. Surratt at the time of the arrest about Booth having been there an hour before; did you read what all these gentlemen said?  
 A. I read it, but I do not remember it.  
 Mr. BRADLEY. The gentleman asks if she read what they said about Booth's having been there an hour before. I object to the form of the question; it assumes that there was such evidence.  
 Mr. PIERREPONT. As what?  
 Mr. BRADLEY. As to their having testified any thing in relation to Booth's having been there an hour before; they had not testified it on this trial.  
 Mr. PIERREPONT. Some one did.  
 Mr. BRADLEY. That is another matter. The question assumes that those witnesses have testified somewhere else in that way.  
 Mr. PIERREPONT. I thought it was the question you just asked about.  
 Mr. BRADLEY. It was not.  
 Mr. PIERREPONT. "That man" was the language. Is that the difference?  
 Mr. BRADLEY. The question was whether she had read the testimony of those witnesses in regard to what Mrs. Surratt or anybody else said about—  
 Mr. PIERREPONT. "That man." That is the question.  
 Mr. BRADLEY. It assumes that those witnesses have testified somewhere or other about such a thing, and there is no evidence that they have, and there is nothing in relation to it, nor are we aware there was any such testimony given by them.  
 Mr. PIERREPONT. I thought the last question you put was on that point.  
 Mr. BRADLEY. It had nothing on earth to do with Captain Smith, Colonel Morgan, and Mr. Wermerskirch or anybody else, except Mr. Louis J. Weichmann whether this was said in Mr. Weichmann's presence.  
 By Mr. PIERREPONT:  
 Q. On the night you were arrested, how many men did you see there besides Colonel Smith?  
 A. I cannot remember; but I know there was a great number of them.  
 Q. Did you hear any of the expressions that you have been asked about made by anybody at that time?  
 Mr. MERRICK. I object to the question.  
 Mr. BRADLEY. I am not aware that she has been

asked any question about expressions used on the night of the arrest. She has been asked whether she identified Wood, and that is all she has been asked about it.  
 Mr. MERRICK. And I asked her if Mrs. Surratt whispered to Anna, and that is all I asked about expressions that night.  
 Mr. PIERREPONT. Well, I will ask, Did Mrs. Surratt whisper to Anna?  
 A. I do not remember her whispering to Miss Surratt.  
 Q. Do you know whether she did or not?  
 A. I was in the parlor and do not remember her doing it.  
 Q. Were you out in the hall when Mrs. Surratt passed by the officer at the door—Colonel Morgan or any officer?  
 A. Mrs. Surratt, Miss Jenkins, Miss Anna Surratt, and myself all passed out together.  
 Q. Did you hear Mrs. Surratt say any thing to Colonel Morgan?  
 A. No, sir.  
 Q. Did you hear her say any thing to the officer there?  
 A. No, sir; I do not remember her speaking at all.  
 Q. You did not hear any thing?  
 A. No, sir.  
 Q. What time did you go to bed on the night of the murder of the President?  
 A. I think it was ten o'clock when I retired.  
 Q. Who went to bed first, you or Mrs. Surratt?  
 A. I retired before Mrs. Surratt.  
 Q. How long before, or had you got asleep before she came?  
 A. I do not remember when Mrs. Surratt came to bed that night.  
 Q. Did you go to sleep pretty soon after you retired?  
 A. Yes, sir.  
 Q. You do not know who came into the house after you got to sleep that night until you got up again, do you?  
 A. I do not remember of anybody coming in.  
 Q. You do not know of anybody that came in while you were asleep?  
 A. No, sir; I do not remember whether anybody came there or not?  
 Q. Persons might have come in without your knowing it, and you could not remember if you were asleep, could you?  
 A. No, sir; I do not think so.  
 Q. You say John Surratt was there on the night of the 3d of April? Did he come from Richmond then?  
 A. Yes, sir; I heard so.  
 Q. What time did he come home?  
 A. I think it was between eight and nine o'clock that Mr. Surratt came.  
 Q. What day of the week was it?  
 A. On a Monday.  
 Q. Who was in the room when he came in?  
 A. Miss Jenkins, Mrs. Surratt, Miss Anna Surratt, Mr. Weichmann, and myself.  
 Q. What room were you in?  
 A. In the parlor.  
 Q. When did he get his supper?  
 A. I do not know the exact time Mr. Surratt got his supper.  
 Q. You went down to order it, did you?  
 A. Yes, sir.  
 Q. Whom did you go down to order it from?  
 A. I went down and gave out the tea to the girl to get supper.  
 Q. To whom?  
 A. To the servant, Ann.  
 Q. Susan Ann Jackson, do you mean?  
 A. Yes, sir.  
 Q. Did she make the tea?  
 A. Yes, sir.  
 Q. You were there?  
 A. Yes, sir.  
 Q. Did you stay to see her make it?

A. I did not stay in the kitchen, but in the dining-room.

Q. How soon did she bring it in?

A. She did not bring it in until Mr. Surratt and Mrs. Surratt came down to tea.

Q. How long was that after you came down?

A. Only a few minutes.

Q. Did she bring any thing else in?

A. No, sir; I do not remember any thing else.

Q. Nothing but some tea?

A. No, sir.

Q. Did you stay there during all the time?

A. Yes, sir.

Q. How long did you stay?

A. I suppose about fifteen minutes. I had been in the dining-room.

Q. Who went out of the dining-room first?

A. I went out of the dining-room and went to the parlor.

Q. Whom did you leave in the dining-room?

A. Mr. Surratt and Mrs. Surratt.

Q. And there you heard something said about John looking like Anna?

A. Yes, sir.

Q. Who said that?

A. Mrs. Surratt.

Q. Was any food brought in at all?

A. No, sir; I do not remember the bringing of any thing but the tea in. I set the table.

Q. What did you set upon the table?

A. I placed some bread and butter and ham there.

Q. Did Mrs. Surratt partake of the supper with him?

A. Yes, sir; she sat down at the table with him.

Q. Did you partake of the supper with them?

A. No, sir; I had my supper before.

Q. Mrs. Surratt had not had hers?

A. No, sir.

Q. And she ate with him, but you did not?

A. I do not remember whether she ate with me or not. I remained there a few minutes.

Q. I asked if she ate with him, not with you?

A. Yes, sir.

Q. Did you hear any thing said about any clothes at any time?

A. No, sir; I do not remember hearing of that.

Q. When did you next see John?

A. The next time I saw him was when I was called down there as a witness for the prosecution.

Q. Recently?

A. Yes, sir.

Q. After you saw him at the supper table, on the night of the 3d of April, you never saw him again until you saw him here?

A. No, sir; I never did.

Q. You do not know where he went; you did not see him anywhere else?

A. No, sir.

Mr. PIERREPONT. If you did not see him, that is all on that point.

Mr. MERRICK. If she saw letters from him at any place, I suppose that would be proper to be stated.

Mr. PIERREPONT. I have not asked on that subject; perhaps I shall. (To the witness.) You say you never saw him anywhere else?

A. No.

Q. Did you not see him up in the parlor after that?

A. No, sir.

Q. Did you not see him in the dining-room after that?

A. Mrs. Surratt came up after tea—

Mr. PIERREPONT. My question is, Did you see him in the dining-room after that?

A. No, sir.

Mr. BRADLEY. Now, if the witness wants to explain, she can go on and explain what she was going to say.

Mr. PIERREPONT. She cannot explain any thing about Mrs. Surratt. My sole question was, Did she see

John Surratt in the dining room after that, and she says no.

Judge FISHER. Go on with the examination.

By Mr. PIERREPONT:

Q. Did you that night go to bed or did you go to the theatre early?

The WITNESS. What night?

Mr. PIERREPONT. This Monday night.

A. I did not go to the theatre on the 3d of April.

Q. Where did you go after you went from the dining-room and the supper?

A. I went up into the parlor.

Q. Whom did you find there?

A. Miss Jenkins, Miss Surratt, and Mr. Weichmann.

Q. Mr. Weichmann was there?

A. Yes, sir.

Q. Did John Surratt go into the parlor?

A. No, sir.

Q. If he had gone in you would have seen him, would you not?

A. I saw him in the back parlor.

Q. Did you see him in the back parlor after he was in the dining-room?

A. Yes, sir.

Q. Then you did see him in the back parlor after he was in the dining-room?

A. Yes, sir.

Q. Whom did you see him with in the back parlor?

A. I was in the parlor, and Mrs. Surratt called me out and told me that John had a bad headache, and asked me if I had not some cologne I could give him.

Q. Did you see him anywhere else than in the back parlor after that day?

A. No, sir.

Q. You never saw him since until you saw him here?

A. No, sir.

Q. What time of night was it that you saw him in the back parlor, and which you say was the last time you saw him?

A. I do not know, but I suppose nine or half-past nine o'clock.

Q. Who else was in the back parlor with him?

A. Mrs. Surratt.

Q. Anybody else?

A. No, sir.

Q. Was Mr. Weichmann then in the front parlor?

A. Yes, sir.

Q. Were the doors open?

A. No, sir.

Q. Were they closed?

A. Yes, sir.

Q. On the night of the murder you say you went to bed and to sleep. Do you remember what time you were awakened in the morning?

A. I think it was about two or half-past two o'clock.

Q. And you were awakened by the door-bell ringing?

A. Yes, sir.

Q. Did anybody come to Mrs. Surratt's door?

A. Mr. Weichmann came there and rapped.

By Mr. CARRINGTON:

Q. When you were examined before, did you state that Miss Anna Surratt was with Mrs. Surratt when she went into the Herndon House?

A. No, sir; I did not state that, but I remembered it afterwards—after I left the stand.

Q. Was she with you at church that day?

A. Yes, sir.

Q. You recollect that?

A. Yes, sir; I remember it.

Q. Who composed the company at that time that were with you?

A. Mr. Weichmann, Miss Jenkins, Miss Anna Surratt, Mrs. Surratt, and myself were there.

Q. How long did you wait for them?

A. We only waited a few minutes; we walked up

the street a little way and turned, and Mrs. Surratt and her daughter again joined us.

Q. Did neither one of them say what they were going there for?

A. No, sir; I never heard them mention it.

Q. Did they say any thing about it after they came out or at any time?

A. No, sir; I never heard it mentioned what they went there for.

By Mr. MERRICK:

Q. You have spoken of Mrs. Surratt's defective eyesight; please tell the jury whether she was in the habit of reading or sewing by gas-light.

A. No, sir; I never saw Mrs. Surratt read or sew after gas-light.

Q. Did she give any reason for not reading or sewing by gas-light?

A. She said her sight was not very strong.

Q. Do you recollect her receiving a letter from John Surratt on Friday, the day of the assassination?

Mr. PIERREPONT. You need not answer that question.

Mr. MERRICK. I ask the fact, if she received a letter on that day, not the contents.

Mr. PIERREPONT. This witness does not know it was from John Surratt, unless she knows it from the contents.

Mr. BRADLEY. She can tell whether it had his signature or not.

Mr. PIERREPONT. No, she cannot.

Mr. BRADLEY. The court will say.

Judge FISHER. Has any thing been asked about that in the cross-examination?

Mr. PIERREPONT. No.

Mr. BRADLEY. Not a word; but the gentleman asked if she knew where he was after the 3d of April.

Mr. PIERREPONT. No; I asked if she ever saw him after the 3d of April.

Mr. MERRICK. The gentleman said that perhaps he would ask about the letter.

Mr. PIERREPONT. If the gentleman will say on his professional honor that he thinks I did say any thing about the letter, I will not object.

Mr. MERRICK. I think you replied to Mr. BRADLEY that you would probably ask about the letter.

Mr. PIERREPONT. If you will state to the jury that you think I asked a word about a letter, I will withdraw the objection.

Mr. MERRICK. No, I know you did not ask about it, but you merely said you would.

Judge FISHER. It amounts to this: she did not see him anywhere else and does not know where he went. If she knows where he went of her own knowledge, she can tell.

Mr. PIERREPONT. I have no objection to that.

By Mr. MERRICK:

Q. Do you know by letters from him, or your own observation, where he went?

Mr. PIERREPONT. That will not do.

Judge FISHER. Certainly not. What he said in his letter would be just the same as what he said *ore tenus*.

Mr. BRADLEY. We want to know whether a letter was received from him with a post-mark on it, and what that post-mark was.

Mr. PIERREPONT. We object to that. That would not be evidence.

Judge FISHER. That is hearsay. Whatever you get by letter is as much hearsay as what you get from the lips of an individual.

Mr. BRADLEY. We offer nothing of the contents?

Mr. MERRICK. It is settled in England that a letter may be produced in evidence bearing a date and a post-mark.

Judge FISHER. But you have not produced any letter.

Mr. MERRICK. I know that; but I am merely

saying that that is the rule there, and I can prove that a letter was received, and then I may follow it, possibly, by the production of the letter when I find it.

Judge FISHER. You cannot state about that letter any more than about what somebody else said that John Surratt said to him. You have not given any proof of handwriting and you do not produce any letter at all.

Mr. BRADLEY. Let it pass, but we note an exception.

CHARLES B. STEWART,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. At Elmira, New York.

Q. What is your business or occupation?

A. Merchant tailor; I am in the clothing business.

Q. Where were you residing and in what business were you engaged in April, 1865?

A. The same.

Q. At the same place?

A. My place of business is not the same, but it is on the same street.

Q. When you say you kept a clothing-store, do you embrace hats, and so on?

A. I do.

Q. Where were you engaged in April, 1865?

A. In the same town, and on the same street, but in a different store, in the same business.

Q. State whether your store was all one room, or whether you had more than one room?

A. There were two stores connected together.

Q. Did you carry on the same business in both?

A. We had separate departments—one for hats, caps, boots and shoes, and furs; and the other merchant tailor, clothing, and gentlemen's furnishing.

Q. State to the court and jury where your store was in April, 1865?

A. At Nos. 20 and 22 Lake street, Elmira, New York.

Q. Were you in the store during the day of the 14th of April, 1865?

A. I was.

Q. Do you recollect a gentleman coming in to speak about getting a suit of clothes there, with any thing remarkable in his dress, on that day?

A. The 13th or 14th I do.

Mr. PIERREPONT. Which?

A. I cannot say which—one or the other.

Mr. BRADLEY. Describe as well as you can his dress. Was there any peculiarity in his dress? Was it novel to you or not?

A. It was a style of coat which I have never seen before or since, until to-day. It was the cut and make of it that attracted my attention.

Q. Do you remember the color?

A. It was a gray-mixed tweed, of foreign manufacture.

Q. You have said it was a peculiar coat. Describe as well as you can what peculiarity there was about it.

A. It was what we call skeleton-cut—that is, made without lining—and it was plaited down the front, cut full, and plaited and gathered at the waist with a belt; a style which I have been informed is in use in Canada, but I had never seen it before, and never have since.

Q. How long did that person remain in the store?

A. I should say I saw him twice, as I stepped from one store into the other. I should say it was fifteen or twenty minutes.

Q. Was your attention, or not, particularly attracted to him?

A. It was.

Q. Do you recollect his appearance, face, and manner?

A. I do.

Q. Did you hear his voice and conversation? Without speaking to him yourself, did you hear him in conversation with anybody?

A. I did.

Q. Have you seen that person since?

A. I have, I think.

Q. When and where have you seen him since?

A. To-day in jail, and in this place.

Q. [The prisoner standing up.] Is this the man?

A. I believe that to be the man.

Cross-examined by Mr. PIERREPONT:

Q. You have not much doubt about this being the man?

A. I have not.

Q. Now, tell us what day of the month it was?

A. It was either the 13th or the 14th.

Q. Which?

A. I cannot say.

Q. Can you not tell which?

A. I cannot tell which.

Q. Why can you not fix the day?

A. Because it was while my partner was in New York purchasing goods. He was gone but two days, and which of the two days it was I do not know.

Q. It was one of those two days?

A. Yes, sir.

Q. You are very sure it was while your partner was gone?

A. I am.

Q. And you know that he was gone on the 13th and 14th?

A. I tell that from my books.

Q. And from your books you form that judgment?

A. I do.

Q. That it was the 13th or 14th?

A. Yes, sir.

Q. Did he get back on the 14th?

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

Q. Did he come in the night?

A. He came through from New York in the night.

By Mr. BRADLEY:

Q. You say you fix it by your partner being absent at the time. State, if you please, whether any thing passed in your hearing with reference to your partner's being out of town?

Mr. PIERREPONT. That you cannot state.

Mr. BRADLEY. Why not?

Mr. PIERREPONT. Because it is not good evidence.

Judge FISHER. Conversations in relation to his partner being out of town?

Mr. BRADLEY. Suppose I show that the person who came in there to get measured for a suit of clothes was answered, "You had better wait until Mr. Ufford returns, for he will bring a better assortment of cloth," and he hears the voice and identifies the party, and fixes that fact as a reason by which he can remember the date?

Mr. PIERREPONT. My objection is that he is not to reason about it. He is to give facts, not reasons. He says it was the 13th or 14th. We do not object to that. We believe all that. We have not any doubt about it.

Judge FISHER. I do not see how you can give any conversations in relation to that matter.

By Mr. MERRICK:

Q. What time of day was this?

A. It was after my return from dinner.

Q. What time did you dine?

A. At twelve o'clock, a good country hour.

Q. Then it was after twelve o'clock on the 13th or 14th that you saw this man?

A. Yes, sir.

Judge FISHER. How long does it take to go from Elmira to New York?

A. The train runs in about twelve hours.

JOHN CASS,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside, and what is your occupation?

A. I reside in Elmira, New York. I am at present assessor of the city.

Q. Where were you residing in April, 1865?

A. I resided in Elmira, and kept a clothing-store at the corner of Water and Baldwin streets.

Q. Do you remember any particular incident which occurred on the morning of the 15th of April, after the news of the assassination of the President was received in Elmira?

A. That morning I got the morning paper about half-past seven o'clock, or between seven and seven and-a-half, containing the news of the assassination. I read the paper and stayed at home probably a little longer than I should have done under other circumstances, and got down to the store at probably eight or eight and-a-half o'clock. My store was directly opposite the telegraph office. When I got to the store, I went over to the telegraph office to inquire the news. The operator was a personal friend of mine. He told me they had received no news since the news of the assassination, and when they did receive news he would let me know at once. I stayed around sometime with friends. Sometime after nine o'clock the news came of the death of President Lincoln. I walked over from the telegraph office, which was directly opposite my side door, into the store and told the clerks to close the store.

Q. Was there a public order issued by the mayor that early in the morning requesting the stores to be closed?

A. No, sir; because we had received no news of the death before that time. I went back and told the boys to close the store immediately. I went down the store to the front door, and stood in the door. By that time the operator had put a bulletin out on the door, and I noticed a gentleman coming across the street, who I thought from his dress was a friend of mine from Canada. That was my first idea. As he came across the street I saw it was not, and I turned back into the store. I had got in the store probably ten feet, not more than that, when this party turned into the store, and he asked for some white shirts. He asked me for a particular description of white shirts; I have forgotten the name of the shirts he asked for, but some particular known maker of shirts, whose shirts I had not got. I told him I did not keep that description of shirts, but I had some good white shirts. I took down the shirts I had, and showed them to the party. He told me he would rather have the make he had been accustomed to wear. At that time I made a remark that I had received some very bad news that morning, the death of President Lincoln. The party made an answer to my remark, which I thought at first was a little disrespectful to President Lincoln, and I straightened up and felt rather incensed, but at the conclusion he disabused my mind of the idea that he meant any disrespect. My idea was that he was a Canadian, and had no sympathy with us.

Q. What was the remark?

A. I do not remember the remark, but I remember the feeling I had at the remark.

Q. But the explanation satisfied you?

A. Yes, that he meant no disrespect. I thought at the same time that he was a Canadian, who had no sympathy with us and did not feel as we felt about the matter.

Q. Can you describe his dress?

A. He had on a darkish gray or kind of mixed blouse, I would call it, plaited with a belt around the waist. That was the first thing that caused my attention to be drawn to him.

Q. Have you ever seen that man since?

A. I have.

Q. Where have you seen him?

A. I saw him in the jail down here.

Q. [The prisoner standing up.] Look at this man and say whether he is the man or not?

A. That is the man I saw there.

By Mr. ALEXANDER, a juror:  
 Q. Was this the morning of the 15th of April?  
 A. Yes, while we were closing the store on receiving the news.  
 Cross-examined by Mr. PIERREPONT.  
 Q. How did you get the first news of the assassination?  
 A. The first news I got at home in the morning paper.  
 Q. What paper?  
 A. The *Elmira Advertiser*.  
 Q. What time did you see the *Elmira Advertiser*?  
 A. About seven or half-past seven that morning.  
 Q. In the *Elmira Advertiser*, between seven and seven and a-half in the morning, you received that news?  
 A. Yes, sir.  
 Q. On the 15th?  
 A. Yes, sir; on the Saturday morning after the assassination. I do not remember the date exactly.  
 Q. It was the morning next after the assassination, whatever the date was?  
 A. Yes, sir.  
 Q. And you think it was the 15th?  
 A. Yes, sir.  
 Q. That was the first you heard of it?  
 A. Yes, sir.  
 Q. What did you then do when you heard of it?  
 A. I went into my dining-room or breakfast-room, and sat down with my family and read the news and felt very bad about it.  
 Q. When did you go to the telegraph office?  
 A. It must have been between eight and eight and a-half.  
 Q. Who did you see there?  
 A. Mr. Palmer.  
 Q. Did you get any more news?  
 A. Not at that time; no other news had come.  
 Q. When did you see this man crossing the street who looked like a Canadian?  
 A. I should say it was between the hours of nine and ten, probably half-past nine.  
 Q. Was he dusty or was he clean?  
 A. Clean.  
 Q. What had he on his head?  
 A. A hat of some kind.  
 Q. What kind?  
 A. I cannot tell you. I did not notice particularly.  
 Q. What kind of trowsers did he wear?  
 A. A lightish kind of trowsers; I should say a shade of drab.  
 Q. Was there any thing peculiar in that?  
 A. No, sir; not that I know of. I do not remember noticing his dress particularly, except the blouse.  
 Q. Was there any thing peculiar in his hat?  
 A. Not that I am aware of.  
 Q. What kind of beard had he?  
 A. He had a goatee coming from the side of his lip around.  
 Q. Pretty long?  
 A. No, sir; short.  
 Q. A goatee coming down in front, below the lip, you say?  
 A. Yes, sir.  
 Q. Any thing else?  
 A. I did not notice.  
 Q. Any side-whiskers?  
 A. No, sir.  
 Q. You are very sure he had a goatee coming around under the lip?  
 A. Yes, sir.  
 Q. Have you any doubt of that?  
 A. No, sir; that is my impression.  
 Q. Had he a moustache the same as he has now?  
 A. No, sir; I think not.  
 Q. What color was the goatee?  
 A. Rather darkish—darkish-brown, I should say.  
 Q. Was it the same color as it is now?  
 A. My impression is that it was rather darker than it is now.

Q. Did you think it was dyed.  
 A. I did not look at him enough to make any remarks on that.  
 Q. Look at it now and tell us whether it is the same color he has now?  
 A. I think it was darker.  
 Q. Do you think it was an unnatural color.  
 A. No, sir; I did not think it was an unnatural color.  
 Q. He has a moustache now, has he not?  
 A. Yes, sir.  
 Q. And that he did not have then?  
 A. Not that I noticed.  
 Q. How was his hair then?  
 A. I cannot tell you.  
 Q. Do you know Colonel Foster?  
 A. No, sir; I do not.  
 Q. Have you not been here before?  
 A. Yes, sir; I was here before.  
 Q. Did you talk to Colonel Foster on this subject?  
 If you do not know him by that name we will show him to you. Did you talk with a gentleman here on this subject when you were here before?  
 A. No, sir.  
 Q. Did you talk with anybody on the subject?  
 A. I talked with Mr. BRADLEY and Mr. MERRICK in the office here.  
 Q. Anybody else?  
 A. Not that I recollect of now.  
 Q. Did not Colonel Foster see you at Elmira?  
 A. I saw a gentleman on the train who told me he was Colonel Foster, but I was not introduced to him, and I think I should not be able to recognize him.  
 Q. You saw that man?  
 A. Yes, sir.  
 Q. Did you talk to that man here when you were here before?  
 A. No, sir.  
 Q. Is there any other John Cass that you know?  
 A. Not that I know.  
 Q. If you did not talk with Colonel Foster, did you talk with any other man on this subject except those you have named?  
 A. No, sir; except the parties who came with me from Elmira; we talked, as a matter of course.  
 Q. Who came with you?  
 A. Mr. Atkinson, Mr. Carroll, and myself.  
 Q. Nobody else?  
 A. Yes; a gentleman from Canandaigua; I do not remember his name.  
 Mr. BRADLEY. Failing?  
 The WITNESS. I think that was the name.  
 By Mr. PIERREPONT:  
 Q. When were you here last before?  
 A. I think it is three weeks ago to-day.  
 Q. At that time, about three weeks ago, did you not go over to the jail?  
 A. Yes, sir.  
 Q. Did you see the prisoner then?  
 A. Yes, sir.  
 Q. Did you not have any conversation at all about that subject with Colonel Foster after you had been to the jail?  
 A. No, sir.  
 Q. Did you go with Mr. Knapp from your place?  
 A. No, sir.  
 Q. Do you know him?  
 A. Very well.  
 Q. Did you have any conversation with him?  
 A. No, sir.  
 Q. Did you have any conversation with him in Elmira about it?  
 A. We spoke about coming here, but I had no particular conversation about the matter.  
 Q. Did you state to him that you had been to the jail, and that you did not recognize the man?  
 A. I did not.  
 Q. Did you say any thing to him about it?

A. No, sir.  
 Q. Did you say any thing to Colonel Foster about it?  
 A. I do not know Colonel Foster.  
 Q. The man that was pointed out to you on the train as Colonel Foster?  
 A. I do not know that I ever saw him before he was pointed out to me. I do not know that I should know him if I saw him now.  
 Q. Then you never talked to him on the subject?  
 A. No, sir.  
 Q. Do you know the gentleman sitting at my right?  
 [Mr. WILSON.]  
 A. No, sir.  
 Q. Did you talk with him across the street, over here, near his office?  
 A. No, sir.  
 Q. You did not say a word to him?  
 A. Not that I remember.  
 Q. At the foot of the stairs?  
 The WITNESS. When?  
 Q. Three weeks ago, or about that, when you were here?  
 A. I may probably have seen him. I saw you and spoke to you there, and I may have spoken to him at the same time.  
 Q. You did see me and speak with me?  
 A. Yes, sir.  
 Q. Did you not see this gentleman standing with me at the time?  
 A. I presume he came there while you and I were speaking.  
 Q. Did you talk to him?  
 A. Not that I know of; I believe not.  
 Q. Did you ask him any thing?  
 A. No, sir.  
 Q. Did you not tell him what you knew and what you did not know?  
 A. No, sir.  
 Q. Did you ask Mr. WILSON, or this gentleman sitting here, if you could not go home?  
 A. No, sir; he had nothing to do with it.  
 Q. Did you tell him that you knew nothing about this prisoner?  
 A. No, sir; I did not.  
 Q. Nothing of the kind.  
 A. Nothing of the kind.  
 Q. Did you say any thing to him about the case at all?  
 A. Not that I know of; I do not think the case was spoken of. I do not remember speaking to him, but I remember speaking to you.  
 Q. Was Mr. Knapp present?  
 A. Mr. Knapp was present and introduced me to you, and I said I knew you from having seen you in Elmira four years ago.  
 Q. Did you say any thing, in Mr. Knapp's presence, to Mr. Wilson in reference to the case?  
 A. No, sir; I did not mention the case at all.  
 Q. Did you here or elsewhere say to Mr. Knapp that you did not know any thing about this prisoner?  
 A. No, sir.  
 Q. Did you not ask Mr. WILSON, in the presence of Mr. Knapp, if he did not think you could go home; that you knew nothing about it?  
 A. No, sir; I had no reason to do that.  
 Q. I am not asking the reason; but is not that the fact?  
 A. No, sir.  
 Q. Did you stand across the street at the foot of the stairs with this gentleman and Mr. Knapp?  
 A. I do not think I did. I do not remember doing it.  
 Q. Do you know where the district attorney's office is?  
 A. No, sir.  
 Q. Have you been across the street anywhere?  
 A. I have been in Mr. Bradley's office on the corner.  
 Q. Near the corner did you not see Mr. Knapp there, with this gentleman? [Mr. WILSON.]  
 A. I do not remember. I remember that Mr. Knapp

was going to introduce me to you, and we walked a little farther from the corner, and several parties came up and called your attention, and I left. That was a little farther than the corner.

Q. Was this gentleman the gentleman?  
 A. I do not remember. I cannot tell you.  
 Q. Did you talk with him any?  
 A. No, sir.  
 Q. And did not tell him any thing or ask him any thing?  
 A. No, sir.

By Mr. MERRICK:

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

A. I cannot tell whether it was before or after.  
 Q. What time of day was it that you saw Judge PIERREPONT; do you recollect?

A. No, sir. I think now it was after the adjournment of the court in the afternoon, but I am not positive.

Q. Did you leave for home that evening?  
 A. I did not leave until the next morning.  
 Q. You talked to the man who came into your place in Elmira to buy the shirts?

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

Q. You had some little conversation?  
 A. Nothing but business until I made a remark about the assassination.

Q. You have talked to the prisoner in the jail?  
 A. I have.

Q. There are various modes of recognizing individuals, one by the moustache, one by his general action and talk, and so on; tell us what is the basis of your opinion that this is the man you saw in your store.

A. The minute I saw him I recognized him as the man that was in my store; before I got near him I saw at once that he was the man.

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

A. I did, and a similarity in his speech, from which I supposed he was a Canadian at the time I sold him the shirts.

Q. I understand that you recognized him the minute you saw him, and, after talking to him, you again recognized the voice and action and the tone?  
 A. I did.

By Mr. BRADLEY:

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

A. Oh, yes; I saw Mr. Miller—saw him in the afternoon at the hotel.

Q. Did you see him when you were talking with Judge PIERREPONT and this gentleman came up?

A. No, sir; I did not see that gentleman come up that I remember.

By Mr. CARRINGTON:

Q. Was that the only time you ever saw the prisoner?  
 A. The first time I saw him was in my store; the second time was in jail.

Q. How long did your conversation with him in Elmira continue?

A. Probably from five to ten minutes; it did not exceed ten minutes; probably not as much as that.

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

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

By Mr. PIERREPONT:

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

A. I had had a friend of mine from Canada the fall before who wore a similar kind of coat.

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

A. Yes; From the tone of voice I thought he talked different from our country people.

By Mr. MERRICK:

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

A. I do.

FRANK H. ATKINSON,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. At Elmira, in the state of New York.

Q. Do you hold any office or position there?

A. I have the honor of being an alderman of the city of Elmira.

Q. What is your business?

A. My principal business is book-keeper for the house of Stewart & Ufford, in Elmira. Mr. Stewart has been on the stand, I believe.

Q. Where were you occupied in April, 1865?

A. In the same house, though not in the same building. Our store was burned down last winter. In April, 1865, we were on Lake street, Nos. 20 and 22.

Q. Do you recollect any thing of a gentleman coming into that store on the 13th or 14th of April, 1865, with any peculiar dress on?

A. I do.

Q. Give us a general idea of the dress; the peculiarity of the dress.

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

Q. What color, do you remember?

A. It was some dark color, either black or gray, or perhaps it may have been a dark-blue or something of that kind; it was a dark color; I think quite a dark-gray.

Q. Did you hear any conversation between him and anybody?

A. Yes, sir.

Q. About what length of time was he there?

A. I cannot say; he was there when I went in, and probably ten minutes after I went in.

Q. With whom was he talking?

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

Q. Have you any means of fixing the date? If you have any book or any thing else to show the date, refer to it.

A. The means I have of knowing the date is this: I know that it was during the time one of the house was in New York buying goods. My means of fixing the date is from my entry on the cash-book, when he took money to go to New York, and when he got home from New York and settled his account.

Q. Now, state when he left?

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

Q. The date of his return?

A. The date of his return was the 15th of April, 1865.

Q. Have you ever seen that man since?

A. I think I have.

Q. Where did you see him?

A. I saw him in the jail above here.

Q. [The prisoner standing up at the request of Mr. BRADLEY.] Is that the same man or not?

A. I have no doubt he is the man.

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

A. I did.

Q. Was there any thing in the tone of his voice or manner which would enable you to recall him?

A. Yes, sir; more especially in his manner. I do not remember the tone of his voice so much as the

manner of the gentleman. I saw him and heard him talking. My attention was called particularly to him by his dress. It was his manner which impressed me with recognition.

Cross-examined by Mr. PIERREPONT:

Q. Open your book again and tell the jury what that book is?

A. The petty cash-book.

Q. In that cash-book do you enter all the cash that is received and paid out?

A. No, sir.

Q. What do you enter in it?

A. The fictitious accounts on our ledger, such as "merchandise," "expense," &c., and the individual accounts of the members of the firm and clerks, and money loaned and borrowed.

Q. Now, look at that book and read the entry there that relates to the absence of one of the house?

A. The date is April 12, 1865. Under the heading of "loan account," Stewart & Ufford's loan account, "D. E. Ufford, to New York, \$105."

Q. Now, on the 15th, what is the entry?

A. On the 15th is charged to "expense" account, "D. E. Ufford's expenses, &c., in New York, \$95 62."

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

A. Yes, sir.

Q. When did he leave?

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

Q. When did he get back?

A. On the morning of the 15th.

Q. Then he left on the 12th and he got back on the morning of the 15th, which was the next morning following the assassination?

A. Yes, sir.

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

A. It was either the 13th or 14th of April.

Q. Which?

A. I cannot state.

Q. Did he buy any thing?

A. I do not know that he did.

Q. Do you know whether he did or not?

A. I do not.

Q. If he did buy any thing of you, it would be entered, would it not? Would not what you sold be entered?

A. The amount of the sale would be entered, but not the individual to whom the sale was made.

Q. The sale would be entered?

A. Probably it would not be entered, but a ticket would be made up, the amount would be made out on the ticket, and go into the cash account.

By Mr. BRADLEY:

Q. But there would be nothing to identify the party to whom the sale was made?

A. Oh, no.

By Mr. PIERREPONT:

Q. The amount would appear in the cash account?

A. No, sir.

Q. In what account?

A. In our business the amount of each separate sale is put on a ticket and placed on a spindle, and the aggregate of the tickets is computed at night, and the aggregate entered on the cash-book?

Q. If one of you sold a coat on a particular day, you would have something that would go to show that you sold it, would you not?

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

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

A. No, sir.

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

A. He might possibly.

Q. There was no way of knowing?

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 77. WASHINGTON, FRIDAY, AUGUST 16, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 76.*

A. No way of knowing.  
Q. Was it the custom?  
A. I cannot say it was the custom to sell goods and put the money in the pocket.  
Q. Was it the custom to sell a coat without making any entry of the price it sold for?  
A. No, sir; the custom was, that when a person made a sale he put the amount upon a ticket and placed the ticket on a spindle, and, as I said before, the aggregate of the amount of the tickets was footed up and entered in the cash-book.  
Q. And what was done with the papers on the spindle?  
A. They were destroyed; that is, thrown into the waste-basket and burned.  
Q. And that would be the way the entries would go upon the cash-book?  
A. Yes, sir; the aggregate entry of the day would go upon the cash-book.  
Q. When did you see this man next after that day, the 12th, 13th, or 14th, or whichever it was?  
A. I think I saw him in this room.  
Q. How long ago?  
A. It was, I should judge, about three weeks ago.  
Q. Is his beard in the same condition now it was three weeks ago?  
A. I should judge it was nearly so.  
Q. Is it in the same condition now it was when you saw him at Elmira?  
A. His beard is in different shape from what I remember its being then.  
Q. Tell the jury how you saw it at Elmira?  
A. It is my impression that the goatee was not as long as it is now, and covered rather more of the surface of his chin.  
Q. There was a goatee that covered his chin at that time?  
A. Yes, sir.  
Q. You are very sure of that?  
A. Quite positive.  
Q. Were there side-whiskers then?  
A. I do not remember any side-whiskers.  
Q. Was there any moustache then?  
A. If any, a slight one.  
Q. Was there any or not?  
A. I think there was a slight moustache.  
Q. The difference between the goatee then and now is, that it covered more space then than now?  
A. I think so, and was not so long.  
Q. Do you think it was lighter or darker than now, or the same color?  
A. I should judge very nearly the same color.  
Q. No more difference than the ordinary dressing of it would make?  
A. Probably; I do not recognize any material difference in color at this time.

Q. What day of the month you saw him you are not willing to tell?

A. I cannot say whether it was the 13th or 14th; it was one of those two days.

Q. Had you ever seen him before that time?

A. Not that I know of.

Q. Now, tell us what hour of the day it was you saw him there?

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

Q. What time of day?

A. I had my lunch at that time at half-past twelve.

Q. But it was somewhere about that?

A. It was after that time. It might have been as late as two o'clock.

Q. Do you think it was?

A. I cannot say; I went to my lunch at half-past twelve, and my memory is that it was when I came into the store on my return from lunch that I saw this man there.

By Mr. BRADLEY:

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

A. I have no doubt of it.

JOSEPH CARROLL,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. At Elmira, New York.

Q. Where did you reside in April, 1865?

A. At Elmira, New York.

Q. What was your occupation at that time?

A. I am cutter in a clothing establishment, and was then.

Q. Whose clothing establishment?

A. Stewart & Ufford's.

Q. Is Mr. Stewart the gentleman who was on the stand a while ago?

A. Yes, sir.

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

A. I do.

Q. Who received him and attended to him in the store?

A. I think I did. I know I did.

Q. Describe to the court and jury the dress?

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

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

A. I do not mean gray, distinctly. I mean colored—a sort of brownish. It was a mixed color. There was a variety of colors in it.

Q. Was there any thing else peculiar about the dress besides the plaits?

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

Q. Did you ever see one before like it?

A. Not exactly like it.

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

A. I thought the gentleman was a Canadian at first.  
 Q. How was the coat fastened?  
 A. It was fastened at the neck, and at the waist with a belt.  
 Q. State whether you had any conversation with that man?  
 A. I had.  
 Q. About how long did it continue?  
 A. It might have lasted twenty minutes—there or thereabouts.  
 Q. State whether or not he came there for the purpose of getting clothes?  
 A. Yes, sir; he came there for the purpose of getting clothes. At least he spoke so.  
 Q. Do you remember whether he was measured for any clothes; and, if not, what was the reason?  
 A. He was not. We did not have the goods the gentleman inquired for.  
 Q. State whether you were in expectation of those goods and whether you said any thing to him on the subject of expecting such goods?  
 Mr. PIERREPONT. No; you need not say any thing about that.  
 Mr. BRADLEY. (To the witness.) Very well; now state whether you can fix the date with any degree of certainty.  
 A. The date was the 13th of April, the first time he came in there, and he came in on the 14th also.  
 Q. He came in twice, then?  
 A. Yes, sir.  
 Q. How do you fix that it was those two days?  
 A. I fix it by our petty cash-book.  
 Q. And what circumstance there—what fact is there in the cash book which enables you to fix the date?  
 A. Mr. Ufford, one of the proprietors of the house, went to New York on the night of the 12th, and returned on the morning of the 15th.  
 Q. You fix it by that?  
 A. By that.  
 Q. Between those two dates?  
 A. Between those two dates.  
 Q. The 13th and the 14th.  
 A. Yes, sir.  
 Q. Did you ever see that man afterwards?  
 A. I did.  
 Q. Now, state when and where you saw him first after that?  
 A. I saw him in the jail here.  
 Q. Did you have any conversation with him?  
 A. Some.  
 Q. [The prisoner standing up.] Is that the man?  
 A. That is the man.  
 Cross-examined by Mr. PIERREPONT:  
 Q. How long have you lived in this country, or have you always lived here?  
 A. Twenty-eight years.  
 Q. What country did you come from?  
 A. I was born in St. John's, Newfoundland.  
 Q. When you came to this country, to what place did you first go?  
 A. Boston, Massachusetts.  
 Q. How long did you stay there?  
 A. I stayed there up to thirteen years ago.  
 Q. And then where did you go to?  
 A. To Elmira, New York.  
 Q. Have you been there since?  
 A. I have been there since.  
 Q. How long have you been cutter in this tailor-shop?  
 A. Thirteen years the 5th of last March past.  
 Q. Did you sell this man who came in there that day any thing?  
 A. I did not.  
 Q. You did not sell him any thing at all?  
 A. Not any thing that I remember.  
 Q. Did you think he was a tailor, or tell anybody that you thought so?

A. No, sir.  
 Q. Did you ever have any conversation with any one in which you said that you thought the man you saw there was a tailor?  
 A. I never did.  
 Q. Do you know an officer in your place named Knapp?  
 A. I do.  
 Q. Did you talk with him about it?  
 A. He came into the store one day, and I think we spoke somewhat on the subject; I know I did.  
 Q. Do you remember what you told Knapp?  
 A. He spoke to me something about it, saying that if I was going to Washington he would like to go when I did. He asked me if I knew any thing about the matter. I remember speaking to him something about it. I do not remember distinctly the amount of words we used at that time.  
 Q. At any time do you remember telling him about thinking that the man was a tailor?  
 A. I never did; I never thought the man was a tailor.  
 Q. Did you give him any reason why you talked with him?  
 A. I spoke to him about his dress; it was a sort of dress that was rather remarkable.  
 Q. Did you tell Mr. Knapp so?  
 A. I do not remember whether I did or not.  
 Q. Do you know Major Field of your place who keeps a hotel?  
 A. I do.  
 Q. Have you talked with him about it?  
 A. I think it would be but very little; I do not remember that I spoke but very little about it?  
 Q. Have you told him on what day you saw the man there?  
 A. I fixed my dates from the time Mr. Ufford went to New York and his return.  
 Q. Did you tell Major Field on what day you saw him there?  
 A. I do not remember; I think I did not.  
 Q. Did you tell Mr. Knapp on what day you saw him there?  
 A. At that time I was not quite certain until I saw our books. I knew by our books.  
 Q. My question is, Did you tell Mr. Knapp on what day you saw him?  
 A. I do not distinctly remember.  
 Q. Did you tell Mr. Knapp that you knew on what day you saw him from the fact of knowing from the books on what day one of the partners was in New York?  
 A. It may be that I did not know at that time.  
 Q. I ask, Did you tell him that you did know the date from that fact?  
 A. I knew the date that Mr. Ufford went to New York, and of course I could not have taken it from any other date.  
 Q. Did you tell Mr. Knapp so?  
 A. I think I did not.  
 Q. Did you not tell Mr. Knapp it was on the 13th or the 12th?  
 A. It may be; but I knew very well from the books what the dates were.  
 Q. Did you not tell Mr. Knapp that it was the 13th, and that you knew it from the fact of the time a partner of the house was absent?  
 A. I knew the dates.  
 Q. I am asking now whether you did not tell Mr. Knapp what I have stated.  
 A. I do not know that I understand you.  
 Q. Did you tell Mr. Knapp that it was the 13th?  
 A. Mr. Ufford went to New York on the evening of the 12th.  
 Q. Did you not tell Mr. Knapp that the time you saw the man was on the 13th?  
 A. I do not know that; I remember distinctly—  
 Q. Do you not remember whether you did or did not?  
 A. As far as that is concerned, I knew very well the

date Mr. Ufford went to New York and the date of his return; it was between those dates that this man was in the store.

Q. What date did you tell the deputy marshal and Mr. Knapp that he was in your store?

A. After consulting the books, I could not have told any thing other than within the time that Mr. Ufford went to New York.

Q. What date did you tell Mr. Knapp and the deputy marshal was the date that he was in the store?

A. I could not have told him any other date?

Q. Did you tell him the date?

A. I do not know; but I could not have told him any other date than what the books showed.

Judge FISHER. (To the witness.) The question is, what you told Mr. Knapp and the deputy marshal.

Mr. PIERREPONT. Did you tell Deputy Marshal Covell any thing about it?

A. He spoke to me about saying that I had said to Mr. Knapp that it was the 12th.

Q. What did you tell him?

A. I told him I could have fixed no date other than the date on our books.

Q. What date did you tell him you could not fix other than?

A. I could not have fixed any other dates than the 13th and 14th. Could I, if they were according to the books?

Q. I am not arguing with you; I am simply asking what you told him?

A. I could not have told him any other dates than these.

Q. I do not ask you whether you could or could not; I ask you what you told him about the time?

A. Do you suppose I am obliged to fix everything I said to persons without being as I am now?

Q. What is the matter with you now?

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

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

A. No, sir.

Q. Then we do not understand what you meant?

A. Then you and I are exactly alike, for I do not really understand you.

Mr. PIERREPONT. I will try to make myself understood, if I can.

The WITNESS. If you speak intelligibly I think I will understand you.

Q. I will try. Did you tell the deputy marshal any thing about the time you saw the man in the store? Do you understand that?

A. Yes, sir; I understand that. Any thing in the English language I understand.

Q. Will you answer it?

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

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

Judge FISHER. (To the witness.) You can answer the question just as easily as you can say "yes" or "no." If you recollect, give the answer; if you do not, say you do not recollect. It is not worth while to stand here and bandy words with the counsel.

Q. (By Mr. PIERREPONT.) Did you say any thing to the deputy marshal about the date at which the man came into your store?

A. I do not remember distinctly.

Q. Do you remember at all whether you did or not?

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

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

A. He told me that he supposed he would have to go to Washington; and, if so, he would like to go when

we did; it would make it pleasanter and more comfortable to come together.

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

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

Q. Did you tell him inaccurately?

A. I do not distinctly remember.

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

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

Q. Was that what you told him?

A. I cannot distinctly remember.

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

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

Q. You told some persons, did you not?

A. Yes, many persons came asking questions about the man and the matter.

Q. Did you tell Mr. Knapp at what time he came in? He is not the deputy marshal, is he?

A. No, sir.

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

A. Have I not given you the answer?

Q. You will give it again, then. I have been trying to get the answer, but I have not succeeded. I intend to ask until I do succeed, if it takes a week.

A. Very well, sir.

Q. Do you understand my question?

A. Yes; I understand any thing in the English language.

Q. The question is: Did you tell Mr. Knapp the date at which the man came into the store?

A. I do not distinctly remember.

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

A. I did not.

Q. Neither of them?

A. No, sir.

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

A. I did not.

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

A. I told them, if I spoke at all, that it was the 13th and 14th.

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

A. As I told you before, he came in the 13th and 14th, because—

Judge FISHER. But what did you tell them, if you told them any thing about it, either Mr. Knapp or Deputy Marshal Covell?

A. I do not distinctly remember.

By Mr. PIERREPONT:

Q. Do you remember telling them any thing about the date?

A. There were a good number of persons asking questions about that time.

Q. You have told us that. I am asking what you told these two gentlemen, or either of them, on the subject of the date?

A. I only fixed my date, as I told you before, by my books.

Q. You do not comprehend my question?

A. I do.

Q. Will you answer it?

A. I have, I think.

Mr. PIERREPONT. I ask the court to put the question.

Judge FISHER. The counsel asks you whether you told Deputy Marshal Covell or Mr. Knapp, when they came into your store to have this conversation about coming down to Washington any thing about the date at which the man of whom you are speaking came into your store? Did you tell either one of them on that

occasion about the date on which he first came into your store?

A. The only knowledge I have of the date would be, of course, from our books, and I could not have told otherwise.

Judge FISHER. That may be; but you can say whether or not you had that knowledge then, and whether you told them any thing about it. Did you tell them any thing about the date on which he came into your store; and, if so, what was it?

A. I do not remember distinctly.

Q. (By Mr. PIERREPONT.) Do you remember indistinctly?

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

Q. Do you know Colonel Foster?

A. I do not.

Q. Did you talk with a gentleman that you understood was Colonel Foster?

A. I did not.

Q. Did you with Mr. Roberts?

A. I did not.

Q. Did you talk with a gentleman who came into your place with Mr. Roberts?

A. No, sir.

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

A. I do not.

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

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

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

A. I do not know any persons of those names.

Q. Did you talk with two persons?

A. I do not remember.

Q. Do you not remember whether you have talked with them since this trial began?

A. No persons known by those names.

Q. Have you talked with any persons that you would know if you should see them here?

The WITNESS. Strangers?

Q. Strangers.

A. In the town I reside in I do not remember any persons bearing those names.

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

A. I do not remember any.

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

A. I do not know any thing about it?

Q. Do you remember easily persons' faces that you have talked with lately?

A. I think I do.

Mr. PIERREPONT. I will ask your honor to direct in any mode that may be necessary, that this witness may be retained here until we bring these gentlemen in the room. It seems they are not here.

Mr. BRADLEY. There is Knapp. Is he not standing in the corner?

Mr. PIERREPONT. The witness knows Knapp, but the other two he says he does not know. I desire to have Colonel Foster and Mr. Roberts present, but it seems they are not here now.

By Mr. BRADLEY:

Q. Did the parties, Knapp and Covell, understand that you had been summoned here as a witness for the defense?

A. Yes, sir.

Q. And knowing that, they came to you to talk about it?

A. They came to me and spoke about it. I do not

know whether it was knowingly or otherwise. The presumption is that it was knowingly.

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

A. Yes, sir, of course; otherwise they would not ask those questions.

Q. With that knowledge they came to you to have these conversations?

A. I cannot say that they came knowingly, but they knew it. It is a small town, and every person knows all other people's business, and of course they knew it.

Q. Have you not from time to time since you were summoned as a witness here had people come to talk about this thing?

A. Yes, sir.

Q. Did any of them represent that they came on the part of the prisoner?

A. Those gentlemen that I spoke to were for the prosecution, as I understood.

Q. These two?

A. I do not know that the marshal was; I do not know that either was. I understood that neither had any thing particularly to do, but they were summoned here, and of course I know nothing about what they were summoned for.

By Mr. PIERREPONT:

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

A. I knew they were summoned here; whether they were for the prosecution or not I did not know; of course I did not ask any such question.

Q. Have you taken any interest in this trial?

A. Not particularly.

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

A. I did not.

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

A. I did not.

Q. You did not take either side?

A. No, sir.

Q. Neither for nor against?

A. Neither; I do not know that I made an expression either way.

Q. And you did not care?

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

Q. That was the reason, was it?

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

By Mr. BRADLEY:

Q. Do you recollect my son?

A. Yes, sir.

Q. Until he called to see you last March, had you known or heard any thing about this matter?

A. I never heard a word about it.

Q. Who was with him, do you remember?

A. I did not know your son at the time; I was sent for to Mr. Robinson's office; I did not know that he was Mr. BRADLEY, or who he may have been.

Q. Is Mr. Robinson a gentleman of the highest character in the profession there?

Mr. PIERREPONT. I did not know his character had been assailed.

Mr. BRADLEY. Very well; I will not insist on the question.

By Mr. MERRICK:

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

A. It would have been impossible.

Q. And in that way it was fixed?

A. The only way I can fix it to-day is by the books.

Q. And your knowledge that the man was there during the absence of one of the partners of the house?

A. Yes, sir.

Q. When did you examine the books to ascertain that date?

A. I asked our book-keeper to see what the date was.  
Q. When was that; how long before you came on here?

A. Indeed, I cannot remember distinctly.

Q. Is it since last March?

A. Since last March, of course.

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

A. Not very long before I came the first time.

By Mr. PIERREPONT:

Q. It was a while before you came the first time that you examined the books?

A. I never examined the books. I saw the date in the books.

Q. That was examining the books, was it not?

A. I suppose it was examining.

The court took a recess until to-morrow morning at ten o'clock.

### Twenty-Ninth Day.

SATURDAY, July 13, 1867.

The court re-assembled at ten o'clock a. m.

JOSEPH CARROLL,

recalled for further cross-examination.

By Mr. PIERREPONT:

Q. Do you know Mr. Knapp?

A. I do.

Q. Do you see him here?

A. I do.

Q. Do you know Mr. Covell?

A. I do.

Q. Do you see him here?

A. Yes, sir.

Q. Do you know Mr. Roberts?

[Mr. Roberts, at the request of Mr. PIERREPONT, stood up in the court-room.]

A. I saw that man this morning. I do not know whether his name is Roberts or not.

Q. Did you ever see him before?

A. I saw him yesterday afternoon or evening.

Q. Before that?

A. I saw a man walking with Mr. Covell who it was stated was Mr. Roberts, but I did not see his face.

Q. Where?

A. At Elmira, New York.

Q. Did you talk with him?

A. No, sir.

Q. Did you talk with him anywhere?

A. I did not, I think.

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

A. Yes, sir.

Q. When?

A. It was before we came down here the first time; I do not remember exactly.

Q. How long ago.

A. It was over three weeks ago.

Q. In Elmira?

A. Yes, sir.

Q. Was Mr. Roberts with him?

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

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

A. The position of my cutting-board is in the rear of the store, and he might have had some person in front without my noticing him. I was busy cutting, at my business. I do not remember Mr. Roberts. I did not see him.

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

A. We talked some on the matter.

Q. Tell the jury what you said?

A. I do not know that I can remember the precise words. He asked me if I was going down in this Sur-

ratt case. I told him I was. I think he asked me if I could identify the man. I told him that if the man looked like the person I had in my mind I could identify him.

Q. Was Mr. Roberts present when you said this?

A. I do not remember seeing Mr. Roberts at all.

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

A. No, sir; never.

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

A. I gave him no reason to think that the young man called Surratt was a tailor, because I did not think he was.

Q. Did you not tell him how you came to talk with him?

A. I said something like this: In my business, of course we talk with customers usually.

Q. That was what you said?

A. I think that was about it.

Q. Did you not say that the man told you he was a tailor?

A. No, sir.

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

A. He did not.

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

A. No, sir.

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

A. I think I might have told him.

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

A. From the time I got the dates of Mr. Ufford's being in New York, I stated it from that date, and Mr. Atkinson stated it yesterday.

Q. I ask you, what did you state to Mr. Knapp about the date at which you saw the man that you thought might be the prisoner; when did you tell him you saw him?

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

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

A. I think I did.

Q. Cannot you remember whether you did or not—so important a matter as that?

A. There were so many questions asked me about that, and so many persons interesting themselves in the matter—

Q. Cannot you tell whether you told this man you saw him on the 14th; you say you told him the dates?

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

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

A. I do not think I did.

Q. What do you say to that?

A. I do not remember.

Q. They were pretty particular to ask you, were they not?

A. Indeed, I do not know whether they were particular or not.

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

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

Q. Are you particular in your memory about it; can you particularly remember what you told them?

A. I do not remember having told him it was the 12th and 13th.

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

A. I do not remember that I did.

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

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

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

Mr. MERRICK. The witness has answered that question. He says he thinks it was the 13th and 14th.

Mr. PIERREPONT. I ask him whether he told him it was the 13th.

Mr. MERRICK. I submit it to your honor whether he has answered or not.

Judge FISHER. Let him answer each day severally.  
 Mr. PIERREPONT. That is what I am doing. (To the witness.) Did you tell him it was the 12th?  
 A. I do not remember that I did.  
 Q. Did you tell him it was the 13th?  
 A. I think I did.  
 Q. Did you tell him it was the 14th?  
 A. I think I did.  
 Q. Did you tell him it was the 12th or 13th?  
 A. I do not remember that I said any thing about the 12th. I cannot remember that positively.  
 Q. Do you remember that you told him it was the 14th at all?  
 A. If my memory serves me, I think I did.  
 Q. Is it your best recollection that you did?  
 A. My best recollection is that I did.  
 Q. You told him it was the 14th?  
 A. The 13th and 14th. That is my recollection of it.  
 Q. Did you tell Mr. Covell when it was?  
 A. I think I did.  
 Q. Where?  
 A. After he returned from Washington to Elmira, I was speaking to Mr. Covell in relation to the matter, and he asked me what time I thought it was.  
 Q. What did you tell him?  
 A. I think I told him it was the 13th and 14th.  
 Q. You told Mr. Covell so?  
 A. I think I did.  
 Q. Did you tell Mr. Covell it was the 12th?  
 A. I think I did not.  
 Q. Did you tell Mr. Covell it was the 13th?  
 A. I think, as I have already answered, I told him it was the 13th and 14th.  
 Q. Did you tell him it was the 12th or 13th?  
 A. I think I told him the 13th and 14th.  
 Q. Did you tell him it was the 12th or 13th?  
 A. I do not think I mentioned any thing of the 12th to him.  
 Q. Did you tell him it was the 13th or 14th?  
 A. I told him it was the 13th and 14th.  
 Q. That is your best recollection of it?  
 A. That is my best recollection of it.  
 Q. Have you any doubt that you told him that?  
 A. No, sir; I have no doubt that I told him that. Mr. Covell mentioned to me that Mr. Knapp had stated that I said it was the 12th and 13th. I told him I had no recollection of it; that the only date by which I could fix it was the date in our petty cash-book as kept by our book-keeper.  
 Q. What dates were those? What dates did you tell him you could fix it by?  
 A. I told him I could fix it by the petty cash-book.  
 Q. What dates did you say those were?  
 A. The 13th and 14th.  
 Q. Did your petty cash-book show that date?  
 A. It shows when Mr. Ufford, one of the proprietors of the store, left on the afternoon of the 12th, and returned on the morning of the 15th. So it was within those dates.  
 Q. What did you tell Mr. Covell your petty cash-book showed?  
 A. I told him it showed the date Mr. Ufford left, the 12th, and his return on the 15th, and that the man came the day after Mr. Ufford left for New York.  
 Q. Mr. Ufford left on the 12th?  
 A. The evening of the 12th.  
 Q. And this man came in the day after, and you told Mr. Covell so?  
 A. The day after. I do not know that I told Mr. Covell in those words, but we had some such conversation.  
 Q. Did you not tell each of them the same thing?  
 A. I might.  
 Q. Did you not tell each of them that he called twice on that one day?  
 A. No, sir.  
 Q. That you are sure of?  
 A. Yes, sir.

Q. In the morning and in the afternoon?  
 A. No, sir.  
 Q. Did you tell them that?  
 A. No, sir.  
 Q. Did you not tell either of them that?  
 A. No, sir.  
 Q. Did you not tell either of them that he called the next day after Mr. Ufford left?  
 A. I told them that he called in the afternoon of the 13th.  
 Q. Did you not tell either of these men that he called the next day after Mr. Ufford left?  
 A. Very likely I may have told them so—the afternoon of the 13th.  
 Q. Did you not tell them that he called twice in one day?  
 A. No.  
 Mr. BRADLEY. He has answered that three times.  
 Q. (By Mr. PIERREPONT.) Did you not tell either of them that?  
 A. No, sir.  
 Mr. PIERREPONT. I want to get it so as that it shall not be objected that the foundation has not been laid.  
 Mr. BRADLEY. He has answered it three times now.  
 Q. (By Mr. PIERREPONT.) How many times did you see these men?  
 The WITNESS. What men?  
 Mr. PIERREPONT. Mr. Covell and Mr. Knapp.  
 A. When in Elmira I saw them almost every day.  
 Q. How many times did you talk with Mr. Covell about this matter?  
 A. I do not remember.  
 Q. More than once?  
 A. I think I did.  
 Q. When did you talk to him the second time?  
 A. I could not remember the date. It was the Sunday after he returned from Washington. I could not fix the date exactly.  
 Q. Did you tell him the same thing both times?  
 A. I do not remember; the substance must have been the same.  
 Q. You did not tell him at either time the information contained in the questions I have asked you?  
 A. No, sir.  
 Mr. BRADLEY. If the court please, I think the witness has already answered three times.  
 Mr. PIERREPONT. No; I ask him now about the second time he saw him.  
 Judge FISHER. I understand that this is in relation to the second interview.  
 Mr. BRADLEY. I have no objection, except that it is merely wasting time after the witness has answered, and repeated his answer, that he never told him so.  
 Judge FISHER. That may be true; but in order to lay the foundation for contradiction, every specific occasion must be mentioned.  
 Mr. PIERREPONT. That is why I am doing it. I do not mean that it shall be said that it is not specific.  
 Q. (By Mr. PIERREPONT.) You saw him a second time?  
 A. Oh, yes.  
 Q. Did you see Mr. Knapp a second time?  
 A. I have seen him a number of times.  
 Q. Did you talk with him twice on this subject?  
 A. More than that, I take it.  
 Q. Did you see Mr. Roberts with him more than once?  
 A. I never saw Mr. Roberts until last evening, that I remember of.  
 Q. Did you see some man who might have been Mr. Roberts with him?  
 A. I saw some man with Covell in Elmira who I was told was a detective.  
 Q. Did you see him more than once?  
 A. I did not see the man's face; but I heard he was a detective from Washington.  
 Q. Did you see him more than once?  
 A. I did not.

By Mr. BRADLEY :

Q. Let me understand you. You were asked whether you talked with Knapp, and if, when you talked with Knapp, Roberts was present.

A. I never saw Roberts to speak to him when Knapp was around. I was told that a man outside of Dyer's Hotel was a man called Roberts.

By Mr. PIERREPONT :

Q. The man you thought was a detective, without regard to his name, how many times did you see him with Knapp at Elmira ?

A. I never remember seeing him with Knapp.

Q. You never saw him at all with Knapp ?

A. No, sir.

Mr. BRADLEY. I must interpose an objection. The witness has answered repeatedly.

Q. (By Mr. PIERREPONT.) Did you see him without Knapp ?

A. No, sir. I saw a man with Covell one afternoon that I heard was a detective from Washington.

Q. With Covell did you have a talk when the detective was present ?

Mr. BRADLEY. I wish to have some rule established. If we interpose an objection, I hope your honor will stop the counsel until it is disposed of, and not allow him to run on with a cross-fire while I am attempting to address the court, and calling the attention of the court to what is going on.

Judge FISHER. State your objection.

Mr. BRADLEY. I did.

Judge FISHER. I could not hear it.

Mr. BRADLEY. It was impossible to hear it.

Mr. PIERREPONT. Now, I will wait for the objection.

Mr. BRADLEY. I might as well make the objection in the midst of a fire of artillery. The time has passed, and I make no objection now. I only want some rule established when I interpose an objection.

Judge FISHER. Whenever an objection is made, of course the counsel will stop putting any questions.

Mr. PIERREPONT. I always do when I hear it.

Mr. BRADLEY. Then you must be very deaf.

Q. (By Mr. PIERREPONT.) Now, did you see with Mr. Covell the man you thought was a detective ?

A. The man that I was told was a detective. I did not think it; but I was so told.

Q. Did you see that man with him ?

A. I saw a man with him.

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

A. He was standing in the hotel, and I said, "Good evening," or something of that kind. The man was not with him then; I saw him with him on the street and was told he was a detective.

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

A. No, sir.

Q. Did you see Covell after you came from Washington the first time ?

A. Yes, sir.

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

A. Covell was not here in Washington the first time.

Q. I ask you whether you saw him.

A. No, sir.

Q. Did you see him after your return ?

A. Yes, sir.

Q. And talk with him ?

A. Yes, sir.

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

A. I saw him in jail.

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

A. I think he asked me if I identified him.

Q. What did you say ?

A. I said he was the same man.

Q. You told Covell so, did you ?

A. Yes.

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

A. No, sir.

Q. That you are sure of ?

A. I am.

Q. You did not tell him so at any time ?

A. Never; neither at that nor at any other time.

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

A. I did not; I never spoke to Roberts.

Q. You did not tell either of them that ?

A. Neither of them.

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

A. I remember that it was Good Friday.

Q. Where did you go Good Friday ?

A. I was at work.

Q. What time did you go to work ?

A. At least, I went to the store. The store was closed during the day after the assassination—all the stores were closed, and I went home.

Q. Closed on the 14th, after the assassination ?

A. On the day after the assassination.

Q. I have not asked you about the day after the assassination. Was it closed on the 14th on account of the assassination ?

A. I do not think it could have been closed then.

Q. What time was it closed on the 14th ?

A. As soon as the assassination of the President was announced in town every person closed his store.

Q. What time was it announced on the 14th ? I am asking about the 14th merely.

A. I have told you it was not on the 14th.

Q. What time on the 14th was the store closed ?

A. It was not closed on the 14th; I think I have answered that.

Q. No, you have not answered it yet; but you may now.

A. I now answer it.

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

A. I cannot remember the hour; my hours vary.

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

A. I think not.

Q. Can you tell what time you went to the store ?

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

Q. Do you remember whether the store was closed on Good Friday, the 14th ?

A. I remember all the stores, as I told you, were closed for business and were draped in mourning.

Q. Do you understand my date ?

A. Perhaps not.

Q. Is there any defect in the utterance? If it is not loud enough, I will make it louder.

A. No, not particularly.

Q. I ask you if you can tell us what time on the 14th this store was closed ?

A. The store was not closed during the day of the 14th at all.

Q. What time was it first opened on the 14th ?

A. I do not remember; I did not go there as early as that.

Q. What time did you go there ?

A. I do not remember the hour.

Q. Where did you get your dinner that day ?

A. I suppose at my residence or dwelling.

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

A. Yes, sir.

Q. And he wanted to get something that you had not got ?

A. Some clothing.

Q. Did he get any thing?

A. Not that I remember.

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

A. Yes, sir.

Q. What did he want on the 14th?

A. I told him we did not have the goods he wanted, but, as Mr. Ufford was in New York, it was quite likely on the following day we might have such goods as he was inquiring for. He came in the second time and asked if those goods had come. I told him the goods were not in the store, but might be at the depot.

Q. Mr. Ufford went on the night of the 12th, you say?

A. Yes, sir.

Q. And on the 13th you told him you thought they might come?

A. Might come the following day, on the 14th.

Q. Did you think they would come on the following day?

A. It was a time when we were remarkably busy, and he was sending things by express as fast as he bought them.

Q. Did you think the things he got, having left on the 12th, could be there on the 14th?

A. I thought they might get through in a day.

Q. Did any of those things get there on the 14th?

A. They did not get there on the 14th, as I have told you.

Q. No goods did get there?

A. I told this man—

Q. Never mind that. I am asking you now whether any goods got there.

A. No, sir.

Q. Now, you say he called in on the 14th. What did he say?

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

Q. What goods?

A. The goods he was inquiring for to make some clothes the day before.

Q. What time in the day did he come in the last time?

A. It was in the forenoon that he came in the last time.

Q. Was anybody else in the store?

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

Q. How long did he stay?

A. He stayed but a little while.

Q. Did you know which way he came from?

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

Q. Do you know which way he went?

A. He seemed to return in the same way.

Q. Did you see him on that day afterwards?

A. No, sir.

Q. Did you see him on the 15th?

A. No, sir.

Q. You say you saw him on the 14th?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. And you never told anybody that you could not recognize him?

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

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

A. On the 14th I spoke but a very little while, I should think; I was somewhat busy and answered the questions.

Q. Did he call there twice on the 13th?

A. No, sir.

Q. Did you tell either of these gentlemen that I have named that he did?

Mr. MERRICK. He has answered that two or three times.

Judge FISHER. I think he has answered that several times.

Q. (By Mr. PIERREPONT.) Did you tell all or either

of these gentlemen that you asked him if his name was Surratt?

A. No; I could not have told them that because I did not know him from any other customer.

Q. I ask you if you did not tell these gentlemen that you asked him if his name was not Surratt?

A. I did not tell them any thing of the kind.

Q. You did not tell either of these gentlemen on either interview that you asked the man if his name was not Surratt and he told you it was?

A. No, sir.

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

A. No, sir; I could not tell them that, because I did not know who the person was.

Q. I am simply asking you whether you did or not.

A. No, sir; I was in the store acting in the capacity of a clerk, waiting on him at that time.

Q. I am only asking you what you said to these gentlemen. You are not mistaken about it? I suppose your memory is good?

A. No, sir.

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

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

Q. There was nothing suspicious in the appearance of the man, was there, when you saw him?

A. No, I should think not.

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

A. Not at all. I thought he was a Canadian when he first came in, as I told you before.

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

A. I should never have thought of it, if it had not come up in the time it did.

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

A. I did.

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

A. I never asked the man's name. I simply asked him if he was not a southerner, and he said he was.

Q. Did you tell them that anybody told you his name was Surratt?

A. I never knew his name was Surratt until I was summoned.

By Mr. BRADLEY:

Q. You say he came to your store from towards Water street?

A. From Water street.

Q. Was there any hotel on that street?

A. Yes, sir.

Q. What was the name of it?

A. It was called the Brainard House. I think they called it the Rathbun House at that time. I do not know whether they had changed it at that time. It was either the Brainard or the Rathbun House. The hotel is owned by Mr. Rathbun, I think.

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

A. I suppose a block and a half. The Brainard House is on the corner of Baldwin street, and then you go down Water and then into Lake street, about a third of the way. I do not know the distance exactly. I am not good on distances.

Q. Not very far off?

A. No, sir. I could give an idea of the distance, but as to the correct distance I could not say.

Q. You have been asked a great many questions about Major Foster. You see him sitting by Judge PIERREPONT now. Do you know him?

A. I saw that man in the cars.

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

A. No, sir.

Q. Do you know who Major Roberts is? Did you ever see him before this?

A. No, sir.

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

A. I saw a man with Covell in Elmira. I did not see his face at that time. It was in the night.

Q. You have seen him here since?

A. I saw him last evening.

Q. And he was pointed out to you?

A. I was told last evening that he was a detective.

Q. And Major Roberts?

A. I do not remember whether I was told his name or not. Covell told me that there was a man named Roberts at Elmira—a detective.

Q. Did you have any conversation with either Mr. Knapp or Mr. Covell after you left the court-house yesterday?

A. Yes, sir.

Q. Was any thing said between you on the subject of your testimony?

A. Something with Knapp with regard to whether he was a tailor. Mr. Knapp said he must have misunderstood me. He spoke about the way in which I got acquainted with Surratt. I do not know that I can give his precise words, but as much as to say that I got acquainted with him on account of his being of the trade, or something of that sort; that that was the way he understood it. I told him that in my business I got acquainted with customers very easily waiting on them, or something of that kind. He said he must have misunderstood me.

Q. Have these or any other parties been following you up with questions in Elmira since you have been summoned as a witness?

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

Q. There and here?

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

Q. In talking to them did you undertake minutely to detail the facts? Did you undertake to go into minute statements, or when engaged in your business did you speak to them casually and answer them?

A. There were times when I was so very busy that could not pay much attention to answers. Of course I endeavored to answer respectfully all persons and treat them with respect as near as can be.

Q. Did you understand that Knapp or Covell was hunting up evidence for the Government?

A. Yes, sir.

Q. And employed by the Government?

A. I do not know. They were hunting up evidence for the Government.

By Mr. ALEXANDER, a juror:

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

A. Mr. Knapp.

By Mr. PIERREPONT:

Q. Who summoned you for the defense—what officer?

A. Mr. Kirby.

Q. Was it not Mr. Covell?

A. The day we left Elmira the last time he came in and read a summons to me.

Q. He read to you the summons for the defense and served it on you. Did not Covell do that?

A. He came in and read it, and Mr. Kirby also came on the same day.

Mr. PIERREPONT. If your honor please, I have not looked at the notes of yesterday, but my memory is that I did ask this witness, in relation to Major Field, the same questions that I have asked the others. If it is so understood, I do not want to ask them now.

Judge FISHER. I do not so understand. I may be under a misapprehension.

Mr. PIERREPONT. I intended to do so, but am not quite certain that I did it.

Judge FISHER. The name of Major Field is new to me.

Mr. BRADLEY. I did hear Mr. Field mentioned, but I understood he was a hotel-keeper there.

Mr. PIERREPONT. That is the man. I will ask the question now to avoid any doubt. (To the witness.) You know Mr. Field, the hotel-keeper, who is called Major Field?

A. I do.

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

A. I may or may not. I do not remember distinctly. He talked to me when he returned from Washington the first time and spoke to me.

Q. He talked to you before he came to Washington, did he not?

A. I think not on this subject.

Q. Did you tell Major Field that you could not recognize him?

A. No; I never told any person so.

Q. Did you tell Major Field that it was the 12th or 13th that he called?

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

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

A. I do not remember.

By Mr. BRADLEY:

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

A. Yes, sir.

Miss OLIVIA JENKINS,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Where did you reside in April, 1865?

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

Q. Do you know Mr. Weichmann, who lived at that house?

A. Yes, sir.

Q. And Miss Honora Fitzpatrick?

A. Yes, sir.

Q. And Miss Anna Surratt?

A. Yes, sir.

Q. And Mr. and Mrs. Holahan?

A. Yes, sir.

Q. Did you know John H. Surratt?

A. Yes, sir.

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

A. Yes, sir.

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

A. Yes, sir.

Q. Was John Surratt about the house on Good Friday?

A. No, sir.

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

A. About two weeks, I think, or nearly.

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

A. I saw him late in the evening on Monday evening.

Q. Whereabouts in the house was it that you saw him?

A. I saw him in the parlor.

Q. Do you recollect any thing about his taking supper and who got it for him?

A. Miss Fitzpatrick.

Q. Was she sent down stairs to get his supper?

A. Yes, sir.

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

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

Q. Did Miss Anna Surratt stop with her?

A. Yes, sir.

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

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

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

A. No, sir; I never saw him.

Q. Did you hear of such a name?

A. I did not.

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

A. No, sir.

Q. Did Mrs. Surratt say who she was going to the Herndon House to see?

A. No, sir.

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

A. No, sir.

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

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

Q. Do you recollect when they were at supper?

A. Yes, sir.

Q. Did any one call whilst they were at supper?

A. No, sir.

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

A. Yes, sir; and a gentleman called and left some papers for me.

Q. You went down to supper after Miss Fitzpatrick went down?

The WITNESS. Of what night are you speaking?  
Mr. MERRICK. I am speaking now of the night of the assassination.

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

Q. The night of the assassination, did you go down to supper?

A. Yes, sir.

Q. You were at the table?

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

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

A. Yes, sir.

Q. Who answered it?

A. Miss Anna Surratt.

Q. Do you know who called?

A. Mr. Scott, from the Navy Yard, left some papers for me.

Q. Was the bell rung another time whilst you were at supper?

A. No, sir; I think not.

Q. That was the only call made whilst you were at supper?

A. Yes, sir.

Q. Did you hear any footsteps going into the parlor while you were at supper?

A. No, sir.

Q. After you got through supper, on the night of the assassination, Good Friday night, where did you all go?

A. We went up to the parlor.

Q. Who went up into the parlor?

A. Miss Anna Surratt, Mrs. Surratt, Mr. Weichmann, Miss Honora Fitzpatrick, and myself.

Q. Did you engage in general conversation or what did you do up in the parlor?

A. Miss Fitzpatrick and I were teasing Mr. Weichmann; Miss Anna Surratt retired very early.

Q. Why did she retire very early?

A. Because she was complaining of being sick.

Q. How long did you and Miss Fitzpatrick and Weichmann keep up this entertainment in the parlor; how long were you there together?

A. I guess we were there until nearly ten o'clock.

Q. Who left the room first, you or Mr. Weichmann?

A. Mr. Weichmann.

Q. Did you leave at the same time?

A. No, sir.

Q. You bade him good night at his bed-room door, did you not?

A. No, sir; I did not.

Q. Are you positive about it?

A. Yes, sir; I am positive about it.

Q. Tell these gentlemen whether or not you noticed any thing peculiar in Mrs. Surratt's manner or not?

A. No, sir; I noticed nothing; she seemed the same as usual. I did not notice any excitement at all.

Q. Did you observe her walking up and down the room in a nervous and excited condition?

A. No, sir.

Q. Were you in the parlor all the time Weichmann was there that night?

A. Yes, sir.

Q. Did you hear Mrs. Surratt ask Weichmann to pray for her intentions?

A. No, sir.

Q. Did you hear Weichmann say to her that he could not pray for her intentions without knowing what they were?

A. No, sir; I heard no such expression.

Q. You heard no such conversation?

A. No, sir.

Q. Do you recollect the night when you were all taken up to the provost marshal's office?

A. Yes, sir.

Q. I will now go back a little. Did you go to breakfast the next morning after the assassination with the family?

A. Yes, sir.

Q. Who was at the table?

A. Mr. Weichmann, Mrs. Holahan, Mr. Holahan, and Mrs. Surratt; Miss Anna Surratt came in late.

Q. Was Miss Fitzpatrick there?

A. Yes, sir.

Q. You need not answer this question unless the court permits it: Did you hear Miss Anna Surratt say that the death of Lincoln was no more than the death of a negro soldier in the federal army?

A. No, sir.

Mr. PIERREPONT. Do not answer the question.

Mr. MERRICK. The answer need not go down.

Q. (By Mr. PIERREPONT.) Did you hear Weichmann say that he had his suspicions about this matter, and that he intended to go and tell the Government all he knew about it?

A. No, sir.

Q. Did you hear Weichmann say that he had his suspicions about this matter, and that he intended to tell the Government about the people who met Booth and associated with him?

A. No, sir.

Q. He said nothing of the kind?

A. No, sir.

Q. Now, I will come down to the next night, the night you were up at the provost marshal's office. You were in the parlor, I believe, when Captain Smith came, were you not?

A. Yes, sir.

Q. Now, state, if you please, where you were sitting, where Miss Fitzpatrick was sitting, and where Miss Anna Surratt was sitting, when Mrs. Surratt came in with Captain Smith.

A. Miss Anna Surratt was sitting on the corner of the sofa.

Q. Where were you sitting?

A. I think I was sitting on a chair.

Q. Near to her?

A. Yes, sir.

Q. How far from her?

A. I could not tell.

Q. State as near as you can relatively to any of these gentlemen.

A. About as near as I am to that second gentleman there. [About four feet.]

Q. Where was Miss Honora Fitzpatrick?

A. I do not know. I think, perhaps, she was sitting on the sofa.

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

A. No, sir.

Q. On the night of the assassination, after the detectives went away, were you in the parlor?

A. I do not remember; I think I came into the parlor. It was in the morning; they were there at two o'clock. I think I came down stairs.

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

A. Yes, sir.

Q. And Mr. Weichmann?

A. And Mr. Weichmann.

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

A. No, sir.

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

A. No, sir.

Q. You remember nothing of that kind?

A. No, sir.

By Mr. BRADLEY:

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

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

Q. You have seen him write?

A. Yes, sir.

Q. And seen his writing?

A. Yes, sir.

Q. [Exhibiting the name of John Harrison in the register of St. Lawrence Hall, Montreal.] Look at that, if you please, and state whether it is his handwriting or not?

A. I do not think it is. The r in Harrison is different. Let me examine it again. [After further examination.] Yes, I think it is his writing.

Q. [Exhibiting another entry of John Harrison in the same book.] Look at that one also.

A. Yes, sir; that is his also.

Q. [Exhibiting another hotel register.] Look at that. Do you say that is his also?

A. Yes, sir.

Mr. BRADLEY. I do not offer this in evidence yet. I propose to give some other proof in regard to it before I offer it.

Mr. PIERREPONT. Allow us to see it first.

Mr. BRADLEY. Not until I offer it. Before I offer it in evidence, I will do so.

Q. (By Mr. BRADLEY.) You state that you were at Mrs. Surratt's on the evening the President was assassinated. Do you remember, in the course of that evening, any thing being said about a letter?

Mr. PIERREPONT. You need not answer that.

Mr. BRADLEY. I think she need.

Mr. PIERREPONT. We object to it.

Judge FISHER. What is the question?

Mr. BRADLEY. I ask her if any thing was said about a letter.

Judge FISHER. When and where?

Mr. BRADLEY. The evening of the assassination, when she was at Mrs. Surratt's house in company with the persons she has named.

Mr. PIERREPONT. If it is in reply to any thing that we have shown about a letter, we do not object to it.

Mr. BRADLEY. Then the gentleman may withdraw his objection.

Mr. PIERREPONT. If it relates to any thing we have offered, I will do so.

Q. (By Mr. BRADLEY.) Did you that evening see Mr.

Weichmann go to Miss Ward in the middle of the room and ask her to let him read a letter which was there?

A. No, sir. Do you mean the evening of the assassination?

Q. Or any other evening?

A. No, sir; I do not remember.

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

A. No, sir.

Q. Was any thing said when Mr. Weichmann was there a few evenings before the assassination, and after John Surratt had left here, about the receipt of a letter in the course of the evening—any letter read there?

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

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

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

Cross-examined by Mr. PIERREPONT:

Q. Are you any relative of Mrs. Surratt?

A. Yes, sir.

Q. What is the relationship?

A. I am a niece of her.

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

A. No, sir; I do not.

Q. Were you examined before him?

A. No, sir.

Q. Were you examined before anybody?

A. No, sir; I was not.

Judge FISHER. I did not hear the witness as to whether she knew Mr. Olcott.

The WITNESS. I do not know him. I may have seen him, but I do not know him.

Q. (By Mr. PIERREPONT.) Do you know this gentleman, Colonel Foster?

A. No, sir.

Q. Nor this gentleman, Colonel Olcott?

A. No, sir; I may have seen him, but I do not know him.

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

A. No, sir; I never was examined.

Q. Were you not examined at all?

A. No, sir. There were some questions asked of me, but I do not remember what they were. They were very slight questions.

Q. My question is not about the number of questions, but were you examined at any place before either of these gentlemen or both?

A. No, sir; not to my knowledge.

Q. Do you understand what I mean by "examination?"

A. I suppose you are examining me now to-day.

Q. Yes. Did you go anywhere? Were you taken anywhere?

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

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

A. No, sir.

Q. Were you examined there before anybody?

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

Q. I ask you whether you were examined?

A. No, sir.

Q. Were not questions asked you?

A. I do not remember.

Q. Were there not answers put down in writing?

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

Q. Were you at the Old Capitol prison?

A. I was at the Carroll prison.

Q. Were you examined at the Carroll prison?

A. No, sir.

Q. You were not examined anywhere?  
 A. No, sir; not to my knowledge.  
 Q. Perhaps I can recall it to your mind; probably you have forgotten it, if it is so. Do you remember any thing about taking a photograph of Booth and giving it to this gentlemen, Colonel Olcott?  
 A. No, sir, not I; I did not do it.  
 Q. At any time?  
 A. No, sir.  
 Q. Who was it, then? Did anybody in your presence?  
 A. There was an album there.  
 Mr. BRADLEY. I object to the question. The court will say whether it is a matter of any consequence to the cross-examination whether anybody gave a portrait of Booth to anybody else in her presence.  
 Mr. PIERREPONT. It is merely to recall her to the examination.  
 Judge FISHER. Is the object of the question simply to refresh her memory?  
 Mr. PIERREPONT. Entirely—to the examination before Colonel Olcott of herself.  
 Judge FISHER. For that purpose it may be asked.  
 Q. (By Mr. PIERREPONT.) Have you any memory as to a portrait or photograph of Booth being given to this gentleman at the examination?  
 A. No, sir; I remember one was spoken of as being in an album.  
 Q. Did you see any taken out of a book or album, or any thing else?  
 A. No, sir.  
 Q. Did you see Booth's portrait at that place?  
 A. Yes, sir; I think I did.  
 Q. Do you remember what was done with it?  
 A. No, sir; I do not.  
 Q. Whose portrait was it?  
 Mr. BRADLEY. I object.  
 Q. At the time—  
 Mr. BRADLEY. Stop.  
 Mr. PIERREPONT. I am stopping. I am asking another question entirely.  
 Mr. BRADLEY. But I cannot understand—  
 Mr. PIERREPONT. You cannot understand it until I ask the question.  
 Mr. BRADLEY. When it is a fusilade, I cannot understand what is coming.  
 Mr. PIERREPONT. Of course not, until it comes.  
 Mr. BRADLEY. I am too slow.  
 Judge FISHER. I have stopped that question, and I understand now there is another.  
 Mr. PIERREPONT. Undoubtedly, and I had stopped it myself.  
 Q. (By Mr. PIERREPONT.) At the time of this portrait of which you speak, were you not examined?  
 A. No, sir; not to my knowledge.  
 Q. Could you have been examined without your knowledge and answer questions?  
 A. No, sir, I think not; there may have been some questions asked me, but I do not remember whether there were or not.  
 Q. Do you remember whether you gave any answers?  
 A. No, sir; Miss Fitzpatrick and Miss Anna Surratt and I were taken into a room to the provost marshal's office, and left Mrs. Surratt alone with the officer.  
 Q. Have you any memory as to what any of the questions asked you were?  
 Mr. BRADLEY. At the provost marshal's?  
 Mr. PIERREPONT. Or at the Carroll prison?  
 A. No, sir; I do not remember.  
 Q. (By Mr. PIERREPONT.) Do you remember whether those gentlemen who asked you any questions wrote down the answers?  
 A. I do not remember of answering any question. I do not remember any questions being asked.  
 Q. You do remember of being there?  
 A. Yes, sir.  
 Q. Tell the jury when you first went to your aunt's house to board.

A. I went there on a visit in the latter part of March.  
 Q. What day of March?  
 A. I cannot tell; I do not remember.  
 Q. Can you tell near the day?  
 A. No, sir; it was the last week in March.  
 Q. How long did you stay there?  
 A. Until the night of the 17th of April, when we were taken to the provost marshal's office.  
 Q. You went there as late, did you not, as the 23th of March?  
 A. I do not know.  
 Q. It was the last week in March?  
 A. Yes, sir.  
 Q. Then all the things that occurred prior to the last week in March you do not profess to give?  
 A. No, sir.  
 Q. Where were you prior to the time you went there?  
 A. I was at home in Prince George's county.  
 Q. Then, if you have spoken of any thing in your evidence now that occurred some ten days before the last week in March, it could not have been any thing you saw, but must have been what you heard?  
 Mr. MERRICK. I have not asked any thing about what occurred before the time that she went to Mrs. Surratt's.  
 Mr. PIERREPONT. Probably, when you look at the dates, you will find that you have.  
 Mr. BRADLEY. I should like to know what the question is.  
 Mr. PIERREPONT. Any thing that occurred prior to that in the city of Washington you do not know? That is my question.  
 Mr. MERRICK. I object. I do not know of having asked her of any thing whatever that occurred before she went to Mrs. Surratt's. The first date of which I made an inquiry was the date when Mrs. Surratt and Miss Anna Surratt and Miss Honora Fitzpatrick and Weichmann went to church, and coming back Mrs. Surratt stopped at the Herndon House, and she was with him.  
 Mr. BRADLEY. At least Weichmann says so.  
 The WITNESS. I was with him.  
 Mr. MERRICK. Of course it does not follow that, because Weichmann says it, it is so.  
 The WITNESS. I do not say that it was the 25th of March, because I do not remember whether it was that evening or not.  
 Mr. MERRICK. I asked whether she was with this party on a certain occasion when a certain thing happened. She says she was with him on that occasion that this thing happened.  
 Mr. PIERREPONT. Now, I will repeat my question. My question is, Any thing that occurred prior to the last week in March in Washington, did you of your own knowledge know any thing about it?  
 Mr. MERRICK. Do not answer that question.  
 Judge FISHER. That question may be answered, because I do not think any particular date has been given to the interview which is said to have been had at the Herndon House.  
 Mr. BRADLEY. Oh, yes; it was fixed by Weichmann as about the 27th of March. The 27th of March, I think, is the date he gives.  
 Judge FISHER. Very well. Now, suppose that the prosecution may be able to fix it that this young lady came to live at Mrs. Surratt's on the 28th, the day after, or the 29th, or the 30th of March?  
 Mr. BRADLEY. But, if your honor will pardon me, Weichmann fixes her as one of the parties, one of the company. So it is not material. He has fixed first the date, the 27th of March, and he has fixed her as one of the parties at that time.  
 Mr. PIERREPONT. I am not revealing, nor do I intend to reveal, nor can anybody compel me to reveal, the reason of my question. If my question is a proper one, I am not bound to tell all the world why I ask it.  
 Judge FISHER. I do not see any impropriety in

the question. It may be for some purpose of that sort.

Mr. PIERREPONT. It is for some purpose. Now, will you tell us whether you were at Mrs. Surratt's prior to the 28th day of March?

A. Yes, sir, I think I was.

Q. What day were you there prior to it?

A. That I cannot remember.

Q. Were you there on the 27th?

A. Yes, sir; I must have been, for I was there before the 28th.

Q. Were you there on the 26th?

A. Yes, sir; I think I was.

Q. Were you there on the 25th?

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

Q. You were there on the 26th, you say?

A. I think so.

Q. What day of the week was that?

A. I do not know.

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

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

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

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

Q. You do not remember the day of the week nor the day of the month?

A. No, sir.

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

A. No, sir.

Mr. MERRICK. She may have known of something occurring here.

Mr. PIERREPONT. I am asking the witness; I am not asking the counsel.

Judge FISHER. She has answered.

Mr. PIERREPONT. Certainly, and I am content with her answer.

Q. Did you come on Sunday?

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

Q. Did you know the 26th was Sunday?

A. No, sir; I do not remember.

Q. Did you come on Monday?

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

Q. You know you did not come on Sunday?

A. I do not think I came on Sunday.

DAVID BARRY,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. Prince George's county, Maryland.

Q. How are you at present employed?

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

Q. During the late civil contest what were you—what side were you on?

A. I was two years in Virginia.

Q. Were you in the service there at all?

A. No, sir; I had sons in General Lee's army.

Q. In the confederate army?

A. Yes, sir.

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

A. I returned in November, I think, 1862; it was either in November or December; I am not sure now which.

Q. State how far from Surrattsville you reside.

A. About a mile and a half.

Q. State whether you were at Surrattsville on the 25th of March, 1865. I will give you a paper directly to refresh your memory. [To the counsel for the prosecution.] Gentlemen, I want the letter—I thought I had it—from Surratt to Brooke Stabler, returning his horses; I thought I had it in my possession.

Mr. PIERREPONT. You may read the printed letter.

Mr. BRADLEY. No; I want Mr. Barry to see the paper itself.

Mr. WILSON. I think Mr. BRADLEY has got them all. Q. (By Mr. BRADLEY.) Go on and state whether or not you were at Surrattsville on or before the 25th day of March, 1865.

A. Yes, sir, I was.

Q. State whether you saw John Surratt there or not?

A. Yes, sir, I saw him there.

Q. Who was with him?

A. I cannot say I saw anybody with him. Yes, I did. When I first saw him he was alone. I afterwards saw him in company with a lady he called Mrs. Brown.

Q. Did you see Mrs. Surratt there?

A. I am in doubt about that, whether I did or not. I rather think I did, though. As I crossed the passage, I think I saw Mrs. Surratt in the passage.

Q. Now, proceed and state whether you accompanied him from that place to anywhere else, and who went with you?

A. Yes, sir; I accompanied him from Surrattsville to Port Tobacco.

Q. How long did you stay there at Port Tobacco?

A. I should like to say why I went to Port Tobacco: There was a man in Port Tobacco who belonged to the signal-corps of the confederate army, and I was anxious to see him to get information in regard to two sons I had in General Lee's army. I understood the day before Surratt came down that he was there. I understood it from a person who was represented as a blockade-runner—Mr. Howell. He told me that he was in Port Tobacco, and I was anxious to see him. I mentioned it to Surratt, and asked him if he knew whether he was there, and he said he did. I think he said how he got the information; but that I forget. He then offered me a seat in his carriage, and told me at the same time that it was somewhat doubtful whether he should return again; but, if he did not return, I could bring back the carriage; that he intended to see this lady he had in charge across the Potomac river; or, if necessary, to Richmond.

Q. You stayed all night in Port Tobacco?

A. Yes, sir.

Q. [Exhibiting to the witness the letter from the prisoner to Brooke Stabler relative to returning the horses, dated March 26, 1865, and identified by Brooke Stabler.] State whether he wrote that letter in your presence and gave it to you, and whether you brought it to this city?

A. Yes, sir; I think he did.

Q. State the date of that letter.

A. March 26, 1865.

Q. State whether you brought back those horses or if anybody else did.

A. I brought them back.

Q. What did you do with them?

A. I delivered them to Howard's stable, I think it was; I do not recollect positively. Surratt mentioned a Mr. Brookes—

Q. Brooke Stabler was the clerk there.

A. I do not recollect; he described a Mr. Brookes to me, and I think told me he was lame; that I should see him.

Q. Before you went to the stable and returned those horses, did you go to Mrs. Surratt's?

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

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

A. I did; after tea that evening, about dark.

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

A. I knocked at the door and Miss Fitzpatrick came to the door; she ushered me in, and in the room I found Mrs. Surratt, Miss Anna Surratt, and I think Miss Jenkins—I will not be positive about that; at all events, if Miss Jenkins was not in the room, she came

in the room while I was there. Mr. Weichmann and two others were there, one of whom Mrs. Surratt introduced as Booth. The other she did not introduce.

Q. Did you find out his name in the course of the evening?

A. After Booth and this man left, I heard him spoken of as "Port Tobacco."

Q. You are quite sure, then, that Booth and the man called Port Tobacco were there; did they spend some time there while you remained there?

A. Not long. Soon after I got there tea was announced, and Mrs. Surratt invited me to tea; but, as I had taken tea, I declined. Booth and this Mr. Port Tobacco left.

Q. You are quite sure, then, that on the evening of the 26th of March you met Weichmann and Booth and Port Tobacco at Mrs. Surratt's?

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

Q. You spent part of the evening with them?

A. Not long.

Q. A short time?

A. I went there at the request of Mr. Surratt to deliver a message to his mother.

Cross-examined by Mr. PIERREPONT:

Q. Will you take that letter (the letter referred to in the direct-examination) and look at its date?

A. Yes, sir; it is dated March 26, 1865.

Q. Tell the jury now the date that you came up with the horses?

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

Q. The same date of that letter?

A. Yes, sir.

Q. Sunday?

A. Yes, sir.

Q. They were two gray horses?

A. Both gray horses?

Q. After you brought the horses, you took that letter to the stable, did you?

A. Yes, sir.

Q. And after you did that, you went to Mrs. Surratt's house?

A. Yes, sir; in the course of the evening—not immediately.

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

A. Yes, sir.

Q. You knew him, perhaps?

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

Q. You saw him at the house?

A. Yes, sir.

Q. And you spoke at the house of having brought back the horses—said something about it?

A. Not in his presence.

Q. Did you speak of it to anybody?

A. Yes, sir; to Mrs. Surratt.

Q. You spoke to her of having brought them back?

A. Yes, sir.

Q. You saw Booth there?

A. I saw a person who was introduced to me as Booth.

Q. She introduced you to Booth?

A. Yes, sir; a man called Booth. I never saw him before or since.

Q. That was the evening of the 26th?

A. The evening of the 26th; the same day that the letter is dated. It was written in the morning and I delivered it in the evening.

Q. You saw another man they called "Port Tobacco?"

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

Q. Before you brought home the horses, where did you see Mrs. Surratt?

A. I brought those horses up from Port Tobacco, and Mrs. Surratt was not there.

Q. But you spoke of having seen Mrs. Surratt before that somewhere?

A. At Surrattsville. I am doubtful about that; but my impression is that I did. I saw her in the passage.

Q. You think you saw her in Surrattsville?

A. I would not like to testify to it.

Q. Testify to the jury on what day it was?

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

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

A. He called her Mrs. Brown.

Q. Where did you see her last?

A. In Port Tobacco?

Q. Who was with her?

A. John Surratt.

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

A. He told me he was going either to put her in safe hands to carry her to Richmond or, if he could not do that, he would himself take her to Richmond.

Q. What did he tell you about returning?

A. He sent this message to his mother.

Q. What was that message?

A. That if he did not cross the river he would be home the next day on the stage; but if he did cross the river, he would return as soon as he could. He might possibly put her in safe hands on the other side of the Potomac river; but, if necessary, he should take her to Richmond.

Q. Who was this blockade-runner that you spoke of in your direct-examination. What was his name?

A. Howell.

Q. Do you know his first name?

A. I think it was Augustus.

Q. Who told you who he was?

A. I have known him a long time.

Q. Did Surratt tell you any thing about him?

A. I think not; he may have spoken about him, but I knew Howell probably better than Surratt did. I have known him since he was a boy. He was raised in the county, and about the county-town, Marlboro.

Q. Was he with Surratt at Port Tobacco?

A. Oh, no; he was arrested the night before Surratt got there.

Q. Who was the signal-man that you spoke of?

A. His name was Charles Cawood; he was a lieutenant in the signal-corps of General Lee's army.

Q. Who told you that he was?

A. I heard it from more than one; I think I heard it from Howell.

Q. You said you asked Surratt about it?

A. Yes, sir.

Q. What did Surratt tell you?

A. That he understood he was there?

Q. Where?

A. In Port Tobacco.

Q. Did you find him there?

A. I did not; I heard where he was; he was at a place about ten miles from Port Tobacco, called Newport, I understood.

Q. And the last time you saw Surratt in March was at Port Tobacco.

A. Yes, sir, the 26th of March I left him in Port Tobacco.

Q. And this woman there with him?

A. At the hotel.

Q. Whom he called Mrs. Brown?

A. Yes, sir.

Q. Describe that woman as nearly as you can; give as good a description of her as you can.

A. She was rather a small delicate woman; I think she had black hair or dark hair; I do not recollect positively whether I saw her with her bonnet off. Going down, I think she wore her veil down nearly all the time. I saw her, however, at the tea-table.

Q. Was she of delicate size?

A. I think so; that is my recollection now.

Q. What about her age?

A. I should think under thirty.

Q. And the only way that you knew of her name being Mrs. Brown was from John Surratt?

A. That is all.

By Mr. BRADLEY:

Q. I understand you to be quite distinct that Dr. Wywill did not bring back those horses, but you did?

A. I am very distinct that I brought them back on the date named in this letter.

Mr. PIERREPONT. We will stipulate that in writing, if it is needed.

Mr. BRADLEY. Something may be needed without stipulations before we are done, perhaps. (To the witness.) And you are quite sure that you did meet a man spoken of there as Atzerodt in company with Booth and Weichmann?

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

By Mr. PIERREPONT:

Q. You are equally certain of all these other things that I asked you?

A. I think I am.

Mr. PIERREPONT. I have no doubt of it.

BENNETT F. GWYNN,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. Prince George's county, Maryland.

Q. Anywhere in the neighborhood of Surrattsville?

A. Yes, sir; within about a mile.

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

A. I did.

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

A. I recollect seeing her there on the 14th.

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

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

Q. Who was with her?

A. Mr. Weichmann.

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

A. Yes, sir; she was.

Q. Have you any knowledge of that business?

A. I have.

Q. To what did it relate? What was the nature of the business?

A. It was relative to the purchase of some land by a man by the name of Nothey from her husband in his lifetime. I was a party to the transaction, and it was settled through me. She held a note on Mr. Nothey. Mr. Nothey had been up to see her, and wanted her to appoint a time—

Mr. PIERREPONT. Never mind that; you need not tell what he wanted.

Q. (By Mr. BRADLEY.) She came to your house, then, in relation to that business?

A. Yes, sir.

Q. Did you see Mr. Nothey in relation to that business?

A. Yes, sir.

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

A. No, sir; there was a difference of opinion.

Mr. PIERREPONT. You need not go into any difference of opinion.

Q. (By Mr. BRADLEY.) There was nothing settled?

A. No, sir.

Q. State whether the debt was long due.

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

Mr. BRADLEY. I offer in this connection the letter of George H. Calvert, Jr., in evidence.

"RIVERSDALE, April 12, 1865.

"Mrs. M. E. SURRATT:

"DEAR MADAM: During a late visit to the lower portion of the county, I ascertained of the willingness of Mr. Nothey to settle with

you, and desire to call your attention to the fact, in urging the settlement of the claim of my late father's estate. However unpleasant, I must insist upon closing up this matter, as it is imperative in an early settlement of the estate, which is necessary.

"You will, therefore, please inform me, at your earliest convenience, as to how and when you will be able to pay the balance remaining due on the land purchased by your late husband.

"I am, dear madam, yours, respectfully,

"GEO. H. CALVERT, Jr."

I ask the gentlemen on the other side if they want proof of the handwriting. I am as familiar with it as I am with my own.

Mr. PIERREPONT. We do not object to it on any such ground; but it is not evidence in the case. We object to it on that ground, and not on the ground of handwriting.

Mr. MERRICK. The handwriting is admitted.

Mr. PIERREPONT. Yes.

Q. (By Mr. BRADLEY.) Do you know whether she was indebted to Mr. George Calvert, jr., at that time?

Mr. PIERREPONT. You need not state whether you do or do not, unless the court tell you so.

Judge FISHER. What is the objection?

Mr. PIERREPONT. The objection is, that it has nothing whatever to do with the case whether Mrs. Surratt was indebted to some other man or not.

Mr. BRADLEY. I suppose it is competent for us to show the purpose with which Mrs. Surratt went to Surrattsville on the 11th of April and on the 14th of April; and, if it was in connection with this business, we show a legitimate reason for her going there.

Mr. PIERREPONT. It has nothing to do with the case.

Judge FISHER. I think, Mr. BRADLEY, you have shown that she had this business in view when she went there by this testimony; but it is not worth while to encumber the case with all the details.

Mr. BRADLEY. Not at all. I propose to prove that after the 11th of April—the day he speaks of—Mrs. Surratt received this letter from Mr. Calvert, requiring her immediate attention to this business, the payment of the debt due to him; and on the 14th she went to Surrattsville for the purpose of settling up that business and getting the money to pay Mr. Calvert. I propose to show this as a part of the evidence. I do not know that I can show any demand upon her except in that form.

Judge FISHER. Then, if you want to show what she did there on the 14th of April, you ought to have witnesses to show what she did.

Mr. BRADLEY. I propose to have that; I do not propose to rest here; the Government have taken the trouble to prove that on the 14th she went there to meet Mr. Nothey to receive payment or some settlement of this debt, and that the Government witness, Weichmann, calculated the interest on this debt for thirteen years; and she went on the 14th in relation to this very matter; for they prove that she went down for this business, and I am carrying out exactly the line of proof they offered.

Mr. PIERREPONT. If the counsel will state that he proposes to show that what the Government offered on that subject is not true, we will not object.

Mr. BRADLEY. Your honor understands me, evidently.

Judge FISHER. I understand you, sir; I do not think it is legitimate proof to go into all the details of the business. If you wish to offer any proof as to what was doing there that day, you can do so.

Mr. BRADLEY. And why she went. That is all I ask. I send the letter to your honor, and you will see that it is clearly admissible for the purpose of proving why she went there.

Mr. PIERREPONT. We submit that it is not admissible for any purpose, so far as we understand the rule.

Mr. BRADLEY. I know it is not to prove the gentleman's case, but it is to disprove it.

[The letter was handed to Judge FISHER and examined by him.]

Mr. PIERREPONT. I have not read the letter, but I say if it tends to disprove any thing we have offered we do not object to it.

Mr. BRADLEY. It is in the report of the other trial; I thought it was lying before you. That is all I propose to prove in regard to that. On the 13th she received that letter, and went down on the 14th. Mr. Weichmann proves that on the 14th, when he came home from the office, she said she had received a letter from Mr. Calvert requiring her to go to Surrattsville on business; and she asked him to get a buggy. I only propose to show what business it was—that it was a legitimate and proper and just business.

Mr. PIERREPONT. The counsel says that Mr. Weichmann said she had received a letter and went down there. I object to putting in the letter, because it is not proper evidence. It does not disprove anything that has been offered heretofore.

Mr. BRADLEY. I do not say that it disproves any thing. I say it proves the reason why she went there.

Judge FISHER. I think you had better confine your proof to what she actually did on that day, after she went to Surrattsville or before she went to Surrattsville.

Mr. BRADLEY. I desire to have an exception reserved to that ruling.

Q. (By Mr. BRADLEY.) Did you see Mrs. Surratt on the 14th of April?

A. Yes, sir.

Q. What time in the day?

A. About five, or half-past five o'clock, I think, in the afternoon.

Q. Had you been to Marlboro?

A. I had been to Marlboro, our county-town, at court.

Q. You saw her about five, or half-past five o'clock, in the evening?

A. Yes, sir.

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

A. When I reached there, I did not know she was there; and as I was passing, Mr. Jenkins, I think, called to me and said his sister was in the house and wanted to see me. I was driving in my buggy, and stopped it opposite the front part of the house, got out, and went in. I saw her buggy at the door. The buggy was then then at the door in the act of leaving. She said to me—

Q. Was anybody in it?

A. No, sir, not at that time. She said to me she had started to go to my house, and that when she—

Mr. PIERREPONT. You need not tell us what she said to you there. You may tell what she was doing. I do not object to that.

Mr. BRADLEY. What is the objection to it?

Mr. PIERREPONT. The objection is, that it is not proper to tell what Mrs. Surratt said to him there. Whatever he saw Mrs. Surratt do, I do not object to.

Q. (By Mr. BRADLEY.) Was Mr. Weichmann present at the time?

A. Yes, sir.

Mr. BRADLEY. The court will say whether I can go on and show what Mrs. Surratt said at that time.

Judge FISHER. If any conversation has been brought out on the other side which Weichmann has detailed here you may give evidence about it.

Mr. PIERREPONT. I do not object if they say it is that. But as Weichmann did not give any evidence of conversation there, it cannot be that.

Mr. BRADLEY. I do not know that that follows at all.

Mr. PIERREPONT. You will find in the record not a word of conversation of Mr. Weichmann.

Judge FISHER. I do not remember any thing of the sort.

Mr. BRADLEY. Nothing was said of conversation by Weichmann when Mr. Gwynn was present—I admit that. I propose to give her actions and sayings at that time.

Judge FISHER. They are not admissible.

Mr. BRADLEY. As they have been offered on one side, I propose to do so on the other. It is ruled out, and I desire an exception to be noted?

Q. (By Mr. BRADLEY.) You say she came out and had some conversation with you?

A. Yes, sir.

Q. Did you see her get into the buggy?

A. I did not.

Q. Did you see her go towards the buggy?

A. I did. I went to the buggy to help her in, and saw the buggy was broken, and called her attention to it.

Q. Was anybody in the buggy then?

A. No, sir.

Q. You saw the buggy was broken and called her attention to it. Did you stop her from getting in?

A. I did. I told her it was not safe.

Mr. BRADLEY. It will not do to state what you said.

The WITNESS. I called her attention to it.

Q. As being dangerous or otherwise?

A. Yes, sir; I considered it so.

Q. Then what further did you do?

A. I saw Mr. Nott crossing from the other side of the road over to the house. He was, I think, a bar-keeper there; and I asked him if he could not get a piece of rope, that Mrs. Surratt's buggy was broken, and it was not safe for her to go home in. He told me that he would, and went off to get the rope. I then called Mr. Weichmann's attention to it, and explained to him how he could tie it to make it strong enough to prevent any accident on the road. I then told Mrs. Surratt that my wife had been very sick, I had been away from home all day, and bade her good evening, and left her standing waiting for the rope.

Q. What part of the buggy was broken?

A. I think it was the fifth-wheel.

Q. The axle?

A. Yes, sir; I think so.

Q. It was you, then, that called her attention to the fact of the buggy being broken, and you directed Mr. Nott to get something to tie it up with, and you showed Mr. Weichmann how it could be done?

A. I did.

Q. Did you see Mr. John M. Lloyd there?

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

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

A. I think it was about that time.

Q. You say you know Mr. Weichmann?

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

Q. Has he ever been to your house?

A. Yes, sir; I think on one occasion.

Q. More than once?

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

Q. Once before he came with Mrs. Surratt?

A. Yes, sir.

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

Mr. PIERREPONT. Do not answer that question. Judge FISHER. I cannot see that that evidence would be admissible at all.

Mr. BRADLEY. We have not laid the foundation for it as regards Captain Gwynn. It is only a general foundation, whether he (Weichmann) ever said so to anybody. I was not aware that Captain Gwynn knew him at the time Weichmann was on the stand. I put it on a different ground. I submit to the court that Weichmann is the principal witness for the prosecution; and I think it tends to show his active agency and an interest on his part in everything that was going on in relation to Mrs. Surratt's house and the people who visited there, for the purpose of showing that interest in the witness which would lead him to give testimony against others in order to escape himself—going to his credit.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 78. WASHINGTON, MONDAY, AUGUST 19, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 77.*

Mr. PIERREPONT. I do not want to debate it; I object to the question.

Judge FISHER. It is not worth while to argue the question; it is ruled out.

Cross-examined by Mr. PIERREPONT:

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

A. No, sir.

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

A. I was commissioned by Governor Hicks as captain of a volunteer company in my county.

Q. A company of what?

A. A company of cavalry.

Q. When were you appointed?

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

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

A. At Surrattsville.

Q. Did you see her anywhere else that day?

A. No, sir.

Q. Did you see any guns there that day?

A. I did not.

Q. Did you see a field-glass there?

A. I did not.

Q. Were the secreted guns between the rafters ever shown to you there?

A. Never.

Mr. BRADLEY. Stop a moment. I must object to that question.

Judge FISHER. I guess your objection is good.

Q. (By Mr. PIERREPONT.) Did you have any thing to do with the escape of Booth on that night after the murder?

A. I had not.

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

A. No, sir.

Q. You were in no such plan?

A. None at all.

Mr. BRADLEY. When?

Mr. PIERREPONT. On Mr. Lincoln's coming from Annapolis to Washington.

Mr. BRADLEY. When?

Mr. PIERREPONT. Any time after he was President.

The WITNESS. No, sir.

Q. (By Mr. PIERREPONT.) Which side did you take in the war?

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

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

A. Sometimes I sympathized with the Southern people where they were oppressed, and sometimes with

the other side. Any thing that I did not think was right I opposed.

Q. You state that you bade Mrs. Surratt good evening after you had shown them how to mend the buggy?

A. Yes, sir.

Q. You said you did not stay to see it mended?

A. I did not.

Q. You do not know who mended it?

A. No, sir.

By Mr. BRADLEY:

Q. You have been asked whether you assisted Booth to escape, and you have answered "No," and various other questions affecting your position as a citizen have been asked. I ask you if you were a secessionist or took any part in the secession of the Southern States against the United States?

A. I did not.

By Mr. PIERREPONT:

Q. In what you stated about your sympathies, you understood my question, did you not?

A. Yes, sir.

By Mr. BRADLEY:

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

A. Yes, sir.

By Mr. PIERREPONT:

Q. Had you any thing to do with blockade-running against the laws of the United States?

A. I had not.

Q. And did not assist in it?

A. No, sir.

By Mr. BRADLEY:

Q. Have you ever heard your character and position there questioned or doubted by any man?

Mr. PIERREPONT. Stop one minute; you cannot ask a man what he heard of his own character.

Mr. BRADLEY. I think we may.

Mr. PIERREPONT. I think not.

Judge FISHER. You have examined and cross-examined and examined in reply, and I guess the witness can go.

[The witness left the stand, and was immediately recalled at the request of Mr. BRADLEY, that he might ask him a question.]

By Mr. BRADLEY:

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

A. Very frequently.

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

A. I never did; I never saw them farther than the District line.

By Mr. PIERREPONT:

Q. Did you say there were none there?

A. I never saw any there.

Q. Were there none placed there by the Government?

A. That I do not know; I never saw them.

Q. All you know is that you never saw them?

A. Yes, sir.

By Mr. MORSELL, a juror:

Q. Was any one sitting in the buggy at the time you called Mrs. Surratt's attention to it?

A. No one.

By the COURT:

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

A. By her side.

Q. How far from the buggy?

A. I suppose two or three feet.

J. Z. JENKINS,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. I believe you are a brother of the late Mrs. Surratt?

A. Yes, sir.

Q. Did you meet your sister at Surrattsville on the Tuesday before the assassination of the President?

A. No, sir.

Q. Did you meet her on the day of the assassination, on Friday?

A. Yes, sir; I saw her there.

Q. State for what purpose you were there; whether you transacted any business with her or for her.

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

Q. You cannot speak of it any further than that—the fact that she showed you a letter from Mr. Calvert. Was Mr. Nothey there?

A. No, sir.

Q. Can you state whether Mr. Nothey was expected there, and whether she waited for him or not?

A. That I do not know.

Q. What was the nature of the business.

A. Her business was with Mr. Nothey, and she wrote a letter, or got Mr. Weichmann to write a letter to Captain Gwinn to see Mr. Nothey. She likewise had two judgments which Mr. Calvert had obtained against John H. Surratt before his death, and I made out the interest on those judgments for her.

Q. Did you make any calculation of interest on the Nothey debt, or was that the Nothey debt that you made the calculation of interest on?

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

Q. Did you leave there before she did?

A. She left before I did.

Q. Did you know any thing about the breaking of the spring of the buggy?

A. I did not.

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

A. No, sir.

Mr. BRADLEY. The only portion of proof which I intended to ask you about the court has ruled out, and that is what passed between you and Mrs. Surratt in regard to that business.

Cross-examined by Mr. PIERREPONT:

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

A. I think he did.

Q. Now, will you tell the jury where Mr. Nothey lived then?

A. He lived about three or four, or probably five miles from that place, in the direction of Piscataway.

Mr. WILLIAM FAILING

was called as a witness for the defense, but did not respond.

Mr. MERRICK. If your honor please, it is now a

little after twelve o'clock, and we will have this witness after the recess, if the court proposes to take a recess.

Judge FISHER. I supposed that probably we would end the session to-day at about half-past one o'clock, and perhaps it would be best to go on right along, if we can. But if you have no witness present, we will take a recess for fifteen minutes.

Mr. BRADLEY. We have been obliged to arrange our business so as to divide it, and in consequence of that, we expected to close this morning with Failing, and then take a recess. We can get him in a few minutes, and then go on.

Mr. MERRICK. We had better take a recess for fifteen minutes, and we will have him by that time.

Judge FISHER. Very well.

The court accordingly took a recess for fifteen minutes, re-assembling at half-past twelve o'clock.

BERNARD J. EARLY,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State, if you please, whether you knew Mr. Michael O'Laughlin, who was tried by the military commission?

A. Yes, sir.

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

A. Yes, sir; I saw him that day.

Q. Will you state where he was that morning from seven o'clock until ten or eleven?

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

Q. Did you see him as early as seven o'clock or afterwards?

A. It was after seven o'clock, I should judge; we left orders the previous evening to wake us up at seven o'clock.

Q. You were called, and what then happened?

A. We were called at seven o'clock, but we did not get up immediately; about a quarter of an hour afterwards we got up and came out of the room.

Q. Dressed?

A. Yes, sir; with the exception of our hair. O'Laughlin was sleeping in the next room adjoining us. He was not up. I looked through the key-hole, and saw him lying on the bed still asleep, and rapped at the door, and told him to come down stairs; we were getting ready to go.

Q. Did you rouse him up?

A. Yes, sir. We went down stairs, went into the saloon, and took a drink—Mr. Henderson, Mr. Murphy, and myself. We went from there into the shaving-saloon, and were sitting in there when Mr. O'Laughlin came down stairs. He asked us to take a drink, and we told him we had one, and he went himself and had one and came in and got shaved.

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

A. Yes, sir.

Judge FISHER. Where was that?

A. At the Metropolitan Hotel.

Q. (By Mr. BRADLEY.) After you had all got shaved, which way did you go?

A. We then went up the avenue to the restaurant kept by a man by the name of Welcker—over Wall & Stephens's clothing-store. We went in there and ordered breakfast, and had to wait until it was prepared for us.

Q. Did you take your breakfast there or not?

A. We did.

Q. After breakfast where did you go?

A. After breakfast we came down Pennsylvania avenue. Mr. Murphy, one of the party, stopped in at Metropolitan Hotel to see a friend of his, and was to rejoin us at the National. Henderson, O'Laughlin, and myself went on to the National. Mr. O'Laughlin went to the desk and inquired for a friend of his, and

went up stairs to see him, and told us to wait there for him. We waited for a few minutes, and then went back in the rear of the hotel.

Q. You were gone how long?

A. About fifteen minutes. We came in then and did not see him there, waited awhile, and Mr. Henderson had some cards written by the card-writer at the hotel, and while he was having them written Mr. Murphy came in and joined us, and the card-writer wrote a sample card for him and I. We then went into the sitting-room or reading-room of the hotel, waited there a few moments—perhaps ten or fifteen minutes—and, O'Laughlin not making his appearance, Henderson and I sent up our cards, as a hint, to the room where he had gone, for him to come down. The waiter returned immediately and said he was not there, there was nobody in the room. We then went down Pennsylvania avenue—Murphy, Henderson, and I—and at Lichau's, formerly Rullman's, we met O'Laughlin.

Q. Between Third and Four-and-a-half streets?

A. Yes, sir. Mr. O'Laughlin was standing in the bar-room there.

Q. How was he dressed that morning?

A. He had on a black slouch hat, what I call a dahlia or plum-colored frock-coat, and very conspicuous plaid pantaloons and vest—purple and green, with stripes up and down.

No cross-examination.

EDWARD A. MURPHY,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Washington at the present time.

Q. What business are you engaged in?

A. The plumbing business.

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

A. Yes, sir.

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

A. Yes, sir.

Q. Now, state to the jury where you saw him and what you know about him that morning?

A. We had roomed the night before at the Metropolitan Hotel, and had ordered the waiter to wake us at seven o'clock in the morning; about seven o'clock he woke us up; we lay there for sometime and then got up, and then I rapped at O'Laughlin's door, requesting him to get up; he was very unwilling to get up, but I opened the door and saw him there, and we went from there down to the barber's shop.

Q. You did not wait for him to dress?

A. No, sir; we went from there to the barber's shop and got shaved.

Q. Where was the barber's shop?

A. In the Metropolitan Hotel.

Q. It leads off from the main entrance into the room running back from the hotel?

A. Yes, sir. After getting shaved we took a drink. Then O'Laughlin came down and we asked him to take a drink. Said he, "I have not been shaved yet." He got shaved, and we waited for him and then afterwards took a drink.

Q. All four of you got shaved there that morning?

A. Yes, sir.

Q. And you each took your morning there?

A. Yes, sir.

Q. Where did you go then?

A. From there we went to Welcker's, on the avenue, above Ninth street—a restaurant.

Q. What happened there?

A. We ordered breakfast there.

Q. Did you have to wait to get it prepared and cooked?

A. Yes, sir.

Q. And you remained there until when?

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

Q. From there where did you go?

A. From there we came down towards the National Hotel. I stopped at the Metropolitan again. I made an arrangement with these parties to meet them at the National Hotel. I stopped at the Metropolitan Hotel ten minutes, I suppose, and went from there into the National; there I met Early and Henderson.

Q. Was O'Laughlin with them?

A. No, sir.

Q. How long did you stay there?

A. From the time I left them until we started away from the National Hotel and got down to Rullman's, I suppose, must have been half an hour.

Q. And there you found him, at Rullman's?

A. Yes, sir.

Q. Where is that?

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

Q. Between Four-and-a-half and Third streets?

A. Yes, sir.

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

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

No cross-examination.

WILLIAM FAILING,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Canandaigua.

Q. Where did you live in April, 1865?

A. In Canandaigua.

Q. What business were you engaged in?

A. In the hotel business.

Q. What hotel did you keep?

A. The Webster House.

Q. [Exhibiting a hotel register.] Look at that book, and tell me if that was the register of the Webster House at that time?

A. Yes, sir; that is the register.

Mr. BRADLEY. (To the counsel for the prosecution.) Now, gentlemen, I will show it to you, and will then offer it in evidence.

[The register was exhibited to the counsel for the prosecution.]

Mr. PIERREPONT. I want to ask this witness some questions about the book before it is offered in evidence. (To the witness.) Will you take that book, and look at the page under the date of April 14th?

Mr. BRADLEY. One moment, gentlemen. If you want to cross-examine, wait until the register is offered in evidence.

Mr. PIERREPONT. I want to examine him about the register before it is offered in evidence.

Mr. BRADLEY. I am going to ask him some questions about that before I offer it in evidence.

Mr. PIERREPONT. Very well; I will not ask him any.

Mr. BRADLEY. I am going to offer it in evidence, and I submitted it to you before I did so.

Mr. PIERREPONT. I thought you were going to do it now. I do not want to ask any thing until you are through with the register.

Q. (By Mr. BRADLEY.) That was your register at that time?

A. Yes, sir.

Q. Who was your clerk at that time?

A. A young man by the name of Pratt.

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

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

Q. Where from?

A. He is put down as from New York.

Q. Are there any names after it or not on that day?

A. Yes, sir.

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

Mr. PIERREPONT. Do not answer that; we are willing they shall show any time when that name was entered, and would like to have them show when it was entered.

Judge FISHER. What is the question?

Mr. BRADLEY. Whether the place where the name is recorded would show at or about what time John Harrison arrived or was registered.

Mr. PIERREPONT. I object to that, but do not object to their showing when that name was written there; I wish them to show it.

The WITNESS. This was the register we kept for every-day use on the desk, dated regular; every morning we would write the date anew.

Q. (By Mr. BRADLEY.) And the names of the parties as they arrived would be entered in their regular order?

A. Yes, sir.

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

Mr. PIERREPONT. Wait one minute; he cannot state whether he arrived at all, so far as he has got now. If the witness will state that that party ever arrived there and entered his name, I will not object; until then I do object.

Mr. BRADLEY. I will save some trouble about that. (To the witness.) Were you at home that evening?

A. I am not positive that I was until some time late in the evening; I had been to Rochester, and I am not sure whether I was there in the fore part of the evening or not.

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

A. I think, at that time, at eight or nine o'clock, or along there; perhaps ten o'clock. I recollect distinctly that it was what we called the last train in the evening.

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

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

Q. The bottom of the page is filled up by whose handwriting?

A. In the handwriting of a young man that I paid off and settled with on that evening, and he wrote his name here himself.

Q. That is Pratt, your clerk?

A. Yes, sir.

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

A. I think it was that evening; I am not certain.

Mr. BRADLEY. Now, I am going to offer the book in evidence, if the court please. I have proved the handwriting by Miss Jenkins to be that of John H. Surratt.

Mr. PIERREPONT. Now, I will ask some questions, if the court please, in regard to it. (To the witness.) Where were you on the 14th of April, the day of the assassination?

A. I do not know; probably I was at home.

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

A. I think I was at home.

Q. What day were you at Rochester?

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

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

A. Yes, sir.

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

A. Yes, sir.

Q. Where?

A. When I sold out to Mr. Chamberlain, I sold the

book to him, and it remained in his hands until a short time ago.

Q. How long ago?

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

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

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

Q. Was it brought away from there—from Chamberlain's?

A. Yes.

Q. Where was it brought to?

A. It was brought up to the cars, and I took it on the cars and brought it here.

Q. What did you do with it when you got here?

A. I left it here.

Q. How long ago was that?

Mr. BRADLEY. With whom did you leave it?

A. I left it with Mr. BRADLEY.

Q. (By Mr. PIERREPONT.) How long ago was that?

A. I should think ten or twelve days ago.

Q. And from that time until now had you seen it?

A. No, sir; not until now.

Q. You tell us that these names at the bottom of the page were written by whom?

A. By my clerk in the office. His name was Selin Pratt.

Q. And he wrote these names down here, "S. Pratt," "S. Batt," "S. B. Batt?"

A. The lower name I am pretty sure is his.

Q. You had the means of telling who were at your house on that day?

A. I had the means, by the night-book.

Q. [Exhibiting another book.] Take that book. What book is that?

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

Q. What does it mean?

A. It means that if a gentleman stopped at the house such a day in the week and entered his name on the register, and called for a room, we would put his name on this book and set a room off to him, and we would charge him with what he had.

Q. Now, take this book and find whether this name of John Harrison was charged to any room?

A. Some of the leaves are gone. I picked up a lot of old books—

Q. One minute. I am going to ask all about that. Do you find any such thing on that night-book, as you call it?

A. I find a good many names here that are on the night-book.

Q. Do you find any thing that will show that that name, or whoever represented that name, was at your house? Take your time. I do not wish to press you about it.

Mr. BRADLEY. It is hardly worth while to be occupying the time of the court. The leaves of that book are evidently lost for that week.

Mr. PIERREPONT. I want to have him tell us all about it.

Mr. BRADLEY. We want to get at the subject practically.

Mr. PIERREPONT. It will be tolerably practical presently.

A. [After an examination.] No, sir, I do not see any thing of that name.

Q. You do not find any thing of the sort?

A. I do not.

Q. Now, will you not tell the jury what you did with these two books; where you left them; where they were put?

A. This one [the night-book] I packed up with a lot of other books, the help-book and others. The register I sold to Mr. Chamberlain when I left, and he took it and used it up—the balance of it.

Q. Mr. Chamberlain used that and you kept the other?

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

Q. Now, will you not tell us what you did with that book? [The night-book.]

A. I packed it up in a box or basket with the others, and carried them home.

Q. Where did you put them?

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

Q. Did anybody ever go there to examine it?

A. No, sir, not to my knowledge.

Q. You did not see it examined, did you?

A. I never did.

Q. Do you know any thing about the other book being examined—where that was put?

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

Q. You had nothing to do with the book afterwards.

A. I had nothing to do with it; never saw it.

Q. You did not see that name written there?

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

Q. You have no recollection of who wrote it or when it was written?

A. No, sir.

Q. Have you any recollection whatever about it?

A. I have not. I was away a good deal about that time, and my clerk did the business there, and I could not tell any thing about it.

Mr. PIERREPONT. I object to its being offered in evidence.

Mr. BRADLEY. State the ground of the objection.

Mr. PIERREPONT. The ground is pretty obvious.

Mr. BRADLEY. I have proved the handwriting, and I should like to hear the ground of the objection.

Mr. PIERREPONT. It is easy enough to have a handwriting put in a register, or any number of hands. It does not prove any thing at all. It cannot be admitted in evidence even where it is objected to. It is only where it is not objected to that it is ever admitted that I have ever heard of. If they can prove that any man wrote that signature there, if this witness saw him write it, or if he knows any fact that makes him know that anybody wrote it, I do not object to it at all. It is not a letter; it is not sent to anybody or received by anybody. It is a name, and there are a good many of them there; and who wrote it, or when it was written, there is no evidence of.

Mr. BRADLEY. There is evidence that it is in his handwriting.

Mr. PIERREPONT. There is not any evidence as to when it was put there at all. According to their theory, it was put there more than two years ago, without anybody to show that it was ever put there, or anybody to show that the man that they claim put it there was ever in the house. There is no such evidence in the case; and the fact that such a name appears upon a book that was taken away from the place, and has been here in Washington, is not evidence of the fact that it was put there at that time, and nobody would say it was evidence in any court.

Mr. BRADLEY. I will ask Mr. Failing to stand down for a moment, and I will call Mr. Frank O. Chamberlain. I never saw him, but I understand he is here.

FRANK O. CHAMBERLAIN,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Canandaigua.

Q. What is your business?

A. Keeping a hotel—the Webster House,

Q. Did you or not purchase out Mr. Failing, and did you purchase the register at the same time?

A. Yes, sir.

Mr. BRADLEY. We wish to examine Mr. Cham-

berlain to see whether there has been any alteration made in that register since it came into his possession or after it came out of his possession into mine.

Mr. PIERREPONT. See what he knows.

Mr. BRADLEY. I shall follow it by proof that it has not been altered in my possession. (To the witness.) I call your attention to the entry of John Harrison under the date of the 15th of April. State, if you please, when your attention was first called to that entry and by whom.

A. I think since this trial commenced.

Q. Further back than that?

A. By Mr. BRADLEY, Jr., before the trial commenced; I cannot tell the date.

Q. Where?

A. At the Webster House, in Canandaigua.

Q. At your own place?

A. Yes, sir.

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

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

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

A. I do not.

Q. To whom did you deliver it?

A. I do not know whether it was to Mr. Failing or Mr. BRADLEY, Jr., or Kirby; I cannot recollect. The day Mr. Failing came on, I think I gave it to him.

Q. And all that time it has been in your possession until you gave it to Mr. Failing to bring it here?

A. I think it has.

Cross-examined by Mr. PIERREPONT:

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

A. It was on the 17th of April, 1865.

Q. When you took possession of that book, was there any such name in it as John Harrison?

A. I could not tell.

Q. Was there any such name or the name to which your attention is called in it for twelve months after?

A. I could not tell that.

Q. What did you do with the book?

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

Q. Then what did you do with it?

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

Q. How long?

A. Until it was brought here.

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

A. It lay there until the last date entered in it.

Q. When was that?

A. December 31, 1865.

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

A. Yes, sir.

Q. After it was used up, where did it continue; on the desk?

A. It was on a shelf under the desk in the office. The desk is outside of the office. It is used for a desk.

Q. How long did it continue there?

A. Until it came here.

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

A. Yes, sir.

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

A. Yes, sir.

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

A. No, sir.

Q. Take this register and look along almost any leaf, and see whether there are vacant lines there or not where any name could have been written or half a dozen names.

A. Yes, sir.

Mr. PIERREPONT. I object to this book being offered in evidence. This man does not know that that name was written there in two years. I will ask him one further question. You have told us where the book

lay and when it was put there; you say you do not know that that name was on it?

A. No, sir.

Q. After it was put in that place, where it was open to everybody, will you tell the court and jury whether it might have been taken away and gone for months without your knowing it?

Mr. MERRICK. Do not answer that question. What might or might not have been is not for him to determine. He can state the fact.

Q. (By Mr. PIERREPONT.) I ask you then the fact, whether there were months you did not see it and did not know whether it was gone or not?

A. It lay where it could be seen every day, but it might not be noticed. It was not in use, and it was not necessary.

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

A. I might and might not; I had no use for it; it was in a public place there under the desk. There were envelope-boxes and another register there with it.

Q. Now, will you tell the jury when anybody first came to ask you about that register?

A. Mr. BRADLEY, Jr., was the first man.

Q. When was that? You say you can give the date, please give it.

Mr. BRADLEY. He did not say he could give the date.

Mr. PIERREPONT. Yes, he did; he said he could give it.

A. I cannot here, but I have a memorandum of it at the hotel.

Q. (By Mr. PIERREPONT.) You can tell exactly the date?

A. Yes, sir.

Mr. PIERREPONT. We will have that then tomorrow.

Mr. BRADLEY. You need not trouble yourself; I will fix it by another witness.

Mr. PIERREPONT. I want him to fix the date.

A. It was a short time before the trial commenced.

Q. (By Mr. PIERREPONT.) What month; was it in June—last month?

A. I think it was.

Q. You think it was the early part of June?

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

Q. Now, will you tell me what the man said to you who came there to get the register?

A. I cannot recollect all he said.

Q. Tell what you can recollect?

Mr. BRADLEY. Which man do you mean?

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

A. Mr. BRADLEY.

Q. What did Mr. BRADLEY say?

A. He subpoenaed me.

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

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

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

A. No, sir.

Q. But he said he had been there twice before this time?

A. Yes, sir.

JOSEPH H. BRADLEY, JR.,

a witness for the defense, sworn and examined.

By Mr. BRADLEY, Sr.:

Q. State, if you please, when you first visited Canandaigua and saw that register; if you have a memorandum of the date, refer to it.

A. From information which I received from the prisoner who was confined in the jail—

Mr. PIERREPONT. Never mind that.

Mr. BRADLEY, Sr. He has a right to state on the information received what he did.

A. I proceeded to Canandaigua, going from the city of New York, and arrived there on the morning of Saturday, the 16th day of March, 1867. I proceeded to the Webster House direct. I am not sure whether it was the 16th of March or a day earlier or later. At all events, I arrived there and proceeded to register my name, and looked around the office and found under a desk in the office this register, which I took the liberty of opening, and turned to the date at once of the 15th of April, to look for the name of John Harrison, and found that identical name there registered.

Q. Was the book in the same condition then that it is now?

A. Precisely the same. I made inquiries of the clerk in charge in the office, who was not there in 1865. He had gone to open a public house for himself, as I was informed. The book was in precisely the same condition that it is now. Without stating anything as to the object of my visit, I stayed at the hotel, as long as it suited me, and I proceeded to another point in pursuit of this investigation. In the month of May, on my second trip in pursuit of information on this subject, I returned to Canandaigua, in anticipation of the trial, which was fixed for the 20th of May, and I arrived there, I think, on the night of Wednesday, the 22d, or Thursday, the 23d. I again looked at the book, which was just where I had left it, and it was still in the same condition. I made my errand known to the clerk of the hotel, and he stated that Mr. Chamberlain was out of town—had gone to a house-warming of a friend of his who had opened a hotel at the head of the lake. He returned the next day. I then stated to him the object of my visit at a private interview. He sent down for the book and it was brought up into the room where we were, and I directed his attention to this entry. I then served a process of subpoena upon him to attend with that book, at this court. That is all I know upon this subject, except that I know the entries are precisely the same now as they were in March last.

Mr. MERRICK. When you first saw it?

A. Yes, sir; and I got all my information from the prisoner.

Mr. BRADLEY, Sr. Now, I will ask Mr. Middleton to swear me, to prove that it has not been altered since I have had it.

Mr. PIERREPONT. If it was there before, it certainly could not have been altered since; therefore, what possible use would it be?

Mr. BRADLEY. I cannot imagine.

Mr. PIERREPONT. Nor I.

Mr. MERRICK. Swear Mr. BRADLEY.

Mr. PIERREPONT. If they insist upon it, we cannot help it.

JOSEPH H. BRADLEY, SR.,

a witness for the defense, sworn and examined.

Mr. BRADLEY, Sr. Mr. Failing delivered that book into my possession when here some three weeks ago, and it has never been out of my possession until to-day.

Q. (By Mr. MERRICK.) Is it in the same condition now in which it was then?

A. It was in the same condition then that it is now, precisely, without the slightest alteration.

Q. You have not allowed it to be mutilated?

A. No.

Mr. BRADLEY. [After retiring from the witness-stand.] Has your honor any doubt about the admissibility of the book?

Judge FISHER. I have.

Mr. BRADLEY. Let me call your attention, before the objection is pressed on the other side, to the evidence. The Government has taken the trouble to prove that, certainly from the 18th of April, 1865 to this day, the prisoner could not have been in Canandaigua. We have proved that the entry in that book is in the hand-

writing of the prisoner. Could he have made it after the 18th of April, 1865, up to this day?

Mr. PIERREPONT. Certainly he could have made it in jail here without the least difficulty, from the evidence given here. Mr. Chamberlain has stated that it might have been two months away and he not have known any thing about it. We are not suggesting, nor have we suggested, that the counsel had any thing to do with any such thing.

Mr. BRADLEY. I think you did.

Mr. PIERREPONT. Not in the least, nor have we made any such suggestion.

Mr. BRADLEY. I do not care whether you did or not.

Mr. PIERREPONT. And that great effort to repel such an intimation was quite uncalled for; no such suggestion was made.

Judge FISHER. I have no doubt on that score. The doubt resting in my mind is this: when you offer a book of this sort in evidence, there ought to be some evidence accompanying it showing the fact that some party came there at the time and made the entry at the time when it purports to have been made. Two years and three or four months have elapsed since the time this entry purports to have been made. We do not know where the prisoner was all the time. It may possibly have been—I do not say it is so—that that entry was made after the 15th of April and before the 17th or the 22d of September, the date when he set out from Canada to Europe. That is the question that presents itself to my mind.

Mr. BRADLEY. Your honor will recollect the proof that the prosecution have given in evidence. If it is worth any thing at all, it is that he was kept in concealment in Canada until he sailed for Europe. Otherwise, there is no evidence about it at all. The proof by the Government is, that he was kept in concealment in Canada until he sailed.

Judge FISHER. I am under a misapprehension if there is any evidence to show a negative of the fact that he never was in the United States after the 15th of April.

Mr. BRADLEY. I only cite the proof given by Dr. McMillan, that he was kept in concealment during the time he was in Canada and up to the time he sailed.

Judge FISHER. He might be kept in concealment, and yet might have been here even.

Mr. BRADLEY. When we prove the handwriting, is it not a question for the jury as to the weight of the evidence, not its admissibility. The handwriting is proved to be his. The effect of that handwriting, and when it was made, is altogether a question for the jury, if the court please.

Judge FISHER. You offer the book in evidence to show the fact that he was in Canandaigua at that time.

Mr. BRADLEY. We offer it as tending to prove that he was, not as conclusive proof. Is not that entry, made in the regular course of business, in the handwriting of the prisoner, admissible as tending to prove it? Is it not admissible for that purpose not as conclusive; but, taken in connection with all the other circumstances, are not the jury to weigh the weight of the evidence when we prove the handwriting? But I go further now, if it is necessary to go further, and prove the impossibility of his making the entry while in jail, if that is all.

Judge FISHER. That is not the point.

Mr. BRADLEY. I understand your honor limits it to the 17th of September, when he is said to have sailed.

Judge FISHER. That is the question which arises in my mind.

Mr. BRADLEY. Now, I say what we offer is an entry made by the prisoner, in his handwriting, under a certain date, at a certain place. *Prima facie* he must have been there, or it could not have been made. The book is all regular on its face. There is nothing suggestive of any alteration of the book that I know

of. Two names are entered under this entry, not in his handwriting, not in the handwriting of the clerk.

Judge FISHER. Let me see the book.

[The register and also the night-book were handed to Judge FISHER.]

Mr. BRADLEY. I do not want to discuss it unnecessarily. I do not mean to discuss the question of evidence. I want to call the attention of the court to the facts. I do not mean to discuss such a question as this.

Mr. PIERREPONT. I propose to discuss it a little.

Mr. BRADLEY. You will have a chance when I am done. You want to talk all the time.

Mr. PIERREPONT. Not all.

Mr. BRADLEY. Yes, you do; because if I interrupt you, you go on.

Now, I wish to call your honor's attention to the proof. You will find that, from the 6th of April until the 21st of April, the leaves are gone out of what they call the night-book there. That is what surprised me. I think those are the dates, from the 7th to the 21st. I can hardly be mistaken about it, for I was surprised when I saw the book.

Judge FISHER. I see here Thursday, April 21, and also Tuesday, April 11, and Wednesday, April 12.

Mr. BRADLEY. And from there to the 20th the leaves are gone.

Judge FISHER. From the 12th to the 20th the book seems to be defective.

Mr. BRADLEY. Mr. Failing says, in regard to that, the book was kept by him until produced by the United States for the purposes of this trial—not the defense—and he cannot account for the loss of those leaves. Now, we have the register of a hotel, with the entries of the arrivals all regular down to the name of John Harrison, and that followed by two other names of arrivals, and the page filled up by the clerk of the hotel in his handwriting, Pratt, Batt, or whatever it is there. Now, is that evidence to go to the jury or not? That is the question.

Mr. MERRICK. Before the counsel for the prosecution close the argument, I desire to say a word in connection with what my learned associate has said. I must confess that the doubt your honor has expressed has amazed me more than any expression I have ever heard from the bench since I have been practising law; and I beg your honor's permission to suggest some reasons briefly why this register, in my judgment, should be admitted.

In the first place, it is proved that the name upon the register is in the handwriting of John Surratt. That proof is now in. The prosecution has shown that he has not been in the United States since the 18th or 19th of April, 1865, until brought back in the Swatara. It is, therefore, in proof that that entry upon that register could never have been made between the 18th or 20th of April, 1865, and the time of his arrival here upon the Government ship. It is in proof, therefore, that that entry could not possibly have been made between the 18th day of April, 1865, and some time in February last. Could it have been made since February last? He was brought to the United States upon a Government vessel, and transferred at the navy-yard to the marshal of this District, and carried by the marshal and put in the hands of the warden of the jail, and your honor passed an order that no one should see him in that jail without your permission. He has not been allowed the privilege of pen and ink in his cell, and none has been in his cell since he has been there.

Judge FISHER. You are under a mistake; I passed no such order.

Mr. MERRICK. I so understood the order.

Judge FISHER. I passed no order about it; I have done this in regard to Mr. Surratt: I have given, on the application of his counsel, an order (which I never thought was necessary, for I thought under our Constitution the friends of the prisoner had a right to visit him in jail everywhere) to enable them to visit him

in the jail; that is all. I have given no order about his not being seen by anybody.

Mr. MERRICK. That order was given at our suggestion.

Judge FISHER. It may have been at your suggestion.

Mr. MERRICK. I think we suggested it. There were some members of Congress very solicitous to get into his company, and we did not choose to have them prowling around there for the purpose they were after; and there were other men who were seeking to get there for bad purposes, and we did not want them there. He has seen nobody; he has had no pen and ink; and, if it is necessary to prove that in order to show it to your honor, we will swear the warden of the jail.

Judge FISHER. To prove what?

Mr. MERRICK. That he has had no pen and ink, as I am informed he has not; that he is not allowed it.

Judge FISHER. No such order was made; no order of non-intercourse has ever been made by me in reference to any prisoner since I have been sitting on this bench, and I do not think it ever will be.

Mr. MERRICK. You may not have entered the order; but your honor said nobody should see him without your permission, if I am not very much mistaken.

Judge FISHER. Something may have been said about it, but I gave no orders for anybody to see him.

Mr. MERRICK. They inferred that he could not see any one without orders from you; and the warden so considered it.

The proof in the case, then, shows that that entry could not possibly have been made from April to December. The circumstantial proof in the case is strong to show that it could not have been made from that time until the present. Why? The book was in charge of Mr. Chamberlain, in his house. It might have been removed, but he thinks it was there. Mr. BRADLEY, junior, went to search for the book; he found the book in March, I think he said, in the same condition in which it now is. When it was exhumed from the place in which it was put after it ceased to be useful as a hotel register, its first appearance was under his eye, and it was then in the condition it now is.

Now, I submit to your honor, as a plain proposition of common sense, do you not feel that that entry was made there by the prisoner at that time? Do you not yourself feel the pressure of the facts? And is it not a rule of law that any evidence tending to prove the issue, however slight, shall go to the jury for what it is worth? Have not new trials been granted time and again by this court and other courts because judges have withdrawn from the jury some slight circumstance they thought might not be pertinent, because, upon the review, it was supposed by the reviewing court that the evidence might have had some effect upon their decision in ascertaining the issue joined? These rules of evidence are matters of common sense as much as matters of law, and as matters of law they have their basis in common sense. When men in a court of justice, under the solemn obligations of an oath, are seeking to ascertain a fact, they seek to ascertain it by the same rules that you seek to ascertain it outside of a court of justice; and all the instrumentalities, and all the forms, and all the means that direct and guide the human mind outside of a court in its inquiry for truth, guide and direct it even more solemnly in a court to that same end and to the consummation of that same purpose. I submit, therefore, as plain common sense, can any living man resist the power of the proof as it stands, circumstantial though it be, that the name was put there by the man whose hand-writing we have shown it to be in, and put there on the day that the register purports to show it was put there?

My learned brothers on the other side seem to require that to save this man's life there shall be no such thing as circumstantial testimony, but all must be positive

and unequivocal proof. They say that we must bring some one here to show that he was there, and that he wrote the name; we must bring conclusive proof before it goes to the jury. Sir, our proof need not be conclusive before it goes to the jury; but the effect of the proof is a question for the jury after it gets there. According to their theory, we must prove our case beyond a doubt to the judge before the jury can hear the case. That is not the law. It is not humanity; but humanity seems to be silent, and I will not refer to it.

The law is, that the circumstances tending to prove an issue, however slight they may be, shall go to the jury. They are to find this issue. This man's life may depend upon the admissibility of these circumstances; and as I have said to your honor, the rules of evidence are founded in common sense. The courts are now every day breaking down the old barriers that technicalities had established for the exclusion of truth; and in the late decision of the Supreme Court of the United States in the case of the *Clicquot Champagne*, reported in 3 Wallace, 141, your honor will find that the Supreme Court of the United States admitted in evidence, for the purpose of ascertaining the price of certain articles at a certain day, letters from third parties unsworn to and the parties unexamined. They admitted in evidence prices current in the cities of France unproved in any way except that they were prices current, and let the paper, being a price current, speak as to what was the price at the time they sought to establish the price. What did the court say when they made that ruling, which somewhat surprised the profession? After quoting from a New York case—the case of *Lush vs. Druse*—they say:

“With this ruling we are satisfied. While courts in the administration of the law of evidence should be careful not to open the door to falsehood, they should be equally careful not to shut out the truth.”

Leave the door open to truth. When they made that step in advance beyond the old principles of the law of evidence, they gave a warning-note that was a source of congratulation and rejoicing to every member of the profession that appreciated its philosophy and valued its high principles beyond its technical forms.

But your honor has settled this principle in this very case. You have admitted in evidence a handkerchief found at a certain place, bearing the name of Surratt, for the purpose of proving he was there then. Upon what principle did you do it? There was no proof that he was there; no identification of him as the man who lost the handkerchief the Government knew he had not lost; mere proof that the rag was there with his name on it. Upon what principle did it get in? Upon the principle that, according to the ordinary courses of the conduct of men and the transactions of life, as it bore his name, it was probably lost by him, and lost at the time that it was found. There was no proof of his handwriting—not as much as we offer here; but simply a garment bearing his name found in a place, introduced without proof as to who lost it, in order to show the man whose name was on the garment was there at the time the garment was found. I offer you a pocket-handkerchief in Canandaigua—something better than that. I offer you his handwriting on the day that a certain register says it was written, or purporting to be written on that day. I offer that in connection with the proof of the prosecution that he could never have been in Canandaigua since that day. I offer it in connection with the further proof that this register has been in the charge and custody presumptively of the man of that hotel; and although it is a remote possibility that it might have been stolen away, yet all the circumstances show there is no probability that it was. May it please your honor, it seems to me that human reason stands aghast at the possibility of an objection to such proof as this. I submit the question; I cannot argue it.

Mr. PIERREPONT. Human reason that belongs to a lawyer's mind certainly does stand aghast at such

an exhibition as this. I undertake to say it never occurred in a court of justice since courts of justice were established, that a lawyer, who pretended to be educated as a lawyer, should get up and earnestly press to the court that a man could make evidence for himself and then bring it in for the purpose of acquitting himself, and should urge to the court as a serious proposition that it was the same thing when a man undertook to bring his own writings and his own acts in his defense as when the Government undertook to bring his own writings and his own acts against him—as though the principles were the same or rested upon the same ground at all. Anybody that has the slightest knowledge of law, or the slightest particle of common sense in his head, knows perfectly well that, if that register can be introduced in evidence, claimed to be in the prisoner's handwriting, which I do not believe—but supposing it to be his handwriting—if you can introduce the name, you can introduce every word that the book may say. Suppose there stood on that register thus: "John Harrison Surratt, Washington city; Wilkes Booth murdered the President; I thank God I had nothing to do with it, and never heard of it." Would the other side undertake to say that that writing could be put in evidence?

Mr. MERRICK. As we do not reply, I hope the gentlemen will allow me to ask him a single question.

Mr. PIERREPONT. Certainly, any number.

Mr. MERRICK. The counsel starts a new proposition. I understood the counsel to say that his objection to the register was that there was no proof that Surratt did write that name and was there. He now states the objection to be that it is in the nature of a declaration from Surratt, and cannot be offered because it is a declaration.

Mr. PIERREPONT. Certainly; I am giving all the reasons, the legal reasons, which the gentleman, if he is a lawyer, knows are legal reasons. Does he undertake to tell your honor that he could give an entry made by Surratt in that register as evidence in favor of himself? If he can give his name as proof that he was at the place, he can give whatever other thing he writes as proof that he was at the place, and as proof that he was not here, and then come in and bring it before this court and say it is evidence to acquit him. Then any murderer, any assassin, can acquit himself.

Now, test this case. This murder occurred on the 14th day of April, 1865, and from the testimony in the case the prisoner at the bar never left his country, I may say, until the 17th day of September, 1865. From April to September, for five months after the murder, did he remain in America. Five months after the murder did he stay here in his varied disguises or without disguises. When he left the ship he had been in disguise; his hair was dyed and had begun to grow out; his moustache was dyed and had begun to grow out. He was afterwards in disguise. He knew his mother had been tried; he knew his co-conspirators had been tried; he knew, as the proof is, that some of them had been executed and the others had been otherwise punished; and he had lain on the border within twelve hours of Canandaigua this whole five months, and all these things going on, and he shrinking from the investigation. Why should he not be preparing to defend himself? Why not come down in his disguises to make an entry there for the purpose of raising the presumption, if he should be seized and brought to trial, that he was there? He could do it without the slightest difficulty in his disguise; and, as your honor sees from the evidence, that register during all that time until he left the country lay there upon the desk. He could have come there at any hour; and, as the witness testified and your honor will see by looking, there is not a page in which there are not from five to six blank lines at this hour, upon which any man might go and enter his name. When he lay within twelve hours of that book, and all these trials going on and all in his

own knowledge and some of the conspirators executed and he quivering and shrinking from light—when his own mother was being tried for her life, he shrinking away close by this border—is it to be supposed that he would not take the means to manufacture any evidence that he could to acquit his coward self? And yet the counsel says that whatever he might have done can be given in evidence in his favor, and treats it just as though it were something he had done that we were giving against him—as though one was a parallel to the other. Did your honor ever hear such a proposition announced by a lawyer before, that, because the Government could give a confession, the other side could give the prisoner's confession in his favor—that he could give the prisoner's statement in his favor, that he could give the prisoner's letter in his favor? All men, when they have committed murder, or assassination, or other crime, always do all they can to work the thing in their favor; and one of the things that they always do is to try to get up some sort of manufactured evidence for the purpose of acquitting themselves when they shall finally be found out. As your honor well knows, the very efforts that people make to conceal their crimes are the great sources by which criminals are discovered.

Mr. MERRICK. Will the counsel be kind enough to allow me to ask him a question?

Mr. PIERREPONT. Any number.

Mr. MERRICK. I submit this inquiry to the counsel: Suppose it is a question material as to time; I take the 15th day of April, 1865; I want to prove that Surratt was in Canandaigua. A gentleman is in Canandaigua to whom he gave a receipt bearing that date. He cannot identify Surratt, but he can swear that that was the name, and he produces the receipt, and we prove the handwriting. I do not offer the receipt for what it alleges and avers, for any fact that it states, my learned friend will understand me; but I offer the receipt simply as a thing showing time. I do not think it is competent to go to the jury to show how many dollars were paid or any thing else. It is an act done. Does he deny it?

Mr. PIERREPONT. Not a bit of it. I quite agree, and should say it was a rule of law, wherever you bring a man from Canandaigua or elsewhere and show that the man gave a receipt to him in relation to this transaction at a given time, he can refer to the receipt to refresh his memory or show the date of the thing. There is no difficulty about it.

Mr. BRADLEY. That is not the proposition.

Mr. PIERREPONT. Then I do not understand the proposition.

Mr. BRADLEY. He cannot identify the man who gave it to him.

Mr. PIERREPONT. If he cannot identify the man who gave him the receipt, certainly he cannot show it, of course.

Mr. BRADLEY. Cannot he prove that a man gave that receipt and he saw him write it, although he can not identify him?

Mr. PIERREPONT. If he saw him write it, yes; and if you will bring a man that saw this entry written, that saw this man write it, I have no objection to that; but he cannot bring a paper without showing that anybody wrote it, or that the man was there whose hand wrote it, and then say that is evidence in defense of the man. If you can do it, as I repeat, if you can use one letter or one line that Surratt wrote for the purpose of his own defense, you can show any number of letters or of lines that he wrote for his defense; and I repeat again, if you can show that name for the purpose of proving an *alibi* on that day without showing that he wrote it there on that day, then you can show just as well that he was anywhere else on that day, and any other letter or any other line that he wrote he can give in his own defense. He could say, as I have already said, that he thanked God that he was not in Washington. Does my learned friend say he could give that in evidence? If he

could find where he was concealed in Canada a memorandum in which he wrote, "I thank God I was not in the city of Washington at the time," do they say they could take that paper and bring it here as evidence going to show he was not here? That is exactly what they are undertaking to do now, when, as I say, he lay on this border for five long months when this was all going on, and if he was not an idiot he would be trying to see what contrivance he could get up to save his head when he should be arrested, as he certainly expected to be. My learned friend has not brought your honor authority; he has not brought you a single case; and I defy him to bring one from the records of civilization where such a thing was ever offered in evidence or ever allowed by any court.

Mr. BRADLEY, Jr. Will your honor permit me to refer to a matter of testimony which has not been alluded to by Mr. MERRICK in connection with this point?

Judge FISHER. Yes.

Mr. BRADLEY, Jr. Your honor will recollect that yesterday we proved by four witnesses that Surratt was in the city of Elmira on the 13th and 14th of April, 1865. Elmira is sixty-nine miles from Canandaigua, and Canandaigua lies in the direct route from that point to Montreal; that is to say, if Surratt pursued the route which the Government has undertaken to show he did pursue by way of Albany and thence through St. Albans. We desire that the court shall consider that fact in connection with the other facts in the case in settling this question, whether or not this evidence may tend to prove that he was in Canandaigua at the time which the entry calls for.

Mr. MERRICK. I merely want to make a single suggestion, not to reply or to violate the rules of order. The question as to whether Surratt coined this evidence and all that is a matter for the jury, what the weight of the evidence should be. The question for your honor is competency. We offer it as an act done by a man, and we attempt to show that no other man than the prisoner could have done the act.

Mr. PIERREPONT. The objection is that there is no proof he ever did the act.

Mr. MERRICK. We prove the handwriting, and the question whether he did it then or not is a matter for the jury.

Judge FISHER. It is now half an hour after the time we intended to take a recess to-day. I will hold this matter under advisement and give a decision on Monday morning.

Mr. CARRINGTON. I do not know whether I have a right to say any thing on this subject.

Judge FISHER. No, you have not.

The court took a recess until Monday morning at ten o'clock.

### Thirtieth Day.

MONDAY, July 15, 1867.

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

Judge FISHER. The register of the Webster House, Canandaigua, offered in evidence when we took a recess on Saturday, cannot be allowed to go to the jury at present. It was proved by the proprietor of the house, who kept it on the 15th April, 1865, to have been the register used by him, and turned over by him on Monday, 17th April, 1865, to his successor, who swears that he kept the same book lying open on his counter until all the blank leaves were filled up, and then placed it under the counter, where it could have been, without his knowledge, used for any purpose, whether honest or fraudulent. This is just precisely one of the cases which the ancient and well-established rule of evidence that a prisoner shall not be allowed to manufacture evidence for himself was intended to meet. It is said that the name, "John Harrison," standing on that register for the 15th April, 1865, having been sworn to by Miss Jenkins as the handwriting of Surratt, it ought to be admitted as evidence tending to

prove that he was present at Canandaigua at that date. But, as I have just said, it is evidence made by himself, and, although it might be put in evidence against him, if in his handwriting, yet it cannot be used as evidence in his favor, just as any diary which he may have kept in his handwriting might be produced against him, but could not be produced in evidence in his behalf.

Besides, the fact, if established beyond all peradventure, that the name "John Harrison" is in the prisoner's handwriting, does not even tend to show that he was in Canandaigua on the 15th April, 1865. The name could as well have been written by him in Canada, or Rome, or Egypt, as in Canandaigua. The book has been at the mercy of anybody for more than two years. It could have gone to Canada and back a hundred times; or the prisoner, during his stay there in Canada, could have gone to the book just as often. The entries below the name of "John Harrison," as well as that entry itself, may as well have been made at any other time as on the 15th April, 1865. It is to guard against just such contingencies as this that the rigid rule of evidence to which I have alluded was established.

If the defense had proved by any credible witness that the entry of the name of "John Harrison" had been made at the hotel in the regular course of business on the 15th of April, by a person passing under that name, the book might go in evidence as a memorandum of a fact made at the time of its occurrence, and thus proof that the entry was in Surratt's hand would tend to show he was there at that time. It is only as a memorandum so made that it is allowed to speak, and it cannot take the character of such memorandum until it be shown that it was so made at the time and place of which it is desired to speak.

Let the principle be once established that such evidence as this register as it now stands is admissible, and the proof of an *alibi* will be the easiest thing made that could possibly be conceived of. A crime may be committed here, the guilty party may escape to Canada, registering himself in an assumed name wherever he may stop, and will only have to travel back again, write his true name at or near the bottom of the appropriate page of the hotel register wherever he stops on his return, with one or two friends to write their names under his, and the defense of the *alibi* is complete. As I said before, it is just exactly to meet such cases as this that the ancient rule of law was established that a prisoner shall not be allowed to make evidence in his own behalf.

Mr. BRADLEY. If I understand the ruling of the court, it goes to this extent: that, although I should prove that from the time of the prisoner's arrival, as given in evidence on the part of the prosecution, in Montreal, on the 18th of April until the 17th of September, he was under the observation of one or more persons, so that it was impossible for him to have left Canada and come into the United States, it would not avail me.

Judge FISHER. No, sir.

Mr. BRADLEY. I have sent to Canada to get witnesses to prove that fact, and I intended to offer that evidence to prove that from the 18th of April until the 17th of September he was under the charge and protection of different persons, and to put them on the stand to prove that he could not have left Canada to come to the United States to make that entry. If it will be unavailing, if it would be inadmissible to make the tender of that proof if they were here, I should like to save the United States the expense of sending for witnesses to prove that fact. My correspondence is such as to satisfy me that I am able to prove that fact; and the examination made by my son in Canada enables me to say confidently that we can prove that fact. From the 18th of April to the 17th of September we can show him in connection with some respectable citizen there all the time, so that it would have been

impossible for him to go to Canandaigua to make the entry. But if I understand the reasoning of the court the book might have been carried to him in Canada.

Judge FISHER. Yes, sir.

Mr. BRADLEY. And therefore, although I should prove the impossibility of his coming to Canandaigua to make the entry, we must also prove the impossibility of its being carried to Canada.

Judge FISHER. The ruling which I establish is this: that in order to put that book in evidence before the jury there must be some proof going to establish the fact that a person traveling under the name of John Harrison, as entered there upon the record, was in Canandaigua at the time, on the 15th of April, 1865.

Mr. BRADLEY. And I understand your honor to go further—to identify that person traveling under the name of John Harrison with the prisoner.

Judge FISHER. No, I did not say that. Then, if you prove his hand-writing, that would be evidence tending to prove his being there at that time. Of course, if you could identify him as being there at the time mentioned on the register, there would be no use for the register.

Mr. BRADLEY. Not much. The evidence we propose to offer upon that point is as follows: We have given in evidence the fact of his presence in Elmira on the 13th, 14th, and 15th of April. We propose to show that the cars left Elmira for Canandaigua on the evening of the 15th of April; and that they would arrive there about the time, according to the testimony of Mr. Failing, that these entries would have been made in that book. The prosecution have given evidence to show that he was on the cars going from the Albany route to Montreal on the 18th of April. I do not know that we can supply that link between the 15th and 18th. The fact of leaves being torn out of that night-book takes from us some proof. What I propose to show is, that a person starting from Elmira to Canada would go to Canandaigua, and thence to Albany on the route which they have indicated. I propose to offer that evidence. I can telegraph and stop all the witnesses but two from Canada. Two of them are on their way now I suppose. The others I can stop in time to save the expense to the United States of bringing them here, when their testimony would be unavailing.

Judge FISHER. I do not understand that there is any objection to what you propose to prove now.

Mr. BRADLEY. I desire to have an exception noted to the ruling of the court.

The exception was noted.

#### WILLIAM FAILING'S

examination resumed.

By Mr. BRADLEY:

Q. What was the ordinary railroad route from Elmira to Albany and thence to Canada. Would it have to come from Canandaigua or not, is what I mean?

A. Yes, sir; most generally it would.

Q. That would have been the ordinary route?

A. There are other routes from Elmira.

Q. But that I understand to be the ordinary route—coming to Canandaigua, and then taking the great central run to Albany, and thence to Montreal?

A. Yes, sir.

Q. [Exhibiting to the witness the register of the Webster House.] Looking at that entry in your register, can you state at or about what time in the day the parties reached Canandaigua? I mean Harrison and the other two names under it.

Mr. PIERREPONT. Wait one minute. Do you know they reached there at all?

Mr. BRADLEY. One moment, if you please. I will ask: Would his record show at or about what time of the evening, in the regular course of business of the hotel, those parties would arrive, if they arrived at all?

Mr. PIERREPONT. I object to that until he shows

they did arrive. If this witness says he knows they did arrive, I shall not object; but he cannot speculate about it.

Mr. BRADLEY. I am speaking of the regular course of business of the hotel.

Judge FISHER. Those questions amount substantially to this: What time would parties, without reference to these individual parties, arrive from Elmira to Canandaigua in the regular course of travel?

Mr. BRADLEY. Yes; taking those entries as his guide.

Mr. PIERREPONT. If the question is, What time parties would naturally arrive, I do not object; but that is not the question.

Judge FISHER. I think that the question in the shape in which I understand it is a proper one: What time would parties arrive from Elmira to Canandaigua, but not those particular parties, until you show they did arrive there.

Mr. PIERREPONT. I do not object to that.

Q. (By Mr. BRADLEY.) Looking at the entries in that book, and from that, taking the regular course of business, at what time would parties arriving from Elmira reach Canandaigua?

Mr. PIERREPONT. I object to that.

Mr. BRADLEY. The court has just put it in that form.

Mr. PIERREPONT. No; he did not. I do not object to your honor's question, but I do object to this question, which I think is a totally different one.

Judge FISHER. My question is this: When would the parties coming from Elmira to Canandaigua, and stopping there, arrive, according to the regular course of travel and business.

Mr. PIERREPONT. That I do not object to.

Mr. BRADLEY. That is exactly the question I put.

Mr. PIERREPONT. You will find it is not.

[The last question of Mr. BRADLEY was read.]

Mr. PIERREPONT. That question I object to, and I do not object to your honor's question.

Mr. BRADLEY. What is the objection?

Judge FISHER. I suppose the objection is to "looking at the book."

Mr. PIERREPONT. "And from the book." It has nothing to do with the book. It is no question with the book.

Judge FISHER. The book I do not consider at all in evidence until you connect the party whose name is there.

Mr. BRADLEY. I agree it is not evidence of the parties arriving; but, looking at the entries in that book, what time do they indicate the arrival of the parties, is what I mean, in the regular course of business.

Mr. PIERREPONT. I object to that.

Judge FISHER. (To Mr. BRADLEY.) You will get it just as well in the shape in which I put the question, because you can state about every train that leaves from Elmira to Canandaigua.

Mr. PIERREPONT. That I do not object to.

Judge FISHER. Put it in that shape, Mr. BRADLEY.

Mr. BRADLEY. I ask the reporter to note that my question was objected to and the objection sustained, and an exception reserved. Now, let the question be put in the language of the judge.

The question was read as follows:

Q. What time would parties coming from Elmira to Canandaigua and stopping there arrive according to the regular course of travel and business?

A. There were different trains; one train arrived in the forenoon at ten or eleven o'clock, and there was another train arrived in the evening between nine and ten o'clock, I think; I would not be positive as to the time.

Q. What is the direct route from Canandaigua going to Montreal from New York, do you know?

A. Yes, sir; there are two or three different routes.

One is called a direct route, going from Canandaigua to Rochester, from Rochester across to Coburg by the steamer, and going down the Great Western railway.

Q. Going by way of Albany, how?

A. You want to go through Syracuse, from Canandaigua to Auburn, and so on to Albany. From Albany they can take the northern cars.

Q. What time did the train leave Canandaigua for New York on the 16th of April, 1865—Sunday—going by way of Syracuse?

A. I do not think there were any trains on Sunday going east on the New York Central.

Q. It would leave, then, there Sunday night or Monday morning?

A. Saturday night or Monday morning.

Q. What time in the night would a party arrive on Saturday night, do you remember?

A. The last train went between seven and eight o'clock.

Q. A party arriving at Canandaigua, then, between eight and nine o'clock would have to lie over until Monday morning?

A. Those going east would lie over until Sunday night at 8:20 now.

Q. That register, I understand you to say, you turned over to Mr. Chamberlain when he purchased you out. How long was that after the 15th of April?

A. I think we had made our arrangements before the 15th of April, but I delivered possession of it on the 22d of April.

Q. Up to that time was that book in your possession?

A. It was; it is a book that I used.

Q. Now, turning to the book that you call your night-book, state to the court and jury what dates are left out from it; what is the last date before the leaves are missing?

A. April 12, 1865.

Q. What is the first one on the leaf remaining?

A. April 20th.

Q. Can you account for the loss of the leaves for the intermediate time?

A. As this book was so near full when I sold out to Mr. Chamberlain, I did not think it necessary to leave it there, and I packed up all the trumpery and traps in the office—such things as would be of no use to him—in baskets and boxes and old trunks. I had bought a house and lot in the village of Canandaigua, and I moved all such stuff—rubbish as we called it—into the wood-shed chamber. It was quite a large chamber, and the children used it for a play-house, and they used to get out the books, keep school there, play soldier, and things of that sort. That is the only way I can account for it. The book, I think, was all right when we put it there.

Q. When did you first refer to that book again?

A. I do not know that I ever had the book in my hand, or ever saw it again, until the time I was notified about coming down here, some two or three weeks ago.

Q. Then who found it?

A. We looked in among the old books to find this.

Q. Did you find it, or some one else?

A. My son found it, or his wife; I do not know which. They lit a lamp and went up in a dark chamber, after we moved where we now live, and found it in some basket or box.

Q. Did they bring it down stairs, or were you searching for it?

A. Brought it down to me.

Q. State whether, when you examined it then, this leaf was missing or not?

A. He spoke about it, and I told him he had better go back and look among the other papers or books; that it was there somewhere. He went back again and looked, and said he could not find anything of it.

Q. Would that book show, if it were perfect, who stayed at your house on Saturday night, the 15th of April?

A. Yes, sir; we kept it for that purpose.

Q. It is in the same condition now as it was when your son brought it to you?

A. Yes, sir.

Cross-examined by Mr. PIERREPONT:

Q. If a person came to Canandaigua on the 15th, which was Saturday, as we all agree, he could not get away from there by the railroad until the next Sunday night, could he?

A. He could go Sunday night.

Q. At what hour?

A. I think it was between seven and eight o'clock.

Q. And that would be the first opportunity he would have to go, would it not?

A. Yes, sir; I should think it would be, east or west.

Q. From Canandaigua to Canada, as I understand you, there were three routes?

A. There are different roads. You can go by Rochester to the Suspension Bridge, to Niagara Falls, and get into Canada.

Q. You say there were three routes by railroad from Canandaigua to Canada?

A. No, sir; there was one road to go from Rochester direct to Canada by railroad; another road to go from Canandaigua to Albany by railroad, and there they could take the northern road through, or they could stop at Schenectady and take the Saratoga Railroad. There are three routes from Schenectady.

Q. There is a Rome route too?

A. Yes, sir; a road going by Rome.

Q. Did a lady die in your house on the 15th of April, 1865?

A. Not to my recollection.

Q. Did Mrs. Wood die in your house on Saturday, the 15th of April, 1865?

A. I have no recollection of it.

Q. The wife of the provost marshal?

A. The provost marshal boarded with me a spell.

Q. Did his wife die there on that day?

A. Not to my recollection.

Q. Did she die there at all?

A. Not that I can recollect now. A lady died there by the name of Mrs. Bull.

Q. The provost marshal boarded there?

A. He did, a spell.

Q. Did you know his deputy?

A. I knew most of them by sight.

Q. Did his deputy board there?

A. I think he did.

Q. Did his deputy's wife board there?

A. Not to my recollection.

Q. Did the wife of either of these men die there on the 15th of April, 1865?

A. No, sir, not that I recollect; not whilst I was there.

Q. Do you remember of any woman dying there?

A. Yes, sir.

Q. Who was she?

A. Mrs. Bull died whilst I kept the house.

Q. I mean in April?

A. No, sir; not anybody.

Q. I speak now of Saturday, the 15th of April. Were you there at the time?

A. I think I was; I am not sure. I was at home that evening.

Q. Now, say whether you were at your house on Saturday, the 15th of April?

Mr. BRADLEY. I beg pardon for interrupting, but your honor will recollect that the witness has been examined twice over by the prosecution.

Mr. PIERREPONT. On the subject of anybody dying there?

Mr. BRADLEY. On the subject of his being at home on Saturday, the 15th of April.

Mr. PIERREPONT. I am now calling his attention to the point of a person dying there, and I want to know whether he was at home.

Mr. BRADLEY. The point put to him is, Recollect and see if you were home on the 15th of April.

Mr. PIERREPONT. That is so, and it relates to the death.

Mr. BRADLEY. Then, I should like to know what the death has to do with the matter in issue.

Mr. PIERREPONT. We shall see presently.

Mr. BRADLEY. The court will see.

Judge FISHER. I think the witness has answered that question. I think he said he had gone to Rochester and got home that night.

Mr. PIERREPONT. Very well, sir. (To the witness.) That is the answer?

A. Yes, sir.

Mr. BRADLEY. He has said two or three times that he does not recollect anybody dying there.

Q. (By Mr. PIERREPONT.) Any lady?

A. No, sir.

Mr. PIERREPONT. That is four times. I want to have it very definite.

Mr. BRADLEY. He did awhile ago say some lady died there—a Mrs. Bull; but not in April.

Q. (By Mr. PIERREPONT.) When did the lady die that you allude to?

A. Six months before that.

Mr. BRADLEY. I must object to that. I cannot see that it is relevant to the issue; and I hope, when a question is put and an objection interposed, the witness will not go on and the counsel will stop him instead of drawing out the answer.

Mr. PIERREPONT. It is not for me to stop him.

Mr. BRADLEY. Yes, it is; but, instead of that, you press an answer directly against the rule of practice. I object, and you follow it up with another question after I object.

Judge FISHER. I do not see that that question has any relevancy at all.

Q. (By Mr. PIERREPONT.) You have before you the night-book?

A. Yes, sir; that is what we used to call the night-book.

Q. Did not that night-book show who stayed at your house?

A. We kept it for that purpose.

Q. And it would have showed?

A. It would, if the leaves were here.

Q. Where the leaves are it shows?

A. Yes, sir; that is the regular book we kept.

#### JOSEPH N. DUBARRY,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State where you reside.

A. Harrisburg, Pennsylvania.

Q. State whether you have any connection with any railroad; and, if so, what, and how long you have had it?

A. I am the general superintendent of the Northern Central railroad, and have been for five years and a half.

Q. On the 15th of April, 1865, where were you?

A. At Harrisburg, Pennsylvania.

Q. Can you state from memory—and, if not, refer to any record you have—whether the cars came through from Baltimore to Harrisburg on that day?

A. I would not like to testify from memory.

Q. Refer to any memorandum which you may have.

A. [Referring to a large book.] The mail train on the 15th did not leave Baltimore.

Q. Any other train, and when?

A. I notice by the record that there was a train called "apart from the accommodation" that left at 6:20 in the evening and went to the Relay House at seven o'clock.

Q. Explain to the jury what Relay House? We have a Relay House this way, you know.

A. The Relay House on the Northern Central is the connection with the Western Maryland line, seven miles out of Baltimore.

Q. The evening train left at 6:20, and went to the Relay House?

A. Yes, sir.

Q. When did it go through to Harrisburg—any train from Baltimore to Harrisburg?

A. Two trains left Baltimore on the evening of the 15th.

Q. What time did they leave or arrive at Harrisburg?

A. They left Baltimore about ten o'clock p. m.

Q. And arrived at Harrisburg when?

A. At 2:50.

Q. State what trains left Harrisburg going north on the 15th?

A. There was a train left Harrisburg going north at 2:14 p. m.

Q. Was there any possible means, by railroad communication or otherwise, that you know of, by which a party leaving here at eleven o'clock on Friday night, the 14th, could have reached Harrisburg by two o'clock p. m. on the 15th of April?

A. We had no train up on the 15th of April out of Baltimore in the morning.

Q. I think you gave me the time when that train left Harrisburg. What time did it reach Elmira?

A. The train arrived at Sunbury at 4:35.

Q. Between Sunbury and Williamsport your road does not run, I think?

A. No, sir.

Q. Was or not the communication interrupted by broken bridges or otherwise?

A. The roads had been heavily damaged by a flood about that time.

Q. At Williamsport you take it up again?

A. Yes, sir.

Q. Give us, if you please, the time when that train would be due at Elmira; and, if you have any knowledge of the fact, the time when it did reach there?

A. The passenger train was due to leave Williamsport at 7:20 in the morning.

Q. What other time during the day?

A. That was the only passenger train running at that time.

Q. Then, the passengers leaving Harrisburg at 2:14 p. m., would be due in Elmira when?

A. That train would not have gone beyond Williamsport, on the Northern Central road.

Q. You mean it could not have gone from Williamsport to Elmira that day?

A. I understood the question to be, "Could the train leaving Harrisburg at 2:14 get to Elmira that night?" I answer no, not by the schedule time.

Q. You have no memorandum or entry of any special train being run through that day from Harrisburg to Elmira?

A. No, sir.

Q. What is the running time from Harrisburg to Sunbury?

A. Two hours and thirty-five minutes.

Q. From Sunbury to Williamsport?

A. That is off my road. I have no record of it.

Q. Can you speak from memory?

A. About two hours.

Mr. PIERREPONT. From your memory of that day?

A. I have no record of that day.

Q. (By Mr. BRADLEY.) But you are frequently on the road, and speaking from memory you say it was a two hours' run from Sunbury to Williamsport?

A. Yes, sir.

Q. Then from Williamsport to Elmira?

A. Five hours and a half.

Q. That is, about ten hours through from Harrisburg to Elmira?

A. Yes, sir.

Cross-examined by Mr. PIERREPONT :

Q. Will you not tell the jury where you were at twelve o'clock at night on the 14th day of April, 1865?

A. I was, I think, at Sunbury that night; but I cannot say the hour I arrived there.

Q. Were you on the train?

A. I came from Williamsport to Sunbury.

Q. On the night of the 14th?

A. Yes, sir.

Q. Were you there at about twelve o'clock?

A. I think I was.

Q. Which way were you running?

A. I was coming towards Harrisburg.

Q. When did you get to Harrisburg?

A. I left Sunbury on the morning of the 15th, about half-past seven o'clock.

Q. When did you reach Harrisburg?

A. About half-past ten.

Q. You remember the fact, or have some fact that refreshes you, have you not?

A. Yes, sir.

Q. On the 15th, at half-past ten o'clock, coming south, you were at Harrisburg?

A. About that time.

Q. How long did you stay there?

A. That is my residence. I do not know my next absence.

Q. How long did you stay at Harrisburg at that time?

A. It may have been a week. I cannot recollect my next absence.

Q. Were you on a train after half-past ten o'clock at any time on the 15th?

A. No, sir.

Q. Were you on any train on the evening of the 15th?

A. No, sir.

Q. Were you on the 16th?

A. I do not think I was.

Q. Were you in Baltimore on the morning of the 15th?

A. No, sir.

Q. Then you do not know what train left Baltimore of your own knowledge, or by any memorandum you ever made?

A. None that I made myself.

Q. That is what I asked. You do not know, from any thing that you saw or ever did, at what hour the train left Baltimore on the morning of the 15th; you do not know it from any memorandum you made nor from being present?

A. Not personally, and from no memorandum that I made.

Q. Were you in Elmira at 7:20 on the evening of the 15th?

A. No, sir.

Q. Do you know whether a train arrived at that hour, 7:20, on the evening of the 15th, that had come from Baltimore or connected with the Baltimore train?

A. I do not know; I was not at Elmira.

Re-examined by Mr. BRADLEY :

Q. I think you do know, from what you have stated, that no train from Baltimore passed through Harrisburg on the 15th which could have reached Elmira by 7:20.

Mr. PIERREPONT. Does he?

Mr. BRADLEY. Let the witness answer.

Mr. PIERREPONT. But you are telling him what you think he does know.

Mr. BRADLEY. I think he has stated it. Do you object to my question?

Mr. PIERREPONT. I do object to your telling the witness what you believe he knows.

Mr. BRADLEY. The court will say whether I am to ask the question.

Judge FISHER. You may ask him whether you understand him to have said that.

Mr. PIERREPONT. To that I do not object.

Mr. BRADLEY. That is what I have said. (To the witness.) You do know, as I understand, that no train could have passed through Harrisburg from Baltimore, on the 15th, to reach Elmira by 7:20?

A. From the records of the road.

Q. You were on the road yourself; you came down from Sunbury that morning?

A. I came from Sunbury to Harrisburg on the morning of the 15th.

Q. Were you in Harrisburg attending to your duties all day on the 15th after ten o'clock.

A. Yes, sir.

Q. And, therefore, if a train had passed through from Baltimore, must you not have known it?

A. I would have known it.

Q. Suppose you were to leave Elmira in the evening at that time; at what hour did the train leave Elmira, coming south, in the evening?

A. No train left Elmira in the evening, coming south, at that time.

Q. Turn to the 13th, and see if any train left Elmira, coming south, on the afternoon of the 13th, after twelve o'clock?

A. There is no record of such a train.

Q. Now, what time of day on the 13th and 14th did the trains coming south leave Elmira?

A. The schedule called for a train leaving there at eight o'clock in the morning.

Q. Leaving Elmira at eight o'clock on the morning of the 13th, at what time would the parties reach Baltimore?

A. They should have reached Baltimore at about seven o'clock the next morning, if the connections were all made.

Q. That is, it would take twenty-three hours to run from Elmira to Baltimore at that time?

A. Yes, sir.

Q. And there was no evening train at all?

A. No evening train.

By Mr. PIERREPONT :

Q. Do you say there was no train run through from Elmira with soldiers on that day? Will you state that? Judge FISHER. Which way?

Mr. PIERREPONT. This way, coming south, on the 13th.

A. I cannot say that there was no train with soldiers.

Q. Do you know Mr. Fitch?

A. Yes, sir.

Q. What is his business?

A. He is my assistant at Elmira.

Q. What did he do there?

Mr. BRADLEY. In 1865?

A. He was clerk of the division superintendent.

Q. (By Mr. PIERREPONT.) He moved the trains, did he not?

A. He was the train mover.

Q. Have you seen him here?

A. I have just caught his eye now.

Mr. BRADLEY. Do you mean to say he was there in April, 1865? Was he not in Williamsport in 1865?

The WITNESS. Yes, sir.

Q. (By Mr. PIERREPONT.) He moved the trains?

A. Yes, sir.

Q. You told the jury there had been some interruptions from freshets; that is true, is it not?

A. Yes, sir.

Q. How did they get along then? Did they stop the trains?

A. They did for some time.

Q. On the 15th, 14th, and 13th?

A. The road was partially repaired, and one train was running through daily.

Q. They ferried, did they not?

A. Not on my road.

Q. Did you not know they ferried?

A. I did.

Q. Did you not go over the ferry yourself?

A. I did.

Q. Then you know that fact that they did ferry?

Mr. BRADLEY. On the 15th?

Mr. PIERREPONT. Yes, sir; and on the 14th and the 13th and the 12th. (To the witness.) That is true, is it not?

A. I believe it is; on the 14th I passed over it.

Q. But you were not at Elmira on the 13th?

A. No, sir.

Q. And you do not know that a train did not leave there with soldiers that day?

A. I do not.

Q. And if they had left they could have come?

A. Yes, sir.

Q. Now, will you not tell these gentlemen whether the trains were running on the time-tables, at these dates, from Elmira here?

The WITNESS. On what dates?

Mr. PIERREPONT. The 13th and 14th.

A. On the 13th my record shows that there was a first and second mail-train running on schedule time, and that there were two freight trains run on schedule time from Elmira to Williamsport.

Q. Were there any trains that did not run on schedule time?

A. There is no record of it.

Q. Were there any?

A. Not that I am aware of.

Q. When interruptions of the schedule time occurred on one part of the road, it would affect it on the other, would it not?

A. Yes, sir.

Q. Suppose this to happen: that a train running from Elmira should leave Elmira at 7:20, and another train, a slower train, should leave at 12:20, and the slower train should overtake the express train at a distance of fifty-eight miles from there, and the passengers should get on to the express train; it would make a difference, would it not? They would arrive at their destination sooner?

A. Yes, sir.

FRANCIS E. FITCH,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State your residence and occupation.

A. I now reside at Elmira, New York; I am train-master; I am called superintendent's clerk.

Q. Where did you reside and where were you employed in April, 1865?

A. I resided at Williamsport, Pennsylvania, and was employed in the same business that I am now.

Q. Have you any memoranda or can you speak from memory so as to show the time of the arrival of the trains at Williamsport from Harrisburg, going north, on the 15th of April, 1865?

A. No, sir; I did not see any train arrive; so I could not speak from memory.

Q. If the train had arrived you would have known it?

A. There was not any on my road at all, and I know nothing whatever personally about any south of Williamsport.

Q. Do you not know how passengers from Harrisburg by Williamsport to Elmira reached Williamsport in April, 1865?

A. They reached there by railroad until they came to the river.

Q. What railroad?

A. The P. and E. Railroad.

Q. At what town does the Central railroad terminate, running up from Harrisburg?

A. Sunbury.

Q. How far is Sunbury from Williamsport?

A. Forty miles, I believe.

Q. Was there a regular railroad communication between Sunbury and Williamsport?

A. I was not over the route at all, but I understood there was.

Q. Do you not know the fact that the cars left there with regularity or not?

A. I am as certain of it as I could be and not be on it myself.

Q. Did you not see them arrive at Williamsport?

A. I did not.

Q. Did you see passengers come from them to take your cars to Elmira?

A. I saw a man on the morning of the 15th who said he came from Harrisburg that day.

Q. But I am speaking now of the regular running of the road. You saw no trains from Harrisburg that day. I am speaking now of the regular course of the road from Harrisburg to Williamsport, not that day particularly, but the 13th, 14th, 15th, 16th, and 17th of April. What was the communication from Harrisburg to Elmira during those five days in April—the route they took?

A. From Harrisburg to Williamsport I know nothing, only what I judge from other folks; but I suppose the trains run regularly, with the exception of transferring passengers across the river twice.

Q. You started them from Williamsport to Elmira?

A. Yes, sir.

Q. What time did your train leave Williamsport for Elmira?

A. Mr. DuBarry, the witness before me, has given it.

Q. He is correct then about it—11:20—I suppose?

A. Yes, sir; I think that is the time.

Mr. PIERREPONT. Just look.

Mr. BRADLEY. The 15th of April.

A. [After examining the papers.] I have no record of the movement of the trains on the 15th.

Q. From Williamsport to Elmira?

A. No, sir; no record; the schedule only.

Q. Look at the 13th?

A. I have the 13th. The train going north from Williamsport on the 13th left there twenty-five minutes late that morning.

Q. What was the hour of starting?

A. The hour of starting, I think, was 7:20, and the train was twenty-five minutes late.

Q. Now, the 14th?

A. I have no record of the 14th.

Q. Nor of the 15th?

A. Nor of the 15th.

Q. Have you any memory about it, whether there was a train run or not?

A. I could not speak positively, but I suppose they run. I do not know that they did or did not.

Q. Was there any other time in the day except 7:20 for a train to leave Williamsport for Elmira?

A. On the 13th there were two trains advertised to leave Williamsport for Elmira, at 7:20 and 7:25 a. m.

Q. Both in the morning?

A. Yes, sir; both in the morning.

Q. You have no record of the 14th or 15th?

A. No, sir.

Q. What time did that train reach Elmira? What is the running time?

A. The running time of the first train from Williamsport to Elmira was five hours and thirty minutes.

Q. Was the second train faster or slower?

A. Slower; that was nearly eleven hours.

Q. Have you any memoranda of the trains coming south from Elmira on the 13th, 14th, and 15th?

A. I have the 12th and 13th only.

Q. Give us the trains coming south from Elmira on the 13th?

A. By the record I find that four trains left Elmira on the 13th.

Q. What were they?

A. Two passenger and two freight—that is, two sections of a passenger and two freight trains.

Q. What time did they leave Elmira?

A. Both the passenger trains left at eight o'clock in the morning.

Q. What time did the freight trains leave?

A. 8:05 in the morning.

Q. Was there any train later in the day?

A. I have no record of any.

Q. Now, what time did they leave Elmira, coming south, on the 14th?

A. I have no record. I can only give the time they should have left.

Q. What time should the regular passenger trains have left?

A. They were advertised to leave there at eight o'clock in the morning on the 14th, I think. I am not certain that this schedule reached the 14th; I do not remember.

Q. Was there any other passenger train left Elmira on the 13th except those two you have mentioned?

A. I have no record of any.

Q. Ought not your office to contain the record?

A. It ought.

Q. Have you searched for it?

A. I have not searched my office for the original record myself.

Q. Have you searched for any copy?

A. This is a copy of the records.

Q. But that is the 13th?

A. I have none of the 14th.

Q. Have you any memorandum in the office showing that any other trains left Elmira except those?

A. I have no memorandum showing that any other left there on the 13th except these.

Q. The train leaving there at 8 or 8:20 would reach Williamsport at what time?

A. 1:42 p. m.

Q. When would the passengers reach Harrisburg?

A. I cannot say certain as to that; I think they had to lay in Williamsport until ten o'clock in the evening, and so reach Harrisburg at two o'clock in the morning; but it is out of my positive knowledge.

Q. Did they not in 1865 lay in Williamsport until the Erie train coming from the west reached Williamsport, and then go on?

A. The regular passenger train, I think, did; but there may have been other trains.

Q. I am speaking of your knowledge. You do not know of any other?

A. My knowledge is not any thing in regard to that—positively speaking of certain dates.

Q. But the passengers from Elmira coming south would reach Williamsport and lay there until the Sunbury and Erie train, coming from the west, took them up and carried them to Sunbury and thence to Harrisburg?

A. Coming east I understood they had to lay there.

Q. You were starter of the trains?

A. Not south from Williamsport. They cannot come south without going east.

Q. Is there any train coming south from Williamsport except from Williamsport to Sunbury?

A. I do not know of any other railroad. They call it east and west, though.

Q. But then it is going southeast from Williamsport to Sunbury; and there it strikes the Northern Central?

A. Yes, sir.

Q. And from there to Harrisburg and Baltimore. Is there any other route from Williamsport?

A. I do not remember any other route but one railroad.

Q. I am aware you can go around by Lock Haven and Bellefonte and so on, and strike the Great Western road?

A. I do not know of any other railroad.

Q. Then they left Williamsport at ten or half-past ten at night; or what time did they leave Williamsport, going to Sunbury?

A. Between nine and ten; I think at ten.

Q. Now, can you state by your schedule when they would reach Harrisburg?

A. No, sir.

Mr. MERRICK. I thought you said two o'clock?

The WITNESS. My memory is two o'clock; but I am asked if I could tell it from the schedule.

Q. (By Mr. BRADLEY.) They would reach Harrisburg at two o'clock?

A. About two.

Q. Then they reach Baltimore at what time? You have come the route often.

A. At seven o'clock in the morning; that is the advertised arrival time.

Cross-examined by Mr. PIERREPONT:

Q. Where were you on the 13th of April, 1865?

A. I cannot say positively; but I suppose I was at Williamsport.

Q. That is your best memory, is it not?

A. Yes, sir.

Q. Will you not tell the jury, as near as you can remember, how far Williamsport is from Elmira and the direction?

A. Elmira is seventy-eight miles north of Williamsport.

Q. What was the running time, at that time, between Elmira and Williamsport by the passenger trains?

The WITNESS. On the 13th?

Mr. PIERREPONT. Yes.

A. Five hours and thirty minutes from Williamsport to Elmira.

Q. You moved the trains, did you not, on the 13th, yourself?

A. The trains moved themselves; that is, the conductors moved them. I did not give the order for the train to start. Each conductor started his own train.

Q. Had you any thing to do with it? Were you there superintending it?

The WITNESS. From Elmira to Williamsport?

Mr. PIERREPONT. No. Were you at Williamsport?

A. I was at Williamsport, I think, on the 13th.

Q. Will you not tell the jury what time the train left Williamsport on the 13th, going south, towards Harrisburg?

A. I have no record of any train south from Williamsport. I cannot say positively.

Q. Cannot you say what hour it left?

A. I can say at what hour they were advertised to leave.

Q. What hour was that?

A. About nine o'clock in the morning and about ten o'clock p. m., two through trains.

Q. The interruptions that had occurred at that time were supplied by ferry, were they?

The WITNESS. South of Williamsport?

Mr. PIERREPONT. Yes.

A. I understand they were.

Mr. BRADLEY. Were you over the route yourself?

The WITNESS. I was never over the route when the ferry was used.

Mr. BRADLEY. Then, gentlemen, I never asked him any question about it. Strike that out.

Q. (By Mr. PIERREPONT.) You say the train from Elmira would reach Baltimore at seven o'clock in the morning?

A. That is my memory; I have no record of it.

Q. You spoke in your direct examination of two trains leaving, one being a train taking five hours and thirty minutes, and the other a train taking eleven hours. Suppose the fast train were detained until the slower one came up, and the passengers went on to the fast train, they would reach their destination sooner than the time for which they started would bring them?

Mr. BRADLEY. I do not understand that question. I should like to have it repeated or read.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 79. WASHINGTON, TUESDAY, AUGUST 20, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 78.*

Mr. PIERREPONT. This is my question: Whether one train running in five hours and thirty minutes and the other in eleven hours, if the first got detained by any cause, and the slower train overtook it, and the passengers on the slower train should take the other, they would not get to their destination much sooner than they would if it had not been for the accident to the fast train?

Mr. BRADLEY. I object to that question. That is all a matter of reasoning.

Judge FISHER. That would depend of course altogether upon how long the fast train remained after the slow train got up.

Mr. BRADLEY. And the management of the conductors, and what they would do with the passengers.

Mr. PIERREPONT. It does not need any argument.

Mr. BRADLEY. I do not think it does.

Mr. PIERREPONT. I will not ask him any more about that. (To the witness.) These other routes you know nothing about yourself?

A. I was not on them.

Q. Do you know what other routes there are?

A. I was right there.

Q. Will you tell us, then, what railroad routes there are coming from Elmira to Baltimore? In what ways can you come from Elmira to Baltimore?

A. I think there are four different ways.

Q. Tell us what those are?

A. One route is from Elmira to Great Bend, from Great Bend to Scranton, from Scranton to Northumberland, from Northumberland to Sunbury, and from Sunbury to Harrisburg—a regular bow exactly.

Q. I want to have you tell what they are? That is all my question.

A. That is one of them.

Q. Now, tell the second?

A. I think there is another one.

Q. What is the other?

A. Another from Elmira to Great Bend, from Great Bend to Scranton, and from Scranton to Philadelphia.

Mr. BRADLEY. He is not sure about that. So scratch that out.

Mr. PIERREPONT. (To the witness.) What did you say?

A. I was never over the route.

Q. What other one is there?

A. There may be another, but that is by New York. There may be one besides the New York—yes, there is another: from Elmira to Great Bend, Scranton, Allentown, Reading, and Harrisburg.

Q. And likewise on to New York?

A. Yes, sir.

Q. That would make five, would it not?

A. Yes, sir.

Mr. BRADLEY. Have you got that map, gentle-

men, that was offered in evidence? To save time, I will ask a question without the map. (To the witness.) Suppose Elmira to be here, [the left elbow,] and Sunbury down here at this elbow, [the right elbow,] you come from Williamsport and then go down to the river.

A. The first route I mentioned is eighty-five miles farther than the direct route. It is three sides of a square, and ours is one side.

Q. Eighty-five miles longer than the other to get to Sunbury?

A. Eighty-five miles by Great Bend and Sunbury. I have figured it up, and I think that is it.

Q. How far is it to Great Bend?

A. From Elmira to Great Bend I cannot say exactly. I figured it up not long ago, and I figured it eighty-five miles farther by way of Great Bend and Scranton.

PATRICK McDONOUGH,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Philadelphia.

Q. You have been, or are now, in the Legislature?

A. I have been; I am not now.

Q. You were in the late army?

A. Yes, sir.

Q. State whether you know John Lee, who has been examined as a witness in this case?

A. Yes, sir.

Q. Did you know him in Philadelphia?

A. Yes, sir.

Q. Do you know his general character among those with whom he associated for truth and veracity?

A. Yes, sir.

Q. Was it good or bad?

A. Very bad.

Q. Would you believe him on his oath?

A. I would not.

Cross-examined by Mr. PIERREPONT:

Q. When did you know him in Philadelphia?

A. I knew him from 1843 until about 1853 or 1854, I think.

Q. Were you in the army with him?

A. No, sir.

HENRY A. COOK,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. Philadelphia, Pennsylvania.

Q. Were you in the service in the late war?

A. Yes, sir.

Q. Do you know John Lee, who has been examined as a witness in this case?

A. I do.

Q. Did you know him when he resided in Philadelphia?

A. I did.

Q. Do you know his general character among his

neighbors and those with whom he associated for truth and veracity?

A. I do.

Q. Was it good or bad?

A. Very bad.

Q. Would you believe him on his oath?

Q. I would not if he was interested in any matter.

Cross-examined by Mr. PIERREPONT:

Q. Do you think he could tell the truth on any subject?

A. I presume he might.

Q. You think he could, but you have some doubt about it?

A. Yes, sir; his character in Philadelphia is that he is a natural liar.

JOHN O'DONNELL,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you live?

A. In Philadelphia.

Q. Do you hold any office there; and, if any, what?

A. I hold the office of constable of the fifth ward.

Q. Do you know John Lee, who was examined as a witness in this case?

A. I do.

Q. Do you know his character for truth and veracity among his neighbors and those with whom he associated?

A. It was bad.

Q. You know what it is?

A. Yes, sir.

Q. And you say it is bad?

A. Yes, sir.

Q. Would you believe him on his oath?

A. I would not.

Cross-examined by Mr. PIERREPONT:

Q. Do you think he could tell the truth?

A. He might, if it was any benefit to him.

Q. Otherwise he could not?

A. Well, if he was a loser by it, I do not think he would.

Q. Unless he got benefited by it, you do not think he could?

A. I do not think if he was losing any thing he would tell the truth.

Q. Supposing he was not losing or gaining by it, do you think he could?

A. He might.

Q. It would be accidental, would it not?

A. Very accidental, I think.

EDWIN G. LEE,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State your native home and residence until within a short time past.

A. In Texas, in the last six months previous to May.

Q. Previous to that where were you?

A. In Virginia during the summer preceding.

Q. You are a native of Virginia?

A. Yes, sir.

Q. And have lived there all your life?

A. Yes, sir.

Q. State if you bore any commission in the army of the Confederate States; and, if any, what?

A. The last commission I held was that of brigadier general.

Q. State where you were in the month of April, 1865.

A. In the province of Canada.

Q. Were you on duty there, or for what purpose were you there?

A. I received a sick furlough for a period of six months, based upon surgeon's certificate.

Mr. PIERREPONT. You need not go into that.

Q. (By Mr. BRADLEY.) You were on sick furlough; that is sufficient. Your health continued bad?

A. It was infirm while I was there, but when I left I was intrusted—

Mr. PIERREPONT. You need not state that.

Q. (By Mr. BRADLEY.) While in Canada, state if you met the prisoner, John H. Surratt, and when you first saw him.

A. I did; I saw him on the 6th day of April, 1865.

Q. State whether he brought any dispatch to you; and, if so, from whom?

A. Yes, sir; he brought—

Mr. PIERREPONT. Wait one minute; you cannot give that.

Mr. BRADLEY. I think we can.

Mr. PIERREPONT. I object to it.

Mr. BRADLEY. State your objection.

Mr. PIERREPONT. It does not need any stating, except that we object to any thing about bringing a dispatch to him.

Mr. BRADLEY. We consider the matter admissible in evidence, if the court please, both on ground personal to the prisoner and because of the range which the testimony on the part of the prosecution has taken in this case. They have offered evidence to show that Surratt went to the South as bearer of dispatches. I propose to show now when he reached Richmond. I propose, further, to show that it was his first visit in connection with furthering or assisting the rebellion, and that he was there intrusted with a dispatch to General Lee in Canada, and reached there on the 6th. They have proved that he reached there on the 6th. I propose to prove now that he was then a bearer of dispatches from the Confederate Government to General Lee, this very witness, and that after that he remained there several days. I propose to prove, not by this witness, but by another, that he was making his arrangements to settle in Canada when General Lee employed him upon special duty at Elmira, in the State of New York.

Mr. PIERREPONT. Not any of which, certainly, could be received in evidence under any rule of law that I understand, and I object to it for that reason.

Judge FISHER. I do not think you can go into the intentions, or motives, or employment of the prisoner at the bar in Canada. Your object is to prove an *alibi*. You are confined to the fact to show when he was there, how long he was there—the 6th of April—and how much longer. You can show all that.

Mr. PIERREPONT. I do not object to that.

Judge FISHER. But you cannot show what sort of dispatches he bore, or who he bore them to, or whether he intended to settle there, or any thing of that sort.

Mr. BRADLEY. There is another part of this case, for your honor has said that testimony is there yet, in which they have charged that Surratt received so much money from Mr. Thompson, and that Mr. Thompson is thereby connected with this transaction. I want to show by that dispatch the transaction between these parties; that Surratt did not receive one dollar from Mr. Thompson. Moreover, that he was despatched to Elmira on special secret service, and on his return made such reports and exhibitions by plans, that he must have been in Elmira on the 13th and 14th and the morning of the 15th of April; otherwise, he could not have accomplished the purpose for which he was sent and made the report which he did.

Mr. PIERREPONT. I do not know what reasoning my learned friend may have to make to the jury on the subject. I am simply objecting to this evidence, not reasoning about it.

Mr. BRADLEY. I am not stating reasons. I am stating facts which I propose to offer in evidence. I shall not attempt to make an address to the jury, such as was made on Saturday. What I have to say, I will reserve until the proper time. I offer now evidence to

show why this party was in Elmira, as we have offered evidence of the fact that he was there. I offer to show that he was not there for any purpose connected with this conspiracy, that he was not there for the purpose of assisting the parties engaged in it; but was engaged upon another duty, which rendered it utterly impossible that he could have been engaged in the matter with which he is charged.

Judge FISHER. When the prosecution offer evidence to show that he was assisting the conspiracy in Elmira, you may offer evidence to show that he was not.

Mr. BRADLEY. Why, if your honor please, for what purpose have they spread the toils they have, unless it is to connect him with the operations here? If the gentlemen concede that, this case is at an end. If the jury are satisfied that he was in Elmira at that time, there is an end of this prosecution; I shall not trouble myself with further proof; but I want to meet the case which they have spread, and which your honor has said is still before the jury. I desired to have certain evidence ruled out, but it is not ruled out; and, being here, I must show that this party had no connection with Mr. Jacob Thompson; that he received no money from Jacob Thompson; that he was sent off at the time of this transaction upon business wholly disconnected with it, and which rendered it impossible that he could have been connected with it and discharged that duty.

Judge FISHER. If you want to show that he did not do any thing with Jacob Thompson, and had no connection with him, the witness must speak as to his own knowledge.

Mr. BRADLEY. The dispatch is for that purpose. It is to show what was done with that money, what that money was drawn for—not connected with the prisoner.

Mr. PIERREPONT. You cannot show what the money was drawn for.

Mr. BRADLEY. I cannot show what the money was drawn for, when, without a particle of evidence to connect it with this prisoner, it is held here as a weight against him! We cannot show that it was drawn by another person and for another purpose! If this prisoner had nothing to do with it, we cannot show that, and cannot show the order from Mr. Thompson to pay over the money to a third party and not to Surratt, and what the object of that payment was, taking it away entirely from Surratt, disconnecting him with the matter!

Mr. PIERREPONT. Of course you cannot, clearly, as a matter of law.

Judge FISHER. I cannot see that you can.

Mr. BRADLEY. I will sit down and reduce to writing the offer which I make and put it on the record. I have a right to do that, I think.

Judge FISHER. Very well.

Mr. BRADLEY. I do not know but that it will save time to take a recess now, as it will take me half an hour to write it.

Judge FISHER. Very well; we will take a recess now.

The court took a recess for half an hour, and re-assembled at half-past twelve o'clock.

Mr. BRADLEY. When the court took a recess I availed myself of the time to write out and condense briefly what I propose to prove, that there shall be no misapprehension about it.

Mr. PIERREPONT. I do not know what the practice is here, and I am frequently embarrassed by that fact; but I ask if it is not the practice in a case of this kind, where there is such a long proposition, which may be argumentative—I do not know—to submit it to the court for the court to determine, without reading it to the jury. I ask if that is not the proper mode.

Judge FISHER. I do not know that there is any practice on the subject here. I am not familiar with any.

Mr. BRADLEY. [Reading:]

"On the further trial of this cause defendant offered to give in evidence tending to show: First, That on the 6th of April, 1865, he arrived in Montreal, in Canada; was the bearer of a dispatch from Mr. Benjamin, the Secretary of State of the Confederate States, to the witness E. G. Lee, which dispatch related to and directed the disposition of the funds in the hands of Jacob Thompson, named in the testimony of the prosecution, and to show that no part of the same was to be paid, nor was any in fact paid, to the prisoner at the bar, or to any one charged in the indictment in this case as concerned in the conspiracy therein alleged; and, in point of fact, what disposition was to be made of said funds."

I propose to prove in point of fact that the funds were to be transferred either to Mr. Lee or to a foreign government. He did not receive them, but they were put under the protection of a foreign government. I do not mean the government itself, but persons under the protection of the foreign government.

"Second, And the Government having also given evidence tending to show that the prisoner was in Elmira after the 12th and before the 18th of April, 1865"—

That is, they prove by the hotel register that he left Montreal on the 12th and returned on the 18th, and they prove by McMillan's revelations that he was in Elmira, and it must have been between those dates—

"and was there co-operating with the alleged assassins of the President; and the prisoner having given evidence tending to show that he was, in point of fact, in Elmira on the 13th, 14th, and 15th of April, 1865, he now offers further to prove that on the 12th of April, 1865, then being in Montreal, he was specially employed by the witness E. G. Lee, then holding the commission of brigadier general in the army of the Confederate States, and absent on sick leave in said Montreal, to visit Elmira, with the view to ascertain the position and condition of the confederate prisoners confined at or near said town of Elmira, and to make sketches of the stations of the guards and the approaches to said prison, and also the number of the arms and troops there; that, in point of fact, the prisoner left Montreal on the afternoon of said 12th of April to go to Elmira, and was absent until the 17th day of April, on which day, or the day next succeeding, he returned to Montreal, and made his report, and brought back with him what purported to be rude sketches of the said prison and its approaches, and the number of the forces there, and that he paid the prisoner his expenses and for his services.

"Third, That the prisoner at the bar having left Washington, as given in evidence by the prosecution, on the 25th of March, 1865, reached Richmond, Virginia, on the 29th of said month, and on the 31st of March was charged by Mr. Benjamin, Secretary of State as aforesaid, with a dispatch for the said witness E. G. Lee, at Montreal, where he arrived, as hereinbefore stated, on the 6th of April, where he remained until the 12th of April.

"All of which evidence, and each several part, is offered as tending to show the whereabouts of the prisoner, and how, in point of fact, he was occupied from the 25th of March to the 17th of April; and also to show that he did not receive the money from Jacob Thompson, which it is pretended by the prosecution he did receive."

Mr. PIERREPONT. If your honor please, if the witness is put upon the stand and proper questions asked of the witness, we can get at what we want to get at. There are several points in that paper that I do not object to; the first part, for instance.

Judge FISHER. Let me understand, Mr. BRADLEY, what you propose to do with this paper.

Mr. BRADLEY. I offer it as a part of the record of the case as a ground of exception.

Judge FISHER. It may do for that; but the proper plan, I think, would be to put the witness on the stand and ask whatever questions you think you are entitled to have answered, and then I will rule as they come whether they ought to be answered or not.

EDWIN G. LEE'S

examination continued.

Mr. BRADLEY. I ask that the last question put to the witness may be read.

The question was read, as follows:

Q. State whether he brought any dispatch to you; and, if so, from whom?

Judge FISHER. That question is objected to, I understand.

Mr. PIERREPONT. Yes, sir; that is objected to.

Judge FISHER. I rule that out on the ground that it is *res inter alios*.

Mr. BRADLEY. Note an exception.

Q. (By Mr. BRADLEY.) On his arrival at Montreal did he deliver to you any paper?

Mr. PIERREPONT. I object.

Judge FISHER. I make the same ruling on the same ground.

Mr. MERRICK. Note an exception, of course.

Mr. PIERREPONT. Of course, in every case.

Judge FISHER. The exception will be noted.

Mr. BRADLEY. I wished to avoid that very thing of having forty exceptions when I made a proposition of proof through the regular mode, as I had supposed. I will proceed, however, to put the questions. (To the witness.) Do you know whether or not at that time Mr. Jacob Thompson had any funds of the Confederate Government in Montreal?

Mr. PIERREPONT. I object to that.

Judge FISHER. That is on the same principle.

Q. (By Mr. BRADLEY.) Do you know what disposition Mr. Jacob Thompson made of any funds of the Confederate Government in his custody in Montreal?

Mr. PIERREPONT. I object.

Judge FISHER. They are all of the same character.

Q. (By Mr. BRADLEY.) Do you know whether the prisoner received any money or not from Mr. Jacob Thompson in Montreal?

Mr. PIERREPONT. I make the same objection.

Judge FISHER. The same ruling.

Q. (By Mr. BRADLEY.) While in Montreal, did you ever have opportunities to see the prisoner from the 6th to the 12th of April?

A. I had opportunities of seeing him at his room at the St. Lawrence Hall, the hotel where I boarded.

Q. Between the 6th and 12th?

A. Yes, if he were there that late, because I did not see him that day.

Q. What day?

A. On the 12th; that is, if I did I do not remember it at all.

Q. Did you employ him in Montreal?

A. Yes, sir.

Mr. PIERREPONT. Do not answer.

Mr. BRADLEY. Do not answer until the court says you may answer.

Judge FISHER. I consider that as standing upon the same footing as the other questions that have been ruled out.

Mr. BRADLEY. The question is not filled out yet.

Judge FISHER. I thought they objected to it.

Mr. BRADLEY. No; they leaped before they reached the stile.

Mr. PIERREPONT. We did not leap even until he had answered the question, strange to say.

Mr. BRADLEY. The answer came before the question was completed. The question is: Q. Did you employ him on any business calling him into the United States on or before the 12th of April, 1865?

Mr. PIERREPONT. Do not answer.

Judge FISHER. That is on the same ground precisely.

Q. (By Mr. BRADLEY.) Did you see him when he left Montreal to come to the United States on the 12th of April, or whatever day he came away?

Mr. PIERREPONT. We do not object to that.

A. I did not.

Q. (By Mr. BRADLEY.) Do you know upon what business he came to the United States?

Mr. PIERREPONT. We object to that.

Judge FISHER. That is on the same principle.

Q. (By Mr. BRADLEY.) Do you know whether he was to go to Elmira?

Mr. PIERREPONT. We object to that.

Judge FISHER. That is ruled out.

Mr. BRADLEY. Of course exceptions will be noted all the way through.

Judge FISHER. Exceptions will be noted to each ruling.

Q. (By Mr. BRADLEY.) Do you know whether he was to come to Elmira on any business which was to occupy him there?

Mr. PIERREPONT. We object to that.

Judge FISHER. That stands on the same ground. Q. (By Mr. BRADLEY.) Was he employed by you for compensation to come into the United States and do any business for you?

Mr. PIERREPONT. Do not answer that.

Mr. BRADLEY. That is objected to, I understand.

Judge FISHER. Yes, and ruled out.

Mr. BRADLEY. Your honor might as well have taken the written paper and ruled on it.

Mr. PIERREPONT. Some of the paper we do not object to.

Judge FISHER. A portion of the paper I can see no ground of objection to.

Mr. BRADLEY. I should like to know what it is.

Mr. PIERREPONT. We have got in the right train now.

Mr. BRADLEY. Let the last question be read.

[The reporter read the question.]

Mr. PIERREPONT. Do not answer that.

Q. (By Mr. BRADLEY.) Were you aware of the fact that he had left Montreal to come to the United States?

Mr. PIERREPONT. Of your own knowledge?

A. Of my own knowledge, no, sir. Yes, I think I am, too; because the next time I saw him—

Mr. PIERREPONT. Do not reason why.

The WITNESS. I am not going to, except thus far—

Mr. PIERREPONT. Do not reason about the reason why you think so.

The WITNESS. Then I cannot answer at all.

Judge FISHER. You must answer of your own knowledge, without any argumentation.

Q. (By Mr. BRADLEY.) Were you aware of the fact that he was about to leave Montreal to come to the United States?

Mr. PIERREPONT. I object to that—what he was about to do.

Judge FISHER. That is on the same principle.

Q. (By Mr. BRADLEY.) When you last saw him, did you leave him with the understanding that he was to come to the United States?

Mr. PIERREPONT. Do not state that.

Judge FISHER. He cannot speak as to the purposes of the prisoner. He must speak of the acts, not of the intentions of the prisoner.

Mr. BRADLEY. He can speak, I suppose, of this: that they separated with the understanding that he was to come to such a place.

Mr. PIERREPONT. I suppose he cannot tell any thing about an understanding between them.

Mr. BRADLEY. An agreement between them.

Mr. PIERREPONT. Not a bit of it.

Judge FISHER. Oh, no; an agreement between them would be no more than an agreement between two parties in this room made now.

Mr. BRADLEY. I do not mean to discuss it. (To the witness.) Did you lose sight of him for several days, while in Montreal, before the 17th or 18th of April?

Mr. PIERREPONT. We do not object to that.

A. I did.

Q. When you saw him again, did he make any report to you?

Mr. PIERREPONT. Do not state that.

Judge FISHER. That would be making evidence for himself.

Q. (By Mr. BRADLEY.) Did he have any sketch, and exhibit a sketch to you?

Mr. PIERREPONT. Do not state that.

Judge FISHER. The same objection obtains.

Q. (By Mr. BRADLEY.) Did he report to you the state of facts at Elmira?

Mr. PIERREPONT. Do not answer that.

Judge FISHER. It does not seem to me it is worth while to be putting questions in different shape amounting to substantially the same thing.

Mr. PIERREPONT. It seems to me one of these questions raises every legal objection they can wish to raise.

Judge FISHER. Yes, perfectly so; but still, if they choose to pursue that course, they can do so.

Mr. BRADLEY. As I cannot comprehend what is in the mind of the court and the counsel's objection to the course I proposed to take, I am obliged to spread everything out, so that we can see what it is when we come to a court above, if we ever get there. (To the witness.) Do you know at or about what time he arrived in Montreal after you had failed to see him for some days?

Mr. PIERREPONT. We do not object to that.

A. At the close of the interval of several days I mentioned just now I next saw him on either the 17th or 18th of April. My own impression has been, ever since I thought of the matter at all, that it must have been the 17th, but I am not positive, but am positive to one of those two days.

Q. Do you recollect at all how he was dressed when you first saw him after this interval of time?

Mr. PIERREPONT. Do not answer that question.

Judge FISHER. What is the objection to that?

Mr. PIERREPONT. We have given no evidence about how he was dressed in Montreal at all.

Mr. BRADLEY. You have given evidence how some man was dressed on board the cars going to Montreal.

Mr. PIERREPONT. Not in Montreal.

Mr. BRADLEY. Going to Montreal.

Mr. PIERREPONT. We have given in evidence how a man was dressed in St. Albans, and not about a man in Montreal.

Mr. BRADLEY. The court will say.

Judge FISHER. I cannot see any objection to his describing the dress as a fact.

A. I recollect nothing of his dress, except that he wore a large ordinary traveling-shawl, that covered the shoulders and his body below the waist nearly to the skirt of the coat. If he threw that off at the moment I first saw him, I do not remember what his other dress was.

Q. Do you remember his costume when you last saw him in Montreal before this interval?

A. I do not.

Q. Do you remember whether he had then a moustache or a goatee?

A. He had a very light moustache that looked to me like one of a man who had never shaved—just let it grow so always—a boy's moustache; and he had a very light goatee; when I say light, I mean in quantity. I do not remember whether it included imperial and all; I do remember the fact that it was light, and that it was a goatee, and not an imperial alone; but whether it grew to the lip or not I do not remember.

Q. Do you know whether he had a shawl when he went away—you cannot say when he went—the last time before he was absent?

A. I do not.

No cross-examination.

Judge FISHER. Call another witness.

Mr. BRADLEY. We shall be unable to occupy the court to-day with more than one or two witnesses. Your honor's ruling, as you will see at once, has interrupted very much the course of our examination, as we have other witnesses to the same point.

DAVID C. ROBINSON,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State your residence.

A. Elmira, New York.

Q. Do you recollect the Brainard Hotel, in 1865?

A. I do.

Q. Do you remember who kept it in April, 1865?

A. It had several proprietors in the course of the month. There was one firm by the name of Granby & Walker or Walker & Granby, who kept it during the larger part of April, 1865.

Q. As late as what day?

A. I think as late as the latter part, and perhaps during the month.

Q. After the 15th?

A. Yes, sir.

Q. Have you or not made very diligent search for the register of that hotel during that period?

A. I have.

Q. Have you been unable to find it?

A. Yes, sir.

Q. You have made diligent search for it and labored a great deal to find it yourself and have been unable to find it?

A. Yes, sir.

No cross-examination.

Mr. BRADLEY. I do not know, if your honor please, how far the power of this court extends; but we had General Eckert here under subpoena as a witness, and let him go, with the express understanding that he would come on receiving a telegram. We have telegraphed him, but he does not come. We can make proof easy enough of the service of the subpoena, and that he was in attendance. My understanding is that the attachment of this court will reach New York as well as this District, and I shall have to ask for an attachment for him.

Mr. WILSON. He will come if he got your dispatch.

Mr. BRADLEY. He did get my dispatch, I believe. I also served a subpoena upon Mr. Tillotson, the managing agent of the Western Union Telegraph at New York. I agree that was an irregular service in some respects. I had the subpoena itself telegraphed from here, and it was received by him in New York—a telegraphic copy. I wish to lay a foundation for an attachment in that case. The witnesses are material to the defense. I ask for the attachment now. The court may decide it at once.

Mr. CARRINGTON. They have been summoned.

Mr. BRADLEY. Mr. Eckert was in attendance on the court, and I served the subpoena, and let him go because his family was sick, and he promised to return when telegraphed for. I telegraphed to him, and I understand he received the telegram.

Judge FISHER. I do not know, but I think I may say I feel confident that I never ordered an attachment issued beyond the limits of the District, and therefore my experience in regard to that subject is wholly at fault. I should think some of the old practitioners at the bar might state something as to the practice.

Mr. BRADLEY. I will state that in the case of the prosecution by Colonel Benton against Frank Thomas, attachments were sent from here to St. Louis, Missouri, and the witnesses brought here under attachment. Mr. Middleton will recollect that perfectly.

Mr. MIDDLETON. Yes, sir.

Mr. PIERREPONT. I should like to inquire whether Mr. Eckert declined to come.

Judge FISHER. The foundation for an attachment is, first, showing the subpoena process and its service and return. Then, in my judgment, wherever the subpoena process will reach, the attachment process will reach also. Then the question arises as to whether the witness, having obeyed his subpoena and come here and been in attendance and been discharged—

Mr. BRADLEY. Not discharged, but his family was sick, and he was allowed to go home to see his family.

Judge FISHER. He was allowed to go home for a limited time, and was to return on receiving a telegram. Now, it seems to me, at all events, there ought to be satisfactory proof to the mind of the court that the telegram had been received by the witness who had been allowed to go away to return upon a telegram. I have some doubt as to whether the witness, being allowed to go away—well, I do not know that I have either; but, at all events, the court ought to be satisfied that the

telegraphic communication has been received by him, so as to bring him within the attachment process.

Mr. BRADLEY. The other question is a novel one. I sent a *subpœna duces tecum* to Mr. Tillotson, at New York, but it was copied at the telegraph office with which he is connected, and the service was made in that mode by a telegram, which was a public copy, a transcript of the subpœna.

Mr. PIERREPONT. Does he decline to come?

Mr. BRADLEY. I cannot get any answer from either of them.

Mr. WILSON. In regard to the telegram, I suppose the marshal of the southern district of New York would be the only person within the jurisdiction of his district that could serve the subpœna; and, if it was sent by telegraph without having been sent to and served by him, it would be, in contemplation of law, no service.

Mr. BRADLEY. It is wholly unnecessary to serve a subpœna by the marshal. Anybody can serve that process of this court. The subpœnas are addressed not to the marshal, but to the parties themselves. The form of the subpœna runs: "The President of the United States to A B, greeting: You shall appear as a witness, and not depart without the order of the court."

Mr. WILSON. But by law no marshal can make any return outside of the limits of his own district.

Mr. BRADLEY. Therefore, if it was served through the marshal of the city of New York, it would be wholly valueless; he could not make any return; the return would be of no use; but if we send a special messenger, as we have had to do in this case, the proof of service of the subpœna is all that is necessary. My only difficulty is, whether that is a mode which we can use of reaching the parties—sending a telegraphic copy of the subpœna. I submit that to the court.

Judge FISHER. That is a new question entirely.

Mr. BRADLEY. It is entirely new.

Mr. WILSON. Is there any return on which your honor can found any action?

Judge FISHER. I was going to observe, that there ought to be some return showing at any rate that the party had received the subpœna process.

Mr. BRADLEY. In both cases I propose to lay before the court evidence that the telegrams have been delivered to Mr. Tillotson and Major Eckert, as the foundation for my application. I only wish to know whether that would be a sufficient foundation. We must send a special messenger to-night to New York to bring Mr. Tillotson here.

Judge FISHER. I think it would save trouble if you would send a special messenger.

Mr. BRADLEY. I have only avoided it because of the expense. The testimony is material. The Government has been put to enormous expense in this case, and I have refrained from sending a special messenger simply to avoid the expense. I am perfectly ready to do it, and would have done it on Saturday but for that.

Judge FISHER. You had better send a special messenger, I think.

Mr. BRADLEY. Very well, sir.

Judge FISHER. (After a pause.) Have you any other witness.

Mr. MERRICK. When Mr. BRADLEY gets through with this attachment, there are two we can examine; and if the court adjourns it will be entirely agreeable to counsel, one of whom is not feeling very well.

AUGUST BACHUS,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Do you reside in the city of Washington?

A. Yes, sir.

Q. Where were you living in April, 1865?

A. At the Winter Garden.

Q. Where?

A. On Pennsylvania avenue, between Tenth and Eleventh streets.

Q. Was that an exhibition of dancing and music?

A. Yes, sir; a concert saloon.

Q. Do you remember the day of the assassination of the President?

A. Yes, sir.

Q. Was there music or dancing in your room that day?

A. There was in the evening, at eight o'clock.

Q. Did you ever have any music or dancing on Fridays in the day-time?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. What sort of tables had you?

A. We had round tables.

Q. Did people come there to drink in the day-time?

A. Sometimes they did.

Q. Did they sit down at the round tables and have drink?

A. I do not remember that day.

Q. I do not speak of that day, but was that the habit of your place, to have drinking there?

A. Oh, yes.

Q. Did you have any woman or women dancing there?

A. Yes; I had a concert saloon.

Q. You sometimes had a woman dancing there?

A. Not in the day-time, except Mondays and Tuesdays.

Q. On the 14th did you have women dancing there in the evening?

A. Yes, sir; in the evening.

Q. And you had drinking there?

A. Yes, sir.

Q. And the round tables there?

A. Yes, sir.

By Mr. BRADLEY:

Q. Did you at three o'clock in the afternoon, or any time before sunset, have any music and dancing there that day?

A. No, sir.

By Mr. PIERREPONT:

Q. Your place was on the avenue?

A. Yes, sir; it was on D street, between Tenth and Eleventh.

By Mr. BRADLEY:

Q. And no building between that and the avenue—nothing but a little triangle?

A. No, sir.

Q. It was on this side of the avenue?

A. At Woodward's building.

Q. You are cut off from the avenue by just such a triangle as that in front of Metropolitan Hall?

A. Yes, sir.

Q. Was there any other concert saloon except yours and Metropolitan Hall between Tenth and Twelfth streets?

A. There is one on Tenth street.

Q. But not between Tenth and Twelfth streets?

A. No, sir.

By Mr. MERRICK:

Q. Is yours on the north side—this side—of the avenue?

A. Yes, sir.

Q. Did you ever see as many as twenty or fifty people in there in the day-time sitting around drinking?

A. No, sir; never.

Q. Did you ever see as many as twenty people sitting around the tables there in the day-time?

A. No, sir, never; there may have been five or six or eight, but not more.

By Mr. PIERREPONT:

Q. Did you not know of any other place there where they had drinking and dancing?

A. No, sir.

Q. Did you know Teutonia Hall?

A. Yes, sir.

Q. Where was that?

A. Between Ninth and Tenth streets.

Mr. BRADLEY. We have got Teutonia Hall as safe as the others, but I object to going outside of Tenth and Twelfth streets: that is the locality fixed; they fixed the locality.

Mr. BRADLEY, Jr. And the name.

Mr. CARRINGTON. Vanderpoel stated that he was a stranger here.

Mr. BRADLEY. That is a matter of argument.

Mr. CARRINGTON. He does not fix the precise locality.

Mr. MERRICK. He said it was on the south side, between Tenth and Twelfth streets, and Metropolitan Hall.

Mr. PIERREPONT. The fact that Teutonia Hall is just in that neighborhood is a fact that can be given in evidence, and it is not a matter of the smallest consequence whether Teutonia Hall was on one side or the other of Tenth street on the avenue. The fact may be given in evidence. The witness might have said it was between Tenth and Eleventh when it was between Eleventh and Twelfth. There is nothing strange in that.

Mr. BRADLEY. He said it was between Tenth and Eleventh or Eleventh and Twelfth.

Mr. PIERREPONT. The witness Vanderpoel did not pretend to know where it was, as your honor will remember.

Judge FISHER. Let us see what he did say.

Mr. BRADLEY. He said it was between Tenth and Eleventh or Eleventh and Twelfth, and I have taken all the houses along there.

Mr. BRADLEY, Jr. Your honor will find it on page 124 of the testimony.

Mr. PIERREPONT. On page 121 your honor will find that the witness said this:

"Q. Where did you next see him?

"A. The next place I saw him was between Eleventh and Twelfth or between Tenth and Eleventh, on the left-hand side of Pennsylvania avenue going from here to the White House."

That fixed it on the south side. Then, on page 125, on that subject, at the top of the page, he states that there were some fifty or sixty persons in the room. Then he is asked:

"You are quite distinct that on Friday, the day of the assassination, you went in there and saw a woman dancing at the lower end of the hall; you are very clear about that?"

A. Yes, sir.

Q. And you think it was between Tenth and Eleventh or Eleventh and Twelfth streets?

A. It was along there; I have not been there since to see.

Q. You do not know what the place was? Was it the Metropolitan Hall?

A. Metropolitan Hall, or Washington Hall, or something of that sort; I could not swear positively to the name."

Judge FISHER. I should say that this witness might be questioned in relation to any place in the immediate neighborhood not on the north side, because I think the witness Vanderpoel expressly stated that this was on the south side of the avenue.

Mr. PIERREPONT. This place is on the south side that I am asking about. Your honor will perceive that on page 124 the witness was asked: "You think it was between Tenth and Eleventh or Eleventh and Twelfth streets," and he replied, "It was along there."

Judge FISHER. Yes, I see what he said.

Mr. PIERREPONT. "I have not been there since to see," that is saying, I do not know; it was somewhere in that region; and then, further, he is asked by the counsel, "You do not know what the place was," and he says, "I do not recollect; Metropolitan Hall, or Washington Hall, or something of that sort; I could not swear positively to the name."

Judge FISHER. This witness may be asked about any place in the immediate neighborhood along there—along Eleventh or Twelfth or Tenth street, or immediately in the neighborhood, on that side.

Mr. PIERREPONT. That is all I want to ask.

Mr. BRADLEY. All I desire is to know if they mean to fix it there. I would just as lief it should be Teutonia Hall as any other place.

Mr. PIERREPONT. I mean to ask the question first if he knows where Teutonia Hall is. (To the witness.) Do you know?

A. I do.

Q. Will you not tell the court and jury where Teutonia Hall is?

A. Between Ninth and Tenth streets.

Q. On what side of the avenue?

A. On the other side.

Q. On the south side, is it not?

A. Yes, sir.

Q. Were you in Teutonia Hall any time in the middle of April or about that time?

A. I was sometimes in there.

Q. Will you tell the jury what kind of tables they had?

A. I could not tell that; they had some round and some cornered tables.

Q. Do you know whether they had dancing there?

A. They had a rehearsal there.

Q. Will you not tell us what time of day they had the rehearsal?

Mr. BRADLEY. On the 14th of April?

A. I do not know when they had a rehearsal.

Q. Their rehearsal was before the exhibition?

A. It is generally in the morning.

By Mr. BRADLEY:

Q. Did you ever know them to have a public performance in Teutonia Hall on a Friday in the day-time?

A. No; I do not know any thing about their business; I went there sometimes and had a glass of beer.

MRS. ANNIE BACHUS,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State, if you please, where you lived in April, 1865; where was your place?

A. 318 D street, on the avenue, between Tenth and Eleventh?

Q. The Winter Garden?

A. Yes, sir.

Q. Do you remember the day of the President's assassination?

A. Yes, sir.

Q. State if there was any performance during the day—any exhibition of dancing or music.

A. No, sir; not in the day-time.

Cross-examined by Mr. PIERREPONT:

Q. What time did it begin in the evening?

A. At eight o'clock.

Q. Did they have any rehearsals before they began; and, if they had rehearsals, what time of the day were they?

A. When we had rehearsals, it was between eleven and twelve or one o'clock.

Q. What kind of tables had you in the hall?

A. Round tables.

JUDGE A. B. OLIN,

heretofore sworn, took the stand for the purpose of making an explanation of his testimony:

If the parties will permit me, I should like to make an explanation of what was testified to by me the other day. At the close of my testimony, the counsel for the prisoner kindly handed me what purported to be a report of the testimony taken before the military commission on the trial of Mrs. Surratt and others. I was examined as a witness on that occasion, and according to the testimony as reported in the printed volume, which I had never seen before, in my examination in the theatre I did not discover the remains of the plastering cut from the hole in the wall in which the

brace was fitted to close the door, nor the shavings from the gimlet-hole, as I supposed, bored into the door after it entered the box. The other day, as the jury will probably recollect, I testified, according to my recollection, that I did discover those. I have no means of knowing whether the report that is produced here of the testimony that I gave before the military commission is an accurate report or not. All I can say in reference to it is that, if I were called upon to testify to-day again, after some reflection upon the subject, I should testify as I did before on this trial; and yet I ought to say, perhaps, after such a lapse of time as has occurred between the transaction and the present hour, that if that be a correct report of my testimony before the military commission, it is more likely to be accurate than the testimony I gave here the other day, because all the circumstances were then fresh in my recollection and the transaction was a recent one. After this lapse of time it is quite possible that I may be mistaken in reference to that fact, as to whether I saw the plastering on the floor cut from the hole in the wall or the shavings that were cut by a penknife from what was apparently a gimlet-hole through the door. I may very possibly be mistaken in reference to that. That is all I can say in reference to the matter. The counsel for the prisoner forbore to cross-examine me upon that subject, and I think it due to the case, as I am about to leave town this afternoon, to make this statement in reference to it. My own recollection is, if I were called upon to-day to testify, that I saw what I testified to, and yet it is quite possible, as I have observed, that I may be mistaken in reference to it.

Mr. MERRICK. Was that the official report you saw?  
A. I do not know; a volume was handed to me. I never saw the report of the evidence on the trial.

By Mr. PIERREPONT:

Q. Will you state whether you saw the shavings that you testified to the other day and the mortar that you testified to at the same time there?

A. I never saw them, unless I saw them on that Sunday morning.

Q. That was the time?

A. That was the time; if I saw them at all, it was on that examination.

Q. Is your recollection now the same as it was the other day when you testified?

A. I should say so.

By Mr. BRADLEY:

Q. If I understand you, you were examined about twelve days after you made that examination?

A. I do not recollect. It was soon after, when all the facts were fresh in my memory.

Q. Did you not take notes of the examination of other persons?

A. Yes, sir; and handed them over to the War Department. I took most of the preliminary examinations until the War Department took charge of the proceeding.

Q. The facts were then much more fresh in your memory than now?

A. Yes, sir.

Mr. MERRICK. The report that was shown you (Pitman's book) is the official report; at least it bears the authority of the War Department.

Mr. WILSON. There is none of it literal.

Mr. BRADLEY. This book that I have here is the literal report by Mr. Sutton. [Boston edition of the Conspiracy Trial.]

Mr. PIERREPONT. The other is not.

Mr. BRADLEY. This that I have is the literal report, which I propose to put in evidence.

Mr. MERRICK. I find this certificate in this book of Pitman's:

"BUREAU OF MILITARY JUSTICE,  
June 30, 1865.

"By authority of the War Department the publication of the work referred to in the foregoing letter will be permitted, on the con-

dition that it be made without cost to the Government, and that it be prepared and issued under the superintendence of Colonel Burnett, who will be responsible to this bureau for its strict accuracy.

"J. HOLT,  
Judge Advocate General."

Mr. BRADLEY. The date of Judge Olin's examination is May 18th, I believe.

The WITNESS. I was examined on two occasions. That book (Pitman's report) was handed up to me immediately after my examination. I know nothing of the accuracy of the report, and have never seen it.

Mr. PIERREPONT. It would be very easy to have it reported so, although the fact was that he did make the examination as he has testified here, as you will find from the report of this trial. I think the reporters of this court are excellent reporters, and yet I can point out more than twenty things of the same kind in this very trial.

Mr. BRADLEY. If you find out any mistakes in this report of Sutton's, I shall be very glad to see them.

Mr. PIERREPONT. I do not know which is Sutton's, but in the record made here I can point out plenty of them.

Judge FISHER. Are you through with Judge Olin?

Mr. BRADLEY. One moment. While we are at this thing I should like to call his attention to the literal report, question and answer, of the trial before the military commission, made by Mr. Sutton.

[Mr. BRADLEY then handed to Judge Olin the Boston edition of the conspiracy trial, which was examined by him.]

The WITNESS. This report states that I examined that, and, so far as I could discover, the plastering that had been cut from this incision in the wall had been removed from the carpet.

Mr. MERRICK. That is a different report from the one I showed you. The one I showed you was the official report; this report is Sutton's. There are no questions and answers in the official report—it is compacted—which was prepared by the Government.

The WITNESS. Some of the circumstances attending that examination are indelibly impressed on my mind; for instance, it was reported that probably the ball was fired through the door, and, having seen that report before I made the examination, I took particular pains to look at that, and discovered, and I recollect very distinctly now the fact, that the small hole bored in the door had been cleaned out by a sharp cutting instrument.

Mr. BRADLEY. If you will look further down in the report I showed you, you will find the reference to that.

The WITNESS. And I recollect very distinctly that fact from its being impressed on my mind; and yet, in reference to these other questions about the plastering and the chips, it is quite possible that I am mistaken as to what I testified the other day. I would be more likely to recollect distinctly the fact so recently after the occurrence than I would at this lapse of time.

By Mr. PIERREPONT:

Q. As you recall it, you reproduce the scene, do you not, of your examination?

A. Yes, sir.

Q. As you reproduce the scene, you say you have a distinct memory about examining that hole?

A. Yes, sir.

Q. And you say it was bored through and then cut out with a penknife?

A. Yes, sir.

Q. As you reproduce it, what is your memory about looking on the carpet to see whether there were any shavings or chips?

A. I recollect that very distinctly.

Q. Did you not find them?

A. That is my belief now, if I were to swear to it.

Q. And so about the mortar?

A. Yes.

By Mr. BRADLEY:

Q. Still, when the thing was fresh on your mind, your recollection was different?

A. Of course you know very well that an honest man would be more likely to remember a transaction that occurred a few moments ago than he would after a lapse of years. That is all I can say about it.

By Mr. PIERREPONT:

Q. And yet would it not depend a great deal upon the way his mind was called to the particular circumstance, whether it was made to be a circumstance of importance or not?

A. Doubtless that is so.

By Mr. BRADLEY:

Q. Did you not say that was a circumstance of importance; that you were examining to see as to that; one of the very things you were looking at?

A. The important circumstance in my mind perhaps was the fact that the door was braced or prepared for a brace, and the other important circumstance was whether the bullet was fired through the door, or whether some other contrivance was resorted to to effect an entrance into the box of the theatre. The chips of the door and the plastering on the floor perhaps would not be so very material. The main points were about the barring of the door, or whether, in fact, the ball was fired through the door, or a contrivance resorted to by which a person approaching the alley to the box of the theatre might look into the box without opening the doors of the box.

Judge FISHER. Call another witness.

Mr. MERRICK. I do not think we have any at hand now.

Judge FISHER. If there are no others at hand, we will take a recess until to-morrow morning at ten o'clock.

The court accordingly took a recess until to-morrow morning at ten o'clock.

### Thirty-First Day.

TUESDAY, July 16, 1867.

The court re-assembled at ten o'clock a. m.

FRANK O. CHAMBERLAIN

recalled

By Mr. BRADLEY:

Q. I do not know that I understood some part of your testimony the other day; at least I did not find it reported. I want to ascertain in regard to that register. I understood you to say that you took possession of the Webster House on the 17th of April, 1865?

A. I was not in full possession. I had commenced invoicing.

Q. Your register begins on the 17th of April, 1865, does it not?

A. I had commenced invoicing the house and furniture then, but did not get through until the 22d.

Q. During that time, and until the 1st of January, 1866, where was that register?

A. It lay on the office counter.

Q. It was in daily use?

A. Yes, sir.

Q. Until what time?

A. Until December 31.

Q. Including December 31, 1865?

A. Yes, sir.

Q. It could not therefore have got out of the way without your knowing it?

A. No, sir; it could not.

Q. It was in constant and daily use?

A. Yes, sir.

Mr. BRADLEY. I understood the testimony that way before, but there is some discrepancy about it.

Mr. PIERREPONT. I so understood it.

Mr. BRADLEY. And I wish this considered as

given in evidence before my exception to the ruling of the court in regard to the admission of that register.

Mr. PIERREPONT. Certainly.

Mr. BRADLEY. If your honor will allow me, I understood this testimony in this way before, and I wish this to form a part of the evidence preceding the bill of exception.

Mr. PIERREPONT. And I so understood it the same way, and my notes have it so in substance.

Judge FISHER. I understood that it was in daily use there until filled up. I did not recollect any particular date.

Mr. BRADLEY. December 31, 1865. I thought it could not have been misunderstood, as it seemed to me it was in the argument on the other side, and perhaps even in the opinion. It shows that this register could not have been carried to Canada and filled up in the meantime.

Mr. PIERREPONT. I understood it, except as to the precise date.

Mr. BRADLEY. What I mean to show is, that it was in daily use until after Surratt went to Europe, and therefore could not have been carried to Canada to be filled up.

Q. (By Mr. BRADLEY.) Can you state at what time the first train from Albany arrived at Canandaigua in the month of April, 1865, on the 14th, 15th, and 16th—the middle of April?

A. They now arrive at 10.30, and that has been the usual time for the last two years.

Q. I mean the train that leaves Albany in the morning?

A. That arrives at about the same time in the evening—between ten and eleven o'clock.

Q. How long did it take that train to run through?

A. I should think about eleven or twelve hours.

Q. From Albany to Canandaigua?

A. I should think so.

Q. I misunderstood you. I thought you said the first train got in at 4.50 or 5.50.

A. There are three trains a day each way, one arriving at 10.30 in the morning, another at 4.55, and another at 10.30 at night.

Q. So I understood you. Then the middle train arrives about 4.50?

A. Yes, sir.

Q. Have you taken that train yourself repeatedly?

A. Not very often. I know of its arriving.

Q. Do you know whether it leaves Albany about 6.50 in the morning?

A. I do not know what is the leaving time; but the trains arriving at Canandaigua from New York arrive at 10.30, 4.55, and 10.30—not far from that time.

Q. And did at that time?

A. Yes, sir, I think they did. That has been the usual time for the last two or three years since I have been there.

Q. Do you know at what time the train arriving at 10.30 left Albany? Did it leave at midnight?

A. I could not tell what the leaving time is. It is about two hundred and twenty-two or two hundred and twenty-three miles.

Q. Does that go by Syracuse?

A. Yes, sir.

Q. That is the direct route from Albany to Canandaigua?

A. Yes, sir.

Cross-examined by Mr. PIERREPONT:

Q. Have you the register of your house for 1866 and 1867 here?

A. Yes, sir. [Register produced.]

Q. Look to the date of May 13, 1867?

A. I have it here.

Mr. PIERREPONT. If your honor please, I will state now my object in offering this evidence, so that the counsel may not misunderstand me, as they seem to have done the other day. I offer this evidence to

show an error in Mr. BRADLEY, Jr., himself entering his name on the register, for the purpose of showing how such errors occur—an error of three months.

Mr. BRADLEY. What difference can that make in the issue here?

Mr. MERRICK. Is our register before the jury? If it is, this is all right.

Mr. PIERREPONT. You gave evidence of when Mr. BRADLEY went there.

Mr. MERRICK. That was for the court.

Mr. PIERREPONT. No; you put Mr. BRADLEY, Jr., on the stand.

Mr. MERRICK. It was all for the court. If our register is before the jury, this evidence is all right.

Mr. BRADLEY. Let me see that register.

Mr. PIERREPONT. You can look at it. My object is to show from Mr. BRADLEY, Jr.'s own entry an error of three months.

Mr. BRADLEY. I cannot perceive what possible object there can be in making such an offer, but I will examine it. [Examining the register.] It is here in May.

Mr. MERRICK. See if it is not in March also.

Mr. BRADLEY. I think not.

Mr. PIERREPONT. It is not in March, but in May.

Mr. BRADLEY. He said it was in May also.

Mr. PIERREPONT. It is to show how such errors will occur, and how they did occur in this very case.

Mr. BRADLEY. I cannot imagine for what purpose the evidence is offered. The other evidence was offered as introductory to the register, which has been ruled out.

Mr. PIERREPONT. It is to show the impropriety of re-introducing their register.

Mr. MERRICK. I think the counsel, by the offer of this register, shows an innate appreciation of the principle upon which this question ought to turn, and that is this: that whether the original entry in the register is correct or not is a question for the jury after the register gets to the jury, and its admissibility is a question of law. If it is not admissible, then the inquiry as to the accuracy or inaccuracy of it is not a matter to be entered upon by the court at all. If it goes to the jury and is to the jury, then whether it be correct or erroneous is a question for them, and all facts tending to show either one thing or the other are legitimate evidence.

Mr. PIERREPONT. This is to show that it could not go to the jury with any propriety.

Judge FISHER. But it has not gone, and it is not worth while to strike that question after it is dead.

Mr. PIERREPONT. But I understood they were reviving it again. If they are not, very well.

Mr. BRADLEY. The gentleman does not understand any such thing, but I think I can understand the object of its production.

Mr. PIERREPONT. I do understand such a thing. I have been informed this morning that such is the fact.

Mr. BRADLEY. I am addressing the court, and when I am done the gentleman will have an opportunity to do so.

It is done for another purpose, having no reference to the issue in this case; for the purpose of affecting the testimony of a gentleman not in court, now sick and confined at home, but whom I will have here, and let him state what he did state on that examination. That he was there on the 23d of March he shows by his memorandum book. Whether he registered his name or not is another question altogether. But this is done with an ulterior purpose, having no reference to the issue in this case at all. It ought not to have been introduced; it cannot touch any question at issue here. The purpose I think I can understand perfectly well; I do not choose to say here what I believe the purpose was, but it certainly can have no reference to the testimony in this case, and it ought not to have been offered.

Mr. PIERREPONT. If the gentleman thinks he

understands my purposes better than I do, I cannot say that he does not think so.

Mr. BRADLEY. I do not care for your disclaimers at all.

Mr. PIERREPONT. I do not know what he thinks about it; but I think I understand my purpose quite as well as he does; and, in order to avoid any possible excuse or reason for trying to say any thing that is quarrelsome, I have undertaken to state it in advance, and have stated it in advance. He says the gentleman is sick. If so, I will waive this matter until he is here. I was not aware of the fact that he was not here. My sole object, as I have stated, was to show how easily such an error in a hotel register is made—an error of three months; and to show, therefore, that the fact that an entry appears on a particular page is not any sort of evidence to go to a jury.

Mr. BRADLEY. Does the gentleman mean to say that this is evidence that the party was not there when his name was registered, and did not register at the time? If he means to say that it is evidence of that fact and it is admissible to the court, I have not a word to say; but if it is in the handwriting of the party, and it is evidence that he was there at the time the entry was made, then it will be corroborative proof of our register.

Judge FISHER. I do not think this register is admissible here.

Mr. PIERREPONT. That ends that.

Mr. MERRICK. He has offered it, and he states—

Judge FISHER. I have rejected it.

Mr. MERRICK. I know your honor has, but we desire to offer some evidence in regard to that. The counsel has offered it, and he has stated that this showed there was an error. Now, I propose to show that there was no error at all; that Mr. BRADLEY, Jr., was there on that day and registered his name there on that day.

Mr. PIERREPONT. I am very willing that they shall show it. I want them to show all about it.

Mr. MERRICK. He offers to show that the register is incorrect. I accept the issue the gentleman has made. He says the question as to the admissibility of our register, in truth, is whether it is likely the register is correct or not. I think his course of reasoning—

Judge FISHER. But the first register, the register of 1865, has been rejected; and as this goes to show that if it had been admitted it was incorrect, as that is the purpose and object of producing this register, of course this register is also rejected.

Mr. MERRICK. Your honor in your opinion stated that the register could not be admitted yet. I did not clearly understand the opinion, but I understood it was an opinion as applied to the condition of the case at that time.

Judge FISHER. Yes.

Mr. MERRICK. And the counsel seemed to suppose that we were looking to the future introduction of testimony with a view to offering that register again, although Mr. BRADLEY had asked that the evidence this morning should go into that bill of exceptions in some further condition of the case as evidence to the court affecting your honor's decision upon the introduction of the register of 1865.

Judge FISHER. I guess you had better dispense with that register altogether, until you make, if you intend to make, some question about it.

Mr. PIERREPONT. I have withdrawn all my questions in relation to it.

Judge FISHER. If you intend to make another effort to get in the register of the Webster House for 1865, we will wait and rule this register out until after you shall have put the other register in, and when that is done, we can discuss this question.

Q. (By Mr. PIERREPONT.) When did you arrive at the Webster House when you came there?

A. I was there on Monday, in April.

Q. What day of the month was it?

A. The 17th, I believe.

Q. Can you tell whether there was anybody dead there, or whether anybody had died just at that time?

Mr. BRADLEY. Stop a moment. I do not think that makes any difference in this case. We have not asked any questions about dead people.

Judge FISHER. No.

Mr. PIERREPONT. The object was for the purpose of fixing that date. We asked about it the other day.

Mr. BRADLEY. I do not care what the object is.

Judge FISHER. I do not see that it is relevant.

Mr. PIERREPONT. Very well; I will say no more about it.

Mr. BRADLEY, Jr., [who had just entered the courtroom.] If the court please, my attention has been called to an error in my statement yesterday in reference to the time I was in Canandaigua. The error into which I fell arose in this way: I went to New York for the purpose of obtaining letters of introduction to Mr. Robinson's father. Those letters I did not obtain at that time, but they followed me back to Washington. That was in March. On my second trip north for the purposes of this case I went by way of New York, thence over the Erie road to Canandaigua, and arrived there on the 13th of May, as appears by the register, going through Elmira and seeing where Mr. Robinson's father resides. On my return again from Canada, on my trip home, I came back by that route, and arrived there, it appears, on the 22d of May, as corresponds with the memorandum in the book. My first visit was the one about which the error arose; and it arose in that way, that I was to have letters of introduction which were not actually furnished to me until subsequently. On both those occasions I saw this book and made the examination to which I have testified.

DAVID H. BATES

recalled, as a witness for the defense.

By Mr. BRADLEY:

Q. [Exhibiting a hotel register.] Look on the left-hand side of that book and tell me whose handwriting that entry is.

Mr. PIERREPONT. What register is that?

Mr. BRADLEY. The register of the Webster House, the one that was rejected yesterday.

Mr. PIERREPONT. What is the other book?

Mr. BRADLEY. I will tell you directly.

Mr. PIERREPONT. I understand they are being compared, and I want to know what the books are.

Mr. BRADLEY. They are not being compared. I ask him in whose handwriting is that entry, "John Harrison?"

A. I believe the name of John Harrison, on the Webster-House register that I am now examining, on the 15th of April, 1865, to be the handwriting of Surratt, the prisoner.

Q. [Exhibiting another register.] Now, look at that register and look at the name of "Harry Sherman" there, and tell me whose handwriting that is?

Mr. PIERREPONT. What is the other?

Mr. BRADLEY. The register of the Spottswood House, Richmond, March 29, 1865.

Mr. PIERREPONT. I object to that.

Mr. BRADLEY. State the objection.

Mr. PIERREPONT. The objection is, that nothing has been shown about any Richmond register whatever. We have offered no register from Richmond, and it is not a book in evidence in any way in the case. There has been no evidence about the Spottswood House in any way.

Mr. BRADLEY. Is it possible that we cannot give any evidence except in reply to what you have given?

Mr. PIERREPONT. Not any of that kind.

Mr. BRADLEY. Make your objection to the court and let the court decide it.

Judge FISHER. You wish to institute a comparison between the handwriting.

Mr. BRADLEY. Oh, no. I wish to prove by this

witness, who is familiar with Surratt's handwriting, from examination, that the entry upon that register, "Harry Sherman," under the date of March 29, 1865, is in the handwriting of John H. Surratt. I shall then offer evidence to prove that the man who wrote that was John H. Surratt; that he arrived there at that time and went under the name of Harry Sherman. I shall trace him in Richmond, following him down from the time they drop him at Port Tobacco. They say he came back from Richmond here. I want to trace him to Richmond and account for him all the time they do not account for him.

Judge FISHER. This is the 29th of March, as I understand.

Mr. BRADLEY. They have given evidence to show that on the 25th of March he left here, and on the 26th of March there is evidence that he left Port Tobacco, supposed to be for Richmond. I wish to show that he went to Richmond, and from Richmond he came back to the city on the 3d of April. I want to account for him every hour of the time, as far as I can, from the time they drop him, on the 26th of March, until he got back here on the 3d of April. They take him up on the 3d of April and show that he left here so as to reach Montreal on the 6th of April, and therefore he must have left on the morning of the 4th of April. I have given evidence to show where he was in Montreal at that time. Lee saw him there until they say he left on the 12th. Then the 12th of April is another starting-point, and we wish to show where he went from Montreal on the 12th of April, and to account for him for every moment, so far as we can at least, so that there shall be no doubt about it, from the 25th of March until the 18th of April; and we propose to show then, from the 18th of April until the 17th of September, where he was until he went to Europe. Therefore, we propose to show that this party was absent from the city of Washington from the 25th of March, except during the night of the 3d of April, when he was here, until he was brought here a prisoner. We trace him to Elmira. They trace him to Elmira. They say he was there on the 13th. Agreed, if we assume that to be the fact.

Judge FISHER. They do not assume to show, as I understand, that he was here after the 25th of March.

Mr. BRADLEY. But your honor will observe, the pretense upon which this rests for a conspiracy is, that he went to Richmond on matters connected with the conspiracy, and got there papers to Jacob Thompson in Canada, and therefore they bring Jacob Thompson in, and make him a part of the conspiracy. Without that, there is no evidence connecting Jacob Thompson with this matter at all in any shape. We propose to show that he went to Richmond, what he went there for, how long he stayed there, when he got there, how he came to go to Montreal from Richmond, and thus account for him and give the reasons and manner of his employment during the whole time. If, then, we can show a constant occupation and employment, utterly inconsistent and irreconcilable, so far as the testimony in this case goes, with any active co-operation in this alleged conspiracy, is it not competent for us to show it? I cannot conceive on what rule we are not allowed to do that. Is it possible they can pick him up on the banks of the Potomac, drop him there, then give evidence when he returned here and went to Richmond, and we cannot show what he went there for and how he was employed? They have given evidence how he went to Richmond. Cannot we show what he went for, how he was employed, how long he stayed there? They allege it was in connection with this conspiracy. We want to show it was not in connection with this conspiracy, but having an entirely different purpose; an object employing his whole time—business which would require his whole attention. Is it possible they can take him just as far as they please, and then drop him and say, "This is evidence," and then take him up at another place, and we cannot fill up the intermediate space and show where he was? When they give

evidence here by alleged declarations that he had been to Richmond during that time, and there had had conference with parties in Richmond, cannot we show that it was not so; that the truth is he had no such interviews, and show how he was occupied while in Richmond? Cannot we fill up the time, in substance, which they thus seek to cover over and leave as ground of bare suspicion, without our being able to raise the veil and show the fact?

Mr. PIERREPONT. The counsel raises a great many questions in his suggestions and propositions to-day as he did yesterday to which I do not object at all. When he puts them in questions, they will come up, as they did yesterday, in their order. I do not object to his showing when the prisoner reached Richmond at all. I do not object to his showing when he left Richmond. I do not object to his showing that he was not in Richmond, if he chooses to do so.

Judge FISHER. If you choose to let the evidence come in, I have no objection; but it does not seem to me to be at all relevant to the matter in issue.

Mr. PIERREPONT. I am not speaking of this evidence. I am speaking of his showing where he was.

Judge FISHER. I cannot see that the evidence as to his being in Richmond, you not having shown anything about his being there—

Mr. BRADLEY. Have they not given evidence over and over again tending to show that he was in Richmond during the time? Surely that cannot have escaped the mind of any one who has attended to the trial of the case. Have they not given evidence by Brooke Stabler, and have they not given the evidence of this man McMillan to the same effect?

Mr. PIERREPONT. Now, the proposition is, do they want to show he was not there?

Judge FISHER. That is what I was going to ask. Do you propose to show that he was not in Richmond, or do you propose to show how he was employed in Richmond, or what is it you propose to show? I confess I do not understand.

Mr. BRADLEY. I said, I thought, with distinctness, we propose to show when he arrived in Richmond, how he was employed in Richmond, what his business was in Richmond, when he left Richmond, and on what business he left Richmond.

Mr. PIERREPONT. That part we certainly shall object to.

Judge FISHER. I cannot see that what he was doing in Richmond would have any relevancy.

Mr. BRADLEY. Your honor has admitted proof that he had interviews with Davis or Benjamin.

Judge FISHER. That is testimony of his own declarations.

Mr. BRADLEY. But given in evidence by the prosecution.

Judge FISHER. You may show any thing about those declarations. You can produce evidence to contradict those declarations, if it happened at the time. If any thing happened at the time those declarations were made, the entire declarations can be given in evidence. But, although you can give in evidence the declaration of the prisoner at the bar made at one time, and although the prisoner may give in evidence all the declarations made at that time, yet he cannot give in evidence in reply, to rebut those declarations, other declarations made at other times or places.

Mr. BRADLEY. I am not offering to give any declarations at all.

Judge FISHER. The case stands on the same footing precisely.

Mr. BRADLEY. Suppose the witness had said he was in the city of Washington on the night of the murder. That is what they undertake to say they have shown. Could we not show in point of fact he was not here? Is not that the very thing we are doing.

Judge FISHER. Not by showing he was in Richmond on the 26th of March.

Mr. BRADLEY. But, if the court please, they have

said he was in Richmond on the 26th of March and had interviews with certain parties. Is it not competent for us to show that it was impossible for him to have such interviews and he did not have them?

Mr. PIERREPONT. Certainly not.

Mr. BRADLEY. Certainly yes. Do you mean to say if a man's declarations are given in evidence, that he is estopped by the declaration as given in evidence from proving the fact?

Mr. PIERREPONT. To be sure.

Mr. BRADLEY. In a criminal case?

Mr. PIERREPONT. Certainly.

Mr. BRADLEY. Well, I learn law every day.

Mr. CARRINGTON. It seems to me, if your honor please, that they are anticipating the questions. As I understand, the question now before the court is whether they can give evidence that this entry, "Harry Sherman," is in the handwriting of the prisoner. It seems to me this would be entirely irrelevant, unless they propose to offer this record in evidence before the jury, and they cannot, under the ruling of the court, offer this record in evidence unless there is some testimony tending to show that he was present at the city of Richmond on the day when this entry purports to have been made. Then I object to his giving any testimony upon this point, because it is irrelevant unless it is admissible in evidence, and it is not admissible in evidence under the ruling of the court unless they first give some testimony tending to show that he was at that time present in the city of Richmond when the entry purports to have been made. In regard to the fact whether he was in the city of Richmond on the 26th of March, that is an entirely different question; it is not the one now before the court; and I submit that this would be irrelevant. However, I do not propose to discuss that until it arises. I object to this witness giving any testimony in reference to that question.

Mr. MERRICK. If your honor please, allow me a suggestion or two in regard to this matter, in order that I may be enlightened as to the rule that your honor indicates upon this subject. We, of course, intend to conform in the evidence to the ruling that your honor has made upon this principle, and show by some testimony that he wrote that name there. We shall conform to the rulings of the court as far as we can, however widely we may differ from your honor's opinion in reference to the law that you may decide. Showing that he wrote his name there and that he was in Richmond, we then propose to show what he did in Richmond, what was his business there, whom he saw, whom he conversed with, when he left, and what he left for.

Now, my learned brothers on the other side say we cannot prove what he did; that it is like his declaration. I hope I do not trespass on your honor, for it is a matter of importance, and I think I may suggest a view which will enlighten the decision to be made upon the question. They have attempted to prove that during this time that we propose to account for him he was in Richmond, and in connection with the conspirators, charged as co-conspirators in the indictment. The object of that proof is to make as perfect as possible his connection with the conspiracy, as a circumstance to go to the jury, from which the jury may infer his presence here. The fact of his being connected with the conspiracy or not connected with the conspiracy, as an independent fact, can in no way affect this case, of course, because the indictment is for murder, and he must have been here present, actually doing the act, or near enough to give assistance. That is well settled law, and I do not suppose the counsel on the other side intend to controvert that law. But the fact that he was in a conspiracy, if they show that he was in a conspiracy and connected with the conspirators, is legitimate evidence to go to the jury, which may be taken in connection with the other evidence tending to prove his presence here in order to establish the fact of his pres-

ence here, and in order to establish what he was doing when here. That is the use of it, and the only use of it.

Now, if they can show that he was connected with this conspiracy, or introduce evidence to show that, and that he was laboring with his co-conspirators for the consummation of the purposes of the conspiracy, I submit to your honor, cannot we, within the time within which he is charged to have been co-laboring, as I have stated, show that he was doing something else inconsistent with the labor charged. It is not like a mere declaration, which is the breath that simply passes from the mouth and amounts to nothing, but it is an act. You charge that on a certain day I was engaged in certain work that required my communication with certain men, and that I saw those men, and spent the day in consultation with them, and messages passed between us. How can I rebut it? I cannot get the men you charge to have been with me. They, as in this case, may be dead or absent from the country. How can I rebut the evidence? I rebut the evidence by proving that I was doing something else, the doing of which was inconsistent with the doing you charge me to have been about.

The counsel says that Dr. McMillan has stated, and that it is a declaration of the prisoner, that he was in Richmond and saw Davis. If he did make the declaration, cannot I rebut the truth of the declaration? Your honor has said that I may show the whole conversation, and show an inconsistent declaration. Your honor is mistaken. I can show the whole conversation, but I cannot show a subsequent inconsistent declaration.

Judge FISHER. I did not say that; far from it. I say you can give the whole conversation so as to show whether one part is inconsistent with the other.

Mr. MERRICK. Very well, your honor; that would be still weaker evidence than what I offer. I may give the whole conversation and show an inconsistent declaration from him. Why may I not go back and show the fact to have been different from what he stated the fact to have been? Does the law of estoppel apply? Is a man always bound to disclose his entire business when in conversation? Is he presumed to disclose his entire business? He may equivocate; he may misrepresent; he may wantonly mislead; and then, having wantonly misled, this conversation in which he did wantonly mislead is introduced as evidence against him, and he is debarred the privilege of showing that the fact was not in point of substance as he stated it to be! I do not understand any such rule as that to apply even in a civil suit. In a civil suit a man is estopped from denying a fact upon two principles: He is estopped by the record where he has put a thing on record, or there is an estoppel *in pais*, where he has said something to a party upon which the party has acted, and by acting upon what he has said put himself in a different position from what he would have been if he had not acted on the representation. Then the party who made the representation is estopped from denying the representation, because, if you allow him to deny the representation and show it to have been false, you allow him to avail himself of the benefit of the falsehood, while the party to whom he told it suffers from having acted on it as the truth. That is the theory of the doctrine of estoppel, with which your honor is perfectly familiar. If he puts any thing on the record, he is estopped by the record. *In pais* he is estopped when he makes a statement which changes the condition of the party to whom he made it, but in no other case. I may make a statement of any kind to any individual, alleging it to be a fact, and then afterwards I may come in when it is proved that I made the statement, and show that the statement I made was not true, unless the doctrine of estoppel applies, and the party to whom I have made it changes his position.

Now, if Surratt has said to Dr. McMillan any thing which in point of fact is not so; if he was entertaining himself with this peripatetic physician's credulity, he

can certainly show the fact. The doctor did not act on it; it did not change his position; he did not buy any property or incur any debt; he is in the same position, so far as that is concerned, now that he was before it was made. I can therefore see no principle within the scope of my limited vision which would debar him from showing what he did in Richmond.

Mr. PIERREPONT. I do not propose to ask your honor to deliver a treatise upon the law of evidence. I ask your honor, when the questions come up, and I object to them, to rule upon them; that is all.

Judge FISHER. Here is a book presented to this witness. I cannot tell—nobody knows, so far as the evidence goes—where this book came from. It might have been picked up in the streets. You bring here a piece of paper with a name written on it and ask the witness in whose handwriting that is—

Mr. BRADLEY. Pardon me just there. We have the clerk of the hotel here to prove the book; we only examined this witness for convenience.

Judge FISHER. According to the ruling I have made in regard to the Canandaigua register, you may bring a witness here to prove the book to have been regularly and fairly kept in the way of business there at this place, whatever place it be, and that a person came there and made this entry, and then you may offer proof as to whose handwriting it is.

Mr. BRADLEY. It is the mere order of proof.

Mr. MERRICK. And the convenience of the witness. We intend to follow it up; we shall conform to your ruling, sir.

Mr. BRADLEY. We will call another witness to prove that.

Mr. PIERREPONT. I have not cross-examined yet.

Mr. BRADLEY. There has been no examination at all; the court has not admitted it.

Mr. PIERREPONT. But you have offered some evidence about it, and I propose to cross-examine him in regard to that.

Cross-examined by Mr. PIERREPONT:

Q. Take this register of the Webster House, Canandaigua, where you say you find the name about which you have testified entered there, and tell the jury under what date that entry is?

Mr. BRADLEY. Stop a moment. If this is evidence to the jury, all very well; but if it is evidence to the court, he need not tell the jury any thing.

Mr. PIERREPONT. Very well. (To the witness.) You need not tell the jury. Hand it to the court, and tell the court, so that the jury cannot hear. They do not want the jury to hear it.

Mr. MERRICK. We want it to go to the jury.

Mr. BRADLEY. We want it to go to the jury; but if you give evidence to the jury about it, you cannot afterwards object to it. I advertise you of that beforehand.

Mr. PIERREPONT. I have said I will not give it to the jury. I ask the witness, in a tone that the jury cannot hear, to call the attention of the court to it.

Mr. BRADLEY. I have no sort of objection to its going to the jury; I want it to go there.

[The witness handed the register to Judge FISHER, and engaged in conversation with him.]

Mr. BRADLEY. (To the witness.) Now, I want to know what that is about. There seems to be something going on between you and the court.

Judge FISHER. I do not understand that there is any thing at all to cross-examine this witness about; the register is not before the jury; whenever it does go before the jury, you may examine as to the date.

Mr. BRADLEY. I want to know what the witness has communicated to the court, and that I have a right to know.

Judge FISHER. That you can very easily have. He simply stated that there was no line drawn between Saturday, the 15th of April, and Monday, the 17th.

Mr. MERRICK. Is not that name under the date of the 15th of April?

The WITNESS. Yes.

Judge FISHER. It does not amount to any thing at all; the proper time to cross-examine him about that entry will be when they have put the record in evidence before the jury.

J. B. TINSLEY, JR.,

a witness for the defense, sworn and examined.

By Mr. BRADLEY :

Q. Where were you employed in the month of March, 1865?

A. At the Spottswood Hotel, in Richmond.

Q. State whether that book before you is the register of the Spottswood Hotel or not?

A. Yes, sir; it is.

Q. You brought it with you from Richmond, did you not?

A. Yes, sir.

Q. Have you any other books with you?

A. Yes, sir.

Q. Have you got them here?

A. Yes, sir; I have them in the court-house.

Q. Look at the name of Harry Sherman in that register, and tell us whether you can state from the books or your memory that that man was there on the 29th of March, 1865, and how long he stayed?

A. Yes, sir.

Q. Do you recollect the fact of his being there, independently of the book?

A. I do not recollect the individual; I know that the party who registered by that name did stop in the house.

Q. Now, turn and see how long he stayed there, or how long "Harry Sherman" stayed there.

A. He came on the 29th of March to supper and left on the 1st of April after breakfast; he left the hotel at that time.

Q. Could you recognize the party if you were to see him?

A. No, sir; I think not.

No cross-examination.

DAVID H. BATES,

recalled.

By Mr. BRADLEY :

Q. Now, Mr. Bates, I will ask you to look at that handwriting, [the name of "Harry Sherman," on the register of the Spottswood Hotel, Richmond, March 29, 1865.] In whose handwriting is it?

A. I believe the signature of "Harry Sherman" in this book to have been written by Surratt.

Q. By John H. Surratt, the prisoner?

A. Yes, sir.

No cross-examination.

HENRY HALL BROGDEN,

a witness for the defense, sworn and examined.

By Mr. BRADLEY :

Q. State where you were employed in the months of March and April, 1865; in what part of the country?

A. In Richmond, up to the 2d day of April.

Q. Were you there from the 29th of March to the 2d of April?

A. Yes, sir.

Q. Did you see the prisoner there?

A. Yes, sir.

Q. Under what name did he pass?

A. He passed there under the name of Sherman. He arrived in Richmond under the name of Sherman.

Q. You knew who he was?

A. I knew who he was.

Q. State whether you were with him at the office of Mr. Benjamin, the Secretary of State, at Richmond?

Mr. PIERREPONT. You need not state that. I

object to the question. I could have objected to the rest, but did not; but there seems to be no end of it.

Judge FISHER. What is the ground of your objection?

Mr. PIERREPONT. The ground of my objection is, that whether he was at Mr. Benjamin's office at that time in March or not is not a matter of any relevancy in this case. It is not contradicting any thing we have offered, nor proving any thing contrary to what we have offered.

Judge FISHER. Have you any thing to say, Mr. BRADLEY?

Mr. BRADLEY. Not a word.

Judge FISHER. The witness need not answer the question. It does not appear to me to be at all contradicting any thing in relation to the matter at issue. He might have been at Mr. Benjamin's, and might have preached a sermon in Richmond two or three times a day, but it does not seem to me to contradict any thing involved in this issue at all.

Q. (By Mr. BRADLEY.) Were you with him much of the time while he was there from the 29th of March to the 1st of April?

Mr. PIERREPONT. You need not answer that. It is of no consequence whether he was with him one minute or every minute.

Judge FISHER. The same objection obtains.

Mr. BRADLEY. Let an exception be noted in both cases.

Judge FISHER. Certainly.

Q. (By Mr. BRADLEY.) Do you know how he was occupied or employed while he was there?

Mr. PIERREPONT. Do not answer that question unless the court says so.

Judge FISHER. Of course that is obnoxious to the same objection.

Q. (By Mr. BRADLEY.) Do you know when he left there?

Mr. PIERREPONT. Do not answer that question unless— I will not object to that question.

Judge FISHER. Do you wish to have the question answered? (To the witness.) You may answer it.

A. I know when I last saw him.

Q. State when you last saw him.

A. I last saw him on the evening of Friday, the last day of March, 1865.

Q. You did not see him when he left?

A. I did not see him when he left.

Mr. BRADLEY. I believe that is all I am permitted to ask.

No cross-examination.

DAVID H. BATES

recalled.

By Mr. BRADLEY :

Q. [Exhibiting the register of the Webster House, Canandaigua.] You find the name of "R. N. Jones" entered next after John Harrison on the 15th of April. Turn forward two pages and you will see the name "R. N. Jones" entered again. I wish you to state whether in your judgment those two entries are in the same handwriting.

Mr. PIERREPONT. I object to that. We have nothing to do with Jones's handwriting, nor whether some other party made an entry there.

Mr. BRADLEY. I am laying the foundation for the introduction of proof of the register. This is for the court.

Judge FISHER. Very well; he may answer that question.

A. I believe those signatures of "R. N. Jones" on both pages are the same writing, written by the same party.

FRANCIS P. BURKE,

a witness for the defense, sworn and examined.

By Mr. MERRICK :

Q. State to the jury what business you were engaged in in April, 1865?

A. I was coachman to our late President Lincoln.

Q. Did you drive his coach to the theatre on the night of the assassination?

A. Yes, sir.

Q. After the President left the carriage, will you state to the jury whether or not you remained immediately in front of the plank platform or moved away; and, if you moved, which way did you move?

A. I drove a distance of from about ten to fifteen paces up towards F street.

Q. A distance of ten or fifteen paces away from that plank platform?

A. From that platform.

Q. The rear end of your carriage was ten or fifteen paces from the nearest end of the platform?

A. The hind wheels projected ten or fifteen yards, to the best of my knowledge.

Q. Your object, I suppose, was to let other carriages come up, and give room for the horses beyond the platform, that the carriages might be beside that?

A. Yes, sir.

Q. Were you on the box most of the time that night?

A. I was on the box all the time that night, with the exception that two of my friends asked me to take a glass of ale with them, which I did, and gave my horses in charge to a man until I returned.

Q. What time was it that you went in to take a glass of ale?

A. I think after the first piece.

Q. The first act?

A. The first act.

Q. How long did you remain away taking a glass of ale?

A. I suppose, may be, five or ten minutes.

Q. You then returned to your carriage?

A. I returned to my carriage and went on the box.

Q. And you remained there, you say?

A. Yes, sir.

Q. I understand you to say you remained there all the time except those five or ten minutes?

A. I remained on the carriage after we came out.

Q. Did you observe any one looking around your carriage, and peeping in it that night?

A. Not that I paid any notice to. They may have passed by and looked at the carriage.

Q. They may have done so?

A. But I did not see anybody.

Q. Did you hear anybody about the theatre calling the time that night?

A. No, sir; I did not. In fact, I did not pay much attention; I felt tired; I was drowsy, laying back on the carriage, with my elbow resting on the carriage. I had been out all day. I could not see anybody, and did not hear anybody pass any remarks.

Q. You did not go to sleep?

A. No, sir; I did not go sleep.

Q. Did you see anybody sitting on that plank platform intended to let people get out on from the carriages?

A. No, sir; I did not.

Q. Did you see any soldiers sitting there for half an hour?

A. No, sir; I did not see any soldiers.

Cross-examined by Mr. PIERREPONT:

Q. Where you were sitting, on the box, as your carriage had gone up some distance, you could not see the platform?

A. No, sir; I could not, because it projected ten or fifteen yards, as I have said.

Q. And when you were drowsy, you could not see it?

A. I was drowsy, and I was at the same time engaged with my horses.

Mr. BRADLEY. There is a portion of Mr. Brogden's testimony on which I intended to interrogate him, but which may be covered by the ruling already made. I think, however, it is directly pertinent to one of the facts given in evidence on the other side. I will either call him back to the stand or state what it is.

Mr. PIERREPONT. Call him back and have the questions put to him.

HARRY HALL BROGDEN

recalled.

Mr. BRADLEY. Your honor has ruled that I should not ask him if he had been to Mr. Benjamin's office with Surratt or seen him there.

Judge FISHER. Yes, sir.

Mr. BRADLEY. I propose to ask Mr. Brogden what passed there in reference to the payment of any money to Mr. Surratt by Mr. Benjamin, and how much money. You will recollect they have given in evidence by this man Weichmann that Surratt had ten or eleven gold pieces when he returned from Richmond. I propose to show where he got that money, and how much he received, and what it was for. Is it admissible in evidence?

Mr. PIERREPONT. Of course it is not. Mr. Weichmann did not say he got it from Benjamin.

Mr. BRADLEY. I can ask the question in any form the court may see fit to suggest. (To the witness.) I now ask you whether, while you were in Mr. Benjamin's office on the day you saw the prisoner there, there was any transaction between him and Mr. Benjamin in which money was paid by Mr. Benjamin to him, and how much was paid, and for what purpose?

Mr. PIERREPONT. Do not answer that question. I object.

Q. (By Mr. BRADLEY.) What form of money, and how much?

Judge FISHER. I cannot see that that has any relevancy.

Mr. BRADLEY. Then I will put it more direct. I ask you whether you saw Mr. Benjamin pay to him ten twenty-dollar gold pieces on the 31st of March, 1865? That is objected to and ruled out, as I understand.

Judge FISHER. Yes, sir.

Mr. BRADLEY. My next question is, whether you know for what purpose that money was paid to him from being present at the conversation between the parties? That is ruled out.

Judge FISHER. Yes, sir.

Mr. BRADLEY. (To the witness.) You can sit down. I intended to pursue the inquiry before, but I supposed it was covered by the previous ruling. I desire to have exceptions noted to all these rulings.

Judge FISHER. Certainly.

Mr. MERRICK. I now offer, your honor, the affidavit made by McMillan, which is furnished by the other side and agreed to be considered as the original: "I, Louis A. J. McMillan, of Montreal,"

Mr. PIERREPONT. One minute, if you please. Suppose you hand it to the court.

Mr. MERRICK. I supposed there was no objection to it.

Mr. PIERREPONT. You cannot offer it in evidence. You did not ask Dr. McMillan a word about that affidavit.

Mr. BRADLEY. Certainly we did, and had it before us at the time.

Judge FISHER. Let me see the affidavit.

[The affidavit was handed to Judge FISHER.]

Mr. PIERREPONT. You cannot ask about any written or printed paper without producing and showing the written or printed paper to the witness.

Mr. MERRICK. Certainly not; and I served a *subpena duces tecum* on Mr. Seward, and the counsel put that in my hand as the original paper.

Mr. PIERREPONT. Precisely; and if that had been shown to McMillan as the original paper I would not object; but I submit, if my memory does not fail me utterly, that that paper was never shown to McMillan by anybody.

Mr. MERRICK. I asked him if he had made an affidavit at that place, and he told me he had, and the other side furnished that paper as the original, and agreed to consider that as the original.

Mr. PIERREPONT. We do now; but no paper was ever shown him.

Mr. MERRICK. Because I had not the manuscript.

Mr. BRADLEY. But you interrogated him as to the contents of that paper.

Mr. PIERREPONT. The rule is too clear for debate. They have this paper as the original paper. There is no objection to it. We gave it to them to be used as the original paper, and they knew well they might have used it as such, and might have given it to McMillan and asked him if he ever made any such affidavit, and then allow him to give any explanation he chose; but they did not do it.

Mr. BRADLEY: I do not care whether it is pertinent to the same matter or not; it is direct proof.

Judge FISHER. Do you propose to put that affidavit in now?

Mr. BRADLEY. Certainly we do.

Mr. PIERREPONT. We object to it.

Mr. BRADLEY. What is the objection?

Mr. PIERREPONT. The objection is, that by every elementary book, when you undertake to put in a paper, answer in chancery, affidavit, printed book, or any thing else in evidence, in order to contradict a witness, you must show him the paper or book, and ask him if he has seen that paper or that book.

Judge FISHER. It is just precisely like asking him about former statements and declarations he had made. He must have his attention and notice called to them in order that he may explain, if there is any inconsistency.

Mr. PIERREPONT. And we furnished that paper to them for the very purpose, that they might use it as the original.

Mr. MERRICK. He was interrogated as to the contents of that affidavit, asked if he had made the affidavit, and he said he had made such an affidavit at such a time.

Mr. PIERREPONT. He was never asked if he made that affidavit, and no notes will show it.

Mr. MERRICK. The fact is this: We asked him if he had made an affidavit—

Mr. BRADLEY. If all the elementary principles that anybody ever read are against you, it is not worth while to discuss it.

Mr. PIERREPONT. I say they are.

Judge FISHER. The court has ruled on the subject.

Mr. MERRICK. Have you? Then I am done.

Mr. BRADLEY. Although it is admitted that McMillan made this affidavit, we cannot offer it, as I understand! Of course, we reserve an exception to that ruling.

STEPHEN F. CAMERON,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. State to the jury in what service you were engaged during the late war.

A. I was in the confederate service.

Q. Did you cross the ocean in company with Louis

J. A. McMillan?

A. With Surgeon or Dr. McMillan, yes.

Q. The one who was examined as a witness here?

A. Yes, the same; I recognize him now in court.

Q. What boat did you cross in?

A. In the steamer *Nova Scotia*.

Q. From what place?

A. Quebec.

Q. To Liverpool?

A. To Liverpool, stopping at Londonderry.

Q. Did you have any conversations with him in that voyage?

A. Immediately after I formed his acquaintance.

Q. Did he state to you in any of those conversations that John Surratt had told him he was in Elmira on the night of the 14th of April, 1865?

A. He so stated distinctly.

Q. Did he state to you that John Surratt had told him that he was in Elmira on the 14th of April, and only learned on the morning of the succeeding morrow that the President had been assassinated?

A. He so stated.

Q. Did he ever state to you that Surratt told him he was in Elmira, and that he went from there to some town in New York, the name of which he could not recollect, but which had an Indian derivation?

A. Yes, sir; he so stated. I tried to recall the name to his recollection by repeating the names of towns in New York of Indian derivation, but he could not recollect it, nor could I.

Q. Did he ever state to you that Surratt first learned of the assassination of the President in the city of Elmira, and that he immediately turned his face towards Canada?

A. Yes, assigned that as the reason.

Q. Did he ever state to you in the conversations on board of that boat or elsewhere, that he was on intimate relations with Surratt on shipboard, that Surratt could not have been guilty of the charge of participation in the assassination, and therefore he regarded him merely as a political offender and a victim of compromising circumstances, and that he felt no scruples in extending aid to him?

A. He did, in answer to my question if he was not fearful of compromising himself as an officer of a public line of steamers in sheltering him and affording facilities for him to leave the country.

Mr. PIERREPONT. Wait; you are answering specific questions now.

The WITNESS. I beg pardon.

Q. (By Mr. MERRICK.) Did he ever state to you that Surratt told him that the whole plan for the abduction of Lincoln was laid by Booth as an individual enterprise, and that Booth procured the funds, bought the horses, and spent in that way some \$4,000 or \$6,000?

A. He so stated and mentioned those sums specifically.

Q. Did he state that the whole plan was laid by Booth?

A. Yes; "That reckless man Booth," I think, was the expression he used. He said he always regarded it as an individual enterprise from the account that was given by Mr. Surratt.

Q. At what time was it that you had these conversations with him? Do you recollect the date?

A. Not without reference to my diary. [After referring to a diary.] It was Monday, the 30th of October. I left on the 28th.

Q. Did he ever say to you at that time, or after the 26th day of September, 1865, that he had never communicated his conversations with Surratt to any one else but yourself?

A. He said so emphatically and solemnly. I made a very earnest appeal to him, and asked him if he had ever repeated that conversation regarding Father LaPierre to any other party, not desiring a priest to be compromised, and he stated that he was his early schoolmate, and that he had never repeated it to any one else. He told me so solemnly. He cannot deny it.

Q. Did he ever state to you that Surratt told him the first knowledge he knew of his mother's peril was her impending execution?

A. He did, and defended John Surratt when I assailed him on that point.

Q. He defended him, and told you Surratt had said his first knowledge of his mother's peril was her impending execution?

A. Yes; I had written to Father LaPierre to tell him.

Mr. MERRICK. No matter about that; they will not allow that to go in.

Cross-examined by Mr. PIERREPONT:

Q. The Dr. McMillan that you are speaking of is the gentleman sitting here by the district attorney?

A. That is the individual.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 80. WASHINGTON, WEDNESDAY, AUGUST 21, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 79.*

- Q. When was the first time you ever saw him?  
A. On the steamer.
- Q. What date?  
A. The date of my arrival on the steamer I saw him around—the 28th of October.
- Q. 1865, was it?  
A. Yes, sir; 1865. So it is on my diary.
- Q. That is the diary you have lying there, is it?  
A. Yes, sir; the entries I made on the dates.
- Q. You made those entries at the time?  
A. At the time.
- Q. Of these conversations?  
A. At the very time.
- Q. You wrote them down, did you not?  
A. I did, at the time.
- Q. Have you got them there?  
A. I have.
- Q. You wrote them down then?  
A. Yes, sir.
- Q. Was he present when you wrote them down?  
A. On one occasion—Friday, November 3d—when he gave me an address where he said he thought Surratt was secreted in Liverpool, I wrote it down in his presence on the rail of the steamer.
- Q. What is that date?  
A. Friday, November 3d.
- Q. And that you wrote down in his presence, did you?  
A. In his presence; he gave me the pencil out of his pocket to write it; he abstracted the direction of a letter from the post office, for which I gave him a small present.
- Q. You gave him a present, did you?  
A. Yes.
- Q. What was the present you gave the doctor?  
A. It was a tobacco-pouch made by the Indians and embroidered with beads.
- Q. You gave him the present for that information?  
A. As an acknowledgment of his general politeness and the information he had extended.
- Q. Was it for politeness in giving this information?  
A. Yes; I desired to have it, for I did not know where John Surratt was.
- Q. You wanted to find him, did you?  
A. I should like to have met him.
- Q. Were you in pursuit of him?  
A. I was not.
- Q. But you wanted to find him?  
A. I should like to have met him.
- Q. Do you know Mr. Creswell?  
A. I know John Andrew Jackson Creswell.
- Q. The Senator?  
A. I believe he was.
- Q. Do you know James M. McCullough?  
A. I do.
- Q. Where did you know these gentlemen?  
A. In Elkton.
- Q. In what State?  
A. The State of Maryland.
- Q. How came you there?  
A. I married in Cecil county, and settled there for a time.
- Q. Settled in what?  
A. I was in business there for a time.
- Q. In what business?  
A. In the grain business.
- Q. That was your business, was it?  
A. Yes, for a time, until I became a student for the ministry, and then I became an Episcopal minister.
- Q. How long did you continue in the grain business?  
A. I think it was something more than a year, or say two years; more than a year, at all events.
- Q. How old were you when you went into the grain business?  
A. I must have been twenty-two or twenty-three.
- Q. Were you married when you went into the grain business?  
A. I was; I was with my father-in-law.
- Q. Did you continue in the grain business more than a year?  
A. No, sir.
- Q. Was there any difficulty or trouble in it?  
A. I was not very successful as a business man.
- Q. After you had been in the grain business you went into the ministry?  
A. I did.
- Q. Where did you study?  
A. At the General Theological Seminary, New York city.
- Q. Were you admitted to license, or whatever it is?  
A. I was admitted to deacon's orders by Bishop Whittingham.
- Q. When did you get deacon's orders?  
A. On Trinity Sunday ordination of 1861, I think it was.
- Q. What day of the year?  
A. It was Sunday; I do not remember the date.
- Q. What day of the year?  
A. It was Trinity Sunday ordination; I do not remember the date.
- Q. About what time of the year?  
A. It must have been May or June, 1861, I think.
- Q. After you got into the ministry, what did you do?  
A. I left for the South about that period.
- Q. When did you leave for the South?  
A. I think I crossed June 24, 1861.
- Q. Had the war commenced when you took orders?  
A. Yes; I expected to remain.
- Q. Where were you educated—in Maryland?  
A. In Maryland I received a portion of my education, and in New York.
- Q. Were you born in Maryland?  
A. No, sir; I was born in the city of Philadelphia.
- Q. Were you educated there?  
A. I received some instruction in my early life there.
- Q. What school?  
A. I was so young when I left there that I do not remember.

Q. Where then?  
 A. By Stephen Roswell, in Baltimore city, for some years, when I was quite young.

Q. You took orders in the Episcopal Church, did you?  
 A. Yes, sir.

Q. Are you in it now?  
 A. No, sir; I am a Roman Catholic by conviction.

Q. When did you become a Roman Catholic?  
 A. On the 1st of May, 1865, I believe.

Q. Before you were an Episcopalian, what were you?  
 A. I was educated a Catholic in early life; my mother was a Catholic.

Q. Then you changed; and, from being a Catholic, became a Protestant?  
 A. No; my early religious education was conducted by a Catholic aunt until I was ten or eleven years old.

Q. Then you became after that a Protestant Episcopal clergyman?  
 A. I did.

Q. And how long did you continue a Protestant?  
 A. It was four years.

Q. How old were you when you began to be a Protestant, and how old were you when you ceased to be a Protestant?  
 A. I cannot recall my age positively without looking back. You will please give me one question at a time. You have asked me two.

Q. When did you first become a Protestant?  
 A. I attended the Episcopal Church by the request of my father from the time I was eleven years old. He preferred that I should go to the Episcopal Church, and forbade my going to the Catholic Church.

Q. That was the reason, was it?  
 A. That was the reason.

Q. Was your father a Catholic?  
 A. No; he had a strong prejudice against Catholics.

Q. Was your mother a Catholic?  
 A. She was before she was married.

Q. Was she after?  
 A. No; my father did not approve of that faith.

Q. When did you go back for the first time to the Catholic Church?  
 A. I told you I made my open abjuration of Protestantism on the 1st of May, 1865.

Q. Where did you make your open abjuration, as you call it?  
 A. Before the vicar general of Quebec.

Q. How long had you continued a clergyman in the Protestant Church before you made your open abjuration?  
 A. I think I told you once before—four years.

Q. When did you first get to Richmond?  
 A. I left on the 24th of June, 1861, and I arrived in Richmond after some three, four, or five days' delay. It was running the blockade.

Q. You ran the blockade?  
 A. Yes, sir.

Q. Whom did you see when you got into Richmond?  
 The WITNESS. The first time I went there?  
 Mr. PIERREPONT. Yes.

A. I saw a great number of persons, soldiers and civilians.

Q. Were you acquainted with them?  
 A. Quite a number of them.

Q. You are a Philadelphian, you say?  
 A. No, sir; I lived most of my time in Maryland. My family lived there.

Mr. BRADLEY. He said he came to Maryland a small child.

Q. (By Mr. PIERREPONT.) Did your father come to Maryland?  
 A. He has lived in Maryland a portion of his life.

Q. You are pretty well known at Elkton?  
 A. I believe I am, as well as any citizen.

Q. You were there some years?  
 A. Yes, sir.

Q. Did you go into any business other than the grain business there?

A. No, sir.

Q. Did you do any thing else there?  
 A. Never.

Q. Were you ever at Winchester, Virginia?  
 A. I was.

Q. Tell the jury when you were there?  
 A. I was there the first year of the war, when General Bradley Johnson's regiment was there.

Q. How long?  
 A. I was then connected with the army, and only remained a few days at a time.

Q. What army?  
 A. The Confederate States army.

Q. What were you doing?  
 A. I was chaplain to the regiment.

Q. How many times were you in Winchester?  
 A. I think three times.

Q. While you were chaplain in a confederate regiment you were there three times only?  
 A. I am sure of that; that is, three separate visits.

Q. Were you charged with stealing any thing there?  
 A. Never.

Q. Let us see. Were you not charged with stealing some silk dresses in Winchester, and taking them to your wife, by the confederates themselves?  
 A. Never. I bought some silk dresses in Richmond, for which I paid, and sent them to my wife.

Q. Was there any difficulty about those silk dresses?  
 A. I never heard of any.

Q. You did not hear any?  
 A. Never.

Q. You did not hear any charges that you stole them in Winchester?  
 A. Never. If such charges were made, they were made by liars.

Q. You did not hear of them?  
 A. No, sir.

Q. This is the first time you heard of them?  
 A. The very first time.

Q. Did you get any silks or silk dresses in Winchester?  
 A. I did in Richmond. I bought two silk dresses in Richmond, for which I gave a pistol, when I was crossing to Maryland.

Q. My question is, Did you get any in Winchester?  
 A. No, sir; I did not.

Q. Did you get any in Richmond?  
 A. I bought two there.

Q. What did you give for them?  
 A. I gave a pistol.

Judge FISHER. (To the witness.) You need not answer questions of that sort unless you choose to do so.

The WITNESS. I prefer to answer these questions.

Q. (By Mr. PIERREPONT.) Did you buy any thing else in Richmond?  
 A. I have bought many things in Richmond.

Q. Did you have any difficulty about any silks you got in Richmond?  
 A. I never had. I got them over myself to Maryland, and sent them to some friend to send to my wife. I think I gave \$40 apiece for the silk dresses, or perhaps more.

Q. I thought you said you gave a pistol?  
 A. That was the rate of valuation. I exchanged the pistol, which was worth \$80, for two silk dresses at \$40.

Q. Were they new?  
 A. They were.

Q. Were they made up?  
 A. No, sir.

Q. You never heard any difficulty about them?  
 A. I never did. I heard my wife would not receive them.

Q. No charges were ever made?  
 Mr. MERRICK. He has answered that four or five times.

Mr. PIERREPONT. I am on the Richmond dresses now.

Mr. MERRICK. He has asked him generally whether there were any charges about any silk dresses.

Q. (By Mr. PIERREPONT.) Did you have any charges made against you for any thing you took in Richmond?

A. Never.

Q. Or in Winchester?

A. No, sir; distinctly no.

Q. What regiment were you in in the confederate service?

A. The first Maryland regiment.

Q. What were you doing in it?

A. I was chaplain.

Q. Did you continue chaplain the whole time?

A. I always held the commission, and I decline to answer that question any further.

Q. My question is, Did you continue a chaplain during the time in the regiment?

A. I always held the commission of chaplain in the Confederate States army. I was detailed to other business, but that was my commission.

Mr. BRADLEY. You are not obliged to answer.

Mr. PIERREPONT. Do you decline to answer?

The WITNESS. Simply regarding the question as impertinent and irrelevant, I do.

Mr. PIERREPONT. That is the reason?

The WITNESS. That is precisely the reason.

Mr. PIERREPONT. You cannot decline on that ground

Mr. BRADLEY. The court will say.

Mr. MERRICK. The court has already said.

Judge FISHER. He can decline to answer any question that tends to degrade him.

The WITNESS. I did not decline on that ground, that there is any thing degrading in my answer.

Mr. MERRICK. Your honor has decided what is the effect of these questions already, and your honor has decided, without saying any thing to the witnesses, if they choose not to answer questions of this character, they need not.

Judge FISHER. I have said that.

Mr. PIERREPONT. He says he does not choose. (To the witness.) Now, what was the date at which you left your regiment?

A. When it broke up?

Q. What was the date?

A. I am sure I cannot remember, there were so many events occurred about that time.

Q. Cannot you tell when you first entered?

A. Yes; my commission was dated the 4th of July.

Q. Did you enter it then?

A. As soon as I could arrive at Winchester, I entered the regiment.

Q. That was early July?

A. Yes, sir.

Q. Now, tell the jury how long you continued in that regiment, cannot you?

A. I continued in it until it broke up.

Q. How long?

A. I think it was about two years; I am not sure. It may have been a little more than a year and a half.

Q. You continued in service as chaplain those two years?

A. Always.

Q. Were you in any other service than that of chaplain?

A. Latterly I have been.

Q. During those two years?

A. Not during those two years, unless it was as a volunteer scout or something of that sort.

Q. Did you go away from the regiment?

A. Whenever I felt like it, yes.

Q. Did you go away?

A. Yes; whenever I had a furlough or felt like it.

Q. Where did you go?

A. I always went to Richmond when I went on furlough.

Q. Did you go anywhere but to Richmond?

A. Perhaps to Petersburg.

Q. Did you go to Petersburg?

A. Yes, a number of times.

Q. Did you go anywhere else?

A. Oh, yes; I went to a number of places.

Q. Did you go into the States?

A. I do not think I crossed into Maryland whilst the first Maryland regiment was regularly enrolled.

Q. When was the first time after you entered the confederate service as a chaplain that you came into the other States?

Mr. BRADLEY. You can answer or not as you please.

A. It was after the battle of Cold Harbor.

Q. (By Mr. PIERREPONT.) What date?

A. I do not remember the date.

Q. Cannot you come pretty near it?

A. No.

Q. Cannot you tell what year?

A. I do not pretend to have such good memory as some witnesses who have preceded me.

Q. Is not your memory good?

A. Very admirable; but in matters of dates I prefer to trust to my diary, and I made no entry on that date.

Q. Will your diary tell you that date?

A. No, sir.

Q. Then the diary will not help you on that?

A. No, sir.

Q. Is there not any mode that you can get at it about the time?

A. If you can find the date of the battle of Cold Harbor, shortly after the seven days, I went to Maryland for the first time.

Q. Where did you go; to what part of Maryland?

A. I decline to localize any place that I visited in Maryland whereby I might compromise people who gave me hospitality.

Q. You decline to answer that?

A. I decline to answer that question.

Q. Did you go into any other State than Maryland?

A. Not the first time.

Q. Did you go the next time?

A. Not the second time.

Q. Where did you go?

A. On those two occasions I went into Maryland only.

Q. On the next occasion where did you go?

A. I went to Kentucky.

Q. What part of Kentucky?

A. Covington was the last place I was at.

Q. Kentucky was not one of the Confederate States?

A. No, I believe not.

Q. What were you doing in Kentucky?

A. I was *en route* to Canada.

Q. You were *en route* to Canada, were you, as chaplain of your regiment?

A. I was ordered to Canada to report there for service.

Q. As chaplain?

A. No, sir.

Q. You had not much to do as chaplain in Canada about those times, had you?

A. No; there was room for pretty active service.

Q. Did you perform service as chaplain?

A. I did not perform service as chaplain; I did as minister in the churches of Toronto and Montreal.

Q. You did not as chaplain?

A. Yes; I visited the sick, those who were confederates, especially.

Q. When did you first go to Kentucky?

A. I was ordered about November, 1864, or the latter part of October, 1864, to report in Canada. I traveled through Kentucky on horseback.

Q. Who ordered you to report in Canada?

A. Secretary Benjamin.

Q. To report as chaplain?

A. No; my orders were not stated.

Q. Did you not think it was to be a chaplain there?

Mr. MERRICK. No matter what you thought.

The WITNESS. You do not want my impressions; I do not know.

Mr. MERRICK. Stop when I tell you to stop.

Q. (By Mr. PIERREPONT.) When did you get there?

A. I think I can recall the date precisely. It was the 15th of November, I believe, 1864.

Q. Have you got that in your diary?

A. Yes, sir; I have.

Q. Will you not tell us exactly?

A. I looked at it the other day. [Referring to a diary.] "Wednesday, November 15th." My entry is: "This day one year ago crossed into Canada by the Niagara Falls."

Q. When did you make that entry?

A. A year afterwards, when I came to that date.

Q. Did you make all your entries a year back?

A. No, sir.

Q. How long after?

A. Generally on the same day, sometimes the day subsequent.

Q. That was not made in the year?

A. No; as I read to you, "This day one year ago," is a reference to the past.

Q. Now, will you not tell us when you got to Kentucky; have you got any date of that?

A. No, sir; this is a diary of 1865.

Q. Have you not it in that diary?

A. No.

Q. Have you it in your mind?

A. About the beginning of November, 1864.

Q. Now, tell these gentlemen how you got out of Kentucky, and by what process?

Mr. MERRICK. You need not answer that unless you choose.

The WITNESS. (To Mr. PIERREPONT.) Well, sir, I propose to write a book on the secret service of the South, in which perhaps my own adventures will be stated, and I will send you a proof copy in advance. [Laughter.]

Q. (By Mr. PIERREPONT.) I would rather have you tell the jury about your secret service.

A. Any thing connected with the assassination or that I may know of Mr. Surratt I am perfectly willing to tell.

Q. When did you go out of Kentucky, and how?

A. I rode through on horseback with two men.

Q. Did any body go with you?

A. Two guides—two persons.

Q. To what point did you go?

A. Covington.

Q. Did you go in disguise?

A. No, sir; I wore soldiers' clothes until I reached Lexington.

Q. When you reached Lexington what did you do?

A. Took the train for Covington.

Q. Where did you go next?

A. Crossed to Cincinnati, and remained there until evening.

Q. Did you go in disguise there?

A. No, sir.

Q. Did you wear soldiers' clothes there?

A. No; I told you I left off the soldiers' clothes before I got to Lexington.

Q. What did you wear?

A. I bought a citizen's suit.

Q. How long did you stay, after you got to Cincinnati, there?

A. I left the same evening.

Q. Where did you go to?

A. I passed through Cleveland, I remember, and Buffalo; I know I stayed all night in Buffalo, and left early in the morning for Niagara Falls.

Q. What time did you get to Niagara Falls?

A. I cannot recall the date.

Q. Cannot you tell the time?

A. I presume, if I crossed the river on the 15th, I must have been in Buffalo on the 14th.

Q. Give the month and year.

A. November, 1864.

Q. Then, in November, 1864, you went into Canada some way?

A. Precisely.

Q. How long did you stay there?

A. I left Canada on the 14th of January, 1865.

Q. Where did you go to?

A. I went to Richmond.

Q. Which way did you go?

A. I came through this city.

Q. Did you go disguised through here?

A. I wore spectacles.

Q. On account of your eye-sight, so that you could see better?

A. No, sir; to affect the eye-sight of others.

Q. That is what you wore them for?

A. Precisely.

Q. That was the effect?

A. I should not have been here if it was not.

Q. You got to Richmond?

A. I did.

Q. Why do you say you would not have been here?

A. I think if I had been passing through Washington not in disguise it would not have been very safe for me.

Q. When did you pass through Washington, on your way to Richmond, in disguise?

The WITNESS. Do you wish the date?

Mr. PIERREPONT. Yes.

A. If you will permit me to refer to my diary. [After examining the diary.] It was Saturday, January 21, 1865.

Q. Did you stop in Baltimore?

A. No, sir; I passed through on the night train.

Q. Did you stop here?

A. I took breakfast here.

Q. Where?

A. I do not think it necessary to tell; yes, I prefer to state it, as otherwise you might think I took it somewhere else; it was at the Kimmel House.

Q. Did you see anybody here?

A. I saw a number of persons.

Q. Did you see Booth here?

A. No, sir.

Q. Did you ever see him?

A. I never saw him in my life, to my knowledge; I have seen his brother act.

Q. I am asking you about Booth, the assassin?

A. You may know him better than I do. I never saw him.

Q. Did you know Payne?

A. I never saw him to my knowledge.

Q. Did you ever see Surratt in Canada?

A. I never spoke to him in my life until I met him in Liverpool.

Q. I ask you if you ever saw him in Canada?

A. I caught a glimpse of him on the 18th of April, 1865.

Q. That was after the assassination?

A. Yes; I think it was four or five days after.

Q. You saw him there on the 18th?

A. Yes, sir. Father LaPierre told me it was John Surratt, and asked me if I wanted to see him, and I said no.

Q. You got down here in January on your way to Richmond. Did you succeed in getting to Richmond?

A. I did.

Q. When did you get into Richmond?

A. February 1, 1865; I remember the date. It was the first of the month.

Q. These missions were not exactly those of a chaplain, I take it, were they?

A. It was a work of mercy on that occasion.

Q. Was the business between Canada and Richmond that of a chaplain?

Mr. BRADLEY. He says it was a work of mercy. Mr. PIERREPONT. I ask if it was the business of a chaplain of a regiment?

A. It depends upon how enterprising he is.  
 Q. So I supposed; and your enterprise got you into Richmond early in February?  
 A. On the 1st of February.  
 Q. How long did your enterprise keep you there?  
 A. I finished my business in four days.  
 Q. Whom did you see there?  
 A. The brother of the prosecuting attorney, Major Carrington, was the first and last person I saw.  
 Mr. CARRINGTON. He is not my brother.  
 The WITNESS. I beg pardon; I thought he was.  
 Q. (By Mr. PIERREPONT.) Was he the only one?  
 A. Major Carrington was the first person I saw.  
 Q. Was he the only one you saw?  
 A. No, sir; I saw Secretary Benjamin.  
 Q. When did you leave there? Have you not got some note of it?  
 A. I left for the Potomac on Saturday, the 4th.  
 Q. Always give the month and year.  
 A. Saturday, February 4, 1865.  
 Q. Where did you go to?  
 A. I went to the Potomac river.  
 Q. Where next?  
 A. Across into Maryland.  
 Q. Did you come to Washington?  
 A. I did.  
 Q. You came again.  
 A. I came again.  
 Q. How long did you stay here?  
 A. Two or three hours.  
 Q. Did you see anybody here?  
 A. I saw one young man whom I had met in the army; I cannot remember his name.  
 Q. Did you come here on your business as chaplain?  
 A. I came passing through Washington. It was the shortest route to Canada.  
 Q. You did not come here on your business as chaplain?  
 Mr. BRADLEY. He did not come here on any business.  
 Mr. PIERREPONT. I am asking the witness.  
 A. I came here for facility of transportation.  
 Q. You went from here to what point?  
 A. To Philadelphia.  
 Q. Did you stop there?  
 A. I went directly through.  
 Q. Did you stop in Philadelphia?  
 A. I went directly through.  
 Q. My question is, did you stop there?  
 A. How could I stop if I went directly through?  
 Q. I am not arguing the question. I ask you whether you stopped there?  
 A. I stopped whilst the cars were conveying me through the city. I did not time them.  
 Q. Did you see anybody there?  
 A. Not a person I knew.  
 Q. Where did you next go?  
 A. To New York.  
 Q. Did you stop in New York?  
 A. Yes; I stopped for breakfast.  
 Q. Did you see anybody you knew there?  
 A. Not a person.  
 Q. Had you any business as chaplain in New York?  
 The WITNESS. (To the court.) Is that a proper question, sir?  
 Judge FISHER. You can answer it or not.  
 The WITNESS. It is a very trifling one.  
 Q. (By Mr. PIERREPONT.) Had you any business as chaplain in New York? If my question is not clear, I will make it so.  
 A. Repeat it, if you will.  
 Q. Did you have any business as chaplain in New York?  
 A. My business was to go to Canada. I was acting on the detached service then.  
 Q. What do you mean by detached service?  
 A. When a soldier is taken from the ranks or from the position he may occupy, and placed on service

within the lines of the enemy, he is called being on detached service.

Q. That is called detached service, when he is in the lines of the enemy?

A. Generally, yes.

Q. When you were on this detached service, that was not chaplain service, was it?

A. One can always be a Christian in every position of life, even as an interrogating attorney.

Q. Was that chaplain service?

A. I am afraid you are not very well acquainted with the services of a Christian minister.

Q. Was that detached service chaplain service?

A. I considered it a service in which any Christian man might be engaged. It was to save the lives of human beings.

Q. Did you consider it chaplain service?

A. I considered it a benevolent office.

Q. My question simply is, Whether you considered it the service of a chaplain in the army? What do you think about it?

A. You do not want my impressions, do you?

Q. I want you to tell this jury whether you call that chaplain service?

A. For the benefit of the jury, then, [turning to the jury] I will explain. I left Canada to save the lives of five of the St. Albans raiders; I risked my own to do it.

Q. You will have to stop there and answer my questions.

A. I beg your pardon; you told me to tell the jury.

Q. My question is whether the detached service was chaplain service? You can answer or decline?

A. You are quite as familiar with the line between military and religious service as myself, and therefore do not require the information. I decline to answer.

Q. What do you say about that?

Mr. BRADLEY. He has explained; he declines to answer.

Mr. PIERREPONT. Very well. (To the witness.) Had you any thing to do with the St. Albans raid?

A. I was in Virginia when it occurred.

Q. Had you any thing to do with the St. Albans raid?

A. Nothing in the world as to its inception.

Q. Did you ever talk with this gentleman [Dr. McMillan] about that raid?

A. Yes, sir, I did; I told him that I did what I could to save the lives of the boys.

Q. Perhaps you told him something else. We will come to that soon. Did you tell him any thing about forging any papers relating to that raid?

A. No, sir; I did not; the papers that I carried were genuine.

Q. Did you change the dates of any papers?

A. No, sir.

Q. You did not?

A. I did not, nor did I tell him so.

Q. You did not tell him you changed the dates of the papers?

A. Nor did I tell him so.

Q. Did you say any thing about the papers?

A. I might have said something about the papers.

Q. State exactly what you told this gentleman about the papers connected with the St. Albans raid?

A. I do not remember having told him about any papers. I know the attorney said that they were papers "cooked up," and I said it was not so. The papers that I carried were genuine, given to me by Mr. Benjamin.

Q. I ask you if you told him any thing about "cooked up" papers?

A. I dare say we spoke on that subject; I dare say there was a conversation about the character of the papers.

Q. Did you tell him any thing about the dates of the commissions for that raid?

A. I did not; the papers which I carried were all genuine.

Q. I am not saying they were not; I am simply asking you whether you told him they were dated back?

A. No, sir, I did not.

Q. You did not?

A. I did not.

Q. That is definite. Did you tell him any thing more about the papers of the St. Albans raid?

A. I do not recall it.

Q. Did you tell him you had any thing to do with the St. Albans raid?

A. I did not; for I was in Virginia when it occurred.

Q. Did you tell him you had any thing to do with it afterwards?

A. I did; I told him I was the messenger for the raiders.

Q. Where did you go as messenger for the raiders?

A. I went to Richmond.

Q. When did you go there?

A. I left Toronto on the 14th of January, I think. My voyage commenced then.

Q. And you went for the raiders?

A. I went voluntarily.

Q. For the raiders?

A. Yes, sir.

Q. As their messenger?

Mr. BRADLEY. No, sir; he says he went voluntarily, not as their messenger. He said so before.

The WITNESS. I undertook it as an office of humanity.

Mr. PIERREPONT. Wait one minute. We will have this matter settled by the notes, and see whether he did not say he went as their messenger.

The WITNESS. Certainly, if I carried papers I was their messenger. I volunteered. I was not their paid messenger.

Mr. PIERREPONT. I did not ask that. Did you not say you went as their messenger?

A. I did; I carried the papers.

Mr. PIERREPONT. That is all the point between us.

The WITNESS. It is not much of an issue.

Q. You knew what that raid was about?

A. I was aware it was retaliatory.

Q. Was that the "Christian service" that you alluded to just now?

A. All war is very unholy service.

Q. I want to know if that was the "Christian service" in which you said you were engaged just now?

A. Yes, sir; I told you I went to save their lives.

Q. You went as messenger of the raiders to Richmond to save their lives, did you?

A. Yes; I volunteered to go for them.

Q. How were you going to save their lives in Richmond?

A. By producing testimony that they were soldiers in the Confederate States army, and doing the same thing in New England that New England men or the federal army were doing in Georgia.

Q. This testimony that they were confederate soldiers required commissions, did it not?

A. I believe so.

Q. Did you not get the commissions?

A. I did; I received the commissions at the hands of Mr. Benjamin.

Q. Will you not tell the jury when you received those commissions from the hands of Mr. Benjamin?

A. It was the day before I left Richmond.

Q. Turn to your diary and see when it was?

A. I left for the Potomac Saturday, February 4, 1865.

Q. My question is, When did you receive those commissions from Mr. Benjamin?

A. The day preceding the date I have named.

Q. What date?

A. Friday, February 3, 1865.

Q. When did the raid take place?

A. I recall it perfectly well, because there were quite a number of medals struck off by the ladies in Montreal. It was the 19th of October, 1864.

Q. Did the raid take place prior to the time when you got the commissions?

A. Unquestionably. There would have been no room for my service if the raid had not occurred.

Q. How long prior to the time you took those commissions had the raid taken place?

A. I told you, I think, it was October 19, 1864; I am not sure.

Q. And those commissions were received the following February?

A. The commission that I brought was a commission for the officer and an extract from the files of the War Department that these were enlisted soldiers in the Confederate States army.

Q. My question is, How long after the raid did you get those?

A. I tell you I left January 14th; I arrived in Richmond February 1, 1865, and I received them on the 3d.

Q. And the raid was in 1864, was it not?

A. Yes.

Q. Now, did you tell then to Doctor McMillan that those commissions were dated back?

A. I do not think I did. I could not do so, because, in the first place, they were not commissions. They were testimonials as to their being private soldiers.

Q. Did you not tell him those papers or dispatches were dated back?

A. No, sir; I have no recollection of it.

Q. Did you not tell him you did it yourself?

A. Never, sir; it is a falsehood.

Q. Did you tell him any thing about it?

A. I have no recollection of any conversation on that subject.

Q. On the subject of the papers?

A. We may have spoken about bringing the commission.

Q. Did you?

A. We did, I think.

Q. Will you state what you said about it?

A. I stated that I had gone for the papers, and that I had brought them, and that some person had falsely stated in the evidence that those papers were "cooked up," but that I had received them from the hands of Mr. Benjamin.

Q. When you got them from Mr. Benjamin's hands, what did you do with them?

A. Put them in my pocket.

Q. Where did you take them?

A. To Canada.

Q. For what?

A. I passed them to the attorney for the prisoners, Mr. Abbott.

Q. For what purpose?

A. To prove their identity as soldiers of the Confederate States army.

Q. And to save these raiders?

A. To save them from extradition; they were my brother soldiers, in the same command.

Q. You wanted to prevent them from being delivered up to the United States?

A. Yes; and I think the United States now are very glad that they did not get them; they are now more humane than to destroy the lives of human beings, with some exceptions.

Q. That was the reason?

A. It was. They were my brother soldiers, members of the same command. There were very few traitors in the confederate army.

Q. When you got back there on that commission, or business, or detached service, or chaplain, or whatever it was, what then did you do?

A. I requested to be sent back to the confederacy, to go back to the army.

Q. Did you get back?

A. I started, and was on my way, when I heard of the arrest of President Davis—Mr. Davis.

Q. You were on your way where when you heard of the arrest of "President Davis?"

A. I was on my way to Halifax, to go by Matamoras to Texas.

Q. Then what did you do?

A. I remained in St. Michel.

Q. Where did you remain?

A. I have lived for the last two years with a Catholic priest near Quebec, in his house, with the exception of the time I was in Europe.

Q. Was it before or after the raid that you made this renunciation, or whatever you call it, of Protestantism?

A. Some three months before I went for those papers I was in converse with the Catholic bishop regarding the change.

Q. When you made the renunciation of Protestantism, was it before or after the raid?

A. Unquestionably it was after; it was the first of May.

Q. Have you been studying for the ministry since?

A. No, sir; I have a wife and three children.

Q. Are you studying for it now?

A. No, sir; I am engaged entirely in literary pursuits. I am writing this book, which I expect to publish, and of which I have promised you a copy.

Q. On what?

A. On the secret service of the South.

Q. Were you in the secret service?

A. I so regarded it when I was sent on detached service to Canada.

Q. That you call the secret service?

A. Yes, sir.

Q. In short, it means a spy, does it not?

A. No, sir.

Q. What does it mean?

A. It means a man who is willing to risk his life in any position for the benefit of the cause which he seeks to serve.

Q. That is what you were doing?

A. Yes, sir.

Q. You were willing to risk your life in the secret service, were you?

A. I proved it several times. I do not like to speak of my own actions.

Q. You did risk your life in the secret service?

A. I risked my life many a time.

Q. Where do you live now?

A. I reside with the Catholic priest, at St. Michel, Canada.

Q. Where is that?

A. Fifteen miles from Quebec.

Q. Which direction from Quebec?

A. Going towards the *Riviere de Loupe*.

Q. Are you in any occupation?

A. I have been writing?

Q. Except writing this book?

A. That is all for the present. I have been professor also.

Q. Professor of what?

A. Of language and music.

Q. What language?

A. When I was in Paris of English, my native language; the one I understand best.

Q. And music where?

A. In Paris also.

Q. Professor of what music?

A. The piano.

Q. You were, then, a professor of music and the English language, not of the French?

A. No, not the French. I understand French.

Q. Were you teaching the piano in Paris?

A. Yes, sir; for subsistence when exiled.

Q. Now, when did you reach Liverpool when you went over with Dr. McMillan?

A. It was a nine or ten days' passage, I remember. It was on the 7th or 8th of November, 1865.

Q. Before you got over there, had you been with Mosby at all?

A. Never. I do not think I ever saw Mosby.

Q. Had you been with Morgan?

A. I had. I was his chaplain.

Q. You were the chaplain of Morgan. What was Morgan's business?

A. He was a confederate general of cavalry.

Q. He was pretty well known, was he not?

A. I believe he was regarded as a man of a good deal of daring.

Q. Were you with him when he made his raid into Ohio?

A. No, sir; I was not connected with the command at that time.

Q. When did you get connected with Morgan?

A. After I returned to the confederacy; after my escape from prison here I was appointed to his command.

Q. How long were you in prison here?

A. Three months.

Q. Where were you imprisoned?

A. At the Carroll prison.

Q. What did they put you there for?

A. They captured me crossing the Potomac one night.

Q. Did you tell them that you were a chaplain?

A. They were aware of it. I had religious books with me when they captured me and they confiscated them.

Q. Did you make known to them your religious character at the time?

A. I never made profession of religion.

Q. Was this Morgan the man who was called the "guerrilla Morgan?"

A. His enemies so denote him.

Q. Then we know who the man is. After you got over into Europe, how long did you stay there?

The WITNESS. (To the court.) Am I obliged to answer these questions about my private matters?

Judge FISHER. Yes.

A. I stayed there eleven months, I think.

Q. (By Mr. PIERREFONT.) Where did you stay?

Mr. BRADLEY. (To the witness.) The court has told you you need not answer any question which affects your condition in society.

Mr. MERRICK. Or your service in the Confederate Government.

Judge FISHER. Any thing which will tend to bring him in danger of indictment or which would tend to degrade him.

The WITNESS. Then I can answer everything. Any question you choose to propose I am ready to answer.

Q. (By Mr. PIERREFONT.) Where did you stay?

A. I arrived in Liverpool, remained there about a week, went to London, and then transferred myself to Paris.

Q. Did you see Surratt?

A. Yes, sir; I saw him in Liverpool. I called to see him.

Q. Where else did you see him?

A. I never saw him anywhere else but in Liverpool, and only twice then.

Q. You did not give him any money there?

A. No, sir; I had none for myself.

Q. After you saw Surratt in Liverpool, did you see this gentleman, (Dr. McMillan)?

A. I did, on the following Sunday, I think it was.

Q. Will you not tell us what you told him about Surratt?

A. I think about that time I had heard a report that the reward was withdrawn. I knew he was after that, for I suspected him; and I went and told him specially that the reward was withdrawn, so that he might not hunt him up, because he was evidently hunting him up, as he broke open letters in the post office to find out the address where he was staying.

Q. That is what you told him?

A. Something to that effect.

Q. Did you tell Dr. McMillan at that time that Surratt was the greatest scoundrel you had ever seen?

A. No; I do not think I ever said that of Mr. Surratt. I did say on the steamer that I would not ex-

tend any aid to Mr. Surratt, because he had not gone forward at the time of his mother's trial, and Dr. McMillan then defended him and said he was kept in utter ignorance—

Q. I am not asking what Dr. McMillan said.

Mr. MERRICK. Let him go on.

Mr. PIERREPONT. No; I do not let him go on. (To the witness.) I ask you whether you told Dr. McMillan in Liverpool that Surratt was the greatest scoundrel you had ever known, or words to that effect?

A. No, sir; I could not have said that.

Q. Did you say it?

A. I could not have said that.

Q. You did not then?

A. No, I did not.

Q. How many times did you see Dr. McMillan in Liverpool?

A. On one occasion, on Sunday, I called to see him; he gave me his address.

Q. Did you call to see Dr. McMillan?

A. I called to see him at his address to inform him that this reward had been withdrawn, so that his appetite for money need not stimulate a search after the boy.

Q. That was your reason?

A. That was it precisely.

Q. You did not want Surratt searched after?

A. I regarded him as innocent even then, before there was any evidence in his defense.

Q. I ask you if you wanted Surratt concealed from search?

A. I think no Christian man wants an innocent man persecuted.

Q. I ask you if you wanted, then, Surratt concealed from search?

A. I am not a man to sell a man's life for money.

Q. Do you understand my question?

A. Precisely. Repeat it, if you choose.

Q. If you do not understand it, I will keep asking it until you do. My question is, Did you then try to conceal Surratt from search?

A. Unquestionably I would not have given him up, for I believe him innocent.

Q. You did try to conceal him?

A. He was sensible enough to conceal himself, although he took no particular pains, for he was staying at a public hotel two or three days, and going around the town seeing the curiosities with Dr. McMillan.

Q. That is all you are willing to answer?

A. I will tell you more if your want to know.

Q. My question is, Did you try to conceal Surratt?

A. I did; I told him I believed Dr. McMillan would betray him; he was a man who expressed infidel sentiments, and I believed for money he would sell him, and to look out for himself.

Q. Did you say any thing to this man (Dr. McMillan) about infidel sentiments?

A. He did to me.

Q. Did you say any thing to him about infidel sentiments?

A. We very frequently discussed both scientific and moral subjects.

Q. You felt shocked at his sentiments, did you not?

A. Somewhat.

Q. You did not think them religious, did you?

A. Not, considering that he had two sisters in the nunnery; and a man who would turn his mother and sisters—

Q. I am not asking you about his sisters; I am asking you what he said about his sentiments.

Mr. BRADLEY. His religious sentiments.

A. I was shocked.

Q. (By Mr. PIERREPONT.) Did you say any thing to him about religious sentiments?

A. We discussed points of faith, particularly the points of the Catholic Church; I tried to convince him that he had made a mistake in giving them up.

Q. Were you violent in favor of the Church?

A. Like most converts; yes.

Q. You were then a fresh convert, I believe; I think you have told us that?

A. Yes, sir.

Q. Did you write any articles for the newspapers over there?

A. Yes, sir.

Q. What paper?

The WITNESS. (To the court.) Is it necessary that I should state that?

Judge FISHER. Yes, unless you think it would tend to degrade you.

The WITNESS. No, sir. I thought the articles were rather creditable.

Mr. BRADLEY. The question is as to the limit of a cross-examination which your honor put upon us.

Mr. PIERREPONT. You have not any limit that will exclude this.

Judge FISHER. The idea is to see what his temper and disposition is.

Q. (By Mr. PIERREPONT.) Did you write any articles for newspapers after you got over?

A. Yes, sir.

Q. What newspaper?

A. The *Liverpool Post*, I think was one.

Q. What other?

A. There were one or two little short notices that perhaps I gave to other papers.

Q. Did you write for the *Daily Courier*?

A. Perhaps I gave a little notice to the *Courier*.

Q. Which side did you take in those papers?

The WITNESS. On what subject?

Mr. PIERREPONT. The two sides of the quarrel, the rebel side or the Union side, in those articles?

A. The war had ceased then, and I had no opinions on that subject.

Q. Which side did you then take?

A. There were no sides to take; there was but one country.

Q. Did you write any thing about either side?

A. I wrote on the subject of the arrival of the *Shenandoah*, stating facts.

Q. Did you write any thing about the confederacy?

A. The confederacy had exploded; there was nothing to say about it.

Q. Did you write any thing in its praise, showing your sympathies on that side, then?

A. I have been writing the truth for the last year or two.

Q. I asked you if you wrote any thing? I did not ask whether it was true or false.

A. Possibly I did. I do not recall any special article.

Q. On which side are your sympathies now?

A. I trust I am a loyal citizen of the United States.

Q. And your sympathies are now against the rebel side?

A. No, sir.

Q. Had you any confederate clothes when you went over on that ship?

A. I had. I have got a uniform.

Q. What did you do with it?

A. I have it yet in Canada.

Q. Did you make an exhibition of them in your state-room?

A. Some gentlemen came into the state-room, and I showed the uniform to them.

Q. Did you wear them?

A. I have no recollection of it.

Q. Where did you go from Liverpool?

A. I went to London.

Q. How long did you stay?

A. A week or two.

Q. What did you do there?

A. I was trying to make some literary connection to write for a Catholic magazine, but did not succeed in England. I did not admire the English so much as the French, and went to France.

Q. That was the reason you left them?

A. Precisely.

Q. Was the fact that you could not get employment the reason you did not admire them?

A. I preferred to remain in France, and have the advantages of acquiring a foreign language.

Q. And you went to France?

A. Yes, sir.

Q. When did you go to France?

A. I have not the exact date.

Q. About the date?

A. I will give the exact date. I like to be particular, you know. [The witness referred to his diary.]

Q. You can tell about the date?

A. Well, it was about the middle of December, 1865.

Q. Before you left Liverpool, you stated to Dr. McMillan the withdrawal of the proclamation, did you?

A. I said I had seen a report. I was not certain that it was withdrawn. I saw a report either that it had been or was going to be withdrawn.

Q. And you told him so?

A. I did, because I had my suspicions about him.

Q. Now, give us the date at which you left Liverpool. You have got it there, have you not?

A. Yes, sir, I will. I think it was Wednesday, November 22, 1865.

Q. And you are sure you told him before that that the proclamation had been withdrawn?

A. I did not say the proclamation was withdrawn. I said I had heard a report that it was.

Q. Did you tell him so?

A. I did.

Q. Had you heard such a report?

A. I had.

Q. Where did you see it?

A. I am sure I cannot recall.

Q. You told him so?

A. I thought it was a good thing to tell a mercenary man.

Mr. MERRICK. I object to the repetition of these questions.

Q. (By Mr. PIERREPONT.) How long did you stay in Paris?

A. Six months.

Q. What did you do there?

A. I gave lessons in English to a French family.

Q. Was Surratt in Paris?

A. No, sir; I did not see him.

Q. Did you ever see him after you saw him in Liverpool?

A. Never; and only saw him on two occasions in Liverpool. The first time there was a witness present.

Q. You only saw him on two occasions, and never saw him after that?

A. No, sir, not until yesterday.

Q. Where did you go from Paris?

A. I traveled then through the United Kingdom?

Q. Of what?

A. Great Britain; through Scotland and Ireland for a summer tour, and through Spain.

Q. Did you get any means from the confederacy to travel upon?

A. No, sir; I never received any thing from the confederacy—hardly my pay.

Q. When did you come back to the United States?

A. I came to the United States about six weeks ago.

Q. When was the last time that you had been in the United States before six weeks ago?

A. About February 13, 1865.

Q. Then, after February 13, 1865, until within a few days, you have never been within the United States?

A. Until within a few weeks.

Q. Have you been in the Confederate States?

A. There are no Confederate States at the present time.

Q. Have you been in those you called the Confederate States?

A. No, sir; I have not been in the United States.

Q. Where have you been?

A. I have been in Canada with a Catholic priest, in his household, for two years, with the exception of the time I was in Europe.

Q. When did you get back?

A. Last October, and I returned to the same curé with whom I lived before I left.

Q. In what ship did you return?

A. The *China*.

Q. Who was the captain of it?

A. I forget his name. I did not form any special acquaintance with him.

Q. Where did you land?

A. At Halifax.

Q. Where did you go to from there?

A. To Quebec.

Q. And where from there?

A. Here.

Q. But you went to the priest, you say.

A. Well, sir, this priest lives fifteen miles from Quebec, at a small country village called St. Michel de Bellechasse.

Q. What is the name of the priest?

The WITNESS. I beg you would not press that question. I would rather not introduce the name of the gentleman, and I am sure you will appreciate that feeling?

Mr. PIERREPONT. I am not very pressing about it.

The WITNESS. It certainly can have nothing to do with the case.

Mr. PIERREPONT. If you do not want to state it, I do not press it.

The WITNESS. I have stated the place where I live, but out of regard for the good curé's feelings, I would prefer not to mention his name.

Q. You have been with the priest ever since?

A. Yes, sir.

Q. And you are not in any occupation except writing a book?

A. Not at present.

Q. You mean that the person you have lived with is a real person besides yourself?

A. One could hardly live with a myth.

Q. You mean that you have lived with a real person?

A. I have told you that I lived with a curé of the Catholic Church.

Q. You are not a curé?

A. No, sir. They sometimes admit laymen to their association when they are respectable characters.

Q. Have your family been with you all the time?

A. No, sir.

Q. Have they been with you any of the time?

A. I have corresponded with them.

Q. I asked whether your family had been with you any of the time?

A. No, sir.

Q. Were your family abroad with you?

A. No, sir; it was as much as I could do to support myself.

Q. My question was, did your family go abroad with you?

A. No.

Q. Did you see them abroad?

A. No, sir.

Q. Did you see any of them?

A. No, sir.

Q. When did you last see them?

A. I saw my wife shortly after she was imprisoned here in Washington.

Q. How long ago?

A. It was during the progress of the war. They took her prisoner on the *Mary Washington*, and kept her down at the navy-yard for three or four days on a gunboat, and her infant died whilst she was a prisoner.

Q. When was that?

A. The second year of the war.

Q. Have you seen her since?

A. She came to see me once in Baltimore when I was on a mission there.

Q. When was that?  
 A. I do not remember.  
 Q. About when?  
 A. About 1863, I think.  
 Q. Have you ever seen her since?  
 A. No, sir.  
 Q. You have spoken of your children. Have you seen them?  
 A. She brought my children to see me when she took the risk to meet me in the lower counties.  
 Q. Have you seen your children since 1863?  
 A. No, sir; not since she brought them.  
 Q. You have not seen them since 1863?  
 A. No, sir.  
 Q. Are they living?  
 A. Yes, sir.  
 Q. Where do they live?  
 A. At Elkton.  
 Q. And your wife lives there?  
 A. Yes, sir. I heard from them the other day.  
 Q. But you have not been there yet?  
 A. Not yet. I have been waiting on this case day by day.  
 Q. How long have you been now in Washington?  
 A. About six weeks, I think.  
 Q. Have you been furnishing any evidence in this case?  
 A. I made my affidavit myself last spring when Mr. Surratt was first arrested.  
 Q. Were you summoned here?  
 A. No, sir; I volunteered to come and tell what I knew. I wrote to Mr. BRADLEY in advance, before he had any communication with me, and told him what I could prove, because I had seen Dr. McMillan's affidavit published in the *Times* of December 11.  
 Q. Then, when Dr. McMillan was cross-examined, you had talked with the counsel?  
 A. Oh, certainly; I made my affidavit last spring; that is what I have testified to here.  
 By Mr. BRADLEY:  
 Q. You say you were not summoned; did you not have a summons served upon you?  
 A. Yes, I believe a summons, or something of that sort, was served on me at Ogdensburg.  
 Mr. CARRINGTON. (To the witness.) Did I understand you to say—  
 Mr. MERRICK. I thought you were done.  
 Judge FISHER. Be a little more regular in these examinations, and when you turn a witness over—  
 Mr. CARRINGTON. We had not finished the examination.  
 Judge FISHER. I thought you had.  
 Mr. MERRICK. I thought so.  
 Mr. BRADLEY. I understood so, and put a question.  
 By Mr. PIERREPONT:  
 Q. Was there any indictment against you?  
 The WITNESS. Where?  
 Mr. PIERREPONT. Anywhere.  
 A. I never heard of one.  
 Q. At Elkton?  
 A. Never; I never heard of any.  
 Mr. CARRINGTON. I wish to ask a question in reference to one point.  
 Judge FISHER. Ask him quick, and let us get through with this examination; it is very long and tedious.  
 Mr. CARRINGTON. I do not wish to travel over the same ground. (To the witness.) In regard to this diary to which you have referred, do I understand you to say that you wrote down the answers of Dr. McMillan at the time they were given to you?  
 A. Oh, no, sir. I made notes of the persons that I met on the voyage and the conversations I had with them on the separate dates. For instance, I say, "Talked with Dr. McMillan to-day on such a subject," and that is all. The general scope of the conversation I

remember, because, as I was writing this book, I took particular pains to remember all that was stated.

Q. When you were asked the substance of the conversations with Dr. McMillan, did I understand you to say that you referred to the diary, and could state exactly what he did say?

A. No, sir, I did not.

Q. How do you remember?

A. Because it is entered on the diary here, the day I formed his acquaintance, the day I talked with him, the day on which he gave me—I will show it to you, [tendering the diary to Mr. CARRINGTON;] it is quite at your service.

Mr. MERRICK. No; I object, even if you are willing.

The WITNESS. Well, sir, you are my counsel. It is quite at your service, though, Mr. CARRINGTON.

Mr. MERRICK. No, no; such things shall not be allowed.

Q. (By Mr. CARRINGTON.) What I wish to know is this: When did you make the entries of the conversations you had with Dr. McMillan?

A. I made the entries at the time of the dates; they are recorded day by day, some in pencil and some in ink. Here is one of Friday, November 3, 1865, which I made in the presence of Dr. McMillan, on the rail of the steamer.

Q. What interval of time elapsed between the conversation and the entry in the diary?

A. I told you this entry I made in his presence when he gave his own address: "Dr. McMillan, No. 6 Mortimer Terrace, Hamilton Square, Birkenhead—always in at six p. m." There is the entry.

Q. When did you make those other entries?

A. Day by day, as the date arrived, I would make the entry merely as a reference, to know what I had done on that day.

Q. And you are able now to state from those entries the conversation that you had with him?

A. I did not say that. I remember the substance of the conversations. I have made notes at different times on this matter.

Q. How are you able to recollect a conversation that occurred so long ago?

A. The subject was a very interesting one, and I have a very retentive memory.

Q. You did not put it down then in that book?

A. Abstracts I have.

Q. Only abstracts?

A. Little short notes. I have been accustomed to preach from notes, and, therefore, it is only necessary for me to put down a few odd words, and I can always connect them afterwards.

Q. And you now undertake to detail a conversation you had with Dr. McMillan at that time?

A. I do, because I repeated very often to different persons—to the curé with whom I have lived and to friends—the substance of the conversations I had with Dr. McMillan, and also my suspicions as to the integrity of his motives towards Mr. Surratt.

By Mr. BRADLEY:

Q. At what time did you receive your pardon from the President?

A. I took the oath of allegiance to the United States in Paris, before Mr. John Hay, nearly a year ago.

Q. What time did you receive your pardon?

A. I received it last month, I think.

Q. Last week?

A. That would be last month, would it not?

Q. Up to that time did you or not consider it unsafe for you to come into the United States?

A. Yes; I remained here quietly; I did not appear on the streets publicly.

By Mr. MERRICK:

Q. You were going on to state in the cross-examination that you had expressed some harsh sentiments towards Surratt on shipboard, on account of his not

coming on here because of his mother's danger, and Dr. McMillan had defended him; will you tell the jury what you were going to say, but were stopped from saying?

A. I stated to Dr. McMillan that when John Surratt first arrived in Montreal I believed him to be as innocent as other gentlemen whose names had been associated with his in the proclamation that was issued, before any proof could have been given here on the subject, and, therefore, I believed him innocent; but that, as he had neglected to follow the advice I had extended to Father LaFierre, which was that he should come forward and go to Washington and tell all he knew, I felt more like giving him up than protecting him. Dr. McMillan said: "You do the fellow injustice there, because he was in so secluded a place that he knew nothing of the progress of the case, and he was sedulously kept in ignorance of it by the gentlemen who surrounded him, who kept saying, 'Everything is going on well; you know your mother is innocent; they cannot murder her; and she will finally be saved if you keep quiet.'"

Q. I understood you to say, in reply to another question of the counsel asking about your sympathies with the rebel cause, that there was no longer any rebel cause?

A. I so understand. I trust I am a loyal citizen of the United States.

Q. You have taken the oath of allegiance?

A. I took it last fall, in Paris, before John Hay.

Q. And you acquiesce in the present condition, and are a loyal citizen?

A. I so regard myself. I trust to do my duty to the Constitution.

Q. Something further was said to you with regard to infidel sentiments expressed by Dr. McMillan in your conversations. What was said about that matter? What did he say about infidelity in religious belief?

A. He certainly expressed doubts as to the future existence of the soul, because my argument was, "You medical men are so apt to be scientific; you are so accustomed to chop up the human frame, and destroy it by chemical analysis, that you think it is all gas, and nothing remains;" and I think it is rather the weakness of the medical profession.

Q. What did he say?

A. He did not withdraw the opinions that he had expressed as to the doubt of the future of the soul.

By Mr. PIERREPONT:

Q. Did the doctor state to you what you have now stated in relation to Surratt's concealment?

A. Yes, sir; he told me that he was secreted in a secluded place, where he got no papers.

Q. I do not want you to repeat it. I ask you where he stated it, and when?

A. He spoke on that subject a number of times, but after two years' lapse of time I cannot pretend to localize, and say whether it was by the smoke-pipe or what particular part of the ship.

Q. It was on the ship on that voyage across the ocean?

A. Yes; I never met the doctor since.

Q. You are sure of that?

A. Yes, sir.

Q. You have been asked about your pardon. Will you not tell when you got your pardon?

A. It is dated the 14th of June, and it was given me on the 3d or 4th of July, I think.

Q. It was given to you on the morning of the 4th of July, was it not?

A. Yes, sir; a very happy omen.

Q. I happen to know the fact. Who gave it to you?

A. The counsel for the defence.

Mr. BRADLEY, Jr. I gave it to him.

Mr. BRADLEY, Sr. My son gave it to him, and I applied for it.

Q. (By Mr. PIERREPONT.) Who obtained it?

A. I made my own affidavit and wrote my own letter to the President, and requested Mr. BRADLEY to present it to his excellency.

Q. When?

A. I do not remember the date.

Q. Since you came here to testify in this case?

A. Yes, sir; but I had no expectation of getting it, for I presumed when—

Mr. MERRICK. No matter about your presumptions.

Q. (By Mr. PIERREPONT.) Since you came here to testify?

A. Yes, sir.

The court then took a recess for half an hour, re-assembling at 1:30.

#### LOUIS J. CARLAND

recalled.

By Mr. MERRICK:

Q. State to the jury whether or not you know Louis J. Weichmann.

A. Yes, sir.

Q. Did you take a walk in company with Louis J. Weichmann and Mr. Brophy in the spring or summer of 1865?

A. I took a walk with Mr. Weichmann, and we called on Mr. Brophy. He introduced me to Mr. Brophy on that walk.

Q. Was that after the time that he had testified before the military commission?

A. Yes, sir; after the testimony had closed.

Q. Did Mr. Weichmann state to you in that conversation that he was very much troubled in his conscience about the testimony he had given at that trial?

A. He did. He wished me to go with him to St. Aloysius's church, as he said he wished to make a confession, for his mind was so burdened with what he had done that he had no peace.

Q. Did he say to you that he was going to confession to relieve his conscience?

A. Yes, sir; he did.

Q. Did you say to him, "That is not the right way, Mr. Weichmann; you had better go to a magistrate and make a statement under oath?"

A. I did.

Q. Do you remember his replying to you, "I would take that course, if I were not afraid of being indicted for perjury?"

A. He did make that remark to me, and I then asked him the particulars. He said that if he had been let alone and had been allowed to give his statement as he wanted to give it, it would have been quite a different affair with Mrs. Surratt from what it was. In the first place, he said that when he came home and had a half holiday, Mrs. Surratt said it was a pleasant day—

Mr. PIERREPONT. Wait one minute. Have you laid any foundation for that?

Mr. BRADLEY. We have laid a foundation for that whole conversation.

Mr. MERRICK. I have laid it all in detail.

Mr. PIERREPONT. Suppose you get it as you have laid it.

Q. (By Mr. MERRICK.) He said it would have been a very different thing with Mrs. Surratt if he had been let alone?

A. Yes, sir.

Q. Did he say who troubled him?

A. Yes, sir; he said the parties who had charge of the military commission.

Q. Did he say to you that he had been obliged to swear to a statement that had been prepared for him, and that he was threatened with being charged as one of the conspirators unless he did so?

A. Yes, sir, he did; that it was written out for him and he was threatened with a prosecution as one of the conspirators if he did not swear to it.

Q. Did he say any thing to you about his having been told by a man that he had made the confessions or statements in his sleep?

A. Yes, sir; he said that there was a detective put in the Carroll prison with him; he had been before some other parties before that; and this man had it all written out for him, and said that was the statement he had made whilst asleep and that was what he would have to swear to. I asked him why he should swear to it if he knew it was not true? He said part of it was true, but it did not contain all the points he could have given if he had been let alone.

Q. And it was on account of that statement that he wanted to go to confession to relieve his conscience, was it?

A. Yes, sir.

Q. Did he tell you that on the 14th of April, 1865—the day of the assassination—Mrs. Surratt had told him she wanted to go to see Mr. Nothey on business, having received a letter from Mr. Calvert requiring her immediate attention; that they had gone to Surrattsville; and, when they found Mr. Nothey was not there, they met Mr. Jenkins, and that he and Mrs. Surratt turned around to come home, and then the spring of the buggy was broken?

A. He did not tell me what particular man it was, but he told me that if it had not been for some gentleman who called them back, Mrs. Surratt would not have seen Lloyd there that day, for they were in the buggy returning to Washington when they were called back, and that in turning the buggy around to come back he supposed the spring was broken, and that then she met Lloyd.

Q. Did he tell you that on that afternoon Mrs. Surratt, when she learned that he had half holiday, said she would like to go to Surrattsville, but did not know where to get a buggy, and he then told her to send to Booth, and she replied she did not know Booth was in town?

A. He did.

Q. He told you that he had suggested sending to Booth, and she then said she did not know Booth was in town?

A. Yes, sir; and he also told me the conversation he had with Booth when he went down after the buggy.

Q. (By Mr. BRADLEY.) There is no doubt about this being the same man sitting here. [Pointing to the witness Weichmann.]

A. That is the same man; I have met him frequently.

Cross-examined by Mr. PIERREPONT:

Q. Have you ever been examined before?

A. Yes, sir.

Q. Where were you examined?

A. I was examined before Judge Olin first, and then I was examined in the War Department. I do not know who they were who examined me; they were officers.

Q. Was your examination taken down in writing?

A. It was, I believe.

Q. Did you state any of these things then that you have now in this examination?

A. No, sir, I did not; because I had not this conversation with Mr. Weichmann until after I got out of prison.

Q. You did not have any conversation then until after that?

A. Not until after I had met him in the penitentiary as a witness.

Q. Did this conversation occur in the prison?

A. No, sir.

Q. Where did it occur?

A. In the street.

Q. Where?

A. In a walk from Ford's Theatre; he came up there after me.

Q. Did it all occur there?

A. We walked from Ford's Theatre down past this building and to a house where I had to call on C street

to see the family, and then we went down to St. Aloysius's church. He went inside, and I sat down on the steps until he came out.

Q. Did he go to confession?

A. I do not know whether he did or not; I did not go into the church.

Q. Is confession customary in the Catholic Church?

A. You can ask that of a member.

Mr. PIERREPONT. I am not a member.

The WITNESS. [Pointing to Louis J. Weichmann.] He will tell you; he is a member; he is giving you the points now.

Q. I ask you?

A. I believe so.

Q. Do not you belong to it?

A. I do.

Q. He does, too, you say?

A. I do not know; he says he does.

Q. I ask you whether it is customary in the Church?

A. It is, I believe.

Q. Was there any thing in his manner that was excited at the time?

A. He got excited afterwards—down at Dubant's saloon; he drank several times there.

Q. Did he recite Shakspeare?

A. Yes, sir.

Q. Hamlet?

A. Yes, sir; Hamlet's soliloquy on death.

Q. Were you alarmed at his state of mind?

A. Not at all; I was alarmed at the statements he made to me before that; I was astonished.

Q. You were not alarmed at his state of mind?

A. No, sir; any man who would make such a confession to me, his state of mind afterwards could not be very well.

Q. You were quite surprised at that confession?

A. Yes, sir; astonished.

Q. It was very shocking, was it?

A. Yes, sir; it was to me.

Q. When you were examined before, did you state any thing about having stood out in front of Ford's Theatre at the time of the murder?

A. Judge Olin did not get as far as that with me; he got to six o'clock in the afternoon, in my examination.

Q. Did anybody get as far as that with you?

A. Never, in my examination.

Q. Did they not get as far as to ask where you were, and did you not state you were in the theatre all the time?

A. I stated that my business was in the theatre during the day; it was only at intervals that business called me away.

Q. Did they not get so far as to ask you where you were on Friday, the night of the assassination?

Mr. BRADLEY. I must interrupt this examination one moment. If the gentleman has any written examination of this witness, reduced to writing with his knowledge, the witness is to examine that paper before he can be interrogated in regard to it.

Mr. PIERREPONT. Probably he will not until I get to that point.

Mr. BRADLEY. He has been asked about an examination, and whether it was reduced to writing; he has stated that he believed it was. Now, then, if the counsel holds a paper in his hand purporting to be his examination, he cannot interrogate the witness about that paper without producing the paper.

Mr. PIERREPONT. I have not asked the purport of any thing; I am asking a simple question.

Judge FISHER. I suppose he is asking about some examination that was had of this witness, just exactly as other witnesses have been asked about examinations had of them at the Arsenal.

Mr. PIERREPONT. Wherever it was.

The WITNESS. Tell me, which examination do you wish to ask me about, and then I will answer. I have had three before this trial—one before Judge Olin, an-

other at the War Department, and then before the military commission; and then this trial.

Q. (By Mr. PIERREPONT.) At either of those, were you asked where you were on the evening of the assassination?

Mr. MERRICK. Wait a moment. I submit to your honor it is proper he should identify one or the other of the examinations.

Mr. PIERREPONT. I ask him whether he was ever asked about that.

Judge FISHER. Take them in detail.

Mr. MERRICK. That is all I ask.

Q. (By Mr. PIERREPONT.) At the War Department, were you?

A. No, sir; not at the War Department.

Q. Before Judge Olin, were you?

A. I do not think Judge Olin got as far as to where I was at the time the assassination took place.

Q. Did anybody at the other examination?

A. No, sir; I do not think they ever did.

Q. Then, according to that, you have not been asked where you were at the time of the assassination?

A. I do not think I have been before the other day, when I was on the stand on this trial.

Q. Have you stated that at the time of the assassination, and on the evening of the assassination, for more than an hour before it, you were not in front of the theatre?

Mr. MERRICK. Wait a moment. When and where?

Mr. PIERREPONT. Anywhere on either of these examinations.

A. No, sir; never.

Mr. MERRICK. Wait one moment.

Judge FISHER. Take the examinations in detail.

Q. (By Mr. PIERREPONT.) Did you so state in your examination at the War Department?

A. No, sir.

Q. Did you so state in the examination before Judge Olin?

A. No, sir; I think Judge Olin did not get as far as that.

Q. I simply ask you the question?

A. No.

Q. Did you so state in the examination at the Arsenal?

A. No, sir.

Q. Have you had any other examinations?

A. None.

Q. Have you had no others?

A. I do not remember. I never have seen the testimony that I gave. The testimony I gave before the military commission was evidence for Spangler, and I have never read it and never seen it; and whether I did state it as far as that, or whether any question was put to me, I do not now remember.

By Mr. BRADLEY:

Q. Have you seen your examination at the War Department?

A. No, sir.

Q. Was it ever shown to you at the time of your examination?

A. No, sir.

Mr. PIERREPONT. I am examining the witness, and I submit the counsel cannot take the witness out of my hands until I am through with him, unless by order of the court.

Judge FISHER. Proceed with your examination.

Mr. BRADLEY. I had a right to ask the question.

Mr. PIERREPONT. He is under my examination, and you need not undertake to take him out of my hands.

Mr. BRADLEY. Go on; the court will regulate that matter.

Mr. PIERREPONT. I trust the court will do so.

Mr. BRADLEY. You need not try to bluff me off.

Mr. PIERREPONT. I do not try; but I do not intend you shall take a witness out of my hands when I am cross-examining him.

Judge FISHER. This constant bickering might just as well be ended now as at any time. Just let each counsel examine his witness, and if there is any thing the other side wish to examine him about or have an explanation about, their time will come at the proper time.

Mr. PIERREPONT. That is what I have been trying to do.

Mr. BRADLEY. I have a right to call the attention of the witness to a particular fact, and I want to confine the counsel to it. The witness said he has not seen his examination before the military commission, and then I asked if he had seen his examination before the War Department. I had a right to ask that.

Judge FISHER. Yes, when he comes to be turned over to you in reply.

Mr. PIERREPONT. One of the great objects of a cross-examination is to test a witness, and if the counsel who are endeavoring to support the witness can interrupt at every stage of the examination its object is defeated, and it is not a reply.

Judge FISHER. Go on.

Mr. BRADLEY. You can go on, and I will stop you when I think proper.

Mr. PIERREPONT. I do not know that you will stop me when you think proper.

Judge FISHER. When the court thinks proper.

Mr. BRADLEY. I will stop you when I think proper, and the court will decide. That is right, I believe.

By Mr. PIERREPONT:

Q. Now, will you state what day of the month it was that you had this walk with Mr. Weichmann?

A. I cannot tell exactly the date, but I can find it out in a very short time.

Q. Can you tell the day of the week?

A. No, sir.

Q. Was the trial going on or not?

A. No, sir; the trial had finished.

Q. He told you that he had stated things that were not true?

A. Yes, sir; he did.

Q. And that his conscience was terribly troubled about it?

A. Yes, sir.

Q. And he wanted to make a confession?

A. Yes, sir.

Q. Did he tell you he wanted you to aid him in any way to make his confession?

A. No, sir; he did not.

Q. You were in no way a priest, were you, to receive confessions?

A. No, sir; never.

Q. What was your business, then?

A. My business was then, as it is now, costumer.

Q. Were you a religious, devout man at that time? I mean were you noted in that way, to lead him to talk to you?

A. I decline to answer that question.

Mr. MERRICK. I object to the question.

Mr. PIERREPONT. (To the witness.) Do you decline to answer?

Mr. MERRICK. No, sir; I object to the question.

Mr. PIERREPONT. He has declined.

Mr. MERRICK. No, sir; he can decline if the question is not legal. The counsel asks him whether he is a religious and devout man, or was so represented.

Judge FISHER. Very well; he has been talking about religion and been talking about Weichmann's taking his advice about making a confession. Now, the question is whether he did it as a religious adviser, and he can answer or not, as he pleases.

Mr. PIERREPONT. That is what I am trying to get at.

Mr. MERRICK. Allow me to explain.

Judge FISHER. It is not worth while. Go on with the examination.

A. I decline to answer.  
 Mr. MERRICK. If I make an objection, your honor will allow me to explain the grounds of it.  
 Judge FISHER. Go on with the examination.  
 Q. (By Mr. PIERREPONT.) When did you leave the city after the trial?  
 A. I left on the 25th of July.  
 Q. You did not leave until then?  
 A. No, sir.  
 Q. Where did you go to?  
 A. Baltimore.  
 Q. Was this conversation after you went to Baltimore or before?  
 A. Before I went to Baltimore. I never saw that gentleman [Mr. Weichmann] after the execution until I met him here.  
 Q. Do you know when Weichmann left the city?  
 A. I do not. I avoided his company ever after that. I used to see him, but avoided his company.  
 Q. Why did you avoid his company?  
 A. I thought he was a dangerous man.  
 Q. That was the reason, was it?  
 A. Yes, sir.  
 Q. Was it on account of this confession that he made to you?  
 A. Yes, sir.  
 Q. Did you invite the confession?  
 A. No, sir.  
 Q. It was wholly voluntary on his part?  
 A. Wholly voluntary.  
 Q. Had you ever been in such relations with him as to invite him to a religious confession of his guilt?  
 A. No, sir; never.  
 Q. Are you still connected with the theatre?  
 A. Yes, sir.  
 Q. What side did you sympathize with in the war?  
 A. I did not sympathize with either. I was doing business with a mixed population, and I kept myself neutral.  
 Q. Where were you neutral?  
 A. Here, in this city.  
 Q. You were here all the time?  
 A. Pretty much.  
 Q. You told us the other day that you were from New York, I think?  
 A. No, sir; I told you I was from Boston.  
 Q. When I questioned you further, did you not tell me you were from New York?  
 A. You asked me if I was raised in Boston, and I told you no, that I was raised in New York.  
 Q. When you were examined before, did you tell us you were from Baltimore?  
 A. No, sir.  
 Mr. BRADLEY. What do you mean by "examined before?"  
 Mr. PIERREPONT. Before the military commission.  
 The WITNESS. I was never asked the question there.  
 Q. Whether you were born and raised in New York?  
 A. No, sir; I never said I was born in New York.  
 Q. I mean in Boston?  
 A. No, sir; I was born in Toronto, Canada.  
 Q. When did you come to the United States?  
 A. In 1845, with my family.  
 Q. During this war you did not sympathize with the rebels?  
 A. I did not sympathize with either side.  
 Q. You did not sympathize with the Union side?  
 A. With neither side.  
 Q. You felt wholly indifferent?  
 A. I sympathize with every one that is in trouble.  
 Q. You only sympathized with the side that happened to get beat?  
 A. No, sir; I did not sympathize with them.  
 Q. Did your sympathies change in the progress of the war from time to time?  
 A. No, sir; it was quite an indifferent matter to me.

Q. Wholly indifferent?  
 A. Yes, sir.  
 Q. You did not care which side succeeded?  
 A. It did not make much difference to me.  
 Q. And you did not care?  
 A. No, sir.  
 Q. You did not care whether the Union Government was destroyed or not?  
 A. It did not make any difference to me.  
 Q. You did not care whether the confederacy succeeded or not?  
 A. No, sir; I did not care whether they succeeded or not.  
 Q. You did not care which army was slaughtered?  
 A. Oh, I did care about that.  
 Q. Which army did you sympathize with?  
 A. I did not want to see any slaughtering at all. I am opposed to war.  
 Q. Did you sympathize with either army?  
 A. Neither.  
 Q. Did you care for one more than the other?  
 A. No, sir.  
 Q. Your feeling is the same now that it was then?  
 A. Yes, sir; I am opposed to war in all things.  
 Q. Your feelings of sympathy are the same now that they were during the war?  
 A. Just the same.  
 Q. You are wholly indifferent to the safety or ruin of the Government of the country?  
 The WITNESS. Wholly indifferent to what, did you say?  
 Mr. PIERREPONT. To the safety or destruction of this Government.  
 A. Well, as I do not happen to be any particular part of the Government, but am merely doing business here as a foreigner, I have no particular interest.  
 Q. Then you are a foreigner?  
 A. Yes, sir; I was born in America, but not in the United States.  
 Q. Did you know of Weichmann going away?  
 A. No, sir.  
 Q. You did not know of his going to Philadelphia?  
 A. No, sir.  
 Q. Will you not tell us the last time you ever met him in Washington before this trial?  
 A. Here, on the steps of the court-house.  
 Q. How long before this trial did you meet him in Washington?  
 A. Sometime before the 4th of July, I think.  
 Q. Of what year?  
 A. 1865.  
 Q. Had you been intimate with him?  
 A. I was intimate with him as long as we kept together, until I shunned him, shook off his society.  
 Q. When did your intimacy begin?  
 A. In the Penitentiary.  
 Q. When was that?  
 A. During the trial.  
 Q. Was that the beginning of your intimacy?  
 A. Yes, sir.  
 Q. When did your intimacy end; before the trial was over?  
 A. After the trial was over.  
 Q. How long after?  
 A. I do not know how long after.  
 Q. Your intimacy was pretty short?  
 A. It commenced in the month of May and ended in the latter part of June.  
 Q. Do you feel friendly towards him?  
 A. I have no antipathy towards him?  
 Q. Do you feel hostile towards him in any way?  
 A. Not in any way.  
 Q. You never have?  
 A. Never.  
 Q. And have never expressed any hostility?  
 A. No, sir.  
 Q. And you did not when you heard these revelations of this perjury?

A. No, sir; I wanted to shun his company; that was all.

Q. And you did shun his company?

A. Yes, sir, I did.

By Mr. BRADLEY:

Q. You were asked about hostile feelings. You may have feelings which would lead you to avoid a man's company without having hostile feelings. I suppose that is what you meant?

A. Certainly that is what I mean. I have no antipathy towards the man; I did not want to hold any associations with him or be with him.

JAMES J. GIFFORD

recalled.

By Mr. MERRICK:

Q. Do you know Mr. Louis J. Weichmann?

A. I have seen him. I have no acquaintance with him.

Q. Were you in Carroll prison with him?

A. Yes, sir.

Q. This is the man here. [Pointing to the witness Weichmann?]

A. That is the man.

Q. Did he say to you, or in your presence, that an officer of the Government had told him that unless he testified to more than he had already stated they would hang him too?

A. I heard the officer tell him so myself.

Q. Who was present at that time?

A. James Maddox.

Q. Did Weichmann ever say any thing to you about wanting to go South?

Mr. PIERREPONT. Do not answer that question. I will ask your honor to strike out the answers which have already been given by the witness.

Judge FISHER. The answers in regard to what took place in the presence of Mr. Maddox and others?

Mr. PIERREPONT. Yes, sir. On page 300 of the record, in the examination of Weichmann, I find this:

"Mr. BRADLEY. Now, I will repeat the question—

"I ask you if an officer of the Government did not tell you that unless you testified to more than you had already stated, they would hang you too?"

"WITNESS. At this trial?

"Mr. BRADLEY. I ask you if he did not, in the presence of Mr. Maddox and some others?

"A. I do not remember to have ever heard it. It is news to me. I never had any fear of hanging."

In the first place, it had nothing to do with this trial, and, in the next place, it is not contradicting any thing stated by Weichmann.

Mr. MERRICK. Let me refer to the preceding part. Your honor will find on the top of page 300:

"Mr. BRADLEY. I now propose to ask the witness whether, in the presence of Mr. Maddox and others, an officer of the Government did not tell him that, unless he testified to more than he had stated, they would hang him too.

"Mr. PIERREPONT. I object.

"The COURT. Is the question, unless he testified to more here than he had stated to somebody else?

"Mr. PIERREPONT. I do not object if it relates to this trial. If it relates to evidence that was to have been given on some former trial, then, I conceive, the question is not a proper one.

"Mr. BRADLEY. I do not know, sir, to what trial it relates. I expect to show, however, that this witness is testifying, and testifying here, under threats.

"Mr. PIERREPONT. Testifying here under threats?

"Mr. BRADLEY. Yes, sir.

"Mr. PIERREPONT. Then I withdraw my objection.

"Mr. BRADLEY. Now, I will repeat my question: I ask you if an officer of the Government did not tell you that, unless you testified to more than you had already stated, they would hang you too."

And without objection the question was put.

Mr. PIERREPONT. "At this trial?"

Mr. MERRICK. "At this trial?" says the witness.

"Mr. BRADLEY. I ask you if he did not in the presence of Mr. Maddox and some others?"

Without specifying any trial.

"A. I do not remember to have ever heard it. It is news to me. I never had any fear of hanging."

Mr. PIERREPONT. But the objection had been interposed before?

Mr. MERRICK. And withdrawn.

Mr. PIERREPONT. Here it is:

"Mr. PIERREPONT. Testifying here under threats?

"Mr. BRADLEY. Yes, sir.

"Mr. PIERREPONT. Then I withdraw my objection."

Judge FISHER. You will find down at the bottom of the page that I said:

"I ruled the other day that no inquiry could be made of a witness in reference to any promise made, or threat held out, to induce him to give or to withhold testimony before the military commission, but that evidence of any promise or threat held out to him to influence the character of the testimony to be given on this trial was proper, and would be allowed to go to the jury."

All this testimony was irrelevant.

Mr. MERRICK. But it was not objected to, and was allowed to come in.

Judge FISHER. Yes, it was objected to, and that is the reason why I stated what I did. He could not be examined as to testimony that was to be given before the military tribunal. The answers given by the witness now on the stand on that subject will be stricken out.

Mr. BRADLEY. Note an exception.

Q. (By Mr. MERRICK.) Did you hear Weichmann say any thing with regard to his having testified that Mr. Lloyd spoke to Mrs. Surratt in a whisper, going down—

A. No, sir.

Mr. PIERREPONT. Do not answer until the question gets out, at least, for we may want to object to it when it is finished.

The WITNESS. Very well, sir; I will not answer.

Mr. PIERREPONT. (To Mr. MERRICK.) Finish the question.

Mr. MERRICK. It is no use; he says he did not.

Mr. PIERREPONT. I hope the witness will wait until the question is out, anyhow, before he answers.

Q. (By Mr. MERRICK.) Did Mr. Weichmann tell Mr. Maddox and yourself that Mr. Bingham had said to him that if he did not state more fully than he had done all he knew, he would be treated as one of the conspirators, or substantially the same thing?

Mr. PIERREPONT. Do not answer that.

Mr. MERRICK. It is for the court to say.

Judge FISHER. I see by the record that when that question was asked of Mr. Weichmann an objection was made, and then withdrawn.

Mr. PIERREPONT. Very well.

Q. (By Mr. MERRICK.) Did he ever say that to you in those words, or substantially?

A. No, sir.

Q. Were you present with him at any time that it was said in his presence?

Mr. PIERREPONT. Do not answer that.

Mr. MERRICK. If a remark is addressed to an individual, and is part of a conversation, it is pretty much the same whether he makes it himself or assents to it.

Mr. PIERREPONT. I do not want to debate it.

Judge FISHER. You asked the witness whether Weichmann did not tell Mr. Maddox and himself that Mr. Bingham said thus and so to him, and the witness answered he did not say that to him and Maddox.

Mr. MERRICK. I now ask the witness if that was said in Mr. Weichmann's presence, when Maddox and Gifford were present, and addressed to Mr. Weichmann. Judge FISHER. Said by Mr. Bingham?

Mr. MERRICK. Yes, sir, to Weichmann; this conversation occurred in the presence of these two parties.

The WITNESS. I do not understand you; do you mean, was that said to Mr. Weichmann?

Mr. MERRICK. Yes.

A. Yes, sir.

Judge FISHER. I do not understand your question.

Mr. MERRICK. My question is this: I first asked him, "Did Mr. Weichmann say to you that Mr. Bingham told him that unless he testified to more than he had already done he would be treated as one of the conspirators and hanged," or words to that effect. He

says Mr. Weichmann did not say so to him and to Mr. Maddox. I then ask him whether or not that expression was used in Mr. Weichmann's presence, in conversation with Mr. Weichmann, and was part of the conversation.

Mr. PIERREPONT. Used by whom?

Mr. MERRICK. By anybody, and whether Weichmann assented to it or not, whether he adopted it or not, whether it became part of his expressions by adoption.

Judge FISHER. You have not laid the ground for that.

Mr. MERRICK. I have asked him whether he said it.

Judge FISHER. And he says he did not say it. There is an end of that.

Mr. MERRICK. I submit if it was said to him, and he acquiesced in it, he adopted it as part of that conversation.

Judge FISHER. Then, if he did, you ought to have put it in that shape.

Mr. MERRICK. Very well. I offer it as substantive proof, the objection having been withdrawn, that the fact did occur in his presence.

Judge FISHER. You cannot offer any proof about it. The court has ruled out any proof of what Mr. Bingham said, or anybody else said, to any witness in regard to testimony that was to be given, or had been given, on the trial before the military tribunal. That is out of the question.

Mr. BRADLEY. Although the witness says he gave the same proof then that he does now?

Judge FISHER. It makes no difference what the witness has said.

Mr. MERRICK. Does not that make any difference in the question?

Judge FISHER. Not a bit.

Mr. BRADLEY. Note an exception.

Q. (By Mr. MERRICK.) Did you ever have a conversation with Weichmann about his interview with Mr. Bingham after that time?

Mr. PIERREPONT. Do not answer that?

Judge FISHER. That is the same question over again.

Mr. MERRICK. No, sir.

Judge FISHER. Oh, yes, it is.

Mr. MERRICK. I ask him whether he had any conversation with Weichmann about this matter. What Weichmann said to him is evidence.

Judge FISHER. But you want now a conversation had between Weichmann and Mr. Maddox and Mr. Gifford. You have laid the foundation only for the contradiction in reference to a conversation had between Mr. Weichmann on the one hand, and Mr. Maddox and Mr. Gifford, to whom it was addressed, on the other, and outside of that you cannot go.

Mr. MERRICK. Very well; that is all I am doing. I am inside. I ask him whether or not he ever had, in the presence of Maddox, without anybody else being present, a conversation with Weichmann in regard to that conversation with Mr. Bingham.

Mr. PIERREPONT. But you have not asked Weichmann a word about that. If you have, please tell us where.

Mr. MERRICK. Here it is:

"Q. Do you say that you did not tell them of any interview with Mr. Bingham, in which Mr. Bingham had used that language to you?"

"A. I may have spoken of an interview with Mr. Bingham, but I never told them that Mr. Bingham used threatening language, because Mr. Bingham did not use threatening language."

There is the foundation.

Mr. PIERREPONT. For what?

Mr. MERRICK. For asking this witness whether or not Weichmann did not tell him he had had a conversation with Mr. Bingham in which Mr. Bingham had used this threatening language; not the substantive fact that he heard Bingham use it, which is a fact.

Judge FISHER. That is just the same thing. You

only repeated there the question which you put to him first. You first asked whether he did not tell Mr. Maddox and Mr. Gifford that he (Weichmann) had been told by Mr. Bingham if he did not state more fully than he had done all he knew, he would be treated as one of the conspirators, and then, afterwards, you repeated the question in different form, "Do you say that you did not tell them of any interview with Mr. Bingham, in which Mr. Bingham had used that language to you." It is just a repetition of the same thing over again.

Mr. MERRICK. I may not make myself understood.

Judge FISHER. I understood this record perfectly.

Mr. MERRICK. This record is not what we are now making; we are making another.

Judge FISHER. But you have got to make the other one accord to this, or you cannot make it.

Mr. MERRICK. The first proposition I put to the witness is, Did Mr. Bingham say so? That is one thing. Then the next thing is, Did he hear Weichmann say Mr. Bingham had said this, afterwards.

Judge FISHER. What is it?

Mr. MERRICK. The first proposition is a question of substantive proof as to the actual occurrence of a fact. Is the witness personally cognizant of it?

Judge FISHER. I understand that, and that I say comes under the ruling of the court.

Mr. MERRICK. I acquiesce then; so far for that. Now the next proposition is, not as to a substantive fact, but as to what Weichmann said, which might or might or might not have been a fact.

Judge FISHER. You have already asked about that, whether Weichmann did not say to Maddox and Gifford that Mr. Bingham had threatened to treat him as one of the conspirators.

Mr. MERRICK. I was going on to lay the foundation. Did he have any conversation with Weichmann? The question here is, Did you say to them in so many words or in substance—

Judge FISHER. No, sir; the question is, "Do you say that you did not tell them?"

Mr. MERRICK. Look above. This is it:

"I ask you whether you did not tell Mr. Maddox and Mr. Gifford that you were told by Mr. Bingham that if you did not state more fully than you had done, all you knew, you would be treated as one of the conspirators—not in those precise words, but in substance?"

The witness says Weichmann did not use those precise words. Now, I want to know whether Weichmann said the same thing to him in substance or not.

Judge FISHER. Oh, very well; you can ask that. Q. (By Mr. MERRICK.) Now, did Weichmann say any thing of that kind to you substantially?

Mr. PIERREPONT. Let us see. You have got to get those men put together again.

Mr. MERRICK. Very well, put them together. (To the witness.) At any time when you and Weichmann and Maddox were present after Mr. Bingham was there—do not speak of what Mr. Bingham said now—but after he left there, at any time that you and Weichmann and Maddox were present, did Weichmann say any thing, amounting in substance and effect to this, That Bingham had threatened him if he did not say more than he had before?

Mr. PIERREPONT. I object to that.

Mr. CARRINGTON. We think it collateral.

Judge FISHER. They put the question to Weichmann "in those precise words, or in substance." This witness says he did not say it in those precise words. Now, the question is, did Weichmann say this to him and to Maddox in substance.

Mr. MERRICK. That is it.

Mr. PIERREPONT. The question asked of Weichmann was:

"I ask you whether you did not tell Mr. Maddox and Mr. Gifford that you were told by Mr. Bingham that if you did not state more fully than you had done, all you knew, you would be treated as one of the conspirators—not in those precise words, but in substance?"

Mr. MERRICK. That is it. (To the witness.) Did he say any thing of that kind in substance afterwards?

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 81. WASHINGTON, THURSDAY, AUGUST 22, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 80.*

Judge FISHER. Oh, no; in this conversation.  
Mr. MERRICK. In any conversation afterwards in the Carroll Prison.

Mr. PIERREPONT. No, no.

Mr. MERRICK. I do not know what conversation this refers to.

Judge FISHER. In the presence of Maddox and Gifford.

Mr. MERRICK. Of course, I must have all three together.

Mr. CARRINGTON. Did I not understand your honor to rule that no threat could be given in evidence not referring to this particular trial?

Judge FISHER. There, you waived the objection, Mr. CARRINGTON. You let the question be answered by the witness.

Mr. CARRINGTON. I understand; but is it not a collateral matter, and therefore are they not bound by the answer of the witness. If it was not admissible in evidence under the ruling of your honor, and upon cross-examination they ask the question and the witness answers it, they are bound by his answer.

Mr. MERRICK. I understood your honor to say they waived the objection.

Mr. PIERREPONT. Waiving the objection does not change the rule about its being collateral.

Mr. CARRINGTON. Your honor has decided, and very properly,—pardon me for saying that,—that it was not competent for them to give in evidence any threat that was made to a witness relating to some other trial. Then, although they may have asked a witness, upon cross-examination, and we made no objection, whether a certain threat had not been made, or whether there had not been a certain conversation in reference to it, it being collateral under the ruling of your honor, they are bound by the answer.

Judge FISHER. I do not know that I have ruled that it was collateral.

Mr. MERRICK. No, sir, you did not rule that it was collateral.

Mr. CARRINGTON. Your honor ruled that was inadmissible, and if inadmissible, it is certainly collateral.

Judge FISHER. Certainly I did, but you took it out of my ruling by letting it come in. Go on and ask the question.

Mr. MERRICK. Now, Mr. Gifford, you may answer my question.

A. I never had any conversation with Mr. Weichmann at all.

Q. You never had conversation with him in all that time?

A. No, sir.

Q. Was Mr. Ford in prison there with you?

A. Yes, sir, he was up there.

No cross-examination.

Mr. MERRICK. (To the counsel for the prosecution.) Gentlemen, I have on my notes here to call Mr. Bunker. I do not know what he testified to with regard to the times that Booth was at the National Hotel. Can you tell me how long Booth was there, to save the trouble of calling Bunker?

Mr. WILSON. He was to furnish a memorandum of the dates.

Mr. MERRICK. He has not yet done it.

Mr. WILSON. No. Mr. Dawson is to furnish it.

Mr. MERRICK. I want to know when Booth came there, and how long he stayed on the several occasions.

JOHN MATTHEWS,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. State to the jury where you were in the month of April, 1865, and what you were doing?

A. I was in this city, playing at Ford's Theatre.

Q. What is your profession?

A. An actor.

Q. Where were you on the afternoon of the 14th of April, 1865, and did you meet Booth on that evening?

A. I did.

Q. Where did you meet him?

A. On Pennsylvania avenue, above 13th street.

Q. Opposite one of those triangular spaces?

A. Just at one of the triangular enclosures.

Q. Was he walking or on horseback?

A. He was on horseback.

Q. What side of the street?

A. On the north side, the right-hand side.

Q. This side going towards Willard's?

A. Yes, sir.

Q. Did he ride up to the curbstone to speak to you?

A. He did.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. How long were you conversing with him?

A. Perhaps in the neighborhood of five minutes, not longer than from three to five minutes.

Q. Did he bend down over his horse's neck to speak to you, or did he speak in rather a loud tone?

Mr. CARRINGTON. This is rather leading.

Mr. MERRICK. It is rather leading.

Judge FISHER. It is merely suggestive, I suppose.

Mr. MERRICK. Merely suggestive. It is with reference to the testimony of those two gentlemen who testified they saw Booth conversing with somebody. (To the witness.) Was he leaning over his horse's shoulder talking to you?

A. Yes, sir.

Q. Did he have your hand?

A. Yes, sir; he crossed his hands, and with one hand, I think the left hand, he held the reins of the horse, and with the right he took mine and shook my hand.

Q. Did he shake it very earnestly?

A. Yes, sir; I saw he was very nervous and agitated.

Q. He left the impress of his nails on your hand, did he not?

A. Yes, sir; he squeezed my hand very warmly.

Q. How were you dressed? What sort of a hat did you have on?

A. I wore a dark hat.

Q. What is your height?

A. About five feet seven.

Q. State whether or not at that time Booth placed a paper in your hands?

A. He did.

Q. Was it sealed?

A. Sealed and stamped.

Q. What did you do with it?

A. I put it in my pocket.

Q. When did you next see it?

Mr. PIERREPONT. Wait one moment. We object to that.

Mr. MERRICK. I have not offered it yet.

Mr. PIERREPONT. We object to when he next saw the paper Booth gave him.

Mr. BRADLEY. What is the objection?

Mr. PIERREPONT. The objection is, that it is not proper in the case that I can possibly see.

Judge FISHER. We do not know what connection they may make, what use they may make of it. Go on and hear it.

Q. (By Mr. MERRICK.) When did you next see it?

A. I saw it in my room immediately after the shot was fired, or a few minutes afterwards, when I succeeded in getting out of the building.

Q. Were you in the theatre at the time the shot was fired?

A. Yes, sir.

Q. Did you open the paper?

A. I did.

Q. What did you do with it after you opened it?

A. I read it.

Q. What then?

A. I burned it.

Q. What was in that paper, and who signed it?

Mr. PIERREPONT. Just wait. Now comes the objection.

Mr. MERRICK. In the first place, whose handwriting was it in?

A. I think in the handwriting of Booth. I have seen his name on photographs, and I once saw a letter written by him.

Mr. BRADLEY. (To the counsel for the prosecution.) Do you object?

Mr. PIERREPONT. Yes; and we do not want to argue any such objection.

Mr. BRADLEY. I do not care whether you want to argue it or not. They make the objection, and I ask the court to indulge us until to-morrow morning. It is a grave question, and a very important one in this case, whether we can give in evidence the contents of that paper, and I will ask the court to indulge us until to-morrow morning to discuss that question.

Mr. PIERREPONT. You cannot give it in evidence.

Mr. MERRICK. It is now nearly time to adjourn.

Mr. BRADLEY. I am not aware that there is any other witness in court.

Mr. MERRICK. I have called two or three, but they are not in attendance.

Mr. BRADLEY. We have nothing further to ask Mr. Matthews except as to the signatures to that paper. We cannot speak of the paper until we offer to give it in evidence. The question is, whether we can give the contents of the paper, if the contents of the paper relate to the subject-matter of inquiry here. Your honor cannot tell any thing about that until you know what the paper contains. I have no sort of objection to writing it down and handing it to the court and letting the court examine it and then determine whether it is admissible after hearing some discussion upon it; but at present I do not propose to state in the hearing of the jury what that paper contained, but to write it down and hand it to the court.

Mr. PIERREPONT. We do not object to their writ-

ing it down and handing it to the court, and why cannot the legal proposition, whatever it is, be handed to the court at the same time?

Mr. BRADLEY. I prefer to discuss the legal proposition. That is the reason.

Mr. MERRICK. I do not see any reason why we may not adopt the ordinary rule of practice in this case. So far as I am concerned, I am willing that everything on God's earth connected with this matter shall go to the jury; I do not care what it is. I want this evidence to go to the jury. If your honor should determine that it is not proper, then it is not before them, that is all; but in discussing whether or not it is proper that it should go there, I do not see any reason why we cannot pursue the ordinary course pursued in the trial of causes, and discuss it, as is usually done, without apprehensions of its effect upon the mind of the jury.

Mr. PIERREPONT. I know of none. I have not any.

Mr. MERRICK. Then we have got none. Let us do it regularly.

Mr. PIERREPONT. My suggestion is, that it may be done to-day, in order that your honor may consider it, as my learned friends say it is a grave question. If it is a grave question, I suggest that the question be presented to your honor to-day, that its gravity may be considered by you before to-morrow morning. I will agree not to discuss it on our side three minutes.

Mr. MERRICK. I will not promise how long I shall discuss it.

Mr. BRADLEY. I have nothing to say about that. The gentlemen on the other side must take what course they think proper. I intend to take the course I think proper. Now, I will state to your honor, I expect to prove by this witness that that paper was an agreement between four parties, entered into that day for the assassination of the President, neither of whom is on trial here—a paper signed by the parties. I want to see whether that is admissible.

Mr. MERRICK. The original articles of the assassination conspiracy.

Mr. BRADLEY. And signed by them.

Mr. CARRINGTON. I feel it my duty to state, as we have not made very much progress to-day—

Mr. BRADLEY. I think we have made very great progress to-day. I think we have killed McMillan pretty effectually.

Mr. CARRINGTON. Mr. BRADLEY has stated to your honor what it is that he proposes to prove, and I do not think any great deal of time should be consumed in the discussion of the question. At all events, we had better go on this evening.

Mr. BRADLEY. I do not know but that the question has been submitted to your honor, and your mind made up; I hope not; but unless it is, I do hope to satisfy the court that this is admissible proof, and must be admitted in order to ascertain the facts upon which this prisoner is indicted.

Mr. CARRINGTON. I do not know what the gentleman means by that allusion. I am sure I have not submitted any such thing.

Mr. BRADLEY. I mean just exactly this, that this witness has been examined before the Judiciary Committee of the House of Representatives, and in that way we found out the contents of that paper. Whether the contents of that paper have reached the ears of the Judge I am not prepared to say.

Judge FISHER. I will say now, once for all, Mr. BRADLEY, because I desire that it may be understood, that at the trial of these conspirators I kept aloof from reading it. Sometimes I would open the paper, and my eyes would light upon the testimony in that case, and instantly I would reflect that I had been holding the criminal court here almost from the inception of this court, and that in all probability, if anybody else had hereafter to be tried before the criminal court of this District, it might fall to my lot to try the case, and I

have kept aloof from that evidence and from any evidence on the subject. I have never seen or read, I think, a syllable of the evidence before the Judiciary Committee about this conspiracy. If I have it has passed out of my mind, and I do not recollect it; and I am sure that these gentlemen would not have so low an estimate of me as to be making questions to me privately in advance. This question is a new one, and I should very much like to hear it discussed.

Mr. CARRINGTON. I have never heard it intimated until it was stated by Mr. BRADLEY.

Mr. BRADLEY. I desire to say, after the remark of the court, that I have not intimated, not even entertained, any impression that he has prejudged this case upon any evidence in it; but it was the most natural thing in the world to infer that that fact, which had taken place before the Judiciary Committee and was so prominent, should have reached his ears and he should have given it his reflection. It would have been no condemnation of a judge to have done so, and anticipating questions which might arise, I think it would have been perfectly proper that he should have looked at it.

Judge FISHER. I did not. My brother WYLIE tells me that it was printed in the *National Intelligencer*, and I do not remember to have read a copy of that paper for several weeks.

Mr. BRADLEY. If your honor will pardon me, if you had seen it and the question was suggested to your mind, I think it would have been your duty to look into it, to see whether it was admissible as evidence or not.

Judge FISHER. I think I had better keep my mind a blank as far as I can in regard to this case.

Mr. PIERREPONT. If I understand the counsel, he has nothing else to ask this witness, except in relation to this paper.

Mr. BRADLEY. At present.

Mr. PIERREPONT. Therefore, it seems to me it would be proper, as there is abundance of time, for me to cross-examine him now.

Mr. BRADLEY. It is not time.

Judge FISHER. You cannot do that until they turn him over to you in the regular course of business; but if they have any other witness—

Mr. MERRICK. We have no other witnesses. I have called two or three, but they are not here. In reply to what the counsel has said about making progress to-day, I think we have made considerable progress, and I will say to the counsel what I have said privately to the court in the morning, that we have made progress against the imperative orders of Mr. BRADLEY's physician, who required him not to be in court this morning; but he would not take advantage of his indisposition, but has sat here by my side all day. We do not ask the court to adjourn on that account. I merely say it to show gentlemen the disadvantages under which we have made this progress, to show our anxiety to close the case.

Judge FISHER. The court cannot fail to appreciate that fact, and therefore we will take a recess.

Mr. PIERREPONT. The gentlemen never made that suggestion to us. Of course we are willing to yield to any such ground.

Mr. MERRICK. I do not put it on that ground.

Mr. BRADLEY. Not at all. I put it upon the ground of its being a very grave question, upon which this case may in some measure hinge.

Judge FISHER. Very well; we will take a recess until to-morrow morning at ten o'clock.

The court accordingly took a recess until to-morrow morning at ten o'clock.

### Thirty-Second Day.

WEDNESDAY, July 17, 1867.

The court re-assembled at ten o'clock a. m.

Mr. BRADLEY. When the court adjourned yesterday, if your honor please, we had submitted, on the

part of the defense, the following proposition: "The defendant now offers to give in evidence an agreement entered into between Booth, Payne, Atzerodt, and Herold, on the 14th of April, 1865, to kill President Lincoln, which agreement was in writing and signed by the parties thereto." The question is, whether it is admissible as evidence for any purpose in this cause. That such a paper would be admissible on the part of the prosecution I deny, because it would not only tend to prove the guilt of the prisoner, but would be clear proof that he was not a party to that conspiracy, and therefore, as their evidence is to the affirmative of the issue, such a paper could not be admitted on the part of the prosecution. And yet it seems to us, with great respect, that it is pregnant proof, admissible in the cause for some purpose or other.

I have not been able, not only from my engagements in this cause, but from actual indisposition, to make such an investigation of so grave a question as its importance demands; and yet I have taken some care to consider how and in what respect it bears upon the issue, and how far it is admissible on the part of the defense.

The object of all rules upon the admissibility of evidence is to prevent the introduction of manufactured proof, and to reach the truth. If the evidence is pertinent to the subject of inquiry, its admissibility is regulated by those rules which are adopted for the purpose of preventing the manufacture of evidence. The exclusion of all simulated evidence is absolutely necessary in order to enable the jury to reach the truth. It is equally necessary to guard against the possible admission of evidence prepared by a defendant. To that extent, I suppose we may say there are fixed rules. Now, all evidence consists of facts; and for this purpose, the opinions of experts and words are facts. It is not an opinion; it is not the words used; but the opinion is a fact, and the words used and given in evidence are facts. Every other species of evidence, except written proofs, is evidence of facts. Everything, except the opinions of experts and words used by parties, are substantial facts, acts. It is the province of the court to determine whether any fact which is proposed to be given in evidence has any tendency—not whether it is proof, but whether it has any tendency to prove the questions involved in the issue which the jury are to try, or any one of those questions. It may be very slight; it may be a mere scintilla; but the weight of the evidence is not for the court; it is for the court to say only whether the jury can draw any rational conclusion touching any one question involved in the issue from the fact offered to be proved. If, on examining the proof, the court can see that the jury may rationally draw an inference from that proof, touching the subject-matter of their inquiry, unless it is ruled out by some positive rule of law founded upon the reason or principle to which I have just referred—the exclusion of manufactured evidence—it must go the jury. I agree that it is exceedingly difficult at times to ascertain whether there is any positive rule of law touching the question of the introduction of a particular piece of proof on the trial of a cause. Undoubtedly the rulings of the Supreme Court of the United States, the rulings of the Supreme Court of the District of Columbia, and statutory provisions, are binding upon this court. Outside of that, I know no positive rules of law by which this court is to be controlled. I shall, therefore, in the discussion of this question, not attempt to hunt up, and I have not attempted to hunt up, any authorities; because there are no authorities, and I must depend, in the view I take of it, upon the rational conclusions to be drawn from the fixed principles with which I set out.

What we offer in evidence is a fact, and a fact bearing directly upon the issues which this jury is sworn to try. Unless it be excluded on the ground of some positive rule of law, it must go to the jury for what it is worth; and in the absence of any positive rule, I infer that it

must go to the jury. It is then for the opposite side to show a positive rule which excludes from the consideration of the jury a fact so pregnant as this is to the consequences of this trial. I know no positive rule. It is not like the cases which have already been considered by the court, where it was possible that the prisoner at the bar might have manufactured proof; it is not the case of the register of the hotel, where the name might have been written at another time; it is not the case of the prisoner's making an arrangement with a party to be employed in a particular place at a certain time. It stands wide and clear from all grounds of objection of that kind. It is the declaration of the parties alleged to be the conspirators in this case; alleged in the indictment to be the conspirators—the declaration of the parties made at the very act, and part of the *res gestæ*. And inasmuch as, if the fact be as we offer to prove, it is as much a part of the *res gestæ* as though it were written at the time of the transaction and that followed before the ink was dry. It is emphatically a part of the *res gestæ*. It is the concerted plan reduced to writing, and signed by the actors immediately preceding the action, and as such is part of the *res gestæ*. They go from the table at which it was signed to the positions respectively assigned to them; they act according to the agreement, and the Government has taken the trouble to prove the acts according to the agreement. They have taken the trouble to prove that Booth murdered the President; that Payne attempted the life of the Secretary of State; that Atzerodt was placed convenient were he might assail the life of the then Vice President; and yet they have shown no overt act on the part of Atzerodt. That was part of the plan of the conspiracy; that was the immediate result of the action of the conspirators; that was the result of the agreement in writing which we offer to give in evidence, and following it immediately.

Is it or not part of the *res gestæ*? I know, if your honor please, that the question of *res gestæ* is a very comprehensive one, exceedingly difficult to define; but if there is a case to be formed in which the *res gestæ* embrace the immediate conception of a design, and the immediate execution of that design following the conception and arrangement, this is that case—I mean, as we propose to prove it. We connect the four parties on the day of the assassination, and late in the day of the assassination; we connect them by what would have been irrefragable proof, but for the destruction of the paper by Mr. Matthews in his alarm; we connect them by secondary proof equivalent to that of the existing paper, preparing for their assault; and they, on the other side, prove the execution of the agreement immediately following its preparation. I venture to affirm, then, that this is one of the clear illustrations of *res gestæ*—plan conceived in the afternoon and executed at night, the plan reduced to writing, the parties signing it and executing it before the ink was dry.

If I am right in this view of the question, it is an end of it. Your honor will observe it is not a thing to which the prisoner was a party, or with which he could have been associated; for, if you take the proof on the other side, that he was here, out of the mouths of witnesses who have spoken from that stand and have been answered, in the face of direct and positive proof offered by the Government themselves, that he left Montreal at three o'clock on the 12th of April, by the declared and open admission of counsel, made of record, that he was in Elmira on the 13th, and the inescapable proof that he could not have left Elmira after eight o'clock on the morning of the 13th, until Friday morning, the 14th—with this mass of proof to show that he was not here in time to enter into that contract, I ask whether he could have assisted in fabricating proof of this kind for his defense.

Now, if your honor please, I beg leave to call your attention to what has not been sufficiently adverted to in the progress of this long, protracted trial, that there are here two entirely distinct issues, governed by dif-

ferent principles, admitting different rules of evidence. The one is, whether a conspiracy existed between Surratt and others; and the other a totally distinct question—whether he was an actor in the murder of the President. The crime with which he stands charged here is being an actor in the murder. The conspiracy is but one of the instruments of proof. Now, I concede that where there is evidence of a conspiracy, and where there is *prima facie* proof connecting the prisoner with that conspiracy, the statements and acts of each of the separate parties *prima facie* connected with that conspiracy are evidence against all and each. But I deny that the statements and acts of any of those parties are evidence against the prisoner or the gist of this indictment—I mean the indictment for murder. Unless they can prove, unless they can establish, that he was present, or within such convenient distance that he could afford aid in that act, it is wholly immaterial what other conspiracy there was.

The question here, then, is whether there was any conspiracy between these parties to kill. If there was a conspiracy to kill, another question follows, dependent upon entirely different principles. If so, when and where was that conspiracy formed, and who were the parties to it? Is it not apparent that this is really the gist of the inquiry here, as totally distinct from the question of murder?

Perhaps we have been led astray a great deal, in the course of this examination on the part of the prosecution and defense, by what I admit to be a general rule, not of law, but a general rule of ethics and philosophy. I concede that ordinarily a conspiracy is a secret; that it may exist without any articles of agreement, oral or written; that there may be no definite plan of action; that there may be not only unknown parties, or parties who do not know the whole object of the conspiracy, associated together; but it must be secret generally, because its exposure is its death, unless, indeed, it be a conspiracy so extensive as to defy the civil authorities; and therefore, ordinarily, a conspiracy is to be proved by circumstantial evidence. That is what, I think, has led us into a very wide field in the course of the examination in this case, which will embarrass its consideration before the jury, and which will in some degree embarrass the discussion of it before court and jury.

The counsel on the other side have undertaken to show that there was a conspiracy. What conspiracy? They have undertaken to show that there was a conspiracy running back, they say, to 1863, when this boy was at school, or had just got home from school. They say they trace that conspiracy down to its final culmination in the death of the President. Is not all that a question for the jury, not for the court? They say they have shown by facts and circumstances that at least during the winter of 1865, and Weichmann says now from sometime in December, 1864, or January, 1865, Surratt was engaged with Booth and Atzerodt and Payne and Herold in a conspiracy. If they have proved any thing in this cause by that witness, if his testimony is to be taken for any thing, they have proved beyond controversy that whatever conspiracy existed at that time was disposed of in the month of March. They have proved that on the 16th of March, three of these four parties, Booth, Payne, and Atzerodt, came to Surratt's room in a great state of excitement; everything had failed, their prospects were at an end; and they have not brought the parties together one single time after that date. They have proved by the declarations of Surratt, given in evidence, that whatever conspiracy existed before had terminated, had failed. Having given that proof, and having shown that from the 25th of March, 1865, until he was brought here in custody, Surratt was not in the city of Washington except on the night of the 3d of April, because they have proved that he left Montreal on the 12th of April at three o'clock, and that he went to Elmira; and they concede that he was there on the 13th, and the proof is inescapable that he could not have got from there here

on the day of the 14th—I say, therefore, having proved that he was not here, they show another conspiracy.

Your honor will observe that I am not arguing this question as to the conclusions to be drawn from it. I am addressing myself to the judicial mind, to show that these questions are open, and must be passed upon by the jury: First, Whether a conspiracy existed in January, February, and March, 1865, to which Surratt was a party, and what became of that conspiracy; Second, Was there another conspiracy formed subsequently, and in the month of April, and who were the parties to it? That they have offered some evidence tending to show that Surratt was here on the 14th of April, that he was with Booth, I do not pretend to dispute now. I am not discussing it before the jury as to the effect of such proof. But we are to meet it, and how are we to meet it? I agree that they have offered proof by Dye and others tending to show that Surratt was at the theatre in company with some of these parties. We have offered countervailing proof as to that. They infer a conspiracy to kill at that time, from these facts. We offer the written declaration of the men who committed the act, and Surratt not one of them. Is it admissible? It is a paper with which he could not have been associated. There is a case which throws some light upon this question, which you will find referred to in Roscoe's Criminal Evidence, the sixth edition, Sharswood's edition, page 387, which goes far beyond what we propose.

"The letters of one of the defendants to another have been, under certain circumstances, admitted as evidence for the former, with the view of showing that he was the dupe of the latter, and not a participant in the fraud. *R. vs. Whitehead*, 1 Dow. & Ry., N. P. 61; 16 E. C. L. R."

Now, if the letters were admissible to prove that one of the parties admitted to have been concerned in the conspiracy was roped in by fraud, that he was duped into it, and therefore the intent was not consummate—if in that case the letters of a co-conspirator, an acknowledged conspirator, were admitted to show that he had been duped into it, how much more must the written agreement of the parties be evidence to show that the other one was not in it at all? I have already said it is not a case in which the prisoner could be concerned in manufacturing evidence for himself; he is no party to it.

Again, if your honor please, it is *ante litem mota*; it is a thing written while the conspiracy was in action, and before it was completed. I concede at once that the declaration of Booth or any of the co-conspirators, made after the execution of the conspiracy, could not be admitted as evidence for the defense; but I beg your honor to take along with that admission the fact that the other side have taken the trouble to offer in evidence Booth's declaration in writing that the conspiracy was formed on that day. Can they now, after producing that diary, Booth's declaration that the conspiracy was formed on that day, with any sort of confidence deny that we can furnish the proof of the acts of the parties before the execution of the conspiracy?

"April 14th, Friday. Until to-day nothing was ever thought of sacrificing to our country's wrongs. Six months we had worked to capture. But our cause being almost lost, something decisive and great must be done; but its failure was owing to others who did not strike for their country with a heart."

As your honor observes, therefore, they have given in evidence, out of the mouth of the chief conspirator, the fact that the conception of the homicide was on the 14th of April. When they have thus given in evidence the written declaration of one of the co-conspirators, made afterwards, I agree—but they have made it evidence; we might have objected to it possibly, because it was an admission made afterwards; but they having given that in evidence, is it possible that, upon any rule for the exclusion of evidence, we can be precluded from giving in evidence the actual agreement of the parties at the time and place, signed by them?

I can feel the full weight of the ground on which the testimony we have heretofore offered has been rejected

by the court. I can feel the full weight of the objection that it was testimony which might have been manufactured by the accused. I can see how it might strike the judicial mind, that a man charged with a great crime should have resorted to every expedient in order to cover up his complicity, and how he might have manufactured proof in Richmond, and in Canandaigua, and in Elmira. I can conceive what weight that may have upon the judicial mind; but when the party is totally disconnected, where there is not a scintilla of proof to show that he ever saw or heard of that paper before the execution of the act of the conspirators, or until he heard of it on this trial; when he is entirely disconnected with it, and it is the act of other parties; and when it is, not the confession and acknowledgment of the man who has done the thing, but the agreement of the parties to do it, excluding the prisoner, I cannot for my life understand what rule of law there is which restrains its admissibility.

I am aware that some elementary writers on the law of evidence maintain that circumstantial evidence is stronger than direct proof. Perhaps in many cases it is so. Although it is certainly very easy to fabricate a train of circumstances tending to produce a particular result, yet it is not so easy as it is for witnesses to come upon the stand and swear directly to a fact where there is no chance of their being contradicted. But I have never seen, so far as I can now recollect, any elementary writer who maintains that circumstantial proof is equal to a written contract of the parties to be charged by that contract. That they have introduced some circumstantial proof is undoubtedly true; but can it have a feather's weight as to the question of admissibility—I am not talking of the effect upon the jury; I have studiously avoided that as far as I can in this discussion, and mean to do so; but I ask, can it weigh a feather's weight with the judicial mind as to the admissibility of that proof, unless there is reason to suppose that it is fabricated proof? Here is a contract signed by the parties to be charged with it. Here is a contract committing men to the gallows—the highest possible form of contract; an obligation that men would not willingly sign unless they were mad, infuriated by passion, or had lost their reason; a contract to commit murder; a contract to commit a murder that has not its parallel in the history of the times; a contract at which human nature starts back appalled—this sort of contract, thus binding these men who are to be charged with the consequences of it, and deposited in the hands of a third party—not retained by them, not kept back and secreted—but by them deposited in the hands of a third party, to be used as evidence against, them in case of accident befalling them. That contract, speaking, acting, living, tells the whole story; not a contract in which the defendant could have participated, not one with which he could have been associated; but a contract speaking with the tongue of fire to every intelligent mind: "We four hold ourselves up as the sacrifice of the nation." Madmen! Infuriated madmen!

Upon what rule of evidence, then, is it so authoritatively said, as has been said by the learned judge at the bar—not the one on the bench, fortunately—that there is no ground upon which such testimony could be admitted? I ask, if your honor please, upon what ground it can be rejected? That it is evidence most pertinent to the issue no man can deny; what its effect may be upon the jury is another question. That it has tendencies to prove, one way or the other, the issue of this cause, no rational mind can fail to perceive; that it is evidence of the highest importance, not only to the fate of this poor prisoner, but to those who are in their graves, murdered, unless they were participants in this conspiracy; that it is of the highest importance to the public interests, aye, and to the public peace—for this nation is agitated with this question, the halls of legislation have rung with it, and will ring again—but I dismiss that; I am led away from what I intended

to do, to confine myself strictly to the question at issue before the court. It is very difficult so to confine myself.

Now, let me restate my propositions: All facts bearing upon the questions at issue before the jury are admissible in evidence, unless they are restrained by some positive rule of law. The fact we now offer to give in evidence is directly pertinent to the issue which the jury are sworn to try; it must, therefore, go to the jury for what it is worth, unless it be restrained by some positive, I say inexorable, rule of law in this case; for it is the life of a human being at stake; and I say it must be admitted, unless there be some inexorable rule of law which will exclude him from showing the truth; and I ask, what rule of law does exclude such proof? It cannot be on the ground of manufactured evidence, manufactured by the prisoner; that is utterly out of the question, and needs but to be stated to be disproved. It cannot be on the ground of evidence produced by his complicity. But suppose they answer it is: I submit to your honor, as matter of law, that that is a question for the jury, and that the court will instruct the jury that, if they find this prisoner had any participation in the preparation of the paper, it is not entitled to their consideration, for he will not be allowed to manufacture evidence for himself; but before that can be said there must be proof either that the prisoner did manufacture it or of some complicity of his in the manufacture of it by others.

Its admissibility depends upon another question altogether. Its admissibility depends upon it being pertinent to the issue, and it is admissible unless excluded by a positive rule of law. I agree a positive rule of law prohibits the introduction of evidence manufactured by the prisoner. He cannot give in evidence his own declarations and acts. He can give in evidence the acts of his co-conspirators. He cannot manufacture evidence for himself. But if the conspirators reduced their agreement to writing at a time and place when the accused could not have participated in such preparation, that writing is the highest proof of the nature of the conspiracy, and whether he was present or not, and whether he had an opportunity or not to enter into that agreement, is a question of fact for the jury. The admissibility does not depend upon that. It is not his act, and, therefore, not excluded on the ground of being his act. It is not evidence of an agreement between himself and a third party, and therefore excluded on the ground of being his act. It is the independent agreement of the parties actually effecting and completing the object and end of that conspiracy to his exclusion.

I would be glad, indeed, to hear how it is possible for a party to prove that he was not in a conspiracy, when there has been some *prima facie* evidence offered that he was. I do not understand the case of the other side. The learned judge who has conducted and managed it all his own way tells us, when we offer proof, "it is not responsive to our proof," and shuts us down. Your honor has, fortunately for us, admitted a good deal of evidence, the effect of which the jury are to weigh; but where there is a conspiracy, the terms of which are reduced to writing and signed by the conspirators, how is it possible for the party accused and charged with being implicated in that conspiracy to prove that he was not? He cannot call his co-conspirators to prove that he was not concerned in it, except by the production of the articles of agreement between the parties and signed by them. I agree that in case a conspiracy is carried into execution, it is competent for him to prove an *alibi*, and prove that he was not there; but that does not prove that he was not in the conspiracy. How is he to prove that he was not a co-conspirator, except by showing the articles of agreement executed by the conspirators, and his name not there? Do conspirators sit with open doors and let third parties come in and hear their deliberations and know their acts, and then a man charged with conspiracy to bring

some one of those third parties to prove that he was not there? That it is a mistake. They do not act so. A conspiracy is no conspiracy after it becomes publicly known, when third parties can come in and can see what is going on. It is secret. How, then, is a man charged with a conspiracy, and who happens to be seen speaking to one of the conspirators two or three times, and knows no more about what is going on than your honor or me—how is that man to prove that he was not a co-conspirator, except by bringing, if he can, the articles of association of that conspiracy, and showing that he was not included in them; particularly when those articles are signed by all the parties concerned in it, declaring that "We, the undersigned, have agreed to do so and so."

I draw a broad line of distinction between that conspiracy set up by the United States in the early part of this case—a conspiracy to abduct, as they call it—culminating on the 16th of March, when the parties never met, so far as evidence in this case goes, after the 17th of March. The 16th was the day of the failure, and they never appeared together again after that time. Booth's declaration, his dying declaration, in that diary, is that that scheme had failed, and they were obliged on the 14th of April to enter into another. The revelations of that man McMillan are that Surratt told him so, that that scheme had failed, that that conspiracy was at an end, and that Booth had written to him (Surratt) in Montreal to come on to Washington to enter into another plan. That conspiracy, then, by their own showing, was done. Here is a new one, with a different object, attained by different means, accomplished for the foulest purpose. That new one they are to complicate him with, and we offer to produce the written contract of the conspirators entering into that association, written and signed by them on the day of its execution. Can it be excluded?

Mr. CARRINGTON. Do you propose to speak, Mr. MERRICK?

Mr. MERRICK. I supposed I should speak after the counsel on the other side.

Mr. CARRINGTON. I think we have the conclusion.

Mr. PIERREPONT. The question arises on our objection.

Judge FISHER. (To the counsel for the prosecution.) You made the objection, and you have the right to open and conclude this question; but you said in the beginning you did not want to say anything on the subject.

Mr. CARRINGTON. But now will Mr. MERRICK have the right to conclude after I reply to Mr. BRADLEY?

Judge FISHER. No; the burden of proof is on you. You waived your right of opening. Mr. BRADLEY has argued the question on the side of the prisoner, and you may now reply to the argument he has adduced, and that will end the matter.

Mr. MERRICK. Mr. BRADLEY and myself had supposed that in the shape which this question had assumed by the acquiescence of counsel on the other side, we should have the opening and the conclusion, although the more regular course I believe to be this: that when evidence is offered, and the counsel objecting to the evidence state their ground of objection, they are, of course, required to open and have the right to conclude; but where there is a clear offer of evidence, and counsel state what evidence they offer, and there is objection to it, and they decline to state their ground of objection, and we are left entirely in the dark as to the ground, and are required to go on and argue the proposition, speculating as to what is the ground of their objection, it changes the relation of counsel, and the parties offering the testimony have the right to conclude. If the gentlemen had availed themselves of their right to state the ground of their objection and gone on, we being advertised of the ground would have had an opportunity to meet it.

Mr. PIERREPONT. We did state all our ground of objection, and the whole ground of objection: that it

was wholly inadmissible as a matter of law, and the counsel mentioned that I stated that every text-book showed it. That was the objection we made, and the only objection we intend to make. When the proper time comes to discuss the legal questions which arise in this case, and which have been discussed for sometime by the learned counsel, I propose to discuss them, but I do not propose to discuss the general questions involved in this trial on a mere question whether you shall admit such evidence as this. But I have nothing whatever to say, and do not intend to say any thing.

Mr. MERRICK. The statement of the ground which the gentleman now says he stated yesterday, is a statement of simply no ground at all.

Mr. PIERREPONT. Very well, we will not state any.

Mr. CARRINGTON. It is for your honor to say.

Mr. MERRICK. Pardon me. Wait till I get through. It is simply stating, "We object to the evidence;" in other words, because, when counsel object to evidence, they mean that it is not admissible in their opinion according to the rules of law. The statement of the ground of objection is a specification of the rule under which it is inadmissible. Where counsel desire to avail themselves of their right, as objecting to testimony, to open and conclude the argument, I apprehend, as a matter of fairness and justice to the other side, they are obliged to specify what particular rule we are required to encounter in order to get in the proof. If they fail to state the particular rule the counsel offering the testimony have to encounter, then the counsel offering the testimony of right open and conclude. I apprehend that is fair and just.

Mr. CARRINGTON. Mr. MERRICK may proceed, and I will conclude the argument.

Mr. PIERREPONT. If Mr. MERRICK wants to speak, we do not object.

Judge FISHER. Do you propose to speak afterwards?

Mr. CARRINGTON. Yes, sir.

Judge FISHER. Very well, you can go on, Mr. MERRICK.

Mr. MERRICK. Then, your honor, if that is the rule which we are to follow, I beg to say to the court that I think my learned associate has so effectually disposed of all possible objections which we could conceive of, that I should be unduly consuming the time of the court if I should continue the argument he has made. There is nothing certainly left for me to argue until I hear from the other side what their ground is; and, if I have not the right to conclude, I shall not speak at all. I do not think there is any room left for me in the discussion of the question.

Mr. CARRINGTON. If your honor please, after the remark made by Mr. MERRICK, I am so much of his way of thinking, that I am almost disinclined to say a single word to the court. However, sir, in view of the high character of the learned gentleman who has addressed the court with so much apparent seriousness, I might be guilty of an omission of duty if I did not state briefly my views on the question which is submitted to your honor for consideration; and I shall be very brief, because it appears to me that it would be an unnecessary expenditure of the public time to discuss a question which your honor is capable of deciding without any assistance from counsel.

What is the proposition? To offer in evidence the written contents of a paper purporting to be executed and signed by one Booth, and which the witness says has been destroyed by himself. If it is any thing at all, it is an offer to give in evidence before this jury the declaration of a third party, not made under the sanction of an oath or the declaration of the accused; or, what is tantamount to his own declaration, the declaration of his associates in crime. Shall I stand here seriously to argue before your honor that hearsay evidence is inadmissible; that a declaration, whether written or verbal, made by a third party not under oath,

is inadmissible evidence to the jury? And shall I stand here to argue before your honor seriously that a declaration made by the prisoner exculpating him is inadmissible in evidence before the jury? Not for a moment. Surely the declarations of the prisoner himself would be inadmissible in evidence. A number of parties, according to the theory of the learned counsel who opened this discussion, may combine and conspire together to commit a crime which he has characterized in terms more eloquent than I am capable of commanding, and one of them, more desperate or more generous than they, may exculpate all who are guilty, by his declarations. If he has a right thus to exculpate his associates, by a parity of reasoning he has a right to exculpate himself. A man may conspire to murder, a murder that sent a thrill of horror throughout the great heart of Christendom, and he goes unwhipped of justice merely by declaring, "I am innocent, and all who are charged with co-operating with me are innocent of this atrocious and enormous crime!" It matters not whether it was written or whether it was verbal; it is either an offer of hearsay evidence, the declaration of a third party, or the declaration of the prisoner or his associates, which is, in legal contemplation, his own declaration, in exculpation or explanation of his criminal conduct.

I dismiss the question, sir. In regard to the imputation, the unjust imputation, upon honorable men who have faithfully served their country, that these conspirators have been murdered, I shall answer it at the proper time and in the proper way. All who were condemned by the military commission deserved and met a murderer's and a felon's doom, and we expect to satisfy this nation, all good men whose opinions are worth regarding, that this prisoner was the armor-bearer of John Wilkes Booth. It was his heart that conceived, his mind that matured, his voice that issued the order in obedience to which the fatal shot was fired which terminated the earthly existence of Abraham Lincoln. Like a coward, false to every sentiment of truth, of honor, and of patriotism, he deserted his country, and when an ocean rolled between him and the home he had dishonored, he boasted of his achievements in crime. Deserting the mother who bore him in her hour of danger and distress; false to his country while professing allegiance to her laws and institutions; false to his Government while enjoying its favor and protection, he seeks to save his blighted life by flight, thus admitting his guilt; and he is here to-day to pay the demands of an outraged and violated law. I do not propose, sir, to discuss this question.

Mr. MERRICK. What authority do you refer to: I supposed it was a question of law. [Laughter.]

Mr. CARRINGTON. I understand, sir, that the object of the counsel is by feeble attempts at wit to excite laughter from certain individuals, who, if they dared, would make a mob in this court of justice. I shall characterize such conduct at the proper time and in the proper way. I submit, however, sir, that all these matters are irrelevant. Why should I refer to authority?

Mr. MERRICK. It was a question of law, I supposed.

Mr. CARRINGTON. A question of law, and none has been discussed. They have referred to a single authority, and what is it? I grant that in the course of a conspiracy a declaration made by one of the parties explanatory of his conduct may constitute a part of the *res gestae*, and under the judicial discretion may be admissible in evidence; but because a declaration accompanying and explaining an act may be admitted in evidence, does it follow, as gravely argued by the learned counsel, that a verbal or written declaration exculpating the party is upon the same principle admissible in evidence? The statement of the proposition is its best refutation. I beg your honor's pardon for having detained you so long. I submit that this evidence is clearly inadmissible.

Judge FISHER. I cannot see that this paper, purporting to have been a written contract, signed, sealed, and delivered into the keeping and possession of a third party, is legal evidence to establish any fact except two. One is that there were two or three or four fools as well as knaves who signed that contract; and the other is that if there were any other parties who were engaged in the conspiracy to take the life of the President, they had more sense than those who signed the contract. That is all it shows; and there is nothing else under the wide world that it can go to prove.

Now, let us see how this question stands. Here are four or five persons who are charged with having been implicated in this conspiracy to take the life of the President of the United States and others in authority here. Let us suppose that they were all here present now and the subjects of this trial, as well as the prisoner at the bar. No man who ever read a horn-book of the law would attempt to say that one of those parties charged in the indictment could give testimony until he had made a confession of his guilt and then been allowed to give testimony before his conviction, or until the trial had proceeded far enough to satisfy the court that no verdict of conviction could be rendered against the party whose evidence it was proposed to bring upon the stand. Then he might give evidence, but that evidence would have to be given under the solemn sanction of an oath. If we are to be so strict in a case of that sort, will it do to say that a man, because he is fool enough to take upon himself the entire guilt, can write a piece of paper, or that three or four men can do it, and put it in the hands of some other person with the view of exculpating some one? That may have been a part and parcel of the conspiracy. These four men might have entered into this contract simply because it may have been a part of the understanding with some of the other conspirators that they should thus screen them and enable them to escape justice. I can see nothing like admissible evidence in this matter at all. It is therefore ruled out.

Mr. BRADLEY. We desire to have an exception noted.

Judge FISHER. Very well.

JOHN MATTHEWS,

a witness for the defense, recalled.

Cross-examined by Mr. PIERREPONT:

Q. Tell the jury from what country you came to this?

A. I never lived in any other country. I was born here.

Q. Where?

A. In Ohio.

Q. From Ohio where did you go for your education?

A. I lived in Maryland until I was sixteen years of age, and I have lived in every other Northern State almost.

Q. What part of Maryland?

A. Western Maryland.

Q. What is the name of the town?

A. Cumberland.

Q. Were you there educated for the stage?

A. No, sir.

Q. Where did you get that education?

A. In various parts of the country.

Q. Did you take any part in the late rebellion?

A. No, sir.

Q. You did not take either side?

A. No, sir.

Q. Your sympathies were neither with the Union nor against it?

A. Yes, sir.

Q. How was it?

A. My sympathies were for the Union; I was sorry to see the country broken up. I had my own ideas as to what brought on the war.

Q. Your ideas were not in favor of putting down the rebellion by war?

A. Not by force of arms, if it could be done by legislation. I once thought it could. I now think it cannot. I have lost all hope as regards legislation.

Q. Were you ever educated for the ministry?

A. No, sir.

Q. Did you make any preparation towards it?

A. No, sir. The suggestion is wrong. I am not good enough. Others may think themselves good enough for the ministry. I have too much respect for it to think that everybody who desires it deserves it.

Q. You are good enough for the stage?

A. No, sir; I do not flatter myself that I am even good enough for the stage. I have too high a respect for that.

Q. Is your memory good?

A. Yes, sir.

Q. Is it uncommonly good?

A. I have very often had great occasion to test it. I have had a wonderful amount of study to do at times.

Q. And you think your memory is rather unusually good, do you not?

A. I think it is ordinarily good.

Q. It is fully up to ordinary?

A. Yes, sir; I think so.

Q. Now, tell the jury whether your memory is better of an event that occurred two years ago, on the 14th of last April, now, than it was ten days after the occurrence. Which do you think would be the better, your memory then or now?

The WITNESS. Of the identical event?

Q. Yes.

A. I think any thing as impressive as all circumstances connected with the assassination will be as deeply impressed on my memory when I am at the age of one hundred as it was one hour afterwards.

Q. Do you think you are more likely to remember correctly now any little incident connected with that event, happening two years ago last April, than you would be ten days after it happened?

A. Well, some trifling matter connected with the incident might possibly be forgotten at the time.

Q. No, not forgotten; but, if you stated a few days after the event a fact carefully, and stated it under oath, would you be as likely to state it correctly then as now?

A. I think so.

Q. Quite, would you not?

A. Yes, sir.

Q. On the 31st of April, 1865, were you examined?

A. I do not know the date. I had the honor of being waited upon several times by various persons.

Q. Were you sworn?

A. I was.

Q. [Exhibiting to the witness a paper.] Take this paper and say whether you have ever seen it before.

A. Colonel Foster examined me. I remember being examined, and I remember that what I said was taken down by a phonographic reporter, but I never read it after that man had deciphered it or written it out in full.

Q. Were you sworn at that time, the 31st of April?

A. It was about that time; I do not know the exact date. I had forgotten about Colonel Foster. I thought Mr. Burnett was the man, but having seen the phonographic reporter since, I remember there was an examination before Colonel Foster.

Q. Now, I will ask you whether this question in these words was then put to you, during the April of the assassination: "When did you last see him," (Booth,) and whether you answered, "A day or two before this transaction."

A. I do not know whether the question was put to me—

Mr. MERRICK. One moment. The witness states that he never saw that paper at all; that he gave some testimony under oath, which was taken down by a phonographic reporter, but after it was deciphered he never saw it and never read it. Counsel is examining him from a paper which the witness never saw. I

submit to your honor whether that is a regular course of examination.

Judge FISHER. It is the course you have been proceeding on from the very beginning of this trial. You have picked up somebody's book and put questions out of that book, and it did not appear to the court or jury that anybody had read the book.

Mr. PIÉRRÉPONT. It was not necessary that they should, either.

Judge FISHER. What we want to know is, whether the witness has ever said thus and so.

Mr. PIÉRRÉPONT. (To the witness.) The question is whether, in the month of April, 1865, a few days after the assassination, you were asked this question, "When did you last see him," referring to Booth; and whether you replied, "A day or two before this transaction." Did you say that?

A. I do not remember whether the word "last" was put in the interrogatory or not.

Q. Was your answer, "A day or two before this transaction?"

A. Very likely. I cannot say positively that it was.

Q. Were you asked "where," and did you answer, "He passed me on the avenue?" Do you remember that?

A. I remember passing him several times on the avenue.

Q. Did you say that?

A. Possibly I did.

Q. Were you then asked, "Did you have conversations," and did you reply, "He was on horseback; only a few words; we passed the compliments of the day?" Did you swear to that?

A. Possibly I did; I often saw him on horseback, and often passed the compliments of the day.

Q. Did you swear that that was the last time you saw him?

A. I cannot say that I did.

Q. Will you say you did not?

A. No, I will not; I think I did say that.

Q. You think it was a mistake?

A. I do not know whether I was most likely to be mistaken or the man who wrote down the examination.

Q. I want to have you tell the jury.

A. I cannot say that; I do not know that I am more infallible than anybody else.

Q. Did you state in that examination what he gave you?

A. No, sir; the reason I destroyed the paper was because I knew very well—

Q. Did you state that he gave you any thing?

A. No, sir. Those who were the wisest knew the least at that time.

Q. I will read further, then:

"Q. When did you see him immediately prior to that?"

"A. Not for some time."

Did you say that?

A. I had not seen him, I think, for some time before the meeting on the avenue.

Q. Then, if it was two days before the murder, it alluded to that, did it? Did it allude to the time prior?

A. I suppose it did.

Q. Were you also asked in that examination, "Had you any conversation with him during that time, besides passing the time of day?" And did you answer, "Nothing that I remember?"

A. I cannot possibly say.

Q. Did you state at the time that he gave you any thing?

A. I did not.

Q. You are sure about that?

A. Pretty sure about that.

Q. And your memory is good?

A. I think on that point it is very good.

Q. Now let me read a little further:

"He presented me with a box in reference to a present I had made him."

A. Oh, yes; that was something that occurred a long time before.

Q. Let me continue the reading:

"Some personal ornament. It was an empty box, in which he used to carry his sword."

Did you state that?

A. I remember such an occurrence as that.

Q. Then you do remember that now?

A. Yes; but it did not occur at the interview on the avenue.

Q. My question is whether you said so; that is all?

A. At a prior time. I remember saying so.

Judge FISHER. The question is, whether, on your examination before Colonel Foster, you said that?

A. I remember saying that he presented me with a box, but that was several days before this interview.

Q. (By Mr. PIÉRRÉPONT.) Did you tell anybody that he presented you with this letter?

A. I did.

Q. I mean during this examination. Did you state on this examination that he presented you with a letter?

A. No, sir.

Q. Now, let me call your attention to this again:

"Q. When did you last see him?" (Alluding to Booth.)

"A. A day or two before this transaction."

Did you say so on that examination?

A. I do not remember that the word "last" was included in the form of the question. I may have been asked when I had seen him.

Q. Well, what did you say?

A. I say I may have been asked when I did see him, but I think not when I last saw him.

Q. What did you say? "A day or two before this transaction?"

A. Possibly.

Q. Did you?

A. I cannot say positively.

Q. What is your memory about it?

A. It is possible.

Q. It is possible you did say that you saw him a day or two before this transaction. Did you say immediately after that you had not seen him but once?

A. On that day.

Q. But once in a long time?

A. It strikes me that I had not seen him for a day or two before that Friday, because I think I asked him where he had been that I had not seen him.

Q. Now, let me ask you, when did you last see him before the assassination?

A. On the stage of the theatre that night.

Q. When last before that?

A. On the avenue.

Q. When last before that?

A. I cannot tell. It may have been a couple of days, I think.

Q. What do you think about it?

A. I think a couple of days had intervened.

Q. Where did you see him?

A. I think I met him up in the neighborhood of the theatre.

Q. What day?

A. I cannot positively say as to the particular day.

Q. Can you not tell the jury if, in answer to this question—"When did you last see him"—you did not say, "A day or two before this transaction," alluding to the assassination?

A. Yes, there or thereabouts.

Q. Did you say that?

A. Possibly.

Q. Then, in answer to the question when you last saw him, you did not state that you saw him on the 14th?

A. No, sir.

Q. But you stated that it was a day or two before?

A. Yes; I stated I had seen him a day or two before, but I do not remember saying that was the last time I saw him.

Q. Do not let us have any misunderstanding on

that. My question is, Did you not, in reply to the inquiry, "When did you last see him," say, "A day or two before this transaction?"

A. I say again, I do not remember that the word "last" was included in a form of the interrogation. I remember to have been asked when I had seen him.

Q. Did you intend to convey the idea on that examination that you had not seen him for a day or two before the assassination?

A. Well, I answered the question as it was put.

Q. Did you intend to convey that idea, and was that the idea that was put to your mind?

A. I did not wish to have it understood that I had been with him that day, because I had understood that persons who were seen speaking with him that day had been interrogated on the point.

Q. Did you wish it to be understood under oath there that you had not seen him that day?

A. If I had seen him that day, I would rather have concealed the fact.

Q. Did you intend under oath to swear that you had not seen him that day?

A. No, sir.

Q. Did you so swear?

A. Because the question was not put in the form you put it now.

Q. Did you so swear?

A. I do not think so, understanding the question as I do now.

Q. Did you not understand the question then?

A. Possibly; but I do not understand it to be the same. I did not understand the question to be then what it is now.

Q. Do you say now to these gentlemen that on that day you did not intend to let it be known that you had seen him?

A. Distinctly.

Q. Then, if this question was put, "When did you last see him;" did you then say, "A day or two before this transaction?"

A. Again I say I do not believe "last" was mentioned in the question.

Q. I say if it was mentioned, was that your answer?

Mr. MERRICK. I object to the question.

Judge FISHER. Let him answer whether or not the question was asked as to when he last saw Booth.

Q. (By Mr. PIERREPONT.) Was this question asked you in these words: "When did you last see him?"

A. Again I say I do not think the question was put in that form. I think not.

Q. Do you know what answer you gave?

A. A couple of days before.

Q. You say the reason you did not want it known that you saw him that day was that you thought it would have involved you?

A. Yes.

Q. Do you think it involved you any more that you saw him that day, than that you saw him a day or two before the assassination?

A. No, sir.

Q. Did you not answer that you saw him a day or two before the assassination?

A. I think it likely—possible.

Q. You thought that it would involve you just as much to have seen him a day or two before?

A. No, sir.

Q. You did not think it would?

A. No, sir.

Q. Why not?

A. Because it was not so near the hour in which the deed was done. Before the Judiciary Committee I was allowed to read my examination previous to signing it. I had not the privilege this time.

Q. I am merely asking you, on your examination in April, a few days after the assassination—

A. But I have yet to be shown that that is my examination.

Mr. PIERREPONT. I have not asked you as to that.

By Mr. MERRICK:

Q. Counsel has asked you why and wherefore you did several things. Tell the jury why you destroyed that paper?

Mr. PIERREPONT. You need not answer any such question.

Judge FISHER. Nothing of that sort has been asked on the cross-examination.

Mr. MERRICK. I think something has been answered about it.

The WITNESS. Will your honor allow me to make an explanation?

Judge FISHER. If there is any thing you want to correct, I will hear you.

The WITNESS. I should like to explain that interview, as it occurred between Mr. Booth and myself. When that paper was given to me—

Mr. PIERREPONT. Wait.

Judge FISHER. All testimony in regard to that has been ruled out.

The WITNESS. But, your honor, some of the newspapers said it was given to me with an air of great secrecy—

Mr. PIERREPONT. Stop. We are not contending with the newspapers. We are in a serious trial in a court of law.

Judge FISHER. You had better answer such things through the newspapers.

Mr. PIERREPONT. If we undertake to contend with all the newspapers of this country, we shall have some difficulty.

The WITNESS. But I am the only sufferer.

Mr. PIERREPONT. But you cannot say any thing about it here.

Mr. MERRICK. I submit to your honor, that if the witness wants to make an explanation, finding that his statement yesterday has been misunderstood by anybody, he still being on the stand, it would be but a kindly privilege at best to allow him to make his explanation. It can do no harm to anybody.

Judge FISHER. He says the newspapers state that the paper which was spoken of yesterday was handed to him with an air of great secrecy. (To the witness.) You may state whether it was handed to you with an air of great secrecy or not.

Mr. PIERREPONT. I do not object to that.

The WITNESS. He simply said—

Mr. CARRINGTON. Stop.

The WITNESS. First I am told to go on and then you tell me to stop.

Mr. CARRINGTON. You are a literary gentleman, and you understand what his honor told you.

Judge FISHER. Just say whether it was handed to you as a confidential thing, or with an air of secrecy, or not.

A. It was not.

By Mr. MERRICK:

Q. Did you have any conversations with him?

Mr. PIERREPONT. You cannot give that.

Mr. MERRICK. I want to prove a substantial thing, to meet the testimony offered by the other side to the fact by a couple of clerks here, that they supposed it was Surratt they saw talking with Booth at that place; I want to know whether he was talking to Booth, and whether he had a conversation or not.

Judge FISHER. That he spoke of yesterday.

Mr. MERRICK. (To the witness.) How long was that conversation?

A. From three to five minutes.

Judge FISHER. That is just what he said yesterday. He told all about that yesterday.

THOMAS T. ECKERT,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. Have you ever seen this diary before? [Handing to the witness Booth's diary.]

A. I have.  
 Q. Did you ever see that letter on that loose leaf? [The leaf referred to by L. B. Baker was handed to the witness.]  
 A. I have.  
 Q. Is that the original letter obtained from Dr. Stewart?  
 A. I do not think it is.  
 Q. Where is the original?  
 A. I saw it last in the War Department, when I was here sometime ago.  
 Q. The War Department has got the original; and this is not the original?  
 A. I do not think it is.  
 Mr. CARRINGTON. You say you think it is not?  
 A. I think it is not; I am certain about it.  
 Mr. PIERREPONT. Have you seen the paper you speak of?  
 The WITNESS. The one I think is the original?  
 Mr. PIERREPONT. Yes.  
 A. Yes, sir.  
 Q. (By Mr. PIERREPONT.) Do you know whether it was part of this diary, or a blank leaf from it?  
 A. I believe it to be a blank leaf from that book.  
 Q. Can you find the paper?  
 A. I do not know. It is my impression you have it. It may be in your possession; I last saw it in your possession.  
 Mr. PIERREPONT. I know you showed me some paper when you were here last.  
 The WITNESS. Yes, sir.  
 Q. Is that the one?  
 A. Yes, sir.  
 Q. Is that the one you think was the original?  
 A. Yes, sir.  
 Q. That is what we want to get at. Where did you get it?  
 A. I got it from either General Baker or his brother; it is my impression, General Baker.  
 Q. Tell when you got it?  
 A. I cannot give you the date.  
 Mr. BRADLEY. I do not know for what purpose this is admissible, and I object. They produce a paper as an original paper, and we show it is not an original paper. That is the end of the inquiry, I suppose.  
 Judge FISHER. Can they not test the memory of the witness about it, so as to know whether he is sure that he has spoken right?  
 Mr. BRADLEY. But then he is asked where he got it and when he got it.  
 Judge FISHER. All with a view to test his memory, I take it.  
 Mr. BRADLEY. But he says he saw it lately, and saw it last in the possession of the counsel. We do not want any memory about it.  
 Mr. PIERREPONT. Do you remember when you saw it last?  
 A. I do not remember the day; I believe I was here the week before last.  
 Q. Do you remember where you got it?  
 A. At the War Department.  
 Q. Do you remember its contents?  
 Mr. BRADLEY. I object.  
 Mr. PIERREPONT. I ask whether he remembers—  
 Mr. MERRICK. Let them produce it. It is traced to them; they have it in their possession; and Mr. Eckert says the last time he saw it it was in Judge PIERREPONT'S possession.  
 Mr. PIERREPONT. I have seen some such paper.  
 Mr. BRADLEY. If there is any thing further to be said about it let it be produced.  
 Mr. PIERREPONT. Yes; there will be. (To the witness.) Do you know in whose handwriting it was?  
 Mr. MERRICK. I object to any further—  
 Mr. PIERREPONT. I ask the witness, Do you know in whose handwriting that paper was?  
 Mr. MERRICK. I object. They offered in evi-

dence a letter in a diary, and represented that it was the original, and attempted to prove it.

Mr. PIERREPONT. We did prove it.  
 Mr. MERRICK. You proved it your way; but now we prove our way that it is not the original, and this gentleman, General Eckert, says that the original was obtained from the War Department, and the last time he saw it it was in the possession of the counsel on the other side, who offered this during the trial of this case. And now, before any further inquiry is made with regard to that original paper, I think, as it is in the possession of the gentlemen, it ought to be produced.  
 Mr. PIERREPONT. Well, it is not in my possession, probably, but still it is possible. I have not kept any original papers.  
 Mr. BRADLEY. The court will remember the paper they offered to undertake to prove as a leaf torn out of the diary.

Mr. PIERREPONT. Certainly. (To the witness.) Did you get the original from Doctor Stewart?

A. No, sir.  
 Q. Then you do not know whether it was the original or not?

A. No, sir; I do not. It is my impression it is the original.

Q. Did you ever get it from him?  
 A. I did not.  
 Q. Then you do not know it is the original?  
 A. I do not; it is only my impression.

Q. (By Mr. BRADLEY.) You say you got it from one of the Bakers?

A. Yes, sir.  
 Q. From whom did you get it?  
 A. I think from General Baker; but I may be mistaken; it may have been his brother.

Q. (By Mr. MERRICK.) Do you know where General Baker is?  
 A. I do not.

Q. (By Mr. PIERREPONT.) Can you tell whether that was in an envelope or not?

A. It was not in an envelope.  
 Q. See if it is in the pocket of the diary?  
 A. It is not.

Q. You have seen a copy of the paper, have you not? It was printed in the newspapers, was it not?

A. I believe it was, but I do not remember to have seen it; I only know from others that it was printed.

Q. It was printed in the *Herald*, was it not?  
 A. I did not see it in the *Herald*.

The court took a recess for half an hour, re-assembling at 12:40.

#### THOMAS T. ECKERT'S

examination continued.

By Mr. PIERREPONT:  
 Q. Look at that leaf, on which there is something to Doctor Stewart. That is the one you spoke about, is it?

A. Yes, sir.  
 Q. See whether that is a part of a leaf of that diary?

Mr. BRADLEY. I do not know, if your honor please, whether this is admissible, and therefore I object.

Mr. PIERREPONT. I am cross-examining on the subject of this letter.

Mr. BRADLEY. I am quite aware of it, and I object to the cross-examination. Whether that paper, which you produced as the original sent to Dr. Stewart, was taken out of that book or not is wholly immaterial.

Mr. PIERREPONT. It will not be as to whether it was sent to Dr. Stewart; it is part of the same thing.

Judge FISHER. I understand the witness to have said on his examination-in-chief that he did not believe this to be the original letter addressed to Dr. Stewart.

Mr. PIERREPONT. I understood him so.

Judge FISHER. Is it the object of your cross-examination now to test his memory and belief?

Mr. PIERREPONT. No; the object of it is to show that this was the only letter ever written by Booth to Dr. Stewart.

Mr. BRADLEY. And to show that he asks the witness to compare that and see whether it was taken out of that diary.

Mr. PIERREPONT. I do. That is part of the evidence.

Mr. BRADLEY. Does it follow that the letter of Booth to Dr. Stewart was certainly taken out of the diary?

Mr. PIERREPONT. It will presently.

Judge FISHER. We will see what it is.

Mr. PIERREPONT. This would be a matter of no consequence but for the mystery which has always been sought to be thrown over this diary for some reason, I do not know what. (To the witness.) Now, look at it and see how that is.

Mr. BRADLEY. I object. The jury can examine that matter just as well as General Eckert can, and see whether that appears to be taken from the diary. We do not want his opinion about it.

Mr. PIERREPONT. He can examine it.

Judge FISHER. I do not see, that the question is inadmissible. I think it is a pertinent question.

Mr. BRADLEY. I except to your honor's ruling.

Mr. PIERREPONT. Now, answer.

The WITNESS. I think it came from this diary.

Q. Did you find where it was torn out?

A. I did find it once; I have not looked since.

Q. Now, look at the paper and state in whose handwriting the leaf is.

Mr. MERRICK. If you know the handwriting.

Mr. PIERREPONT. Yes, if he knows the handwriting; and he may compare it with the rest of the handwriting, which has been already proved.

Mr. BRADLEY. I must interpose an objection; it is wholly immaterial whether that came out of that diary or not; the question between us is, what paper was sent by Booth to Dr. Stewart.

Mr. PIERREPONT. I know it is.

Mr. BRADLEY. I am talking to the court, and you will wait till I am done, if you please. The counsel produced a letter which they say was sent by Booth to Dr. Stewart. We produce General Eckert to show that that was not the paper which was sent by Booth to Dr. Stewart. Is it a matter of any sort of consequence whether there were half a dozen letters written in that book, or on paper torn out of that book, or not? Does that throw any light on the question, whether or not General Eckert recognizes the original, or says that this is not the original letter sent to Dr. Stewart?

Mr. PIERREPONT. I am going to show that it was.

Judge FISHER. I understand it is proposed to prove that this is the very letter; and any questions that will lead to that, I suppose, are admissible.

Mr. BRADLEY. If that is so, if General Eckert did not see the other paper in the possession of counsel here, and told him that that was the original, and if that paper is not kept back, it is another matter. I do not pretend to say that it is not proper to examine General Eckert to see whether he knows that that paper is the original one or not; but it is not to be proved by General Eckert that that was the handwriting of Booth, and that that was taken out of that book. That is not the way to prove it. If counsel had the two papers, and he pointed out the original one and said this was not the original one, we could get at it.

Mr. PIERREPONT. We shall get at it, if we go on under the rules of law.

Judge FISHER. I understand that Mr. PIERREPONT is trying to show that this is the one.

Mr. PIERREPONT. That is the very object. (To the witness.) Now, tell us whether that is Booth's handwriting or not, in your judgment?

Mr. MERRICK. Let me ask General Eckert if he ever saw Booth write.

A. No, sir, I did not.

Mr. BRADLEY. Did you ever receive any papers from him and act upon his writing?

A. No, sir.

Mr. BRADLEY. Then, do not say any thing about it.

Mr. PIERREPONT. The witness has had experience in comparing handwritings. It is already proved that this is in the handwriting—

Mr. BRADLEY. I do not care what is already proved. I ask whether General Eckert is an expert.

Mr. PIERREPONT. I will ask him then on that very point. (To the witness.) Will you state whether you are an expert in handwriting and deciphering and all those things connected with it?

A. I have had a great deal of experience; and, so far as my own business is concerned, feel that I can judge very correctly.

Q. Now, I ask you in whose handwriting that is?

A. It compares with the handwriting in the diary.

Q. In whose handwriting is that?

A. In the handwriting of Booth.

Q. Now, have you ever seen any paper in the handwriting of Booth that was sent to Dr. Stewart, in your opinion, unless that is the one?

A. No, sir.

Q. You never have seen any other paper in the handwriting of Booth which was sent, to your knowledge or belief, to Dr. Stewart?

A. None in the handwriting of Booth.

Q. You were inquired of about another paper. Will you tell the jury where you last saw that other paper?

A. I saw it in this book.

Q. Was it one of the leaves of the book?

A. I believe it was.

Q. Tell where you saw it. Where was it lying?

A. I handed it to you at the desk. I sat in the chair.

Q. You have never seen it since?

A. Never.

Q. Did you ever receive any papers from Dr. Stewart?

A. No, sir.

By Mr. MERRICK:

Q. Did you point out to Judge PIERREPONT the difference between that paper and the one you said was the original?

A. Yes, sir.

Q. Did you not tell Mr. PIERREPONT that that was not the original paper that Dr. Stewart had?

A. The paper from Dr. Stewart? I did.

Q. You told him the paper that came from Stewart was not that paper, but the other one that is not here?

A. The other paper about which I have just said that I saw it in this book, is the one I believe to be the original paper sent to Dr. Stewart.

Mr. BRADLEY. By Booth?

A. I do not know by whom.

Mr. MERRICK. That was the letter from Booth?

A. Yes, sir.

Mr. PIERREPONT. The objection is that he does not know of any paper that came from Booth, he says.

Mr. BRADLEY. Never mind about that now. Let us go on with the examination.

By Mr. MERRICK:

Q. That paper you say you believe to be the original you last saw in the possession of the counsel on the other side?

A. Yes, sir.

Q. Was not the handwriting of that paper which you saw in the hands of the counsel on the other side like the handwriting of this one?

A. It did not seem to me to be the same handwriting.

Q. Did you know in whose handwriting it was?

A. I did not.

Q. Did you compare that with any of Booth's handwriting?

A. Yes, sir.

Q. Was it on a leaf of the diary?

A. It was.

Q. The same diary as that?

A. Yes, sir.

Q. Was it attached to the diary or detached?

A. Detached, when I saw it.

Q. Did you see that one also, the one before you, at the same time?

A. No, sir; not at the same time.

Q. When was the first time you saw that one?

A. I do not remember the date; about the time the diary came into my possession first.

Q. About the time the diary came into your possession you saw the one that is now in the diary?

A. Yes, sir.

Q. When did you first see the other one?

A. It was after the examination of Dr. Stewart; I do not remember the date.

Q. How do you know that the other one is the original paper?

Mr. PIERREPONT. I object. If he says that he does not know that it is the original paper, I object to his being asked how he knows.

Judge FISHER. I do not suppose it will make any difference; if he does not know it, he cannot tell how.

Mr. MERRICK. He said it was the original paper.

Mr. PIERREPONT. No, he did not.

Judge FISHER. Let us see what he does say about it.

By Mr. MERRICK:

Q. How do you know it?

A. It was the paper handed to me by Baker, and it is the paper described by Dr. Stewart in his statement.

Q. Which of the papers came to you first?

A. This.

Q. Then did you send for the other one?

A. I did not.

Q. How did the other one come?

A. It came after the arrest of Dr. Stewart.

Q. And is the paper described by him as the one he received?

A. Yes, sir.

Q. This one came to you with the diary, and you never saw the other one until after the arrest of Dr. Stewart?

A. No, sir.

Q. And when he was arrested the other paper came out; and the other paper is the paper which he describes as the one he received from Booth?

A. Yes, sir.

By Mr. BRADLEY:

Q. Now, look at that paper, and see whether it has ever been pinned together, as though it contained any money or any thing else in it.

A. No, sir; it does not seem to have been pinned.

By Mr. MERRICK:

Q. Has it any folds in it?

A. Yes, sir.

By Mr. BRADLEY:

Q. Was or was not the paper to which you refer as the original pinned, as though it had contained the money referred to in the paper, or something else?

A. Yes, sir; it contained pin-holes.

Q. Was that paper which you have before you now detached from the diary at the time you received it?

A. It was.

Q. And enclosed in any envelope?

A. No, sir.

Q. Simply folded, or opened?

A. I do not remember about its being folded. I do not recollect that.

Q. There are no marks in it showing that it had ever been pinned together, and the other paper has marks as if it had been pinned together and contained something.

A. It has.

Q. Was or was not the other paper—the one not produced—discolored and dirty, as though it had been carried in the hand of a servant or some one else?

A. It was.

Q. Is that one so?

A. It is discolored, but not to the extent the other was.

By Mr. MERRICK:

Q. It is hardly worth while to ask you, but the jury may not know you, and therefore I ask what was your position relatively to the Government of the United States at the time these papers came into your possession?

A. I do not think I was Assistant Secretary of War at that time; the appointment was made, but I had not accepted it.

Q. But you were acting as Assistant Secretary of War?

A. Substantially.

By Mr. PIERREPONT:

Q. This paper that you speak of there you say was in the diary when you first saw it, in Booth's handwriting?

A. Yes, sir.

Q. How long after the evidence given by Lieutenant Baker here about that paper was it that you spoke to counsel about the other paper?

A. I do not know at what time he was examined. I think it was Saturday, and it was after Baker's examination; but how long after, I do not know.

Q. It was after Baker had produced this?

A. Yes, sir.

Q. And the paper you then showed, and that you last saw in the diary, you say was not in Booth's handwriting?

A. I do not believe it was.

Q. You have been asked about the description of that other paper. Now, will you tell us what was written on it?

Mr. MERRICK. I object to that. I want the paper. He says you have got it, and I object to proving its contents in this way.

Mr. PIERREPONT. No, the general does not say I have got it.

Mr. MERRICK. He says he saw it last in your possession.

The WITNESS. In this diary.

By Mr. PIERREPONT:

Q. Where was the diary?

A. I handed the diary to you at the desk. You were sitting where you are now.

Mr. PIERREPONT. I have no doubt that was so, because I remember very distinctly to have seen it.

Mr. MERRICK. Now, I object to his stating what is in it, because counsel is shown to have been in possession of it.

Mr. PIERREPONT. If it is got at in any way, it is very easy, certainly, to show its contents. I believe it has been printed.

Mr. BRADLEY. It is very easy to show under oath that it has been got out of the way.

Mr. PIERREPONT. It has been printed, too.

Mr. MERRICK. I do not know any thing about that. I have heard of its being printed, but I have not seen it. If it is traced to the counsel, or any living person, its contents cannot be proved until the person to whom it is traced accounts for its loss. I understand that to be the rule of evidence.

Judge FISHER. That is so.

Mr. PIERREPONT. That is clearly so, except that in their examination the gentlemen have asked about it.

Mr. MERRICK. Not a word about contents.

Mr. BRADLEY. I asked for a description of the paper, the dirt upon it, but not one word of contents.

Mr. PIERREPONT. Very well, I will get a description of it. The paper may possibly be found. I do

not know what papers we give to Mr. Middleton, but if they are looked over this may be found.

Mr. MERRICK. I do not understand that any papers have been with Mr. Middleton except those offered in evidence.

Mr. PIERREPONT. Yes, the diary and all the photographs have been in his hands.

Mr. MERRICK. Whatever is in evidence I want to see. If he has any thing that I have not seen I want it out.

Mr. PIERREPONT. I do not know whether he has it or not. He has had the diary, and we have all had the diary about here, and I have no doubt General Eckert put that paper in the diary, for I remember distinctly having seen it.

Judge FISHER. Is this the paper that was offered in evidence?

Mr. PIERREPONT. No, another one.

Mr. MERRICK. All I say is, if, as the counsel states, Mr. Middleton has papers which have not been offered in evidence and I have not seen them, I want to see them.

Mr. BRADLEY. Do I understand the gentleman to say that this paper was put in Mr. Middleton's possession?

Mr. PIERREPONT. I do, if the diary has been; for it has never been taken out of the diary by me.

Mr. BRADLEY. Your honor has inspected the diary, and we have all seen it; the jury has seen the diary, and there was but one loose paper in the diary except the papers taken out of the pockets. Whether there was another one there or not when in the hands of the counsel he can say, and what became of it he can say.

Mr. PIERREPONT. I cannot say.

Mr. BRADLEY. You will have to say before you offer any evidence about it.

Mr. PIERREPONT. I am not going to offer any evidence as to it now; I am going upon another subject entirely. (To the witness.) After Baker was examined, and after Baker stated that he had obtained that paper thus taken from Dr. Stewart, you then showed this other paper which you last saw in the diary, did you?

A. Yes, sir.

Q. And it was not in Booth's handwriting, in your judgment?

A. No, sir.

Q. And you so stated it to me, did you not?

A. Yes, sir.

Q. And you stated to me that you could not tell yourself whether Dr. Stewart ever had it—that you never took it from him?

A. I did.

By Mr. MERRICK:

Q. Did you not state to the counsel that it was the one Dr. Stewart had?

A. That impression I got from Dr. Stewart's statement.

Q. Did you not state to the counsel that it was the one that came from Stewart?

Mr. BRADLEY. He has been asked about the conversation. Let him state the whole conversation.

Mr. PIERREPONT. I am perfectly willing that that should be done, and would prefer it rather than not.

The WITNESS. I stated to him that I believed that to be the paper taken from Dr. Stewart.

By Mr. BRADLEY:

Q. Did you or not tell him that Baker, who had just been examined in your presence and hearing, was mistaken about that, and that the other was the original paper?

A. I did not hear the statement made by Baker, nor was it explained to me by any one; but simply that Baker identified this paper as being the paper taken from Dr. Stewart.

Q. Who told you that?

A. Judge Pierrepont.

Q. Then what did you tell him?

A. That I did not believe this was the paper.

Q. Then did he have the original, or did you give it to him?

A. I gave it to him.

Q. And he put it in that diary?

A. The original was in my possession, left by me in my safe at the War Department, and I presume not seen by any one until I returned here on the 28th or 29th of June.

Q. Then you went and got that original and brought it down here and showed it to the counsel and left it with him?

A. Yes, sir.

Q. You were here then, under a subpoena as a witness for the United States?

A. Yes, sir.

By Mr. PIERREPONT:

Q. And you left it, as you stated, in the diary?

A. In this diary.

Q. Did you not state to me at the time that you did not know of your own knowledge, and could not testify, that Dr. Stewart ever had that paper?

Mr. BRADLEY. Do not answer that, because it has been asked three times and answered.

Mr. PIERREPONT. The other side have asked about this conversation, and I said I was willing that it should come out.

Judge FISHER. What is the question now?

Mr. PIERREPONT. My question is, whether the witness did not state to me at the time that he did not know of his own knowledge that Dr. Stewart ever had it.

Mr. BRADLEY. The objection is, that the question has been asked and answered twice before, if not three times.

Mr. PIERREPONT. Very well, I will ask if he did not state at the time that it was not in Booth's handwriting, in his judgment?

A. I did.

Mr. BRADLEY. That he has answered before.

By Mr. MERRICK:

Q. But you did state that the other was the original paper which came from Dr. Stewart, in your belief?

A. In my belief; but I did not know it of my own knowledge.

Q. Did you tell the counsel that that paper came to you after Stewart's arrest?

A. I do not remember that I did.

By Mr. PIERREPONT:

Q. Did you ever tell me a word about Stewart's arrest, or that he ever was arrested even?

A. I do not think I did.

Mr. PIERREPONT. I have never heard of it until now.

By Mr. MERRICK:

Q. Have you ever traveled from Montreal to New York?

A. I never have.

By Mr. BRADLEY:

Q. I suppose you have gone from Albany to Canandaigua often?

A. Not that I remember.

Mr. PIERREPONT. If the paper General Eckert has been speaking of can be found, I want to understand now whether the counsel will let it come in, without the general being kept here, because we mean to put it in evidence; if not, we shall have to keep him here.

Mr. BRADLEY. It will be time enough to answer when the gentlemen bring it; he can come here on a telegram at any time.

Mr. PIERREPONT. Then we shall have to keep him here.

Mr. BRADLEY. I have no sort of hesitation, on

General Eckert's account, in saying that if the general will identify that as the paper in any way, they may offer it in evidence as if the general were here; but I want it identified.

Mr. PIERREPONT. If it shall be found, we shall want to prove it by General Eckert, and give its contents in evidence; it was printed in the newspapers.

Mr. BRADLEY. How came it to be printed?

Mr. PIERREPONT. I saw it in the *Herald*; I never knew of it until a gentleman showed it to me a few days since printed in the *Herald*.

Mr. BRADLEY. (To the witness.) Did you ever furnish a copy of that?

A. No, sir.

Q. You had it locked up in your safe two years?

A. I had; I did not see it printed, but I heard of its being printed.

By Mr. MERRICK:

Q. Have you testified to this matter before?

A. I did before the Judiciary Committee.

Q. And you testified that that was not the original paper?

A. This is the original paper written by Booth, in my opinion.

By Mr. BRADLEY:

Q. But is that the paper which was sent to Dr. Stewart?

A. That I cannot say.

By Mr. PIERREPONT:

Q. Was the paper before the committee?

A. Yes, sir.

JOHN A. W. CLARVOE,

a witness for the defense, recalled.

By Mr. MERRICK:

Q. I understood you to say, in your examination before, that you were in Canada in April, 1865?

A. Yes, sir.

Q. State when you returned to Washington; where you started from in Canada.

A. From Montreal.

Q. At what time of day?

A. 3:15, I think.

Q. What time did you get to Albany?

A. I did not come by way of Albany; I came by way of Springfield, Massachusetts, through St. Albans, Springfield, and New York city.

Q. What time did you get to New York?

A. I left Montreal on Saturday at 3:15, and got to New York on Sunday afternoon, the 23d, about two o'clock.

Q. About twenty-three hours from Montreal to New York?

A. Yes, sir.

Q. Was that the shortest route by which you came?

A. I was informed that it was the quickest route. On my first trip to Canada, I went through Troy up to Whitehall, and from there by steamer. Coming back, I came by way of St. Albans.

Q. Did you go on straight through?

A. Yes, sir.

Q. What time did you leave New York for Canada, when you first went by Troy?

A. I left that night about ten o'clock.

Q. What time did you get to Albany?

A. I passed through Albany in a sleeping-car; I do not recollect the time.

Q. What time did you get to Montreal?

A. At ten o'clock on Saturday, the 22d.

Q. Can you state now the time, as near as you can fix it, between Albany and Montreal?

A. I cannot.

Q. Can you state the time from New York to Albany?

A. I am not positive that I can.

Q. Can you not come pretty near it? That is a very well-known route.

A. I judge it to be about twenty-three hours' ride from New York to Montreal.

Q. How is it from New York to Albany?

A. Five hours, I should judge.

Q. Then from Albany to Montreal the time is twenty-three hours, less five?

A. Yes, sir.

Q. Did you ever travel west from Albany?

A. Yes, sir.

Q. Can you state the time from Albany to Syracuse?

A. No, sir; I cannot.

Q. What is the time from Albany to Buffalo?

A. That I do not know. I have not taken any minutes of my traveling on those roads.

JOHN T. FORD,

a witness for the defense, recalled.

By Mr. MERRICK:

Q. Were you in Carroll prison with Weichmann?

A. I was.

Q. Is this the man?

A. Yes, sir; the one now sitting behind Judge PIERREPONT.

Q. How long were you there with him?

A. Between thirty-nine and forty days. I think it was thirty-nine and a half days.

Q. Did you tell him that he was mistaken in his testimony as to the time when Pescara was performed?

Q. Yes, sir.

Mr. CARRINGTON. We object to all this.

By Mr. MERRICK:

Q. Did he ask you what night Jane Shore was performed?

Mr. CARRINGTON. We object to that. The question may have been asked of Mr. Weichmann, but we think it was collateral, and not a matter of any importance.

Mr. BRADLEY. You thought it very material to fix times and dates.

Mr. PIERREPONT. If your honor will look at page 414 of the record you will see what part of the cross-examination of Mr. Weichmann this is intended to rebut.

Judge FISHER. I see it. The testimony of Mr. Weichmann was this:

"Q. Did you not talk about this very time—talk about the performance of Pescara in the play of 'The Apostate'?"

"A. I do not remember.

"Q. Didn't he tell you then that you were mistaken as to the time when Pescara was performed?"

"A. No, sir; I do not remember that.

"Q. You do remember that you had conversations with him?"

"A. I do."

There seem to be two objections to asking this witness in regard to that. In the first place, it appears to me to be collateral and irrelevant to the issue, something that you could not give in proof as a test for the defense independently of the attempt to contradict; and, in the second place, the witness Weichmann said he did not remember any thing about these conversations.

Mr. MERRICK. The materiality of it is, that he fixes the dates by these performances.

Mr. CARRINGTON. How could a witness possibly recollect the date at which a particular play had been performed?

Mr. BRADLEY. Weichmann was asked, "You do remember that you had conversations with him?" and he answered, "I do;" and then the next question was, "What enables you to fix the change in the date as to the time when Dr. Mudd was at the Pennsylvania House?" and he was asked whether he did not talk about these performances.

Judge FISHER. He said he did not remember it. He first said he did not remember having any conversation, and then he said, "No, sir; I do not remember that." That is all. What did he mean to say? That he did not tell him? I do not understand it in that way.

Mr. BRADLEY. When he says "No," I understand him to mean that he did not have any such conversation.

Judge FISHER. How can you understand it in that way, when he qualifies it by saying that he does not remember? The objection is sustained.

Mr. BRADLEY. We wish to have an exception noted.

Mr. MERRICK. In the examination of Weichmann, this question was put to him: "Did he" (that is, Mr. Ford) "state to you, whilst you were in Carroll prison, in the presence of two other persons, that the reason you had no clean clothes there, or were short of clean clothes, was, that you had left your clothes at Mrs. Surratt's, to go into the wash?" and he answered, "No, sir." Now, I propose to ask Mr. Ford in regard to that matter.

Mr. CARRINGTON. We object to that on the same ground.

Judge FISHER. The answer to that question was, "No, sir; I do not remember." That question was as to two persons, not specifying anybody particularly; and you cannot contradict him on that, assuredly, because you did not specify anybody. And then you went on and asked, "You did not say that to Mr. Ford and Mr. Carland?" and he answered, "No, sir; not that I remember." He says again that he does not remember saying this to Mr. Ford and Mr. Carland, the only two persons by whom you could contradict.

Mr. MERRICK. But he goes on to say, "I had clean clothes at Mrs. Surratt's house, and was not permitted to go and get them." And then he was asked, "Did you not state"—of course to Ford and Carland—"that you had left your clothes there to go into the wash?" and he answered, "No, sir; I always put my clothes out to wash by Monday."

Judge FISHER. You may ask him that.

Mr. CARRINGTON. Is it not collateral?

Judge FISHER. It appears to be collateral; but let it be asked.

By Mr. MERRICK:

Q. Did he say to you in Carroll prison that he left his clothes at Mrs. Surratt's to go into the wash, or that that was the reason why he was short of clothes?

A. He stated that in substance.

Mr. MERRICK. A little further on in Weichmann's examination he was asked if he did not "Tell Jarboe and some one else in Carroll prison that, being taken before Mr. Stanton and interrogated as to what you knew, if you knew any thing, of the parties engaged in the plot to murder the President," and if "You did not say you did not know any thing about it?" The question is put in this shape: "Did you say to Jarboe and some one else," without mentioning Mr. Ford's name.

Mr. CARRINGTON. We object to any interrogation on that point.

Mr. MERRICK. Suppose you do. I am asking the court if that is a sufficient foundation to put any inquiry to Mr. Ford in relation that matter.

Judge FISHER. The question was as to what he had told "Jarboe and some one else."

Mr. MERRICK. But we desire to show that Mr. Ford is the "some one else."

Mr. CARRINGTON. We object.

Judge FISHER. There might have been half a dozen conversations with Jarboe and some one else. They might have been with Jarboe and John Smith, or Jarboe and Edward Nokes, or Jarboe and John Stiles, as well as Jarboe and the witness here.

Mr. MERRICK. I understand that the object in laying a foundation is to direct the witness under examination so that he may know what particular matter he is asked about. Enough shall be designated to sug-

gest to him what conversation you are after; and this suggests to him that it was a conversation with Jarboe and some one else.

Judge FISHER. "Some one else" is too indefinite.

Mr. MERRICK. Very well. I will now ask Mr. Ford whether Mr. Lloyd was in Carroll prison with him?

A. Yes, sir; he was.

Q. State whether or not you heard a conversation between Mr. Lloyd and Mr. Weichmann?

Judge FISHER. What question was asked Lloyd about that?

Mr. MERRICK. In the course of Weichmann's examination these questions and answers were put:

"Do you remember a conversation with Mr. Lloyd on the subject of an interview between himself and Mrs. Surratt at Uniontown, or near Uniontown?"

A. No, sir; I had some conversation with him in 1865. He then felt astonished and angry on learning that I had not overheard the conversation between him and Mrs. Surratt. I could not help that, however.

Q. Did you tell him that you had sworn to the whisper?

A. He knew that; he had read it in the papers, and I think I told him.

Mr. BRADLEY. I want to know what you said to him. Did not you tell Mr. Lloyd, on your examination below, that you had sworn to a whisper?

A. I do not remember; I may have told him so; I believe that I did.

Q. Do you remember what his reply was?

A. No, sir.

Q. You were both in prison at that time?

A. Yes, sir, but in different rooms.

Q. Did not Mr. Lloyd tell you there that if you had sworn to a whisper you had sworn to what was not true?

A. I cannot remember what Mr. Lloyd said. I do not recall anything of the kind that he said. I am judge of my own conscience."

Now, I propose to prove what Mr. Lloyd said to him in reply.

Judge FISHER. But Weichmann said he could not remember what Mr. Lloyd said.

Mr. BRADLEY. *Non mi ricordo*; the old Queen's Case over again.

By Mr. MERRICK:

Q. Did Mr. Weichmann tell you that he had told the Secretary of War where John Surratt was at the time of the assassination?

Mr. PIERREPONT. Do not answer that.

Mr. MERRICK. Immediately after what the court has just read you will see that Weichmann was asked whether he had told the Secretary of War where John Surratt was, and he replied that he did not.

Mr. PIERREPONT. Very well; we do not object.

Mr. MERRICK. (To the witness.)

Q. Did Weichmann tell you that he had told the Secretary of War where John Surratt was at the time of the assassination?

A. He did.

Q. What did he say?

A. Montreal.

Mr. PIERREPONT. We ask your honor to strike out that answer. There was no question asked about Montreal.

Judge FISHER. That question was not put, as to whether he said Surratt was in Montreal.

Mr. BRADLEY. It was unnecessary to ask him that, when he said he did not know any thing about it?

Mr. PIERREPONT. And now they ask if he did.

Judge FISHER. If you wanted to inquire on that point, you should have put that question to Weichmann—"Did you not tell the Secretary of War where John Surratt was at the time of the assassination?"

Mr. BRADLEY. He says he did not.

Judge FISHER. Then, if you wanted to have this testimony from this witness, you ought to have asked Weichmann whether he did not tell the Secretary of War that Surratt was in Montreal. The question and answer will both be stricken out.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 82.

WASHINGTON, FRIDAY, AUGUST 23, 1867.

PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 81.*

Mr. BRADLEY. Now, by turning to Weichmann's testimony, page 449, your honor will find this:

"Q. Did you repeat to him what passed at the interview with the Secretary of War?

A. I may have done so.

"Q. If you did, you say you did not tell him that you had told the Secretary of War where John Surratt was at the time of the assassination?

A. I never said any thing of the kind, because I did not know where he was. I told Mr. Ford that I had had an interview with the Secretary of War, and I believe I did state to him what passed at that interview.

"Q. Did you not state to him that you had told the Secretary of War that John Surratt had left here a considerable time before the assassination, and that, from a letter which you had seen, he must have been in Montreal at the time?

A. I may have said that; I may have said that I had not seen John Surratt for a considerable time before the assassination, and that I had seen a letter from him, dated April 12; but I did not state to the Secretary or to Mr. Ford that I knew where John Surratt was when the blow was struck, because I did not know.

Mr. BRADLEY. I do not know whether you knew or not; that is not the question. I ask you if you did not tell Mr. John T. Ford that you had had an interview with the Secretary of War, and had told him all you knew about that affair, and of John Surratt's whereabouts at the time of the assassination, and that you had not seen John Surratt for ten days or two weeks before, and that you had seen a letter which satisfied you that John Surratt was in Canada at the time?

A. I believe I have told Mr. John T. Ford that; I have told it on the stand here; but I did not tell Mr. Ford that I knew where John Surratt was when the assassination took place."

Now, I ask this witness if Weichmann did not tell him that he had told the Secretary of War where John Surratt was at the time the assassination took place?

A. He told me that he had told the Secretary—  
Mr. PIERREPONT. Do not state what he told the Secretary.

Judge FISHER. Tell what he told you.

Mr. BRADLEY. We have asked him if Weichmann told him what he told the Secretary.

A. To the best of my recollection he told me that John Surratt was in Canada, at Montreal, that he had seen a letter from Surratt received on the day of the assassination, dated, I think he said, on the 12th of April.

By Mr. CARRINGTON:

Q. How long is it since these conversations with Weichmann, to which you have testified, took place?

A. They occurred, I think, about the first week in May, 1865, to the best of my recollection.

Q. Did you make any note of them at the time?

A. I did make some memoranda of what occurred in prison.

Q. At the time the conversations took place?

A. No; the day I heard this.

Q. When do you recollect ever making any note of these conversations with Weichmann?

A. I cannot say that I ever made any note of these special conversations.

Q. Do you recollect stating what he had said to you to persons shortly afterwards?

A. I talked with the people connected with my establishment in regard to these very conversations.

Q. When did these conversations first impress themselves upon your mind?

A. As I was affected by his evidence in the military court it rather startled me that it should contradict to such an extent his statements to me.

JAMES L. MADDOX,

recalled as a witness for the defense.

By Mr. MERRICK:

Q. Were you in Carroll prison with Mr. Weichmann?

A. I was.

Q. Did you go to the War Department with him, or to Mr. Bingham's office, or any place with him?

A. I do not know whether it was Mr. Bingham's office; it was opposite the War Department, in Winder's building.

Q. Did any officer of the Government at that time tell Weichmann that unless he testified to more than he had already stated they would hang him?

Mr. PIERREPONT. Do not answer that question.

Mr. CARRINGTON. When was it?

Mr. BRADLEY. Before any examination of witnesses.

Mr. CARRINGTON. Then we object.

Judge FISHER. Do you want to put that in now as a substantive fact, or for the purpose of contradicting Weichmann?

Mr. MERRICK. As a substantive fact first.

Judge FISHER. Then you must confine it to this trial.

Mr. MERRICK. I do not know whether there was any trial designated at the time. I suppose I can ask the witness whether there was any trial designated.

Judge FISHER. You can ask him about that. If you bring it home to this trial, very well.

By Mr. MERRICK:

Q. Was there any particular trial referred to at that time?

A. Yes, sir.

Judge FISHER. When was the conversation?

A. In the month of May, 1865.

Mr. BRADLEY. Before the military commission was organized?

A. While the trial was going on.

Q. Before he had been examined as a witness?

A. I do not know. I think it was after the witnesses had been examined, but I cannot say positively.

Mr. MERRICK. I put the question, and I suppose your honor rules it out.

Judge FISHER. Yes, unless you put the question so as to make it refer to this trial distinctively.

Mr. PIERREPONT. Which it could not do in 1865.

Judge FISHER. Or to the trial of John H. Surratt. You asked that question of Mr. Weichmann himself, and it was ruled out on that ground; and when you ask it of this witness now, you must expect that the same ruling will be held.

Mr. MERRICK. Yes, sir. I did not know that

there was any trial referred to particularly in the conversation. But now I will ask the witness whether Weichmann ever told him that an officer of the Government had said to him that unless he testified to more they would hang him.

Judge FISHER. That is irrelevant, because you could not prove that as a substantive fact in this trial.

Mr. MERRICK. Now, I refer your honor to page 449, in the examination of Weichmann, where these questions and answers occur:

"Q. I ask you whether you did not tell Mr. Maddox and Mr. Gifford that you were told by Mr. Bingham that if you did not state more fully than you had done all you knew, you would be treated as one of the conspirators—not in those precise words, but the substance.

["Mr. PIERREPONT objected. Objection withdrawn.]

"A. No, sir, I do not remember to have said any thing of the kind.

"Q. Do you say you did not?

"A. I never heard Mr. Bingham make a remark of that kind."

Now, I ask Mr. Maddox whether or not Mr. Weichmann did not say to him that he was told by Mr. Bingham that if he did not state more fully than he had done he would be treated as one of the conspirators, or something substantially the same.

Judge FISHER. Was that in reference to this trial? Mr. MERRICK. The objection as to that question to Weichmann was withdrawn.

Judge FISHER. The objection may have been withdrawn for the purpose of letting him answer; but there it must end.

Mr. MERRICK. It is not offered as a substantive fact; it is with a view of contradicting him.

Judge FISHER. You cannot contradict a witness in that way. When you ask him a question with a view to contradict him, it must be a question in reference to a fact which you might give in testimony here as tending to prove your side of the issue; and unless you could give it in testimony as a substantive fact, you cannot contradict him on it, because it is collateral and irrelevant.

Mr. MERRICK stated that the defense had no more witnesses in attendance, but expected to close to-morrow.

Whereupon the court took a recess till to-morrow morning at ten o'clock.

### Thirty-Third Day.

THURSDAY, July 18, 1867.

The court re-assembled at ten o'clock a. m.

REV. LOUIS ROCOFFORT,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. State to the jury, if you please, whether or not you know Louis J. Weichmann?

A. I knew him.

Q. That is the man? [Pointing to the witness Weichmann.]

A. Yes, sir.

Q. Did you ever have any conversation with him outside of the confessional?

A. I had a conversation with him outside of the confessional.

Q. Did he ever tell you that he was employed in an office in the War Department, and engaged to send information to the Southern Confederacy?

Mr. CARRINGTON. Stop one moment. We object.

Mr. MERRICK. On page 321, in the examination of Weichmann, your honor will find the following:

"Q. Do you know a gentleman in this city, residing here at that time, named Mr. Rocoffort?

"WITNESS. What was he, a clergyman?

"Mr. BRADLEY. Yes, sir.

"WITNESS. I do.

"Q. Did you ever tell him that you were employed to furnish information?

"A. No, sir; I never had any conversation with Mr. Rocoffort except at his feet in the tribunal of penance.

"Q. That is in the confession?

"A. Yes, sir.

"Q. You never had any conversation with him except in the confession?

"A. No, sir, except on one occasion, and that was after I was released from Carroll prison, meeting him on the steps outside St. Aloysius's church. I asked him a single question, whether he would hear my confession that evening. He replied, "Not that evening." That is the only conversation I ever had with him.

"Q. About that your memory is quite distinct?

"A. I remember that very distinctly."

I now prove by Father Rocoffort that he had a conversation with him outside of the confessional, and I go on to ask the question which was here asked Weichmann, whether he told Father Rocoffort that he was in this city to furnish information to the South.

Mr. CARRINGTON. When the avowed object, if your honor please, is to contradict a witness for the purpose of impugning his veracity before the jury, it is my duty to invoke your honor to see that the rules of evidence are strictly observed. It is a cardinal rule, with which your honor is entirely familiar, that you cannot ask a witness a collateral question with the view of afterwards contradicting him. In the latitude which the court gives to counsel upon cross-examination, they may ask any question which may tend to enlighten the jury in regard to the character of the witness, for the purpose of introducing him before the jury. Upon that principle, upon cross-examination, the counsel asked the witness Weichmann whether he had furnished any information to the South inconsistent with his professions of loyalty to this Government, and inconsistent with the official position which he occupied at the time; but, having asked him those questions, they are bound by his answers, clearly. They cannot contradict him, because it is collateral. The charge in this indictment is a conspiracy to murder, and that in pursuance of that conspiracy the parties therein named did kill and murder the deceased. Now, how can the fact, if it be a fact, that the witness Weichmann took advantage of his official position to furnish information to the South tend to throw any light upon the issue submitted to the jury, whether there was such a conspiracy, and whether the object of the conspiracy was executed? Clearly, if this is evidence for any purpose, it is to cast a cloud of suspicion upon the witness; it is to show that he was an accomplice, if you please. An accomplice in what? Does the fact, if it be so, that he furnished information to the South, tend to show, in the first place, that he was an accomplice? But, even if it did, it is a familiar rule that an accomplice is a competent witness; and it is the province of the jury to believe or to reject his testimony, and if his testimony is corroborated they are bound to believe it, or at least they should believe it; it is the province of the jury to determine whether they will do so or not. But where a person enters into a conspiracy, repents, retires from it, and gives information, he ceases to be an accomplice.

But, I submit, if your honor please, whatever the object may be, whether to show that the witness Weichmann was an accomplice or a co-conspirator, they must prove it by witnesses who can testify to facts tending to show his connection with it, and not in this indirect way, by asking him certain questions calculated or intended to cast a cloud of suspicion upon his testimony before the jury, and then asking some other witness if he did not make a statement inconsistent with that to which he testifies. I do not think it necessary to detain your honor longer, but it seems to me we have departed from this rule, and I feel it to be my duty to urge upon your honor to enforce the observance of it.

Mr. MERRICK. The ground upon which I offer the evidence has been in part indicated by the counsel on the other side. There are two grounds. In the first place, we charge that if there was any conspiracy at all, Weichmann was in that conspiracy, and his testimony is the testimony of an accomplice seeking to save his own life by the betrayal of his associates. The testimony as already given in goes far to establish that fact. If he was an accomplice, that becomes a substantive fact, which I have the right to prove. Why have I the right to prove it? For the reason that the law

says the testimony of an accomplice is to be taken with great caution by a jury. The English rule is, that a party cannot be convicted on the testimony of an accomplice alone; that such is his character, such are the inducements held out to him to falsify, such are the prospects in advance of him, that the temptations are too strong to trust to his truth as you would to the truth of a man who was not in a position to be influenced by those temptations. You cannot convict on the testimony of an accomplice. If there is a conviction on the testimony of an accomplice, the court will set the verdict aside. The testimony of an accomplice must be corroborated by other evidence; and I refer your honor to Roscoe on Criminal Evidence, page 121. My distinguished associate suggests that such has been the settled rule in this court for forty years. It certainly is the settled rule everywhere as far as I know the law.

Mr. CARRINGTON. I admit that I never would ask, and never have asked, the conviction of a party upon the uncorroborated testimony of an accomplice.

Mr. MERRICK. Very well.

Mr. CARRINGTON. But my point here is, that if they charge Weichmann with being an accomplice, they must prove it by witnesses who can testify to facts within their own personal knowledge tending to show it, and not by asking Weichmann a collateral question, and then bringing other witnesses here to contradict him.

Mr. MERRICK. If then the fact that he is an accomplice is a substantive fact which I am authorized to prove by any other witness, it is a substantive fact about which I have a right to make an inquiry of him, and having a right to make an inquiry of him, I have a right to contradict his statements. I am only prevented from contradicting the statement of a witness on the stand when I inquire of him in regard to a matter that is not a substantive fact, but entirely collateral and can have no influence in determining the issue before the jury; but, as to any fact that can influence the decision of the jury in determining that issue, I have the right to interrogate the witness, and I have the right afterwards to contradict his replies to my interrogatories. If, then, the fact that he is an accomplice is a substantive fact which might influence the decision of the jury upon these issues, I have the right to ask him, first, whether he is so or not, and then disprove it; or I have the right to ask him whether he has done certain acts, the doing of which acts would be facts from which it might be inferred that he was an accomplice. Now, I propose to prove by the witness on the stand that Weichmann stated that his business in the War Department was, to hold that office under the Federal Government of the United States for the purpose of aiding the rebel government at Richmond, and that in his office he received information in his official capacity as an officer of the United States which he did communicate to the Confederate Government at Richmond. Is not that fact a fact from which it might be inferred that he was an accomplice?

Judge FISHER. Yes, if you first prove that the Confederate Government was the principal in this murder, it would be undoubtedly.

Mr. MERRICK. No, sir. Your honor has admitted testimony showing sympathies. Why? Did your honor admit it because the Confederate Government was the principal in this murder? You admit the introduction of evidence showing the sympathies of parties with the one Government or the other. I did not understand the ruling at the time, I must confess; but I am acting upon the rulings of your honor, as I proceed in this case, and not upon my own views. I take the rulings of your honor with regard to evidence, establishing the rules that are to govern me; and upon that ruling, as a second point, I have a right to show his feelings and his sympathies as between the rebel government and the Government of the United States.

Your honor has said that that may be shown. Your honor has said that, that being shown, of course it may influence the credit of the witness, the force of his testimony; and, if that is the case, I surely have the right to show what his sympathies were and what his associations were. I therefore submit to your honor that this testimony, in our judgment, is admissible under the rulings of your honor, upon two grounds: first, as a fact which may tend, with other facts, to show that he was an accomplice; and, secondly, as a fact showing his sympathies, as your honor has allowed the sympathies of other witnesses to be shown.

Mr. PIERREPONT rose.

Judge FISHER. I do not wish to hear any further argument.

Mr. PIERREPONT. I hope not. I only want to say that I hope this question will be settled now, so that it may not be all the time coming up in some form.

Judge FISHER. With regard to the admission of testimony or permitting of questions to be put to a witness with a view to show his sympathy and disposition and temper in the case—allowing such questions to be put to him on cross-examination is one thing; showing the fact by other independent witnesses as a substantive fact is altogether another thing. A witness may be cross-examined, according to the ruling first made for the defense in this case, with a view of ascertaining his temper and disposition. That is an old rule of law; it is a familiar rule of law. But when you come to examine another witness in order to contradict what has been said by a former witness on his cross-examination, you are confined in your examination of such other witness to those matters which are relevant and pertinent to the matters in issue. Test it in this way: would it tend to prove, in any way, the issue for the defense in this case whether Weichmann was in this office for the purpose of assisting the Confederate Government or not? I cannot see how that would shed any light whatever upon the issue. Supposing that he were there for that purpose, and you could prove by a host of witnesses that he was placed in this office here, by some chicanery and fraud, for the purpose of communicating information to the rebel government; unless you can show that it was a part of the plan of the rebel government to murder President Lincoln, the question would be altogether irrelevant. If you can show that to have been a part of the plan of the rebel government for the destruction of the Federal Government, and that Mr. Weichmann was a party who was engaged for the purpose of giving information in order to enable them to effect that plan, then you might give in this testimony. But you have asked Mr. Weichmann on his cross-examination whether or not he had any conversation with Mr. Roccofort, in which he told him he was employed to furnish information to the rebel government. You are foreclosed; you are estopped by Weichmann's answer. When he has given his answer, there is the end of it; because, when you come to test the matter by the question, whether or not you could have given this thing in evidence as a distinct substantive matter tending to prove your side of the issue, you find you could not do it.

Mr. BRADLEY. We desire to note an exception to your honor's ruling.

Mr. CARRINGTON. With the permission of your honor and the counsel, as what we say is published, I do not desire to be understood in anything I have said as admitting that Mr. Weichmann was an accomplice or a co-conspirator, or did any thing inconsistent with the character of a faithful officer. I was arguing the question upon the theory of the defense, and only assumed that for the purposes of the argument. I shall endeavor to defend his character at the proper time.

Mr. BRADLEY. I take that for granted.

No cross-examination.

REV. JACOB A. WALTER,

a witness for the defense, sworn and examined.

By Mr. MERRICK:

Q. State to the jury where you reside.

A. I reside in Washington, at the corner of G and Tenth streets.

Q. Did you know the late Mrs. Surratt?

A. I did.

Q. State whether or not you were her spiritual adviser.

A. I was.

Mr. PIERREPONT. You need not answer that question. We object to it.

Judge FISHER. I cannot see what that has to do with the case. If I could be made to see it, I should have no objection myself to admitting the testimony.

Mr. MERRICK. It is merely introductory to what is coming. I shall ask Father Walter whether or not he administered the consolations of religion to her on the day she was hung.

Mr. PIERREPONT. We object to that. She is not on trial.

Mr. BRADLEY. I rather think she has been on trial for the last five weeks.

Q. (By Mr. MERRICK.) Were you present at the time of her execution, when she was led from her cell to the gallows?

A. I was.

Q. State whether or not, when being led from her cell to the gallows, she avowed her innocence at that time, just before her death.

A. Yes.

Mr. PIERREPONT. Stop. Do not answer that question. The counsel know whether that is a proper question, I think.

Judge FISHER. Do you object to it?

Mr. PIERREPONT. Yes, sir.

Judge FISHER. (To Mr. MERRICK.) Have you any thing to say?

Mr. MERRICK. I submit the question.

Judge FISHER. I do not think it is relevant at all. Mr. MERRICK. Note an exception. Now, I propose to ask the same question with regard to Payne.

[To the witness.] I ask you, did not Payne declare to you and General Hartranft, on the day of his execution, just before he was led to the gallows, that Mrs. Surratt was perfectly ignorant of any conspiracy to murder the President or any conspiracy to abduct him?

Mr. PIERREPONT. Do not answer the question.

Judge FISHER. That is subject to the same objection.

Mr. MERRICK. Note an exception.

No cross-examination.

Judge FISHER. [After a pause.] Have you another witness at hand, Mr. MERRICK?

Mr. MERRICK. I do not know. We have just got a message from one—for whom we sent a carriage, knowing he was sick—that the doctor will not allow him to come out. One died yesterday morning, and we will have to substitute others for them. I think we can go on. Call Mr. Reeves.

JOHN J. REEVES,

a witness for the defense, sworn and examined.

By Mr. BRADLEY, Jr.:

Q. Where do you reside?

A. In Montreal, Canada.

Q. What is your occupation?

A. Tailor.

Q. Do you know the prisoner at the bar?

[The prisoner stood up.]

A. Yes, sir; I do.

[The prisoner resumed his seat.]

Q. Did you ever make any clothes for him in Montreal?

A. I did.

Q. State what garment you made for him.

A. I made a Garibaldi.

Q. When was that—what year and what month?

A. In April, 1865.

Q. Can you fix what time in the month?

A. It was between the 8th and 9th that I made it.

Q. You made a Garibaldi. Describe it to the jury.

A. It is a plaited garment, plaited in front and also in the back, with plain wristbands, the same as a shirt exactly, and with a belt around the body.

Q. Of what was the belt made?

A. Of the same material.

Q. Describe how it buttons in front?

A. There are, I believe, about four buttons in front and one in the belt.

Q. Did it button high up or not?

A. Close up to the throat.

Q. That was two years ago. Do you recollect the color or about the color?

A. Yes; it was a cloth mixture.

Q. Have you any doubt that this is the gentleman [pointing to the prisoner] who bought that coat?

A. That is the gentleman that bought the coat.

Q. Did you see him after the purchase of this coat?

A. I did.

Q. Where?

A. At my place.

Q. What do you mean by your own place?

A. My store.

Q. About what time? Fix the date as near as you can.

A. I could tell very near by my cash-book the time I received the pay.

Q. Cannot you approximate it without the aid of your cash-book? Was it before the 20th of April?

A. Oh, yes; it was before the 20th.

Q. Was it after the 18th?

A. I should think it was near about that time; as well as I recollect, about between the 11th and 18th.

Q. As near as you can recollect it was between the 11th and 18th?

A. Yes, sir; because he left his measure on the 8th or 9th—I have got it on the measure-book—and then it took some time to make the garment up.

Q. Have you got your measure-book down here with you?

A. Yes, sir; it is at the hotel.

Q. Do you recollect when he returned to Montreal, and where he went?

A. I do.

Q. State to the jury about what time he returned and where he went?

A. He returned to Montreal, and came to me and said his coat was too tight around the neck, and I altered it and made it larger around the neck. Then I asked him where he was staying; commenced talking with him, and asked him to dinner with me.

Q. About what date?

A. I could not say. As I said just now, it was between the 11th and the 18th.

Q. Did you see any thing of him on his return to Montreal. What do you know about his staying in Montreal?

A. I saw him at the hotel.

Q. Did you see him anywhere else?

A. Yes, sir.

Q. State all you know in connection with it?

A. I saw him at Father LaPierre's. That is where I first got acquainted with the gentleman, and from there he came to my place, and I made him this garment.

Q. Did he stay any time with you?

A. He did.

Q. How long?

A. About two days, I think.

By Mr. BRADLEY, Sr.:

Q. You say he stayed with you about two days.

Was there an interval of time between his getting the clothes and his coming to your house to stay?

A. Yes, sir.

Q. Can you now, from memory, state about how long an interval—four, five, six, eight, or ten days?

A. It was not ten days; about five days, I think.

Q. Then he came to your place and stayed two days?

A. Yes, sir.

Q. You can state whether he was lying there private—concealed or not?

A. No, sir. He was in my room opposite the post office. The window was open, and everything of the kind.

Q. Do you know where he went from your place? Did you see him afterwards?

A. I went with him.

Q. Where did you go?

A. There was a gentleman by the name of Mettevie came and got him out of my place, and we went together in a carriage. He said he wanted to go to Long Point, and we drove to Long Point.

Mr. PIERREPONT. You need not state what he said.

Q. (By Mr. BRADLEY.) How far did you go—to Long Point?

A. I could not say exactly; about thirteen miles.

Q. So that after a lapse of five or six days from the time you furnished him with these clothes, you saw him again, he came to your house, and stayed two days?

A. Yes, sir.

Q. And from your house he went with you and Mr. Mettevie to Long Point?

A. Yes, sir.

Q. Did you see him after that?

A. I did not.

Q. Did you see him shortly before he left for Europe?

A. Yes, sir; I did.

Q. Where was that?

A. At my door.

Q. During the interval between the time you left him with Mettevie until that time you did not see him?

A. I did not.

Q. You say you did not see him in the interval.

A. No, not in the interval; but he came there then in a carriage with two other parties, and said he had forgotten a small stick. My wife had put it away somewhere, and we could not find it, and I told the party that was with him that I would return the stick.

Mr. PIERREPONT. You need not state that.

Mr. BRADLEY. He came there, and you returned the stick?

A. I did.

Q. Now, sir, during the two days he was at your house, was it possible for him to be absent for ten or twelve hours without your knowing it?

A. No, sir; it was not.

By Mr. BRADLEY, J.:

Q. Do you know H. B. St. Marie by reputation?

A. I know him by reputation. I do not know him personally.

Q. Where do you know him by reputation; in what place?

A. In Montreal.

Q. Do you know what his reputation for truth and veracity is in Montreal?

Mr. CARRINGTON. Stop a moment; do not answer that question.

Mr. BRADLEY, Jr. What is the objection?

Mr. CARRINGTON. I do not think you have laid the foundation sufficiently yet.

Mr. BRADLEY, Jr. For general reputation?

Mr. CARRINGTON. I do not think so.

Mr. BRADLEY, Jr. We do not have to lay any foundation.

Mr. CARRINGTON. It must be a reputation among persons at the place where he resides. You have not

fixed Montreal as the residence of St. Marie, nor how long the witness has known him there.

Q. (By Mr. BRADLEY, Jr.) Did you not say you knew him where he resided, or that he resided in Montreal?

A. Yes; I understood he lived in Montreal, or used to formerly.

Q. You saw him formerly, but did not know him personally?

A. Yes, sir.

Mr. CARRINGTON. I submit with all respect that you have not yet laid the foundation.

Mr. BRADLEY, Jr. What is the objection?

Mr. CARRINGTON. In the first place, he does not know him personally, and he does not know the fact that he resided in Montreal.

The WITNESS. Yes, he did reside in Montreal.

By Mr. CARRINGTON:

Q. Do you know that fact yourself?

A. Yes, sir.

Q. Do you know where he lived?

A. No, sir.

Q. You did not know it personally?

A. No, sir.

Q. All you know of his residence is what you heard from others?

A. Yes, sir.

Mr. CARRINGTON. Now, as I understand the rule, before a witness is permitted to state the general reputation of another for veracity, and to express his opinion whether he would believe him on oath, the court must be satisfied that he has sufficient knowledge upon which to base that opinion, and the court will not allow any expression of it until he does appear to the court sufficiently acquainted with the party to do so. I submit, as a matter of law, whether it is competent for this witness to speak to the general reputation for veracity of another when he admits that he does not know him personally, and when he admits that he does not know of his own personal knowledge where he resided, and therefore it is a mere floating general reputation. He must have some personal knowledge of the man, some personal knowledge of his residence, and some personal knowledge of the persons who spoke in reference to it.

By Mr. BRADLEY, Jr.:

Q. When you say you do not know him personally, do you mean you are not personally acquainted with him?

A. I am not personally acquainted with him.

Q. Do you know him by sight?

A. Yes, sir; not to speak to him.

Q. And you have seen him moving about Montreal, as I understand?

A. In Montreal.

Mr. CARRINGTON. He does not know where he resided.

The WITNESS. I do not know where he resided. Mr. MERRICK. He does not know whereabouts his house was.

The WITNESS. I know he resided in Montreal, but not his house or dwelling.

By Mr. CARRINGTON:

Q. I ask you if you know from your own personal knowledge that he resided in Montreal?

A. I do.

Q. How do you know it?

A. I saw him in Montreal.

By Mr. BRADLEY, Jr.:

Q. I ask you whether or not he is the same man who was a clerk in one of the government offices in Montreal?

A. He was in a bank.

Mr. CARRINGTON. When?

A. That is more than I can tell. I cannot tell exactly the time.

Mr. CARRINGTON. I want to test your personal

knowledge on this subject. Did you see him in the bank doing business yourself, or do you merely know it from others?

A. I know it from others.

Q. You have no personal knowledge on the subject?

A. No, sir.

By the Court:

Q. What is your personal knowledge as to his residence there? How long a time do you know of your own knowledge that he was residing in Montreal?

A. I should think off and on about two or three years.

Mr. PIERREPONT. Will your honor ask him when that was?

Judge FISHER. I was going to follow it up by that question. During what years?

A. I could not tell.

Q. Cannot you fix some approximate time?

A. No; I could not.

Q. Was it 1861, '62, '63, '64, '65, '66, or '67?

A. It was before that.

Q. Before 1860?

A. Yes, sir.

Q. How long before 1860?

A. I could not exactly say.

Q. Was it as far back as 1855?

Mr. BRADLEY, Sr. I think, if your honor please, we have the means of showing the period to which he refers. We expect to prove that by another witness, who will fix the time when he was there.

Mr. PIERREPONT. It is shown very clearly that this witness knows nothing about it.

The WITNESS. The time was about 1855 or 1856.

By the Court:

Q. You say you knew him in 1855 or 1856?

A. Yes, sir.

Q. And you are certain of your own knowledge that he resided there somewhere about that time for about two years?

A. I think so.

Mr. BRADLEY, Sr. I will ask him further, to refresh his memory, whether he cannot fix the date by any other means; whether he did not leave Montreal after the breaking out of the rebellion in the United States. Can you recollect whether he left then?

A. No, sir; I was not there.

Mr. PIERREPONT. Now, we submit to your honor that the examination of a witness by the counsel who puts him on the stand for the purpose of injuring the reputation of another man has some limit to it.

Mr. BRADLEY, Jr. If your honor will allow me, we will withdraw the witness for a moment and recall him at another time.

Mr. PIERREPONT. Wait a moment. I want to examine him on what he has testified to, not about St. Marie, but on the other points.

Cross-examined by Mr. PIERREPONT:

Q. What business do you do?

A. I am a tailor.

Q. Were you a tailor in 1865?

A. Yes, sir.

Q. Where was your shop?

A. On Notre Dame street.

Q. Were you keeping it yourself?

A. Yes, sir.

Q. You saw the prisoner there, did you not?

A. Yes, sir.

Q. At what time?

A. In April, 1865.

Q. What day?

A. I could not tell exactly the day.

Q. Cannot you tell when he got his measure?

A. Yes, sir.

Q. When?

A. As I stated just now, I can show it by my books.

Q. I ask you now, can you state when he got his measure?

A. Yes.

Q. When?

A. I can do so exactly when I get the book. It was somewhere between the 8th and 9th.

Q. When did you next see him?

A. I saw him at Father LaPierre's.

Q. When?

A. About the same time; the same week, in fact.

Q. What day did you see him next?

A. He came back with his coat to get it altered.

Q. I do not ask you about the coat now?

A. I could not exactly say the date he did come.

Q. You saw him between the 8th and 9th. When did you next see him?

A. I should say about the 11th.

Q. When did you next see him?

A. I saw him at Father LaPierre's.

Q. When?

A. That is more than I can tell.

Q. Cannot you tell when? You have got the 8th and 9th, and now you have got the 11th. When did you next see him.

A. I could not tell exactly.

Q. About when?

A. I can give the 8th and 9th, because I have my books to show it.

Q. Cannot you tell about when you next saw him?

A. No, sir. It was before he started for Europe, at the door.

Q. Cannot you tell about when it was?

A. I could not exactly say.

Q. Was it in April?

A. Yes, sir.

Q. What day in April?

A. That is more than I can tell about the dates.

Q. Cannot you tell somewhere near?

A. No, sir.

Q. You saw him at Father LaPierre's on the 11th?

A. Yes, sir.

Q. See if I can help you any. How many days do you think it was before you saw him again?

A. I met him in my place.

Q. How many days after you saw him on the 11th before you saw him again? You understand the question?

A. I understand perfectly well, but I could not exactly tell you, as I said before.

Q. I do not ask it exactly. About how many days was it?

A. I should think—well, in fact, I could not exactly say the perfect time.

Q. I do not want you to say the perfect time. I want you to say about how many days after the 11th it was that you saw him?

A. About five or six days.

Q. That would bring it up towards the 17th or 18th that you saw him?

A. From the 11th five or six days.

Q. You saw him then somewhere about the 17th or 18th?

A. About that time.

Q. Somewhere between the 17th and 20th you saw him the next time?

A. Yes, between the 17th and 20th of April.

Q. You saw him somewhere between the 17th and 20th of April, and then you saw him when he was going away, after that. How long was that after the 18th of April?

A. As I said before, this Mr. Mettevie came and got him at my place.

Q. When did he get him?

A. I could not exactly say about that time.

Q. He came to your place on the 18th and stayed two days?

A. I could not say it was the 18th precisely.

Q. It was about that. How many days did he stay about your place?

A. Two days.

Q. He was not concealed any?  
 A. No, sir.  
 Q. Who came and got him?  
 A. Mr. Mettevie.  
 Q. After he stayed two days, this man came in a carriage for him?  
 A. Yes, sir.  
 Q. Was there anybody with him?  
 A. Yes, sir, another party.  
 Q. Who?  
 A. A brother of Mr. LaPierre was with him.  
 Q. What did they do?  
 A. We went down to Long Point.  
 Q. What time of day was it?  
 A. About five or six in the afternoon.  
 Q. Was it light or dark?  
 A. It was light.  
 Q. Was it light when you got there?  
 A. Yes, sir.  
 Q. How long did it take you to go?  
 A. About an hour and a half.  
 Q. What day of the month was it when you got there?  
 A. That is impossible for me to answer.  
 Q. What day of the week was it?  
 A. That is more than I can tell either.  
 Q. You cannot tell the day of the month or the week?  
 A. No, sir.  
 Q. Can you tell the year?  
 A. I have just told you.  
 Q. Can you tell the year and be sure about it?  
 A. Yes, sir.  
 Q. What year was it that you are sure of?  
 A. 1865.  
 Q. Was it in May?  
 A. No, sir.  
 Q. Was it in April?  
 A. It was.  
 Q. Was it the fore part of April?  
 A. No, sir.  
 Q. Was it the latter part of April?  
 A. The latter part.  
 Q. Was it Father LaPierre's house?  
 A. No, sir.  
 Q. You said that this man and you and Father LaPierre's brother went with the prisoner somewhere?  
 A. I do not know where he went afterwards.  
 Q. Whose house did you go to then with him?  
 A. We went to a house there, and I left him in a tavern.  
 Q. What place?  
 A. In Hochelaga.  
 Q. In whose house?  
 A. In the tavern.  
 Q. Did you leave him there?  
 A. Yes, sir.  
 Q. Did you leave the carriage?  
 A. No, sir; the carriage brought me back.  
 Q. Did Father LaPierre's brother come back with you?  
 A. He did.  
 Q. And the other man?  
 A. No, sir.  
 Q. Whom did you leave him with?  
 A. Mr. Mettevie.  
 Q. In the tavern?  
 A. Yes, sir.  
 Q. You never saw him after?  
 A. No, sir.  
 Q. That you are sure of?  
 A. That I am sure of.  
 Q. You never saw him after that time?  
 A. I never saw him after that time.  
 Q. Did you make any clothes for him except the Gari-baldi jacket?  
 A. A pair of pantaloons.  
 Q. Any thing else?  
 A. No, sir.

Q. Did you make any priest's garments for him?  
 A. I did not.  
 Q. Did you see him with any on?  
 A. No, sir.  
 Q. And you say you never saw him after that time?  
 A. After he left me down below, I never saw him.  
 Q. In the latter part of April?  
 A. Yes, sir.  
 Q. How many went with him in the carriage?  
 A. We were three together.  
 Q. Three besides him?  
 A. No, sir; two of us.  
 Q. You were one, Father LaPierre's brother two, and Mr. Mettevie three.  
 A. Four, I should say.  
 Q. Why did you all—so many of you go?  
 A. It was a pleasant evening.  
 Q. It was on account of the pleasantness of the evening?  
 A. Yes, sir.  
 Q. He never came to you any more?  
 A. No, sir.  
 Q. And you never saw him again?  
 A. No, sir.

Re-examined by Mr. BRADLEY:

Q. Now, about that stick of which you have spoken; did he ever get that cane back from you?  
 A. I think he did.  
 Q. When and where?  
 A. In Montreal.  
 Q. Did you not see him then?  
 A. He came when he went away.  
 Q. When you tell this gentleman [Mr. PIERREPONT] that you never saw him after you left him at that tavern, do you mean that he did not come back and get that stick?  
 A. He came back and got the stick.  
 Q. Then you did see him again?  
 A. Yes, sir. I was not recollecting about the stick. He came back again and got the stick. I have never seen it since. It was a small rattan.  
 Q. When you answered Mr. PIERREPONT that you never saw him after you left that tavern, which he has pinned upon you very closely, you did not mean to say that you did not see him when he came after that stick?  
 A. No, sir. I saw him when he came to get the stick.

By Mr. PIERREPONT:

Q. Then you were mistaken when I pinned you, as the counsel says, so strong on that?  
 A. It is very hard, in fact, to recollect.  
 Mr. PIERREPONT. Yes; it seems to be. That is all.

SARSFIELD BARRY NAGLE,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State where you reside?  
 A. In the city of Montreal, Canada.  
 Q. What is your profession?  
 A. I am an advocate.  
 Q. Of what firm?  
 A. The firm of Nagle & Pagnuelo at present.  
 Q. How long have you resided in Montreal?  
 A. I have resided there since 1859 permanently. I was there before that time as a student at college?  
 Q. State whether, since 1859, you have known St. Marie, who was examined as a witness in this case, as a resident in Montreal?  
 A. In 1858, 1859, 1860, and 1861, I believe, he boarded at the same hotel that I did. The hotel was on two streets, or were two hotels, I believe, owned by the same proprietor, and he was on one side and I was on the other.  
 Q. Had you any personal acquaintance with him?

A. Not personally. I saw the man frequently, and heard him spoken of, but I was not intimate with him.

Q. You know the fact that he was residing there during these years?

A. I know he was in Montreal at that time. I did not watch him particularly, but he was there.

Q. At what public institution or college were you educated?

A. No; in Montreal, at St. Mary's Jesuit College.

Q. Did you know there Dr. McMillan, who has been examined as a witness in this case?

A. Yes, sir, I did.

Q. Have you known him ever since?

A. I have known him ever since.

Q. Did you know him while he was residing in one of the parishes between Montreal and Quebec, or two of them?

A. No; I was not aware that he resided in one of those parishes. I knew him when he resided in Lennoxville.

Q. I thought it was on that route. Had you, or not, frequent occasions to visit that immediate neighborhood?

A. Yes; I had business there very often during the summer months, when we had nothing to do in Montreal, to attend to some land affairs for my father.

Q. You knew him in Montreal, did you?

A. Yes, sir; when he was going to the university, I think, taking his degree of doctor of medicine.

Q. State whether you thus had opportunities of learning and knowing the general character, among those with whom he associated, of the witness Dr. McMillan. I only ask if you had an opportunity to know and did know; not what the character was.

A. I had opportunities of knowing him since he left college more particularly than when he was there.

Q. I mean since he left college; while he was pursuing his profession in Lennoxville or elsewhere?

A. I had more opportunity of knowing his character from hearsay at Lennoxville than elsewhere.

Q. General report?

A. General report.

Q. Now, state whether it was good or bad.

Mr. CARRINGTON. Stop a moment.

Mr. BRADLEY. For truth and veracity?

Mr. PIERREPONT. You have not asked a word about that.

Mr. BRADLEY. I beg pardon. I speak of his general character among those with whom he associated for truth and veracity.

Mr. CARRINGTON. (To the witness.) Whether you heard that discussed and spoken of.

Mr. BRADLEY. Let the witness answer my question, Mr. CARRINGTON. (To the witness.) Had you opportunities of learning and knowing his general character for truth and veracity?

A. I have heard it spoken of.

Q. Generally?

A. Generally.

Q. Was it good or bad?

A. It was not very good.

Q. Was it good or bad?

A. I should consider it was bad, from common report.

Q. You cannot speak of your personal knowledge. Whatever transactions you may have had, or whatever you may have known about him personally, is not the question. I am aware that your rule of law is different, but it is not so here. Speak simply of the general reputation, not of your personal knowledge. From that general reputation as to his truth, would you believe him on his oath?

A. I should have great doubts if I was interested myself.

Cross-examined by Mr. PIERREPONT:

Q. You say you should have doubts if you were interested yourself?

A. He is a person on whose oath I would not rely.

Q. I ask you if that was what you said, that you should have doubts if you were interested yourself?

A. I should have doubts.

Q. I ask whether that was the answer you gave? I did not distinctly hear.

A. I think it was, or something very near it.

Q. Now, will you not tell us what gentleman you ever heard speak against the character for truth and veracity of Dr. McMillan?

A. I have heard a number.

Q. Who?

A. I have heard Antoine Trudeau, of Waterloo.

Q. When?

A. In the month of March, I think it was.

Q. March last?

A. Yes, sir; of this current year.

Q. What was he speaking about?

A. He was in my office in Montreal, and we happened to speak about this trial. General Carroll and some others in Montreal, who were—

Q. You were talking about this trial. That is the very point.

A. The trial had not then commenced, but we were talking about the arrival of the vessel containing the prisoner.

Q. You were talking about the prisoner?

Mr. BRADLEY. About the arrival of the vessel containing the prisoner.

The WITNESS. I believe he had not arrived at that time.

Q. (By Mr. PIERREPONT.) Had you seen or heard then of any statement that Dr. McMillan had made about him?

A. I had not at that time; Trudeau had.

Q. He spoke about it, did he?

A. The way the conversation arose was this: He asked me if that was the same McMillan who had resided at Waterloo.

Q. You were speaking of the statement that McMillan was said to have made.

Mr. BRADLEY. He is going on to state.

Mr. PIERREPONT. He is not going on to state under my question. My question is, Were you speaking of that?

The WITNESS. If you will allow me, I will state exactly what occurred.

Mr. PIERREPONT. No; answer my question; that is all I ask about. Were you speaking at the time about the statement that Dr. McMillan had made in relation to this prisoner?

A. We were not.

Q. What you were saying had nothing to do with the prisoner?

A. It was relative to his coming to this country in the vessel and his capture in Alexandria. On that, Trudeau asked me if it was the same McMillan who resided in Waterloo who had made this complaint. I had not then seen the complaint; did not know any thing about it. In fact, my impression was that it was somebody else who denounced him. I was surprised when I heard it.

Q. When you heard what?

A. When Trudeau told me McMillan was the party who denounced Surratt.

Q. You were surprised?

A. I was.

Q. Will you not tell us why you were surprised that McMillan had denounced Surratt, as you say?

A. Because McMillan, being a friend of mine, and a school-fellow, it took me by surprise that he should be a party from Canada who would find out this young man, who had got away to a foreign country.

Q. Now, will you not tell the jury why you were surprised that Dr. McMillan, who you say was a friend of yours, should have told of the whereabouts of this man, supposed to be one of the assassins, who had got into a foreign country?

A. I had understood there was a reward offered, and

I was surprised that a person at such a distance as McMillan should come forward and give information to take this man's life. I considered him in the light of an informer. It struck me so.

Q. It was that that surprised you?

A. And the fact of my being acquainted with the person.

Q. You had been well acquainted and were a friend of McMillan?

A. We were at college together.

Q. The same college?

A. Yes, sir.

Q. School-mates?

A. We were not in the same class, but in the same college.

Q. Will you not tell the jury whether, when you and McMillan were in college together, he was then considered a liar?

A. I never entered into particulars concerning that.

Q. Did he bear such repute?

A. No, he did not.

Q. While your friendship continued with him, he did not bear the repute of a liar, did he?

A. I never took the trouble since he left the college to inquire.

Q. Did you ever hear such a thing while you were intimate with him—that he bore the character of a false man or a liar?

Mr. BRADLEY, Jr. He never said he was intimate with him. You put that word in his mouth.

Q. (By Mr. PIERREPONT.) I ask, Did you, when you were friends, hear that he was a false man or a liar?

A. I did not. If I had, I would have ceased to be a friend of his.

Q. Your surprise arose from the fact of his giving information, did it not?

A. I believe I have answered that question.

Q. Did you not say it did?

A. I will repeat it, or the reporter may read it.

Q. Had you any other source of surprise?

A. You asked me what surprised me on that occasion, and I told you as fully as I recollect what did surprise me.

Q. If you say that is full, that is all?

A. Nothing more than that.

Q. Did you take any part in this war that our country has been through?

A. No, sir.

Q. Did you manifest any sympathy for one side or the other?

A. During the time of the *Trent* affair I felt a slight leaning towards the South.

Q. Did you feel a "slight leaning" towards the enemies of our country afterwards?

A. No, sir.

Q. Towards the Union, I am speaking of? There were a great many very good Union men in the South, who suffered more than we at the North did.

Mr. BRADLEY. We will discuss that at another time. They did not make as much money as some of us did.

A. I never had strong sympathies with either side. I had friends on both sides.

Q. (By Mr. PIERREPONT.) Which side did you take in sympathy during that struggle?

A. My sympathies were more to the South than to the North, though I had no interest whatever, and I felt no particular interest. My sympathies only became excited when the *Trent* affair arose—when we were called to arms in Canada.

Q. Were there any public charges made against you in Montreal?

A. Not that I am aware of.

Q. Have you any idea to what I allude?

A. I have not.

Q. Were you not public prosecutor, or something of the kind, there?

A. Never.

Q. I do not know what you call it; what is the office—the same as public prosecutor here—called there? The WITNESS. The office you now occupy?

Mr. PIERREPONT. Yes.

A. It is the attorney general who is supposed to prosecute, but he delegates that power to another gentleman to represent him. He is generally called the crown prosecutor.

Q. Were you engaged in any such thing?

A. Never.

Q. Were you for the city?

A. Never.

Q. There were no charges made against you about any houses there?

A. Never.

Re-examined by Mr. BRADLEY:

Q. I understand you to say that your acquaintance with McMillan was principally when you were in college; but I do not understand that there was any intimacy or relation of friendship between you after you left college.

A. Nothing very strong afterwards; he had gone one way and I went the other, and it was only when I found him in Lennoxville that I became aware of the fact that he had gone out there to practice. I have seen him several times since. We were neither friends nor enemies; just as strangers.

Q. You used the term, that being a friend of yours, you were surprised at his betraying Surratt.

A. Generally among young men attending the same college there is supposed to be more or less intimacy, and it was on that account that I was surprised that two Canadians should have been the parties who followed and traced the prisoner.

Q. Now, I am going to ask a question which I suppose will be objected to on the other side, and therefore do not answer until the court determine whether you shall or not. They have asked you in regard to McMillan's character; I ask you now as to any facts within your knowledge touching his moral character?

Mr. CARRINGTON. We object, of course.

Judge FISHER. You can only give testimony as to his character for truth and veracity.

By Mr. MERRICK:

Q. You said, as I understood you, that if you were interested you would have great doubts about McMillan's oath? I understand you to mean—and tell me if I am right—that if—

Mr. CARRINGTON. I object to that form.

Judge FISHER. You can ask him what you understood him to say.

Mr. MERRICK. Then I will begin at the other end. (To the witness.) I understood you to say you would have doubts, and would not believe him on oath?

A. I will explain what I mean. From what I know of him, not personally, but from hearsay, in that locality, if I had a law-suit wherein I wanted a witness, I would not certainly take his oath.

Q. That is just what I was going to ask. If you were a jurymen, you would not take his oath.

Mr. PIERREPONT. He cannot answer such a question as that.

Mr. MERRICK. That is all.

Mr. BRADLEY. I wish to introduce three witnesses, one of whom speaks English pretty well, another very little indeed, and the third not at all. The first I shall put upon the stand is a French advocate. All the records and pleadings in the section from which he comes are kept in French, and although he understands English and understands any question put to him, he finds great difficulty in expressing himself in English. I therefore ask that Colonel O'Beirne be sworn as interpreter.

Judge FISHER. Of course, if the witnesses are unable to understand the questions put to them in English or unable to respond in that tongue, it is

desirable to have an interpreter, and I presume there is no objection to Colonel O'Beirne acting in that capacity.

LOUIS W. SICOTTE

was then sworn as a witness for the defense, and Colonel James R. O'Beirne was sworn as interpreter.

By Mr. BRADLEY:

Q. State your full name.

The WITNESS. Louis Winfred Sicotte.

Mr. CARRINGTON. If your honor please, I object to this witness testifying through an interpreter. I think your honor has seen enough already to be satisfied that he understands English.

Mr. PIERREPONT. Let the court examine him and discover whether he needs an interpreter.

Mr. CARRINGTON. The court will not allow an interpreter where a witness can speak intelligibly in English.

Judge FISHER. I have heard him pronounce his name; that is all.

Mr. CARRINGTON. And he understood the oath.

Mr. BRADLEY. Undoubtedly, in ordinary conversation, as I stated, he can speak intelligibly; but his difficulty is in expressing himself in English. I have no objection to his expressing himself in English and French and letting Colonel O'Beirne translate.

Judge FISHER. Let him express himself in English as far as he can, and if we do not understand him we will call in the aid of an interpreter.

By Mr. BRADLEY:

Q. State, if you please, where you reside.

A. In Montreal, Canada.

Q. What is your profession?

A. Advocate. I am now employed in the crown law department.

Q. How long have you resided in Montreal?

A. Since 1858.

Q. While residing there, did you know St. Marie, who has been examined as a witness in this case?

A. I did not meet him in 1858, but I saw him in 1859, and from that date up to 1862. Perhaps I met him before, but I did not notice him at all. I have seen him since 1859 up to 1862. Then he was employed in the Education office, from 1860 to 1862, and he left the Education office, robbing the sum of—

Q. You must not state any particular facts not within your knowledge, but only what you know. I will ask you now, had you an opportunity during that time to know what was said of him among those with whom he associated as to his truth and veracity?

A. Yes.

Q. Was his general character for truth and veracity good or bad?

A. It was very bad.

Q. From that general character—not your personal knowledge, but from what was said of him by people associated with him—would you believe him on his oath?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. Did you ever talk with St. Marie?

A. I spoke to him once or twice, I could not say exactly; but I have never been well acquainted with him. I met him only in Montreal when he was there.

Q. That was the first time you ever met St. Marie to know him?

A. I saw him when he was a law student. At the same time that he was employed at the Education office he studied the law, and I have seen him at the house of Mr. Archambault.

Q. Did you talk with him then?

A. Only on business.

Q. Did you talk with him on business?

A. Only on business.

Q. When did you next see him?

A. From 1859 up to 1862 I saw him sometimes, but not very frequently.

Q. Have you seen him often since that time?

A. No.

Q. Did you see him often between 1859 and 1862?

A. I met him only on the street. I was not acquainted with him. I spoke to him only on business.

Q. You had business with him once?

A. Yes, sir.

Q. Did you associate with his friends and acquaintances?

A. Oh, yes; I knew many of his friends and acquaintances.

Q. Were you intimate with the same persons with whom he was intimate?

A. Yes. During last winter—

Q. That is simply my question, whether you were intimate with the same persons?

A. Yes, and I will tell you how.

Mr. PIERREPONT. That is all.

The WITNESS. I will explain, if you will let me.

Mr. PIERREPONT. Explain what?

The WITNESS. That I had occasion during last winter to live in LaPrairie, which is his native place, and there I met many persons who knew him perfectly well since his birth, and I heard these persons speaking of him in such a way that I—

Q. Had you then heard that he had betrayed Surratt in Rome?

A. No, and before that time too.

Q. At this time that you are now speaking of, had you then heard that he had made known that Surratt was in Rome?

A. No. I began to work in La Prairie in the month of November, and the arrest of Surratt was sometime after; but before the arrest of Surratt I heard many persons speaking of St. Marie in a way—

Q. After the arrest of Surratt in Rome did you hear any thing about it?

A. Certainly; many people spoke of it.

Q. Was much spoken of it?

A. Oh, certainly; I heard it at that time too; but I heard it before.

Q. Did you know the fact that Surratt was arrested in Rome on the information given by St. Marie?

A. Certainly I did.

Q. Did you know the fact that he escaped from the guards there at the time of this conversation?

A. I did not know then that St. Marie made the deposition against Surratt and that Surratt was arrested.

Q. You heard that?

A. Yes, sir.

Q. That was much discussed, was it not?

A. Certainly; the people were talking about it.

Q. Those people among whom you moved thought it was not right for St. Marie to betray Surratt in Rome, did they not?

A. There were some people speaking that way, but they were discussing him generally.

By Mr. BRADLEY:

Q. I understand you to say that the conversation to which you first referred, in November, was before you heard of the arrest of Surratt?

A. Oh, certainly; the first conversation I heard of St. Marie was in 1862, when he left the Education office; but I heard the conversation in his own native land since the month of November up to the arrest of Surratt.

By Mr. CARRINGTON:

Q. November of what year?

A. Last November.

By Mr. BRADLEY:

Q. And after you heard the report of the arrest of Surratt, you heard it still more spoken of?

A. Oh, certainly, more.

Q. Now, as far back as 1862, when he left the Education office, was or not his character freely spoken of?

A. Certainly it was publicly noticed that he left the country for the reason I have mentioned.

By Mr. PIERREPONT:

Q. Did you know of St. Marie studying for the ministry in your Church—for the priesthood?

A. I did not know that.

Q. You belong to the Roman Catholic Church?

A. Yes, sir.

Q. Did you know of his studying for the priesthood?

A. No, I did not know that.

Q. Did you not hear of it among the people up there?

A. No.

Q. Did you not know he was sent down here as a teacher in the Church?

A. I did not hear anything of that.

Q. You did not hear that discussed when you heard him discussed?

A. No.

By Mr. BRADLEY:

Q. Did you hear why he came into the United States?

A. Because he robbed a certain sum of money from the Education office—\$900. He did not come as a teacher. That is the only reason I ever heard of which he left the country.

By Mr. CARRINGTON:

Q. That was what you heard? You heard he came here as a teacher?

A. No, no. I said that the only reason for which I heard he left the country was because he robbed the Education office.

Q. That was not the question. The question we asked you was, do you know the fact that he was sent here as a teacher?

A. No, sir; I never heard of it.

Q. Did you know the fact that he came to Washington city, and that he was employed here as a teacher?

A. I did not. I did not hear what he did here.

Mr. CARRINGTON. We did not ask why he left the country.

Mr. BRADLEY. I followed up your question.

Mr. CARRINGTON. Not at all. I submit that the question put by the counsel on the opposite side was not responsive to the cross-examination.

Mr. BRADLEY. I think it is.

Mr. CARRINGTON. I submit to the court that it is not. The question put by Judge PIERREPONT to the witness was, Did he not know the fact that St. Marie had come to the city of Washington, and had been sent here by the Church of which they were both members, as a teacher? Then Mr. BRADLEY asked some question, and in response to that the witness gives the reason, so far as he pretends to know, why St. Marie left Canada.

Mr. BRADLEY. The question put by the prosecution was, if he had heard that St. Marie had come to the United States to teach and had been sent by the Church? He said no, he had not heard it. I then asked him if he knew, or had heard the reason why St. Marie left Canada. His answer was, because he had robbed the Education office and fled to the United States. Now, is that admissible or not, following up the inquiry put on the other side?

Judge FISHER. Let the question put by Mr. PIERREPONT be read.

[The reporter read the question put by Mr. PIERREPONT and also the question by Mr. BRADLEY and the answer of the witness.]

Judge FISHER. It is not at all in reply to the question of Mr. PIERREPONT.

Mr. PIERREPONT. I ask that it be stricken out.

Mr. BRADLEY. No objection was made to the question nor to the answer until after it was all out.

Mr. PIERREPONT. I should have objected to it

if I had heard it. A telegram was handed to me at that moment, which diverted my attention, and I understood the district attorney made some objection.

Mr. CARRINGTON. Of course I supposed the question put by counsel was responsive to the question which we had asked. It is not too late to make the objection.

Judge FISHER. I think it is not admissible.

Mr. MERRICK. There was no objection made, your honor; and the other day, you will recollect, when the counsel offered to allow me to recall, as I supposed, any witness that was in attendance to cross-examine him, and I then specified one that I notified them I wanted to recall, I had understood that I had accepted the offer, but your honor told me I had not accepted it in distinct terms, and would not allow me to avail myself of an offer distinctly made, because I had failed to accept it distinctly. Now, the learned counsel heard the question which was put here, and no exception was taken to it.

Judge FISHER. That is altogether a different thing. The answer will be stricken out.

Mr. MERRICK. It is very near the same thing. It shows that the counsel must act at the time.

By Mr. PIERREPONT:

Q. Did you hear yourself that St. Marie had betrayed Surratt in Rome?

A. Yes; I saw it in the papers.

Q. Did that affect your feelings towards St. Marie?

A. No, not at all.

Q. You thought it was right?

A. I thought it was right that he had made a deposition against Surratt.

Q. You thought it was right for St. Marie to do it?

A. Oh, no; I did not give any opinion on the matter then.

Q. I did not ask your opinion. I ask as to your feelings?

Mr. BRADLEY. Then I object to it.

Mr. PIERREPONT. The very thing that might be objectionable would be his opinion. I am asking his feelings.

Mr. BRADLEY. The objection I have is to his feelings.

Mr. PIERREPONT. That is the very thing I am asking.

Judge FISHER. You can ask him whether he entertained any bad feelings to St. Marie on that account.

Mr. BRADLEY. That is another matter.

Q. (By Mr. PIERREPONT.) Did that excite any unpleasant feelings in you towards St. Marie?

A. I have no feelings in favor of Surratt nor against St. Marie. I gave only the general character of St. Marie, but did not express any feeling.

Q. I ask you if his betraying Surratt in Rome excited in you any feelings against St. Marie?

A. I tell you I did not express any feeling.

Q. I did not ask what you expressed. I ask what you felt?

A. I felt that he was—I cannot say it in English.

Mr. MERRICK. Say it in French.

The WITNESS. *J'ai dit que l'était un lâche d'avoir dénoncé Surratt pour de l'argent.*

Mr. MERRICK. Col. O'Beirne, will you translate that?

Mr. PIERREPONT. No; I want my answers in English.

Mr. MERRICK. The counsel asks the witness a question in English. The witness attempts to express his idea, and it was apparent to your honor and every one that he could not express it. He says, "I cannot find English for it."

Mr. PIERREPONT. It was perfectly apparent to me that he could.

Mr. MERRICK. Wait until I am through. Now, he puts it in French. Why can it not be translated?

It was perfectly apparent that the witness could not find English in which to put his idea, and he said he could not put it in English. I then said to him, "put it in French." We have here a sworn interpreter. The witness has gone on evidently with great difficulty in expressing himself, although he has done so with great clearness; yet in reply to this question it was apparent that he could not find the English word to convey the idea that was struggling to get out. Ought not your honor to let him get that idea out in answer to the question in a language in which he is capable of conveying it?

Mr. PIERREPONT. Now, if the court please, I am cross-examining this witness, who was directly examined in English. I intend to continue it in English. If the witness says he does not understand my question, I will endeavor to so shape it that he will understand it, and I do not intend, unless your honor compels me to, to have the cross-examination interrupted at every step or at every other step to bring in an interpreter.

Judge FISHER. (To the reporter.) Read the question that was put by Mr. PIERREPONT.

Mr. BRADLEY. Before that is read, pardon me for stating, that when this witness was sworn, an interpreter was also sworn, and it was with the understanding that he should go on and answer in English as far as he could, and when he could not, the interpreter should be appealed to.

Judge FISHER. That is exactly the point I want to get at. Let the question be read to the witness distinctly, and let him answer in English, if he can. Let him make an attempt to answer it in English.

The question was read, as follows:

"I ask you if his betraying Surratt in Rome excited in you any feeling against St. Marie?"

Judge FISHER. (To the witness.) Answer that yes or no.

A. I answered this question before; I said no, not any feeling against him.

Mr. PIERREPONT. That is the answer. You found no difficulty in saying yes or no.

The WITNESS. But I thought you were asking me if I said something, when I heard that Surratt was arrested, against St. Marie. I understood that, and I understood, too, this question, to which I was able to reply in English what I said then in French.

Q. Did you at any time say any thing against St. Marie connected with his betrayal of Surratt?

A. The only thing I said I will tell you in French. I will try to translate it in English.

Q. I do not ask you what you said, but whether you said any thing?

A. I said—

Q. Did you say any thing against St. Marie. I do not ask what you said. I am coming to that next. I ask you if you said any thing?

A. I can tell you in French what I said.

Q. I do not ask what you said.

Judge FISHER. (To the witness.) He asks you whether you said any thing at all against St. Marie at that time.

A. The only thing I said of St. Marie—

Mr. PIERREPONT. I will ask the court to put it to you; if you do not understand me. I ask you simply whether you said any thing against St. Marie?

A. Yes. I said only a few words, that I—

Mr. PIERREPONT. That is all.

Mr. BRADLEY. The witness asks to explain.

Mr. PIERREPONT. He has not asked any thing.

Mr. BRADLEY. He did say so.

The WITNESS. I will explain.

Judge FISHER. (To Mr. BRADLEY.) You can have him explain when you come to reply.

Mr. PIERREPONT. I am going on a little further now. (To the witness.) Did you talk to anybody against St. Marie.

A. I said only some few words against St. Marie.

By Mr. BRADLEY:

Q. Now, state, if you please, what you did say about St. Marie when you heard of the betrayal of Surratt?

A. When I heard that St. Marie made the deposition against Surratt, I said that he was a coward to have made such a deposition against Surratt—I cannot say it properly in English.

Mr. BRADLEY. Say it in French to Colonel O'Beirne.

The WITNESS. *J'ai dit que l'était un lâche d'avoir dénoncé Surratt pour de l'argent.*

Colonel O'BEIRNE. [Translating.] He said it was mean or unprincipled in him to have made that deposition against Surratt for money.

LUDGER LABELLE,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State where you reside?

A. In Montreal.

Q. State what your profession is?

A. Advocate.

Q. Are you in any public position now?

A. I am a city counsellor for Montreal, and have been for four years past.

Q. How long have you resided in Montreal?

A. I have always resided in Montreal. I was born there.

Q. Did you know in Montreal a man named H. B. St. Marie, who has been examined as a witness in this case?

A. Yes, sir.

Q. When and how long did you know him?

A. I have known him for about eight years.

Q. Where was he residing while you knew him?

A. In Montreal.

Q. During what years, as well as you can recollect?

A. As well as I can recollect, I made his acquaintance in 1858 or 1859; I am not sure which.

Q. How long did he continue to live in Montreal after you formed his acquaintance?

A. About three years, until 1862.

Q. During that time do you know whether he had any employment or not?

A. Yes; he was employed from October, 1860, until August, 1862, in the Education office in Montreal.

Q. State whether, during that time, you had opportunities to know the persons with whom he associated and mingled in society?

A. Perfectly well. I have known him personally, and I was myself at the time the editor of a small paper next to the Education office, and I had the opportunity to see him three or four times a week perhaps.

Q. During that time had you opportunities to learn and know his general character, among those with whom he associated, for truth and veracity?

A. Oh, yes, perfectly well.

Q. Was it good or bad?

A. In the beginning his character was not known as a bad one. I mean in 1858 or 1859.

Q. Before he left Montreal—up to the time he left Montreal?

A. But, when he was employed in the Education office—

Mr. PIERREPONT. Are you speaking of his character for truth?

The WITNESS. I am speaking of his general character.

Mr. PIERREPONT. We do not want that.

Judge FISHER. (To the witness.) Speak of his general reputation for truth and veracity; that is, what other people say about him as being a man who will tell the truth or who will tell lies.

The WITNESS. Well, his character became bad while he was in the Education office.

Mr. CABINGTON. For truth?

The WITNESS. Yes, sir.\*

Q. (By Mr. BRADLEY.) His character for truth became bad while there amongst those with whom he associated?

A. Yes; among the citizens of Montreal generally, and to my knowledge.

Q. State, not from your personal knowledge, but from what people generally said of him, would you believe him on his oath?

A. No, sir, I could not believe him on his oath, according to his general character and according to his acts.

Cross-examined by Mr. PIERREPONT:

Q. You knew him intimately?

A. Not intimately; but, as I have said before, I had many occasions to see him. I was not his friend. I do not like to pass for having been his friend.

Q. What did you mean by saying you knew him intimately well?

A. Not intimately. I have not used that word.

Q. What have you said?

A. I have known him personally, and I had many occasions to see him, but I did not know him intimately.

Q. When did you first know him?

A. In 1858.

Q. Was his character good then?

A. I cannot say any thing against him—

Q. I mean for truth?

A. I understand. I cannot say any thing against him for that time, because I had just commenced to know him at that time.

Q. Did you know him in 1859?

A. Yes.

Q. Was his character for truth bad in 1859?

A. I cannot say about that time exactly. I have said before his character came to be considered as bad during the time he was employed in the Education office.

Q. When?

A. From 1860 to 1862.

Q. When did his character for truth become bad?

A. From 1860 to 1862.

Q. Have you seen him since?

A. Oh, yes. After he left the Education office and came into the United States, I suppose a year after, he came to Montreal for two or three days, and I saw him on the street at one time.

Q. Did you know of his making a deposition in Rome by which Surratt was arrested?

A. I learned that by the papers.

Q. When did you learn it?

A. When it came to the knowledge of the papers.

Q. When?

A. I cannot say exactly the time.

Q. Was it soon after it happened, soon after his arrest in Rome that you heard about it?

A. Yes.

Q. Did you talk about that?

A. I have talked about it as other persons have.

Q. Did you express yourself as against that—against St. Marie informing on Surratt in Rome?

A. I have no particular feeling against St. Marie.

Q. I asked you if you had expressed yourself on that subject.

A. I have given my opinion on the fact.

Q. What opinion did you give?

Mr. BRADLEY. Stop a moment; they said a little while ago that that was not evidence.

The WITNESS. I have no objection to answering that question.

Judge FISHER. You do not want his opinions, but his feelings.

Q. (By Mr. PIERREPONT.) Did you express any feelings on that subject?

Mr. MERRICK. Do not answer that question.

The WITNESS. I have answered it already, I think.

Mr. BRADLEY. Certainly you have, in plain terms, that you had no feeling about it.

Mr. PIERREPONT. My question is, Did you express any feelings about St. Marie on that account?

Mr. MERRICK. Do not answer that question. I understood your honor to say that he was to be asked not what he expressed, but what he entertained.

Judge FISHER. I suppose if he expressed them, that is the best evidence that he entertained them.

Mr. MERRICK. The question is, did he entertain them, and does he entertain them?

Judge FISHER. That is a fair question.

Mr. PIERREPONT. My question is, Did you express any feelings about St. Marie on account of his informing on Surratt in Rome?

The WITNESS. I have no objection to answering on every subject.

Mr. PIERREPONT. Well, answer that.

A. I have said that St. Marie, under the circumstances, was a low man for having done such a thing in consideration of a remuneration.

Q. Was that all you said?

A. Yes.

Q. You felt so, did you not?

A. That is my opinion about it.

Q. And you did not feel very kindly towards him for it? You felt hostile towards him for doing that mean thing?

A. Not very hostile; I did not care for that man; I did not like to be in contact with him at all.

Q. And you thought it was a wrong act, and felt so?

A. Not the act itself; I do not say that the act itself is a wrong act; but I say that it is low to do such a thing for a consideration of money.

Q. And you did not think any but a low man would tell on Surratt in Rome?

Mr. BRADLEY. That is not what he said.

Mr. PIERREPONT. I ask him if that was his feeling.

The WITNESS. What?

Q. (By Mr. PIERREPONT.) Was it your feeling that none but a coward or low man would inform, as St. Marie informed, on Surratt?

A. No, no; I did not say that.

Judge FISHER. I hardly think that is a fair question.

By Mr. CARRINGTON:

Q. Will you state the first time that you ever heard St. Marie's reputation for truth—confine yourself to that—discussed by any persons in Montreal?

A. The first time was some months before his entry into the Education office. I have heard in public that he was obliged to leave the People's Bank in Montreal for something wrong.

Q. You say you are an advocate, a lawyer. Have you not been told by the court that you must confine yourself to his reputation for truth?

A. Yes.

Q. Did you ever hear any person say that he was a liar and would not tell the truth; and, if so, state when?

A. Oh, many.

Q. Now, I want to know when it was that you heard that; the first time you heard it said that he was a liar and would not tell the truth, or words to that effect—an attack upon his reputation for veracity?

A. I have answered that before, I think, but I will repeat. It was when he was employed in the Education office that his character became very bad, and at that time I heard many persons say that it was impossible to believe that man.

Q. Who were they? Name the persons who made that statement.

A. That was about five years ago, and I did not take notice of the fact at the time, because I did not know that I would be obliged to appear in Washington about this case.

Q. It has been five years ago, and you recollect what was said?

A. I recollect generally.

Q. You recollect what was said, and yet you cannot recollect the persons who said it?

A. Certainly; that is a very different thing. I recollect the fact that many persons, not only one person or two, but a large number of persons, knew St. Marie as a man whom they could not believe; but it is very difficult after five years to name the persons.

Q. You say you cannot then?

A. I have received that information not from one person only, but from a large number of persons.

Q. Can you state the names of any persons that you heard say, before the arrest of Surratt, that this man St. Marie could not be believed?

A. I can, in the first place, name myself. It was my opinion before that.

Q. Who else?

A. I cannot say exactly the names. It was the general opinion in Montreal. It is perfectly easy to have a hundred witnesses to swear to that fact.

JOSEPH DUTILLEY,

a witness for the defense, sworn and examined.

[The witness being unable to speak English at all, Colonel James R. O'Beirne, previously sworn, acted as interpreter throughout his examination.]

By Mr. BRADLEY:

Q. Where do you reside?

A. West Shefford, Canada.

Q. How long have you resided there?

A. Seven years.

Q. Do you know Dr. Louis J. A. McMillan, who has been examined as a witness in this case?

A. Yes, sir.

Q. Did you at any time reside near where Dr. McMillan lived?

A. Eight miles from there.

Q. Did you know the people among whom Dr. McMillan associated?

A. No, sir.

Q. Where did Dr. McMillan live at the time you knew him in 1862?

A. Frost village.

Q. Did you know the people at Frost village?

A. No, sir.

Q. Do you know the village of Waterloo?

A. Yes, sir; very well.

Q. How far is it from your residence?

A. Eight miles.

Q. Did Dr. McMillan live at Waterloo at any time?

A. Yes, sir.

Q. How long did Dr. McMillan live at Waterloo?

A. To my knowledge almost a year.

Q. In what year?

A. 1864.

Q. Did you know the people at Waterloo?

A. Very well.

Q. Do you know the Canadian people who are acquainted with Dr. McMillan?

A. Yes, sir.

Q. Many or few?

A. A great many.

Q. Have you ever heard them speak of Dr. McMillan's character for truth?

Mr. CARRINGTON. You have not asked the question whether he knew his general reputation.

Mr. BRADLEY. I am going to prove his general reputation by asking if he has heard the great many people whom he knows, who know Dr. McMillan, speak of his character for truth.

Mr. CARRINGTON. Go on, sir.

A. Yes, sir; I have heard them speak of it.

Q. What sort of character do they generally give of him for truth—good or bad?

A. Very little.

Mr. BRADLEY. Does he mean that he knows very little?

Mr. MERRICK. They give him a small character. That is what he means.

Mr. PIERREPONT. That kind of interpretation will not do.

Mr. BRADLEY. We will not discuss it now.

Mr. PIERREPONT. The witness said "*bien petite*," and of course everybody who knows any thing about French knows what that means.

Q. (By Mr. BRADLEY.) Do you mean to say that you have heard people speak very little of him; or what do you mean?

A. I mean to say that the people have spoken very little of him.

Q. Do you know his general reputation among the people for truth?

A. Yes, sir.

Q. What is that character for truth—good or bad?

Mr. CARRINGTON. It is for the court to determine whether this witness has sufficient knowledge to speak of the general reputation for veracity of the one he is called to assail. This witness says that he has heard Dr. McMillan's character spoken of very little. Then he is asked, Do you know his general reputation for veracity, and he says, yes; but it is obvious that he does not know it. It may be his opinion that he knows it sufficiently, but the court is to determine whether he has sufficient knowledge to speak on that subject from his testimony, and he having stated that he heard very little said about it, of course he cannot say any thing about it.

By Judge FISHER:

Q. Have you heard the people generally in the neighborhood where Dr. McMillan resided speak much or often about his character for truth and veracity?

A. A great deal.

By Mr. BRADLEY:

Q. Now, I will ask you what is generally said of his character for truth? Is it good or bad?

A. All the people who have employed him as doctor said that he should not serve them again.

Mr. PIERREPONT. I ask your honor to strike that answer from the record. Its tendency of course would be against any professional man in his profession.

Mr. BRADLEY. I agree that it should be stricken out; it is not an answer to the question. I will repeat my question. (To the witness.) What is generally said of his character for truth; is it good or bad?

The WITNESS. *Mechant mauvais*.

The INTERPRETER. It is bad.

Mr. MERRICK. What is the full force of that expression?

The INTERPRETER. Wicked bad.

Mr. PIERREPONT. No, wicked.

Mr. MERRICK. The worst kind of a character.

Q. (By Mr. BRADLEY.) Have you ever heard his oath called in question in a court of justice?

Mr. CARRINGTON. We object to that.

Judge FISHER. That is a new question to me. I do not know that I ever heard that question before; it may be proper.

Mr. BRADLEY. That is one of the best modes of ascertaining the character of a man.

Mr. PIERREPONT. There is not any such mode of ascertaining it that I ever heard of.

Judge FISHER. It looks like bringing another court here to do business at this court.

Mr. PIERREPONT. I do not know what has been done in another court; we are in this court.

Mr. BRADLEY. I wish to know whether his oath has been challenged and people called to testify in regard to it, and whether, therefore, this witness has had an opportunity of hearing what his neighbors said about him.

Mr. PIERREPONT. That we will find out when we cross-examine. You cannot ask that.

Mr. CARRINGTON. It would be a very dangerous rule.

Mr. PIERREPONT. I submit it is not the rule, and never has been.

Mr. MERRICK. I will ask if it has been discussed by people in attendance on a court?

Judge FISHER. I do not think that is proper.

Q. (By Mr. BRADLEY:) Have you ever heard his character for veracity spoken of freely by his neighbors on any particular occasion?

Mr. PIERREPONT. You cannot ask that. You want his general reputation, not particular.

Q. (By Mr. BRADLEY:) Have you heard people who know him say they would not believe him on oath?

Mr. PIERREPONT. Do not ask him that. The mode of putting these questions is very well settled, and we have had it over a great many times. If you want to ask the witness whether he would believe him on oath, I have nothing to say.

Mr. BRADLEY. If it is objected to I shall not insist upon it, for I do not think it is strictly a legal question; but I did not suppose it would be objected to, under the circumstances. (To the witness:) State whether, from what people say generally of him, you would believe him on his oath.

A. No, sir; and it is not on account of reasons which I have given to myself.

Q. From what people generally say, without your knowledge of him, would you believe him on oath?

A. No, sir; I would not.

Cross-examined by Mr. PIERREPONT:

Q. What is your occupation?

A. I do some things at Reynolds's gallery, at Waterloo.

Mr. MERRICK. He does not understand the question.

Mr. PIERREPONT. Then I will put it over again. (To the witness:) What is your present occupation?

A. Farmer.

Q. Do you know a priest named Boucher?

A. Yes, sir.

Q. Is he the same one about whom Dr. McMillan spoke in his testimony?

A. I think he is.

Q. Have you been a servant of that priest, Boucher?

A. No, sir.

Q. Have you been in his employ?

A. No, sir.

Q. Who first spoke to you about this case?

A. Mr. Nagle.

Q. Did the priest Boucher say any thing to you about it?

A. Yes, sir.

Q. Did the priest Boucher say any thing to you about Dr. McMillan?

A. No, sir.

Q. Did the priest Boucher say any thing to you about a quarrel between him and Dr. McMillan about a debt of 1864?

A. Yes, sir; it was I who paid it.

Q. Did not you yourself bring the money from the priest Boucher to Charles S. Martin, at Waterloo?

A. No, sir; I gave it to Dr. McMillan himself.

Q. Do you know Charles S. Martin, of Waterloo?

A. I do not think I do.

Q. Have you talked with the priest Boucher about Dr. McMillan?

A. Sometimes.

Q. How lately?

A. We have not spoken of McMillan for a month.

Q. Did he speak to you of McMillan about a month ago?

A. Yes, sir.

Q. Did he say any thing to you against Dr. McMillan?

A. No, sir.

Q. Did you say in the presence of Mr. Charles S. Martin that you would, whenever you had a chance, do Dr. McMillan whatever damage you could?

A. No, sir.

Q. Did you say any thing against Dr. McMillan, or any thing you would do against him?

A. No, sir.

Q. Are you an enemy, or hostile, or unfriendly to Dr. McMillan?

A. I am a friend; I have no reason to be an enemy.

Q. Where were you in 1864?

A. At West Shefford.

Q. What was your occupation in the year 1864?

A. I was engaged in cultivating a farm.

Q. Have you at any time been in the service of this priest Boucher?

A. No, sir.

Q. Did you ever live in the house with him?

A. Yes, sir.

Q. When?

A. In 1864; I was there three months, boarding.

Q. In whose house were you boarding?

Mr. BRADLEY. He has just said in the priest's house.

Mr. PIERREPONT. I do not know whether the priest owned the house or somebody else. (To the witness.) In whose house were you boarding?

A. With the priest.

Q. Did you do any work to pay for your board?

A. Yes, sir; not for the curé; I worked for myself.

Q. Did you do any thing for the priest to pay for your board?

A. Yes, sir; sometimes.

Q. What did you do?

A. I took him about to different places in a carriage, riding.

Q. In whose carriage?

A. In my own carriage.

Q. What business were you then doing yourself?

A. I cultivated a farm.

Q. How much of a farm—how many acres?

A. I believe about fifty acres.

Q. What rent did you pay?

A. Sixty dollars.

Q. When did you first go to live in the priest's house?

A. In 1864.

Q. What time in the year?

A. At the end of April or the commencement of May.

Q. When did you leave it?

A. In August.

Q. When did you go back again to the house of the priest?

A. I returned there in the month of January.

Q. How long did you stay?

A. I believe I remained there two months and a half.

Q. When did you next return there?

A. Every winter.

Q. Were you there in the winters of 1865, 1866, and 1867?

A. Yes, sir.

Q. Did you talk with the priest about McMillan within the last month?

A. Once.

Q. Have you talked with the priest Boucher about McMillan since McMillan came on here to testify?

A. Yes, sir; once.

Re-examined by Mr. BRADLEY:

Q. You have been asked about a quarrel between Boucher and McMillan. Do you know what that was about?

A. The curé has never spoken to me about it. When McMillan practised chicanery with the curé, I was there. I do not know the cause at all. I simply saw the curé put him outside.

Q. When was that?

A. In 1864.

Mr. BRADLEY. I want to examine this witness on another part of the case, totally distinct from this branch. It is now eighteen minutes to one o'clock, and perhaps we had better take a recess.

Mr. CARRINGTON. I want to ask the witness one or two questions.

Mr. BRADLEY. I thought you were all done. The only question I have asked him on the re-examination was about that quarrel.

Mr. PIERREPONT. We wish to ask whether he took the money after this quarrel to Dr. McMillan.

Mr. BRADLEY. I think he was interrogated about that on the cross-examination. I have not asked a word about it on the re-examination.

Judge FISHER. In reply to the cross-examination how long will you take before you finish?

Mr. BRADLEY. I want to recall him on another point.

Mr. PIERREPONT. I want to ask him whether the money was given after the quarrel of which he has just spoken.

Mr. BRADLEY. I object to the question, because there was nothing about that on the re-examination.

Mr. PIERREPONT. They have asked about the quarrel. Now, I ask whether this money was given after the quarrel.

Mr. BRADLEY. I asked about the quarrel because it was a matter brought out on the cross-examination.

Mr. PIERREPONT. My question is, whether he took the money to Dr. McMillan after this quarrel about which he has been asked.

Mr. BRADLEY. There cannot be any mistake about the question.

Judge FISHER. I guess that is not in reply to the examination. The witness can go.

The court took a recess for half an hour, re-assembling at 1:15.

Mr. CARRINGTON. I will state that the Rev. Dr. Gillette, who was summoned by the defense, is present.

Mr. BRADLEY. The court has already ruled that we cannot give in evidence any of the confessions or dying declarations of the parties executed at the Arsenal. We summoned Dr. Gillette for the purpose of giving the confession of Payne. Under the ruling of the court, his testimony would not be admissible, and therefore he can consider himself discharged.

Mr. WILSON presented to the counsel for the defense a memorandum of the dates of the arrival and departure of J. Wilkes Booth from the National Hotel, prepared by Mr. Charles Dawson.

Mr. BRADLEY objected to receiving the paper, on account of a certain statement contained in it, and on his suggestion, Mr. WILSON consenting, the statement objected to was stricken out.

Mr. BRADLEY. If your honor please, when the court took a recess we had intended to examine Mr. DuTilly further upon a different branch of this case; but, upon conversation with him, I find that it would not only be no advantage to us, but no advantage to the case on either side, his memory of the transactions is so indefinite.

We are disappointed in the arrival of five witnesses that we had every reason to expect would be here. I suppose they have missed the connections. I have telegrams showing that they are on their way. They are absolutely material to the defense in the case, and we have used every exertion to get them here. They will unquestionably be here this evening, or to-morrow morning at the latest. Two of them are from Albany, New York; one from Montreal, who is on his way; one from Rome, New York; and one from Pennsylvania. In order to expedite it, we sent special messengers to make sure of their arrival. I have here a telegram from the messenger. They will unquestionably be here in the morning, and they are really witnesses of vital importance to the defense—two of them certainly; and it would be doing great injustice to the prisoner to close the case without their presence. We have exerted ourselves, with the means we had, for weeks now, to get two of them here. It will be utterly impossible for us to close to-day with any justice

to the defense, and we shall therefore have to throw ourselves on the indulgence of the court on the part of the prisoner until to-morrow morning. We shall close with those witnesses. We would have closed to-day if they had been here.

Mr. CARRINGTON. Do you expect them to-morrow?

Mr. BRADLEY. They will be here to-morrow.

Mr. CARRINGTON. Do I understand that those are the only witnesses the gentleman proposes to examine?

Mr. BRADLEY. Those are the only witnesses we propose to examine. If we should hear of any in the meantime—

Mr. CARRINGTON. You have none here now in town?

Mr. BRADLEY. Oh, no. We have examined every witness in the city we deem it necessary to examine. There are witnesses here whom we do not care any thing about.

Mr. CARRINGTON. Upon the statement of the counsel that the witnesses are important to the defense, I think it improper in us to interpose any objection. Of course we are all anxious to close the case, but your honor has been disposed to grant indulgence on both sides.

Judge FISHER. (To Mr. BRADLEY.) Then you have no other witness to put on the stand to-day?

Mr. BRADLEY. None to-day. There are several witnesses in town, but their testimony is not admissible under the rulings of the court. I think there are some twelve or thirteen whose testimony is out of the case under the ruling of the court, and we did not choose to trouble the court with bringing up witnesses merely to introduce them and let them be dismissed. Perhaps there are fifteen of them, a number of whom are still in town, but go off to-day. We have retained them until the last in the hope that their testimony might be admitted.

Judge FISHER. Then, if we can do nothing further to-day, we shall have to take a recess until to-morrow morning, with the understanding that you will certainly close to-morrow.

Mr. BRADLEY. I think so. Of course I cannot pledge myself, but so far as we can possibly promise, we will close to-morrow. We would have closed to-day but for the absence of these witnesses. Our case is made up when we get those witnesses.

The court then took a recess until to-morrow morning at ten o'clock.

### Thirty-Fourth Day.

FRIDAY, July 19, 1867.

The court re-assembled at ten o'clock, a. m.

Mr. BRADLEY. Two of the witnesses for whom we were waiting yesterday, instead of coming in person, have sent us certified copies of the time-tables, which I have handed to counsel on the other side; and time will be saved by our examining them together.

Judge FISHER. Very well.

The time-tables having been examined by counsel—

Mr. BRADLEY. After very diligent search, we have been able to find a time-table from Albany for the period in question. Mr. Chittenden, instead of coming himself, has sent it on certified by the proper officer, and the gentlemen on the other side agree that it shall be received as though he were here.

Mr. PIERREPONT. To avoid any misapprehension about what we agree to, I will state that we agree that the time-table be received on that certificate precisely the same as though the man had testified to it, and we do not object to its being received in evidence. We do not admit that the cars ran upon the time, but that is the time-table.

Mr. BRADLEY. I understand that.

Mr. PIERREPONT. I did not want any misapprehension about it.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 83. WASHINGTON, SATURDAY, AUGUST 24, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 82.*

Mr. BRADLEY. By this time-table of the New York Central Railroad Company, it appears that in March and April, 1865, the first train of passenger cars left Albany at seven o'clock in the morning, and reached Syracuse at 1.20 p. m., making the time to Syracuse six hours and twenty minutes. The next is a time-table showing the time of departure from Syracuse of the cars going west to Canandaigua, and the time of arrival at Canandaigua. The first shows that the cars arrived at Syracuse at 1.20. This shows that they left at 1.30 p. m. and arrived at Canandaigua at 4.52 p. m. I wish you, gentlemen of the jury, to take notes of these times, as you will not have the papers with you.

Now, your honor, in the absence of the proof we have been waiting for as to the route from Montreal to New York, to save time, we offer to put in evidence *Appleton's Railway Guide*.

Mr. PIERREPONT. I will not object to its going in as *Appleton's Railway Guide* for whatever it is worth, if it is for the right month.

Mr. MERRICK. It is agreed, then, that *Appleton's Railway Guide* may go in evidence for what it is worth. The one I have here is for March, 1865; but the time was the same in April, 1865.

Mr. PIERREPONT. We do not consent to that. I supposed it was for April.

Mr. MERRICK. I cannot find one for April. I may get one yet. I do not know, but I suppose the time was the same for both months.

Mr. PIERREPONT. I do not know that.

Mr. MERRICK. I do not know it either, but I suppose it to be so.

Judge FISHER. Then, I understand, the *Railway Guide* is not admitted.

Mr. PIERREPONT. No, sir.

Mr. MERRICK. Before we go any further this morning, I would ask the indulgence of the court to allow me to hand your honor an authority that you may look at it and see whether it would be proper to permit the counsel for the defendant to re-open the case with regard to the introduction of the Canandaigua register. It was decided upon the then condition of the case, and I simply desire to refer your honor to the authority of the case of *Gaines vs. Relf*, in 12 Howard's United States Supreme Court Reports, in reference to certain letters from Desgrange to Clark. Your honor will find the passage marked; I will hand the book up to the court. I made the remark to the court at the time, that a letter was evidence of the time when and place where written, as decided in the English Exchequer Reports; and your honor indicated that that was not your view of the law. On further examination, I find this authoritative decision.

Judge FISHER. I suppose that letter must have had a post-mark on it, showing its date by the act of somebody else, or must have had some internal evidence

impressed upon the face of it, showing conclusively that it was written at the time and place.

Mr. MERRICK. The letter is in the original report. I have not got the original report; the volume which I have is Curtis's Condensed Reports.

Judge FISHER. Letters bearing post-marks are always admissible.

Mr. MERRICK. That was not the case here, as your honor will find in the original report, and the court said there was no evidence by whom it was deposited, and the only evidence was as to the handwriting; and the ruling was that, "it is competent to prove the state of feeling, affection, and sympathy of Desgrange towards his wife when he wrote the letter." That was one purpose, supposing it to be from Desgrange; but the court go further and say, "And also the date is evidence to prove where the writer was at the time when he wrote;" that is, the date of the letter, not the post-mark. And this follows the decision I referred your honor to in the Exchequer Reports: "There is no ground to suppose that the letter was written collusively. It appears to have been ingenuous and honestly intended," indicating that the burden of proof of collusion is on the other side, and that in the absence of proof of collusion, the handwriting of the letter being shown, and the date of the letter being shown, it is proof to show where the party, whose handwriting is proved, was at the time the letter bears date. The question was a very important one in that case.

Judge FISHER. I do not recollect any thing about that case, and do not know that I ever saw it; but I think you will find upon inspection that it was one of those letters that bore a post-mark.

Mr. MERRICK. There is no reference in this report to a post-mark. It says, "the date of the letter," not the date of the post-mark.

Judge FISHER. What reporter gives the case?

Mr. MERRICK. It is in 12th Howard, page 534.

Judge FISHER. What authority does it refer to?

Mr. MERRICK. 1st Phillips on Evidence, by Cowan, pages 189 and 190. I looked in my edition of Phillips, but it is a later one, and I could not find the reference; but the language of the judge seemed quite explicit, and so explicit as to justify me in calling your honor's attention to it.

Judge FISHER. I have always heard, in my practice and always known letters to be ruled out unless they had a post-mark on them, or unless they were sworn to have been contained in an envelope having a post-mark. If they have that impress of public authority, showing that they did come from the place and were written at the time at which they purport to have been, or the post-mark shows they were, they have been admitted in evidence. The post-mark is evidence of the time and place of mailing a letter.

Mr. MERRICK. The court in that decision met that by saying that the letter does not appear to have been collusively written.

Mr. BRADLEY. The letter may have been mailed by a third person, as is often done. The fact of the mailing of the letter, therefore, would not be evidence

that the party was at the place where it was mailed. But the handwriting and the date are the points. I have sent for the volume containing the full report, and I have it here. I call your honor's attention to page 520 of 12th Howard, the case of *Gaines vs. Relf*. The statement of the introduction of this evidence will be found on page 520, and there is not a word said there about how the letter was transmitted.

"In July, 1801, Desgrange wrote to Clark the following letter."

The letter is then copied in full, dated Bordeaux, July, 1801; and in the close of it the writer says: "Write to me to the care of Mr. Jean Bernard, merchant, at Chartron." At page 534 the court say:

"The letter of Desgrange to Clark, of July, 1801, from Bordeaux, is objected to as incompetent. We think it is competent to prove the state of feeling, affection, and sympathy of Desgrange towards his wife when he wrote the letter; and also is evidence to prove where the writer was and the time when he wrote. There is no ground to suppose that the letter was written collusively. It appears to have been ingenuous and honestly intended. The doctrine on which such a letter is admitted is laid down in 1st Phillips's Evidence, by Cowan, pp. 188, 190."

The court say the letter ought to have been admitted. The date of a letter, merely proved to be in the handwriting of the party, was admitted as showing the place where it was written and the time when he was there. I have not been able to lay my hand on the passage in Phillips here referred to in the late edition; my old edition has been borrowed by somebody, as a matter of course; but I rely on the authoritative manner in which Judge Catron refers to it, as indicating what the rule ought to be.

Mr. PIERREPONT. All such letters in family matters, showing feelings between the parties, are admitted as evidence.

Mr. BRADLEY. But this was not a letter from a member of the family, but from Desgrange to a third party.

Mr. PIERREPONT. For the purpose of showing the feeling between them; such letters are always admitted.

Mr. BRADLEY. We agree that they are admissible for that purpose. The only question is, whether they are admissible for another purpose, which the Supreme Court say they are admissible for. They say that the letter being proved to be in the handwriting of the party, there being no evidence of collusion, that letter is evidence of the time when and place where it was written. That is the second purpose. As to the first, there is no dispute about it; but we say it is admissible for something more than to show the relations of the parties. It is admissible to show the time when and place where it was written, as I understand the ruling of the court.

Judge FISHER. Suppose you go on with the examination of your other witnesses. Let us not lose time. This matter can be disposed of afterwards.

Mr. BRADLEY. In relation to the witnesses, I will say that Mr. Boucher, whom we particularly desired to have here, it seems left for this place three days ago, and we have heard nothing from him since he left Montreal; but he is supposed to be on the way. He left on Tuesday, and we fully anticipated his being here this morning. He is the only one of the four I mentioned yesterday that we think very material to us. The places of two of them are supplied by the certificates of the officers of the railroad company, which have been admitted. Mr. Chittenden was one who was to have been here, and a gentleman from Syracuse, Mr. Lapham, is another. They, however, have sent the time-tables and we have received them since the court adjourned yesterday, and that saves us the necessity of bringing them here personally. I ought to say to the court that since it adjourned yesterday—and if it is necessary we will lay the foundation for an application by an affidavit—we have succeeded in discovering, as we suppose, a gentleman for whom we have been looking ever since this case was first put upon the *tapis*, and we have been unable to discover him until this

morning. He resides in the city of New York; a man of respectability and character, by whom we expect to prove that he was in the Brainard Hotel, at Elmira, on the 14th and 15th of April, 1865, and there saw the prisoner at the bar. I telegraphed immediately for him to respond by telegraph whether he will be here by to-morrow morning or not, and upon that I shall submit the matter to the court. If necessary, I will lay the foundation by an affidavit.

Judge FISHER. Have you no witnesses to-day?

Mr. BRADLEY. We intended to close to-day. The ruling of your honor has excluded a large number of witnesses whom we had summoned here, and we have discharged them. We do not intend to burden the case with any further testimony. If we get Father Boucher and the gentleman to whom I have just referred, we are satisfied to rest the case.

Judge FISHER. Is there any objection on the other side?

Mr. PIERREPONT. We shall leave it with the court entirely.

Mr. MERRICK. I would suggest to the counsel, to save time, as that is the only evidence we want, with the addition of what we have no difficulty about—for if I can get one of the Railway Guides for April, 1865, Judge PIERREPONT consents that we may use it—

Mr. PIERREPONT. That you may put it in as *Appleton's Railway Guide*—that is all.

Mr. MERRICK. That it may go for what it is worth. That piece of evidence, and the testimony of the two witnesses to whom my colleague has referred, is all we propose to introduce; and I suggest that the counsel might go on with their rebutting testimony, and give us an opportunity to put in this testimony afterwards.

There is one other question that I want to bring up before the final close, and I may as well do it now. A motion was made, at the time the counsel for the prosecution closed their case, to strike out certain testimony that had been offered by them with the understanding that it was to become admissible by connecting it with the prisoner; and, if it was not so connected, it would not then be admissible. The court said that when a failure to connect was manifest, it would strike the testimony from the record. We made the motion at that time. Your honor said it could be made afterwards; and, as the defense is about to close, I think it is probably the proper time now to renew that motion; at least I can do no better than to submit it to your honor, and take your ruling or your suggestion on the subject. All original evidence is now in except that to which I have just referred. There can be no other evidence that is original. The gentlemen on the other side can offer no evidence that they could have offered in the examination-in-chief. They can offer no evidence except such as is rebutting to what we have introduced, and such as rests on the foundation of our own. The time has now arrived when original evidence is at an end. I think, therefore, that the time has come when your honor will look at this record and see whether or not the counsel on the other side have kept the promise of making that connection between the evidence offered and the charge which is so essential to the legitimacy of the evidence offered; and I therefore move your honor to strike from the record the testimony in regard to Thompson, the testimony in regard to the alleged shooting of Union soldiers, and the fight that occurred with some gunboat on the Potomac river. If the connection has not yet been made, and the relevancy of this testimony has not already been shown under the rules of evidence, it cannot be established hereafter. This I think, therefore, is the proper time to consider that question.

Judge FISHER. Are those the only portions of the evidence you move to strike out?

Mr. MERRICK. Also the letter that was found floating upon some waters in North Carolina, which was to have been shown to be connected with some of

the parties charged to have been concerned in this conspiracy, and has not been shown to have been connected with them.

Judge FISHER. How was that letter signed?

Mr. MERRICK. "No. Five." I do not now recall any thing else that is of sufficient importance to bring it to the attention of the court. There is a great deal in that I do not esteem of the slightest moment, which would be subject to this objection, but it is not worth while to notice it.

Mr. PIERREPONT. If your honor please, I do not propose to discuss any of these questions until the case is finished, and then I do. As I said once before when this question was up, there are a great many things in this case that would appear to a person who is not familiar with the whole case to have no connection with it. There are a great many detached things in it which of themselves do not appear to be connected. When, however, they come to be connected with other things, they will be found to form a chain in which there is no dislocation in any link, in my judgment; but that cannot be shown until they are put together. You cannot take them in a detached way and show their connection. This case has occupied a great many weeks and fills a great many hundred pages of testimony. There are a great many detached things in it. When they come to be put together it will be seen where they bear. I do not concede my learned friend's proposition, that the prosecution cannot offer any thing now in evidence which they could have offered in the beginning. I understand him to make that proposition.

Mr. MERRICK. Yes, sir; I understand that to be the rule of law.

Mr. BRADLEY. What could have been admitted as evidence-in-chief cannot be admitted as rebuttal.

Mr. PIERREPONT. I understand that to be stated as a proposition, that any thing which could have been admitted in chief cannot be admitted now. That is not a correct proposition, as I suppose. According to my judgment, it is not at all correct, nor, according to any experience that I ever had in such matters, is it correct. I will illustrate it by a suggestion, by which I think it will be made entirely clear that that proposition is not correct. For instance, in the course of the prosecution, we had the right to show, and did show, for various purposes, the presence of the prisoner in Washington. That was one of the things we showed. We were not obliged to show it; but, for certain purposes, it was deemed proper to show it. Now, on their side, they have undertaken to show that the prisoner was in Montreal or in Canandaigua or in Elmira. Suppose they should bring witnesses here to prove that he was in Elmira on the 14th day of April, and should bring three or ten witnesses to swear that they saw him in Elmira on the 14th day of April, it would be entirely rebutting if we showed he was not in Elmira on the 14th day of April; and nothing can more clearly illustrate the principle than that very suggestion. If they brought witnesses to show that he was in Elmira on the 14th of April, we could bring witnesses to rebut that by showing that he was somewhere else, and therefore not there.

Mr. MERRICK. The rule, as I have stated it in regard to rebutting evidence—I see the direction it is about to take—is the rule, as I have understood it, ever since I have been at the bar; and I think it has been repeatedly determined by all the judges sitting in this court and laid down by the text-writers. Rebutting evidence is evidence meeting the case of the defendant, set up to defeat the case of the plaintiff; or the evidence of the prisoner to meet the case of the United States; and whatever the United States or the plaintiff could have given in evidence as essential to the case in chief cannot be given in evidence afterwards; because it does not rebut the case made by the defendant; it simply establishes the case upon which the actor, the United States or the plaintiff, came into court.

In regard to the suggestion of the learned counsel upon the other side that they undertook to prove that the prisoner at the bar was in Washington, though it was not necessary, and that they may now meet our proof that he was in Elmira by showing that he was somewhere else, I beg leave to say, that I think the learned counsel has passed beyond a very plain rule of law in saying that it was not necessary, and he has already shown to your honor his appreciation of its great necessity in this case. In order that a party should be convicted of murder, whether done by his own hand or done by the hand of another, it must be shown, if it was not done by his own hand, that he was there, by, present, aiding and abetting, in such a relative position to the party striking the blow that he could render assistance to accomplish the murder. That law is well settled by, I think, some fifteen judicial decisions passed upon in the case of Knapp in Massachusetts, a thoroughly argued case, which your honor will remember very well, where there was a conspiracy to murder, and the conspiracy was proved; and one of the conspirators, on the night of the murder, went home and went to bed; but he became rather restless, unfortunately for him, and got up from his bed and went into an alley that was at the back of the house where the old gentleman that was to be murdered lived; and whilst his co-conspirator got into the window by means of a plank elevated from the ground to the window, he stood within twenty yards of the window in the alley watching the process, within reach, where he could hear a shout and render aid, and where he could receive the actual assassin when the deed was done, and facilitate the escape, and where he did receive him. The court went into the full consideration of this whole doctrine, and Mr. Webster laid down the principle, extending it, as he said, as far as it could possibly be extended, that the co-conspirator, in order to be charged as a principal, must be within such distance that he could render material aid to the consummation of the act, or receive exactly there, fresh from the deed, the individual and help his escape; and the court unanimously agreed upon the rule of law, and there established it.

Mr. PIERREPONT. And held the man guilty.

Mr. MERRICK. The jury found that the man was in the alley, within twenty yards of the place, and found him guilty.

Mr. BRADLEY. I do not think that settles any question of law.

Mr. MERRICK. The adjudication of a court is given, and the limitation of the rule is prescribed by the court; and under that limitation the jury found him guilty. So the counsel found it necessary to show in this case, in the first instance, that Surratt was at the theatre, if he could; and, second, if he failed to show that he was at the theatre, then to show that he was in Washington city, and leave the jury to presume that, being in Washington, he was near enough to the theatre to give the material aid; proving that he was here present, where he could have been near enough, and leaving the jury to presume from his presence in Washington the fact of such proximity as the law requires to charge him as principal.

The same question was more elaborately discussed, perhaps, in the case of Burr, by Chief Justice Marshall, when the question was as to who were principals and who were accessories. The learned Chief Justice went into that full doctrine, and discussed the questions of who were principals in the first and principals in the second degree in ordinary cases of felony, and who were accessories in felony; and he lays down the distinct principle that a principal in the second degree in a felony—a murder, for instance—namely, a party who does not strike the blow, but stands by to aid it, is one who is sufficiently near to give material aid to the party striking the blow.

Mr. PIERREPONT. Mr. MERRICK, will you pardon me? I do not understand this array of books and

these propositions on the general questions that are up now; I did not know they were to be discussed.

Mr. MERRICK. I am meeting the learned counsel's suggestion. Mine is plainly rebutting.

Mr. PIERREPONT. When the evidence is in, I am prepared, as the learned district attorney is, to discuss these questions at length; but we did not understand that in the midst of the case they were to be brought up and discussed.

Mr. MERRICK. I beg the counsel's pardon if I have transcended any rule of propriety. The learned gentleman availed himself of the opportunity to make a particular application in this case of a general rule of evidence which I stated with a view to the proposition before the court. My proposition before the court, if you will allow me to explain, was to the effect that all the evidence which can go to connect the testimony we propose to strike out with the prisoner was now in. The learned gentleman replied that my rule was not right, and went on to illustrate by a particular application in this particular case; and I was bringing forward my reasons for not agreeing with the particular application which he stated.

Mr. PIERREPONT. But the counsel would seem to be engaged in a general discussion of the authorities.

Mr. MERRICK. The morning was cool and I felt comfortable.

Mr. PIERREPONT. We are prepared to discuss all the questions in this case at the proper time.

Mr. CARRINGTON. It seems to me that this discussion is premature. The only question before the court now is, whether certain items of testimony should be stricken from the record on the ground that we have not shown a connection between them and the prisoner. The proper course, I think, is to suspend any action of the court upon that question until the whole testimony has been introduced. When we closed our case in chief, the same motion was brought forward, and your honor then remarked, very properly, that it was not the proper time to consider it. I would simply remark here that in regard to two items of testimony to which the gentleman objected, we really think they have been connected and are admissible in evidence. The fact that the prisoner, during the existence of the conspiracy, and being a member of it, did shoot down, in company with others, certain Union soldiers, who were unarmed, is, we think, admissible, for reasons which I might state very clearly to the court, and I am prepared to discuss that question at the proper time.

In regard to the Duell letter, I understand it is objected to, because we have shown no connection. I can satisfy your honor, I think, now, if you desire an argument on that question, or hereafter when the case has been closed, that it is properly before the jury and to be considered by them.

Mr. MERRICK. You gentlemen agreed in regard to that letter, that you were going to prove whose handwriting it was.

Mr. PIERREPONT. We have not got through yet.

Mr. MERRICK. Yes, you have. I think this is the time to settle this question.

Mr. CARRINGTON. If your honor thinks so, I desire to be heard.

Judge FISHER. Do I understand the counsel to say that they are not prepared to go on with more witnesses to day?

Mr. BRADLEY. We desire to save all the time we possibly can, and we will call Mr. Sutton now.

RICHARD SUTTON,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State, if you please, whether you have or have not had large experience in reading and examining handwritings.

A. Very large.

Q. Have you examined the letters which I exhibited

to you just now, which are conceded to be in the original handwriting of the prisoner, John H. Surratt, and have you compared them with the envelope and enclosure of the paper addressed to Atzerodt, and testified to by Mr. Bates?

A. I have.

Q. Have you compared them carefully?

A. I have.

Q. Is the result of your examination that this small paper addressed to Atzerodt was written by the man who wrote the other two?

A. I think not.

Mr. BRADLEY. I will explain that the small paper is the "Tony" letter addressed to Atzerodt in an envelope bearing the post-mark of May 15. (To the witness.) Now, state if you have also compared the original telegrams from Booth to O'Laughlin and the original telegram from him to Weichmann, which are proved to be in Booth's handwriting, with the Charles-Selby letter.

A. I have.

Q. Have you carefully compared them?

A. Yes, sir.

Q. In your judgment, were they written by the same person?

A. They were not.

Cross-examined by Mr. PIERREPONT:

Q. Do you know in whose handwriting those telegrams are?

A. I do not; I was informed.

Q. You do not know yourself, and do not know the handwriting?

A. I do not.

Q. Do you think this Charles-Selby letter is a natural hand?

A. No, sir.

Q. You think it is disguised?

A. Yes, sir.

Q. Do you know who disguised it?

A. No, sir.

Q. You are not an expert, are you?

A. I do not profess to be.

By Mr. BRADLEY:

A. And yet you have had very large experience in reading and comparing handwritings?

A. Yes, sir; very large.

By Mr. PIERREPONT:

Q. [Handing to the witness the card signed J. Harrison Surratt.] Look at that card, and take the first letter of Surratt to Weichmann, and see if the card and the letter are in the same handwriting.

A. I cannot undertake to say that they are.

Q. Do you believe that card is the same handwriting as that letter?

A. I should have to examine them a little more closely to say accurately.

Q. Take time and examine them. Do they look alike?

A. They do not.

Q. Do you think they are in the same handwriting.

A. I would not undertake to say, and for this reason: I have seen letters by the same person, admitted to be written by the same person, that had no characteristic alike.

Q. You are not an expert?

A. I do not profess to be.

Mr. PIERREPONT. We ask that all this testimony be stricken out. This card is conceded to be Surratt's writing.

Mr. BRADLEY. (To the witness.) Look at the card and the other letter to Weichmann, written by Surratt, and see whether they are alike.

A. There is a greater similarity between the card and this letter; between this letter and that letter there is scarcely any similarity.

By Mr. PIERREPONT:

Q. You do not discover any?

A. I do not.

Mr. PIERREPONT. It is the same with me; I am not an expert.

The WITNESS. Nor am I.

Mr. PIERREPONT. We will ask your honor to strike out this testimony; the witness admits that he is no expert, and he cannot compare handwritings.

Mr. MERRICK. It is not to be determined by his own statement whether he is an expert or not. It is a question of whether he has examined writing, and been in the habit of doing so.

Mr. PIERREPONT. If you could prove by somebody else that he is an expert, the question might arise.

Judge FISHER. The witness says he has had very large experience in comparing handwritings. Perhaps it would be better to know whether he has had his attention directed, in the comparison of handwritings, towards the ascertainment of who was the writer.

Mr. PIERREPONT. I will ask that question. (To the witness.) Have you had your attention directed towards the ascertainment of whether different handwritings that looked differently were written by the same persons?

A. I have not.

By the COURT:

Q. Have you made it your study to compare handwritings, with a view of ascertaining whether they were written by the same person or not?

A. No; I could explain what my experience has been.

Q. Just explain what your experience has been.

A. My experience has been in receiving contributions for publication, written by all sorts of people, learned people and unlearned people, and persons that we employ in our office to write for us, and letters, through a period of forty years, connected with publications.

By Mr. PIERREPONT:

Q. Your business has been rather to decipher the handwriting than to compare it?

A. Yes, sir.

By Mr. BRADLEY:

Q. But still, necessarily, to compare it from time to time to see whether it was written by the same man or not, as I understand?

A. Somewhat.

By the COURT:

Q. Have you had your attention directed to this branch of chirography? Have you ever made it your study, to ascertain whether, by comparison, you could learn whether a signature or a letter or any paper in writing was genuine, or a forgery or a feigned hand?

A. No, sir.

Q. Nothing of that sort?

A. No, sir.

Mr. BRADLEY, JR. Now, I ask your honor's attention to this note to section 440 of Greenleaf on Evidence:

"Experts, in the strict sense of the word, are, 'persons instructed by experience.' 1 Bouvier's Law Dict., *in verb.* But more generally speaking the term includes all 'men of science,' as it was used by Ld. Mansfield in *Folkes v. Chadd*, 3 Doug., 157; or, 'persons professionally acquainted with the science or practice' in question—Strickland on Evid., p. 408; or 'conversant with the subject-matter, on questions of science, skill, trade and others of the like kind'—Best's Principles of Evidence, § 346. The rule on this subject is stated by Mr. Smith in his note to *Cartor v. Boehm*, 1 Smith's Lead. Cas., 286. 'On the one hand,' he observes, 'it appears to be admitted that the opinion of witnesses possessing peculiar skill is admissible, whenever the subject-matter of inquiry is such that inexperienced persons are unlikely to prove capable of performing a correct judgment upon it without such assistance; in other words, when it so far partakes of the nature of a science as to require a course of previous habit or study, in order to the attainment of a knowledge of it; see *Folkes v. Chadd*, 3 Doug., 157; *R. v. Sturte*, 2 M. and M. 79; *Thornton v. R. E. Assur. Co.*, Peake, 25; *Chaurand v. Angerstein*, Peake, 44; while on the other hand it does not seem to be contended that the opinions of witnesses can be received when the inquiry is into a subject-matter the nature of which is not such as to require any peculiar habits or study in order to qualify a man to understand it.' It has been held unnecessary that the witness should be engaged in the practice of his profession or science, it being sufficient that he has studied it."

Judge FISHER. I think that is pretty good law,

with the exception of the last clause, that if a man studied a science and never practised it, his opinion could still be received as that of an expert. A man who has studied a science and never practised it, soon loses all knowledge of it, as any man who has ever studied the Greek or any other language can testify. What the law requires is that a person who gives evidence as an expert shall have studied and have experience in the very matter about which he is questioned when he comes upon the stand as a witness. Here, the question is a comparison of handwriting, taking up a paper which is admitted to be in the handwriting of a particular person, and comparing it with another paper not admitted to be in his handwriting, and determining from the one which is admitted to be in his handwriting whether the other which is disputed is or is not in his handwriting. In order that a person shall testify as an expert on that subject, that person must have devoted some study, some considerable study, and must have had some experience, in that very specialty. Take a bank officer whose business it is to detect spurious from genuine handwriting, or any other officer whose business and study has been turned in that direction; he is an expert in that particular branch of business. But a person who is merely engaged in literary pursuits or in some learned profession, and in that way sees a thousand or a million handwritings, if he has not had his attention directed to this particular matter of the comparison of hands, cannot testify as an expert. He may testify as to whether a particular paper is in the handwriting of somebody whom he has seen write, or from whom he has received communications acknowledged to have come from the person; but he cannot testify in reference to a comparison of hands. And as Mr. Sutton does not come up to that measure, his testimony is of no account, and will be stricken out.

Mr. BRADLEY. I would make a suggestion for the consideration of the court, that we be allowed to introduce the two witnesses to whom I have referred, if we can get them here within a certain time. Let the prosecution go on with their rebutting testimony, and we be allowed to introduce these two witnesses if we can get them by a limited date.

Judge FISHER. That would be irregular, but it would be satisfactory to me if it would be to the counsel for the prosecution.

Mr. CARRINGTON. We must apply to the learned counsel for the prisoner the same rule which they applied to us. I submitted a similar proposition before they opened their case, but they would not consent to proceed with their case until we had closed ours.

Judge FISHER. That is a matter over which the court has no control. Counsel must settle it among themselves.

Mr. CARRINGTON. We cannot consent to proceed with our rebutting proof until the defense is closed.

Mr. MERRICK. The court allowed you to put in proof of the Duell letter after we opened.

Mr. CARRINGTON. No; the court said they would reserve that matter for consideration.

Judge FISHER. What I said was, that they might argue the question when they undertook to offer such evidence; but I had a decided opinion about it.

Mr. CARRINGTON. And your honor will do exactly the same to them. If, hereafter, they should satisfy the court, after closing their case finally, that they have a right to re-open it and introduce other testimony, it will be a matter addressing itself to your honor.

Mr. BRADLEY. The gentlemen do not require any affidavit from the prisoner in regard to the facts which I mentioned as to the witness we expect from New York?

Mr. CARRINGTON. Not at all. Mr. BRADLEY's statement is all we require.

Mr. BRADLEY. I have myself been the active agent in the matter, and know more about the facts. His information is derived from me as to the whereabouts of the gentleman, or at least how he was discovered.

Mr. CARRINGTON. Any statement Mr. BRADLEY may make of course we accept as the fact. It will be for your honor to determine hereafter what course shall be taken upon the fact. All we say now is, that we cannot, consistently with our duty to the public, consent to commence our rebutting proof until the defense have closed their case.

Judge FISHER. That is the end of it. I am considering now in my own mind with regard to the time to be allowed to the defense to close, inasmuch as the counsel for the prosecution will not agree to this proposition made by the defense; whether I shall give them until to-morrow to conclude or require them to finish to-day. I am inclined to give them until to-morrow evening to close in view of all the circumstances; the witnesses come from a very great distance.

Mr. BRADLEY. And one was not really discovered until yesterday. I received a telegram this morning as to where he is.

Judge FISHER. On consideration I have concluded that the testimony for the defense must be closed to-morrow at all events, if we have to sit here by candle-light. This is now the fifth week of the testimony.

Mr. BRADLEY. We accept that very cheerfully. It is all we ask. If we do not get the witness from New York by to-morrow, we close the case whether Father Boucher is here or not.

Mr. MERRICK. I wish to ask your honor in what position the motion to strike out certain evidence stands.

Judge FISHER. I think I will let that motion stand until the evidence is gone through with, and I will look over it in the meantime and see if I can trace any connection, or whether I fail to trace it to the prisoner, and I will consider whether it is such evidence as ought to be stricken out or permitted to go before the jury.

Mr. MERRICK. Counsel on the other side interrupted me in the course of my remarks, which he thought were anticipating points to be raised hereafter, and I did not finish what I was going to suggest in reference to that matter. Your honor states that you will look and see whether you can trace that connection. I apprehend that nothing further can be introduced to show any connection.

Judge FISHER. I want to look over the printed testimony.

Mr. MERRICK. It must be found in the printed testimony now. I beg also to suggest to your honor that counsel on the other side have two or three times intimated, with regard to this evidence and its connection, that it was mysteriously connected by links yet undiscovered, but which, under the magic touch of their exposition, would become plain and distinct—

Mr. PIERREPONT. No; we did not use any such beautiful language as that.

Mr. MERRICK. And that they could not show the connection without going into the case. Now, if there is any such chain, I have never seen it, although I have heard it rattle a good deal; and I think that the counsel will have to show your honor that connection, and not postpone it to the final argument in the case. That is what I want to suggest: that this is an independent, substantive proposition, coming up in its order of time prior to the argument of the case; and if my learned brothers can show by any logic that there is this connected chain in the evidence, we would rather they should do it than keep it concealed and give interesting suggestions with regard to the existence of that which we believe to be a myth.

Mr. PIERREPONT. We are not so poetical. We have no idea of the "magic;" it is a simple, common, iron chain; that is all.

Mr. BRADLEY. But you have got to forge some links yet.

The court took a recess until to-morrow morning at ten o'clock.

### Thirty-Fifth Day.

SATURDAY, July 20, 1867

The court re-assembled at ten o'clock a. m.

AUGUSTUS BISSELL,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. State to the court and jury what your profession is.

A. Physician.

Q. Where do you reside?

A. In New York city.

Q. What number and street?

A. 218 West Twenty-Second street.

Q. State, if you please, whether you were in Elmira on the 14th of April, 1865?

A. I was.

Q. Were you at the Brainard House there?

A. I was.

Q. State whether you saw the prisoner at the bar there at that time or not.

A. I did.

Q. Have you any means of fixing the precise day?

A. I have.

Q. Now, state to the court and jury how you fix the day.

A. I left Owego, thirty miles east of Elmira, on the night express from New York, which gets to Elmira in the morning—a little before daylight at that time. I left on the night of the 13th or morning of the 14th. I went there in search of a man.

Q. State who the man was. State the circumstances which fix it in your memory.

A. The man was a brakeman on the New York and Erie Railway. I had a suit at that time against the New York and Erie Railroad Company for damages from an injury sustained, from which I am still suffering.

Q. Did you go to Elmira in pursuit of him?

A. I went to Elmira in pursuit of him and to ascertain his whereabouts.

Q. State whether you were on crutches or not.

A. I was on crutches at that time. I stopped at a little house, I cannot think of the name of it. Names are the worst things for me to recollect, but I never forget a countenance.

Q. You did not stop at the Brainard House?

A. I did not stop at the Brainard House. I stopped at a little house on the street that runs from the east end of the depot south or southwest, on the south side of the street, where I had been in the habit of stopping. It was so nigh morning that I went up and lay upon a lounge in the sitting-room or parlor till breakfast time. I ate my breakfast and went out in quest of this man, and ascertained that he was not in Elmira; and during my going to find him I went to a third party, whom I had been directed to in a letter from a gentleman at Deposit, I think, but I will not be positive as to that; and, in going, I called at the Brainard House. After going and doing my business I called at the Brainard House. I thought I would take the 'bus there and ride back to the depot in time to take the train back to Owego—the day express.

Q. Had you any conversation with the prisoner at that time?

A. As I went in he passed me. I noticed his dress as he passed me. I went into the reading-room or office and there sat down. He came in from the bar-room or from the office to the reading-room where I was, and passed up and down. He kept looking at me.

Q. Did you have any conversation with him?

A. I did. After he had passed up and down a few times, he came and sat down. There were some chairs, or a settee, I think, about one seat away from me.

Q. After he had taken his seat, did any conversation pass?

A. I noticed that he was looking at me. When I turned my eyes towards him, he would look away and look down. I spoke to him, I think, first—made some remark to him.

Q. Did you have such conversation as would enable you to recollect his manner and voice in speaking?

A. Yes, sir; I suspected him.

Q. You can say why you observed him particularly?

A. My counsel had told me that the Erie Railway—  
Mr. PIERREPONT. You need not tell what your counsel told you.

Mr. BRADLEY. Did you suspect that this man was looking after you?

A. Yes, sir. I suspected that he was looking after me on the part of the Erie Railroad Company.

Q. And so you observed him more closely?

A. Yes.

Mr. BRADLEY. I now propose to give the conversation. It does not relate to this case, but I wish to offer it to show how it was impressed on the witness's mind.

Mr. CARRINGTON. We object to the conversation. Judge FISHER. Do you object?

Mr. PIERREPONT. I think it had better all be given.

Mr. CARRINGTON. Very well. I withdraw the objection.

Mr. PIERREPONT. We do not object.

Mr. BRADLEY. (To the witness.) Now, state all that passed?

A. He wanted to know if I had been to war, and I did not give him any satisfaction at all. I did not have a great deal of conversation with him. I wished to avoid it myself.

Q. Referring to your lameness, he asked you if you had been in the war?

A. Yes, and I gave him no satisfaction.

Q. And then you had a brief conversation with him?

A. A little conversation with him. I merely spoke to him to see if my suspicions were correct; to satisfy myself, and to see if he would attempt to draw me out or any thing of the kind. I wanted to satisfy myself whether he wanted to draw me out and was a "spotter" of the Erie Railway Company.

Q. What enables you to fix that day as the 14th of April?

A. I returned that same day to Owego. I got there on the arrival of the day express. I think it was a little past noon. I went immediately to the office of my attorney in Owego, Judge Munger, to see if there had been any communication from my attorney in New York, Mr. Wetmore. He was not in; he had not come down from dinner. I went on to the street and met a gentleman with whom I was acquainted when I had resided over in Pennsylvania, and we went to an oyster-saloon and had some oysters together. When I came out from that saloon, and came on to the street going back to the judge's office, I met a boy with a telegram for me from my wife.

Q. State whether you went home immediately or not?

A. The telegram informed me that my child was very sick, and I took the first train on which I could leave Owego for Great Bend that night.

Q. Did the child live or die?

A. My child died before I got home. I got home on the morning of the 15th and found it dead.

Q. And you fix the date by that event?

A. I fix the date by that circumstance.

Cross-examined by Mr. PIERREPONT:

Q. Did you have any pay for giving this testimony or any promise of any?

A. No, sir.

Q. Not any?

A. Not any.

Q. When did you first come here?

A. I came here this morning.

Q. When did you first have notice that you were wanted?

A. Yesterday afternoon.

Q. How did they know that you knew any thing about it?

A. I do not know; I asked Mr. BRADLEY how it was.

Q. Did you find out?

A. No, he would not give me any satisfaction; he said they had been looking for some time for the gentleman on crutches.

Q. And you could not find out how they came to send for you?

A. I could not, but I suspected.

Q. You did not tell anybody this?

A. On last Monday or Tuesday, as I was passing through Warren street, New York, as I passed the office of Cassidy & Covell—young Covell, formerly of Elmira, and James Cassidy, of Waverly, grain merchants, Cassidy was sitting—

Mr. PIERREPONT. My question was, whether you told this to anybody before?

Mr. BRADLEY. Oh, let him go on.

Mr. PIERREPONT. I do not wish him to go on, except in answer to the question.

The WITNESS. I am answering the question.

Mr. PIERREPONT. I am asking when you first told this; I am not asking for any long narration about grain merchants.

A. Last Monday or Tuesday; Tuesday, I think, in the office of Cassidy & Covell.

Q. Did you not understand my question before, when I asked you when you first told of it?

A. Certainly; and I was telling you how.

Q. I do not ask you how; I ask you when you first told of it.

A. I was telling you the circumstances.

Q. Was that the first time?

A. That was the first time, and I will tell you how it came to be the first time.

Mr. PIERREPONT. I have not asked you yet as to that, and you need not be in a hurry. Wait until I get to it. You will have enough to do to answer all the questions before you get through, without volunteering any thing. Now, tell us where you live?

The WITNESS. Where I live now, or where I lived at that time?

Mr. BRADLEY. (I hope the counsel will not tell the witness that he will have enough to do to answer before he is done with him. That is not proper.

Mr. PIERREPONT. The witness must not volunteer.

Judge FISHER. (To the witness.) Just answer the questions put to you, and if there is any thing which you wish to explain afterwards, you will have an opportunity to do so.

By Mr. PIERREPONT:

Q. Now, tell where you live in New York?

A. 218 West Twenty-Second street.

Q. What is your business?

A. Physician.

Q. Give me your full name?

A. Augustus Bissell.

Q. How long have you lived there?

A. I have lived there since the first day of May last.

Q. Where did you live before that?

A. In New York city.

Q. Where?

A. I was boarding part of the time.

Q. Where?

A. Part of the time we had rooms on the Eighth avenue.

Q. You went to Twenty-Second street, you say, in May last?

A. Yes, sir; on the 1st of May.

Q. Where did you board in the last of April?

A. I was sleeping in a room at 203 West Twenty-third street.

Q. Whose house?

A. It was in the rear of a drug-store—a room that I occupied as an office.

- Q. Whose house?  
A. It is the firm of Smyser & Co.
- Q. Did you rent it of them?  
A. Yes.
- Q. What were you doing there last April?  
A. My office was there. My wife had gone to her father's, in Pennsylvania, and I slept in there, and took my meals at saloons and around.
- Q. How long did you sleep there?  
A. I slept there from along in the first part of April until the first of May.
- Q. Then you slept there a month?  
A. Yes.
- Q. Where did you stay in March?  
A. In March I was keeping house at 401 Eighth avenue.
- Q. Whose house?  
A. I do not know; I do not recollect the firm's name. I had a floor.
- Q. Do you recollect whom you hired it of?  
A. He was a German.
- Q. What was his name?  
A. I think it was Cohen.
- Q. Did you have a lease?  
A. No; I hired it monthly.
- Q. What was it you hired monthly?  
A. A floor.
- Q. How many rooms?  
A. Four or five rooms.
- Q. Can you not give the name of the man from whom you hire it?  
A. I did; Cohen & Co., I think.
- Q. How long did you hire those rooms of this German?  
A. From along in the winter or fall until I moved away. They wanted to overhaul their building, and I left.
- Q. Do you say you left there the 1st of March?  
A. About the 1st of April.
- Q. When did you go there?  
A. I went there—I forget whether it was in December or November.
- Q. But it was one or the other?  
A. Yes.
- Q. What did you pay a month?  
A. Twenty or twenty-five dollars a month for the floor.
- Q. Did you have an office there?  
A. No, sir.
- Q. Where did you have the office?  
A. At 203 West Twenty-Third street.
- Q. Where you afterwards slept?  
A. Yes, sir.
- Q. What business did you do?  
A. Physician.
- Q. Tell me some of the people who know you in New York as a physician?  
A. Michael Phillips for one.
- Q. Where does Michael Phillips live?  
A. He is boarding now at 218 West Twenty-Second street.
- Q. Anybody else?  
A. Charles F. Wetmore.
- Q. Where does he live?  
A. He lives in Clinton Place; I forget the number.
- Q. Have you any other patients in New York?  
A. I am not doing a large amount of practice.
- Q. What are you doing?  
A. I do a little office practice, and I have some outside business which I am connected with now.
- Q. What do you call "outside business?"  
A. Well, I am engaged, for one thing, with Andrew N. Rankin, formerly of Chambersburg.
- Q. Do not say where "formerly of," but I am asking you what is your outside business?  
A. I am engaged with him in developing some patent rights which he has.
- Q. What are they about—doctors?
- A. No.
- Q. Any thing to do with doctoring?  
A. Yes.
- Q. What?  
A. They are disinfectants—hygienic; it will come under that head.
- Q. Do you know Aaron Stone, of New York?  
A. No, sir.
- Q. Has it any thing to do with that Stone?  
A. I do not know him.
- Q. Do you not know Aaron Stone, of New York, engaged in the disinfectant business?  
A. No, sir; I do not.
- Q. What are you doing in that outside business?  
A. We are developing it.
- Q. What do you mean by that?  
A. Getting it ready to put upon the market.
- Q. Have you got it on the market yet?  
A. We have got one of the patents on the market.
- Q. What is that patent?  
A. A patent chamber-pot.
- Q. Now, with the exception of your patent chamber-pot, tell us what other outside business you do?  
A. I am about bringing out a patent urinal now.
- Q. That is the next outside thing you are at, is it?  
A. Yes, sir; and a water-closet seat, besides.
- Q. How long have you been studying these subjects?  
A. They are patented by a gentleman by the name of Rankin—Andrew N. Rankin.
- Q. How long have you been studying the subjects of these patents?  
A. I have been engaged with him now for about a year.
- Q. That has rather knocked the medicine aside, I suppose?  
A. Yes.
- Q. Have you made any money out of these things?  
A. Well, I have got some little money out.
- Q. Have you sold any of the patents?  
A. We have made an arrangement with the Trenton Pottery Company, whereby they are manufacturing the chamber-pot and paying a royalty upon it.
- Q. Have you got any of that?  
A. Yes.
- Q. How much?  
A. Really, I do not know.
- Q. What! so little, you cannot tell.  
A. No; I could tell by figuring it up.
- Q. Well, tell.  
A. Two or three thousand dollars, perhaps.
- Q. Have you got two or three thousand dollars from that pottery company?  
A. Something in that neighborhood, I should think.
- Q. Have you received two or three thousand dollars from the Trenton Pottery Company?  
A. Rankin and myself have received in that neighborhood.
- Q. How much have you received?  
A. I have received half of it.
- Q. Have you received a thousand dollars from it?  
A. I think I have.
- Q. Now, tell us where you lived before you lived in this German's room, the last of March.  
A. I was sleeping in my office there nearly all the time from May up to fall, what time I was not in the country at my wife's folks.
- Q. Did your wife sleep in the same office?  
A. No, sir; she was in the country, at her father's.
- Q. Where was that?  
A. Near Orville, Bradford county, Pennsylvania.
- Q. And does she live there now?  
A. She is up there in that neighborhood now.
- Q. Then she does not live with you.  
A. She lives with me, but she is up there through the summer.
- Q. When did she live with you?  
A. She always lived with me. She never separated from me.

Q. When did she lodge in the same room with you?  
 A. During the month of March and from the time we went there to this floor.  
 Q. What time was that?  
 A. I told you, in November or December, up to the time we left it.  
 Q. During the summer she was not there.  
 A. No; during the summer she was not there.  
 Q. Was she there during all the winter?  
 A. She was there at 401 Eighth avenue during all the winter, until the time she went into the country.  
 Q. What time did she go into the country?  
 A. Along about the 1st of April.  
 Q. Now, where were you before November of last year?  
 A. I was lodging in that office and taking my meals out.  
 Q. Where was your wife then?  
 A. She was at her father's; in Pennsylvania.  
 Q. Where were you last July?  
 A. I was in New York city.  
 Q. Was your wife there?  
 A. No, sir.  
 Q. A year ago last May, where were you?  
 A. I was in New York city.  
 Q. Was your wife there?  
 A. My wife went into the country in May.  
 Q. A year ago last May?  
 A. Yes.  
 Q. Where were you in the month of April a year ago?  
 A. 339 Fourth avenue.  
 Q. That is another place, still?  
 A. Yes, sir.  
 Q. Whose house did you live in there?  
 A. We first went to keeping house, then, in New York; we went to the house of Peter C. Campbell.  
 Q. Did you hire the house?  
 A. Yes. He had his jewelry store there, and I hired the rest of the house and boarded him and his wife. I boarded them for the house-rent.  
 Q. What rent did you pay?  
 A. I boarded him and his wife for the house-rent.  
 Q. How long did you live there?  
 A. From fall till May.  
 Q. What time in the fall?  
 A. I think, from along in the middle of October or the first of November; I was there all winter, any way.  
 Q. Did you have a doctor's office then?  
 A. No; I had not got settled to do any business.  
 Q. What business did you do?  
 A. I was lame and unable to do any business that fall.  
 Q. You did not do any business?  
 A. I was not doing any business to amount to any thing.  
 Q. Before you came there, where were you?  
 The WITNESS. Before I came to New York?  
 Mr. PIERREPONT. No; before you came to 339 Fourth avenue.  
 A. I was in New York city.  
 Q. Where?  
 A. I was boarding before I went there, and before I went to keeping house, at 1160 Broadway.  
 Q. Did you go from 1160 Broadway to 339 Fourth avenue?  
 A. I think we did. I would not be positive; but I think we did.  
 Q. When did you leave 1160 Broadway?  
 A. I think it was in November.  
 Q. What year?  
 A. 1865.  
 Q. Do you not remember whether you did go from 1160 Broadway to 339 Fourth avenue.  
 A. Yes, sir; it strikes me that I hired rooms for myself and wife in Twenty-seventh street for a week or two till we found this place, after she came from the country.

Q. Then you do not think you went from 1160 Broadway to Fourth avenue?  
 A. I do not think we went directly from there, but I think we hired rooms.  
 Q. Where did you go from 1160 Broadway?  
 A. I do not recollect the number.  
 Q. Where was it?  
 A. In Twenty-seventh street.  
 Q. Do you not remember what place it was?  
 A. I do not recollect the number.  
 Q. Do you remember between what streets it was?  
 A. It was between Broadway and Sixth avenue.  
 Q. On which side of Twenty-seventh street?  
 A. On the north side.  
 Q. Do you not know whose house you went to there?  
 A. The lady's name was Boyd that kept the house. I hired rooms, two rooms, of her.  
 Q. Where were the rooms?  
 A. They were situated on the second floor—a bedroom and sitting-room.  
 Q. Do you remember her first name?  
 A. I do not.  
 Q. Do you remember what you paid her for the rooms? Perhaps we can get at it in that way?  
 A. I think I paid her twelve dollars or fourteen dollars a week.  
 Q. How long did you stay there?  
 A. My impression is a couple of weeks.  
 Mr. SCHNEIDER, one of the jurors being taken sick, the examination was suspended, and the court took a recess. The jury retired, and a physician was sent for to attend to Mr. SCHNEIDER.  
 After the lapse of an hour and a half the jury returned, Mr. SCHNEIDER reclining on a sofa in front of the other jurors.  
 Judge FISHER. How do you feel, Mr. SCHNEIDER?  
 Mr. SCHNEIDER. I feel pretty well when lying down, but I cannot stand up.  
 Mr. CARRINGTON. Can you hear the witnesses?  
 Mr. SCHNEIDER. Yes, sir.  
 Mr. CARRINGTON. We do not wish to continue the examination to-day if you think it would make you worse?  
 Mr. SCHNEIDER. I feel pretty well as long as I am lying down.  
 Mr. CARRINGTON. I suppose, then, we may proceed.

## AUGUSTUS BISSELL'S

cross-examination continued.

By Mr. PIERREPONT:

Q. Were you ever a notary public?  
 A. No, sir.  
 Q. Were you commissioner of deeds?  
 A. No, sir.  
 Q. Did you ever have any thing to do with getting up any claims of any kind on the Government in any way?  
 A. No, sir, in no way.  
 Q. No kind of claims?  
 A. No kind.  
 Q. Do you know this gentleman sitting here on my left? (Colonel Foster.) Have you ever seen him?  
 A. I never saw him that I know of, until to-day.  
 Q. You are not aware that you ever saw him?  
 A. No, sir.  
 Q. You have told us where you were in November, 1865. Where were you between the months of September and November, 1865?  
 A. At 1160 Broadway.  
 Q. How long were you there?  
 A. I think I was there from sometime in July or August, 1865; boarded there.  
 Q. What rooms did you have at 1160 Broadway?  
 A. I had a bed-room, and boarded in the house.  
 Q. Whom did you board with?  
 A. I boarded with Hiram Faulkner, at the house,

from sometime in July; I think it was July, but I would not be positive as to the exact date. It was either the last of July or the first of August; and I boarded there until the first of September?

Q. What did you do the first of September?

A. I then boarded with Augustus Bissell?

Q. Who was he?

A. Myself.

Q. Where?

A. At 1160 Broadway.

Q. Did you keep a boarding-house there?

A. No, sir, or yes, sir.

Q. What did you keep?

A. You can have it "Yes, sir," or "No, sir," just as you have a mind to.

Mr. PIERREPONT. I have no mind about it; I want to know what you kept.

A. I will just tell you what it was: Myself and a gentleman by the name of McMahon bought out Patrick D. Killduff, 1160 Broadway, for one Hiram Faulkner.

Q. Bought out what?

A. Bought out the small hotel—restaurant and drinking place.

Q. Did you continue to keep the small hotel, restaurant, and drinking place?

A. He kept it until McMahon became dissatisfied and said, "We are going to lose the money we advanced Mr. Faulkner, and we must get rid of him."

Q. Were you a partner in it?

A. We advanced him the money.

Q. I ask were you a partner with McMahon in it?

A. We were partners in buying it for him, to give him a chance to pay for it.

Mr. BRADLEY. That is, you and McMahon advanced the money for Faulkner?

A. Yes, to eventually let him have it and pay for it. But we found that we were going to lose, and McMahon said to me, "We must get rid of him and take the place and dispose of it."

By Mr. PIERREPONT:

Q. How long did you keep this drinking place and restaurant at 1160 Broadway?

A. I think he was in there some five or six weeks, and was not getting money enough to pay the rent.

Q. How much money did you put into it?

A. Some three thousand dollars.

Q. Did you pay the money?

A. I paid the money.

Q. What came of that? Did you give it up?

A. I then purchased Mr. McMahon's interest of him, and went in the whole of it myself. I kept it until I took in one Luther D. Eaton as a partner with me, and we were together two or three weeks, and then he wanted his friend to buy out the remaining half-interest, which he did, John G. Ball, who was book-keeper of the Everett House.

Q. Did you sell out?

A. I sold out.

Q. While you kept it yourself, did you keep your doctor's shop too?

A. No, sir; I was not attending to doctoring; I was on crutches.

Q. When did you first become a doctor?

A. A number of years ago.

Q. What year?

A. About 1850 or 1852.

Q. What college were you educated at?

A. Castleton, Vermont.

Q. Are you from there?

A. No, from Litchfield, Connecticut.

Q. Were you educated at Castleton, Vermont?

A. I took lectures in New York, in Crosby street.

Q. I ask where you were educated; at what college?

A. I never went through any literary college; I only took my medical lectures and graduated there.

Q. Where did you take your first medical lectures?

A. In New York city.

Q. Of whom?

A. Of the College of Physicians and Surgeons.

Q. When?

A. In 1851.

Q. Did you take your degree there?

A. No, sir.

Q. What kind of business did you practice in New York when you called yourself a doctor there, and had an office as a doctor? What did you practice, any peculiar kind of business?

A. No, sir; no specialty. If you came to me and wanted me to prescribe for you, I would prescribe for you.

Q. You did not prescribe for any peculiar class of diseases?

A. No.

Q. Nor have any peculiar branch of business?

A. No, sir; I have made that a secondary business?

Q. Made what secondary?

A. The business of a physician.

Q. What did you make your principal business?

A. I have been in the habit of speculating more or less in one thing or another; any thing I could make a dollar out of legitimately.

Q. Whatever you make a dollar out of legitimately you go into?

A. Yes, sir; it makes no odds what it is.

Q. And this doctoring was a mere side amusement, was it?

A. I merely put my name up.

Q. When you were keeping the restaurant and drinking place, did you have your name up as a doctor then?

A. No, sir.

Q. Did you use to doctor any of your customers then?

A. I do not know that I did.

Q. They did not apply to you to be doctored.

A. Not at all.

Q. They applied to you to get diseased, I suppose; they applied to you for drink.

A. I never pretended to go behind the bar. I do not think I set out a glass of liquor to any one.

Q. Did you set out any thing for them to eat?

A. Certainly, my men did.

Q. Then doctoring is not exactly in your line, is it?

A. Not exactly.

Q. Now, coming down a little further, tell us where you were in June, 1865.

A. I was in New York city.

Q. What were you doing?

A. I was boarding at No. 79 West Seventeenth street.

Q. Whom did you board with?

A. A lady by the name of Payne. I went there first to board.

Q. Did your wife board with you there?

A. Yes, sir.

Q. Had you children there?

A. My only living child was with me there.

Q. Is the child living now?

A. Yes, sir.

Q. And that child was with you there at Mrs. Payne's.

A. Yes, at Mrs. Payne's.

Q. How long did you board there?

A. We boarded there five or six weeks.

Q. Where did you board in the month of May?

A. I was in Owego.

Q. Whom were you boarding with in Owego in May, 1855?

A. I think at the Tioga House, John J. Orton's.

Q. When did you go there in May?

A. I was on and off; I was looking up the witnesses and getting prepared for trial in this Erie railroad case. I was making it my headquarters when I went there; and at Elmira I put up at this little hotel.

Q. I am not talking of Elmira now. In order that we may get it quite definitely, tell the jury when you left New York in the month of May, 1865.

A. I did not leave New York; I had not gone to New York in the month of May.

Q. When did you first go to New York?

A. In the month of June.

Q. What time in June?

A. I cannot state the time exactly.

Q. But the first time you ever went to New York was in the month of June, 1865, was it?

A. To stay.

Q. And you went to 79 West Seventeenth street?

A. Yes, sir; Mrs. Rachel A. Payne's.

Q. Did you ever go to New York to stay before that?

A. I have been there and stayed three or four weeks at a time.

Q. With your family?

A. Not with my family.

Q. Where were you in the last part of May, 1865?

A. I was either in Elmira or Owego, or near Montrose, Pennsylvania—the town of Jessup.

Q. As they are pretty well scattered, tell us which you think you were at.

A. My wife was at her brother's.

Q. I am not asking you about your wife now, but where were you?

A. I was back and forth. I was working up my case against the Erie Railway company.

Q. So you have told us. I am not asking about that. I am asking you now if you can tell the jury where you were in the last week in May, 1865?

Mr. MERRICK. He has answered the question. He says he was back and forth between those two places.

Mr. PIERREPONT. Can you tell where you were?

A. I have answered the question. I tell you back and forth between these places, and looking up witnesses.

Q. On the last day of May, 1865, which of these places were you in?

A. I cannot tell which place I was in precisely the last day of the month, for there is nothing to fix it definitely on my memory.

Q. Where were you on Wednesday of the last week in May?

A. I may have been at my brother-in-law's, in Jessup township.

Q. I only ask your best recollection of where you were?

A. My best recollection is, that I was at Owego.

Q. On Wednesday; in the middle of the last week in May?

A. I was there for two or three weeks,

Q. I am not asking you about two or three weeks. I ask your best recollection of where you were on Wednesday in the last week in May, and you say it was Owego, as I understand you. Is that so?

A. Yes; I think it was.

Q. When did you go to Owego first?

A. Sometime in the month of February, I think.

Q. What time in February did you first go to Owego?

A. I think it was about the first.

Q. About the first of February you went to Owego; to what house?

A. The Tioga House.

Q. Did you register your name?

A. I presume I did; but I do not know whether I did or not. I was well acquainted with the proprietor.

Q. What is your best memory as to whether you registered your name on the first of February, at the Tioga House?

A. I think I did.

Q. How long did you stay at the Tioga House?

A. I was there four or five weeks, off and on.

Q. From the first of February?

A. Yes, sir; I was not there all the time. I made it my headquarters there.

Q. Where were you on the first day of March, 1865?

A. In Owego, I think.

Q. At the same house?

A. The same house;—but, no I am mistaken. I was at Towanda, Bradford county, Pennsylvania, from the first to the middle of March. I went to Owego, staid there a while; and then went to Towanda, and staid there awhile; and went back to Owego.

Q. From the first to the middle of March, then, you were it Towanda?

A. From the first to the last of March I was at the Eagle hotel, in Towanda.

Q. Where is that?

A. In Bradford county, Pennsylvania.

Q. Was your name registered there?

A. Yes, sir.

Q. Did you leave there during the month of March?

A. I think I did, the last of March or the first of April.

Q. Where did you go to?

A. To Owego.

Q. What time did you leave there?

A. I cannot tell you the day.

Q. What day did you go there?

A. I cannot tell you the day I went there.

Q. Can you not tell it pretty nearly?

A. I cannot; there is nothing to impress it on my memory.

Q. You cannot tell whether you went there on the 1st, 2d, 3d, or 4th of March?

A. No, sir; there is nothing particular to impress it on my memory.

Q. Was it the first week of March?

A. It might have been.

Q. What is your best memory?

A. I have nothing to impress it on my memory.

Q. I ask you what your best memory is?

A. It was some time in March I went there.

Q. Is it your best memory that it was the first week in March?

A. It might have been.

Q. It might have been any time; but my question is, what is your best memory as to when it was?

A. I will answer "Yes," if that will be satisfactory.

Q. Any thing that is true will be satisfactory, whatever you wish to answer.

The WITNESS. Certainly; I do not choose to tell any thing but what is true.

Q. Your answer is, then, that it was the first week in March?

A. To the best of my recollection.

Q. Did you register your name there then?

A. Yes, sir.

Q. When did you leave there first after you registered in the first week in March?

Mr. BRADLEY. If your honor please, I must interpose. Is it possible that a witness is to be examined as to every day of his life for two years past? He answers that he was back and forth from one place to another, and that he cannot tell the precise dates when he arrived at one place and departed; but he was back and forth between them. Are we to have this thing reiterated and persisted in as to every day during all that period of time? I have refrained from interposing as long as I could.

Mr. PIERREPONT. I intend to persist in it with regard to these two months very particularly.

Judge FISHER. I think the counsel for the prosecution have the right to test the memory of the witnesses about the time of this transaction, if that is the object.

Mr. BRADLEY. But when the witness says over and over again, "I have nothing that will enable me to fix dates," to persist in pressing him down to name some date, according to the best of his recollection, is a singular proceeding. He says he has nothing by which to fix the dates; and is that to be repeated consecutively, day after day, during all this period of time?

Judge FISHER. The counsel must not repeat as to particular places and particular times; but he can repeat the same question in regard to the same place.

Mr. PIERREPONT. I have not repeated it at all in any case where the witness will answer. Now, the last question I asked was when he first left Towanda after he registered his name the first week in March.

A. I left right after the high water in the Towanda dam came down. If you will tell me what date that was I will tell you the day of the month.

Mr. PIERREPONT. That does not inform me about what day it was. I want you to tell me, if you can, what day it was when you left there after you registered your name there?

A. I was there for two or three weeks.

Q. Then you left within two or three weeks' time?

A. Yes, sir; to the best of my recollection.

Q. That would bring you somewhere near the 20th?

A. Somewhere in that neighborhood—the 20th, or perhaps later.

Q. Is it your best memory that you left about the 20th?

A. I repeat that I think it was between the last of March and the 1st of April.

Q. Then that is close enough. Between the last of March and the 1st of April is a few hours, and that is all I want now; but before the last of March and the 1st of April—

Mr. MERRICK. Do you mean "When he left the place," that he left it permanently to go somewhere else?

Mr. PIERREPONT. I mean exactly what I ask for. The WITNESS. I was back and forth.

Mr. PIERREPONT. My question is very simple and very plain: When it was that he first left it after he registered his name there.

Mr. MERRICK. The leaving of a place is not very simple and very plain to me. You asked the witness when he left the place, having first located him at a place; and the question may have two meanings: When he first left temporarily to go back, or the more significant meaning when he first left permanently, when he first left to make his headquarters at some other place. I do not understand which it is.

Mr. CARRINGTON. The witness does not complain.

Mr. PIERREPONT. The witness seems to understand the matter; he makes no complaint.

Mr. MERRICK. I know the habit of the counsel for verbal criticism.

Mr. PIERREPONT. I ask your honor whether my question is a proper question.

Judge FISHER. Mr. MERRICK, you will have a chance to understand the matter by examination in reply to the cross-examination.

Mr. PIERREPONT. (To the witness.) I will repeat my question: You say you left between the last of March and the first of April. Where did you go to?

A. I went from Towanda to Owego.

Q. When did you reach Owego?

A. I will not be sure whether it was on the last days of March or the first few days in April.

Q. Which ever it was, did you register your name?

A. Yes, sir.

Q. At what hotel?

A. At the Tioga House, in Owego; I told you that three or four times.

Q. No, you did not tell me that it was the last of March before. Now, how long did you stay at the Tioga House after you registered your name there about the last of March, before you left it?

A. I stayed there till I got a telegram from my wife, with the exception that once while there I went to Deposit and once to Binghamton—two separate occasions. I went past Binghamton to Deposit once and came back to Owego; and I went to Binghamton and came back to Owego, and then I went to Elmira and came back to Owego, and got the telegram on the 14th day of April of the sickness of my child; got home on the 15th and found it dead.

Q. Did my question perplex you any, or did you not understand it? I asked you when you first left the Tioga House, after you registered your name, about the first of April?

A. My board was going right on the same. I paid my board by the week, and I think the first I left there was to go to Deposit.

Q. When was it you went to Deposit?

A. Sometime in April.

Q. What time?

A. I cannot give you the date.

Q. Can you give about the date?

A. I cannot. It was a few days after my being in Owego.

Q. Can you tell how many days?

A. It may have been two; it may have been three; it may have been four; it may have been five.

Q. It may have been a thousand, but can you tell your best memory is?

A. Four or five days.

Mr. BRADLEY. It could not have been a thousand before the 14th of April.

Mr. PIERREPONT. It might have been any number of days that have passed since. (To the witness.) Can you tell us your best memory of how many days it was?

A. It might have been four or five days.

Q. Do not answer any more what might have been.

A. That is my best memory.

Q. Any thing is possible—"might have been." I ask your best memory?

A. That is my best memory. It might not have been two days.

Q. Your best memory is that it was how many days?

A. My best memory is that it might have been four or five days. It might have been but two.

Q. Is your best memory that it was but two?

A. No, sir; it is not. I have given it to you as near as I can.

Q. But you do not give it to me. You say your best memory is four or five, and it might have been but two. My question is, What is your best memory?

A. I have given it to you as near as I can.

Q. Please tell the jury whether you wish them to think your best memory is two days, or whether your best memory is five days?

A. It might have been four or five days. We will put it at that.

Q. That is your best memory, then—four or five.

Now, where did you go to then?

A. I went to Deposit.

Q. Where did you go to in Deposit?

A. I went to the house of a Methodist minister two or three miles beyond Deposit.

Q. Did you stop at any hotel in Deposit?

A. I stopped long enough to take my dinner.

Q. Did you enter your name at any hotel in Deposit?

A. I cannot say that I did.

Q. What hotel did you stop at?

A. I think it was the Oquaca.

Q. What day was that?

A. I cannot tell the day.

Q. Did you stop over night at the hotel?

A. No, sir.

Q. Then you went to the Methodist minister's, you say?

A. Yes, sir. I hired a horse of a livery-stable man.

Q. What was his name?

A. Dean, I think.

Q. How far from Deposit was it where he lived?

A. I found him sitting in the bar-room of the hotel when I went in.

Judge FISHER. (To Mr. PIERREPONT.) You asked the name of the preacher, and he is telling you the name of the livery-man.

Mr. PIERREPONT. You told the name of the preacher?

The WITNESS. No; of the livery-man.

Mr. PIERREPONT. I have not asked about the livery-man, but about the preacher.

The WITNESS. I misunderstood you.

Q. How far was the preacher's house from Deposit?

A. I do not know; I think two or three miles.

Q. Which way from Deposit?

A. Rather in a northwesterly direction.

Q. What is his name?

A. Hewitt.

Q. Did you find him?

A. He was not at home.

Q. You did not see him?

A. No; I did not go to see him.

Q. Did you see anybody at his house?

A. I saw his wife and, I think, two daughters.

Q. Did you know their names?

A. I did not know their given names.

Q. How long did you stay there?

A. I stayed there about fifteen minutes.

Q. Where did you go to then?

A. I went and got into the vehicle that took me to the house and rode back to Deposit.

Q. When you got back to Deposit what did you do?

A. I asked the livery-stable man how much he charged for taking me out, and I paid him; that was the next thing I did.

Q. When did you do that?

A. I did it after I got out of the buggy; I think it was a buggy, or it might have been a cutter; and when we got into the bar-room—

Q. Which do you think it was, a buggy or a cutter?

A. I cannot say which, but I think it was a buggy.

Q. What time of day was it when you paid him?

A. Just before dinner.

Q. About what time of day was the dinner? They dine at different times in different places.

A. About twelve o'clock; that is the time they generally dine in the country.

Q. After that where did you go to?

A. I got on to the cars and rode directly back to Owego, to John Orton's hotel, the Tioga House.

Q. When did you get back to John Orton's hotel, the Tioga House?

A. In the evening, the forepart of the evening; it might have been six or seven o'clock. I got in on the arrival of the train.

Q. What day of the week was it?

A. I cannot tell.

Q. What day of the month was it?

A. I cannot tell, for I did not note it down, and there is nothing to impress it on my memory.

Q. When did you next leave Mr. Orton's house, the Tioga House?

A. I went to Binghamton next.

Q. What day did you go to Binghamton?

A. It was a day or two after—I think two days after I went to Deposit.

Q. When you got to Binghamton, where did you go?

A. I went to the Meserole House.

Q. Did you enter your name?

A. I do not think I did, for I did not stop long enough to have any thing there. I merely did my business and returned on the next train.

Q. Did you stop at the hotel, the Meserole House?

A. I walked into the hotel. I might have got something to drink there or a cigar or something of that kind.

Q. I do not ask what you might have done, but what is your best memory as to what you did do.

A. I have no recollection; but I am almost confident that I did not eat or register my name there.

Q. How far is Binghamton from Owego?

A. I think the distance by railroad is twenty-two miles.

Q. What time did you get to Binghamton that day?

A. I think I went down in the forepart of the day, in the morning train.

Q. What time did you get back?

A. I came back in the first train that ran west.

Q. When was that?

A. My memory is now, one o'clock.

Q. The same day.

A. The same day.

Q. Then you came back to Owego.

A. Yes, sir.

Q. When did you next leave Owego?

A. I next left Owego on the night of the 13th or morning of the 14th of April, to go to Elmira.

Q. Which was it?

A. I do not recollect whether it was after midnight or before when I got into the cars. My impression is that it was after midnight on the morning of the 14th.

Q. Now, let it be as distinct, so that there can be no misunderstanding. You left this hotel in Owego?

A. Yes, sir, but did not pay my bill then, did not go away; only went to Elmira.

Q. I have not asked you about your bill; I am not suing you?

Mr. BRADLEY. Only prosecuting you!

The WITNESS. The bills are paid.

Mr. PIERREPONT. I have not asked you whether they are paid or not. Now, tell us, was it the evening of the 13th that you left Owego?

A. My best impression is that it was after midnight I left.

Q. Then it was the morning of the 14th, you think?

A. Yes.

Q. Did you take the train?

A. I took the train.

Q. What train did you take?

A. The night-train from New York. I think I took the train about two o'clock. That is my best impression.

Q. How far is Owego from Elmira?

A. Thirty-six miles.

Q. When did you get to Elmira?

A. I got there before daylight in the morning. I did not look at the time, and I cannot tell the exact time, but it was before daylight.

Q. Had you a trunk with you?

A. No, sir.

Q. Had you any thing with you?

A. No, sir; nothing but the clothes I had on my back and my crutches that I walked with.

Q. When you got there and got out of the train, where did you go to?

A. To this little hotel on the street that runs—

Q. What is the name of the little hotel?

A. I do not recollect the name of it?

Q. Who kept it?

A. I cannot think of the man's name that kept it.

Q. Did you find anybody up when you got there at that early hour?

A. Yes, sir.

Q. Did you go to bed?

A. No, sir; I laid upon a lounge in the parlor with a buffalo skin over me.

Q. Did you get any thing to eat there?

A. I got my breakfast there.

Q. That night, did you get any thing to eat?

A. No; not until breakfast-time.

Q. Did you take a room?

A. No, sir.

Q. Did you enter your name on the register?

A. I might or might not; but do not think I did.

Q. You think you did not enter your name?

A. No.

Q. Had they a register?

A. I believe they had.

Q. Did you see it?

A. I am not positive; but I think they had a register.

Q. Why did you not enter your name?

A. When I got there the man was starting the fire in the bar-room, and I went in. I knew him.

Q. What is his name?

A. I knew him by sight. I do not know what his name was. I had been there before.

- Q. Do you not know his name now?  
 A. I do not know his name now. There are some names that come to me that I recollect.
- Q. Where had you known him?  
 A. I knew him there. I knew him prior.
- Q. Had you never known his name?  
 A. I do not know that I did.
- Q. Have you ever known it since?  
 A. I do not think I have seen the man since.
- Q. Have you ever heard his name since?  
 A. I do not think I have. I knew him by casually visiting there.
- Q. That somebody whose name you have never learned was making the fire, was he?  
 A. Yes.
- Q. What did you do when you got in there?  
 A. I went up stairs and laid on the lounge until breakfast time; got up, and ate my breakfast.
- Q. Did anybody eat breakfast with you?  
 A. There was a tablefull.
- Q. Anybody whom you knew?  
 A. No one, but parties that I had seen there when I had been stopping there; boarders.
- Q. Was there anybody there you knew?  
 A. I think there was a gentleman there of the same name as my own.
- Q. Did you see him then?  
 A. I would not be positive whether I saw him or not.
- Q. Did you talk with him?  
 A. I cannot say; I was busy.
- Q. You were busy eating breakfast, were you not?  
 A. I was busy with my other matters.
- Q. I am not talking of your other matters. I have got you now at breakfast, and I ask whether you saw these people?  
 A. I saw people at the table.
- Q. Did you talk with them?  
 A. I very rarely say any thing to any one when I am eating; I generally eat and attend to my own business.
- Q. You did not say any thing to them?  
 A. Perhaps I did, and perhaps I did not.
- Q. Have you any memory of speaking to anybody; and, if so, who was it?  
 A. I have no recollection of it now. I presume I spoke to some of them; merely passed the time of day.
- Q. Do you remember the time you ate?  
 A. I ate in the morning.
- Q. What time in the morning?  
 A. I do not remember the precise hour.
- Q. You say you did not go to bed there?  
 A. I did not go to bed; I only laid on the lounge.
- Q. And you did not have any room there?  
 A. No, sir.
- Q. Tell us when the Erie train reached there that day?  
 A. I think it was a little before daylight in the morning.
- Q. About what time?  
 A. I cannot say about what time; I do not know that I know what time; it was daylight then. My impression is it was just before daylight.
- Q. You think that is so?  
 A. Yes, a little before daylight.
- Q. Did you reach it the usual hour or not?  
 A. I do not know. The trains had been irregular.
- Q. How were they that day, do you know?  
 A. I cannot state.
- Q. Did you go on the Erie train on that day?  
 A. I went on the Erie train.
- Q. When?  
 A. The night express. I think it was about three o'clock in the morning I started; I would not be positive of the precise time.
- Q. Did you go on any other Erie train on that day?  
 A. I went back to Owego, on the train that is called the day-express, I think.
- Q. Did you go back on the Erie train of that day?  
 A. I did, to Owego.
- Q. What time did you go on the Erie train on that day to Owego?  
 A. If my memory serves me aright, it was about noon. It might have been a little before or a little after.
- Q. Which is your memory?  
 A. I think it was in the neighborhood of twelve o'clock.
- Q. On the 14th?  
 A. Yes, sir.
- Q. Was there any other train but the Erie train that ran from Elmira to Owego?  
 A. I think there was.
- Q. What else?  
 A. I think there was a train ran down in the morning.
- Q. From where?  
 A. From Elmira, east.
- Q. At what time?  
 A. I cannot say as to the time.
- Q. And the one you went on was about twelve o'clock, you think?  
 A. Yes, I think it was the day-express. It might have been later.
- Q. Was it the express-train?  
 A. I think it was. That is my recollection now.
- Q. You state that when you went into this little hotel, whose name you cannot tell and whose proprietor you cannot give, you went up stairs?  
 A. Yes, sir.
- Q. Where did you go up?  
 A. I went out of the bar-room into the hall and right up the stairs.
- Q. When you got up stairs, did you go to any room?  
 A. I went into the parlor, as I said, and laid on the lounge.
- Q. Was any thing else in there? Was there a fire in it?  
 A. No.
- Q. Was anybody else in it?  
 A. No, I think not.
- Q. Did you enter your name in any way at that house, or in giving or receiving any receipt, or in any way?  
 A. I do not know that I did.
- Q. Did you take a receipt for what you paid?  
 A. No, sir.
- Q. Can you not tell about what time you got your breakfast?  
 A. I think it was about the usual breakfast hour—about seven o'clock; from seven to half-past seven, or in that neighborhood.
- Q. How long were you at breakfast?  
 A. Not a great while. It does not generally take me a great while to eat.
- Q. After you got through your breakfast, it was about eight o'clock, was it?  
 A. In that neighborhood.
- Q. What did you next do?  
 A. I went to the livery stable and found this young man.
- Q. What livery stable?  
 A. I think it is near Haight's hotel.
- Q. What is the name of it?  
 A. I do not know the name. I had the names of the parties on a paper at the time, but I have not got it now.
- Q. Can you not tell us something near it?  
 A. I cannot.
- Q. Can you not tell us whom you saw there?  
 A. I think I saw one of the men.
- Q. What was his name?  
 A. I said I could not tell you his name. They were strangers to me. I was not personally acquainted with a great many men in Elmira.
- Q. Were you personally acquainted with any man you saw there that day at the livery stable?

A. No, sir.  
 Q. Not one?  
 A. Not one.  
 Q. You cannot give the name of any one you saw there?  
 A. No, sir.  
 Q. You did not see the one you were searching for?  
 A. He was a stranger to me.  
 Q. You did not find him?  
 A. I did not find him.  
 Q. Did you hire any horse there?  
 A. No, sir.  
 Q. Did you pay any one there for any thing?  
 A. Nothing but my breakfast.  
 Q. I mean at the livery stable?  
 A. No, sir.  
 Q. You had no service done you there?  
 A. None.  
 Q. When you got through at the livery stable, which resulted in no success, where did you next go?  
 A. I cannot tell exactly where I went.  
 Q. Your memory is very defective about that day, is it not?  
 A. I was in at the Brainard House.  
 Q. Where did you go from the livery stable?  
 A. I think I went around to the Chemung House.  
 Q. Who did you see there?  
 A. I saw parties in the Chemung House.  
 Q. Whom?  
 A. I think that is the name of the house.  
 Q. Whom did you see?  
 A. I cannot tell who they were. I do not know that I knew them.  
 Q. You cannot tell one?  
 A. I saw at one time that I was there —  
 Q. I am asking you whom you saw at the Chemung House at this time, not some other time?  
 A. Whether it was this time or a time prior, I do not know; but I saw a man there by the name of Drake, that was attending bar, who formerly lived in Waverly.  
 Q. Did you see Drake at this time attending bar?  
 A. It might have been this time and might not. I cannot be positive.  
 Q. What is your best memory whether you saw Drake there attending bar at this time?  
 A. I cannot say whether it was this time or at a time prior.  
 Q. Did you see anybody at the Chemung House?  
 A. I do not know that I did.  
 Q. Did you go into the Chemung House?  
 A. Yes, sir.  
 Q. What did you do when you got there?  
 A. I presume —  
 Q. I do not ask what you presume, but what did you do first?  
 A. I do not know.  
 Q. Did you stand up or sit down?  
 A. I almost always sit down. When I get tired of walking I would slip in somewhere to sit down.  
 Q. Had you got tired of walking that day, and slipped in to sit down after breakfast?  
 A. I presume likely.  
 Q. What is your memory about it?  
 A. My memory is that I did. I went in there to sit a few minutes.  
 Q. Did you get any thing to drink?  
 A. I do not know that I did.  
 Q. Did you talk with anybody in the Chemung House?  
 A. I do not know that I did, and I may have talked with half a dozen.  
 Q. What is your memory about it?  
 A. I have no recollection on the subject.  
 Q. Where did you sit?  
 A. If I sat anywhere it was in a chair; but in what particular part of the house I cannot tell.  
 Q. Could you not have sat on a sofa?  
 A. I might, if there had been one in the room.  
 Q. Was there?

A. I cannot say whether there was or not.  
 Q. How long did you stay there?  
 A. I might have stayed there five minutes or half an hour; I cannot tell how long.  
 Q. You might have stayed there until you came here; but what is your best memory of how long you did stay there?  
 A. I cannot tell now.  
 Q. What did you go there for?  
 A. I had nothing else to do. If I was waiting for a train here to start back to New York, I might step into half a dozen different places in this town, without any particular object or motive.  
 Q. I am not asking what you would do here, but what you went into the Chemung House for.  
 A. I do not know that I had any motive in going there more than merely to rest myself.  
 Q. Do you know that you did go in?  
 A. I am not positive that I did go in there.  
 Q. Then we will not trouble you on that subject.  
 A. I told you so in the start.  
 Q. Where did you go next?  
 A. I was around on Water street.  
 Q. At whose place?  
 A. I passed up the street and was looking around.  
 Q. What did you see?  
 A. I got up as far as the Brainard House.  
 Q. Did you see any thing or anybody when you looked around?  
 A. Nobody particular.  
 Q. Anybody you ever saw before?  
 A. I might and I might not.  
 Q. Did you see anybody that you have ever seen since?  
 A. I do not know that I did.  
 Q. Where next did you go?  
 The WITNESS. After I went to the Brainard House?  
 Mr. PIERREPONT. No, I have not got you there yet.  
 A. I went next to the Brainard House.  
 Q. Did you go to the Brainard House next after you went to Water street?  
 A. That is on Water street, I think; but I would not be positive as to that being the name of the street.  
 Q. Did you go to the Brainard House?  
 A. I went to the Brainard House.  
 Q. Now, tell us who kept the Brainard house then?  
 A. I am not positive whether Bartlett kept it. I do not think he did.  
 Q. I ask you who you think did keep it?  
 A. I do not know who kept it.  
 Q. Do you not know who kept it?  
 A. No; I do not.  
 Q. You went into it?  
 A. I went in there.  
 Q. What did you go in there for—the same reason that you went into the Chemung House?  
 A. Well, I will tell you. As I got there I thought I would go in and sit down, and wait until the 'bus ran up to the depot, and get in and ride up. That was my impression when I went in there.  
 Q. What time did you go in there?  
 A. It might have been nine o'clock; it might have been ten; it might have been half-past ten. I cannot tell the time when I went in there.  
 Q. What is your best memory about the time?  
 A. I cannot tell.  
 Q. Have you any memory about it?  
 A. I have no recollection what time it was; I did not note it down.  
 Q. I thought you told us on your direct examination that your memory was remarkably good?  
 A. I said my memory was good as to faces.  
 Q. If your memory is good of faces, it is good of whatever you see, is it not?  
 A. I might see a horse going along, and forget three weeks after that I had ever seen the same horse unless I paid some particular attention.

Q. Is your memory good of all things you see, or only of faces?

A. If I pay attention to them it is. If I saw a horse, or a cow, or an ox, I would have recollected it, certainly.

Q. You would recollect the horse or the ox?

A. Yes, sir; if I had paid particular attention.

Q. If you went into a house, you would recollect it, would you not?

A. Unless I paid some particular attention or had something to charge my mind with it, I should not recollect it.

Q. If you went into the Brainard House and sat there, you would have a pretty distinct recollection of it, would you not?

A. Certainly.

Q. You have now, have you not?

A. I have that recollection of going there.

Q. [Handing the witness a pencil and a sheet of paper.] Now, draw the first floor of the Brainard House, beginning with the street.

Q. (By Mr. MERRICK.) Do you know how to draw?

A. I am not an artist; I never painted a picture or made a drawing.

Mr. PIERREPONT. We are not particular about the colors in this case.

Mr. MERRICK. Ask him to describe, instead of drawing it.

Mr. PIERREPONT. I ask him to draw it.

Mr. MERRICK. I object to his drawing it.

Mr. PIERREPONT. I ask him to make a drawing of that Brainard House; I do not mean in proportions.

Mr. MERRICK. I submit it to the court.

Judge FISHER. What is the ground of objection.

Mr. MERRICK. The ground of the objection is, that a witness on the stand may be required to state in language any thing that is a legitimate matter of inquiry; but when a witness says he cannot draw, I do not think it is the right of counsel to require him to draw a house.

Judge FISHER. Let the witness say whether he can make a draught of this house.

The WITNESS. I cannot; I cannot make a draught of this house.

Judge FISHER. Then, of course, you cannot compel him to do it.

Mr. PIERREPONT. Certainly not, if he cannot do it. (To the witness.) You cannot draw the house?

A. No, sir, I cannot.

Q. You cannot draw the entrance?

A. No, sir.

Q. Can you tell on what side of the street it was?

A. I call it the north side of the street.

Q. The reason you are not willing to draw it is because you cannot; is that all?

A. That is all the reason.

Q. Perhaps you can tell us something about it, as your memory is very distinct on such subjects; which way were you going when you entered the house?

A. I was going directly towards the house.

Q. Were you crossing the street?

A. I was on the sidewalk upon the same side of the street as the house.

Q. Was your right hand or your left hand towards the house as you were going on the street?

A. I rather think my right hand was.

Q. Then did you turn to your right to go in the door?

A. I went in a door to get into the house.

Q. Did you go up stairs?

A. I do not know whether there was a step, or two or three steps.

Q. Were there any?

A. I am not positive whether there was a step to the house or not.

Q. What is your best memory about it, whether there were high steps or no steps, or two, or only one?

A. I cannot say.

Q. Were they stone steps?

A. I cannot say.

Q. Was the sill as you entered a stone—large stone—or was it wood?

A. I cannot say, for I paid no attention to it.

Q. Was there a platform up from the sidewalk made of wood?

A. I cannot say.

Q. Was there a platform made of stone?

A. I cannot say.

Q. Did it run in right level?

A. I cannot say.

Q. Was there a high stoop up of stone?

A. I cannot say.

Q. When you got in, what was on your right hand?

A. I do not know.

Q. What was on your left hand?

A. I do not know.

Q. What was in front?

A. I do not know.

Q. Was it a double house or a single one?

A. I do not know.

Q. But you went into a reading-room there and got into a private conversation with this prisoner?

A. I went in and sat down in a chair.

Q. Went into the reading-room?

A. Yes, sir.

Q. Where was it—on the right hand or the left?

A. I cannot say whether it was upon my right hand or left as I entered.

Q. Was it there?

A. I cannot say as to that.

Q. Was there a reading-room on the right hand?

A. I cannot say.

Q. Was there a reading-room on the left hand?

A. I cannot say as to that.

Q. Was it the first story you went into, when you went into that room?

A. I think it was; I am not positive.

Q. Or was it in the second story?

A. No; I think it was the first.

Q. Can you not state whether it was on the right hand or the left?

A. I cannot.

Q. Can you tell whether it was on either?

A. I cannot.

Q. Were there newspapers in it?

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

Q. Was there a library in it?

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

Q. Was there a settee in it?

A. I think it was a settee that I sat upon.

Q. Were there chairs in it?

A. Either settees or chairs.

Q. Which?

A. I cannot tell which.

Q. Does not your memory bring it back?

A. I paid but very little attention.

Q. But you know you have a very distinct memory of things you have seen. Now, as you recall that—

Mr. BRADLEY. He says he has a distinct memory of things to which his attention has been called.

Mr. PIERREPONT. As you recall that Brainard House, can you not tell whether, as you went in, you went to the reading-room on the left side or the right side of the front?

A. I cannot tell.

Q. Where was the desk?

A. I have no distinct recollection where that was?

Q. Did you see a billiard-table there?

A. Possibly I might.

Q. I ask you if your memory is that you saw it?

A. I do not recollect seeing one, and I may have seen half a dozen.

Q. Did you see a telegraphic machine there?

A. I do not know that I did.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 84. WASHINGTON, MONDAY, AUGUST 26, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 83.*

- Q. Did you or not see a telegraph machine there?  
A. I do not know that I did; I have no recollection.  
Q. Was there a carpet on the reading-room?  
A. I do not know.  
Q. Was there a table in it?  
A. I do not know.  
Q. Was there a man in it?  
A. Yes.  
Q. Now, tell us who the man was?  
A. That man [pointing to the prisoner] came in there, and there were three or four others.  
Q. Is there no doubt about it?  
A. No, sir, not in my mind.  
Q. Did he come in alone?  
A. He came in alone.  
Q. How long had you been there when he came in?  
A. I saw him first on the sidewalk, I said, going into the house.  
Q. How long had you been there when he came into the reading-room?  
A. I had been in there I should think fifteen or twenty minutes before he came back again.  
Q. Before he came in?  
A. Before he came into the room where I was.  
Q. Did anybody come in with him?  
A. No, sir.  
Q. When he came in, was there anybody in the reading-room?  
A. I think there were some other gentlemen sitting there.  
Q. What were they doing?  
A. I cannot tell; I was paying no attention to them.  
Q. Were they not reading?  
A. They might have been.  
Q. Can you now bring back which side it was, or any thing about it?  
A. No, sir, I cannot.  
Q. Was the room papered?  
A. I cannot say.  
Q. Can you not tell what color it was?  
A. I cannot.  
Q. Were there curtains to it?  
A. I cannot distinguish colors. I can tell white from black.  
Q. I do not see, then, how your sight is so good to remember?  
A. I can tell white from black; but when you come down to these fancy colors, I cannot tell any thing about them.  
Q. You can distinguish between black and white?  
A. I can distinguish between black and white, or red, or blue, or green; but when you come down to these fancy colors I have heard ladies talk of—solferino, megenta, &c.—I cannot distinguish them.  
Q. Do you not find that that defect in your eye-sight rather perplexes your memory of facts?  
A. Not at all of faces.  
Q. Then it would not make any difference whether pale or red, or sallow or dark, or the light pink of the finest blush of the maid—would it be all the same?  
A. It would not affect that.  
Q. Your memory of faces being very perfect, give us the face of one of the other men you saw there?  
A. I had nothing to call my attention to the other men.  
Q. How many were there?  
A. I do not know. There may have been one; there may have been half a dozen. I would not swear that there was another in the room.  
Q. But you would swear to this one?  
A. I would swear to this one, because I had my attention called to him, for the simple reason that when he came in he passed up and down the room, and I was noticing his peculiar dress for one thing, and I was looking at the man, and he would turn and look at me, and then he came over and sat down perhaps one seat from me, as I stated.  
Q. Did he seem to take pains to come near you?  
A. I thought he did.  
Q. You thought he was "spotting" you, did you not?  
A. I suspected it, and that is what called my attention to him.  
Q. You felt that?  
A. I felt that he was looking after me.  
Q. You had quite a talk with him, had you not?  
A. I did not have much conversation with him.  
Q. Now, tell these gentlemen what you said to him.  
A. He came there and sat down.  
Q. I have not asked you that yet; I ask you to tell these gentlemen whether you had much conversation with him?  
A. Not a great deal.  
Q. Now, tell these gentlemen of the jury what you said to him?  
A. I made a common-place remark with regard to the weather.  
Q. What did you say of the weather?  
A. I cannot say what I said of the weather; but it was something about it.  
Q. What did you next say?  
A. He asked me a question, if I had been to the war.  
Q. What did you tell him?  
A. I think I replied to him that I had not. He said, "I see you are lame; how did you come by your lameness." That was in corroboration of the idea I had formed of the man from his watching me.  
Q. What next did he say?  
A. I gave him an evasive answer.  
Q. What did you say?  
A. He partly followed it up—  
Q. What did he say in partly following it up?  
Mr. MERRICK. Let him go on; he is answering your question.  
The WITNESS. I did not make much reply to him.  
Mr. PIERREPONT. I ask you what you said. I did not ask what you did not do, but what you did do.  
What did you say?

A. I cannot state the precise language.  
 Q. Can you state the substance?  
 A. The substance of it was with regard to how I had received my injury.  
 Q. What did you say?  
 A. I evaded his question, and did not give him a direct or satisfactory answer.  
 Q. Did he ask you any more questions?  
 A. Yes, sir; he asked me where I resided.  
 Q. What did you tell him?  
 A. He asked me if I resided in Elmira. I told him no, that I resided in Pennsylvania. That was my answer to him.  
 Q. What did he say to you?  
 A. He did not seem to be very communicative. I thought he was getting around to get me on another tack.  
 Q. I am not asking what you thought?  
 A. I got up and walked up to Haight's Hotel.  
 Q. My question is what he said, not what you thought. What did he say further?  
 A. He asked me where I resided.  
 Q. You have told us that?  
 A. I told him in Pennsylvania, and he made some other remark; what it was I cannot say.  
 Q. Can you not tell any other remark you made?  
 A. No; I got up. I made up my mind—  
 Q. Wait a moment. I have not got you up yet; I want you down there at present?  
 A. I cannot state what I said. I did not communicate much to him.  
 Q. Can you state any thing more than you have stated?  
 A. No, sir.  
 Q. Did he say any thing more to you than you have stated?  
 A. There was a little conversation passed between us. There might have been a little more conversation than I have given, and there might not.  
 Mr. PIERREPONT. We all know that. Was there more?  
 A. I cannot tell whether there was any more.  
 Q. Who got up first?  
 A. I got up and left, and went to Haight's Hotel.  
 Q. When you got up and left, did he get up too?  
 A. I do not think he did.  
 Q. Did he remain seated?  
 A. I do not know. I turned my back towards him, passed on to the street, and went around to Haight's Hotel.  
 Q. Did you ever see him any more?  
 A. I never saw him again until I saw him to-day.  
 Q. When you got to Haight's Hotel, what did you do?  
 A. I stopped there a few moments.  
 Q. Whom did you see at Haight's Hotel?  
 A. It is so long ago I cannot say now.  
 Q. Did you see anybody?  
 A. I saw some people in and about there; who they were I do not know. I am not acquainted with many people in Elmira.  
 Q. Did you see anybody there you had ever seen before?  
 A. I do not know that I did.  
 Q. Tell us what you did after you left Haight's Hotel.  
 A. I was watching for the arrival of the train. I think I asked some one in the office about the time the train went east.  
 Q. What did they tell you?  
 A. They remarked the time the train went east, and I saw I had a little spare time, and I bethought myself of one person who was keeping a little hotel around near the depot that I knew—a Dutchman.  
 Q. Did you go there?  
 A. I went around there.  
 Q. What is his name?  
 A. His name is George—now you have got me again; I will think of it, though. I knew him in Pennsylvania.

Q. Then, after you left the Brainard House, you went to this other hotel and then you went to the Dutch hotel?  
 A. Yes, I went around to that German's.  
 Q. Where else did you go?  
 A. I remained there until I got ready to go and take the train.  
 Q. Did you take the train?  
 A. I did.  
 Q. How did you get to it?  
 A. It was but a short distance, and I walked to it.  
 Q. What made you change your mind? As you went into the Brainard House you said you went in to wait for the omnibus that went to the train. What made you change your mind?  
 A. Simply because I thought that man there was looking after me, and was one of the men in the employ of the Erie railway, and was on my track. I had been informed by my counsel—  
 Q. Were you afraid of him?  
 A. I was suspicious of him.  
 Q. What were you afraid of him for?  
 A. I had a suit against the Erie Railway Company.  
 Q. Were you afraid that they would murder you or hurt you?  
 A. Not at all.  
 Q. Why were you afraid of him, then?  
 A. For the simple reason that I supposed he was working up testimony in behalf of the company against me, and wanted to draw out what he could from me.  
 Q. That was the reason you were afraid of him?  
 A. That was the reason.  
 Q. That was the reason you left him?  
 A. That was the reason I left him. My counsel advised me—  
 Mr. PIERREPONT. Never mind what your counsel advised you.  
 Judge FISHER. Oh, let him tell it.  
 The WITNESS. My counsel, Judge Munger, of Owego, and C. F. Wetmore, of New York, had advised me to talk with no one on the subject, to say nothing to any one as to how I was hurt, where I was hurt, or by what I was hurt, save to my friends and those whom I knew perfectly well.  
 Q. What do you mean by being hurt?  
 A. I received an injury upon the Erie railway, between Lackawaxen and Shohola, on the 28th of September, 1863  
 Q. And you sued the company?  
 A. I sued them; I brought a suit against them.  
 Q. Have you read this trial as it has been going on?  
 A. I read a part of the evidence on the part of the United States; I did not read it fully.  
 Q. Did you read any of it?  
 A. I have occasionally picked up a paper and glanced at it; I have not been interested in it particularly.  
 Q. When did you first read it?  
 A. I cannot tell when I first noticed it; I do not think I saw the opening of the case at all.  
 Q. Did you read any of the opening evidence?  
 A. I do not know but that I did.  
 Q. What did you read in the newspapers about it?  
 A. Yes, I have read some of the opening evidence; I read a portion of Weichmann's testimony; I glanced at his testimony.  
 Q. Was that all you read?  
 A. I have noticed one or two others' testimony.  
 Q. About what?  
 A. I have not read it; I have not looked at it; and the first that called my attention to it particularly was the testimony of Stewart and those men from Elmira. That was the first I paid any attention to so as to look at it particularly.  
 Q. After you left Elmira, about twelve o'clock that day, what time did you reach Owego?  
 A. It was in the afternoon; I cannot tell the hour; I cannot state the exact hour that I left, and I cannot state the hour that I got back.

Q. Are the Chemung and Brainard Houses on the same street in Elmira?

A. No, sir.

Q. On what street is the Brainard House?

A. The Brainard House, I think, is on Water street.

Q. On what street is the Chemung House?

A. I forget the name of the street; there is another hotel right across, nearly opposite.

Q. It is a different street?

A. Yes, a different street, and runs a different direction.

Q. Is it a different block, or is it on the same block?

A. I cannot be positive; it strikes me that the block runs clear around.

Q. When did you next see this man who is the prisoner here, after you saw him at the time of this conversation?

A. This morning.

Q. You never saw him until then, did you?

A. I never saw him until then.

Q. You recognized him in a moment?

A. I recognized him the moment the door was opened.

Q. In here?

A. No, sir; not in here.

Q. Where was it?

A. It was in the jail.

Q. Was he dressed as he is now, or was he dressed up?

A. No; he was not dressed at all there.

Q. Was he dressed as he is now, or was he dressed up in some different costume?

A. He was in a different costume.

Q. Why do you say he was not dressed at all?

A. I call him dressed now.

Q. Why do you say he was not dressed at all?

A. If I saw you with a sack on, or a dressing-gown, I would not call you dressed.

Q. Was he dressed in the jail the same way that you saw him dressed up there at the Brainard House?

A. Partially, but a different colored suit.

Q. In what respect partially?

A. The sack that he had on.

Q. Was it not the same coat?

A. No, not the same coat exactly.

Q. Was it partially the same, then?

A. It had a belt that buttoned around him, but it was a little different style.

Q. What was the difference?

A. There was a difference about the neck, and there was a difference in the plaiting.

Q. You noticed particularly about the neck and the plaiting, did you not?

A. Oh, yes; I noticed that.

Q. And you remember very distinctly these differences?

A. Yes; and I will recollect very distinctly a year hence the coat he has on now.

A. And you now remember the difference between the plaiting of the one you saw him in this morning and the plaiting of the one you saw him in two years or more ago?

A. I noticed that there was a difference.

Q. And you remember it distinctly, do you not?

A. Yes. It was different around the neck.

Q. The question is, Do you remember distinctly the difference in the plaiting around the throat?

A. I do.

Q. Do you remember, then, what the plaiting was there?

A. I remember that it was plaited.

Q. Do you understand my question—Do you remember just what the plaiting was?

A. Not distinctly, so that I could describe it.

Q. Can you not describe it?

A. I know it is different from what this is.

Q. Can you not describe how this was that you saw this morning?

A. I cannot describe exactly how the plaiting was this morning.

Q. Can you not describe how that plaiting was two years ago or more?

A. I told you twice I could not describe it. I can describe you the color.

Q. What omnibus were you going to take when you went into the Brainard House?

A. I was going to take the Brainard-House omnibus.

Q. Was there one?

A. I have always seen one there. I did not make any inquiry whether there was or not.

Q. Did you not ask when you went in?

A. No; I did not ask.

Q. Did you see one?

A. I did not see one standing there.

Q. How far is the Brainard House from the depot?

A. I should think from a quarter to half a mile.

Q. Which; one is twice as much as the other?

A. I cannot state now the distance.

Q. You finally walked it?

A. I walked it. I had plenty of time.

Q. When you went in did you think you had plenty of time?

A. Yes, I did; but I had nothing particular to do, and I thought I might just as well go in there and lounge till I got ready to go, and perhaps get my dinner if I had time.

Q. Did you get your dinner?

A. No. I went around to this place I spoke of.

Q. I simply ask if you got your dinner?

A. I took some oysters around at this place—this Dutchman's. George Streupler—that is his name. I did not get dinner.

Q. Did he see you there that day?

A. Yes, sir.

Q. Did you talk with him?

A. I talked with George Streupler.

Q. Do you know where he is?

A. I do not know where he is now.

Q. You spoke of the little hotel, whose name you cannot remember, where you got your breakfast before you went to the Brainard House. You said you had been there several times before, as I understood you?

A. I was there three or four days.

Q. When?

A. I was there in the fall and in January.

Q. Of the same year?

A. The fall previous, in December.

Q. You stayed there several days?

A. Three or four days.

Q. Did you stay three or four days in the fall?

A. I think I only stayed one day in the fall.

Q. How long in January?

A. I think I stayed three or four days there, and I think it was in the month of January.

Q. Did you enter your name then?

A. Yes, sir.

Q. And yet you cannot remember the hotel or the name?

A. I cannot remember the name of the hotel nor who kept it.

Re-examined by Mr. BRADLEY:

Q. You were asked what you were to receive, if you were to receive anything, for giving testimony in this case. State whether you are to receive any thing.

A. Nothing.

Q. Have you had any intimation that you would receive any thing except your expenses?

A. Nothing but my expenses, as you told me.

Q. What was the first intimation you had that you would be required here?

A. A telegram from you.

Q. When was that?

A. Yesterday I received it, I think, about one o'clock or a quarter past one.

Q. Had you or not determined not to come?

A. Yes; I was determined not to come then.

Q. Were you visited in the afternoon by a gentleman

residing in New York, who prevailed on you to come?

A. I was visited by a gentleman, who said he was in business in New York, between five and six o'clock.

Q. Now, state when it was and where it was that you first spoke of your knowledge of Surratt being in Elmira at that time?

A. It was in the office of Cassidy & Covell, in Warren street. I think it was on Tuesday last.

Q. Do you remember what passed; what you said on the subject?

A. Cassidy called me in. I spoke with him. I was not going into the office at all, but he called me in and said he wanted to see me a moment.

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

Mr. BRADLEY. You can state whether your attention was called to this matter in any way or not.

A. He called my attention to the Surratt trial, and said I, James —

Mr. PIERREPONT. You need not tell what you told him.

Q. (By Mr. BRADLEY.) Was that the first time you had spoken of it to any one to your knowledge?

A. That was the first time I had ever spoken of it to any one to my knowledge. There were two or three there. I remarked that I had read the testimony of those men.

Q. Which men?

A. The men from Elmira; and said I, "It calls to my mind the circumstance of my seeing him there," and I told them how I could fix the date as the 14th.

Q. Did you at that time, when you saw him in Elmira, know that the man was Surratt or John Harrison, or who he was?

A. I did not know what his name was. I had no idea whether it was Surratt or Harrison, or John Doe or Richard Roe. I did not seek to find out his name.

Q. Do you remember giving any description of the man you saw there to those persons? I do not ask what the description was, but whether in point of fact you described to Mr. Cassidy and the others the person you saw in Elmira on the 14th of April?

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

Mr. BRADLEY. I do not ask him to do so. I ask for the simple fact whether he gave that description of the man's appearance and dress.

A. I did.

Q. And the next thing you heard was a telegram from me?

A. Yes, sir; and I was surprised at it when I got it.

Q. You were asked as to the dress which he wore this morning, and you said it was not of the same kind exactly that he wore in Elmira, and was different colored. What was the color of the dress in which he was dressed at Elmira?

A. It was a gray.

Q. Did you observe any thing about his hat or cap, or whether he had a hat or cap, which?

A. He wore a round-top slouch hat.

Q. Did you observe any thing about his moustache or imperial?

A. It was not as long as it is now. It covered more of his chin than now, and his moustache was not as long as it is now. It looked like first-growth hair—fuzz.

Q. Do you remember whether he had any thing in his hand or not; and, if so, what?

A. I have not a positive recollection. My impression is that he had a stick or walking-cane, but I am not positive as to that.

Q. When you saw him this morning first, did he have any hat or cap on?

A. He had not.

Q. Was any part of his costume the same color as that he had on in Elmira?

A. Not at all.

Q. State whether you recognized him at once, or whether any thing passed before you recognized him as the same man?

A. As quick as the door was opened I remarked to you that that was the man; I did not want to see him further. I described him to you and told you I did not want to go to the jail to see him.

Q. When I proposed that you should go over to the jail, did you not decline to go?

A. I did.

Mr. CARRINGTON. Stop. I do not think this conversation is admissible.

Judge FISHER. Certainly not.

Q. (By Mr. BRADLEY.) Did you or not request that you should see him first in a crowd?

Mr. PIERREPONT. That is not proper. What passed between the witness and his counsel is not allowable.

Mr. BRADLEY. I am not his counsel.

Mr. PIERREPONT. The counsel of the prisoner.

Judge FISHER. You cannot give conversation with anybody else.

Mr. BRADLEY. Very well, I will not press it.

By Mr. PIERREPONT:

Q. When did you say you first got the telegram?

A. I think it was yesterday, a little past one o'clock.

Q. You say you were greatly surprised at it; what surprised you?

A. That I should have a telegram to come here.

Q. Why did that surprise you?

A. I could not imagine who had informed of any thing that I had said with regard to it.

Q. Did you not imagine that your evidence would be of great importance to the defense if you had seen the prisoner in Elmira on the 14th?

A. I was not positive as to the man. I told you that it answered the description, and said I, "If I could see that man" —

Q. I am not asking what you said; but did you not think it would be of great importance to the defense if you had seen him in Elmira?

A. No; I did not think any thing material about that.

Q. You did not think it would be?

A. I paid no attention to that; I merely came to the conclusion that I was not coming.

Q. What made you conclude you were not coming?

A. I did not want my name mixed up in the matter one way or the other.

Q. You said somebody came to see you?

A. Yes, sir.

Q. How did that change your mind on that subject, when you were so firm and determined not to come?

A. He said this, "If you don't come, I shall proceed to Washington immediately to-night, and your statement I shall lay before his counsel, and it will only delay the court in getting out a subpoena to bring you here."

Q. Who said that?

A. This man who was sent —

Q. Who was it?

A. The name has slipped my memory.

Mr. BRADLEY. I can tell you who it was: Mr. James E. McCullough.

Mr. PIERREPONT. (To the witness.) Where did he come from?

A. I do not now remember. He told me his place was 35 Broadway.

Q. And that changed your mind and made you come?

A. That changed my mind to come.

Q. And then you came on without any difficulty?

A. Yes.

Q. And the moment the jail was opened and you saw the man you said you did not want to see him any further.

A. I did. I recognized his face.

Q. At once?

A. I did.

Q. When you said that, did you know it was of any importance in this case?

A. I supposed it was.

Q. Did you suppose so before you left New York?

A. I supposed that if I recognized him as the man, and with that particular blouse on there in Elmira, it would be of importance to him; and I also supposed that if I saw him and recognized him as not the man it would be equally as important to the prosecution.

Q. How, possibly, to the prosecution? If you did not recognize him, how did you think that would be important to the prosecution?

Mr. MERRICK. Is not that a matter of reasoning, not properly addressed to the witness?

Mr. PIERREPONT. He says he thought it would be of equal importance to the prosecution if he did not recognize him. (To the witness.) Now, tell us what made you think so. I am merely asking your own answer.

A. For the simple reason that it would be contradictory to what others had stated with regard to his being the man.

Q. Had you heard of anybody speaking of seeing him at the Brainard House?

A. I told you I had read the testimony of the Elmira gentlemen.

Q. Did you read any such thing in their testimony?

A. No; I do not think I did.

Q. Then how did you think that would be important to the prosecution?

A. They described him as being in a store there—the store of Stewart & Uford. I know where their store is. I did not, that I recollect of, read any thing of their seeing him at the Brainard House.

Q. Now, inasmuch as they did not say any thing about his being at the Brainard House, tell us why you thought it would be equally important to the Government if you did not recognize him as the man you saw at the Brainard House.

A. It would merely establish this fact: that my mind being impressed as to the man, from the fact that I thought he was looking after me for the railway company as one of the railway employees or detectives, I would be quite as likely to recognize him as they would; and I said that to Mr. BRADLEY, and told him "if he is not the man I shall say it, and then I shall be frank enough to inform the counsel on the other side, and they will make use of me;" and said I, "The better plan is to let me go home, or have me pick him out here in the crowd."

Q. Do you think we could have used you?

A. Yes, sir.

Q. You thought so, did you?

A. I thought so.

Q. Did you tell Mr. BRADLEY this in New York?

A. I told Mr. BRADLEY this in his office, I should think, between eight and nine o'clock this morning.

Q. That was not any reason why you did not come on here?

A. No; I merely came on here at the earnest solicitation of that man, Mr. McCullough.

Q. You first determined not to come?

A. Yes.

Q. After your determination not to come, something occurred to make you come on?

A. Yes, the solicitation of Mr. McCullough.

By Mr. BRADLEY:

Q. Did Mr. McCullough show you a telegram from me?

A. He did.

By Mr. MERRICK:

Q. You said you supposed the Government could use you if you recognized this as not being the man: had you not read in the testimony of the Elmira witnesses that they had described the particular dress of the man they saw in Elmira on that day?

A. I swore to that three or four times over.

Q. And if you saw that the man you had seen in the same dress there that day was not the prisoner, it

would put two men in Elmira on that day with that same dress, would it not?

A. That was the view I took of it.

By Mr. PIERREPONT:

Q. You have told us of James McCullough?

A. I do not know whether his name is John or James; I know his name is McCullough. He said he lived some place on the Northern railroad, up above Jersey City.

Q. Do you know what he is?

A. I do not; I never saw him before.

Mr. BRADLEY. I know him intimately; he is a gentleman of the highest character.

Mr. PIERREPONT. You are not on the stand.

Mr. BRADLEY. And he is not on the stand.

Mr. PIERREPONT. This witness is.

Mr. BRADLEY. Mr. McCullough is a man of as high character as the counsel.

Mr. PIERREPONT. It is not proper that counsel on either side should testify.

Judge FISHER. You need not get into a quarrel about Mr. McCullough.

Mr. BRADLEY. I do not mean to have a quarrel about it. I do not mean to quarrel again during the present term with anybody; but I do not mean that Mr. McCullough shall be assailed when I am by, without putting in a word for him.

Mr. PIERREPONT. Has anybody assailed Mr. McCullough?

Mr. BRADLEY. I think you have.

Judge FISHER. I have not heard any assailing of Mr. McCullough.

Mr. BRADLEY. If your honor please, is not the intimation too broad? Cannot everybody comprehend it? If he asks this witness how much money he has got, or is to get, if he is to be paid, and so on, and then suggests that the witness refused to come, then is solicited by Mr. McCullough to come—is not the intimation too plain that there was some kind of influence exercised on him?

Judge FISHER. I cannot see it.

Mr. BRADLEY. If the gentleman disavows that, I have nothing to say.

Judge FISHER. I do not understand that there has been any reflection cast on Mr. McCullough. The inquiry was to know who he was and where he lived.

JOHN C. BARTLETT,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Washington.

Q. Where were you employed in the months of February, March, April, and May, 1865?

A. I was driving stage for John Thompson from here to T B and back.

Q. Did you make double trips down and back the same day or not?

A. I did.

Q. You went down in the morning and came back in the afternoon?

A. I left here at eight o'clock in the morning, and generally got in here between five and six in the evening.

Q. That is, when the roads were tolerable; but it was sometimes much later, I suppose?

A. Sometimes later.

Q. During the month of April, 1865, were there any pickets on that road beyond Good Hope?

A. No, sir, there were none.

Q. You went down in the morning, and returned between five and six o'clock?

A. Yes, sir.

Q. And there were no pickets below Good Hope in the month of April?

A. No, sir; there were not.

Cross-examined by Mr. PIERREPONT:

Q. How do you know there were no pickets?

A. Because I did not see any.

Q. Were there none set there?

A. I did not see any.

Q. That is all you mean.

A. I think I should have seen them if they were there.

Q. All you mean is that you did not see any?

A. I did not see any pickets at all after I left the bridge.

Q. On the 14th of April did you pass that road?

A. I did.

Q. At what time?

A. I left here about eight o'clock in the morning.

Q. Where did you go to?

A. To T. B.

Q. When did you return?

A. I returned that evening, between five and six o'clock.

Q. After that were there any pickets set?

A. After that there were; the next day there were.

Q. Were there none that night?

A. Not when I came in.

Q. You say you did not see any between five and six?

A. None, only at the bridge.

Q. And those were all you saw?

A. Yes, sir.

Q. Whether there were any set that night after that you do not know; you had nothing to do with setting the pickets, had you?

A. No, sir.

By Mr. BRADLEY:

Q. If there had been a cavalry picket on that road between Surrattsville and Good Hope, in the evening, between four and five o'clock, on the 14th of April, must you not have seen them?

A. I think I should have seen them.

Q. Which side did you take in the late contest?

A. I was always a Union man.

Q. A Northern man?

A. I am a Northern man, born and brought up in New York State.

Q. Were your sympathies always with the United States and against the rebels?

A. Yes, sir.

Mr. BRADLEY. I desire to take advantage of this opportunity to make a remark to the court in relation to some matters connected with this case; and I do it now especially because of something that occurred in the course of the examination of the witness who was examined this morning. There has been industriously circulated throughout the country a charge that I offered to Hobart, a witness who was here, a bribe of \$1,500 to induce him to bear testimony opposite to that which he had given here. I should feel myself a little degraded if I thought it necessary to go into the public papers to deny any such allegation, and I supposed Mr. Hobart would make the refutation himself; but I mention it to show the spirit which has influenced the press of this city, or a portion of it at least, as well as a portion of the press of the country, bearing on the conduct of the defense in this case, and reflecting on the merits of the prisoner's case. I do not think it necessary to deny any such imputation. Where I am known, no one would believe it; where I am not known, it will have its influence. But I call the attention of the court to the manner in which the press is using its power in this city to injure the defense of this prisoner.

Judge FISHER. Has that statement appeared in any of the papers of this city?

Mr. BRADLEY. Certainly.

Judge FISHER. I have not seen it.

Mr. BRADLEY. I have not read it nor seen it, but half a dozen persons have offered it to me, and I de-

clined to read it. I believe it purports to be copied from some other paper.

Mr. PIERREPONT. Will counsel state the paper it was in?

Mr. BRADLEY. The *Chronicle*. It was handed to me by some persons, but I would not look at it. I do not know what the paper was from which it purported to be copied. I have not looked at it myself, and, so far as I am personally concerned, I am indifferent to it; but, so far as it affects the defense in this case, I call the attention of the court to it.

Mr. PIERREPONT. I do not know what can be said about it, inasmuch as nobody on our side has had any connection with it. We do not know what to say on the subject, except that we have had no connection with it and no knowledge of it.

Mr. BRADLEY. Do you mean to say that none of you gentlemen have seen the article?

Mr. CARRINGTON. I have seen it.

Mr. BRADLEY. I do not see that you have any thing to say about it.

Judge FISHER. What paper was it copied from? Mr. J. A. FOSTER, (who was sitting with the counsel for the prosecution.) A Vermont paper.

Judge FISHER. I do not see what power the court has, unless there should be a suit instituted for libel.

Mr. BRADLEY. So far as I am personally concerned, there will be no action of libel.

Judge FISHER. I do not know any order that I could make in a matter of that sort. If I knew any thing that could be done, I would be very glad to suppress any such publication.

Mr. BRADLEY. It is for the grand jury, not for me, to notice it.

Judge FISHER. Have you no other witness in attendance?

Mr. MERRICK. We expect Mr. Boucher by the train that will arrive at six o'clock. In order to get through to-day, it will be necessary to hold a night session, if your honor thinks it proper to hold a night session under present circumstances, in view of the condition of the sick juror.

Judge FISHER. You will have but one witness, as I understand.

Mr. MERRICK. There was one other in attendance to-day, merely to fix some dates, who will not occupy five minutes. Besides him there is only the one we expect by the train.

Judge FISHER. Have you any idea how long the examination of Mr. Boucher will last?

Mr. BRADLEY. As long as the witness who was examined this morning.

Mr. MERRICK. The period of time consumed in the examination of witnesses for the defense depends more upon the cross-examination, apparently, than it does on the examination-in-chief. We are perfectly willing to accept with pleasure any order that the court may make in reference to its sessions; but I hope your honor will consider, in determining that matter, not so much the expedition of business and the accommodation of the juror at the present time, as the possibility of his being so far weakened as to subject him to danger of serious illness during the coming week.

Mr. SCHNEIDER. I think I can stand it?

Mr. BOHRER. I do not think it would be safe for Mr. SCHNEIDER to come here at night.

Judge FISHER. He might remain here.

Several JURORS. We are all anxious to go on.

Mr. MERRICK. But it may be a little perilous to him, possibly.

Mr. BOHRER. Mr. SCHNEIDER tells me he could come here this evening by a carriage being provided to take him back and forth.

Mr. CARRINGTON. Certainly he ought to have a carriage.

Judge FISHER. That would be better.

Mr. SCHNEIDER. I think I can walk down.

Mr. MERRICK. Would it not be better to let him

have sufficient respite to recover rather than press him so as to break him down? That is the danger.

Judge FISHER. Undoubtedly; but where he has the opportunity of lying down and being properly attended to, I do not think it would do him any harm to be here an hour after dinner, if he feels well enough.

Mr. BRADLEY. The cars do not get in until six o'clock. I am exceedingly desirous myself to close this case, and I will examine one witness now to a single point, which I had almost forgotten; it is only as to the age of the prisoner.

ISAAC H. SURRETT,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. Are you not several years older than your brother John?

A. I am some years older.

Q. What is his age?

A. He was twenty-three last April. He was born the 13th of April, 1844.

Mr. BOHRER. I will say to your honor, that Mr. SCHNEIDER says he thinks if he can go to the hotel and lie down until five o'clock he would then be able to go on.

Judge FISHER. Very well; then we will take a recess until six o'clock.

The court accordingly took a recess until six o'clock, and re-assembled at that hour.

Mr. BRADLEY, Jr. If the court please, in order to secure the attendance of the witness promptly here, I proceeded to Baltimore, and to the Philadelphia depot there, for the purpose of meeting him in the train and bringing him directly to Washington; but we were disappointed; he did not arrive. I have a gentleman there waiting for him at the next train, for we had every reason to expect that he would arrive in the train I met or in the coming train. Here is a telegram which we received yesterday in the afternoon, stating that he had just left Montreal for Baltimore, and that he would communicate to us from that point. I know the gentleman personally, and I know that he will make every exertion to be here, and most likely he will be here in the last train this evening.

Judge FISHER. When did he leave Montreal?

Mr. BRADLEY, Jr. He was due here this afternoon if he succeeded in making the connections regularly through. He may have been disappointed in making some connection, but the messenger who is there is well acquainted with him and will bring him here.

Mr. MERRICK. We expect to have him, and Mr. BRADLEY has stated the basis of our expectation—a telegram from himself; and if he comes we may examine him on Monday morning; but if he should have missed any of the connections, Sunday intervening, as the cars on many lines do not run on that day, possibly he may not come. We have to ask your honor in the first place, certainly, to allow us to examine him on Monday morning, should he come; and, in the second place, with a view to the expediting of the case, that your honor will allow us to examine him whenever he may get here, within a limited time—say Tuesday or Wednesday—leaving the prosecution to go on with their rebutting evidence in the meantime. This is a matter within the discretion of the court. The counsel on the other side, when the suggestion was made the other day, interposed no very serious objection to it, but stated their preference on the subject. Your honor will see that no material damage can come to the prosecution from allowing us this privilege, and it is possible that without it there might be the withholding of material facts from the jury.

Judge FISHER. Perhaps the counsel can make some arrangement among themselves.

Mr. MERRICK. Frequently the exercise of the

court's discretion facilitates an arrangement among counsel. Things are sometimes done after such an intimation that are not done before.

Judge FISHER. It is a matter in which I very much dislike to exercise discretion, if, indeed, I have any such discretion.

Mr. CARRINGTON. All we can say is, that we do not feel that it is proper for us to offer our rebutting testimony until they have closed the testimony for the defense.

Judge FISHER. It would perhaps put a party at some disadvantage for one party to have the privilege of delaying giving in his testimony to the eleventh hour, when there is no chance to rebut it. I do not know what the testimony is; I do not know whether the other side will want to rebut it.

Mr. BRADLEY. For that reason we ask your honor to limit our time to Tuesday or Wednesday.

Mr. CARRINGTON. But in the meantime what should be done?

Mr. BRADLEY. Go on with your rebutting testimony, not touching the subject-matter of the examination of this witness. I have told you what we want him for.

Mr. CARRINGTON. It is a very bad rule that does not work both ways. Your honor will remember that I suggested to counsel on the other side that I desired to offer items of testimony after they should have entered upon their evidence, and they rejected the proposition; and if I take warning by their example I would not be disposed to deviate from that rule of practice.

Mr. MERRICK. Allow me to suggest that you did make the proposition, and we did not agree to it; but the court told you you might offer proof of the handwriting of the Duell letter at that time.

Judge FISHER. No.

Mr. MERRICK. Am I wrong about that?

Judge FISHER. For the second time.

Mr. BRADLEY. What his honor said was that he would hear a motion to allow such testimony to be given.

Mr. MERRICK. There must be something in these notes that has given me the idea.

Judge FISHER. If so, we must have the notes corrected.

Mr. CARRINGTON. Your honor will recollect that the gentlemen pressed me very hard for a trial, and gave me no quarter, insisting upon the trial of this case day after day, though I urged that I was doing all I could to secure the attendance of witnesses. I am sure the gentlemen cannot complain of any illiberality on my part now, when I reject a proposition which they rejected when made by myself to them. In a word, we cannot consent to proceed with our rebutting evidence until they have announced formally to the court that they have concluded their testimony.

One word more. Your honor will pardon me for saying that it is a matter addressed to the sound discretion of the court whether you will grant any further indulgence to the counsel or not. You have already received a suggestion from counsel on the other side. It is very desirable that we should bring this case to a speedy determination. Counsel have been indulged on both sides.

Mr. BRADLEY. We have asked no favor to ourselves.

Mr. CARRINGTON. I do not know whether the fact which the gentlemen propose to prove by this witness is a very material one or not; but, of course, they are more capable of judging of that than I am.

Mr. BRADLEY. I have stated it to you, and you are not willing to admit it.

Mr. CARRINGTON. You have stated it, but I am not very clear about it.

Mr. BRADLEY. It is not worth while to occupy the time of the court in discussing the matter. We have made the proposition, and we have heard the

answer from the other side. It is certainly within the power and discretion of the court, if we should have this witness here before the prosecution begin their rebutting proof, to allow him to be heard. There certainly can be no objection to that, unless they are going to begin the rebutting proof to-night.

Judge FISHER. If I were to grant that to one side, I should have to grant it to both.

Mr. BRADLEY. Certainly, I think that is reasonable. If, before they begin their rebutting proof, our witness comes in, your honor will hear him; that is all we ask. I presume he will be here by Monday morning. The other side certainly cannot be expected to go on with the case to-night. If our witness is not here on Monday morning, we shall have to submit to the order of the court. That is all I can ask under the circumstances.

Judge FISHER. You promised to close your testimony on Thursday, and you have had two more days.

Mr. BRADLEY. Undoubtedly; but your honor sees how we are situated. It is not our fault, but our misfortune, and the misfortune of this witness in not making his connections. He ought to have started, as we supposed he did, on Monday. Why he did not we are not advised, except from presumption. We suppose we have ascertained the reason. We know by a telegram from Mr. Coyle, the agent of the parties we employed in Montreal and a reliable person, that he started in time to be here this evening. Every exertion has been made on the part of the prisoner that could possibly be made to get this witness here in time. We had made our arrangements to close the case on Wednesday. We expected the witness to be here by Wednesday morning, but he was not here. That was the first cause of delay. During the three days that have intervened we have offered testimony that we did not anticipate it would be necessary to put in. The testimony which we have offered this morning we knew nothing of until after Wednesday.

Judge FISHER. Have you no other witness you can examine now?

Mr. BRADLEY. A single witness, Mr. Reeves, who was on the stand the other day, but had not his books with him, to give certain dates.

Judge FISHER. Call him, and I will think about the other matter.

JOHN J. REEVES,

a witness for the defense, sworn and examined.

By Mr. BRADLEY:

Q. What book is that you have with you?

A. It is my measure-book.

Q. What are the dates which you could not give the other day without reference to the book?

A. The dates are from the 7th to the 9th of April, 1865.

Mr. MERRICK. Read the entry.

Mr. PIERREPONT. You need not read the entry.

Mr. BRADLEY. State by looking at it whether you measured John Harrison for a suit of clothes.

Mr. PIERREPONT. You cannot read the entry. You may give the dates and refresh your memory by reference to the book.

The WITNESS. It was the 7th to the 9th, that is all I can remember about it.

Mr. BRADLEY. You may state, without reading, what the entry is.

A. A Garibaldi.

Q. What date?

A. From the 7th to the 9th of April. The entry is John Harrison.

By Mr. BRADLEY, Jr.:

Q. Is there anything else in that entry?

A. No, sir.

Q. Did you take his measure?

A. I did.

Q. At that time?

A. Yes, sir.

Q. For what?

A. For a Garibaldi.

Q. (By Mr. BRADLEY.) And you identify this prisoner as the man?

A. I do.

Q. See what the entry is as to the date?

A. Saturday, 7th of April, 1865.

Q. And what was the next date you mentioned?

A. Monday, the 9th of April. I measured him on the 7th and delivered the goods on the 9th.

Judge FISHER. Saturday was the 8th of April.

Mr. MERRICK. He says that he measured him on the 7th and delivered the goods on the 9th; that is what he means by 7th to 9th.

Judge FISHER. The 9th would be Sunday.

Mr. BRADLEY. He has got "Monday, the 9th," on his book.

By Mr. PIERREPONT:

Q. Did you make any suit for him after that?

A. No, sir.

Judge FISHER. I was very anxious to get through with this case and have it closed next week, if possible.

Mr. CARRINGTON. I understand from my associates that we can close our rebutting testimony in two days, and I feel it my duty to ask that your honor will require the defense to close their case to-night; I think that was the understanding of counsel and the court. I regret exceedingly that they have not their witnesses here in attendance; but we really hardly know how to prepare ourselves, unless it is understood that their testimony is at an end. If it is, we shall be ready with our rebutting testimony promptly on Monday morning at ten o'clock.

Mr. BRADLEY. It is altogether probable that when they get through with their rebutting proof we shall have some sur-rebutting; and I think it is altogether probable that when we get through we shall propose to submit the case without argument, thus saving time. I am very willing now to submit the case without further discussion on either side.

Mr. PIERREPONT. We will finish our proof, and then we will talk about whether we will submit it.

Mr. BRADLEY. Therefore, if they are to finish their proof, it is entirely within the discretion of the court whether the court will allow us, on Monday morning, to introduce this witness, if he should arrive.

Judge FISHER. What objection would there be to having this understanding: that if your witnesses should not be here at the hour of ten o'clock on Monday morning, the prosecution should go on with their rebutting testimony; and, if he is here, you will be at liberty to examine Father Boucher, and no other witnesses?

Mr. BRADLEY. Agreed.

Mr. CARRINGTON. Well, we agree to that.

Judge FISHER. The case for the defense, then, is closed, except the examination of Father Boucher, if he shall appear here on Monday morning at ten o'clock.

Mr. BRADLEY. Except in answer to the case on the other side.

Judge FISHER. You close your *prima facie* case.

Mr. BRADLEY. Our case in chief.

Judge FISHER. But if your witness is not here at the opening of the court on Monday morning, the prosecution will go on with their rebutting testimony; and, if he is here, you may examine him, but no other witness.

Mr. BRADLEY. Very well. I think that is reasonable.

The court took a recess until Monday morning at ten o'clock.

Thirty-Sixth Day.

MONDAY, July 22, 1867.

The court re-assembled at ten o'clock a. m.

Mr. MERRICK. If your honor please, last week we summoned Mr. Queen as a witness in this case, and the return was that he was so ill that he could not come.

Wesent a carriage for him ; but his physician sent word that he could not be allowed to leave his bed. He is out this morning ; his examination will certainly not take over five minutes, and I ask that we may have the privilege of putting him on the stand.

Judge FISHER. Is there any objection to it ?

Mr. PIERREPONT. If it is something short, we do not object.

EDWARD F. QUEEN

was called, but did not answer.

CHARLES BOUCHER,

a witness for the defense, sworn and examined.

By Mr. BRADLEY :

Q. State to the court and jury where you reside.

A. I reside in the parish of St. Hilaire, Canada ; I am rector of that parish, a priest of the Catholic Church.

Q. Where were you residing in the month of April, 1865 ?

A. In the parish of St. Liboire.

Q. Look at the prisoner at the bar, and see if you recognize him ?

A. Yes, sir, I do.

Q. State, if you please, whether you saw him in the month of April, 1865, and where you saw him ?

A. The first time I saw him was in my place in St. Liboire.

Q. Do you recollect on or about what date it was ?

A. It was about the 22d of April, 1865 ; I think it was on the evening of that day.

Q. Was he in company with any one when you first saw him ?

A. Yes, sir.

Q. Who was it ?

A. It was Joseph DuTilley, who brought him to my place.

Q. Was any one else with him ?

A. No, sir.

Q. Is that the same Mr. DuTilley who was examined as a witness here or not ?

A. Yes, sir, the same.

Q. You say you saw him at your place. Do you mean at your house ?

A. Yes, sir.

Q. State how long he continued at your house ?

A. He remained with me about three months, perhaps a little over ; I cannot say exactly now.

Q. Where did he go after that ?

A. He went to Montreal.

Q. Did you see him from time to time, after that, until he left for Europe ?

A. Yes, sir.

Q. How frequently ?

A. Sometimes twice a week, and sometimes three times a week.

Q. Always as often as twice a week ?

A. Yes, sir.

Q. You say you saw him until he left for Europe ?

A. Yes, sir.

Q. During that time, do you know whether or not he received any information from the United States as to the condition of his mother ?

Mr. PIERREPONT. Do not answer that question.

Mr. BRADLEY. If your honor please, it has been made the burden of the opening of this case, and twice subsequently in incidental arguments, that the prisoner fled, deserting his mother, proving himself a coward. I want to show the fact that he did not know what the condition of his mother was ; that he had not means or opportunities to learn what was passing in the United States, but that the facts were concealed from him. And I do it to meet and repel the imputation. I propose, further, to show by this witness what occurred when he was informed of the condition of his mother.

Mr. PIERREPONT. The statement of the counsel

makes it quite clear, I should think, that it cannot be admitted in evidence.

Judge FISHER. It would certainly be violating the rule respecting hearsay testimony.

Mr. MERRICK. If your honor will permit me, I beg to suggest that there is one ground upon which the evidence may be admissible ; and it is that the statement was made in the opening, and has been since repeated during the trial.

Mr. PIERREPONT. The statement that he did receive or did not receive the information ?

Mr. BRADLEY. That he fled as a coward, abandoning his mother.

Mr. WILSON. No reference was made to his mother.

Mr. MERRICK. There was not ?

Mr. WILSON. Not in the opening.

Mr. MERRICK. Then it has been since ; I am certain it has been.

Mr. BRADLEY. Once by Mr. CARRINGTON and once by Judge PIERREPONT.

Mr. MERRICK. I remember very distinctly Mr. CARRINGTON made the remark ; at the time I asked him for his authority.

Mr. CARRINGTON. I did. I will not deny any statement that I made.

Mr. MERRICK. And that statement having been made by counsel, with all due respect to them, somewhat contravening a well established rule of law in reference to the department of counsel to a prisoner at the bar, we submit to your honor that we have the right to rebut the statement and relieve the prisoner from the danger of the prejudice which such a statement would be calculated to create. I think my learned brother who is associated with me recollects a cause tried sometime since before another branch of this court, a civil suit, where a statement made in the opening of the case was allowed to be contradicted by testimony afterwards. I merely throw out the suggestion ; I will not argue the question.

Mr. PIERREPONT. Will your honor allow us to call witnesses to rebut all that the counsel have said in this case ?

Judge FISHER. I have never known the rule to be that the fact that counsel makes a statement authorizes proof to be brought to show that the statement is incorrect. I have never known proof to be brought to wipe out prejudices that might be suspected to exist or to have been made in the minds of the jury. It is something entirely novel to me, and if we go into this matter and admit evidence to overcome prejudices that may be suspected to be entertained by the jury, or to meet all the statements that may have been made in the heat of debate or argument by counsel, I do not think we should ever terminate this case.

Mr. MERRICK. I beg, then, your honor, to offer the testimony in another aspect. In reply to the suggestion of counsel on the other side, I will say, that I have not the slightest objection to their introducing testimony to rebut any thing we say on our side ; not the slightest.

Judge FISHER. I have, because that would make the case interminable.

Mr. MERRICK. I am speaking of the offer of the other side now. You may interpose and prevent their accepting the proposition. But I am perfectly willing that every thing that can throw light on this case shall go to the jury.

Mr. PIERREPONT. When we get through our speeches, can you bring new evidence to rebut them ?

Mr. BRADLEY. If the speeches undertook to state facts, perhaps we might.

Mr. MERRICK. It has been stated that the prisoner fled ; and we propose to show by this witness that when he learned or was informed, very late, of the condition of things in this country, he insisted upon returning, and was restrained and prevented—

Judge FISHER. The matter has been decided.

Mr. MERRICK. This is a new aspect of it.

Judge FISHER. Very well, let us have the new aspect.

Mr. CARRINGTON. How do you expect to prove it?

Mr. MERRICK. I expect to prove, first, that he did not know of his mother's peril at the time she was in peril; and, second, that subsequently when he learned of it he insisted upon returning and was restrained.

Judge FISHER. That is subject to the same objection.

Mr. CARRINGTON. If necessary, I think I can answer the proposition.

Judge FISHER. I overrule the offer.

Mr. MERRICK. We note an exception.

Mr. BRADLEY. (To the witness.) Now, Mr. Boucher, state what was the condition of health of the prisoner while he was under your charge or at your house and after he returned to Montreal.

Mr. PIERREPONT. You need not answer that question. We are not on the question of his health. We have given no evidence on that subject.

Mr. BRADLEY. Is it possible that we are to be confined merely to answering facts produced by the prosecution, and that we are not to introduce any new facts tending to meet and repel the facts thus introduced? That seems to be the rule prevailing in the mind of the learned gentleman who conducts this case. It is alleged that the prisoner had an opportunity to leave Canada and go to Canandaigua, and enter his name in the register at Canandaigua, while, as we say, he was in Canada, and before he left Canada for Europe. Now, if we show that he was actually under the eye of persons all the time there, and that the condition of his health was such that he could not have come and returned in two days, we offer evidence tending to prove that he did not come back. If that register remained on the counter in the hotel at Canandaigua from the 15th of April until the 31st of December, and the handwriting is upon that register purporting to be of the 15th of April and the entry is in his handwriting, then, if I follow that up by proof (as this shows the register could not have been carried to him) that he could not have been carried to the register, I shall lay the foundation for offering that register in evidence.

Mr. PIERREPONT. Why do we need a foundation to be laid for an argument to be made? If this witness had his eyes upon him all the time, can he not tell it? We do not want any inference about it; let him give facts.

Mr. BRADLEY. The witness has already stated that he only saw him twice or thrice a week regularly after the middle of July.

Mr. PIERREPONT. To be sure, and that cuts you off.

Mr. BRADLEY. That being the case, I want to show the condition of his health.

Mr. PIERREPONT. That very fact which the witness has stated cuts off your proposition.

Mr. MERRICK. If the fact of the prisoner's inability to be present at Canandaigua and register his name can be established by circumstantial evidence, it is just as good as positive proof.

Judge FISHER. You may give in evidence the condition of his health. I hardly think it is admissible, but I will give you the benefit of the doubt.

Mr. BRADLEY. (To the witness.) Now, be good enough to state to the jury what was the condition of the prisoner's health from the time he reached your house until he left for Europe?

A. He was very poor in health. He had fever and ague. The first time he remained at my house he had that disease once or twice a week; and then the rest of the time he remained in Canada he had it every other day, or every second day, as you say it in English. I must remark here, that I am not very well acquainted with the English language, and you should be indulgent with me on that account.

Mr. BRADLEY. You speak distinctly; we under-

stand you very well. You say that while the prisoner was at your house he had it twice a week, and after he left there and was in Montreal he had it every alternate day—the Tertian ague?

A. He used to call it chills himself; and he was very poorly. He remained in bed whole days long. He could hardly move. Sometimes I was afraid for his life, he was so pale and so weak.

Q. Reduced by his illness?

A. Yes, sir.

Q. State whether you know a witness examined in this case named Dr. Louis J. A. McMillan?

A. Yes, sir.

Q. When and where did you know him?

A. I knew him in the township of Shefford. I was stationed there five years.

Q. At what time was he there?

A. It must have been about 1860 or 1861 that I became acquainted with him. I am not sure whether it was six or seven years ago.

Q. Did you know him afterwards—in 1864?

A. Oh, yes; I lived in Shefford then. He was my parishioner.

Q. State whether you had opportunities to know his general character among those with whom he associated as a man of truth and veracity?

A. I have had opportunities of knowing it.

Q. Did you know how he was generally esteemed amongst such in regard to truth and veracity?

A. Yes, sir.

Q. Was his character for truth good or bad?

A. As much as I can say, I do not think his character was very good.

Q. Was it good or bad?

A. Bad.

Q. It has been asked in the cross-examination of the witness DuTilly, whether you ever had any quarrel with McMillan or not?

A. We had truly a certain contestation.

Q. Was that in relation to any money transaction?

A. No, sir.

Q. Did you owe him any money?

A. Yes, sir.

Q. How much?

A. Five dollars.

Q. Did you pay him?

A. Yes, sir.

Q. Have you a receipt?

A. Yes, sir.

Q. Was it not prior to the time when you had a quarrel with him, your parishioner?

A. Yes, sir.

Q. Had you or not had conversations with him on the subject-matter which gave rise to that quarrel?

A. Yes, sir.

Mr. BRADLEY. I propose now, if your honor please, to give in evidence the cause of that quarrel, which has been brought out on the other side.

Mr. PIERREPONT. If your honor will allow Dr. McMillan to be examined in reply to it I have no objection.

Mr. BRADLEY. He will have the undoubted right to do it.

Judge FISHER. Of course.

Mr. BRADLEY. (To the witness.) I do not like to ask you in this audience, but I cannot help doing it: You will please state what was the cause of that quarrel, what had preceded it, and what led to that quarrel?

A. I must confess that I feel a little reluctant about the matter. It was reported to me—

Mr. PIERREPONT. Do not state what was reported to you.

Mr. BRADLEY. Only what you said to him had been reported to you. If you told him what had been reported to you, you may state it.

Mr. MERRICK. State what you told him of the cause of your complaint against him.

The WITNESS. You want to know what I stated to him when we had our conversation, I suppose?

Mr. BRADLEY. Not at the time of the quarrel, but what conversation you had anterior to the quarrel and on the same subject.

Mr. PIERREPONT. Which led to the quarrel—which made the quarrel.

The WITNESS. I spoke to him about a principle that I disliked. It was on account of abortion. He argued the point with me, pretending that it was not against good morals, and I tried to convince him that it was wrong. We did not go very far that time. I met him in a house where we were both called on sick calls. He was called for as medical attendant and I was called for as spiritual attendant. That is all I can tell of that conversation.

By Mr. BRADLEY:

Q. Then when you had the quarrel what passed?

A. After the first conversation loud complaints came to me, and I thought I would advise Dr. McMillan not to practice that any more among my people.

Mr. PIERREPONT. Do not state what you thought. Simply tell what you said to him?

Mr. BRADLEY. How he came to your house, or wherever it occurred.

A. He happened to pass by my house, and I had my servant to call him in. He came in. To begin the conversation with him I spoke about the money matter of five dollars, and then I spoke about the main point.

Mr. MERRICK. What did you say about the five dollars to Dr. McMillan?

A. I said that I had been delaying to pay him until the time I paid him because he had subscribed towards the building of a church in Waterloo.

Mr. BRADLEY. How much?

A. I cannot say exactly, but I think from five to ten dollars he subscribed; I cannot say exactly the sum; and, owing him five dollars, I thought I would keep the five dollars towards the subscription, because it was made payable to me. He looked to be very much excited on the point, and then I said I would like to advise him not to practice abortion, nor to argue the point before my people; it would be a great scandal. Then he passed very severe remarks, or he insulted me, meant to insult me, and I took him by the collar and drove him out. I wanted to protest publicly—

Mr. PIERREPONT. Never mind what you wanted to do. Confine yourself to what you said to him.

A. I could not say any more when he was out.

Mr. BRADLEY. You spoke of calling your servant in. Was that Monsieur DuTilley, who was examined as a witness—was he your servant or employed by you?

A. He was employed by me sometimes, but he never was my servant.

Q. What was his business?

A. He had a horse, and sometimes he used to drive my carriage—drive me around. I had a horse of my own; but sometimes he was sick, and I got a horse from Mr. DuTilley.

Q. State to the court and jury whether you have any hostile feeling towards Dr. McMillan now, in consequence of that quarrel, or from any other cause?

A. No, sir; I never had any spite against him.

Q. I have asked you as to his general reputation among those with whom he is known for truth and veracity. Would you or not believe him on his oath in a matter where he was interested?

Mr. PIERREPONT. From what? From reputation?

Mr. BRADLEY. From his reputation would you?

A. No, sir, I would not.

Cross-examined by Mr. PIERREPONT:

Q. Do you know this gentleman sitting here at my right? [Dr. Erskine.]

A. Yes, sir.

Q. Has he been your physician?

A. Yes, sir.

Q. Did you see him in Canada?

A. Yes, sir.

Q. Did you talk with him?

A. Yes, sir.

Q. Was he present when you had the quarrel with Dr. McMillan?

A. I do not remember having seen him there.

Q. Do you not remember whether he was present or not?

A. No, sir.

Q. Can you or not tell the jury whether he was present or not present?

A. Yes, sir; I can.

Q. Can you state whether he was present or not?

A. I have never reflected since that there was anybody present.

Q. Suppose you reflect a little now?

A. I am not reluctant to say whether he was there, if it comes to my mind. Now, it strikes me, after your question, that there was somebody in the wagon outside the gate.

Q. Does it strike you that that somebody was your family physician, this gentleman sitting at my right?

A. He was called several times to my house.

Q. Does it strike you that this is the gentleman?

A. I take him for Dr. Erskine.

Q. This is Dr. Erskine, and I ask is this the gentleman that was there at the time of this quarrel?

A. I cannot say.

Q. You say it strikes you that somebody was there. Who does it strike you that somebody was, if it was not Dr. Erskine?

A. My whole attention was brought on Dr. McMillan.

Q. Was your attention brought on the one that was with him?

A. No, sir?

Q. Does it now strike you that somebody was with him?

A. Yes, sir.

Q. Who does it strike you was with him?

A. I cannot tell.

Q. Does it strike you that this gentleman was or was not?

A. I cannot tell, when I did not know the man.

Q. Is your best memory, as you recall the scene, that this gentleman was the gentleman, as you say it strikes you there was somebody?

A. No, sir; I cannot tell.

Q. You cannot tell whether he was there or not?

A. No, sir.

Q. Now, tell where the quarrel with Dr. McMillan occurred?

A. It was in my very house.

Q. Did the person who was present hear the conversation?

A. There was no person in the parlor but Dr. McMillan and myself.

Q. Nobody else?

A. Nobody else in the parlor where the conversation or quarrel took place.

Q. Tell exactly what that conversation was? Give it as near *verbatim* as you can.

A. It was very short. I have just said it in my evidence.

Q. Have you said it all?

A. Yes, sir.

Q. Tell when it was.

A. As much as I can remember, it was in the month of June.

Q. What year?

A. 1864.

Q. When did you next see Dr. McMillan after this?

A. It is very difficult for me to answer, because he was a physician and used to attend to sick persons all around in the township of Shefford, and I left the township of Shefford soon afterwards.

Q. Had he a bad character as a man of truth where he was attending as a physician, do you say?

A. Among my people, yes.

Q. A bad character for truth?

A. Yes, sir.

Q. Tell me whom you heard say so?

A. It was the general reputation.

Q. Name any one whom you heard say so.

A. I can mention some names. For instance, a Frenchman of the name of Michael Potbin.

Q. Can you tell me any other?

A. A Scotchman of the name of McRae.

Q. Did he say he was a man of bad character for truth?

A. I remember very well that he said he would not believe him.

Q. When?

A. I think it was in the year 1864.

Q. What is the first name of McRae?

A. Christopher.

Q. What is his business?

A. Tailor.

Q. Where does he live?

A. In West Shefford.

Q. Did he live there in 1864?

A. Yes, sir.

Q. Can you give me some other name?

A. You are going very far, you must allow me to say, if you bring me to name the whole parish.

Q. Take any length of time to answer.

A. I had eight hundred or nine hundred communicants under my charge.

Q. Did you hear the eight hundred or nine hundred communicants say so?

A. It is very hard to tell.

Q. Did you hear any of them say that he was a bad man for truth?

A. Yes, sir; I have just mentioned some of them.

Q. Can you mention any others?

A. I can name another that comes to my mind—Daniel McGill.

Q. Where does he live?

A. In West Shefford.

Q. What is his business?

A. He is a farmer.

Q. Does he live there now?

A. I think he does.

Q. Can you state any other?

A. Not presently.

Q. Was this Dr. Erskine your family physician before Dr. McMillan was?

A. I know Dr. Erskine to have been to my house.

Q. Before Dr. McMillan was?

Mr. BRADLEY. He has not said that Dr. McMillan was his family physician.

The WITNESS. I never said it.

Q. (By Mr. PIERREPONT.) Was Dr. McMillan your family physician?

A. He was called once, because there was no physician to be found in Waterloo for me.

Q. Who was called?

A. Dr. McMillan.

Q. Before that was Dr. Erskine your physician?

A. As much as I can tell, he was.

Q. Was he after that?

A. I cannot tell.

Q. Can you not tell whether he has been since?

A. No, sir.

Q. Do you not know him pretty well?

A. Yes, sir; I have met him frequently.

Q. Did Dr. McMillan visit a good many people in your parish as a physician?

A. I saw him pass by several times; and to my knowledge he was called to attend some sick persons belonging to my place.

Q. Tell us when you first went to that place in your official or professional capacity?

A. I shall be one year in St. Hilaire next fall. We

are removed generally in the fall. Then I was two years in St. Liboire, and then five years in Shefford.

Q. When did you leave Shefford?

A. I left Shefford in 1864.

Q. What time in the year?

A. In the fall.

Q. How long had you been there?

A. Five years.

Q. Was there the first place you ever saw Dr. McMillan?

A. Yes, sir.

Q. How long did you know him in Shefford?

A. I certainly knew him there for four years.

Q. Did he bear a bad character for truth there during those years?

A. As I stated it.

Q. During all those years did he bear a bad character for truth?

A. At the beginning, I will not say, because I was not very much acquainted with him, nor with the rest of the people. I was a new-comer. I will say not, at the beginning; not before I heard the reports.

Q. When did he first bear a bad character for truth to your hearing?

A. About the year 1862, I think, or 1863, I cannot say positively.

Q. That was the first you heard of it?

A. Yes, sir.

Q. Did he grow worse or better in reputation as he stayed?

A. It is not very easy to calculate the thermometer on that point.

Q. You say you did not hear of it till 1863. After 1863 did it grow worse or better, as you stayed, in point of reputation?

A. It was not certainly for the best.

Q. Why did you leave?

A. I was removed by my bishop.

Q. Do you know why you were removed by your bishop?

A. I was removed for a betterment, if I can express myself in that way.

Mr. BRADLEY. A better position?

A. A better position. I can tell the reason that I know.

Mr. PIERREPONT. Did you not hear that any complaint was made to your bishop?

A. Yes, sir.

Q. Did the bishop talk to you about it?

A. Not to lay any censure on my conduct.

Q. Did he not conclude that you had better go somewhere else?

A. No, sir.

Q. Did he put you somewhere else?

A. Yes, sir; after my asking for it.

Q. Then you concluded that you had better go somewhere else?

A. Yes, sir; on account of my health.

Q. Did you have this interview with the bishop about it after the quarrel with Dr. McMillan or before?

A. I was five years in Shefford, and I had been asking for four years to be removed.

Q. But was the conversation that you had with the bishop after you had the quarrel with Dr. McMillan or was it before?

A. A great many times before I asked the bishop to be removed and afterwards also.

Q. You said Dr. McMillan insulted you. Where was that?

A. In my house.

Q. Was this gentleman here, Dr. Erskine, present then?

A. There was nobody present.

Mr. MERRICK. You have asked about that conversation before.

Mr. PIERREPONT. Not one word about the insult.

Mr. MERRICK. I submit to your honor, he states that a conversation did occur in his house between himself and Dr. McMillan.

Judge FISHER. And there was a quarrel, and he said he took the doctor by the collar and put him out of the house.

Mr. MERRICK. Yes, when Dr. McMillan insulted him, after he remonstrated with McMillan as to his practices as a physician, and for the insult he took Dr. McMillan by the collar and put him out to give a public repudiation to him. He has stated the whole conversation. The counsel asked him four or five times if this gentleman was present at that conversation, and he said, "I cannot recollect." He added, "It strikes me that there was somebody in the wagon outside;" but he says there was nobody in the parlor at that conversation at which the insult passed. Why repeat it any oftener?

Judge FISHER. (To Mr. PIERREPONT.) All that has been answered before. Do you direct your question now to some other time?

Mr. PIERREPONT. I direct my question to the time of the insult, and I intend to find out when that time was exactly, if I can.

Mr. BRADLEY. That is, if the court will let you take your own course.

Mr. MERRICK. And he seems to want to go on with it, whether the court does or not.

Mr. PIERREPONT. I intend to find out exactly when the insult was. I have never asked a word about that yet.

Mr. MERRICK. The witness has stated that it was in that conversation. If the insult was not at that conversation, I submit the question is perfectly legitimate.

Judge FISHER. We can ascertain that without any loss of time.

Mr. PIERREPONT. And we could have ascertained it long ago, if I had not been interrupted.

Mr. MERRICK. You would not have ascertained it by your question.

Mr. PIERREPONT. I will repeat my question: Was this gentleman, Dr. Erskine, present when Dr. McMillan insulted you?

Mr. MERRICK. I object to that question. Your honor will see from the question that it refers to the conversation about which this identical inquiry has been put—

Mr. PIERREPONT. We will see when he answers.

Mr. MERRICK. I have not done yet. The gentleman will wait till I have done, and then reply. I will not submit to be interrupted by the repeated yelping of counsel when I am addressing the court.

Judge FISHER. Allow me to ask the witness whether there was any other interview besides that at the house?

Mr. CARRINGTON. I desire to submit one proposition to your honor. In cross-examining a witness in reference to a single point, are we confined to one question? May we not ask him in reference to that point several questions for the purpose of elucidation? I have never heard that the rule was restricted to that. I ask a witness, did you have a certain conversation at such a time in the presence of such a person; then may I not put a different question?

Judge FISHER. We are wasting a great deal of time about nothing.

Mr. PIERREPONT. There is no difficulty about it. I have a right to test the witness in relation to this matter, and I propose to do it.

Mr. BRADLEY. The court will say.

Judge FISHER. The witness had better answer the question, because it may be that he insulted him at some other time.

By Mr. PIERREPONT:

Q. Was Dr. Erskine present when Dr. McMillan insulted you?

A. I cannot recollect that.

Q. Can you recollect whether he was or was not?

A. To my knowledge he was not, and I remember having been insulted but once in my house by Dr. McMillan.

Q. Were you insulted by him anywhere else but in your house?

A. I do not remember having been insulted by him anywhere else.

Q. Now, tell what the insult was?

A. Yes, sir; I can remember some words that he passed. He called me a blackguard, which I thought was very little respect—

Mr. PIERREPONT. Do not tell what you thought. I am asking what you said?

A. He mumbled some other things; I cannot say very directly.

Q. Did he say any thing else?

A. I do not remember.

Q. Did he do any thing to insult you?

A. When I took him by the collar, he tried to resist a little, but we were near the door, so that I could give him a push.

Q. I did not ask what you did, but I have no objection to that. I ask if he did any thing to insult you, except the words?

A. He called me a liar on the subject that we were speaking of.

Q. Did he call you any thing else?

A. I do not remember.

Q. Did you have any conversation with Dr. McMillan in the presence of Dr. Erskine, in the office of Dr. Erskine, at Waterloo?

A. I do not remember at all.

Q. Were you in Dr. Erskine's office at Waterloo in 1864, before the quarrel?

A. I cannot say; I remember that I was once in his office.

Q. Was that before the quarrel?

A. I cannot say.

Q. Did you have any conversation with Dr. Erskine?

A. Yes; I spoke to him, being in his office.

Q. Did you have any conversation with Dr. McMillan in the presence of Dr. Erskine?

A. I do not remember.

Q. I will call your attention particularly then. Did you have any conversation with Dr. McMillan, in the presence of Dr. Erskine at Waterloo, in relation to Dr. McMillan's subscription to the church?

A. I do not remember.

Q. Do you remember any thing that was said? Will that help you to recall it?

A. I do not remember of any thing in particular.

Q. Do you remember of having had any conversation at any place with those two gentlemen present in relation to Dr. McMillan's subscription for the church?

A. No, sir.

Q. Did Dr. McMillan, at Waterloo, in Dr. Erskine's office, speak to you about the money you owed him?

A. I do not remember.

Q. Did you speak to him about the money for the church?

A. I do not remember.

Q. Did Dr. McMillan at that time tell you that the committee of the church refused to intrust the money to you?

A. I do not remember that.

Q. Did he not give you that as a reason why you must pay him, instead of its being turned on the subscription, in the presence of Dr. Erskine, in that office at Waterloo?

A. I do not remember.

Q. You went from Shefford to St. Liboire. How long did you stay at St. Liboire?

A. A year.

Q. When did you leave St. Liboire?

A. I left St. Liboire last fall.

Q. Where did you first see the prisoner?

A. In St. Liboire.  
 Q. What time? Give us the day of the week, if you can; you say it was the 22d of April, you think; but what day of the week was it?  
 A. I think it was on a Wednesday evening.  
 Q. That was the first time you ever saw him?  
 A. Yes, sir.  
 Q. Who came there with him?  
 A. Joseph DuTilley.  
 Q. Did he come afoot, or on horseback, or in a carriage?  
 A. It was in the evening and I was in bed, and I heard them say they rode in a cart.  
 Q. What time in the evening did they reach your house?  
 A. Nine or ten o'clock.  
 Q. What cart was it?  
 A. I was in bed; I did not see.  
 Q. You say you heard them say they came in a cart; what cart?  
 A. I cannot say.  
 Q. When he came there, was he in disguise?  
 A. No, sir.  
 Q. Was his hair dyed a different color from what it is now, or different from its natural color?  
 A. No, sir.  
 Q. Do you know where he came from?  
 A. I did not then.  
 Q. Do you know now?  
 Judge FISHER. Speak of your own personal knowledge, or what the prisoner told you.  
 Mr. BRADLEY. Or what DuTilley said; I have no objection to that.  
 Mr. PIERREPONT. Did the prisoner tell you where he came from?  
 A. From Montreal.  
 Q. How long did he stay with you?  
 A. About three months; perhaps a little over.  
 Q. In what way did he come to your place; by what road?  
 A. I cannot say.  
 Q. He did not come by railroad, did he?  
 A. Not to my place. According to what he said, he came riding in a cart.  
 Q. How far was your place from Montreal?  
 A. I think about from four to five miles.  
 Q. Is it a lonely place, or a thickly-settled place?  
 A. It is a newly-settled place.  
 Q. Did they tell you who he was when he came?  
 A. No, sir.  
 Q. Did they not give some name?  
 A. Yes, sir.  
 Q. What name?  
 A. Charles Armstrong.  
 Q. Did they tell you what Charles Armstrong had come to you in the night for?  
 A. I was told that he was coming to the country on account of his health and being compromised in the American war.  
 Q. I do not ask you what you were told, but I ask you if you knew at the time, if they at the time told you, why he came to your house that night?  
 A. I knew it then, because they wrote to me before sending him to my place.  
 Q. Did you know that he was one of those that were accused of being in the conspiracy to murder the President?  
 A. No, sir.  
 Q. You did not hear of that?  
 A. Not then.  
 Q. When did you?  
 A. I saw it by the papers.  
 Q. How long after he had been with you did you see in the papers that John H. Surratt was accused as one of the conspirators?  
 A. About ten or twelve days.  
 Q. Had you any suspicion then that the man with you—Charles Armstrong—was Surratt?

A. When I saw that Surratt was missing, by the public reports, and considered the mystery of this young man's staying in St. Liboire, I inquired; I put some questions to the young man who was committed to my care, and he owned that he was John Harrison Surratt.

Q. I have not asked you what he said.

A. I am telling you that I knew and how I knew it.

Q. I have not asked what he said; but I asked if you had any suspicions that that was John H. Surratt?  
 A. Not when he came.

Q. When did you first get suspicious? You have been going on to tell what he said. I have not asked you that; but I ask you when did you first get these suspicions?

A. I said about ten or twelve days after he came.

Mr. PIERREPONT. I ask your honor to strike out what the witness says that Surratt told him, because I did not ask any questions about that, and I only want his answers which are responsive to my questions.

Judge FISHER. I will strike out what he said as to what Surratt told him, and let the witness answer the questions as they are put; and afterwards if he wishes to make some explanation he can do so.

Mr. PIERREPONT. Now, my question is, Had you any suspicion that he was John H. Surratt?

The WITNESS. When?

Mr. PIERREPONT. At any time while he was with you.

A. Before he told me, I had no suspicions.

Q. When did you first suspect that he was John H. Surratt? At what date?

A. About ten or twelve days' after his arrival at my place.

Q. Then you suspected it about the first of May or the last of April.

A. A little after the first of May.

Q. How long did he stay with you there before he went out of the house?

A. Three months.

Q. Did he go out of the house at all?

A. Yes, sir.

Q. Did anybody come to see him at the house?

A. Yes, sir.

Q. His friends.

A. Yes, sir.

Q. Did people come to see him whom you did not know?

A. Yes, sir.

Q. How many came to see him?

A. Only once, four or five came.

Q. When?

A. Sometime in the course of the summer; I cannot state the date.

Q. Did any of the St. Albans raiders come there to see him?

Mr. MERRICK. Wait a moment. I do not know what this has to do with the question who they were and what they were.

Mr. PIERREPONT. I should think it had something to do with it.

Mr. MERRICK. I submit it to the court.

Mr. PIERREPONT. We are cross-examining this witness.

Judge FISHER. You may ask if he knew the parties and who they were.

Mr. BRADLEY. He has answered that; but the question now is, whether any of the St. Albans raiders came there.

Mr. PIERREPONT. (To the witness.) You say you did not know the names of those who came to see him?

A. Some of the names were given; some English names.

Q. Did you know the persons?

A. No, sir.

Q. Do you know whether any of the St. Albans raiders came?

Mr. MERRICK. I object to that. I do not want any general description of those parties in that way. If he knows the persons and their names, he can give them.

The WITNESS. There was one person whose name I know.

Mr. PIERREPONT. My question is, Did any of the St. Albans raiders, men that you knew or heard to be such, come there?

Mr. BRADLEY. Do not answer that.

Judge FISHER. What is the ground of the objection?

Mr. BRADLEY. Because there is nothing in the direct examination to which this is responsive.

Mr. PIERREPONT. There is something in the cross-examination.

Mr. BRADLEY. Besides, there is nothing, that we can see, relevant to the issue in the inquiry.

Mr. PIERREPONT. There is a good deal in showing this witness's relation to this conspiracy. If this witness concealed a man whom he saw advertised in the papers as one of the assassins of President Lincoln, and knew it ten days after he was in the house, and the St. Albans raiders were visiting that house to see him, it is a thing proper in the cross-examination to be brought out. The witness has already stated that he knew in ten days that the man concealed was one of those accused of the murder of the President.

Mr. BRADLEY. But the gentleman refused to let him tell how he found it out, or what was said when he did find it out, so as to see whether or not he was acting in his character as a priest in concealing a man whom he believed to be innocent, and had reason to believe innocent, or not. All that the gentlemen are careful to shut out; and now, whether they can go outside of that—I do not mean to discuss that part of the case—whether they can go outside and ask about the St. Albans raiders coming to see him is the question. What on earth has that to do with the subject of inquiry here? That is the point I make. It is not in reply to any thing in the examination-in-chief, and it is not pertinent to the issue.

Mr. PIERREPONT. This witness comes here for the purpose of trying to blacken the character of Dr. McMillan, who has testified for the Government; and we have the right, on cross-examination, to test him, to sift him, to see whether he was in sympathy with the rebellion; whether he was one of those who, if he had been in the United States, would have been liable to be arrested, to be imprisoned, and to be tried as an accessory to this murder after the fact; and the counsel want to shut off his relations to this matter. I submit that I have the right to this thorough cross-examination, where the witness stands in the relation which he himself has exhibited.

Mr. BRADLEY. There are some principles of law, if the court please, which I suppose are settled. I may be mistaken about it, but I take it that the cross-examination is to be limited to the examination-in-chief and such matters as are pertinent to the issue, or such matters as tend to show the memory, character, and disposition of the witness towards the matter of inquiry.

Mr. PIERREPONT. And his feeling.

Mr. BRADLEY. Disposition means feeling. How the fact that the St. Albans raiders, if it were true—I have never heard a word of it before, and do not know any thing about it—should have gone to see this prisoner, can throw any light on the witness's temper and disposition in relation to this case, is beyond my comprehension. If your honor sees that it throws any light on it, you will of course let it in. But I understand the rule of law to be such as I have stated. There is no other ground; certainly not as responsive to the examination-in-chief; certainly not as a matter pertinent to the issue can this inquiry be allowed? It is personal to the witness, and the learned counsel has chosen to "pitch into" the witness, as having shown

his sympathy with this conspiracy. For all the good that may do him, it is at his service. I do not mean now to discuss these matters. I do not mean to retort; I try to keep myself simply to the legal discussion. The question is: Does this tend to show the temper and disposition of the witness? If they prove that the St. Albans raiders came to see the prisoner, does that tend to show the temper and disposition of the witness in relation to the matter in controversy? It is said he is brought here to assail Dr. McMillan. Does that help the matter at all? Because he is brought here to assail Dr. McMillan, does that make this any more evidence? Does it show the temper or disposition of the witness towards Dr. McMillan one way or the other? It must either show the temper of the witness towards the case, or the temper of the witness towards Dr. McMillan, or it is not admissible. On neither of these accounts can I conceive that it is admissible.

Judge FISHER. I can hardly see that the visit of the St. Albans raiders would be exactly pertinent and relevant to the issue. The question is objectionable on that ground.

Q. (By Mr. PIERREPONT.) You said you knew the name of one; what was his name?

A. Father LaPierre.

Q. Do you know where he came from?

A. Yes, sir; Montreal.

Q. Did you know any other?

A. I had seen some of them in Montreal.

Q. Did you know their names?

A. Yes; one name strikes me.

Q. What name strikes you?

A. Lackey.

Q. Did they come more than once?

A. But once.

Q. How long did they stay?

A. Two or three days; about three days.

Q. When did they come?

A. I cannot say exactly; I know it was in summer.

Mr. BRADLEY. Do you mean that they stayed at your house?

A. No, sir; they boarded in a private house.

Q. (By Mr. PIERREPONT.) How often did they come to your house during their stay?

A. Several times during the day.

Q. Did they all come together or separately?

A. They came together.

Q. Did they always come together?

A. I cannot say exactly, because they were employed hunting.

Q. Did he hunt with them or did he keep concealed?

A. He went hunting with them.

Q. How many times did he go hunting with them?

A. Once.

Q. Did they come to see him more than once a day while they stayed in the village?

A. I should think they came more than once.

Q. Did they dine with him and you at the house?

A. In the boarding-house; yes, sir.

Q. Did you go hunting with them?

A. Yes, sir.

Q. Did you go every time?

A. No, sir.

Q. They sometimes went alone and sometimes you were with them.

A. I remember one time I did not go—in the morning, before breakfast.

Q. Did he go hunting with anybody else?

A. I do not remember.

Q. Did he go out with anybody else, or did you keep him concealed?

A. I kept him in my house.

Q. Did he go out at all with anybody but those men?

A. He went out one evening to take a ride.

Q. With whom did he go to take a ride?

A. With Joseph DuTilly.

Q. Did he go to take a ride with anybody else?

A. I do not remember.

Q. Did he not ever walk out in the evening?  
 A. Yes, sir.  
 Q. Did he ever walk out in the day-time?  
 A. Yes, sir.  
 Q. Did he go to church?  
 A. Yes, sir.  
 Q. Did he take his meals with you?  
 A. He did one week.  
 Q. When he went to church, did he go in his natural dress or in a disguised dress?  
 A. In his common dress.  
 Q. Did he sit in a pew?  
 A. Yes, sir.  
 Q. Did you see him in the church?  
 A. Yes, sir.  
 Q. Did other people see him?  
 A. It was not during service.  
 Q. Was there anybody else in the church?  
 H. I do not remember.  
 Q. How long was he in the church?  
 A. From a quarter of an hour to half an hour.  
 Q. After you found out that he was gazetted as one of the murderers and conspirators, did you communicate to the authorities of the United States the fact that he was there?  
 A. No, sir.  
 Q. Did you not tell it?  
 A. No, sir.  
 Q. Did you try to conceal it?  
 A. I did not speak of it.  
 Q. Did you try to conceal it?  
 Mr. BRADLEY. From whom?  
 Mr. PIERREPONT. From everybody.  
 Mr. BRADLEY. Conceal what?  
 Mr. PIERREPONT. Conceal the fact that this man was staying in his house?  
 A. I never spoke of it.  
 Q. Did you try to conceal that fact?  
 A. I do not remember.  
 Q. Do you not remember whether you tried to conceal it or not?  
 A. I think a thing that you do not speak of is concealed.  
 Q. My question is, whether you tried to conceal him in your house?  
 A. He was in my house.  
 Q. Did you try to conceal him there?  
 A. He was kept in the house.  
 Q. You do not understand English, you say, perfectly, and probably you do not thoroughly understand my question. My question simply is, Did you try to conceal him in your house?  
 A. He remained in my house without any exterior communication but what I have just related to visitors.  
 Q. I ask you if you tried to conceal him in your house? Do you not understand?  
 A. I do not understand what you mean exactly by trying to conceal.  
 Q. Do you not understand what concealment is?  
 Mr. MERRICK. The question is, "trying to conceal;" endeavoring, seeking to conceal.  
 Q. (By Mr. PIERREPONT.) Did you take the means of concealing him in your house?  
 A. My house was visited by my parishioners every day.  
 Q. And you saw your parishioners?  
 A. Every day.  
 Q. Did they see him?  
 A. No, sir. Some of them did when he went out hunting.  
 Q. Did they frequently see him?  
 A. No, sir.  
 Q. Did you let your parishioners know that you were keeping a man who was published as one of the President's assassins in your house?  
 A. Not to my knowledge.  
 Q. You did not tell them, did you?  
 A. No, sir.

Q. How came you to come here to testify?  
 A. Of my own accord.  
 Q. You had no subpoena?  
 A. I had one to-day.  
 Q. You had not one when you came into the United States?  
 A. No, sir.  
 Q. Had you any safe conduct?  
 A. No, sir.  
 Mr. BRADLEY. Safe conduct in time of peace?  
 Mr. PIERREPONT. I ask if you had any safe conduct from the Government of the United States?  
 A. No, sir.  
 Q. No paper of any kind from any officer of this Government?  
 A. No, sir.  
 Q. How often did your parishioners hunt with him?  
 A. I do not think I ever said that my parishioners went hunting with him.  
 Q. How often did he go hunting while he stayed with you?  
 A. He went frequently during a week.  
 Q. How long was he gone?  
 A. When he went in the morning it was a part of the forenoon, and then he came for his dinner and went in the afternoon.  
 Q. What was he hunting?  
 A. Birds.  
 Q. Was he walking or riding?  
 A. Walking.  
 Q. Always walking?  
 A. Yes, sir.  
 Q. Did he always hunt alone?  
 A. I do not remember.  
 Q. Did other people sometimes hunt with him?  
 A. Yes, sir.  
 Q. Can you tell any of those who hunted with him?  
 A. Yes, sir.  
 Q. Who?  
 A. Joseph DuTilly.  
 Q. Any others?  
 A. That party that came to visit him went with him?  
 Q. That party whose names you do not know?  
 A. I gave the names I knew.  
 Q. I mean the party that I asked you about as St. Albans raiders.  
 Mr. BRADLEY. All about the St. Albans raiders was ruled out.  
 Mr. MERRICK. He has not said that St. Albans raiders came there.  
 Mr. PIERREPONT. I know he has not, but I asked if he could give me the names of those parties, and I asked if they were St. Albans raiders.  
 Judge FISHER. He stated the names of two of the party who came there. He said that one was Father LaPierre and the other a man named Lackey, and the rest he did not know.  
 Q. (By Mr. PIERREPONT.) Did any other party come there?  
 The WITNESS. Besides that party do you mean?  
 Q. Yes?  
 A. No, sir.  
 Q. Did any other individual come to see him while he was at your house?  
 A. Nobody.  
 Q. Did he go out to see anybody?  
 A. He went out to go to Montreal when he left my house.  
 Q. While he was staying at your house, did he go out to meet people or did he keep concealed?  
 A. He did not go out to my knowledge.  
 Q. Did he go out?  
 A. I told you just now.  
 Q. How often did he go out to hunt?  
 A. I never counted the times.  
 Q. How many times should you think?  
 A. It is very hard to tell.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 85. WASHINGTON, TUESDAY, AUGUST 27, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 84.*

Q. Was it a good many times or a few?  
A. During a week he went twice one day and the next he could not go because he was sick in bed. He had his fever and ague and was so prostrated that he could not move. The day after that he could not go either. It was only the third day he went again.  
Q. Did he do so the other weeks?  
A. No, sir.  
Q. Can you not tell how many times he did hunt?  
A. No, sir.  
Q. Because they were so many or so few?  
A. I never counted them.  
Q. Then he was not so sick that he could not hunt?  
A. He looked to be very weak.  
A. But he was not so sick that he could not hunt?  
A. Not on that day.  
Q. And the next day that he hunted he was in the same state?  
A. The next day he was very sick.  
Q. But the next day that he hunted he was in the same state he was the first day he hunted, was he not?  
A. He could hunt only the third day after. He was taken sick.  
Q. Could he hunt the sixth day?  
A. I cannot tell.  
Q. You say he had chills: did he shake from chills?  
A. Yes. Fever and ague, I hear it called. We do not call it so in French.  
Mr. MERRICK. What do you call it in French?  
A. *Fievre tremblantes.*  
Q. (By Mr. PIERREPONT.) What physician attended him during all this time that he lived with you?  
A. No physician at all.  
Q. Give us the day of the week that he left your house to go away from you?  
A. I cannot.  
Q. Can you give us the day of the month?  
A. No, sir.  
Q. Will you give us the month?  
A. July—the latter part of July.  
Q. Where did he go to?  
A. He went to Montreal.  
Q. How often did you see him after he went to Montreal?  
A. I used to see him about twice a week.  
Q. Did he come to see you?  
A. No, sir.  
Q. Did you go to see him?  
A. Yes, sir.  
Q. What time in the day did you go to see him once or twice a week in Montreal?  
A. In the day-time.  
Q. What time of day?  
A. Sometimes I started at five o'clock—by the five-o'clock train as it passed through St. Liboire, and some other times about half-past eleven.

Q. Where did you use to see him?  
A. In a private house in Montreal.  
Q. Whose house?  
Mr. MERRICK. So far as the witness himself is concerned, I have not objected to this examination; but I object to the question as to whose house he saw the prisoner in in Montreal.  
Mr. PIERREPONT. We insist upon it.  
Judge FISHER. The question may be put.  
Q. (By Mr. PIERREPONT.) Whose house did you meet him in?  
A. In Father LaPierre's father's house.  
Q. What was the business of Father LaPierre's father?  
A. Selling shoes and boots. He keeps a shop.  
Q. What was the name of the one who sold boots and shoes?  
A. His Christian name I do not know.  
Q. His other name is LaPierre?  
A. Yes, sir.  
Q. Where was this place that he sold shoes and boots?  
A. In the city of Montreal.  
Q. What street and number—do you know?  
A. I think it is in St. Paul street; I do not know the number.  
Q. Where was his house?  
A. I think it is in Old Cemetery street.  
Q. Do you know the number of that?  
A. No, sir.  
Q. Is that a public or a quiet street?  
A. A quiet street.  
Q. What days of the week did you use to go to this house?  
A. I generally went on Mondays.  
Q. What other day?  
A. Thursdays, generally.\*  
Q. In what room in this LaPierre's dwelling-house did you see him?  
A. In a room in the second story, as we call it in Canada.  
Q. A front or rear room?  
A. A rear room.  
Q. Did you always see him in the same room?  
A. No, sir.  
Q. Where else did you see him?  
A. I saw him down stairs also.  
Q. Where down stairs?  
A. In the dining-room.  
Q. Did you ever dine with him there?  
A. Yes, sir.  
Q. Did you ever see him in the street in Montreal?  
A. No, sir.  
Q. Where is Cemetery street in relation to the Bishop's palace in Montreal; how near it?  
A. Very near.  
Q. It is behind the palace, is it not?  
A. Not behind it, but quite near it.  
Q. Is that a narrow street?  
A. Yes, sir.  
Q. Quite so?  
A. Common width. It is not a very large street, but it is a very good street.

Q. (By Mr. BRADLEY.) Are not all the streets in Old Montreal very narrow streets?

A. Generally very narrow.

Q. (By Mr. PIERREPONT.) Did you meet anybody at that house besides the prisoner?

A. Yes, sir.

Q. Who?

A. I saw strangers, visitors from Quebec.

Q. Did you know their names?

A. No, sir.

Q. Did you see them often?

A. I remember one instance.

Q. How many were there then?

A. Three; a lady with her two daughters.

Q. Did you continue to visit him every week until he took the steamer for Europe?

A. I think I did. I do not remember having lost a week.

Q. Did you see him twice every week?

A. I think I did.

Q. How long did you stay when you went there to visit him?

A. Generally I would stay over a night.

Q. At this house? Did you sleep at the house?

A. Sometimes.

Q. Did you generally?

A. Yes, sir.

Q. Did you always sleep at this house?

A. No, sir.

Q. Did Father LaPierre go with you to see him at the house?

A. Yes, sir.

Q. Always?

A. Not always.

Q. Did you see him when he left in the middle of September to go to Europe?

A. Yes, sir.

Q. Where did you first see him on that day?

A. In Montreal.

Q. Did you go with him?

A. Yes, sir.

Q. Where did you go?

A. As far as Quebec.

Q. Did you see him to the steamer?

A. Yes, sir.

Q. Did you undertake to get upon the steamer *Peruvian*?

A. I did not get on the ship.

Q. Did you not try to get on?

A. No, sir.

Q. Did you not think of going up the gangway, and did not Dr. McMillan order the officer not to let you go?

A. No, sir; I do not remember that.

Q. Are you sure about it?

A. Yes, sir.

Q. Did you not hear Dr. McMillan order the officer to stop you as you were going up the gang-plank?

A. No, sir.

Q. Did you see Dr. McMillan there?

A. Yes, sir.

Q. You went on the boat that took the prisoner to the ship, did you not?

A. Yes, sir.

Q. Did not Father LaPierre go up the gang-plank to the *Peruvian*?

A. Yes, I think he did.

Q. Why did you not do so?

A. Because I did not want to.

Q. Was that the reason?

A. Yes, sir.

Q. Was there anybody else that told you he did not want to have you go?

A. No, sir.

Q. Did you not wait for some time for Father LaPierre to come down from the steamer?

A. Yes, sir.

Q. Then you had your parting with the prisoner on the tug or small steamer.

A. Yes, sir.

Q. Do you know the room he went down in on this small steamer?

A. We were all together.

Q. Did you see him in a room there?

A. No, sir.

Q. Where did you see him?

A. With all the rest of the passengers.

Q. On the steamboat that took you from Montreal to Quebec, where did you see the prisoner?

A. I saw him in the cabin.

Q. In a room?

A. Yes, sir.

Q. What room?

A. I cannot tell.

Q. Do you know the number of it?

A. No, sir.

Q. Who was with you in the room besides the prisoner?

A. Father LaPierre?

Q. Anybody else?

A. Some French Canadians—boys, young men; I do not know their names.

Q. Anybody else?

A. I cannot think of any.

Q. Did you go out of the room before you reached the *Peruvian*—I mean on the steamer that took you from Montreal to Quebec?

A. Of course.

Q. When did you first see him on the boat or steamer—the one that went from Montreal? Did you see him before the boat steamed off?

A. Before and on the steamer.

Q. You saw him before?

A. Yes, sir.

Q. Where was he when you saw him before the boat left?

A. At the house where he lived.

Q. How did he go from LaPierre's house to the boat?

A. In a carriage.

Q. Who went with him?

A. I went with him.

Q. Anybody else?

Q. Father LaPierre.

Q. Anybody else?

A. I think there was another.

Q. Who?

A. I cannot recollect.

Q. Do you not know his name?

A. No, sir.

Q. Did you know his name then?

A. I cannot recollect.

Q. I ask did you know his name then?

A. If I could recollect now who he was, perhaps I could tell his name.

Q. Did you know then, at that time, who he was?

A. I am not sure whether there was another person with us.

Q. What is your best memory; that there was or was not?

A. I think there was not. I am more positive now to say that there was not.

Q. You say that there was no one but you and Father LaPierre?

A. Yes.

Q. Was this carriage an open carriage or a close one?

A. Open. There was a top over it, but the sides were open.

Q. And you went openly?

A. Yes.

Q. When you got to the steamer what did you do?

A. We remained as the rest of the passengers.

Q. Where did Surratt go?

A. He remained there on the deck awhile, and then went into the cabin.

Q. What did he do when he got into the cabin?  
 A. He smoked.  
 Q. Did he go into a room in the cabin?  
 A. We call the rooms there cabins.  
 Q. We call them state-rooms. Did he go into one of those rooms?  
 A. Yes, sir.  
 Q. How soon after he got on that boat did he go into that room?  
 A. I cannot say.  
 Q. Was it one minute or two?  
 A. More than that.  
 Q. How many minutes?  
 A. I cannot tell.  
 Q. Had he any disguise of any kind when he was on the boat?  
 A. I did not see any except his hair dyed.  
 Q. Was his hair dyed?  
 A. Yes, sir.  
 Q. Was his moustache dyed?  
 A. I do not recollect whether he had a moustache or not.  
 Q. Did he wear spectacles?  
 A. Yes, sir.  
 Q. Did he have any other disguise?  
 A. Not to my knowledge.  
 Q. Did he have his hair dyed when he was stopping with you?  
 A. I do not remember.  
 Q. Do you not remember whether he had or not?  
 A. I do not remember that he had.  
 Q. When did you first discover that his hair was dyed?  
 A. In Montreal.  
 Q. When he was with LaPierre?  
 A. Yes, sir.  
 Q. What color was it?  
 A. Dark brown.  
 Q. Did you go out of the room and lock the door of the cabin, as you call it?  
 A. No, sir.  
 Q. Did Father LaPierre lock it?  
 A. I do not remember.  
 Q. Do you not remember that you came out and left Surratt in the room?  
 A. I cannot say positively, but I think I did.  
 Q. Did you see Dr. McMillan that day?  
 The WITNESS. The day we went on board the boat at Montreal?  
 Mr. PIERREPONT. Yes.  
 A. No, sir.  
 Q. Did you see him on the steamer that went from Montreal down to Quebec?  
 A. No, sir.  
 Q. Did you not see him talking with LaPierre?  
 A. No, sir.  
 Q. Did you see anybody talking with LaPierre?  
 A. Yes, sir.  
 Q. Anybody that you knew?  
 A. No, sir.  
 Q. How was LaPierre dressed at this time; was he dressed as a Canadian priest or in the clothes of a civilian?  
 A. He was dressed in the clothes of a civilian.  
 Q. And not as a priest?  
 A. No, sir.  
 Q. Was it customary for a priest to go in that way, dressed as a civilian, in Canada?  
 A. It is not customary.  
 Q. Do you know any reason for his going in that way?  
 A. No, sir.  
 Q. How were you dressed?  
 A. I was dressed in my clerical suit, a cassock.  
 Q. The same as the clergy dress there?  
 A. Yes, sir.  
 Q. But LaPierre was not?  
 A. No, sir.

Q. Were you in Portland last summer?  
 A. I passed through Portland.  
 Q. Did you stop there?  
 A. No, sir.  
 Q. Were you at a watering-place close by there?  
 A. Yes, sir.  
 Q. A place called Cape Elizabeth?  
 A. No, sir.  
 Q. Were you at any place near Portland which was a sea watering-place last summer; and, if so, what was the name of it?  
 A. Old Orchard Beach.  
 Q. How long did you stay there?  
 A. About two weeks.  
 Q. What was the name of the house you stayed at?  
 A. I do not remember.  
 Q. Was it the Ocean House?  
 A. I do not remember the name of it.  
 Q. Who was there with you that you knew?  
 A. Two other priests; my friends.  
 Q. Who were they?  
 A. Father Beauregard and Father Hevey.  
 Q. Did you state there that you were Father Beauregard's son?  
 A. That is rather a hard question.  
 Q. Did you state there, at his house, that you were his son?  
 A. I do not remember.  
 Q. Did you register there your real name?  
 A. No, sir.  
 Q. What name did you register yourself as?  
 A. Jary.  
 Q. Did you go there dressed as a priest?  
 A. I went as I am dressed now.  
 Q. I ask did you go there in a Canadian priest's dress?  
 A. With a cassock? No, sir. My answer is: I did not go with the ordinary ecclesiastical suit I wore in Canada. There is a little difference between the two countries, and Portland is in the United States. I did not wear the cassock.  
 Q. Did you wear the priest's dress of Canada last summer at this watering-place near Portland?  
 A. I was dressed as I am now; you may judge for yourself.  
 Q. I have never been in Canada, and my question is whether at this watering-place you did wear the priest's dress of Canada?  
 A. No, sir.  
 Q. And you entered a false name on the register?  
 A. Yes, sir.  
 Q. Did any difficulty occur there in which you were involved?  
 A. Not to my knowledge.  
 Q. Did you carry yourself or give yourself out there as a priest?  
 A. No, sir.  
 Q. What did you call yourself there?  
 A. Jary.  
 Q. I mean in what character?  
 A. I did not say what I was.  
 Q. What did you call yourself there—any occupation?  
 A. If you want me to say what I thought they took me for, I can tell you.  
 Q. What was it?  
 A. They took me for a lawyer.  
 Q. Did you disabuse their minds of that impression?  
 A. I did not say anything.  
 Q. You did not disabuse them of it?  
 A. No, sir; I thought it was honorable enough.  
 Q. Were you quite attentive to some young ladies there, as a lawyer?  
 A. No, sir.  
 Q. Were you attentive to young ladies there, carrying yourself, as they believed, as a lawyer?  
 A. No, sir.  
 Q. Did you give them attention?

A. No, sir; I was polite to everybody; no more than that.

Q. Nothing beyond?

A. No, sir.

Q. Was there nothing that caused any talk?

A. No, sir.

Q. But they thought you were a lawyer, did they not?

A. So my companions, the other priests, said to me.

Q. And you knew they thought so?

A. I thought that was their impression.

Q. You did not want them to think you were a priest, did you?

A. If they had asked me, I would not have concealed it.

Q. You did not want them to think you were a priest, did you?

A. When I first started from my place, no sir.

Q. You were not ashamed of your calling, surely, were you?

A. Oh, no, sir.

Q. Why did you not want them to think you were a priest?

Mr. BRADLEY. State all about it, why you took another name.

Mr. PIERREPONT. Certainly.

The WITNESS. Will you repeat your question slowly?

Mr. PIERREPONT. My question is this: You having already stated that you knew they took you for a lawyer, and that you wanted them to think so, and did not want them to think you were a priest; why were you not willing that they should think you were a priest?

A. I was not unwilling; if they had asked me, I would have told them the plain truth.

Q. Then you were not unwilling?

A. I was not unwilling to go for a priest.

Q. Why did you allow it to pass that you were a lawyer?

A. I did not say any thing.

Re-examined by Mr. BRADLEY:

Q. When you went to this watering-place near Portland, had you any apprehension that you might be troubled if it was known that you were Father Boucher, and had had connection with the escape of Surratt?

A. Yes, sir.

Q. Was that the reason why you assumed the name of Jary?

A. Yes, sir.

Q. I understand that you did not represent yourself as being the son of Father Beauregard?

A. No, sir.

Q. There are instances, I suppose, of persons who have had sons going into the Church after having been married and becoming priests?

A. There may be; I never knew of such an instance.

Q. You were asked if you reported to the authorities of the United States the fact that Surratt was at your house after you knew he was advertised as having been compromised in this conspiracy. Now, I ask you to state the reason why you did not report the fact to the United States?

Mr. PIERREPONT. You need not state that.

Mr. BRADLEY. Oh, yes, the witness can explain that.

Mr. MERRICK. The court said he might explain.

Mr. PIERREPONT. The court did not. He cannot give the reason.

Judge FISHER. What is the question?

Mr. BRADLEY. The question was put to him in his cross-examination why he did not report to the United States authorities the fact that Surratt was at his house, after he knew by the public papers that he had been advertised as concerned in this conspiracy. He says he did not so report, and now I ask him to explain why he did not.

Mr. PIERREPONT. He cannot explain if it runs into a certain order of explanation; that is very certain.

Mr. BRADLEY. Let us have the explanation why he did not tell.

Judge FISHER. I think that question may be put.

Mr. BRADLEY. (To the witness) When you found out that the person at your house was Surratt, why did you not report him to the United States?

A. Because I believed him innocent.

Q. Was that belief from information received from him or others?

Judge FISHER. That will not do.

Mr. PIERREPONT. That was the very point and the reason of the objection to the whole thing. And now I move that his answer be stricken out. His answer of his reason for his belief in the innocence of the prisoner cannot be given in evidence.

Judge FISHER. Yes, I think we must let that stand, but the further question is objectionable.

Q. (By Mr. BRADLEY.) You were asked at what time you suspected this party. I ask you now what gave rise to your suspicion that the man at your house claiming to be Armstrong was Surratt?

A. On account of the absence of Surratt from the United States, and the mystery of the young man being at my place.

Q. How did you ascertain that it was Surratt?

A. He told me himself.

Q. What did he say about it?

Mr. CARRINGTON. I believe we did not ask any question of that sort.

Judge FISHER. He cannot give any conversation with the prisoner.

Q. (By Mr. BRADLEY.) After you found that the man was Surratt, state whether you or any others presented him from coming to the United States?

Mr. PIERREPONT. Do not answer that question.

Judge FISHER. No question of that sort was asked on the cross-examination, as far I remember, and you cannot ask it in reply.

Q. (By Mr. BRADLEY.) You stated that you learned from him that he was Surratt. Now, state whether the public papers, from which you obtained the information, were or not kept from him?

Mr. PIERREPONT. You need not state that.

Mr. BRADLEY. Let us hear the objection.

Mr. PIERREPONT. I do not care about arguing the objection.

Judge FISHER. I presume the objection is that it is not in reply.

Mr. BRADLEY. They have attempted to show that the prisoner was kept concealed during all that time and the extent of that concealment. I am following in the very track and asking whether or not while he was there the public newspapers were kept from him.

Mr. PIERREPONT. We have not asked a word on that subject in any form.

Judge FISHER. That is concealing something from him and not concealing him from public notoriety. Of course it is not in reply.

Mr. BRADLEY. Your honor rules it out?

Judge FISHER. Yes, sir.

Mr. BRADLEY. Note an exception. (To the witness.) You were asked about a conversation between yourself and Dr. McMillan as to whether he did not refuse to let you pay over that five dollars because the trustees were not willing that you should receive the funds. Did you or not collect the funds for that church, or a large portion of them?

A. Yes, sir.

Q. Was it or not publicly known that you were collecting the funds for the building of that church?

Mr. PIERREPONT. We object to that.

Judge FISHER. The prosecution asked about Dr. McMillan's refusing to pay him on account of the trustees having forewarned him from so doing. The other side can ask any question in reply to that.

Mr. CARRINGTON. But they are asking what was publicly known.

Mr. BRADLEY. If it was publicly known I take it for granted the trustees knew it.

Judge FISHER. You had better ask him whether the trustees knew it.

Q. (By Mr. BRADLEY.) Did the trustees know you were collecting?

A. Yes, sir.

Q. Did any objection ever come from them to you as to your collecting?

A. Not from them, but from me myself. I was too over charged with work; I had two missions to attend to.

Q. I understood you to say that in your interviews with the bishop in regard to your removal to another parish, nothing was said to you of any complaints of your conduct as curé?

A. No, sir.

Q. It was your own voluntary motion?

A. Yes, sir; I had been asking for four years to be removed on account of my health.

By Mr. PIERREPONT:

Q. Do you know Thomas Brausard?

Mr. BRADLEY. I object. There was nothing in our examination about that.

Mr. PIERREPONT. Yes; it relates to this very fund.

Mr. MERRICK. That was a matter drawn out by the other side.

Mr. PIERREPONT. Very well; I will not spend any time over it.

Mr. MERRICK. I ask that Mr. Queen may now be called.

The MARSHAL called E. F. Queen, and no response was made.

Mr. MERRICK. I suppose he has been taken sick and gone home again.

Mr. CARRINGTON. We are ready to proceed with the rebutting evidence. I hope your honor will hold the gentlemen to the order of the court.

Mr. BRADLEY. There is another witness who was to have been here on Saturday evening—a very short witness—who will be asked but a single question; and, if he is here now, we ask the indulgence of the court to introduce him. His name is William H. Scott.

Mr. CARRINGTON. I thought it was distinctly understood last Saturday that counsel would examine but one witness this morning—Father Boucher—and he has been examined.

Mr. MERRICK. No doubt about that.

Mr. BRADLEY. I wish to examine Mr. Scott as to but a single point. Miss Jenkins stated that Mr. Scott brought some papers to Mrs. Surratt's on the night of the assassination. I had Mr. Scott here on Saturday to prove the fact that he was the person who went up those steps that night; and he would have been examined on Saturday, but we were not aware that he was present at the time the court took a recess.

The MARSHAL called William H. Scott, and no response was made.

Judge FISHER. Proceed with the rebutting testimony.

Mr. MERRICK. Before the prosecution proceed with their rebutting testimony, our case being closed, we desire to call your honor's attention to the motion made to strike out certain items of testimony which your honor said the other day you would take into consideration, and that you would examine the evidence. We submit, upon that motion, that, all the evidence-in-chief being now in, it is the proper time to purge the record of what your honor may determine not to be legal testimony to go to the jury. Certain testimony was noted, and your honor's attention called to it sometime ago, as not being connected with the charge in this case; and at the time of its introduction

the counsel on the other side, representing the United States, stated to the court that, if your honor would permit the testimony to be given, they would connect it in the course of the trial. Our written motion to strike out was filed, and I am reminded this morning by the senior counsel for the defendant that I omitted the other day to mention to your honor one portion of the testimony that we desire to have stricken out—the portion relating to the attempted assassination of the Secretary of State, and all that with regard to Atzerodt at the Kirkwood House. I think there were five pieces of testimony altogether.

Mr. PIERREPONT. It seems to me the fit time for all this subject is when the witnesses are disposed of that are to be witnesses in this case. It certainly is not in any order that I have ever heard of to keep witnesses here for a motion of that kind. Here are witnesses from Canada, from New York, from Maine, and from New Hampshire now waiting in this city, witnesses in rebuttal; and it would seem to me very extraordinary if now at this stage a motion was to be made and this whole subject argued, which we are ready to argue when it comes up in proper form, and those witnesses kept waiting here, when the proper time to argue the matter is after the evidence is all in. Then we can argue it, and then we can be heard.

Mr. WILSON. His honor stated the other day that he would postpone it till that time.

Mr. PIERREPONT. So I understood, and that the case was not to be broken in upon in this way.

Mr. MERRICK. I did not understand your honor to postpone it to any particular period; but, in reply to the counsel for the United States as to the proper time when this motion should come under the consideration of your honor, I will say that in my experience, according to the rules of practice as I understand them, the time for connecting evidence when its admissibility depends upon its being connected with some other fact, is properly when the evidence of the party offering the testimony to be connected is closed. The order of proof is a matter within the discretion of the court, and ordinarily all evidence when offered should at the time of the offer be manifestly admissible testimony; but in exercising its discretion the court will say to counsel: "Although I cannot see that this testimony now bears upon the case, yet if you will tell me that you intend in the course of your testimony so to connect the propositions submitted with other material facts in the case as to give them the legitimate character of legal evidence by virtue of the connection, you may under that promise give your testimony now, and if you fail to redeem the promise the testimony will then be ruled out." As they can offer no further testimony after the close of their's in chief, for the purpose of establishing the promised connection, the time has then come when they must show the connection if it exists, and if it does not the court will strike out the evidence. At that time I made the proposition to your honor, and your honor stated that you would consider it at some future period of the case, and directed that we should go on with our evidence. It was possible, unquestionably, that although they had not established the connection in their evidence-in-chief, yet that the defendant, from the kind of evidence it was necessary that he should introduce, might himself, in giving in the testimony for his defense, make up the wanting link in their chain; but now that the evidence-in-chief on both sides is closed, I think it certainly is the proper time to cleanse this record of superfluous stuff that does not belong to it. I submit, therefore, that now is the time to get rid of this testimony, and if it should be slightly at the inconvenience of witnesses, it will be very much to the convenience of lawyers, who are preparing the case for the argument, that we may know and that the jury may be advertised as soon as possible what is evidence and what is not. The only reason for admitting any evidence out of proper order is that it may be shown to be proper evidence afterwards; but it certainly is

desirable that the jury should be informed at as early a period as practicable what evidence is in the case and what is not in.

Mr. PIERREPONT. This spreads over the whole case, and would take an argument of a day to show how it all bears.

Mr. MERRICK. If it advances the cause of justice it should be done, though it takes a week.

Judge FISHER. We will go through with the rebutting testimony, and after that, if you have no sur-rebutting testimony, we will decide as to the evidence that is to be stricken from the record.

Mr. MERRICK. Suppose we have sur-rebutting testimony; I suppose we are to put that in, and your honor will decide this question only when all the testimony has been closed.

Judge FISHER. That is my purpose.

The court took a recess for half an hour, and re-assembled at 1:10 p. m.

Mr. BRADLEY. If your honor please, this morning when Mr. Boucher was under examination I mentioned that after his examination I would offer the Canandaigua register again. I consider that, however, as settled and ruled out by your honor, and I wish now to reserve an exception; and, if the question is open, we desire to be heard upon it before the rebutting testimony on the other side begins.

Mr. MERRICK. When I offered the motion a second time to the court the other day, and referred your honor to the case of *Gaines vs. Relf*, in 12th Howard, I stated that when we produced evidence showing a greater improbability of the prisoner getting access to this register, for the purpose of coining this evidence, or showing the actual impossibility of it, it would then be presented in a new aspect. Your honor first said that, in the then condition of the case, you would rule it out; but I did not understand, by any means, that it was to be ruled out now.

Mr. BRADLEY. My colleague is correct. I was under a misapprehension.

Mr. MERRICK. I take it for granted that under the decision in 12th Howard, the register will now be admitted.

Mr. PIERREPONT. I suppose it is ruled out now, and ruled out on two grounds. In the first place, the register itself, to which I called your honor's attention, shows that the entry was just as much under the 16th as it was under the 15th, and we are going to have witnesses whose names are before that name, who entered their names on the 16th.

Mr. MERRICK. Even admitting what the counsel says to be so, in the argument of this question of evidence we should not confuse what are properly questions of law with what are questions for the jury. If the entry is under the date of the 16th, it is a fact which the jury can find.

Mr. BRADLEY. The fact is not so.

Mr. PIERREPONT. I say it does not appear but that it may as well have been on the 16th as the 15th.

Mr. MERRICK. It is a matter the jury can find, and it is a matter for the jury to find when it was put there and how it was put there. The question for the court is whether there is evidence enough before the court to satisfy the court that this is certainly not a piece of made-up evidence, and has sufficient appearance of the probability of being correct and true to allow it to go to the jury. When it goes to the jury all these questions are to be sifted: did he write it then; did he write it at another time; was it made up by him; is it under the date of the 15th or the 16th? These are questions for the jury. If there is any thing in it from which the jury could rationally come to any conclusion relating to the issues in this case, then your honor will let it go to the jury. The question for your honor to decide is whether it is such a piece of testimony as bears

on its face the evidence of having been made up and therefore not legitimate. With a view to that point we have introduced the evidence this morning of the concealment of this prisoner.

Mr. PIERREPONT. If there is any thing in the evidence of Boucher it certainly tends to show that this was made up, that the prisoner had an opportunity to make it up.

Mr. MERRICK. We will argue that to the court, if you choose.

Judge FISHER. I decided not to admit the Canandaigua register upon this ground: that before it could be admissible to go to the jury as evidence, there would have to be preliminary proof showing that some person appeared there in Canandaigua, at the time, on the 15th day of April, or whatever day it was, and that he registered this name, John Harrison. That is what I consider to be preliminary in order to enable the register to be let in to the jury. If that proof were made, then it would come in; but not without that, I think.

Mr. MERRICK. I then did misunderstand you and my senior associate was correct, for I understood your honor to say that in the then condition of the proof you would not admit it, and you referred to other proof.

Judge FISHER. I thought you probably would have some proof to show that there was a party passing under the name of John Harrison there at that time, who did register this name.

Mr. MERRICK. The way we intended to supply that was by circumstantial proof. In the first place we proved it to be in his handwriting; and in the second place we proved that he was in Elmira on the morning of that day, within forty miles of the place; and in the third place we have proved that after that time he was in Canada and out of the United States; and I sustained the proposition by an authority which your honor had not seen, an authority in 12th Howard, where a letter written by a man named Desgrange, from Bordeaux, was introduced by date and caption to show that he was in Bordeaux at a certain time, a case which we had not seen at the time of the first argument of the question, and which, being a decision from the tribunal of last resort, is conclusive; but we had not at that time the proof which we offered this morning.

Mr. CARRINGTON. I think there should be an end to this discussion. I understood your honor to decide that there was a certain fact to be proved before this register could be admitted. They have not offered any evidence of that fact, nor offered any evidence to identify the prisoner on that occasion, and even if they did, I should object to it on another principle which it is not necessary now to state.

Mr. BRADLEY. I was correct, then, about what I understood. We offered to show, and did show, that this register remained on the counter of that hotel until the 31st of December. Then we said we would produce evidence to show that Surratt was not in the United States after the 18th of April until he was brought here, and then, taking the proof of handwriting, it was for the jury to say whether it was written by him on the day or not. I understood your honor to say then, as you do now, that unless we offered some evidence to show that a man passing under the name of Harrison was there at the time, the register would not be admissible. What I wish now is to have it clearly understood that, having offered the evidence which was given this morning, we now offer the register again.

Mr. CARRINGTON. To which we object.

Mr. BRADLEY. And your honor sustains the objection.

Judge FISHER. Yes, sir.

Mr. BRADLEY. And we note an exception.

Judge FISHER. Very well. Proceed with the rebutting testimony.

GEORGE W. STRAYER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What was your business in the month of April, 1865?

A. Engineer on the Northern Central railway.

Q. The road that runs from Baltimore to Harrisburg and from Harrisburg to Sunbury?

A. Yes, sir.

Q. State whether, on the 13th of April, 1865, you were at Elmira?

A. I was there on the morning of the 13th.

Q. What time did you leave there?

A. I cannot tell exactly the time I left there, but I got twenty-five miles south of there about half-past eleven.

Q. You know about what time you left?

A. Between ten and half-past ten.

Q. With what did you leave Elmira—a special train?

A. Yes, sir; second section of mail.

Q. Where did you run to?

A. To Williamsport.

Q. What distance is Williamsport south of Elmira?

A. Seventy-eight miles.

Q. Did you meet anybody on the way—any other conductor?

A. I met the mail north.

Q. Who was the conductor?

A. Rogers.

Q. Is he here?

A. Yes, sir.

Q. Where did you meet him—at what point?

A. At Troy—twenty five miles south of Elmira.

Q. What river is there at Williamsport?

A. The Susquehanna—West Branch.

Q. Was there a bridge over it then?

A. No, sir; there was no bridge across at that time.

Q. What time did you get to Troy?

A. It was about 11 or 11:35. The train north was due there at that time. I had to get there before them or lay back.

Q. Did you get there or lay back?

A. I got to Troy in time and I did not lay back.

Q. When did you go on to Williamsport?

A. Immediately after that train went by.

Q. What time did you get to Williamsport?

A. It was somewhere about two o'clock. I was close on to the train that was ahead of me.

Q. Can you tell exactly the hour you got to Williamsport? Can you say between one and two, if those were the hours?

A. I got to Williamsport between one and two o'clock.

Q. Did you go any farther than Williamsport with your train?

A. No, sir.

Q. You took passengers and the mail?

A. No; I was second section of the mail. The train ahead of me took the mail—first section.

Q. You were the second section?

A. Yes.

Q. Do you know the ferryman at Williamsport?

A. I know the one that was ferryman there then.

Q. What is his name?

A. I cannot think of his name.

Q. Do you know him by sight?

A. There are two—one named Glines, and the other one I cannot remember his name—it is a singular name.

Q. Drohan?

A. That is it.

Q. Are you still in the employment of the railroad company as an engineer?

A. Yes, sir.

Cross-examined by Mr. BRADLEY:

Q. Did you at that time run on regular time under the direction and control of the general superintendent?

A. We always ran under the direction of the general superintendent.

Q. Did you at that time run on your time-table?

A. No, sir; we had no time-table for that train. That was a second section.

Q. What do you mean by a second section?

A. An extra train following a regular train. The regular train has a time-table.

Q. Was there any record kept of the time of your departure and arrival?

A. There ought to be.

Q. Whose duty is it to make that report?

A. The telegraph operators generally keep a register.

Q. Does not the man who has charge of starting the train keep a record of the time you leave and the time you arrive?

A. He should keep it.

Q. Was there any thing that morning different from any other morning?

A. Nothing more than this extra train.

Q. How often did that extra train run?

A. Whenever they would send one out. I cannot tell. Whenever the superintendent sent one it ran.

Q. How many trains left Elmira that morning?

A. There was the regular and this extra, that I know of.

Q. How many left there regularly at that time?

A. A passenger train and a freight train left at that time. Those were the regular trains.

Q. What time did they leave?

A. The regular passenger left at 8 o'clock, and the time of the freight train to leave was 8:05.

Q. Where did you overtake the freight train?

A. I do not remember where I overtook it.

Q. Do you remember that you did overtake it?

A. I think I did.

Q. Have you any recollection about it?

A. No; I cannot remember where we did overtake it; but some place on the road; I cannot remember it.

Q. Do you remember the fact that you did overtake it before you got to Troy?

A. No; I think it was at Troy I overtook it, but I am not positive.

Q. Then did you pass the freight train?

A. When I overtook it I passed it.

Q. Where did you meet the passenger train going north; at Troy?

A. Yes, sir.

Q. What time did that leave Williamsport?

A. That left Williamsport the same time that the regular train left Elmira—eight o'clock; that was their time-table.

Q. And you ran half way when you met it.

A. No; one third of the way.

Q. You started from ten to half-past ten, ran twenty-five miles, and met the passenger train going north which left Williamsport at eight o'clock.

A. Yes, sir.

Q. You met it at Troy at what time?

A. I think at 11:35; that was their time-table.

Q. Have you any time-table with you?

A. No, sir.

Q. Did you overtake the eight-o'clock train from Elmira?

A. I think not on the road.

Q. Not till you got to Williamsport.

A. No, sir.

Q. How long did the passengers have to lie over at Williamsport before they took the train going south?

A. Their regular time to leave there was 9:32.

Q. At night.

A. In the evening. I believe that was the time. I did not run below Williamsport.

Q. So that when you got to Williamsport between one and two o'clock your passengers going south had to lie over there until 9:32?

A. That was the time for the regular passenger train to go south.

Q. And you do not know of any other train running south that left before 9:32?

A. I do not know, because I do not run on that lower part of the road. I do not know any thing about the Philadelphia and Erie road.

Q. How do you fix this date as the 13th?

A. Because I know the days I ran north and the days I ran south.

Q. Did you run regularly an extra train?

A. No, sir.

Q. How can you fix an extra train on any particular day?

A. I left Williamsport on the morning of the 10th with the regular mail train. I ran back on the morning of the 11th with the regular mail train. Then I was sent out with a special train on the 12th to Elmira, and came back with that special on the 13th. We know by the engineer's reports.

Q. Have you any memorandum or any other data or any other report from which you can speak with certainty of your having come down from Elmira on the 13th?

A. I know what days we commenced running after we got the road fixed.

Q. When was the road fixed?

A. We commenced running on the 10th, after the flood.

Q. Were you running regularly from Williamsport to Elmira on the 10th?

A. Yes, sir.

Q. And on the 10th you went up with the mail train and on the 11th you came down?

A. Yes, sir.

Q. And on the 12th you went up with an extra train?

A. The 12th was my day to lay over at Williamsport, but they sent me out with an extra.

Q. And you came back on the 13th, leaving Elmira at ten or half-past ten?

A. Somewhere along there.

Q. What is the regular time between Elmira and Williamsport?

A. At that time the schedule time was five hours or five hours and a few minutes to Elmira. The road was in very bad condition, and we ran slow.

Q. What part of the road was in bad condition?

A. Between Ralston and Williamsport.

Q. How far is Ralston from Williamsport?

A. Twenty-five miles.

Q. How many streams do you cross between Ralston and Williamsport?

A. Twenty.

Q. You cross twenty bridges?

A. We cross one stream that winds around a great deal, and we cross it at various points, and there are two other streams.

Q. But you cross twenty bridges between Williamsport and Ralston?

A. Yes, sir.

Q. And those bridges had been carried away, had they not, and had just been repaired?

A. Four had been carried away entirely.

Q. And several of the others were injured and had to be repaired?

A. Yes, sir.

Q. So that you had to run slowly across them?

A. Yes, sir.

Q. Then at that time it took five hours between Williamsport and Elmira?

A. Yes, sir.

Q. What was the next train that left Elmira after you left there?

A. There was no train left there until the next morning at eight o'clock—no time-table train.

Q. Do you recollect any extra train after you left, before eight o'clock next morning?

A. I do not recollect any.

Q. Do you know how long it takes to run from Williamsport to Harrisburg?

A. No, sir; I do not.

Q. Have you not traveled it often?

A. I have traveled it some six or eight times.

Q. Can you not come very near it?

A. I suppose it takes about five hours now. I do not know how it was then.

Q. At that time were there not obstructions in the road between Williamsport and Harrisburg?

A. Yes, sir.

Q. Did you go down to Harrisburg during that month of April?

A. No, sir.

Q. You say it takes about five hours now between Williamsport and Harrisburg?

A. I believe that is the schedule time.

Q. And you know the fact that at that time communication was interrupted between Sunbury and Williamsport?

A. Yes, sir.

Q. How much it was interrupted you do not know?

A. I do not; I did not go below Williamsport. I had been down to the bridge below Williamsport, but never across the ferry.

Q. Do you know how long it takes to run from Harrisburg to Washington?

A. No, sir.

Q. Did you bring passengers from Elmira in your special train on the 13th of April or not?

A. I do not remember. I was not in the caboose we had. I did not bring any on the engine. We do not allow them to ride on the engine.

Q. When you stopped to take water or any thing, did you not observe whether there were any passengers or not?

A. I did not go back.

Q. Who was the conductor?

A. I do not remember whether we had a conductor or not. We very often ran those trains without a conductor?

Q. Who had charge of the train when there was no conductor?

A. I took charge of it when there was no conductor.

Q. Who went through to look after the tickets?

A. I think there were no tickets sold for that train.

Q. Now, according to the best of your recollection, did any passengers come down on that train with you from Elmira?

A. I was not back, and did not see any; I was on the engine.

Q. If there was no conductor, would it not have been your business to ascertain whether there were any passengers there or not?

A. No; whoever was in the caboose would look after that; I am not hired to go back and see about passengers.

Q. I understand that very well; your business is on the engine, and you have the safety of the passengers to look after; but I ask you, when there was no conductor, who had charge of the train, to take up the tickets and see whether there were any passengers there or not?

A. When tickets are sold for the regular trains there is a conductor on such trains.

Q. But when there is no conductor?

A. We do not run trains to haul passengers that have no conductors.

Q. I understand that, but here is an extra train running down. You went up on the 12th and came back on the 13th with an extra train; now, were there any passengers on board your train on the 13th?

A. I did not see any.

By Mr. MERRICK:

Q. You had a caboose, you say?

A. Yes, sir.

Q. Tell us what that is.

A. It is like a freight-car; it was a soldier-car; that is what it was; we used them for cabooses on the freight trains.

Q. What was that train run out for?  
 A. To take Mr. DuBarry over the road, I believe.  
 Q. To take Mr. DuBarry where to?  
 A. To Elmira.  
 Q. Where from?  
 A. From Williamsport.  
 Q. What was the train down from Elmira for?  
 A. To bring him back again, I suppose.  
 Q. Do you not know that it is against the rules of the company to carry passengers on freight trains?  
 A. It was not a freight train; it is not against the rules on our road.

By Mr. BRADLEY:

Q. If I understand aright, you ran upon the 12th with Mr. DuBarry, to take him to Elmira; was there any conductor on that train?

A. I do not remember of any being on.

Q. Did you bring him back on the 13th?

A. I think so; he was on the caboose.

Q. How many cars did you have?

A. I believe there was only one.

Q. Was it an open car or a close one?

A. There were two windows, I believe, on each side of the car; it is like a freight-car, with windows put in; it was made for hauling soldiers.

Q. If there had been any passengers on board that train coming back from Elmira, must you not have seen them?

A. I could if I had gone back and looked into the car. I could not see them from the engine.

Q. Did you not get off the engine between Williamsport and Elmira?

A. I got off at Troy.

Q. And you did not see any passengers?

A. I do not remember seeing any.

Q. Did you see Mr. DuBarry in there?

A. I do not remember now whether I saw him or not.

Q. Do you know that you brought him back?

A. That is what I started for, to bring Mr. DuBarry back to Williamsport, and I suppose he was in the caboose.

Q. But you did not see him?

A. I might have seen him, but I do not remember now.

Q. I want to know whether any passengers could have come down with Mr. DuBarry in that train without your knowledge of the fact?

A. They could, I suppose.

Q. If they had been concealed?

A. Yes.

Q. Without Mr. DuBarry knowing it?

A. I do not think they could without his knowing it. There was but one car, and he would certainly have known it.

By Mr. PIERREPONT:

Q. You have been asked about the freight trains and the other trains taking passengers; had you at that time orders to take passengers on all trains?

A. We always hauled passengers on all trains.

By Mr. BRADLEY:

Q. And do now?

A. Do now.

By Mr. PIERREPONT:

Q. Do you know about the trains between Williamsport and Sunbury; the construction trains that were then running?

A. No, sir; I do not know any thing about below Williamsport.

Q. Nothing one way or the other?

A. No, sir.

By Mr. BRADLEY:

Q. When did you go back to Elmira from Williamsport?

A. On the 14th of April, with the regular mail train.

Q. And you came down again on the 15th.

A. Yes, sir.

Q. What time did the freight trains of the 14th leave after you left?

A. 8:05 was their time. I was out of sight by that time.

Q. Was there any other train during that day?

A. I do not remember.

Q. If there had been another train would it have gone to the same depot in Elmira at which you stopped?

A. Yes, sir; there is but one depot there.

Q. Did any other train come into Elmira on the 14th except the freight trains and the one you ran?

A. I did not see any.

Q. On the morning of the 15th, did the train leave Elmira at eight o'clock?

A. Yes, sir.

Q. And one at 8:05?

A. Yes, sir; I suppose it left at that time.

Q. When you came down on the 15th, did you meet any other trains on the road except the regular passenger train and that freight train which left at 8:05?

A. I do not remember any.

JOSEPH C. ROGERS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What is your business?

A. I am a grocery man now.

Q. What was your business in April, 1865?

A. Conductor of a railroad train.

Q. On what road?

A. The Northern Central road, Elmira division.

Q. Between what points were you running on the 13th of April, 1865?

A. From Williamsport to Elmira.

Q. State at what time you left Williamsport for Elmira?

A. Eight o'clock was our time. I do not remember that I left promptly on time, but very close to it. It was near eight o'clock.

Q. Do you know Mr. Strayer?

A. Yes, sir.

Q. Did you meet him that day going south?

A. I did.

Q. At what point?

A. At Troy.

Q. At what time did you meet him?

A. About 11:35.

No cross-examination.

Z. B. GLINES,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. In April, 1865, had you any thing to do with the ferry across the Susquehanna river at Williamsport?

A. I had. I was put there to collect fare from all passengers that were transferred.

Q. Who ran the boat?

A. Drohan.

Q. What is his first name?

A. I cannot say. He always went by the name of "Gunboat" there.

Q. What kind of a ferry was this?

A. A rope ferry.

Q. And what carried the boat across the river?

A. The force of the current.

Q. How quick was it at that time, in the middle of April, 1865?

A. We always ran it in from three to five minutes.

Q. Do you know whether Drohan was there that day?

Mr. BRADLEY. What day?

Mr. PIERREPONT. The 13th of April, 1865?

A. Drohan was there every day that I was there.

Q. And when was that?  
 A. I was there (with the exception of two days at the first of the month, I think, when I lay off,) all the time every day.

Q. Do you know what construction trains at that time ran between Williamsport and Sunbury?  
 A. I know there were two construction trains on the road between Williamsport and Sunbury.

Q. Why were two running at that time? What was the reason there were two?  
 A. We always have one between Williamsport and Sunbury, and the road had been very much washed.

Q. Was that the reason for there being two then?  
 A. Yes, sir. They were hauling bridge-timber, repairing bridges, etc.

Cross-examined by Mr. BRADLEY:

Q. Do you say that you were there certainly on the 13th of April?  
 A. Yes, sir.

Q. And on the 12th?  
 A. Yes, sir.

Q. Do you recollect Mr. Strayer's going up with a car on the 12th?  
 A. I know nothing of it. I was not connected with that road.

Q. Were you connected with the ferry?  
 A. I was on the Philadelphia and Erie road. His road was the Northern Central.

Q. Do you recollect Strayer's crossing the ferry there?  
 A. The ferry is below Williamsport. Strayer started from Williamsport above.

Q. Strayer had to cross the river?  
 A. No. You cross the river before arriving at Williamsport going up.

Q. How far outside of Williamsport?  
 A. A half a mile or three quarters of a mile outside of Williamsport?

Q. Do you live in the town of Williamsport?  
 A. I do.

Q. Do you remember Mr. DuBarry's being there, going up and looking after the condition of the road?  
 A. I do not.

Q. You say you were connected with the Philadelphia and Erie road?  
 A. Yes, sir.

Q. That is between Sunbury and Williamsport?  
 A. Yes, sir; that is part of the road.

Q. How far did your connection with that road extend?  
 A. The division I am on extends from Sunbury to Renovo.

Q. How near Williamsport is Renovo?  
 A. Fifty-three miles west from Williamsport.

Q. Williamsport was embraced in your section?  
 A. Yes, sir.

Q. Were you not up and down that line, between Sunbury and Renovo, almost every day?  
 A. No, sir; I had been below Williamsport, but not above.

Q. But in April, 1865, where were you occupied?  
 A. Up to the 20th of the month I was on this ferry. After the 20th of the month I took my regular trains.

Q. Were you a conductor at that time?  
 A. Yes, sir.

Q. What time did the southern train leave Williamsport on the 13th of April?  
 A. If it left on time, it left at 9:32 at night.

Q. Then passengers arriving at Williamsport between one and two o'clock would have to lay over at Williamsport until 9:32?  
 A. Yes, sir.

Q. Do you recollect whether there was any sleeping-car that came down from Elmira at that time?  
 A. I know nothing of the Northern Central road at that time.

Q. Do you know whether a sleeping-car came from Elmira or from Erie?

A. I think there was no sleeping-car west of Williamsport. I think there was one below, running between the bridge and Baltimore.

Q. Was there any sleeping-car in April, 1865, in which passengers took berths at Williamsport and came through to Baltimore?  
 A. Not at Williamsport. There might have been this side of the bridge.

Q. Do you know what time the train leaving Williamsport at 9:32 reaches Harrisburg?  
 A. No, sir; I cannot say.

Q. Does not the train divide at Sunbury, one part going to Baltimore and one to Philadelphia; and what time does it reach Philadelphia?  
 A. I could only tell you the time at Sunbury; that is as far as I know.

Q. What time did it reach Sunbury then?  
 A. 12:10 midnight.

Q. Were they not very irregular at that time?  
 A. The trains were running very regular after the 10th of April.

Q. From Sunbury to Williamsport?  
 A. Yes, sir.

Q. Do you know the time from Sunbury to Harrisburg?  
 A. I do not.

By Mr. PIERREPONT:

Q. You have been asked whether trains were then running regularly, and you told us they were?  
 A. Yes, sir.

Q. What were the orders about taking passengers upon all trains?  
 Mr. BRADLEY. Stop a moment. Not a word was said about that in the cross-examination.

Mr. PIERREPONT. I will ask in the direct examination. Were there any orders in relation to the trains?  
 Judge FISHER. You cannot ask it unless you recall the witness.

Mr. PIERREPONT. I will do that. I see that on my notes I had the question before, but I did not ask it.

Judge FISHER. That will give the other side the right to cross-examine again.

Mr. PIERREPONT. Certainly.  
 [The witness stepped down from the stand and was immediately recalled.]

By Mr. PIERREPONT:

Q. What orders, if any, were there in relation to taking passengers on all the trains?  
 A. We had orders from the acting superintendent then to allow passengers to ride on all trains.

By Mr. BRADLEY:

Q. On what road?  
 A. The Philadelphia and Erie.

By Mr. PIERREPONT:

Q. Was any reason given why you were directed to take passengers on all trains?  
 Mr. BRADLEY. I object to that.

Mr. PIERREPONT. Very well; I will not spend any time on it. It is enough that the order was given. (To the witness.) Was the order obeyed?  
 A. I presume it was.

Q. (By Mr. BRADLEY.) How do you know?  
 A. I ran one day in the month. I ran a gravel train between Watsonstown and Williamsport in the early part of the month, between the 1st and the 5th.

Q. Did that run from Williamsport to Sunbury?  
 A. We had the right of road between Watsonstown and the bridge.

Q. Where is Watsonstown?  
 A. Twenty-three miles from Williamsport.

Q. Between Sunbury and Williamsport?  
 A. Yes, sir.

By Mr. PIERREPONT:

Q. What is the distance between Williamsport and Sunbury?

A. Forty miles.

Q. Did the two construction trains which you have stated were running there at that time run at any particular hours?

A. No, sir.

Q. At different and all hours?

A. Yes.

Q. How soon could a construction train run between Williamsport and Sunbury?

Mr. BRADLEY. Does he not say that construction trains did not run regularly. I suppose they ran up and down the road whenever and wherever it was necessary.

The WITNESS. They stopped whenever they chose.

Mr. BRADLEY. It was not a train running between Williamsport and Sunbury, but construction trains supplying the wants of the road at various places. (To the witness.) Was it not so?

A. The construction trains were supplying the needs of the road.

By Mr. PIERREPONT:

Q. Where did the construction trains go to?

A. They had a right to run between the points named in the morning. Every morning they would send to the division superintendent a statement of the points between which they were going to work, and they had a right to run at any time between those points, keeping out of the way of all regular trains.

Q. Tell what was their principal point between Sunbury and Williamsport?

A. Watontown was the division.

By Mr. BRADLEY:

Q. You say the passenger train arrived at Sunbury at 12:10, midnight, going south?

A. Yes, sir.

Q. (By Mr. PIERREPONT.) How long would it take a construction train to run if it ran directly through?

Mr. MERRICK. It would depend on how often they stopped.

The WITNESS. If they ran directly through they would run the distance in two hours or an hour and forty-five minutes.

#### MORRIS DROHAN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. On the 13th, 14th, and 15th of April, 1865, had you any thing to do with the ferry at the Susquehanna river at Williamsport; and, if so, what?

A. Yes, sir; I ran it.

Q. Do you remember a special train coming in from Elmira on the 13th, and anybody coming to be ferried over?

A. I do not remember any thing about the special train.

Q. Do you remember anybody coming to be ferried over?

A. Yes, sir.

Q. Now tell exactly what occurred. What were you doing when the man came?

A. I was at the other side of the ferry at Williamsport, and a man came to me on the Williamsport side.

Q. Is that the same side with Elmira?

A. Yes; it is the same side that the Elmira train comes in.

Q. What were you doing?

A. I was coiling up my rope. There was a man came to me and asked me to ferry him across to the other side, and I said if he would pay I would ferry him over.

Q. What did he say?

A. He said yes.

Q. Was there any thing that arrested your attention about him?

A. Yes, sir.

Q. How was he dressed?

A. Well, he had a peculiar coat on him. [Laughter.]

Mr. PIERREPONT. I do not see that there is any thing extraordinarily funny in that answer.

Mr. BRADLEY. I do not see that there is; suppose you go on with the witness.

Mr. PIERREPONT. Suppose we do not go on with the witness until we understand whether that is to go on.

Judge FISHER. I have done my best to enforce order; if I can see any particular individual who is boisterous I shall certainly cause him to be arrested. I have seen no occasion for any laughter all the way through this trial, but it has been very much indulged in. I hope the marshal will endeavor to preserve order; and if he shall see anybody engaged in boisterous laughter, let him be arrested. Of course, smiles will be provoked sometimes; but if anybody indulges in boisterous laughter, such as to confuse the case and to make noise and uproar in the house, it is altogether out of order, and must be stopped; and if the marshal or any of his assistants sees anybody engaged in it, let him be arrested and brought before the court.

Mr. PIERREPONT. (To the witness.) Did the man say any thing further to you?

A. He said he wanted to get to the other side.

Q. Did he say how quick he wanted to get to the other side?

A. Not to my knowledge.

Q. What did he say in relation to his desire as to quickness, if any thing? Give us all he said.

A. He said that he wanted to get to the other side; I told him the charge would be fifty cents. In the middle of the river I generally made it a rule to stop the boat to get my pay, when I ferried anybody over that did not have a ticket of the company. I told him that.

Q. What did he then say?

A. He gave me a dollar bill; I had no change, and I kept the dollar bill; he said I might have it.

Q. Have you seen that man since?

A. Yes, sir, to the best of my knowledge.

Q. Where is he? I request the prisoner to stand up.

[The witness was pointing his finger.]

[The prisoner partially rose.]

Mr. BRADLEY. No, sir; sit down. The witness is not pointing in his direction at all.

Mr. PIERREPONT. I ask you if that is the man?

A. To the best of my belief, that is the man.

Mr. PIERREPONT. You can take the witness, gentlemen.

Mr. BRADLEY. I do not want to take him; let him go. No, I will ask him one question. (To the witness.) Who brought you here?

A. The authority of the Government.

Q. Who came after you?

A. I do not know the gentleman.

Q. Was he a young man or an old man?

A. A middle-aged man.

Q. Do you see him in the court-room?

A. Yes; there is the gentleman. [Pointing to Major Richard Montgomery, who was sitting near the counsel for the prosecution.]

Mr. BRADLEY. That is enough; that will do.

#### CHARLES J. HEPBURN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What is your business?

A. Train-master on the Warren and Franklin railroad.

Q. What was your business in the month of April, 1865?

A. I was acting as superintendent of the eastern division Philadelphia and Erie railroad.

Q. Where was that division which you superintended?

A. From Sunbury to Renovo.  
 Q. Did you know any thing about the road between Sunbury and Williamsport at that time?  
 A. Yes, sir.  
 Q. Tell us how it was on the 13th of April, 1865?  
 A. It was in good order, with the exception that they had to ferry across at Williamsport.  
 Q. How many construction trains were running?  
 A. There were two between Williamsport and Sunbury.  
 Q. Did they run at regular hours?  
 A. No, sir; they had an order to work from morning until evening, keeping out of the way of regular trains.  
 Q. Do you know what order they had in relation to taking passengers?  
 A. They had orders to carry passengers from and to any points they wished to ride, and do their own work besides.  
 Q. And they obeyed the order, I suppose?  
 A. Yes, sir.  
 Q. Can you tell the jury what time a construction train leaving Williamsport ferry at half-past two would reach Sunbury if it went directly through?  
 Mr. BRADLEY. I do not want hypothetical cases here. I want to know if any train did leave.  
 Mr. PIERREPONT. My question now is about running time.  
 Judge FISHER. You may prove the time; and then, if you do not prove that a train ran, of course it will be of no use.  
 Q. (By Mr. PIERREPONT.) What was the running time?  
 A. The running time of passenger trains was one hour and forty minutes or one hour and fifty minutes, and gravel trains could run in a little over two hours, that is, from this side of the bridge at Williamsport to Sunbury.  
 Q. When could that have been done?  
 A. At any time after the 10th of April.  
 Q. What was there before the 10th to make it different?  
 A. The road had been washed out in places that had not been thoroughly repaired, and there was a bridge which we had to transfer over.  
 Q. Now, tell the jury what train left Sunbury on the 13th in the afternoon?  
 A. 4:25 was their leaving time.  
 Q. From Sunbury towards Harrisburg; that is what I mean?  
 A. That was not on our road. I have been told there was a train—  
 Mr. BRADLEY. No matter about that; you cannot state what you were told.  
 Mr. PIERREPONT. If it was not on your road, and you do not know it, I do not want to ask you. Who gave the orders for carrying passengers on construction trains?  
 A. I gave the orders.  
 Q. Did passengers frequently go through in that way?  
 A. The conductors remitted money and returned tickets for such passengers.  
 Q. Every day?  
 Mr. BRADLEY. Through passengers, do you say?  
 A. We did not require them to say where the passengers were from or to; they just remitted the money in bulk, so much for such a day.  
 Q. (By Mr. PIERREPONT.) From these construction trains?  
 A. Yes, sir.  
 Cross-examined by Mr. BRADLEY:  
 Q. Do you mean to say that any construction train left Williamsport on the afternoon of the 13th of April after half-past one o'clock?  
 A. I cannot say whether any did or not.  
 Q. Did they not start out in the morning to supply the work on the road, and either pass through or come back as the occasion might require?

A. Yes, sir; the bridge at Williamsport was being rebuilt at that time, and the gravel trains were working at that end. A great deal of material was being hauled to supply the men who were working on the bridge.  
 Q. Did they run from Williamsport out to the bridge and back again?  
 A. No, sir; from the bridge east. The bridge is this side of Williamsport, about three-quarters of a mile.  
 Q. How far from the bridge did the gravel train run?  
 A. It ran to Watsonstown, and then there was another gravel train connecting between Watsonstown and Sunbury.  
 Q. It ran to Watsonstown and back again to the bridge?  
 A. Yes; just as the work happened to be. If they happened to be wanted at the bridge they came back there.  
 Q. Was there any time for the meeting of those two gravel trains at Watsonstown?  
 A. No, sir; each had orders to work to that point; neither one dared pass over.  
 Q. That is to say, a construction train went out from the east side of the bridge at Williamsport and ran to Watsonstown and back again as the work required it?  
 A. Yes, sir.  
 Q. And there was another gravel train beginning at Watsonstown and running east to Sunbury?  
 A. Yes, sir.  
 Q. And those trains ran backwards and forwards from time to time?  
 A. No, sir.  
 Q. There was no particular hour for their leaving was there, only that they were obliged to keep out of the way of passenger trains?  
 A. That was it. The one east of Watsonstown at that time was hauling wood from Watsonstown to Sunbury.  
 Q. Was that the 13th or the 14th of April?  
 A. The 13th.  
 Q. What was it doing the 14th?  
 A. I do not remember. I could tell by looking at my notes.  
 Q. What was it doing the 12th?  
 A. I do not remember.  
 Q. How do you fix the 13th?  
 A. I looked at the books.  
 Q. How far did it go that day? Where did it stop to take up wood?  
 A. It hauled wood from Watsonstown straight to Sunbury.  
 Q. What time did it start from Watsonstown?  
 A. I do not know that.  
 Q. What time did it leave Sunbury?  
 A. They would start out in the morning.  
 Q. How long did it take to run to Watsonstown?  
 A. A little over an hour—more than an hour.  
 Q. How long would it take to load up the wood?  
 A. That would depend on how many cars they had.  
 Q. You have nothing to show at what time they returned from Watsonstown to Sunbury?  
 A. No, sir.  
 Q. And nothing to show when the train for Harrisburg left Sunbury going south?  
 A. No, sir.  
 By Mr. PIERREPONT:  
 Q. These trains ran from Sunbury to Watsonstown; at that end a construction train ran every morning; did it not leave in the morning?  
 A. It did that morning and every morning.  
 By Mr. BRADLEY:  
 Q. What time it got back you do not know?  
 A. No, sir.  
 Q. What time it started you do not know?  
 A. Not exactly.  
 Q. How long it took to go over the road you do not know?  
 A. I do not.  
 Q. Can you tell whether it got back before the men quit work?

A. Yes, sir; they got back before night.

Q. It got back in the afternoon?

A. I do not know what time it got back there that day.

Q. Did it get back before night?

A. I cannot say that. It got back there that night, but I do not know what time.

Q. Whether before night or after?

A. No, sir.

GEORGE W. HAMBRIGHT,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What was your business in the month of April, 1865?

A. Passenger conductor on the Northern Central railway, between Sunbury and Baltimore.

Q. [Handing some books to the witness.] Take these books and see if you know what they are?

A. Yes, sir; the records kept by freight conductors who ran trains.

Q. Are they originals?

A. Yes, sir.

By Mr. BRADLEY:

Q. How do you know they are originals?

A. It is the only kind of book I have ever seen kept.

Mr. PIERREPONT. I have not got through with the witness yet.

Mr. BRADLEY. I do not care; I object to offering any books.

Mr. PIERREPONT. I have not offered any books.

Mr. BRADLEY. I object to interrogating the witness about the books.

Judge FISHER. How can he know any thing about them if they are not presented to him to inspect?

Mr. PIERREPONT. Counsel seems to be anxious to interrupt it. He will find that I shall go through it and in a way that I shall be satisfied with if he will let me alone.

Mr. BRADLEY. I object to the counsel handing the witness any book that he himself had nothing to do with.

Judge FISHER. We do not know yet whether he had any thing to do with it or not.

Mr. BRADLEY. Your honor did not put the question to him, and I put the question to draw that fact out.

Mr. PIERREPONT. I object to the counsel putting any questions to him now. I have brought a witness on the stand; I propose to examine him; and I think I shall succeed.

Judge FISHER. Go on with the examination.

Mr. BRADLEY. (To the witness.) Do not look at the book yet.

Mr. PIERREPONT. I think I shall succeed.

Mr. BRADLEY. I believe you always do, some way or other.

Mr. PIERREPONT. (To the witness.) Now, tell us what time the train left Sunbury on the 13th of April for Baltimore?

Mr. BRADLEY. What train?

Mr. PIERREPONT. The afternoon train.

Mr. BRADLEY. Passenger or freight?

Mr. PIERREPONT. I ask no other question than one now, and will not ask another until I am ready to do so. The question I now ask is, Will you tell us at what time the afternoon train left Sunbury for Baltimore on the 13th?

A. Four o'clock and thirty minutes.

Q. What time did it arrive in Baltimore?

A. I think about three o'clock and fifty minutes.

Cross-examined by Mr. BRADLEY:

Q. What train do you refer to?

A. A freight train.

Q. You say a freight train left Sunbury at 4:30;

what time did any train come into Sunbury from Williamsport on the afternoon of the 13th?

A. I cannot tell you that.

Q. How do you know the freight train left at 4:30?

A. By the record.

Q. Have you no knowledge of the fact yourself?

A. No, sir.

Q. You ran a passenger train to Sunbury?

A. Yes, sir.

Q. What time did you get there?

A. I was not running at that date.

Q. Then you have no personal knowledge of the fact, and know nothing of it except from the record before you?

A. No, sir.

Mr. BRADLEY. I ask your honor to strike out the testimony of this witness.

Mr. PIERREPONT. (To the witness.) Have you any books that show the fact?

Judge FISHER. I do not see that this evidence can be admitted unless the witness speaks from his personal knowledge, which he can refresh by reference to memoranda.

Mr. PIERREPONT. That is what I was just coming to.

Mr. BRADLEY. But I object to his refreshing his knowledge by anybody else's books. He said he speaks from the records. (To the witness.) Had you any control over the records?

A. No, sir.

By Mr. PIERREPONT:

Q. Tell us how the records are made?

A. Each conductor of a freight or passenger train keeps a monthly record of the cars upon his train, the time they leave—

Mr. BRADLEY. What knowledge have you of that fact?

A. My own personal knowledge.

Q. That each conductor of a freight train keeps a record?

A. Yes, sir.

Q. Have you seen that kept?

A. Yes, sir.

Q. By each conductor?

A. Yes.

Q. Do you mean that each one of the conductors at that time showed you his record?

A. No, sir; they did not show it to me.

By Mr. PIERREPONT:

Q. Tell us in what way the record of the railroad time of the trains was made up?

A. It is made up by the train-conductor himself?

Q. In what way? Explain it so that the court and jury can understand the mode of making up the record of the running of a train?

A. Each conductor has a book similar to this. He puts down the number of his cars, and his engine, his engineer, his fireman, himself, his brakeman and flagman, and the time of his leaving, and he also notifies upon his book the time of leaving each telegraph point; and such a register is kept also at the terminus of each division of the road and some important stations along the line of the road.

Q. Then there are two kept in that way?

A. Yes, sir.

Q. One for a check on the other, I suppose?

A. Yes, sir.

Q. Where are these conductors' records kept?

A. At the general superintendent's office, at Harrisburg; that is, the books are forwarded there monthly.

Q. I speak of the conductors' records?

A. They are kept in this book.

Q. Where is the book kept after it is given in?

A. It is kept at the general superintendent's office, in Harrisburg.

Q. Where did you get that book which is now before you?

A. From the general superintendent's office, at Harrisburg.

Q. When did you get it?

A. I got it on last Saturday a week ago.

Q. When you spoke of a train leaving Sunbury at 4:30, and reaching Baltimore at 3:50, from what did you derive your knowledge?

Mr. BRADLEY. Now I object.

Mr. PIERREPONT. I ask the witness from what source did he derive his knowledge.

Mr. BRADLEY. The question is plain enough. I object to it.

Judge FISHER. State the ground of objection.

Mr. BRADLEY. The ground of objection is that the witness states that he has no personal knowledge, and he is going to state to you that such knowledge as he has is derived from these books. How does he know any thing about the books? The books are kept in the office of the general superintendent. He simply goes there and gets a book and brings it here. He has not stated that he has any personal knowledge of the books or any control over them or any responsible connection with them. He merely goes to the office and takes a book and brings it here. Can it be evidence?

Mr. PIERREPONT. I have shown the general mode in which the records are kept. I have produced the original record brought by this witness from the original place, and I offer either to have the witness speak from looking into it, or to put the book in evidence, and I do not care which. That is good evidence.

Mr. MERRICK. There is no proof that that is the record.

Mr. BRADLEY. Certainly not a particle of proof that that is the original record.

Mr. PIERREPONT. There is not any better evidence than that.

Mr. BRADLEY. If that is all, it is very clear that it is not evidence. Mr. Hambright does not say that this is the original record. He has not proved the handwriting or any thing about it. He simply got from the office of the general superintendent a book purporting to be so and so, and there is not a particle of proof to show that it is in the handwriting of the conductors, and if it were I should have a further objection.

Mr. PIERREPONT. The other day we had the superintendent of a railroad upon this stand with records which he did not make. He did not profess to have made one of them; but he referred to those records as evidence of the running of the trains at that time. I put this witness on the stand and bring these original records from the original office and offer to show by him from them the running time of a train. I propose to show it by him from these books. He may look at the books. I do not care any thing about the books being in evidence; it is not a matter of consequence either way. I desire merely to show how the trains ran from the records themselves, and from the original records brought from the original office by this gentleman.

Judge FISHER. We must have some evidence as to his knowledge of the fact that they are genuine and original records.

Mr. PIERREPONT. (To the witness.) What knowledge have you about that?

A. I have this knowledge: it is the only record that has ever been kept of this kind since the general superintendent, who is at present there, Mr. DuBarry, has been on the road. It is the only kind of a book we have ever kept for freight and passenger trains.

Q. Who gave the books to you?

A. The division superintendent gave them to us at Baltimore.

Q. Where did he get them?

A. From the general superintendent, at Harrisburg.

Q. From the office?

A. Yes, sir.

By Mr. BRADLEY:

Q. From Mr. DuBarry?

A. From his office.

Q. Do you know Mr. DuBarry?

A. I think I do. I am still in his employment.

By Mr. MERRICK:

Q. Did he give them to you?

A. No, sir.

By Mr. PIERREPONT:

Q. You brought them from that office?

A. Yes, sir.

Q. Do you know what time the train left Sunbury of your own knowledge?

Mr. BRADLEY. He has answered that he does not.

The WITNESS. I do not.

By Mr. PIERREPONT:

Q. Your knowledge is derived from the records filed in the office, is it?

A. Yes, sir.

Q. And from these records filed in the office as the evidence of the running time on that day?

Judge FISHER. Let us first see how the witness knows that these are the original and genuine records?

Mr. PIERREPONT. Look at these books, and tell the court how you know them and what you know about them?

A. In regard to the writing and the figures, I do not know any thing at all; but this is the original record that is kept of all trains.

By Mr. BRADLEY:

Q. If you do not know the writing and the figures, how can you say that this is the original?

Judge FISHER. Let me ask the witness if he knows the handwriting in the book?

A. I do not.

Mr. MERRICK. So far as any thing appears in that book it might be a copy, and a book just like the original as well as the original, might it not?

A. It might, but I think this is the original record.

Mr. MERRICK. It may be, but you do not know it.

Mr. BRADLEY. It was given to you by some clerk in the office as an original record, but you do not know that it is an original record. You may infer it, but that is not the thing. No doubt you believe it is so, and a clerk gave it to you as such, but that does not make it so.

Mr. PIERREPONT. (To the witness.) Is that all you know about the books?

A. Yes, sir.

Q. Then what you stated came from the books?

A. Yes, sir.

Q. The books now before you?

A. Yes, sir.

Mr. PIERREPONT. I offer to show from these books the running time.

Judge FISHER. We must have some preliminary proof that they are original and genuine records.

Mr. PIERREPONT. Well, we shall get that.

Mr. MERRICK. Then let what the witness has said be stricken out.

Mr. PIERREPONT. We must ask this witness to remain here till we get Mr. DuBarry. We will find somebody that knows about the books.

Judge FISHER. All that this witness has said in relation to the time of the running of the trains will be stricken out.

DAVID R. P. BIGLEY,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. What was your occupation in April, 1865?

A. Detective officer.

Q. Were you one of those employed by the Government to go in pursuit of Surratt?

A. I was.

Q. Was Weichmann arrested by you?

Mr. BRADLEY. Nobody has said he was. How does he know whether he was arrested or not?

Mr. PIERREPONT. (To the witness.) Was Mr. Weichmann arrested by any one of your squad, Clarvoe or McDevitt?

A. Not that I know of.

Q. Were they with you?

A. They were on the duty.

Q. Was Weichmann likewise one of those specially employed by the Government?

A. He went—

Mr. BRADLEY. I think all this matter has been gone over before. This is no rebutting proof.

Mr. PIERREPONT. It is rebutting proof about the arrest of Weichmann.

Mr. BRADLEY. He knows nothing on earth about the arrest of Weichmann.

Mr. PIERREPONT. We are asking about that.

Mr. BRADLEY. The testimony of Clarvoe and McDevitt was that Weichmann was put under arrest by them, not by Bigley, and they did not see Bigley until long afterwards. How can he testify in regard to it? He says he knows nothing about the arrest.

Judge FISHER. If he says that, then there is an end of the question.

By Mr. PIERREPONT:

Q. When were you employed to go with Clarvoe and McDevitt?

A. I went the following day after the assassination with Mr. Clarvoe.

Q. Did they arrest Weichmann after that?

Mr. BRADLEY. I object, if the court please. The testimony is that they arrested him before.

Mr. PIERREPONT. Before the assassination?

Mr. BRADLEY. No, before they went in pursuit!

Mr. PIERREPONT. I did not hear it.

Judge FISHER. We cannot go on if this spirit is entertained.

Mr. BRADLEY. If the court please, when such a question is put to me by counsel, who understands the testimony as well as any one, I cannot avoid speaking as it deserves. What an idea, to ask me if he was arrested before the assassination, when the proof is that he was arrested on the morning after the assassination, before they went in pursuit. When the gentleman asks me such a question I have a right to treat it contemptuously.

Mr. PIERREPONT. I have not seen any such proof.

Mr. BRADLEY. The court has seen it.

Mr. PIERREPONT. I have seen no such proof that he was arrested the morning after the assassination.

Mr. CARRINGTON. Can we not give in evidence this fact to contradict them? They have attempted to show that he was arrested the day after the assassination. We expect to prove by Mr. Bigley that he co-operated with these two other officers in this business, and that Weichmann was with them. If they had arrested him, the presumption is that they kept him under arrest.

Judge FISHER. This witness can only testify as to when he was present with them; whether any arrest was made at the time he was present.

Mr. BRADLEY. We have not offered any such evidence, and therefore it is not rebutting. What we have proved is, by Clarvoe and McDevitt both, that Weichmann was arrested on the pavement in front of the office of the superintendent, before they saw Bigley or anybody else in regard to it, and he was kept under arrest afterwards.

Mr. CARRINGTON. I submit to your honor that it is strictly rebutting, and we are not confined to the precise time. Does not this tend to meet the point which is presented by the counsel on the other side? They say that Clarvoe and McDevitt arrested him at a certain point of time and at a certain place in this

city. Bigley says that the very morning after the assassination he co-operated with those two officers, and he did not understand that Weichmann was under arrest there by him or them.

Judge FISHER. You had better confine your question then.

Mr. MERRICK. Let me make a suggestion to your honor before you decide that point. The question was asked Mr. Weichmann whether he had been arrested or not, and he said he had not been; it was a question going to his veracity or recollection, whichever you please. We contradicted that statement. He said that he had not been arrested, and we showed that, in point of fact, he had been at a certain particular time. Are we to go off now on this general issue of his arrest or not? Does it not end just there, in any event, as to any point of time? I ask him, "Were you arrested?" He answers, "No, I never was." We then proved, for the purpose of contradicting him and showing how much his testimony is worth, that he was arrested. There was no objection made on the other side to our going into that inquiry, although it was not material to this issue in any way, shape, or form; and, as there was no objection, we went into it. Now, how long are we to keep up the inquiry into this immaterial issue? In point of fact, the arrest was made on the morning before Bigley became associated in this pursuit. That is the proof, as I recollect it. In point of law, whether that is so or not, the inquiry has come to an end.

Judge FISHER. I think, if you put in evidence that you knew ought not to go in, you cannot take advantage of your own wrong, but must allow it to be rebutted. Still, this proof must be confined to the time and place of which Clarvoe and McDevitt spoke.

Mr. MERRICK and Mr. BRADLEY. That is all we ask.

Q. (By Mr. PIERREPONT.) Did you hear the testimony of Clarvoe and McDevitt about the arrest of Mr. Weichmann?

A. I was here at the time Mr. Clarvoe swore, but not when Mr. McDevitt testified.

Q. State whether the time and place of the arrest, as given by them, was correct.

Mr. MERRICK. Do not answer that. You can turn, gentlemen, to the evidence of Clarvoe and McDevitt, and find what the time stated by them was, and then ask the witness whether the arrest was at that time so stated; but we cannot trust to this witness's recollection of what they may have said, or whether he was present.

Mr. PIERREPONT. Very well; we will turn to that; but before we do so I will go on with another matter. (To the witness.) Did you go with Holahan to St. Albans?

A. I went with Holahan and McDevitt to Montreal.

Q. What time did you get to St. Albans?

A. We got there on the 20th.

Q. Did Holahan tell you any thing about a handkerchief?

A. Not at that time.

Q. Now, tell us what he did say to you and when on the subject of a handkerchief.

A. He told me that he lost the handkerchief at St. Albans.

Q. When did he tell you he lost it?

A. About the 25th or 26th of April, in the American consul's office at Montreal.

Q. Was that in reply to any information that came in?

A. It was.

Q. What was it?

A. We were informed that there was a handkerchief found—

Mr. BRADLEY. I object to the question.

Mr. PIERREPONT. I will not press that. State whether you went with him to the station at Burlington?

A. I did.

Q. Did he lie down there on a settee?

A. I did not see him lie down on a settee.  
 Q. You would have seen him, would you not?  
 A. I said I did not see him lie down on a settee.  
 Q. Did he lie down on a settee in your presence?  
 A. No, sir.  
 Q. Would you have seen him if he had been lying down?  
 A. I think I should.  
 Q. Were you with him all the time until the train started?  
 A. I was with him and Mr. Weichmann and Mr. McDevitt.  
 Q. Did you have to wait long there?  
 A. No, sir.  
 Q. Did you go directly to the train?  
 A. We went to the train. The train was standing outside of the depot—the place we got on.  
 Q. Did you go right on the train?  
 A. We did.  
 Q. Then there was not any sleeping or lying down?  
 A. Not that I saw.

Cross-examined by Mr. BRADLEY:

Q. You say that Holahan did not lie down?  
 A. No, sir.  
 Q. Did you know that he had a handkerchief with him with John Surratt's name on it?  
 A. I did not.  
 Q. You did not know any thing about it?  
 A. No, sir; my first intimation was at the time I before stated.  
 Q. Do you know whether he had a great-coat or not?  
 A. I think he had.  
 Q. Do you know whether he had on his great-coat in the depot or not?  
 A. I do not.  
 Q. Did you take any particular notice of him in the depot?  
 A. I did not.  
 Q. Are you quite sure you did not have to wait some time at the depot before the train started?  
 A. My impression is that we waited about five or ten minutes, not longer.  
 Q. Who walked from the hotel to the depot with you?  
 A. I think it was Holahan that went with me, and I think Mr. Weichmann went with Mr. McDevitt.  
 Q. You cannot tell whether Holahan had his great-coat on or not?  
 A. I do not recollect whether he had his coat on or not.  
 Q. Do you recollect whether he carried it on his arm or not?  
 A. I think he must have had it on his arm or under his arm. I carried mine in that way.  
 Q. What time did you start from the Burlington depot?  
 A. It was early in the morning.  
 Q. What time?  
 A. I do not recollect the exact time; between five and six o'clock, I should judge.  
 Q. Not earlier than that?  
 A. It may have been earlier.  
 Q. What time were you called up?  
 A. I do not recollect. I did not notice the time. We were called up very early, I know, to meet the early train from Burlington to St. Albans.  
 Q. Who was present when Holahan spoke of the lost handkerchief?  
 A. The loss of the handkerchief was mentioned either by the American consul, Mr. Potter, or his secretary, I do not recollect which. They were both in the room. Mr. Clarvoe, Mr. Kelly, Mr. Weichmann, Holahan, and myself were in this office, right opposite the Ottawa Hotel.  
 Q. What was said there about the loss of the handkerchief?  
 A. Either the secretary or the American consul stated that there had been a handkerchief found at St. Albans.

I asked by whom. He said by one of Baker's detectives. I immediately said, "This is a very fine thing, to have Baker's detectives fighting us people off." Holahan then stated that he had lost the handkerchief at St. Albans.

Q. Did Holahan say, "It is the handkerchief I lost," or "The handkerchief I lost at St. Albans;" and did the secretary say one of Baker's detectives picked it up at Burlington or St. Albans?

A. The information was that it was found at St. Albans.

Q. You were not aware then, in point of fact, that the handkerchief was found at Burlington by a man named Blinn and given to one of Baker's detectives named Gurnett?

A. Not until this trial.

Q. What you heard was that the handkerchief had been found at St. Albans?

A. Yes, sir.

Q. And that is all you know about the finding of the handkerchief?

A. Yes, sir.

Q. You understood Holahan to say that he had lost it at St. Albans?

A. He did say that he had lost it at St. Albans, and that was so reported to the major of police when we reached New York.

Q. Not only that he lost the handkerchief, but that he lost it at St. Albans?

A. I understood Mr. Holahan to say that he lost the handkerchief at St. Albans.

Q. Did or did not the secretary or consul say that the handkerchief had been picked up at St. Albans, and did not Holahan say, "I lost that handkerchief," or "That is the handkerchief I lost?"

A. Holahan stated that he lost this handkerchief at St. Albans, and the secretary also stated that this handkerchief was found by one of Baker's detectives.

Q. The handkerchief which was found by one of Baker's detectives you understood was found at St. Albans, and you understood Holahan to say that he had lost it at St. Albans?

A. Yes, sir.

By Mr. MERRICK:

Q. When was that conversation?

A. I should judge about the 25th or 26th of April.

Q. Was there a report made from Montreal about the loss of that handkerchief?

A. Not that I am aware of.

Q. Do you know where G. A. Gurnett is?

A. I do not know him.

Q. You do not know then that a man at Burlington gave a handkerchief found there, marked with Surratt's name, to Gurnett, one of Baker's detectives, about the 25th or 26th of April?

A. I do not. My information was as I have stated. I do not know who the party was that found it.

By Mr. BRADLEY:

Q. I understand your information then was that the secretary said a handkerchief had been picked up at St. Albans?

A. Either the secretary or the American consul, I will not be positive which.

Q. And you understood Holahan to say that he had lost that handkerchief at St. Albans?

A. Yes, sir.

Q. Did he say when he lost it, or how he lost it?

A. He did not state to me how he lost it. He said he had lost it at St. Albans going on the way, and I said at the same time that it was a fine thing to have detective officers following us to know what we were doing.

Q. Did he say at the same time that he lost it in the depot at St. Albans?

A. No, sir; I do not recollect him saying it was at the depot.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 86. WASHINGTON, WEDNESDAY, AUGUST 28, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 85.*

Q. Did you go out of the depot at St. Albans?  
A. I did.  
Q. Did he go out?  
A. I believe he did.  
Q. You did not understand whether that handkerchief was picked up in the depot at St. Albans, or where it was picked up?  
A. No, sir.  
Q. But you understood from the consul that that handkerchief was picked up in the depot?  
A. It may have been stated so, but I have no recollection.  
Q. Refresh your memory, and see if you did not tell me so—that you learned the handkerchief had been picked up at the depot in St. Albans?  
A. It may be. Now, that I think of it, it was so. He told me that he lost it in the depot at St. Albans.  
Q. What enables you to speak with so much confidence that Holahan did not lie down in the depot at Burlington?  
A. Because when we were waked up to go to the train we had not much time; we did not remain there long before getting on the train.  
Q. That is your recollection now, that you did not remain there any length of time?  
A. We may have remained five, or probably ten minutes; I do not think any longer. It was the early train. I do not recollect whether the train was in or whether it was waiting at the time.  
Q. You kept your eye on Holahan there?  
A. No, sir; I did not keep my eye on any one.  
Q. Could he have put his great-coat under his head on the arm of a settee and lain down without your noticing it?  
A. I do not recollect him doing any thing of the kind.  
Q. But could it not have been done without your knowing it; you say you were not looking at him?  
A. My impression about it at this time, and I have thought over this thing, is, that we did not even go into the depot at Burlington. There was a track at the side of the depot, and I think we went out there and waited, if my memory serves me correctly.  
Q. What time did you reach St. Albans?  
A. On the morning of the 20th?  
Q. What time of day?  
A. I do not recollect exactly the time of the day, but it was in the morning, I think.  
Q. Did you stop on the road between Burlington and St. Albans?  
A. No, sir; we were on the through train. We may have stopped at way stations though.  
Q. Where was the first stopping-place after you left Burlington?  
A. I do not recollect.  
Q. Did you get out of the cars at the first place you stopped?

A. We may have got out; I do not recollect whether we did or not. Some of them may; I do not think I did.  
Q. When you got back to Burlington, do you remember Holahan going out and buying any thing at Burlington?  
A. Yes, sir.  
Q. Did he buy a shirt?  
A. I think he bought a shirt, a handkerchief, and a necktie. I was with him.  
Q. What time did you get into Burlington?  
A. We reached Burlington, I judge, about seven or eight o'clock on the evening of the 19th.  
Q. Where did you put up?  
A. I think it was at a place called the American House.  
Q. Did you enter fictitious names there?  
A. We did.  
Q. What time did you go to bed?  
A. I do not know, but I should judge between ten and eleven.  
Q. Did you all occupy the same room?  
A. There was some one with me; I do not recollect whether we were in one room or two.  
Q. How many were in the room with you?  
A. There may have been one.  
Q. Do you know who that was?  
A. I do not. We may all have occupied one room; I do not recollect.  
Q. Who entered the names?  
A. I think I entered the names, if I am not mistaken.  
Q. What is your recollection about it?  
A. I know that I wrote my name—the *alias* I had; I do not recollect whether I wrote the others' names or not. I may have done it though.  
Q. Did you get supper after you got there?  
A. I think we did. My recollection is that we got supper there.  
Q. Do you remember whether it was dark when you were called in the morning?  
A. It may have been at early dawn; it may probably have been dark. It was very early dawn; I do not recollect whether it was daylight or not.  
Q. Do you remember whether it was dark or not?  
A. I do not.  
Q. How far was it from the depot to the hotel where you stayed?  
A. I do not recollect the distance; it was not a very great distance.  
Q. One block, or two blocks, or three blocks?  
A. I should judge about two blocks.  
Q. Were there any lamps lit?  
A. I do not recollect.  
Q. Can you not recollect whether it was quite dark or not?  
A. I know that it was very early in the morning, probably four o'clock. I supposed it was five or six, but it may have been four.  
Q. You have no recollection of the character of the morning?  
A. No, sir.

Q. How did you reach Burlington—by steam or by rail?

A. By rail.

Q. In a sleeping-car?

A. No, sir; there was no sleeping-car going.

Q. You are quite sure about that?

A. I think so.

Q. You did not take a sleeping-car after you left Burlington?

A. No, sir.

Q. Where did you breakfast that day?

A. I think we got something to eat at St. Albans.

Q. Did you breakfast there?

A. We ate at the depot, I think.

Q. Do you remember when you got to Montreal?

A. It was about half past one or two o'clock, I think.

It may have been later; I do not recollect the exact time.

Q. May it not have been earlier?

A. It may have been earlier; it may have been half past twelve or somewhere in that neighborhood.

Q. Was it not earlier?

A. I do not think it was. I know that after we reached Montreal we got dinner at the Ottawa Hotel.

Q. Now, can you fix with any more certainty the date at which this handkerchief was first mentioned to you?

A. The first intimation I had of the handkerchief was after the arrival of Clarvoe and Kelly, and this thing was stated to me while they were there. I think it was on the 26th day of April.

#### ALMIRAN C. RICHARDS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation at the time of the assassination of President Lincoln?

A. Superintendent of Metropolitan Police here.

Q. Do you know Mr. Holahan?

A. I do.

Q. Did you have any conversation with him about this handkerchief?

A. I had a conversation in New York with Holahan, Weichmann, Bigley, and Clarvoe, when they returned from Montreal.

Q. Did Mr. Holahan make any official report to you as an officer?

Mr. BRADLEY. No such question was put to Holahan.

Judge FISHER. I do not recollect any such question.

Mr. PIERREPONT. I do not remember that it was asked myself.

Mr. BRADLEY. Major Richards's name was never mentioned in connection with it.

Mr. PIERREPONT. What I ask is, and I want to take the ruling of your honor upon it, whether, upon his return, Holahan made any official report in which he stated that he had lost the handkerchief at St. Albans.

Mr. BRADLEY. I object to it. After the concession that no such question was put to Holahan and the ruling of the court, I submit whether it is right to ask the question of the witness in the terms in which it is put.

Judge FISHER. The ruling of the court is that, inasmuch as there was no question put to Mr. Holahan whilst under cross-examination, in which Mr. Richards's name was mentioned, you cannot now interrogate Mr. Richards for the purpose of contradicting Mr. Holahan.

Mr. WILSON. I will state to your honor that there are a number of witnesses in the city, but we supposed the court would adjourn at three o'clock to-day. It is after that hour, and we have no witnesses in attendance. After to-day we shall be able and willing to go on as long as the jury are willing to sit.

Mr. MERRICK. We are perfectly willing to get rid of the whole matter and let them take it now.

Mr. WILSON. You have said that before.

Mr. BRADLEY. We will make the offer now.

Mr. MERRICK. It is most remarkable that there should be any pressure at this particular time. Whilst I am perfectly willing to sit as long as the counsel, the court, and the jury shall desire, pushing things now may deprive us of some advantage in this particular: witnesses are sprung upon us from places we know not where, bearing names we never heard of, and, of course, we want time to look after them.

Mr. BRADLEY. They are calling "spirits from the vasty deep," and they "come."

Mr. MERRICK. We may be closed in by a rapid proceeding, without having an opportunity to inquire about some witnesses where inquiry would certainly enlighten the mind of court and jury.

Mr. PIERREPONT. What is the point? Do the gentlemen wish to delay us or to hurry us, which?

Mr. MERRICK. My point is, that while I acquiesce in any expedition, if we seem to hold back from a proposition to sit until ten o'clock at night, it is simply because we want a little time to learn something of the strangers you introduce us to.

Mr. CARRINGTON. There is nothing before the court now.

Judge FISHER. Yes, I think you are. [Laughter.]

Mr. CARRINGTON. Then I will sit down.

Mr. PIERREPONT. So far as I am concerned, I am willing to go just as fast or as slow, sit as many hours or as few, as the court and jury are satisfied with.

Judge FISHER. We will try to continue the session to-morrow until four o'clock. The jury have several times spoken to me about it, but I did not wish to hurry too much.

Mr. PIERREPONT. We will endeavor to hurry; and I will say now, that if the railroad witness, in relation to the train that we supposed Mr. Hambright knew about, gets here to-morrow, we shall probably close to-morrow.

The court took a recess until to-morrow morning at ten o'clock.

#### Thirty-Seventh Day.

TUESDAY, July 23, 1867.

The court re-assembled at ten o'clock a. m.

Mr. CARRINGTON applied to the court for attachments against T. J. Osborn and W. G. Carson; and, on proof of service of the subpoenas by E. B. Westfall, the attachments were directed to be issued.

Mr. PIERREPONT. If your honor please, I desire at this stage of the case to offer in evidence the paper that General Eckert spoke of the other day when here. Although he said it was not in Booth's handwriting, and for that reason I could not put it in evidence, and never did offer it in evidence before, yet it seems to me that the inquiries which were made by the other side of General Eckert about it make it proper that it should be put in evidence, and make it now legal evidence. I offer it in evidence, showing it first to the gentlemen on the other side. Here it is [handing to the counsel for the defense a leaf of paper with writing on it,] and here is the diary which the leaf fits.

Mr. BRADLEY. If the handwriting of this is proved, I have no objection to its going in.

Mr. PIERREPONT. General Eckert said it was not Booth's handwriting, and he thinks it is somebody else's.

Mr. BRADLEY. He did not say whose. We want the jury to see it.

Mr. PIERREPONT. I do. You may submit it to the jury, or bring any evidence about the handwriting you like—either way.

Mr. MERRICK. I want the jury to look at the writing.

Judge FISHER. There is no objection to the jury inspecting it.

Mr. MERRICK. I do not feel that we ought properly to object to offering it in evidence, though the handwriting is not proved.

[The paper was handed to the jury.]

Mr. BOHRER. The jury do not seem to understand the object with which this is submitted.

Judge FISHER. I do not know myself, and therefore cannot give any light.

Mr. PIERREPONT. It is merely this: there seem to be two papers, and they differ somewhat in expression; for instance, one says he was in a "sad plight," and the other "sad condition;" and in the one he says he sends \$2 50, and in the other \$5. That is all.

Mr. BRADLEY. And one is addressed to Dr. Stewart and the other is not; and one has pin-holes in, as if it had pinned up something, and the other has not. One we prove was the original sent to Dr. Stewart; the other was produced by the other side as the original.

Mr. PIERREPONT. And the one we produced as the original, by Mr. Baker, General Eckert swears is the handwriting of Booth, and he swears the other is not.

Mr. MERRICK. As far as he can judge. Anybody who looks at it will see.

Mr. PIERREPONT. I do not know whether either is, and I do not think it of the slightest importance.

Mr. MERRICK. I do not know about that.

Mr. PIERREPONT. I want them in evidence.

Mr. BRADLEY. Let the jury inspect them, and they will see how much value there is in the testimony of these experts.

Mr. MERRICK. The jury will see which one Stewart had and which he had not.

EZRA B. WESTFALL,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What was your business in April, 1865?

A. A train-master on the Philadelphia and Erie railroad.

Q. Where were you stationed?

A. At Williamsport and about there.

Q. Do you remember the 13th of April, the day prior to the President's assassination, if any thing occurred?

A. I do.

Q. Where were you?

A. I was at Williamsport.

Q. What were you doing at Williamsport?

A. I was there, as my business called me there, at other times than when I was assisting to transfer passengers over the ferry.

Q. State how far the depot at Williamsport, where the trains coming from Elmira stop, is from the ferry?

A. About three-quarters of a mile.

Mr. BRADLEY. That is, the Sunbury and Erie railroad is three-quarters of a mile from the other?

A. No; both run to the same depot. The Northern Central and Philadelphia and Erie trains both stop at the depot, and the depot was about three-quarters of a mile from the ferry at that time.

Judge FISHER. Let me understand you; do you say that the depot was three-quarters of a mile from the town of Williamsport?

A. No, sir; the ferry.

By Mr. PIERREPONT:

Q. Were you at the depot that morning?

A. I was there when the train arrived from Elmira that day.

Q. Now, tell the jury what trains did arrive from Elmira?

A. Two trains arrived between twelve and two.

Q. Were you there when the train that left Elmira at eight o'clock arrived?

A. Yes, sir.

Q. What time did it arrive?

A. Between the times I gave you; I cannot give you the exact minutes.

Q. Were you there when the special train that left Elmira at 10.30 arrived?

A. Yes, sir, I was.

Q. State what occurred just after the arrival of that train. You know what I mean—what matter peculiar?

A. A man came to me and was very anxious to get through. He asked questions as regards the trains—what would be the probable chance of getting through over the line; and I took him to be a rebel spy or a Government detective.

Mr. BRADLEY. Do not say any thing of what you thought about him; just state what passed.

A. I cut him off pretty short. I did not give him much satisfaction, because I thought it was none of his business how we ran our trains at that time?

Q. (By Mr. PIERREPONT.) Do you know which way he went?

A. I cannot say which way he went.

Q. Did you know the ferryman?

A. Yes, sir; I had charge in a manner of the ferryman.

Q. Did you see the ferryman afterwards?

A. I saw him that evening.

Q. Did you have any talk with him?

Mr. MERRICK. If you did, do not say any thing about it.

Mr. PIERREPONT. I ask, Did you have any talk—

Mr. BRADLEY. I object.

Mr. PIERREPONT. I first asked if he saw the ferryman, and he said he did. Now I ask if he had any conversation with the ferryman that evening.

Mr. BRADLEY. I object.

Judge FISHER. Do you propose to give the conversation in evidence?

Mr. PIERREPONT. No; only the fact.

Mr. BRADLEY. What interest has that in rebutting any thing?

Mr. PIERREPONT. It has some interest. It is a fact.

Judge FISHER. I cannot see what bearing it has upon the case.

Mr. PIERREPONT. It has something to do with fixing the time.

Judge FISHER. If you could fix the time by it, that would be another thing.

Mr. BRADLEY. What time?

Mr. PIERREPONT. The time of his having the conversation, and the time at which he was taken over.

Mr. BRADLEY. The time that he had the conversation with the ferryman?

Mr. PIERREPONT. Yes.

Mr. BRADLEY. What has that to do with the time the man was taken over the ferry?

Mr. PIERREPONT. It has nothing to do with it, but as to the time; and that is what I am aiming at—fixing times.

Judge FISHER. You may go on and fix the time.

Mr. MERRICK. Not by a conversation.

Judge FISHER. Certainly not.

Mr. PIERREPONT. I withdraw the question. I can get at it by other questions, but it will take several; that is all. (To the witness.) When did you next see the ferryman after the conversation with that man?

Mr. BRADLEY. I object again.

Mr. PIERREPONT. I press the question, When did you next see the ferryman after the conversation with that man?

Judge FISHER. What man—the man that came in the special train?

Mr. PIERREPONT. The man that he saw after the arrival of the special train.

Mr. BRADLEY. He does not say that the man came in the special train.

Judge FISHER. No; the man that he saw after the special train arrived.

Mr. PIERREPONT. And who wanted to inquire the ways of getting over. When did you next see the ferryman after that?

Mr. BRADLEY. I object to it.

Judge FISHER. That question is admissible.

Mr. BRADLEY. I note an exception to the ruling.

The WITNESS. I next saw the ferryman that evening about half-past six o'clock.

Q. (By Mr. PIERREPONT.) About what time was it this man had the conversation with you in relation to making these inquiries about your trains?

A. I should judge between twelve and two. I cannot exactly fix the time.

Q. Have you seen anybody since that looks like him?

A. I cannot say that I have; that is, any person I could swear to positively.

Q. I do not ask you to swear positively, but have you seen anybody that you think looks like him?

Mr. MERRICK. That will not do on a question of identity.

Judge FISHER. You can ask him whether he has seen anybody since that he believes to be the man.

Mr. BRADLEY. That is a different thing.

Q. (By Mr. PIERREPONT.) Have you seen anybody since that you believe to be the man?

A. Yes, sir, I have.

Q. Do you see him now?

A. Yes, sir.

Q. You know the prisoner; you have seen him?

A. The prisoner is the man. That is my impression.

Q. Now, tell us when you left Williamsport that day?

A. I remained in Williamsport after transferring the passengers north until about nine o'clock.

Q. Did this man that you saw ever come back to you?

A. Not that I remember.

Q. You did not see him after this?

A. I saw him but once that day.

Q. Do you know any thing about the construction trains on the other side, going to Sunbury?

A. Yes, sir.

Q. Tell us what you know of them on that day—how many were working.

A. There were three trains working between Montoursville and Watsonstown, and one between Watsonstown and Sunbury, and the switching engine was running between Williamsport bridge and Montoursville.

Q. And these places that you have mentioned formed the whole connection between the ferry and Sunbury?

A. Yes, sir.

Q. Do you know whether they were ordered to take passengers?

A. They were at that time.

Q. Why?

A. Because the road had been obstructed; and we gave the men orders to carry persons that would offer to go from one point to another.

Q. Now, tell about the speed at which these construction trains were running at that time.

A. They were running at a very fast speed at that time.

Q. Why was that?

A. Because, as a general thing, when we wanted any thing, we would go in a good bit of a hurry for it. In getting things to the bridge it was very necessary to lose as little time as possible.

Q. How were they running then compared with the passenger trains in speed?

A. I should judge they would make about the same time.

Q. Can you state whether the runners of these trains had any authority to take extra fare for extra speed.

A. They did not have—

Q. Did they do it?

A. That I cannot say.

Mr. MERRICK. Do you know of your own knowledge?

Mr. PIERREPONT. That is what I ask, whether they did it and reported. I ask what you know about it.

Mr. MERRICK. He does not know what other people did, unless he was along.

A. Such things had been done.

Judge FISHER. To your knowledge?

A. Yes, sir.

Cross-examined by Mr. BRADLEY:

Q. What knowledge have you of it?

A. Persons telling me so.

Q. Is that your knowledge, persons telling you so?

A. I know it from their saying so.

Mr. BRADLEY. I ask your honor to strike it out.

Judge FISHER. If that is the only knowledge he has of it, it must be stricken out.

Mr. BRADLEY. (To the witness.) Now, sir, was there any connection in those supply trains or construction trains running regularly between Williamsport and Sunbury?

A. They could connect.

Q. I do not ask whether they could or not; I ask you what was done on that day and other days as a rule; was there any connection between them?

A. They generally did things just as the work would require them to do.

Q. What did they do on the 13th of April?

A. I do not know that I can remember particularly what they did that day.

Q. Do you know what trains went out that day?

A. Yes, sir.

Q. On the 13th of April, 1865, what trains went out from Williamsport to Sunbury?

A. On the 13th of April there was no train started from Williamsport.

Q. No construction train?

A. No, sir; not from Williamsport.

Q. From the ferry?

A. From the east side of the bridge there was a switch-engine running to Montoursville.

Q. What else?

A. A freight train from Montoursville to Sunbury, and returning.

Q. What time that day did it run?

A. It left Montoursville a little after six o'clock a. m.

Q. How far is Montoursville from the bridge?

A. About three miles east of Williamsport bridge.

Q. That would be three miles and three-quarters from your depot?

A. Yes, sir.

Q. And it left at six o'clock in the morning.

A. Yes, sir.

Q. What train left after six o'clock?

A. What was then called the Elmira mail, or Lock Haven accommodation.

Q. What time did that go?

A. About half-past eight in the morning.

Q. What train next?

A. No train went until half-past nine at night; no regular passenger train.

Q. You say the first train left at six o'clock and the second at half-past eight in the morning, and the third at half-past nine in the evening, and those were the only trains?

A. The only regular trains.

Q. Now, what irregular trains left the bridge on the 13th of April?

A. There were none except these gravel trains and switch-engines working on the road that day.

Q. What time did they leave the bridge?

A. The gravel train did not leave the bridge.

Q. Where did it leave?

A. Montoursville, three miles from the bridge.

Q. What train left the bridge?

A. A switch-engine was running there, an extra passenger engine, going backward and forward.

- Q. What time did the switch-engine leave?  
 A. I cannot fix the time exactly in the morning.  
 Q. Did it leave more than once that day?  
 A. Yes, sir.  
 Q. How often?  
 A. I cannot fix to a certainty. It ran backward and forward.  
 Q. How far?  
 A. From the bridge to Montoursville. It was working backward and forward there at intervals all day.  
 Q. Now, what trains left Montoursville for Watson-town?  
 A. A gravel train was working between Montoursville and Watsontown all day backward and forward.  
 Q. What other train?  
 A. That was all, except the freight.  
 Q. You have mentioned the freight train and you have mentioned all the regular trains. Now of the trains that ran back and forth. You say a gravel train was running from Montoursville to Watsontown all day?  
 A. Yes, sir, working between those points.  
 Q. At what speed did the gravel train run?  
 A. They were allowed to run at the rate of twenty miles an hour.  
 Q. I do not ask what they were allowed to do; I ask what they did on the 13th of April?  
 A. I cannot say as to the time they made.  
 Q. Do you know, in point of fact, that any gravel train did run through from Montoursville to Watsontown that day and back, of your own knowledge?  
 A. I know they were working between those points on that day.  
 Q. I ask you if you know that they went from Montoursville to Watsontown and back?  
 A. I cannot say positively about that.  
 Q. Have you any memorandum—any means by which you can ascertain?  
 A. No, sir.  
 Q. Can you state that there was any supply train or construction train or gravel train that ran from Montoursville to Watsontown that day?  
 A. Yes, sir.  
 Q. You are sure of it?  
 A. Yes, sir; there was a train working between those points on the 13th.  
 Q. Are you sure it went to Watsontown?  
 A. Yes, sir.  
 Q. Did it go directly through, or part of the way and back again?  
 A. That I cannot answer.  
 Q. How do you know it went to Watsontown?  
 A. That is where they were working that day—between those points.  
 Q. Where did they stay over night?  
 A. At Montoursville.  
 Q. What time did they return to Montoursville?  
 A. They returned there between five and six o'clock in the evening.  
 Q. How far is it from Montoursville to Watsontown?  
 A. About twenty miles.  
 Q. What time did they leave Montoursville for Watsontown?  
 A. They started from Montoursville to work; I cannot say what time they started from Montoursville.  
 Q. Did any construction train leave Montoursville after two o'clock on the 13th of April?  
 A. I cannot say that there did.  
 Q. To the best of your knowledge and recollection, did any train leave Montoursville after two o'clock on the 13th of April to go to Watsontown?  
 A. I cannot answer the question, because I was not with the trains all the time.  
 Q. How do you know it went to Watsontown?  
 A. From the fact that they had work to do between those points.  
 Q. Is that any reason why they should go clear through to Watsontown—because they had work part of the way?  
 A. Yes, sir.  
 Q. Is that your only reason?  
 A. Yes, sir; that would be the only reason.  
 Q. Then you have no knowledge of the fact that they went to Watsontown?  
 A. No actual knowledge of the fact. I did not keep a record.  
 Q. Why should they go to Watsontown, if they did not have a call for work down near Watsontown?  
 A. They would go there for water.  
 Q. Was there no water on the road between the two points?  
 A. There was at Montoursville.  
 Q. Was there no water between Montoursville and Watsontown?  
 A. Not at that time. A station has since been established about four miles west of Watsontown.  
 Q. When was that station erected?  
 A. I cannot give the exact date.  
 Q. In what month and year?  
 A. I cannot give that exactly. I do not think it was in operation at that time. There was a tank there, but no water.  
 Q. Was there not a tank at that place as far back as February, 1865?  
 A. There was a tank there, but no water.  
 Q. You do not know when the water was put in?  
 A. I cannot give the date.  
 Q. Was not water put in while they were repairing that part of the road?  
 A. I cannot say as to that.  
 Q. Was not water put in while they were repairing the road between Sunbury and Williamsport?  
 A. I cannot answer positively.  
 Q. Do you recollect how long afterwards it was put in?  
 A. I cannot give the date.  
 Q. Can you say it was two years ago this summer?  
 A. I cannot say.  
 Q. Can you say it was not more than two years ago this summer?  
 A. I cannot fix the date at all.  
 Q. Now, go back to the running of those trains; you say a construction train left Montoursville in the morning, but what time you do not know?  
 A. It left there between six and seven o'clock.  
 Q. Did you ever, in your experience, know it to leave Montoursville to run out after two o'clock, or get back before four or five in the evening?  
 A. I do not know, from the fact of my not being there.  
 Q. I ask you, not as to that day, but any time, whether you ever knew that train to leave Montoursville in the afternoon?  
 A. Not that particular train; I have known trains to leave at any hour.  
 Mr. BRADLEY. Let me explain to you. I understand you are brought here to identify this prisoner as having passed over that road that day. He is on trial for his life, and if I push these questions to you, you must excuse me; it is necessary that I should do it to ascertain how much you know.  
 Mr. PIERREPONT. I do not see any object in such a speech. Why not put the question?  
 Mr. BRADLEY. I submit that is just as rude as the other was out of the way.  
 Mr. PIERREPONT. I submit that the other is out of the way, and I ask the court whether it is in the way.  
 Mr. BRADLEY. I was apologizing to the witness for pressing him, and I had a right to do so.  
 Mr. PIERREPONT. There was no pressure of the witness, and I submit whether these speeches to the witness are proper.  
 Judge FISHER. I do not see that there was any thing improper in it, but it consumes time.  
 Mr. PIERREPONT. If your honor thinks it is not improper, I suppose it is proper.  
 Mr. BRADLEY. I will go on. (To the witness.)

I ask you again if you can fix any time within your memory when the construction train left Montoursville in the afternoon?

A. Yes, sir, I can.

Q. Now, go back and fix that time whenever you can recollect it?

A. It is almost an every-day occurrence now for the gravel train to do that.

Q. I am not talking about now, but about the time they were reconstructing this road. I confine it to when these construction trains were running?

A. I cannot fix any day.

Q. Can you recollect a time, during those repairs, when a construction train ran out and came back to Montoursville and went out in the afternoon?

A. I cannot fix any date.

Q. Can you state how far that train had to run before it discharged its first load on the 13th of April?

A. No, sir, I cannot.

Q. If it went to Watontown, would it return in time to go out again before two o'clock?

A. Yes, sir.

Q. It would do so?

A. It could do so.

Q. I do not ask whether it could; I ask whether it would do so. If it ran down to Watontown, would it come back to take another load in the course of the work?

A. Yes, sir.

Q. Now, just recollect an instance when a train leaving Montoursville ran to Watontown and back again before two o'clock, while you were making those repairs?

A. I do not understand.

Q. See if you can recollect an instance, while they were making those repairs, in which the construction train ran out from Montoursville to Watontown and back again before two o'clock and then went out again in the afternoon?

A. I say I cannot remember, because I was not with the trains all the time.

Q. Where did you first see the prisoner at the bar after you came here?

A. Sitting about where he is now.

Q. Who pointed him out to you?

A. I do not remember.

Q. Who summoned you here, do you know?

A. Mr. Montgomery, I believe.

Q. Is he the same Mr. Montgomery who was examined on the conspiracy trials?

A. I do not know. I never saw him until he came up there.

Q. When did he summon you?

A. I think Thursday-night week.

Q. Did he tell you what he wanted?

A. Not particularly.

Q. He did not?

A. No, sir.

Q. Did he not call your attention to the running of these trains?

A. He asked me what I was doing about that time?

Q. Is that all?

A. Whether I could not remember some incidents.

Q. Some incidents of what?

A. Some that happened.

Q. What incidents; any particular incidents?

A. Well, I do not know that he called any thing in particular to my attention more than what happened about that time.

Q. Did he ask you what happened on the 13th of April?

A. I think he did.

Q. Did he tell you any thing about a man passing there on the 13th of April?

A. I think he did.

Q. Did he tell you what sort of a man it was?

A. Yes, sir.

Q. Did he tell you about what time he was supposed to have got to Williamsport?

A. He may have done it in course of conversation.

Q. Did he tell you by what train he was supposed to have arrived at Williamsport?

A. Yes, sir.

Q. Did he describe to you what sort of a man it was?

A. I do not know that he gave me a description.

Q. Did he say any thing about his dress or clothing?

A. Yes, sir; I think he did say something about his dress?

Q. Did he say any thing about his going across the ferry?

A. Not when he came there first.

Q. Did he when he came there the second time?

A. I cannot say as to that positively.

Q. You do not recollect his saying any thing about crossing the ferry?

A. He may have done so in the course of the conversation.

Q. Did he have any photograph of the man?

A. Not that ever I saw.

Q. You think he may have told you about his crossing the ferry in the second conversation?

A. Yes; he may have done so.

Q. Have you yourself been engaged in serving summons for witnesses in this case?

A. I have served two.

Q. Who got you to serve them?

A. That gentleman sitting there. [Pointing to Colonel J. A. Foster.]

Q. You have been away from here since you came first?

A. I have been away; my family has been sick; by that means I got a chance of being home over Sunday.

Q. Your family was sick, and you went to serve summons?

A. He gave me a summons, thinking I could get home in that way.

Q. Did you serve the summons in your neighborhood?

A. No, sir; but I served them and got home.

Q. Where did you summon those persons?

A. One in Baltimore and one at Smyser's station, on the Northern Central railroad.

Q. Was that on your way home?

A. Yes, sir.

Q. Did you tell them what they were expected to prove—what they were to be inquired of about?

A. I told them they were wanted for something about the running of the trains. I did not just explain to them, because I did not have time.

Q. Nothing about any man?

A. No, sir.

Q. Only about trains?

A. Yes, sir.

Q. Do you know the name of the gentleman who got you to serve those summons?

A. Foster, I believe.

Q. What had he to do with getting you off?

A. I do not know; I had been very anxious the whole week to get off.

Q. Had you thought at all after that 13th of April of the man who was in a hurry to get across the river until Mr. Montgomery came after you?

A. I had a conversation with a gentleman afterwards.

Q. How long afterwards?

A. The same evening or next morning; I cannot say.

Q. I ask you whether it had not passed out of your mind?

A. Yes, sir, it had.

Q. When you were here the first time or the second was any examination taken down in writing by anyone—any notes made of your evidence?

A. I cannot say as to that; there may have been.

Q. Did not the gentleman with whom you were talk-

ing make notes of what you said you could prove and write it down in your presence?

A. I think Mr. WILSON may have done it; I cannot say.

Q. Anybody else?

A. Not that I know of.

Q. This gentleman in black [Colonel Foster] did not do it?

A. No, sir.

L. J. A. McMILLAN

recalled for the prosecution in rebuttal.

By Mr. PIERREPONT:

Q. State whether you had any quarrel with Mr. Boucher?

A. I had.

Mr. BRADLEY. I think that is entirely collateral, Mr. MERRICK. We agreed that it might come in.

Mr. PIERREPONT. It is according to arrangement.

Mr. BRADLEY. Then I have not a word to say.

By Mr. PIERREPONT:

Q. State what it was, when it was, and where it was?

A. In the summer of 1864 we had in Canada general elections. Mr. Boucher advocated the cause of one of the candidates in the county of Shefford and I the other. During the elections I met Mr. Boucher twice. Mr. Boucher was then attending two different churches, one in West Shefford and the other in North Shefford. On the occasion of meeting him at West Shefford, I, being in his house, ran out by the back door and went in front of the church and dispersed or told the people there to go away.

Mr. BRADLEY. I should like to know where this is to lead to.

The WITNESS. I have to give the cause—

Mr. BRADLEY. I am speaking to the court.

Judge FISHER. (To the witness.) Come to the quarrel.

Mr. PIERREPONT. Come to the termination of the contest or quarrel as soon as possible.

A. From that date I did not see Mr. Boucher for about six or eight weeks. Mr. Boucher was owing me some money and it had been due for a year or more. I wrote to Mr. Boucher and enclosed my bill. He never answered it. I wrote the second time and then he came down to my office, and there, in the presence of Doctor Erskine, who was then my partner, he asked me what I had written such letters for. I told him I had written the letters because he was owing me, and I thought it was time he should pay.

Mr. BRADLEY. Mr. MERRICK can state the agreement; I was not here at the time; but I do not want to go into all this collateral matter and have to call back other witnesses.

Mr. MERRICK. I will state to your honor, I do not want to range over all this matter and call Father Boucher again. Father Boucher referred to a conversation he had with McMILLAN in his (Father Boucher's) house; and he went on to detail the circumstances of a quarrel that occurred there, when he put McMILLAN out of his house. The gentlemen on the other side interrogated that that was a collateral matter, but said it might be gone into if they were allowed to rebut it, and we said yes.

Mr. PIERREPONT. That was it.

Mr. MERRICK. It was confined to that particular matter. Now, the witness can go to Father Boucher's house by a construction train or a regular passenger train, without all this circumlocution, and take the matter up there.

The WITNESS. I will tell you just what happened there.

Mr. PIERREPONT. Just come to the quarrel.

A. The day referred to I was passing by Father Boucher's house. His hired man came to the road and hailed me and asked me to come in.

Q. Was anybody with you?

A. There was another gentleman with me. I got out of my carriage and walked into Mr. Boucher's house. He directed me into the parlor and closed the door. He then said, "You are a very nice man to send me such a person as you did yesterday," referring to a bailiff whom I had sent to him the day previous. I said, "Mr. Boucher, I served you as you deserved." He then said, "Sir, you are a scoundrel and a blackguard." I said, "You are — a gentleman;" and I took my hat to go out. As I was going through the door he tried to slam the door on me, and I turned round and slapped him across the face. That was the quarrel.

Q. Now, tell us whether any thing was said about abortion or any such subject in any mode, shape, form, or manner, discussed between you and him then or ever.

A. I never heard Mr. Boucher in all my life speak the word "abortion" to me in any way whatever.

Q. Was that subject alluded to or reference had to it.

A. He never alluded to it in any way whatever.

Q. Did you do him?

A. I never did.

Q. In order that there may be no mistake, and that it may not be said some other word might have been used, a French word or any other, let me ask was any thing that indicated it or that meant it in French or English, or any other language, used?

A. I understand the French language perfectly well, and Mr. Boucher never spoke to me in the French language or any other language of "abortion" or any thing pertaining to it.

Q. What do you say to such a statement of that conversation?

A. I say it is an utter falsehood.

Cross-examined by Mr. BRADLEY:

Q. You say you were riding by Father Boucher's; who was riding with you?

A. A gentleman by the name of Edwin Kemp.

Q. It was not Dr. Erskine?

A. It was not.

Q. You were here yesterday when Mr. Boucher was cross-examined?

A. I was.

Q. Did you not suggest to counsel—

A. I did not—not a question.

Q. Did you not suggest to him to press Mr. Boucher whether there was not somebody present at the time of the quarrel?

A. I did not.

Q. Were you here the other day when DuTilley was examined?

A. I was not; I was absent from the court at the time.

Q. I ask whether you furnished the counsel with any interrogatories to DuTilley about the money which Boucher owed you?

A. I did.

Q. What amount did you mention?

A. Ten dollars.

Q. Not fifteen hundred dollars?

A. Fifteen hundred dollars! No; I never saw the fifteen hundred dollars, only in a newspaper.

Q. I did not ask you about a newspaper; I ask you about the amount you mentioned in your memorandum.

A. I did not; I said nothing of fifteen hundred dollars or any thing else but ten dollars.

Q. Then how much did Mr. Boucher owe you?

A. He owed me ten dollars.

Q. Had you made a subscription to the church?

A. I had.

Q. At the time of this trouble between you and Father Boucher, had you paid up that subscription?

A. I had not.

Q. Did not Father Boucher propose to pay the church and pay you the difference?

A. He did.

Q. Do you recollect whether he paid that money for you?

A. He did not.

Q. Who did?

A. I paid it myself.

Q. Who paid to you the money he owed you?

A. The money was paid; I am not positive who paid it to him, but it was paid to the bailiff, Charles S. Martin, for me.

Q. Did you give any receipt for it?

A. The bailiff did.

Q. Did you give any receipt for it?

A. I did not, because he was acting for me.

Q. Do you recollect when it was paid?

A. I do not recollect the date; I believe sometime in September—on a Monday in September.

Q. Do you remember the year when it was paid?

A. In 1864.

Q. The month?

A. I believe it was in September, 1864, or August; either one or the other.

Q. [Handing a paper to the witness.] Do me the favor to look at that paper and see whether the signature to it is your signature.

A. Yes, that is my signature.

Mr. BRADLEY. I will read it: "Received, Waterloo, 20th June, 1864, from Rev. Charles Boucher"—

Mr. CARRINGTON. Let us see it.

Mr. BRADLEY. It is a receipt which he gave to Father Boucher in his own handwriting.

Mr. CARRINGTON. Do not read it until we see it.

Mr. BRADLEY. (To the witness.) This paper is your signature?

A. It is not a paper for the whole. I say the money was paid to Mr. Martin for me.

Q. How much did he owe you?

A. Ten dollars.

Q. How much did he pay you?

A. Martin received ten dollars.

Q. And when did you visit Boucher?

A. I visited Mr. Boucher himself once and his sister twice.

Q. What year—what time?

A. I believe the first visit I paid to Mr. Boucher was in 1863, and to his sister it was in the spring of 1864.

Q. Now, let me read to you?

Mr. CARRINGTON. I object to that paper.

Mr. BRADLEY. The court will say whether I can offer it in cross-examination or not.

Judge FISHER. What is the objection?

Mr. CARRINGTON. Your honor will see. The witness refers to some transaction in September. You will find by an inspection of this paper that it is dated in June.

Mr. PIERREPONT. If the paper is to be read to the jury, we have a right to inspect it.

Mr. BRADLEY. You may examine the paper.

Mr. CARRINGTON. Do not read it until we have made our objection.

[The paper was handed to the counsel for the prosecution, and afterwards to the court.]

Mr. CARRINGTON. My objection is, that it is entirely collateral, and it is not responsive to the examination. It refers to a different time.

Judge FISHER. Well, gentlemen—

Mr. PIERREPONT. Will your honor wait a moment? We do not object.

Mr. CARRINGTON. On reflection my associates, Judge PIERREPONT and Mr. WILSON, think we had better make no objection, and I withdraw it.

Mr. BRADLEY. Then I will read it:

"Received, Waterloo, 20th June, 1864, from Rev. Charles Boucher, five dollars, in full of all accounts up to this date.

\$5.  
"L. J. A. McMILLAN."

(To the witness.) I understand you to say that that bill was due more than a year, for which you had this quarrel; and you think it was paid in September, 1864?

A. This bill is for the visit that I made to Mr Boucher

himself. I called again twice afterwards, in the spring of 1864, on his sister, and the other bill in September was for those two calls that I made in the spring of 1864 to his sister.

Q. Then it was not due a year?

A. No; of course not. Those ten dollars were not due a year. The previous bill was.

Q. But that had been paid?

A. Very well.

Q. So now I understand you to say that you visited his sister in the spring of 1864, and you issued a writ against him in the fall—in September, 1864?

A. I did not sue him.

Q. You put it in the hands of a bailiff?

A. For collection.

Q. In September, 1864?

A. Yes; about that time.

Q. It was paid then?

A. It was paid after I threatened to sue the gentleman.

Q. Then it was not due a year?

A. It was not. If it was in the spring of 1864, it could not be a year in September, 1864.

Q. And you say now, positively and distinctly, that you had another bill against him for ten dollars for other services rendered after this?

A. Yes, sir.

Q. Why did you not render your account against him for the whole amount when you rendered it in June?

A. Because at that time Mr. Boucher paid me that account. We were on very good terms together and he paid me that.

Q. Why did you not render your bill at that time for services rendered his sister?

A. He did not ask me for my bill. He just paid me that amount, and said he would give me that at present.

Q. Why did you give a receipt in full of all accounts?

A. I believe those visits to his sister were made after the giving of this bill.

Q. Then they could not have been in the spring of 1864?

A. Spring is up to June.

Q. Then, if they were in the spring and the spring is up to June, and this money was paid on the 20th of June, they were not rendered in the spring? Am I not right?

A. Repeat the question.

Q. If they were rendered in the spring of 1864, and the spring ends on the first of June, and the money was not paid until the 20th of June, the visits could not have been rendered after that?

A. I believe the spring lasts until the 21st of June.

Q. Then you think the visits to his sister were after the 21st of June, 1864?

A. They may have been. I am not very positive; I have not got my books.

Q. But at first you were under the impression that they had been rendered a year before September; that the money had been due a year.

A. I was not under the impression that I had attended his sister a year previous to that. I spoke about himself—the visits I had made to himself personally.

Q. Did you not state to the court and jury that that money had been due for more than a year, and that you had written twice to him about it?

A. I did.

Q. Did you not state that during that summer you had written to him, and he had a meeting at your office when Dr. Erskine was present?

A. That meeting was in the fall, or at least in August or September.

Q. Did you not say, "July or August?"

A. No; I said August or September.

Q. Your memory is quite as distinct about the nature of that account as about any thing else, is it—that it was the account of his sister?

A. It was an account for his sister.

Q. You did not tell the jury at first that it was an account for his sister.

A. I spoke in a general way of his account, because the account against his sister was supposed to be paid by him, and of course I spoke of the account against his sister in conjunction with his, because his sister was with him, living with him, and he paid whatever expenses she incurred.

Q. When was she living with him?

A. In the summer of 1864; and in 1863 I saw her there.

Q. Now, can you tell the jury what time you attended her; about how long before you put that claim in the hands of a bailiff?

A. It was some months, two or three months—perhaps four months. If I had my books here I could say.

Q. We are talking about memory now, not books?

A. Very well; it was about two or three months—say four months.

Q. Now, what time was it you had this quarrel at Father Boucher's house?

A. It was, I believe, at the latter end of August or the beginning of September.

Q. You had then put the claim in the hands of a bailiff, you say?

A. Yes, the bailiff had been to Mr. Boucher's house the day previous.

Q. Then the visits you speak of were rendered after the 20th of June, and about the last of August or first of September you put this account in the hands of a bailiff; and yet you had made these visits three or four months before you put the account in the hands of a bailiff. Is that so?

A. If you will repeat the question I will answer you.

Q. I understand you to say that these visits were rendered after the 20th of June, and you put the account in the hands of a bailiff about the last of August or the first of September, and yet you say these visits were rendered three or four months before you put the account in the hands of a bailiff?

Q. I said three or four months. I may be mistaken. It may have been two months.

Q. I want to see what your memory is about it now; how far you yourself can rely on your memory. What is your memory about it now?

A. My memory is that I attended his sister during the spring or summer of 1864; exactly what time I cannot positively say. I have not got the dates every time I went to see a patient in my memory.

Q. I am asking you now about your memory, so as to see how far you can rely on your memory when we come to talk about another matter—that quarrel. I ask you now to the best of your memory when were these visits paid to the sister?

A. In the summer or late in the spring of 1864.

Q. And after the 20th of June, I understand you?

A. Yes, it may have been after the 20th of June.

Q. Your impression is that spring continues to the 21st of June?

A. I believe it is so stated.

Q. How did you fall into that mistake of saying that the money had been due more than a year before the quarrel with Father Boucher?

A. I had forgotten altogether about the receipt.

Q. Now that the receipt is produced, it refreshes your memory?

A. Certainly.

Q. If you visited his sister after the date of that receipt, it must have been sometime late in June or July that you made those visits?

A. Yes, sir.

Q. Had you any quarrel with Father Boucher before that time—before you paid those visits to his sister?

A. Not at all.

Q. Then the quarrel, the first difference between you, was after you had paid those visits to his sister?

A. Yes, sir.

Q. How long after?

A. I cannot say exactly. I know it was after the general elections we had that summer, and I believe the elections were sometime in August. It was after those elections that the quarrel was.

Q. Had you had some dispute with him before that?

A. No, sir.

Q. During the elections?

A. No; I never had a dispute with Father Boucher but once.

Q. Now, tax your memory again about the election. When was that election held?

A. The election was held, I believe, in the beginning of August. I am not very positive, but I know it was sometime in the summer.

Q. What election was that?

A. A general election for the whole province of Lower Canada.

Q. Was not that held in the month of June?

A. I do not think it was, but it may have been. I am not very positive as to the time.

Q. Recollect now if that election was not held in the month of June?

A. The elections in Canada are not all held at the same time.

Q. I mean that year?

A. That year I do not know that it was.

Q. Was not the election in the district where you resided held in the month of June?

A. I do not think it was. It may have been, but I do not think it was.

Q. Now, do you remember when the returns of the election were to be made?

A. I do not know.

Q. Did you take an active part in that election?

A. I did.

Q. You took an active part in the election, and you cannot tell whether it was in June, July, or August?

A. I say it was in the summer of 1864. I do not recollect exactly the date. I know it was very hot weather at that time, and that is what makes me believe it was in August.

Q. Do you have any hot weather in June in that country?

A. Yes, but our hottest is generally in August.

Q. Now, to come down to the day of the quarrel, can you fix within a week, or two weeks, or three weeks, when that quarrel occurred?

A. No, sir. All I can say is, that it was five or six weeks after the election, or perhaps not so much—four or five weeks. It was on a Saturday. I was passing in front of Mr. Boucher's house and his man called me in.

Q. Were you one of his parishioners?

A. I was not.

Q. Did you belong to that Church?

A. I never attended his church.

Q. I mean do you belong to the Catholic Church?

A. I am a Catholic.

Q. Was there any other church in that parish?

A. There was.

Q. Besides his?

A. No. Mr. Boucher attended two churches, one in West Shefford, where he resided, and he had a mission at North Shefford.

Q. In what parish were you residing?

A. I was residing in the township of Shefford, the same township in which Mr. Boucher lived.

Q. But you did not attend the church all the time you were there?

A. Not his church.

Q. What church did you attend?

A. I went to the Episcopal church.

Q. How long were you there?

A. I was there, in the township of Shefford, from the spring of 1863; I believe I came there in March, and I left there in October, 1864.

Q. You left there shortly after this quarrel, then?

A. Yes, a short time afterwards

Q. Where did you go then?  
 A. I went to sea.  
 Q. On one of those steamers?  
 A. I went with the Canadian Steamship Company.  
 Q. The steamers running from Quebec to Liverpool?  
 A. Yes, sir.  
 Q. Did you ever reside in Montreal?  
 A. Only when I studied medicine.  
 Q. You were from the spring of 1863 to the fall of 1864 in the parish of Mr. Boucher?  
 A. Not in his parish. It is not considered a parish at all.  
 Q. Well, in the same township?  
 A. In the township.  
 Q. Was it not the parish of West Shefford?  
 A. I did not reside in the parish of West Shefford.  
 Q. Did not the parish extend all over the township of Shefford?  
 A. I believe what is called in Canada canonically, it was divided into two parishes. Mr. Boucher could explain that better than I can. The township of Shefford was divided into two different parishes.  
 Q. Did you reside at Waterloo?  
 A. I did.  
 Q. Was not that in one of those parishes?  
 A. Not at that time.  
 Q. Between the fall of 1863 and 1864?  
 A. It was not. Since then they have built a church there.  
 Q. You say that canonically they were divided so and so; civilly were they not also?  
 A. It may have been, but not that I knew—not that I was aware of.  
 Q. Now, to come to the incidents of that quarrel, I understand you to say that Father Boucher invited you into the parlor and closed the door; how long before that had you made a subscription to the erection of the church?  
 A. In the winter previous.  
 Q. Was nothing said by him in that interview about that?  
 A. Not a word.  
 Q. He simply complained that you had sent a bailiff after him?  
 A. Yes.  
 Q. He insulted you?  
 A. Yes, sir.  
 Q. And when you offered to go out he tried to stop you, and you slapped his face?  
 A. I did.  
 Q. And that was the end of it?  
 A. It was. I was not in the house two minutes.  
 Q. And your memory is quite distinct about that?  
 A. It is quite distinct.  
 Q. Is it any more distinct about that than it was about the time you visited his sick sister after the 20th of June?  
 A. Far more so, because the action that he did then was enough to make me remember everything.  
 Q. And you remember very well your slapping him in the face?  
 A. I do.  
 Q. Was that at the parlor door or at the front door?  
 A. At the front door.  
 Q. Did he follow you to the front door?  
 A. He did.  
 Q. What happened there?  
 A. He tried to slam the door after me and I just turned around and slapped him in the face.  
 Q. I thought you said it was at the parlor door?  
 A. I did not.  
 Q. Did you then get into the carriage and drive off?  
 A. I did.  
 Q. And you say positively that in that conversation nothing was said such as he repeated here—I do not want to repeat it again—as to the cause of the quarrel?  
 A. No; he never did.

Q. And you never previous to that time had had any conversation with him on that subject?  
 A. I never had.  
 Q. Were your associations there principally with the English or the French population?  
 A. I associated with both.  
 Q. Do they intermingle a great deal, or do they live very much separate?  
 A. There is not much communication between the two.  
 Mr. PIERREPONT. Does your honor see any possible connection in this? I object to it, and want it ruled upon.  
 Mr. CARRINGTON. As I understood, Dr. McMillan was recalled to a single point in reference to the quarrel between him and Father Boucher.  
 Mr. PIERREPONT. This question is whether the French and English associated much together.  
 Mr. CARRINGTON. It seems to me it is taking a very wide range. I have not interposed an objection up to this time, but I think it proper to do so now.  
 Mr. BRADLEY. He has answered the question.  
 Judge FISHER. I do not see that it has any pertinence.  
 Q. (By Mr. BRADLEY.) You say you did not suggest to counsel the question whether Dr. Erskine was with you on this occasion or not?  
 A. I did not.  
 Q. Did you put him right when he interrogated Father Boucher about that?  
 Mr. PIERREPONT. Do not answer any more questions on the subject of what you suggested to counsel. I have not interrupted it; but now, as it is going to be repeated, I do.  
 Mr. BRADLEY. I am asking him what he said—whether he permitted counsel to put certain questions to the witness on the stand yesterday, he not being a party to the suit or interested in this issue.  
 Mr. PIERREPONT. They asked him that before, and he stated. Now they are repeating it, and I object. I object on both grounds—first, it has been asked, and second, it is improper.  
 Mr. BRADLEY. I do not recollect having asked it before.  
 Judge FISHER. Yes, you did; and you specified specific questions.  
 Mr. BRADLEY. Now, if your honor please, I ask him whether, when counsel put such questions to the witness on the stand, he, sitting beside him, corrected him and put him right. That is the point.  
 Mr. PIERREPONT. I object to it.  
 Judge FISHER. I cannot see that it has the slightest relation to the case.  
 Mr. PIERREPONT. He would not have any right to do so if he did. Whatever passes between counsel and anybody in the case cannot be given in evidence; otherwise you could call counsel to contradict it.  
 Judge FISHER. I cannot see, and I have thought of speaking of it several times, what right counsel have to know about the preparation of the case, how the counsel on the other side have prepared their case. They have a right to prepare their case in their own way. They have a right to employ whom they please, so that they use no corruption or bribery. They have a right to call to their assistance whoever they please. Nothing is more common than for counsel on one side or the other, in civil and criminal cases, to have witnesses sit by them, so that they may give what information they have, and there is nothing whatever improper in it; and I do not see why such questions should be asked the witness. I never saw it in any other court.  
 Mr. BRADLEY. I think I have not asked any thing about any conversation between the counsel and witnesses pertinent to this issue. I have asked as to persons other than counsel; but as to the counsel, I have sedulously avoided that. But if your honor says I have

no right to ask a witness, who is called to contradict another witness, whether he did not suggest to counsel in court certain interrogatories, I submit to the ruling of the court.

Mr. PIERREPONT. I submit that the gentleman has no such right.

Judge FISHER. Suppose it were so, how would counsel know any thing about his case if he does not get a knowledge from those who possess that knowledge—the witnesses?

Mr. BRADLEY. On the contrary, I think it is very right and proper. I am not complaining of it; but while I am not complaining of it, I want the jury to see whether this witness sits by and hears a string of interrogatories put without interruption, that the jury may see the temper and disposition of this witness.

Judge FISHER. Suppose he does, he has no business to meddle with counsel.

Mr. PIERREPONT. It might show the disposition and temper of counsel if a witness sitting by undertook to interrupt him; he would not have any business to do it.

Judge FISHER. I should not want a witness to be prompting me at every question unless I desired to know something about it, and then I would ask him for information.

Mr. BRADLEY. I think it is perfectly right; I do it myself, and of course I think it right.

By Mr. PIERREPONT:

Q. Now, doctor, I will ask you one or two questions. You have been asked several in relation to this church subscription and what Boucher said about the subscription. What was that; what did you and Boucher say about the subscription?

Mr. BRADLEY. The question I put was this: they asked him on his examination-in-chief whether Boucher said any thing to him about the subscription, and so on, and he went on to tell; then, in the cross-examination, I asked him positively to state whether Boucher did or did not; and that is all that has been said about it, except when that subscription was made. That was the only question I asked him about it.

Mr. PIERREPONT. I asked him about the quarrel.

Mr. BRADLEY. Yes, and asked him about the subscription.

Mr. PIERREPONT. I asked him about the quarrel and I did not ask him about the subscription, but I do now.

Judge FISHER. But he went on to tell something about the subscription.

Mr. PIERREPONT. I know he did. I want now to ask him what passed between him and Boucher about the subscription.

Mr. BRADLEY. At the time of the quarrel?

Mr. PIERREPONT. At any time.

Mr. BRADLEY. No; I have not asked him about any thing else.

Mr. PIERREPONT. You have asked him about the subscription, and now I ask him about the subscription.

Mr. BRADLEY. We object.

Judge FISHER. I do not see that we shall ever end the case if we go into all these collateral matters. I am very sorry the quarrel was let in by agreement. It has cost us an hour and a half of our time. This must be excluded.

JOHN ERSKINE,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What is your occupation?

A. I am a physician and surgeon in Waterloo, Canada East.

Q. How long have you lived in Canada East?

A. I was born there and have lived there ever since.

Q. Do you know Dr. McMillan?

A. I do.

Q. Do you know his reputation for truth among the people with whom he dwells and associates?

A. I did during the time he was at Waterloo.

Q. Before he went into the steamship service?

A. I have known him for nine years. I knew him in Waterloo, and I knew him before he went to Waterloo.

Q. And before he went to sea on the steamers did you know his character?

A. I did, perfectly.

Q. State to the jury whether it was good or bad?

A. It was perfectly good. I never heard of a person that had really a better character.

Mr. PIERREPONT. That is all.

Mr. BRADLEY. That is not all; it is simply a question as to his character for truth, not any thing else.

Judge FISHER. (To the witness.) Confine yourself to his reputation, among those who knew him, for telling the truth, as a man of veracity.

A. I never heard it questioned.

By Mr. BRADLEY:

Q. Do you mean that you never heard it spoken of?

A. I never heard it spoken of. His character was always considered in every respect as perfectly good.

Q. Did you ever hear anybody express an opinion about his being a man of truth and veracity?

A. No, sir, I never did. His veracity was never called in question.

Q. (By Mr. PIERREPONT.) What was that character for truth and veracity—good or bad?

Mr. BRADLEY. How can he tell if he never heard it spoken of?

Mr. PIERREPONT. I submit that he can, and that the rule is perfectly well settled. Whenever you come to sustaining a witness, it is always so. As the counsel very justly and truly said the other day, witnesses of high character are not discussed in any community. If a witness stands high in a community, as the counsel said the other day, if he has a lofty character, it is not discussed on the subject of his truth; and if it is not discussed and never called in question, that is the character he has for truth; and that is the rule, too, when you come to sustaining a witness. Now, I ask whether his character was good or bad.

Mr. BRADLEY. It is simply a question for the jury to infer. The witness says: "I never heard the question of his truth or veracity spoken of; no one has spoken of it." What the effect of that is, is another thing.

Mr. PIERREPONT. He said he never heard it called in question.

Mr. BRADLEY. Now, can they recall the witness to ask him what that character was in the neighborhood? He was interrogated in his examination-in-chief as to whether he knew Dr. McMillan; he answered that question. He was then asked what was his character for truth and veracity, and he said he never heard it called in question. I asked him: "Did you ever hear it spoken of by anybody," and he says, "No, I never did; I never heard it called in question." Is not that the end of the business? Those are the facts.

Mr. PIERREPONT. No, if your honor please, these are substantially the facts: I had not finished with the witness at all; I have never turned him over to the other side yet; I was going on with my examination; but they in their zeal took him out of my hands.

Mr. BRADLEY. I beg the gentleman's pardon. I refer to the notes. I say the counsel did ask the question as to general character, and I waited until he had done.

Mr. PIERREPONT. I did not turn him over, and the notes will show it.

Mr. MERRICK. No doubt he was turned over. I know he was.

Mr. PIERREPONT. I am not so positive; but I

say the other side took him out of my hands. Now, I insist on my right to put this question to the witness. What was his reputation for truth and veracity—good or bad.

Mr. BRADLEY. I submit that the witness, having testified as he has, has stated all he knows about the reputation, for he says he never heard a human being speak of it.

Judge FISHER. I think the question may be put.

Mr. PIERREPONT. I put the question, What was his reputation for truth and veracity?

A. It was perfectly good.

Mr. PIERREPONT. Now you may take the witness.

Q. (By Mr. BRADLEY.) Did you ever hear anybody speak of his character for truth and veracity?

A. I will explain that. I mean by that to say his character was above reproach.

Mr. BRADLEY. That is not what I want to know. I ask whether you ever heard anybody talk of his character as a man of truth?

A. No, sir; I do not think I ever heard it called in question.

Q. That you answered before; but did you ever hear anybody talking about his character in that respect?

A. No, sir; I do not recollect?

Q. You never heard his character for truth discussed?

A. No, sir.

By Mr. CARRINGTON:

Q. How long did you know him?

A. Nine years.

Q. (By Mr. PIERREPONT.) Now, doctor, I come to another subject. Did you have any conversation with Boucher in relation to the subscription about which I asked him yesterday?

A. No—

Mr. MERRICK. Do not answer that question. I object.

Judge FISHER. What is the objection?

Mr. BRADLEY. That it is wholly irrelevant.

Mr. PIERREPONT. My reason for asking it is to contradict Boucher upon what we asked him yesterday.

Mr. BRADLEY. It is entirely irrelevant, and if it were not, the question is answered.

Mr. MERRICK. He answered the same as Mr. Boucher did. It confirms Boucher.

Mr. PIERREPONT. Then I shall ask another question, if they say this is answered. I did not hear it answered. Did you hear a conversation between Dr. McMillan and Mr. Boucher in your office?

Mr. BRADLEY. We object. What is it about?

Mr. PIERREPONT. About the subscription.

Mr. BRADLEY. We object to it.

Judge FISHER. That is a collateral matter.

Mr. PIERREPONT. If your honor says it is collateral, we will drop it.

#### ERNEST RACICOIT.

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. At Swedesburgh, in the district of Bedford, county of Missisquoi, Canada East.

Q. What is your occupation?

A. I am a barrister; a member of the bar. "Advocate," we call it in Canada.

Q. Do you know Dr. McMillan?

A. I know him very well.

Q. How long have you known him?

A. I have known him about fifteen years at different times.

Q. Do you know his reputation for truth and veracity among the people with whom he associates and with whom he dwells; and, if so, is it good or bad?

A. Yes; it is good. I have never heard any thing

against it, and I was in the same district he was. He was in the county of Shefford, and I in the county of Missisquoi.

Cross-examined by Mr. BRADLEY:

Q. How long did you reside in the same district with Dr. McMillan?

A. I have resided in the district of Bedford since the fall of 1859, at Swedesburgh?

Q. How far from Waterloo?

A. Nineteen or twenty miles. I cannot tell exactly.

Q. Is there any rail between these two places?

A. No, sir; not directly. The direct road is by carriage.

Q. How often were you at Waterloo?

A. I was there every term of the court.

Q. How often was that?

A. Three times a year, and I went there several times besides.

Q. How long did Dr. McMillan reside at Waterloo?

A. I think he resided at Mansquville first, and came to Waterloo in 1863, or somewhere about that time. I did not pay much attention to the time he came there.

Q. How long did he stay at Waterloo?

A. Up to the time he went to sea, which, I think, was in the fall of 1864.

Q. During that time how often were you at Waterloo?

A. As I said before, every term of the court I went there, and I went there several times besides, just when I happened to have any business or any thing to call me there. I saw him at Swedesburgh, too, pretty often.

Q. How long does the term of the court last?

A. Two or three days each time, generally.

Q. Did you see him attending court?

A. No; I do not recollect that he had any business in court. He was practising his profession there in the township.

Q. How often did you meet with him?

A. I am sure I cannot tell. I used to meet him very often. I do not say I saw him every time I went to Waterloo; perhaps he was sometimes away.

Q. Did you ever talk with anybody in Waterloo about him?

A. A great many persons. Mr. Huntington spoke about him.

Q. Did you speak any thing about his truthfulness?

A. In fact his truthfulness was never called in question. I never heard any one say any thing against his character one way or the other. He was called a good doctor. That was all I knew about it.

Q. Did he ever attend you as a physician?

A. No. When he came to Swedesburgh sometimes, if I wanted any pills, he would give me some pills. When he was on the ship, sometimes he would come to Swedesburgh to pay a visit; and if I wanted any thing I would get it, but not as if he were my regular physician. He was never my regular physician; in fact, I never had any regular physician.

#### LEVI A. PERKINS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In the township of Poten, Canada East.

Q. What is your occupation?

A. I am clerk of the commissioners' court and the courts of justice.

Q. Did you ever live in the same village with Dr. McMillan?

A. I did.

Q. How long?

A. From the fall of 1860 to the spring of 1862, I think. I would not be positive.

Q. Did you know his general character and reputation as a man of truth among the people with whom he associated?

A. I did.

Q. State to the jury whether it is a good one or a bad one?

A. I never heard any one speak of his reputation as being bad; I always heard him well spoken of.

Cross-examined by Mr. BRADLEY:

Q. How far is this village where you lived, Poton, from Waterloo?

A. I call it twenty miles.

Q. Is there any railroad running between the two?

A. No, sir.

Q. How often were you in Waterloo?

A. I have been there frequently; I cannot say how often.

Q. How often were you in Waterloo during the years 1863 and 1864?

A. I could not tell the times of the year I was there. I was there several times during the doctor's residence in Waterloo.

Q. Were you there on business connected with him?

A. I do not know that I was. I think I went there one time on a visit. I do not remember any business transactions; still there might have been; I have had several business transactions with the doctor.

Q. During that time did you ever hear any thing said about Dr. McMillan that you recollect—good, bad, or indifferent?

A. I have heard him spoken of.

Q. I mean during that time, from the spring of 1863 to the fall of 1864 at Waterloo, did you ever hear him spoken of at all—any thing said of him, good or bad?

A. Yes, sir; I have heard several speak of him.

Q. I mean in regard to his character. You may have heard people say he was doing very well, or was a good physician, or something of that kind; but did you ever hear any thing said about his character?

A. Yes, sir, I heard several speak of it.

Q. Who are they?

A. Stevens, the cashier of the bank at Waterloo; Luke Robinson, a merchant there.

Q. What did Stevens say about him?

A. He said he was a fine man, a good doctor, and hoped he would get on, and continue to reside there.

Q. Who was the other?

A. Luke Robinson.

Q. What did he say about him—the same sort of thing?

A. Yes.

Q. Did you ever hear Reynolds, who keeps a hotel there, say any thing about him?

A. I do not think I ever did.

Q. Did you stop at the hotel kept by Reynolds?

A. Yes, sir; that is where I stopped when I was in Waterloo.

Q. You never heard him speak of him?

A. I do not recollect that I did; still I might.

JOSEPH W. GUPPY,

a witness for the prosecution in rebuttal, affirmed and examined.

By Mr. PIERREPONT:

Q. In April, 1865, what was your occupation?

A. I was assistant superintendent of the Erie railway.

Q. What is it now?

A. The same position.

Q. On the 13th of April, 1865, and the morning of the 14th, what time did the train leave?

Mr. BRADLEY. What train, and where?

Mr. PIERREPONT. From Owego to Elmira, going west to Elmira?

A. There were two or three trains that left that morning; the first passenger train left there at 4:38 a. m.

Q. On the morning of the 14th?

A. Yes, sir.

Mr. BRADLEY. You said 13th.

Mr. PIERREPONT. I said 13th first, but it is the 14th. What time should that train have reached Elmira?

A. 6:12 a. m.

Q. Do you know what time it did reach Elmira?

A. From the original report made to my office at that time it was on time.

Q. It reached there at 6:12?

A. Yes, sir.

Q. That was the first train, was it?

A. Yes, sir.

Q. Passing back into the night of the 13th, what was the last train before this at 4:38.

The WITNESS. Do you refer to a passenger or freight train?

Mr. PIERREPONT. Passenger train—the time when it left Owego.

A. 9:65 p. m. of the 13th.

Q. When would that be due in Elmira?

A. It reached there at 11:20.

Cross-examined by Mr. BRADLEY:

Q. Did any train arrive at Owego from Albany on the 13th? Was the Binghamton road open then?

A. Those trains would come in at Binghamton from Syracuse, not at Owego.

Q. There was no direct communication between Owego and Albany on the 13th?

A. I cannot tell you how the trains ran on the Syracuse and Binghamton railroad at that time.

Q. There were no trains from Binghamton, then, to Owego except these.

A. Yes, sir; there were several.

Q. Have you them?

A. Yes, sir.

Q. On the 13th what time did the train come in from Binghamton to Owego running west? A road ran down from Syracuse to Binghamton, striking the Erie road at Binghamton. Now, I want to know what time the trains reached Owego coming from Binghamton during the 13th?

A. The first one arrived at 4:40 a. m. on the 13th.

Q. When did that train leave Albany?

A. That is something I do not know.

Q. You do not know the connections of that road?

A. No, sir.

Q. How long does it take to run from Owego to Albany?

A. I should think, to go around that way, it would take twenty-four hours. I do not know how the connections are made.

Q. Suppose they make close connections from Owego, running by Binghamton to Albany, what is the shortest time?

A. I should think they might do it in seventeen hours.

Q. What is the usual route from Albany to Owego?

A. That would be the usual route, I suppose; but it would be according to the hurry a man was in. He might figure it out to go by Canandaigua quicker.

Q. He might make an elbow—come to Canandaigua from Albany, and then down to Elmira, and then up to Owego?

A. Yes, sir.

Q. (By Mr. MERRICK.) Was there any train running from New York on the Erie road at that time.

A. Yes, sir.

Q. What time did it leave New York?

A. One train left at seven in the morning, one at ten in the morning, one at five in the afternoon, one at six in the afternoon, and one at eight in the evening.

Q. Did they go by Owego?

A. Yes, sir, all of them.

Q. How many hours is it from New York to Owego?

A. Some trains about nine, and some fourteen.

Q. Take the afternoon trains on that road from New York. When was the first afternoon train?

A. Five o'clock.

Q. What time would that be due in Owego?

A. 4:30 the next morning.  
 Q. That would be nine hours and thirty minutes?  
 A. Yes, sir.  
 Q. That was the first train from New York in Owego?  
 A. Yes, sir.  
 Q. What is the time from Owego to Elmira?  
 A. About an hour and forty minutes.  
 Q. (By Mr. BRADLEY.) I want the return trains from Elmira to Owego on the 14th; the time they left Elmira and the time they reached Owego?  
 A. The first train on the 14th left Elmira at 12:35 in the morning and arrived at Owego at two o'clock.  
 Q. The next?  
 A. The next at 1:35 in the morning; that arrived at Owego at 3:05.  
 Q. The next?  
 A. The next one left Elmira at 5:30 a. m. and arrived at Owego at 6:54 a. m.  
 Q. The next?  
 A. Left Elmira at 7:45; arrived at Owego 9:45.  
 Q. The next?  
 A. Left Elmira at 11:40 and arrived at Owego at 12:50 p. m.  
 Q. The next one?  
 A. Left Elmira at 4:04 p. m. and arrived at Owego at six.  
 Q. (By Mr. MERRICK.) Are these time-tables that you made out, for our use here?  
 A. Yes; you can have them.  
 Mr. MERRICK. You might as well leave them here.  
 Mr. BRADLEY. Put your initials on them and leave them here.

ALMERON FIELD,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?  
 A. In Elmira.  
 Q. How long have you lived there?  
 A. Two years and since the 1st of May.  
 Q. Were you there on the 13th, 14th, and 15th of April, 1865?  
 A. I was there, but not a resident.  
 Q. What were you doing?  
 A. Overhauling the furniture in the Brainard House; negotiating for it.  
 Q. Did you purchase it?  
 A. I did.  
 Q. And you were there on the 14th of April?  
 A. Yes, sir.  
 Q. Describe to these gentlemen the Brainard House as it was on the 14th of April, 1865.  
 Mr. BRADLEY. What do you mean by describing it as it was?  
 Mr. PIERREPONT. The rooms.  
 Mr. BRADLEY. Is that rebutting in any sense? What does it rebut?  
 Mr. PIERREPONT. You brought a man here who said he saw another man in the reading-room.  
 Mr. BRADLEY. Do you mean to say there was not a reading-room there?  
 Mr. PIERREPONT. I do.  
 Mr. BRADLEY, Jr. Or a hall; he did not know which.  
 Mr. BRADLEY. He said expressly he did not see any books there, and did not know whether any papers were there or not; but a room where people sat and talked.  
 Mr. PIERREPONT. He could not tell.  
 Mr. BRADLEY. We are not talking of what he did, but of what he said.  
 Judge FISHER. The witness Bissell said he saw the prisoner in the reading-room.  
 Mr. BRADLEY. Turn to his testimony and let the gentlemen show what they want to rebut.  
 Mr. PIERREPONT. We want to rebut what he

said about meeting a man in the reading-room in that house.

Mr. BRADLEY. Let us see what he said  
 Mr. PIERREPONT. While you are looking for that, we will take another subject. You remember what he said about going into the Haight House; that he said he went into the Haight House.

Mr. BRADLEY. Suppose he did, it is collateral. What has that to do with it?

Mr. PIERREPONT. He said that he went in on that day.

Mr. MERRICK. It was on cross-examination.

Mr. PIERREPONT. It was important as to the places he was in on that day in that town.

Mr. BRADLEY. The court will say whether that is rebutting testimony.

Mr. PIERREPONT. I propose to show to your honor that the Haight House was in reality closed and locked; that it was not open that day, and had not been for some time before and was not for some time after; and it was impossible for Bissell to have gone in there and sat in that hotel.

Mr. BRADLEY. The gentleman is doing exactly what he complained of our doing, stating what he proposes to prove. When we did that we were called to account for it. I ask how it can be pertinent, putting it in the form in which he puts it? That witness said he went into the Haight House. That has nothing to do with this question. Suppose he had said he went to a spring and sat down, and they found there was no spring there, would that fact be allowed to be given in evidence as rebutting?

Mr. PIERREPONT. I suppose it rebuts what he said.

Mr. BRADLEY. But it must be evidence pertaining to the issue to be rebutted.

Judge FISHER. It seems to me, you can give in testimony any thing in reply to what the witness Bissell said about meeting the prisoner or seeing the prisoner, because that is pertinent to the issue; but when he leaves the company of the prisoner, then you come to collateral and irrelevant matters, and you are foreclosed by the answer of the witness.

Mr. PIERREPONT. Well, we will come back to the reading-room then.

Mr. BRADLEY. There is a passage before you get into the reading-room.

The REPORTER. The notes of Bissell's testimony are in the printing office.

Mr. MERRICK. He said he met the prisoner in a room in that house—the reading-room; and, being interrogated in regard to books and papers, he said that he did not know that there were any books and papers, but there were some settees; and he could not tell on which side it was, or whether it was in front or up or down stairs.

Judge FISHER. On his examination-in-chief, according to my recollection, which may be at fault, (for I confess there has been so much testimony in this cause that I sometimes am a little confused about it,) the witness Bissell said he went into the reading-room to wait for the omnibus to start from the Brainard House, and whilst he was sitting in the reading-room the prisoner at the bar came in and walked by him once or twice, and eyed him closely; he thought he was intending to spot him; and he described that room as the reading-room in the first instance. Then on cross-examination he said the same thing; and when specific questions were put to him as to whether there were papers there, or books there, or chairs or tables there, he answered those specific questions.

Mr. BRADLEY. The only point of difference is, that according to my recollection he did not say any thing about the reading-room until the cross-examination.

Mr. PIERREPONT. I think he did.

Mr. BRADLEY. Gentlemen, I am giving my recollection, not yours; you can give yours after I am done.

Judge FISHER. He certainly did say that he went into the reading room to wait for the omnibus.

Mr. BRADLEY. He certainly did say that in the course of the cross-examination, if he did not in his examination-in-chief. My impression is that I did not ask him about that in chief. I feel very confident that in chief I did not ask into what room he went or any thing about it, further than his going into a room and taking a seat on a settee, and the prisoner coming in and sitting down. He said he did not know whether he came from the office or the passage. That was in the examination-in-chief. I have no recollection of his having used the word "reading-room" until the cross-examination. On cross-examination I am aware he did use it; but he went on to say that he did not see any books or papers there.

Judge FISHER. It does not make any material difference whether he used the term in the examination-in-chief or the cross-examination, or in both. He certainly said he went into the reading-room to wait for the Brainard House omnibus.

Mr. BRADLEY. Very well, I withdraw the objection. Let it go. Give them a wide field.

Mr. PIERREPONT. (To the witness.) Tell us about the reading-room? Was there any reading-room there?

A. Not what we call a reading-room.

Q. Tell what there was there?

A. You mean describe the whole front.

Mr. PIERREPONT. The front floor.

Mr. BRADLEY. No. You say there was not a reading-room there. What do you mean by that?

Mr. PIERREPONT. Describe that?

The WITNESS. Shall I describe it all at once?

Mr. BRADLEY. No, just the room into which people walked and sat.

A. There is a telegraph room—

Mr. BRADLEY. I have said you are not to describe the building.

A. In front of the office, as they come in the door, there is a settee on each side; there are newspapers and things of that kind lying on the lounges or settees. At the right hand of the office there is a telegraph office with five or six instruments in it.

Mr. BRADLEY. Do you mean that the telegraph office is in the same room?

A. The same room, but there is an arched way to go out on one side to the telegraph office, and on the other side there is a coat-room and wash-room, the office being in front. In the telegraph office there were five or six instruments. The whole was in one room.

By Mr. PIERREPONT:

Q. Were those telegraph instruments in operation?

A. They were all in operation, but not at all times.

Q. But the noise was going on?

A. Yes, sir; the main office of the city is in that room.

Q. And the current was running all the time?

A. Most of the time.

Mr. BRADLEY. What does he know about currents?

Mr. PIERREPONT. I suppose everybody who has ever been in a telegraph office has heard them.

Mr. MERRICK. There are many people who go into hotels where they are that have not heard them.

Mr. BRADLEY. If Major Field knows any thing about the electrical current running there he can speak of it.

Q. (By Mr. PIERREPONT.) Do you know whether those instruments made a noise?

A. They made a noise.

Q. You are aware of that without any scientific knowledge of electrical currents?

A. It was within ten feet of my own office.

Mr. CARRINGTON. Do I understand your honor to confine us to that room? Can we not ask the witness to describe the whole house?

Mr. BRADLEY. Dr. Bissell did not describe the house; he said he could not.

Judge FISHER. I think that has nothing to do with it. I think you are closed up.

Cross-examined by Mr. MERRICK:

Q. You say the telegraph concern was within ten feet of your office?

A. Yes, sir.

Q. You have not got the hotel now?

A. No, sir.

Q. You only kept it a little while?

A. A year and fourteen days.

Q. How far are the settees in that room?

A. There are settees on both sides of the entrance as you come in.

Q. How far from the telegraph wires?

A. Perhaps twenty feet.

Q. There are settees on both sides, and some newspapers on the table?

A. Yes, sir.

Q. And that is the sitting-room of the place?

A. It is the main room; up stairs is the sitting-room and parlor.

Q. But for ordinary purposes of sitting, by casual passers, that is the room?

A. Yes, sir.

By Mr. BRADLEY:

Q. You say you purchased out the Brainard House: were you bargaining for it at that time?

A. Not the house, but the furniture; I took a lease of it.

Q. What became of the register of the Brainard House?

A. I cannot tell you.

Q. Was it not turned over to you?

A. It was left in my office.

Q. What became of it after that?

A. I cannot tell; but I never heard any thing of it until after I left the house and there was a search made for it.

Q. From different sources?

A. From half a dozen different sources. People were constantly wanting to know where the register was of certain dates, not naming these dates, but other dates, and then coming down to 1865.

Q. Several persons came at different times?

A. Yes, sir; Mr. Robinson came, and Mr. Knapp, the marshal of our city, came, and others came. Captain Dingley came after it, a captain in the army.

Q. When you left the house, did you leave the register there or take it away?

A. I cannot tell you positively whether I left it there or not.

Q. Have you searched for it?

A. I have searched every room in the house myself, every clothes-press, and every cupboard and wardrobe in the house. The house has been shut up the last eight or nine months, and they have been overhauling it.

Q. Did anybody take it after you left it?

A. Yes, sir; the owner's son, John H. Rathbun; the owner of it was John T. Rathbun.

Q. Do I understand you to say that this room where casual passengers came in and sat down is the room into which you enter from the street?

A. You enter from the street, and on both sides are settees.

Q. Is there any table in it?

A. One table—a large round table.

Q. And settees and chairs?

A. I do not remember any chairs; I think not. I think the chairs were more in the telegraph office.

Q. And if I understand you aright the telegraph office is on one side?

A. Yes, sir; on the right-hand side as you come in.

Q. And the front is on Water street?

A. Yes, sir.

Q. Where does the omnibus come?

- A. On Water street.  
 Q. Which way would that be?  
 A. In front of the entrance.  
 Q. So that a man waiting for the omnibus, coming at the front door and sitting down to wait, would be near the door to which the omnibus would come?  
 A. Yes; he would naturally sit on one side or the other of this entrance. A lady coming in would go up stairs into the parlor.

CHARLES H. BLINN,

recalled as a witness by the prosecution in rebuttal.

By Mr. PIERREPONT:

Q. You have testified here before, and I call your attention for the sake of a question. You testified to a man lying upon the settee in the Burlington depot and your picking up the handkerchief. What night of the week was that?

A. Monday night.

Q. The 17th of April?

A. Yes, sir.

Mr. MERRICK. He said all this before.

Mr. PIERREPONT. Yes, sir; and I call his attention to it again. Mr. Holahan, will you please step this way, where the jury can see you and where you can see Mr. Blinn. [Mr. John T. Holahan stepped forward and confronted the witness.]

Q. Tell the jury whether that is the man?

A. That is not the man.

Q. Does he look like him at all?

A. I see not the faintest resemblance in any respect.

Q. You are sure it is not the man?

A. I am very positive.

Cross-examined by Mr. BRADLEY:

Q. You say you found that handkerchief on Monday. Tell me when you had it washed?

A. I cannot tell you; it was several days afterwards; two days, perhaps.

Q. Was any member of your family sick at that time?  
 A. Not that I am aware of.

Mr. PIERREPONT. Wait. You cannot go into this. All this was asked before. He is merely called here now to show that Mr. Holahan was not the man who slept there.

Mr. BRADLEY. I beg your pardon; it was not asked before, and I sent for Mr. Blinn and could not get him here before we closed our case. I sent a special messenger for him.

Mr. PIERREPONT. Whether or not, he was cross-examined fully before.

Mr. BRADLEY. Not in relation to this matter.

Mr. WILSON. In regard to the washing of the handkerchief.

Mr. BRADLEY. I know what he said then, and I know I have sent a special messenger for him and could not get him here.

Mr. PIERREPONT. I do not know any thing about the messenger. I know he was cross-examined by counsel.

Mr. BRADLEY. When we sent for him we heard he had a fall from his horse, and could not come. When you send for him he is here quick enough.

Mr. PIERREPONT. He is here now.

Mr. BRADLEY. Yes.

Judge FISHER. It is not worth while to talk about this matter.

Mr. PIERREPONT. He was cross-examined by counsel, as your honor will see by looking at page 56.

Mr. MERRICK. Your honor will recollect that he was cross-examined, but afterwards we filed a motion to have him recalled for further cross-examination, and your honor declined the exercise of the discretionary power of having him recalled, and left us to our chance of his being on the stand or not, as I supposed at the time, stating, in the opinion which you delivered on the subject, that to recall witnesses who had once been

allowed to depart, they living, one I think in Mississippi and the other in Vermont, would protract the case beyond any reasonable limit. There is an affidavit filed as the basis of re-cross-examination.

Mr. PIERREPONT. If your honor please, under no circumstances can it be possible to be opened for cross-examination on the former subjects. If your honor made the ruling that counsel says your honor made, that would conclude it, of course, of itself. If it can be done with one witness it can be done with every witness, and we shall have rebuttal and sur-rebuttal, cross-examination and re-cross-examination. This witness is called here in rebuttal, and the sole and only question put to him is whether Mr. Holahan is the man who slept on that settee and lost the handkerchief. Any thing that bears upon that, I admit, is proper, but they can go no further.

Mr. BRADLEY. I rather think there was another question put. The gentleman seems to have forgotten the day on which that handkerchief was lost there.

Mr. PIERREPONT. Yes; he was asked that.

Mr. BRADLEY. And he answered it was on the 17th.

Judge FISHER. Now, the witness has been asked on this examination, in reply or rebuttal, whichever you choose to call it, the night when the handkerchief was found. He has named distinctly and positively the night, the day of the week, and the day of the month on which he picked up this handkerchief in the depot at Burlington. He has also been asked in the examination-direct as to whether Mr. Holahan was the man, or looked at all like the man, or had any resemblance whatever to the man who lay there, and after whose getting up he picked up the handkerchief. Now, in the cross-examination the counsel for the defense have the right to ask him any questions in reference to those matters, or any question for the purpose of searching into his memory, testing his memory, or testing his temper and disposition.

Mr. PIERREPONT. On those matters?

Judge FISHER. Yes.

Mr. PIERREPONT. We do not object to that.

Judge FISHER. I think it would be testing his memory to ask him about the time he gave it out to wash.

Mr. PIERREPONT. Very well.

Judge FISHER. And all about what he did with it would be directed towards testing his memory.

Mr. PIERREPONT. Well, we do not object.

Mr. BRADLEY. Of course not. The court has ruled it. (To the witness.) Now, state when you gave that handkerchief out to wash?

A. I think it was two days after I found it. It may have been the next day, but I think it was two days?

Q. What did you do with it after that?

A. I kept it in my possession safely until it was taken from me or called for.

Q. When was it taken from you?

A. On Tuesday, the 25th, I think.

Q. By whom?

A. I cannot tell. He was a detective, but I do not remember his name.

Q. Did you not tell that detective that you found that handkerchief on Friday morning in the railroad depot?

A. The detective asked me nothing about when I found it.

Q. Did you not tell him?

A. Not that I remember.

Q. Did not that detective see you before the 25th and talk with you about the handkerchief?

A. I have no recollection of his seeing me.

Q. Did he not see you on the Saturday before you gave him that handkerchief?

A. One of Colonel Gleason's force saw me, not one of Colonel Baker's detectives.

Q. I do not ask you about Colonel Baker, but what was the name of the detective who went down to Springfield and back and forth?

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 87. WASHINGTON, THURSDAY, AUGUST 29, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 86.*

- A. That was one of Colonel Gleason's detectives.  
Q. What is his name?  
A. I do not know his name.  
Q. Has he been examined as a witness here?  
A. I think he has been.  
Q. Do you not know him?  
A. I do not.  
Q. Did you not know him then?  
A. I knew him by sight merely.  
Q. Did you know his name?  
A. I cannot remember his name now.  
Q. Do you recollect whether he came on a train from the north or south, or whether he was in Burlington?  
A. He lived in Burlington at that time.  
Q. Do you recollect his going down from Burlington to Springfield and returning?  
A. I know nothing about it.  
Q. Do you remember his telling you so?  
A. No, sir.  
Q. That he had been down to New Haven with some soldiers?  
A. I have no recollection of his telling me any thing of the kind.  
Q. And you do not remember seeing him?  
A. I think it was the latter part of the week when he came to see me first about the handkerchief.  
Q. Were any of your relations sick at that time?  
A. I had an uncle sick?  
Q. Did he die?  
A. He died.  
Q. What day did he die?  
A. I do not remember.  
Q. Was your mother absent from home at the time of his death?  
A. My uncle lived in the next house to me.  
Q. Was your mother absent from her house, and attending to him at the time of his death?  
A. Not that I know of.  
Q. Did she not, when you gave her that handkerchief to wash, tell you she could not attend to it because of the sickness of her brother, who subsequently died?  
A. I have no recollection of her telling me that.  
Q. Can you tell whether that handkerchief was washed before or after the death of your uncle?  
A. I cannot.  
Q. Do you not know it was washed afterwards?  
A. I do not know whether it was washed before or afterwards.  
Q. Where is your mother now?  
A. In Vermont.  
Q. Why did she not come here upon the summons I sent?  
A. She is too old to travel. She has not been summoned, either.  
Q. Did I not send a summons for her?  
A. Not that I am aware of. You wrote me a letter, telling me I should bring her along, but that was not a summons.  
Q. You do not now recollect whether that handkerchief was washed before or after your uncle's death?  
A. I do not remember.  
Q. You do not remember whether or not your mother made it as an excuse that she was attending upon her brother, and could not wash the handkerchief?  
A. I have no recollection of any thing of the kind.  
Q. Was there more than one handkerchief?  
A. I do not remember.  
Q. You do not remember whether there was not more than one?  
A. There was only one handkerchief that I had.  
Q. Only one that you picked up?  
A. That is all.  
Q. Now, what enables you to fix it as the night of the 17th of April?  
A. It was the first night the boats ran.  
Q. How do you know that?  
A. I know it from official documents of the Champ-lain Transportation Company.  
Q. Have you the finding of the handkerchief on those documents?  
A. I have not. I got the official documents as to when the boat first ran.  
Q. How do you know it was the first night the boat ran?  
A. Because the boat was late that night—came several hours behind time into Burlington.  
Q. Was not the boat late several times that week?  
A. I do not know.  
Q. Do you not recollect whether it was late Monday night, or late Wednesday night, or any other night?  
A. I recollect that it was late on Monday night, and that makes me recollect that it was the first boat.  
Q. You do not recollect whether it was late on Wednesday or Friday night?  
A. I do not remember.  
Q. But you do remember that it was late that night?  
A. I do.  
Q. You do not recollect the name of that detective of Captain Gleason's corps?  
A. His name has gone from my memory now.  
Q. Is his name Conger?  
A. No, sir.  
Q. Is it George F. Chapin?  
A. That is the man. I knew the name, but it had gone from my memory.  
Q. Were you living in Burlington at that time?  
A. I was.  
Q. Were you living in Burlington when you gave up the handkerchief to the detective?  
A. I was; I never lived anywhere else.  
Q. Then he did not have to go out of the town of Burlington to get it?  
A. No, sir.  
Q. Were you living at Winooski Falls at that time?  
A. That was my post-office address. It was directly opposite the river from where I lived.

Q. Were you living at Winooski Falls at the time?  
A. Winooski Falls is on one side of the river and Burlington on the other. I lived on the Burlington side, out of the city limits, however.

Q. Did this detective Chapin and one of Baker's detectives go to your place about two miles from the city?

A. Yes, sir.

Q. Then they did go about two miles from the city?

A. Yes; it is outside of the city limits, but not out of Burlington.

Q. I asked you if it was outside the city?

A. I did not understand you to ask me about the city.

Q. Then you were living at Winooski Falls?

A. I was not. I was living in Burlington, opposite Winooski Falls.

Q. Near the village?

A. Two miles out of the city proper, on the Winooski Falls road.

Q. What day do you fix that on?

A. Tuesday, the 25th.

Q. How do you fix it?

A. From a diary that I have at home that I looked in before I came.

Q. Did you bring the diary with you?

A. I did not.

Q. Did you find in that diary an entry of the finding of the handkerchief?

A. I find in the diary an entry of the delivery of the handkerchief to the detective.

Q. Did you find in the diary any entry of the day when you found it?

A. No, sir.

Q. Or any note of having given out that handkerchief to wash?

A. No.

Q. But on the 25th of April you find a note that you gave it to the detectives?

A. I find written, "Two detectives called this morning and asked for the Surratt handkerchief," under the date of Tuesday, the 25th.

Q. And there is nothing in your diary to show the first day the boat ran?

A. No, sir.

Q. And nothing in your diary to show that two or three men were in the depot that night?

A. I have a letter in my pocket that shows the first day the boat ran.

Q. That is another matter. I know the first day the boat ran by this time, but I want to know what minute you have of it, made by yourself, not by any other person. You have nothing by which you can fix the date except your memory of the fact of your finding that handkerchief on the morning of the 18th?

A. Yes; I have it also from a copy of the Burlington *Times* publishing it.

Q. Where is that?

A. On file somewhere.

Q. Here?

A. I understand it is on file in this city. I have a copy of a letter in my pocket from the editor of the paper stating that it is on file in the district attorney's office in this city.

Mr. BRADLEY. (To the counsel for the prosecution.) I ask you to produce it, gentlemen.

Mr. WILSON. I have not got it.

Mr. BRADLEY. (To the witness.) What is the date of that paper?

A. I expect it is dated the 19th of April. It states that the handkerchief was found on the morning of the 18th.

Q. Then, you rely upon that note in the Burlington *Times* of the 19th as helping you to fix the date?

A. I do not rely upon that so much as I do upon my own memory.

Q. If there is any notice of the finding of the hand-

kerchief in the Burlington *Times* at any date different from that, is not that notice right?

A. I cannot say whether it is or not.

Q. But I thought just now you stated that you fixed it by that?

Mr. PIERREPONT. No, he did not.

Mr. BRADLEY. I know what I understood him to say. Now you say that the finding of the handkerchief was mentioned in the Burlington *Times*?

A. I say that I have a letter in my pocket from the editor of the *Times* saying that it was mentioned as having been found on the morning of the 18th.

Q. Did you not see it in the Burlington *Times*?

A. I did not.

Q. You never saw it?

A. I do not know. I might have seen it afterwards. I did not see it at that time.

Q. Did you refer to the letter of the editor of the Burlington *Times* stating that there was a notice of this finding in the paper?

A. I referred to that partly.

Q. On the morning of the 20th of April were you at the depot at Burlington?

A. I presume I was.

Q. Was it not your business to be there?

A. There were several days there about the time of my uncle's death that I was not on watch.

Q. You do not fix the date of your uncle's death, as I understand?

A. I said about the time of uncle's death.

Q. At what time did he die?

A. I am not certain; I do not remember the exact date.

Q. Can you not remember the date of your uncle's death as well as you can recollect the 17th of April?

A. I cannot. I think it was about the 21st, but I am not positive.

Q. Then if it was the 21st it is possible you were not at the depot?

A. I might have been and might not.

Q. You cannot now recollect the date of your uncle's death, although your attention has lately been called to it, and yet you can recollect that those men were in the depot on the night of the 17th?

A. I cannot fix the date of his death positively.

Q. Have you not been talking about it; has not your memory been refreshed about it since you were here before?

A. Not a word. I do not live at home.

Q. Have you not seen your mother?

A. I have not seen my mother for several weeks.

Q. Have you not seen her since you were examined?

A. Yes, sir; I saw her on my return home.

Q. If you have not seen her, how do you know she is feeble and cannot come?

A. I did not say she was sick. I said her age would not allow of her coming?

Q. How old is she?

A. Upwards of sixty.

Mr. BRADLEY. So am I, and I am a young man. You have had no conversation with her on the subject of finding that handkerchief since you were examined here as a witness?

A. I have not.

Q. When you went back and saw her after having been a witness here, did you not talk with her about what you had been examined upon?

A. I was only there five or ten minutes before taking the train to go where I reside.

Q. You have not seen her since then?

A. I have not.

By Mr. ALEXANDER, a juror:

Q. Did you write a letter to the Burlington *Times* inquiring about the date?

A. I did, and I have the editor's answer in my pocket.

Q. Did the editor of the *Times* refresh your memory?

A. The editor of the *Times* refreshed my memory by writing me a letter, which I have in my pocket.

By Mr. BRADLEY:

Q. Why did you write to the editor of the Burlington *Times* to refresh your memory?

A. I wrote to the editor of the Burlington *Times* to ask him if he had published the account of the finding of the handkerchief; and, if so, the date.

By the COURT:

Q. When did you write to him?

A. Something like two weeks since?

Q. Since you were examined here?

A. Yes, sir.

By Mr. BRADLEY:

Q. Was not a copy of the Burlington *Times* in court when you were here last; did you not see it here in court?

A. I did not.

Q. Did you see it here in town?

A. I did not see a copy of it in this city.

By the COURT:

Q. You were asked by a juror whether your memory was refreshed by this letter which you received from the editor of the Burlington *Times*, and you answered that your memory was refreshed.

A. Yes, sir; I wrote the letter merely for my own gratification.

Q. To know whether you were correct or not, according to the statement in the paper?

A. Yes, sir.

Q. Was it the object of your writing to have your memory refreshed, or to see whether he concurred with you?

A. My object in writing was to see whether he concurred with me. My memory did not need refreshing.

By Mr. MERRICK:

Q. Did you not tell George Chapin that you picked up those things thinking they would do to wipe a lantern with, and while handling the stuff you found that you had got two very dirty handkerchiefs?

A. I have not the least recollection of ever telling him any such thing. I may have told him so, but I have not any recollection of it.

Q. Do you not recollect that you found two pocket-handkerchiefs?

A. I do not recollect that I did.

Q. Do you recollect that you did not?

A. I do not. I may have found two, but I cannot remember finding but one. I scarcely think I did find two.

Q. But you are not willing to say positively that you did not?

A. I am not willing to say positively I did or did not.

By Mr. ALEXANDER, a juror:

Q. How many handkerchiefs did you deliver to the detective?

A. Never but one.

By Mr. MERRICK:

Q. Did you not say to this detective that you had found two handkerchiefs, one of which was marked and one not marked?

A. No, sir; I do not remember stating it.

Q. And you do not remember finding two handkerchiefs—one marked J. H. Surratt and the other not marked at all?

A. I do not.

Q. Do you not recollect telling him that your uncle died on Tuesday evening?

A. I do not.

Q. Do you not recollect that he did die on Tuesday evening?

A. I do not.

Q. Do you recollect that he died the night you found those handkerchiefs?

A. I am quite positive he did not die that night.

Q. Did he die before or after?

A. I think he died after; I think it was still later in the week, because I think he was buried on Sunday.

Q. How long was your mother in attendance upon him?

A. He lived two doors below. She might have run in there a dozen times a day.

Q. Did she live in Burlington?

A. She did.

Q. I did not understand you just now with regard to the place to which you went some little distance from the town of Burlington?

A. I say it is two miles out of the city limits, but still it is in Burlington.

Q. How far apart are the houses there?

A. Perhaps as far as from here to that door. [Indicating a distance of about sixty feet.]

Q. Is that a part of the suburbs of Burlington?

A. Not exactly suburbs; it is pretty thickly settled.

The court took a recess for half an hour, re-assembling at 1:30.

CARROLL T. HOBART,

recalled as a witness for the prosecution in rebuttal.

By Mr. PIERREPONT:

Q. After you were sworn before, did you see Mr. Holahan in this city?

A. I met Mr. Holahan about a fortnight since in Mr. BRADLEY's office.

Q. Was it after you testified?

A. Yes, sir; since I testified.

Q. State what occurred between you and Mr. Holahan?

Mr. BRADLEY. Stop. They may have had a fight for all I know. I was not there.

Mr. PIERREPONT. No, not a fight. I am asking in relation to any representation made about the man that went with this witness.

Mr. BRADLEY. That cannot be rebutting evidence.

Q. (By Mr. PIERREPONT.) You have seen Mr. Holahan?

A. I have.

Q. You can state whether he is the man that went upon the car with you?

A. I have no recollection of ever meeting Mr. Holahan or seeing him before I met him there on that occasion.

Q. He is not the man that wanted to get along without payment?

A. I am confident of that.

Q. And does not look much like him?

A. No, sir.

Mr. BRADLEY. If your honor please, I desire to ask Mr. Hobart a question in reference to myself, rather in the nature of a personal explanation in my relation to the cause. It is proper it should be done, and he desires to make the explanation. I see by the public papers that it has been stated that I offered him a consideration or compensation to come here as a witness. Now, I ask him to state whether any such thing ever passed between him and me.

A. Nothing of that kind. I knew nothing of the publication; had nothing to do with it in any shape or manner. Any such thing was put in the papers without my consent or knowledge.

Q. Is it true?

A. There is no truth in it.

Q. No suggestion of that kind ever came from me to you?

A. No, sir.

Q. The whole of it is utterly false, so far as I am concerned?

A. Yes, sir.

Mr. MERRICK. So far as all the counsel are concerned it is utterly false, is it not?

A. It is.

Mr. BRADLEY. I have no objection to your stating what was said about money, but it was not in reference to any compensation to yourself. What I did say I said openly and without any disguise. I have very few concealments. If the gentlemen desire to know what it is, you can state what passed.

Mr. PIERREPONT. I do not know what it means.

Mr. BRADLEY. I think you do; Judge. I think he told you yesterday what it means.

Mr. PIERREPONT. I do not know.

The WITNESS. I told Mr. PIERREPONT nothing except that you said that money had been contributed, and that you were going to pay me out of the contributed money. That is all I told the judge.

Mr. BRADLEY. Pay for what?

A. My fees for traveling.

Q. Actual expenses?

A. Yes, sir.

Q. Was the amount you speak of as having been contributed stated at the same time?

A. About \$1,000 or \$1,500, I understood.

By Mr. MERRICK:

Q. That is the amount which was contributed, out of which all these people are to be paid?

A. Yes, sir.

Mr. MERRICK. We are very poor. I wish we had \$1,500 to pay to anybody.

By Mr. PIERREPONT:

Q. Was this in any connection with Holahan?

A. No, sir.

Q. What was there connected with Holahan, not with the counsel?

Mr. BRADLEY, Jr. Do you mean to ask whether Holahan offered him a bribe?

Mr. PIERREPONT. I ask what there was in connection with Holahan—what Holahan proposed to him.

Mr. BRADLEY. We know nothing about that.

Mr. PIERREPONT. I want to see that it is distinctly ruled out, so that no one shall say it has not been offered.

Judge FISHER. What is proposed to be offered?

Mr. PIERREPONT. I propose to show what Holahan said to this witness in relation to his being the person, and attempting to personate Surratt, if any thing.

Mr. MERRICK. We do not propose to allow that testimony as to any conversations the witness may have had with Holahan.

Mr. BRADLEY. I should like to hear what Hobart has to say of that off the stand before I agree to let it in; and then Holahan's account of it ought also to be admitted.

Mr. MERRICK. If the counsel means to impute to Holahan any attempt to bribe this witness in any way, he can ask whether Holahan or anybody else ever offered him any money about testimony; but he cannot give conversations between these witnesses to have an effect on the case one way or the other.

Mr. PIERREPONT. I do not understand that to be so.

Mr. MERRICK. Then I object to the question.

Mr. PIERREPONT. What I do understand is, that Holahan attempted to make this witness say that he was the man that he traveled with and to personate Surratt, and that he told him he was not the man and that he knew he was not. I propose to show that, and that this occurred after this witness testified, and that Holahan came to him for that purpose.

Mr. BRADLEY. If Mr. Holahan told Mr. Hobart that he was traveling and attempting to personate Surratt, I do not think I shall have any objection to that.

Judge FISHER. I do not think it is relevant.

Mr. BRADLEY. I should have no objection to that.

Mr. PIERREPONT. If it is not objected to we shall ask the question.

Mr. MERRICK. But we shall put Holahan on the stand to give his account of the matter.

Judge FISHER. These matters are irrelevant. We have had one sample of them this morning. An irrelevant matter was introduced the other day by agreement, and the result has been a waste of two or three hours of our time.

Mr. PIERREPONT. I understand the court rules it out and that ends it.

Judge FISHER. Yes, sir.

Mr. MERRICK. (To the witness.) Have you any time-tables of these roads?

Mr. PIERREPONT. Do not answer the question. As we are coming now to strict rules of law, let them be enforced.

Mr. MERRICK. The agreement was that time-tables should be given in. I only want to get the time-tables so as to put them in. (To the witness.) Have you the time tables for 1865?

A. I have not with me.

Q. How many roads were you on up there?

Mr. PIERREPONT. Do not answer the question.

Mr. MERRICK. (To the witness.) Will you furnish us with time tables of all the roads in that region you know any thing about in April, 1865?

A. I can send them. I believe there was only one to be found, and that is on file in the general superintendent's office; but I will try to procure you another.

Q. Can you not send a certified copy of that one?

A. Yes, sir; as soon as I get home I will send a copy.

LOUIS J. WEICHMANN,

recalled as a witness for the prosecution in rebuttal.

By Mr. PIERREPONT:

Q. You know Mr. Holahan?

A. I do.

Q. State whether you were with Holahan at Burlington?

A. I was. We arrived at Burlington on the evening of the 19th of April, 1865, and left on the morning of the 20th, on the arrival of the cars.

Q. State whether you went to the station together?

A. On the morning of the 20th, Mr. McDevitt, Mr. Bigley, Mr. Holahan, and myself left the hotel together and went to the depot together, and we took the cars on the track.

Q. Did he go in and lie down?

A. It is my impression that he lay down in the cars.

Q. I ask if he went into the depot and laid down.

A. I did not see him. I do not think he did.

Q. Could he have done it without you seeing him?

A. No, sir.

Q. Where were the cars standing—inside the depot or outside?

A. The cars were standing outside the depot, on a side track, according to my impression now.

Q. State whether you waited long?

A. No, sir; we did not.

Q. Did he tell you any thing about his handkerchief?

Mr. MERRICK. Refer us to the page, gentlemen, containing the testimony that this rebuts.

The WITNESS. We went through the depot in the cars, but we did not go into the depot to take the cars.

Mr. PIERREPONT. On page 563, in Holahan's examination, is this:

"Q. Did you know Weichmann well, who was with you?"

"A. I knew him well."

"Q. Did you tell him you left it under your pillow at the hotel?"

Now, I ask this witness, Did Holahan tell you that he left the handkerchief under the pillow at the hotel?

A. He told me so during the conspiracy trial in 1865—

Mr. BRADLEY. Stop. Let us have a little more time, place, and circumstance, if you please. When you asked Holahan so generally as that, you did not lay your foundation sufficiently.

Mr. PIERREPONT. Holahan said he did not tell

Weichmann that he left the handkerchief under his pillow at the hotel, and then he was asked, "You did not tell him so at any time?" and he answered, "No," sir." When he says that, it covers all times.

Mr. MERRICK. "You did not tell him so at that time," it reads in our copy; and then he answers, "No sir; it is a falsehood."

Judge FISHER. I have read the testimony. There is no place or time laid there.

Mr. BRADLEY. I ask your honor if in your copy it reads, "You did not tell him so at any time."

Mr. PIERREPONT. "At that time."

Mr. BRADLEY. You read it "at any time."

Mr. PIERREPONT. It was a mistake.

Mr. BRADLEY. "At that time" means in Canada, and now they read it "at any time," so as to get in the time of the conspiracy trial.

Judge FISHER. The foundation was not laid there.

Mr. PIERREPONT. On the ground that a specific time was not given?

Judge FISHER. Nor the place. The time was given as during the time he was in Canada, but not the time and place about which the witness proposes to speak.

Mr. PIERREPONT. (To the witness.) Did he tell you in Canada of having lost it?

Mr. BRADLEY. Stop a moment. Let us see your foundation for it.

Mr. MERRICK. No such question as that was put to Holahan.

Judge FISHER. The question will have to be different: "Did he tell you in Canada that he left it under his pillow?"

Mr. PIERREPONT. Well, I will put it in that way. Did he tell you in Canada that he left it under his pillow?

A. No, sir. He did not tell me in Canada—

Mr. BRADLEY. Now, do not say any thing more.

Mr. PIERREPONT. I cannot ask you the other question, it seems.

#### JOSEPH WELLS,

a witness for the prosecution in rebuttal, sworn and examined

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Elkton, Cecil county, Maryland.

Q. Did you ever know a man by the name of Stephen F. Cameron there?

A. I did.

Q. Do his family reside there now—his wife and children?

Mr. BRADLEY. We have nothing to do with his wife, or children, or family. The man himself, is the question.

Judge FISHER. That is so.

Mr. PIERREPONT. Very well; then I shall ask when did he leave there?

A. He was there in 1861.

Q. Do his family reside there now?

Mr. BRADLEY. That we object to.

Judge FISHER. I cannot see that that is pertinent.

Mr. PIERREPONT. I suppose that where a man's family is, is his residence.

Mr. MERRICK. Not necessarily, by any manner of means.

Q. (By Mr. PIERREPONT.) Has he been there since 1861?

A. I have not seen him.

Q. What was his business there?

Mr. BRADLEY. We object.

Judge FISHER. He told that himself.

Mr. PIERREPONT. I have a right to see whether it is the same man I am going to talk about.

Mr. MERRICK. The court will decide the point.

Judge FISHER. You can ask whether it is the same Cameron who gave testimony here.

Mr. PIERREPONT. I have a right to ask the occupation of the man I am going to give testimony about. He may not know whether it is the same Cameron who testified here or not.

Mr. MERRICK. I understand the court has decided the point.

Mr. PIERREPONT. I do not so understand. I understand I have a right to find out the occupation of the man that I am going to talk about. He comes here as a clergyman. Now, I am going to ask if this witness knew the man there, and what that man's occupation was when he knew him there, and connect the man if I can. I have a right to connect him as the man that I am going to give evidence about that did swear here, although he may be of a different occupation.

Mr. BRADLEY. The witness Cameron stated not that he is a clergyman, but that he had been a clergyman in the Episcopal Church.

Mr. PIERREPONT. I do not propose to take that witness's statement on any subject.

Mr. BRADLEY. You stated what he swore to, and did not state it correctly.

Mr. MERRICK. Suppose you could contradict him, what then?

Mr. PIERREPONT. I do not propose to take him on any statement of fact. I ask this witness if he knew a man of that name and what his occupation was when he knew that man. Now, I submit it is a legal question.

Judge FISHER. When you ask a witness on cross-examination what his occupation is, it is a matter which is collateral and irrelevant, and you are estopped by his answer.

Mr. PIERREPONT. My object is not to contradict him at all.

Judge FISHER. I thought that was the object.

Mr. PIERREPONT. Not at all. My object is (which I undertook to state) to find out the identity of the man about whom I am going to give evidence.

Judge FISHER. You have that right.

Mr. PIERREPONT. It is solely for that purpose.

Mr. MERRICK. The counsel has a right to find out the identity, but I submit he has no right to contradict the witness in his statement of his occupation. Although that may be a means of finding out his identity, it may also be a means of contradicting him; and if he can identify him without adopting those means, he should take those general means of identification; first, he should ask the witness if he knows S. F. Cameron, the man who testified in this case.

Mr. PIERREPONT. I have stated to your honor that the object is not to contradict Cameron.

Judge FISHER. You first may ask him the question, and then ask whether he knows it is the same man.

Mr. PIERREPONT. (To the witness.) Now, Mr. Wells, did you see the man who testified here?

A. No, sir.

Q. You do not know the man who testified here; that is, you were not here?

A. No, sir; I was not here.

Q. Now, I ask you whether there lived in your place a man of the name of Stephen F. Cameron?

A. I knew him.

Q. When did you know him?

A. In 1861.

Q. Do you know what his business was?

A. I can scarcely tell you. He professed to be employed in a good many businesses. He professed to be a sort of minister. He clerked there a while, I think, for his father-in-law. His father-in-law was in the grain business?

Q. Do you know what sort of reputation and character he bore for truth and veracity in that region?

Mr. BRADLEY. You mean general reputation, what people commonly said of him.

Judge FISHER. The question is as to his reputation for veracity, I understand.

Mr. PIERREPONT. That is the question. I put it in the proper technical form.

Mr. BRADLEY. I beg your pardon. I think the proper question is as to his general reputation among those with whom he associated.

Judge FISHER. That is it.

Mr. PIERREPONT. I asked him, whether I have a right to ask, if he knows Cameron's general reputation among the people there as a man of truth and veracity?

Mr. BRADLEY. I have not objected to that.

Judge FISHER. It is not worth while to waste time about the form. The question is understood.

The WITNESS. Well, it was not very reliable.

Q. (By Mr. PIERREPONT.) Was it a good reputation or a bad reputation?

A. His general reputation was not very good.

Cross-examined by Mr. BRADLEY:

Q. What do you mean by his general reputation?

A. He was a man who would report things that people generally would not believe to be true.

Q. That was his general reputation, was it?

A. That was his general reputation.

Q. Among those with whom he associated?

A. Yes, sir; his general reputation in the neighborhood.

Q. Did you associate with him?

A. I was very well acquainted with him.

Q. Did you associate with him?

A. Yes, sir; I frequently met with him, and had conversations with him.

Q. Did you associate with him in society—meet him in society?

A. No, sir.

Q. Did you ever visit at his father-in-law's or where he lived?

A. I never visited there, but I have been there frequently.

Q. What sort of business were you engaged in?

A. I am a mail contractor.

Q. What were you in 1861?

A. I kept a provision store in Elkton in 1861, and I have been a mail contractor eleven years.

Q. How often were you thrown into association with Mr. Cameron?

A. I met with him frequently.

Q. Whom did you ever hear speak about him at that time?

A. I do not know that I can mention any particular one at that time.

Q. He was, then, as you say, a sort of minister.

A. Well, he professed to be. I do not know whether he was or not?

Q. Do you know whether he preached or not at that time?

A. I never heard him preach.

Q. But we are speaking of general reputation?

A. I have heard of him preaching at places out of Elkton. I do not think he ever preached in Elkton.

Q. You say his general reputation for truth, then, was bad; that people would not generally believe what he said?

A. Yes, sir; as a general thing.

Q. But you cannot recollect anybody that said it?

A. Not to my recollection. I cannot just cite any one now.

Q. Were your companions and associates his? Did you associate with the same people?

A. Well, yes, sir.

Q. Did you commonly associate with him, or occasionally get together?

A. Commonly.

Q. Did party politics run very high at that time?

A. I do not know. Yes, I suppose there was very strong feeling each way.

Q. Were you and Mr. Cameron opposed to each other in party politics?

A. I do not know whether we were or not. Some-

times he professed to be with me, and other times he was against me. I could not tell where Mr. Cameron stood. Sometimes he was in favor of the rebellion and at other times he was a very strong Union man.

Q. How long did you know him there?

A. I have known him, I suppose, for eight or ten years.

Q. But how long in 1861?

A. I cannot recollect. I knew him all the time he was there.

Q. I understand you have not seen him since 1861?

A. I knew him all the time he was there until he left. I do not remember the time he left there.

Q. How long did he live there?

A. He lived in Elkton or in the neighborhood for several years.

Q. When did this bad reputation begin?

A. I never knew him to be a man that there was much reliance to be placed on since I knew him. I never heard any man speak of him as a very reliable man.

Q. Whom did you hear speak of him as not being a reliable man?

A. I cannot tell you.

Q. Cannot tell one?

A. It was a general thing among the people of the neighborhood. That was his general reputation.

Q. That he was a common liar? Is that it?

A. No, sir; I do not say that.

Q. Then you could generally rely on him?

A. I do not say that.

Q. Then he was not a common liar?

A. I do not say that.

Q. I want to understand you—what estimate you put him in. You say people generally said if a report came from him it was not to be relied on?

A. Yes; that was the general impression of the people in the neighborhood.

Q. And that was so all the time from the time he first came there?

A. Yes, sir; ever since I knew him.

Q. How many years did you know him there?

A. I suppose I have known him eight or ten years.

Q. For eight or ten years before 1861?

A. Yes, sir.

Q. How long was he married before 1861?

A. I cannot tell you exactly; I suppose he was married eight or ten years, but I do not know. I think he had several children.

Q. He married after he came there, did he not?

A. Not after he came to Elkton.

Q. Did he marry before he came to Elkton?

A. Yes, sir; his father-in-law lived in the county.

Q. And he came there with that reputation, and kept it all the way through?

A. I do not remember exactly what it was when he came there.

Q. But you do not recollect a time when he did not have that bad reputation?

A. No, sir.

Q. You are still a mail contractor?

A. Yes, sir.

JAMES S. CRAWFORD,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Elkton.

Q. How long have you lived there?

A. Since the winter of 1865.

Q. What position do you hold there?

A. I am clerk to the county commissioners.

Q. Do you know Stephen F. Cameron?

A. I do.

Q. Did he marry in that county?

A. Yes, sir.

Q. Does his family live there now?

A. Yes, sir.

Q. How many children has he?

Mr. MERRICK. Oh, stop. What have the babies got to do with this business?

Judge FISHER. That does not shed any light on the issue.

Mr. PIERREPONT. I think it does; but still I will not press it. (To the witness.) When did you last see him there?

A. I have not seen him there or anywhere else since, I think, in the fall or late in the summer of 1861.

Q. Do you know what his general character or reputation for truth and veracity was among the people there where he lived?

A. I think I do.

Q. Was it a good or bad one?

A. He had the reputation of being a man very much given to exaggeration.

Q. What was his reputation generally there as a truthful man?

A. I think that his general reputation was that he was not a truth-teller. I should suppose no man could be given to exaggeration and still be a truth teller.

Q. He had not the reputation of being a truth-teller?

A. No, sir.

Cross-examined by Mr. MERRICK:

Q. I understand you to say that his general reputation was that he was a man given to exaggeration?

A. Yes, sir.

Q. And he did not bear the reputation of being a common liar, did he?

A. I cannot say that I ever heard the term "liar" applied to him.

Q. Whom have you ever heard say he was a man given to great exaggeration?

A. I have heard a great many persons speak of his habits of exaggeration.

Q. How long had you known him before 1861?

A. I think since 1858 or 1859. I am not quite certain as to the time when my acquaintance with him commenced.

Q. You knew him from 1858 or 1859 down to 1861?

A. Yes, sir.

Q. When did he leave Elkton?

A. I think sometime in the summer or fall of 1861. I am not certain about that.

Q. What were your sympathies during the late war?

A. My sympathies were on the side of the Government very decidedly.

Q. And his were on the other side?

A. I cannot say that they were at one time. We did not so understand at one time.

Q. Were you not all variable there, first on one side and then on the other, from Mr. Creswell down?

A. No, sir, we were not.

Q. You never changed your opinions about it?

A. Never, and I have not yet.

JAMES T. McCULLOUGH,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In Elkton.

Q. What is your occupation?

A. I am a lawyer.

Q. How many years have you known Stephen F. Cameron?

A. I have known him since about the time he married his wife.

Q. Where did he marry her?

A. In our county.

Q. Is she still living in your town?

A. With her father, in the neighborhood of Elkton.

Q. When did you last see him in your town?

A. Sometime in the summer or fall of 1861.

Q. Before that time you knew him, I suppose?

A. Very well.

Q. You knew his father-in-law and his family?

A. I knew them all very well.

Q. Do you know what his general reputation was among the people there for truth and veracity?

A. I believe I know it.

Q. What was it, good or bad?

A. If I have to say that it was either good or bad, I should say it was bad.

Cross-examined by Mr. MERRICK:

Q. You state that if you had to say it was either good or bad, you would say it was bad?

A. Yes, sir.

Q. Did you associate with Cameron?

A. Yes, sir.

Q. And moved in the same circle with him?

A. Yes, sir.

Q. Whom did you ever hear say his reputation was bad?

A. I do not know that I could tell you. It has been spoken of lately a good deal since he testified here.

Q. That is not it; but at that time, 1861, and prior to that?

A. I suppose I gathered up his reputation from what I heard persons say of him.

Q. I ask who the persons were?

A. I recollect about the time Mr. Cameron was very much excited before he went away. Judge Price and I had a conversation on the subject.

Q. Price, who was judge in Harford and Baltimore counties?

A. Yes, sir; he was laughing about some of Cameron's statements and furnished me with a copy of a report he published in Baltimore.

Q. I ask you whom you heard say he was not a man of good character for truth and veracity?

A. That was the inference I drew from what Judge Price said.

Q. You were discussing politics?

A. No, he was telling me something about Cameron's doings, something he did and said over in Harford.

Q. About politics?

A. No, not particularly. He was speaking of what was going on in Elkton and how the soldiers had acted and making representations about it.

Mr. MERRICK. That is what I understood when I spoke of politics. I probably used the word "politics" in the broader sense. What Cameron stated related to national matters, did it?

A. No, it did not refer to Cameron's opinions about national matters, but his statement of what had been done in our county.

Q. Price said that what Cameron stated as having been done there was not true?

A. No, sir, he did not. He went to Baltimore and gave in a statement there to the *Baltimore Sou h* of how the soldiers had acted towards him, &c. That statement I knew to be exaggerated. It was a misrepresentation.

Q. Those were times of considerable political excitement, were they not?

A. A good deal. Previous to this time I had known Cameron.

Q. Were there statements made on both sides at that time which were pretty much exaggerated?

A. I suppose there were.

Q. Do you know the fact that they were made on your side and on the other, too?

A. I do not know any thing about that. If you will refer me to any particular statement, I can tell you.

Q. Was there not a good deal of feeling in Elkton?

A. Not more so than in other parts of the country.

Q. But still there was a great deal?

A. Certainly.

Q. Did not political sentiments existing at that time divide the people socially?

A. To a certain extent they did, but I have a great many friends on both sides. Some of my own relations and my wife's relations are among those who were sympathizers with the South.

Q. Still I ask the question, was not the political sentiment at that time so intense and bitter that it divided the people in their social relations and broke up old friendships?

A. It had some effect, no doubt.

Q. Did it not have a very decided effect? Did it not break up some of your own?

A. It may have been so, but I do not think of any just now.

Q. Can you not think of any friendships that were cooled by this condition of things at that time in Elkton?

A. None that were entirely broken up.

Q. But although not broken up, were they not materially cooled?

A. I suppose they were. Mr. Cameron was a very erratic man, and I attributed his characteristic of exaggeration more to the character of his mind than any thing else. I never considered him exactly a sane man. He was regarded in the same light by many persons.

Q. You attributed it to the character of the mind and not to the character of the moral man?

A. Exactly.

Q. Then you did not regard him as having the reputation in the community of being morally corrupt with regard to truth?

A. I would not make it that strong.

Q. Then the reputation which he had in your community was that of an imaginative man?

A. Yes; very erratic.

Q. Whose fancy sometimes ran ahead of his recollection?

A. Yes; I would not rely upon his judgment at all.

Q. But upon the question of moral truth, moral obligation, you know nothing against him, do you?

A. No; I would not say that.

Mr. PIERREPONT. You would not say what?

A. I would not say that I would rely upon his statement.

Mr. PIERREPONT. I thought that was what you meant.

Mr. MERRICK. You say you would not rely on his judgment. I ask you again whether or not there was any reputation there going to affect him as a moral man with regard to truth?

A. He may have meant to do what was right; I do not say that; but the character of his mind was such that I do not believe he could always give a correct statement of what actually did happen or what was actually said.

Q. The character of his mind was such that he would exaggerate; but there was no reputation in the community which would taint him with the immorality of being a malicious liar, was there?

A. Oh, no; I never said that far, and do not mean to say it?

JOHN TORBERT,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. I reside in Elkton?

Q. How long have you lived there?

A. Since the fall of 1863 the last time. I was born there and raised there; I left there, I think, in the latter part of 1859, and came back in 1863.

Q. Do you know Stephen F. Cameron, who married there?

A. Yes, sir.

Q. Do you know his wife's father and his wife and his family?

A. Yes, sir.

Q. When did you last see him there?

A. It was sometime during the year 1861. I resided in Philadelphia for a few years, but I was down there every week or so.

Q. The last time you saw him there was in 1861?

A. Yes, sir.

Q. Do you know the kind of general reputation he bore in that region as a man of truth and veracity?

A. He had the reputation of being a wild sort of man. I can hardly say further. I have heard his word doubted frequently, I think.

Q. But what was generally said about him as to truth; was his general reputation for truth good or bad?

A. I have heard a great deal said about the man, but I do not know that I ever heard his reputation for truth discussed. In all probability I have, but I mean that I cannot remember any one instance that I ever heard it discussed.

Q. I do not ask you any instance; I ask you what his general reputation was?

Mr. BRADLEY. I object. The court will say whether, after having said that he never heard his character for truth and veracity discussed that he can recollect—

The WITNESS. By recollecting, I mean I do not recollect who ever mentioned the subject.

Judge FISHER. You mean you do not recollect individuals; but have you heard his character generally spoken of by the people?

A. I have by almost every one in the town with whom I have spoken.

By Mr. PIERREPONT:

Q. When?

A. I mean in 1858 and 1859.

Q. Now, tell us whether it was a good or bad character they gave him?

A. He was generally considered a sort of crack-brained individual; a man about half crazy. Whether he was morally bad or not, I would not like to say.

Q. How did that crack-brained, half-craziness seem to affect him—to make him particularly truthful or untruthful? What turn did it take?

Mr. MERRICK. Do not answer that question.

Judge FISHER. He has said now that Cameron was considered crack-brained. Just state how he was reputed among the people in respect to his truthfulness?

A. The character the man bore was such, that if he would relate any wonderful circumstance or any thing that happened that he saw, nobody would believe it until they found it was so.

Cross-examined by Mr. MERRICK:

Q. Whom have you heard say that his reputation for truth was bad or that they would not believe him?

A. I cannot state whom I ever heard say so.

Q. You have heard it discussed?

A. I have no doubt but that I have.

Q. But I want to know the fact; do you recollect hearing it discussed?

A. I do not recollect ever hearing it discussed.

Mr. MERRICK. Then I ask you honor to strike out what he has said about character. He does not recollect ever hearing it discussed.

Judge FISHER. He said that before; but then he qualified it by saying he did not recollect any particular individual.

The WITNESS. That is what I mean. I can remember having heard men say they would not believe him in any thing he might say, but I do not remember who said it.

Mr. MERRICK. Then I ask you whether you have heard it generally talked of?

A. Yes.

Q. As far back as 1861?

A. Before 1861. I was not residing in Elkton in 1861?

Q. How old are you?

A. I am nearly twenty-seven.

Q. Then you were nineteen at that time?

A. About that age.

Q. Did you associate with Cameron?

A. Yes, sir; I met him almost every day while I was there and he was in town.

Q. What were you doing at that time?

A. I was not doing any thing at that time, I believe. My father was in mercantile business in town, and I was with him.

Q. Is your father living now?

A. Yes, sir.

Q. You say you cannot recollect any particular instance in which you heard his character for truth discussed?

A. Not at that time.

Q. You cannot recollect any individual at that time whom you heard speak of it?

A. No, sir; I never thought of it, and I never thought any thing of the man, and never troubled myself about it.

Q. I understand you to say that he was spoken of as a crack-brained sort of a fellow, who would exaggerate about any thing he had to tell, particularly if it was wonderful?

A. That explains his reputation about as well as any thing you could say.

Q. You never heard him spoken of as a man whose reputation was that of a morally corrupt man, did you?

A. No, sir; he was always rather of a religious turn of mind.

Q. He had a very good character in regard to truth, except that he was a little crack-brained, and would exaggerate and dress things up?

A. That would represent it.

By Mr. ALEXANDER, a juror:

Q. Would you believe him on his oath?

A. Not unless I had corroborative testimony. I would not believe his unsupported testimony.

Mr. MERRICK. I did not ask that question, because counsel on the other side did not. It was their business.

Mr. PIERREPONT. I never asked such a question in my life. I always let the jury decide that point.

Mr. MERRICK. I do not know any other legal right you have failed to avail yourself of in this case.

JOSEPH L. MAHAN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In Elkton.

Q. How long have you lived there?

A. About thirty-two years.

Q. Were you born there?

A. Yes, sir.

Q. Did you know Stephen F. Cameron?

A. I did.

Q. Do you know his family and his wife and children?

A. Yes, sir.

Q. When did you last see him there?

A. In the summer of 1861.

Q. Did you know his general reputation for truth in that region; and, if so, what was it?

A. His reputation was not very good.

Q. State whether it was good or bad.

A. Rather bad.

Cross-examined by Mr. MERRICK:

Q. How long did you know him?

A. I do not know; I knew him since he first came to Elkton; I do not remember how long that was; some eight or ten years, I think.

Q. When did he leave Elkton?

A. I do not know that, but some time in 1861, I believe.

Q. Have you heard him generally discussed as a man of truth?

A. I have heard his name frequently mentioned.

Q. What have you heard said about him?

A. I have heard it said that he was not a very reliable man.

Q. Was that the language used, or can you recollect the language?

A. I do not know that that was the exact language, but that was the meaning of it. Very often in speaking, if any thing was mentioned as coming from Cameron, people would say they did not consider any thing that came from him very reliable.

Q. Was he spoken of as an erratic man, given to exaggeration?

A. Yes, sir.

Q. Was that his character?

A. That was his general character.

Q. Did he have the character of being a corrupt liar?

A. No, I do not know that he had.

Q. You cannot say that he had that character?

A. No, sir; he was considered a fanatic, and a man who was not a perfectly sane man.

Q. Do not one half of Elkton consider the other half insane anyhow?

A. No, sir.

Q. Did they not in 1861?

A. No, sir.

Q. Do you not think there was a very general opinion of that sort existing among the people there in regard to each other?

A. No, sir.

Q. Was not party feeling running very high?

A. Yes, sir.

Q. Pretty bitter?

A. At times it was.

Q. Was it not particularly so in Elkton?

A. No more so, I suppose, than any other parts of the State.

Q. Is it not still so?

A. Not to a very great extent.

Q. Did it not divide social life there among the people?

A. Not to a very great extent.

Q. Did not one side abuse the other side very generally personally in every way in the world?

A. No, sir; not as a general thing. Of course there are always cases of that kind.

Q. Did they not say a great many bad things about each other?

A. In certain cases I suppose they did.

Q. Were you on the same side with Cameron?

A. I do not know, indeed. I cannot answer that question.

Q. Why?

A. Because I did not know which side he was on. I knew after he went to the rebel army, but never knew before.

Q. That was in 1861. When did the rebellion begin?

A. It began in 1861, I believe.

Q. What time in 1861 did he go South?

A. I cannot answer that question.

Q. How often did you change your side before he went South?

A. I never changed.

Q. You always stuck to the same side?

A. I always did.

JOHN V. REARDON,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. I reside in Elkton, Cecil county, Maryland.

Q. How long have you lived in that region?

A. I moved there the first of December, 1858.

Q. Have you ever known Stephen F. Cameron?

- A. I have.  
 Q. The man who married there?  
 A. Yes, sir; he married in the county.  
 Q. You know the family?  
 A. Yes, sir.  
 Q. Have you heard people talk about him and heard his reputation among the people as a man of truth and veracity?  
 A. I have heard him spoken of.  
 Q. Do you know what his general repute is for truth and veracity in that region?  
 A. Very high.  
 Q. You know what it is?  
 A. Yes, sir.  
 Q. Now, state whether it is good or bad?  
 A. In regard to truth, or exaggeration, it is bad—not reliable

Cross-examined by Mr. BRADLEY:

- Q. What business are you engaged in?  
 A. Coach-making.  
 Q. Were you at that time?  
 A. Yes, sir.  
 Q. How long did you know him?  
 A. From the time I moved to Elkton until the time he went away.  
 Q. Did you associate with his friends and associates?  
 A. No, sir; nothing more than passing backwards and forwards and meeting him on the street.  
 Q. But did you associate with those people with whom he principally associated; his friends and neighbors?  
 A. No, sir.

FRANK TITUS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

- Q. Where do you live?  
 A. In Elkton, Maryland.  
 Q. When did you come there to live?  
 A. About the year 1855, I believe.  
 Q. Did you know a man named Stephen F. Cameron when he lived there?  
 A. Yes, sir.  
 Q. Do you know when he went away?  
 A. I was not living in the town the time I heard he went away.  
 Q. Do you know what his reputation was among the people there for truth and veracity?  
 Mr. BRADLEY. Among the people with whom he associated?  
 Mr. PIERREPONT. Among the people with whom he lived and dwelt.  
 A. Yes, sir; I know it.  
 Q. State whether it was good or bad?  
 A. It was bad.

Cross-examined by Mr. BRADLEY:

- Q. What business are you engaged in there?  
 A. At that time I was a student at the academy in that town.  
 Q. How old are you now?  
 A. I am now twenty-three.  
 Q. And when you were a student there you were twelve years old?  
 A. I think I was a little older than that; I was twenty-three the 20th of last April.  
 Q. What time did you go to school there in 1855?  
 A. I say I moved to near Elkton in 1855. I lived in Elkton in 1857 and 1858 and until the early part of 1861.  
 Q. What were you doing in 1857 and 1858 and until the early part of 1861?  
 A. I was attending school all the time until the early part of 1861.  
 Q. You were going to school until 1861?  
 A. Yes, sir.

- Q. And do you undertake to say what the general reputation in the neighborhood of Mr. Cameron was?  
 A. That part of the neighborhood with whom I associated.

- Q. How large a neighborhood was that that you associated with?  
 A. All around Elkton and a circuit, I suppose, of about two or three miles.  
 Q. And you knew the people generally there?  
 A. I knew the people generally there from 1858 to 1861.

- Q. And associated with them generally?  
 A. I associated with the people generally.  
 Q. You heard them talk about Cameron generally?  
 A. I heard Cameron spoken of.  
 Q. Heard them talk about him generally?  
 A. If you mean by "generally" every person I met, I would not say that I heard him spoken of in that way.

- Q. I do not understand that you met everybody there, but you say you met the people generally, and I want to know if you heard him spoken of generally among those people whom you did meet?

- A. I heard him spoken of by a great many.  
 Q. At that time?  
 A. Yes, sir; at that time. I have heard him spoken of lately, and at that time also.

- Q. You heard a good many people speak of him at that time?  
 A. Yes, sir.

- Q. Who were they?  
 A. I would not undertake at this distance of time to state their names positively.

- Q. Were you boarding there, or living with your family there?

- A. My father lived in the town a part of the time, and part of the time a short distance from the town, and then I came in in the morning and went out in the evening.

- Q. You mingled and associated with the same people that Cameron did?

- A. I do not know with whom he associated particularly; that is, whom he visited.

- Q. You do not know where he visited?  
 A. I would not undertake to say at what places he visited.

- Q. You do not know, then, where he visited, with whom he associated, or what business he was in?

- A. He was at that time, I believe, a clerk with his father-in-law in the grain-commission business in Elkton.

- Q. Any thing else?  
 A. That is all I know of to my own knowledge.

- Q. Did he keep house there?  
 A. The time I knew him he lived with his father-in-law.

- Q. Did his father-in-law live in Elkton?  
 A. He lived in Elkton at that time.

- Q. Did you visit there?  
 A. No, sir, I did not.

- Q. Did you visit in the houses that he visited at that time?  
 A. I do not know.

- Q. When you say his reputation was bad, what do you mean by it—that he was a wilful liar?

- A. I do not know that it was to that effect, that he was a wilful liar; but that he was not a man of probity; that he was hardly considered of sound mind.

- Q. You say he was not a man of probity?  
 A. Not a man of strict truthfulness as regards telling the facts.

- Q. That is what you mean by probity?  
 A. Yes, sir.

- Q. He exaggerated things—was that it?  
 A. Yes.

- Q. Was any thing said about his being a wild, crack-brained fellow?  
 A. Yes; I have heard that spoken of.

## MICHAEL McNAMARA,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. On Capitol Hill, in this city.

Q. Do you know John T. Tibbett, a witness who was examined in this case?

A. Yes, sir. I have known him since August 5, 1863.

Q. Do you know his general reputation among those with whom he associated?

Mr. BRADLEY. Where did Tibbett live when he knew him?

Mr. CARRINGTON. I will ask that if necessary. Where did Tibbett live at the time you knew him?

A. He came to Camp Baker and enlisted in my regiment.

Q. What was your position?

A. I was first lieutenant then of the company.

Q. Was he in your company?

A. Yes, sir. He served in my company all the time, company B, first District of Columbia cavalry.

Mr. BRADLEY, Jr. L. C. Baker's command.

By Mr. CARRINGTON:

Q. How long was he in your company?

A. Until October 26, 1865.

Q. Then you had an opportunity to know his reputation for truth?

A. I had.

Q. What was his reputation?

A. Excellent.

Cross-examined by Mr. MERRICK:

Q. He had the reputation of being a very smart man, had he not?

A. No, sir; not a very smart man, but a good, honest man—sober, industrious, and steady.

Q. You never heard his reputation for truth and veracity discussed?

A. No, sir; I never did. I never saw any occasion for it.

## JOHN H. CLARK,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. I am residing now in Washington city, on I street, between First and Second streets east.

Q. How long have you been residing here?

A. Since the regiment was mustered out, in October, 1865.

Q. I see that your arm is disabled; what is the cause of that?

A. A gun-shot wound.

Mr. BRADLEY. That does not throw any light on this question.

Q. (By Mr. CARRINGTON.) Where did you reside before you came here?

A. I was in the army five years before I came here.

Q. Where from?

A. From the State of Wisconsin.

Q. Do you know John T. Tibbett, a witness who has been examined in this case?

A. Yes, sir; I have known him since the fall of 1863, I think.

Q. Under what circumstances did you form his acquaintance?

A. In our regiment, the first District of Columbia cavalry.

Q. How long was he connected with the command?

A. Until its muster out in 1865.

Q. Were you his lieutenant?

A. I was lieutenant in the regiment; part of the time in his company.

Q. Did you have an opportunity to know his general

reputation among his fellow-soldiers and associates for truth?

A. I had.

Q. What was it?

A. His reputation was very good. I never heard any one question his reputation for truth and veracity in any way.

Cross-examined by Mr. BRADLEY:

Q. You never heard it called in question?

A. No, sir.

Q. How long did you say you were in the service?

A. Since 1858.

By Mr. MERRICK:

Q. Who was in command of that regiment?

A. The colonel of the regiment was Lafayette C. Baker, but he was not with the regiment. Colonel Conger, who was lieutenant colonel of it, was generally in command.

## JOHN A. CAMPBELL,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. In Washington city, at the corner of First street west and D street south.

Q. How long have you been living in Washington?

A. I came to Washington in 1852.

Q. How are you now employed?

A. In the Quartermaster General's office as a clerk.

Q. Do you know John T. Tibbett, who has been examined as a witness here?

A. Yes, sir.

Q. State where and when and under what circumstances you formed his acquaintance?

A. I was acquainted with him during the time he was in the regiment I served in, from the fall of 1863 until the 4th of September, 1865.

Q. Did you belong to the same company that he did?

A. No, sir.

Q. What position did you hold in the regiment to which he belonged?

A. I was sergeant major of the regiment.

Q. You knew him during the time he was connected with the regiment?

A. Yes, sir.

Q. Did you know his reputation for truth among his associates and fellow-soldiers?

A. I never heard his truth questioned.

Q. Was his reputation good or bad?

A. His reputation generally was good, and I have found him very truthful. I had no direct business with him in regard to duty.

Mr. BRADLEY. Confine yourself to general reputation—what people said about him.

Mr. CARRINGTON. You never heard it questioned?

A. Never before this trial.

No cross-examination.

## JOHN E. LOWE,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. In the city of Washington, on Fifth street west, between N and O streets.

Q. How long have you resided here?

A. Next October will be six years.

Q. How are you employed at this time?

A. At my trade, the tailoring business.

Q. Do you know John T. Tibbett, who has been examined as a witness here?

A. I do know him.

Q. How long have you known him?

A. To the best of my knowledge I have known him for about eighteen years.

Q. Do you know his reputation among his associates and his neighbors for truth, whether it is good or bad?

A. As far as my judgment is—

Mr. BRADLEY. That will not do. Answer the question.

Mr. PIERREPONT. The question is, what people say about him; what is his general reputation for truth?

Mr. BRADLEY. What the people say among whom he associates.

Judge FISHER. What is his general reputation for truth and veracity in the neighborhood in which he has resided?

A. I lived there, and I never heard any thing to the contrary.

By Mr. BRADLEY:

Q. When did you live there?

A. About six years ago.

Q. Where?

A. In Prince George's county.

By Mr. CARRINGTON:

Q. I understand that you have known him eighteen years, and never heard his reputation for truth questioned by his neighbors?

A. Never heard it doubted.

By Mr. BRADLEY:

Q. Where did you live when you knew him?

A. In Prince George's county. I knew him at his father's house.

Q. Where is that?

A. Near Mr. Marriott's, in Horsehead district. I can hardly name the very spot of land.

Q. Do you know where Mr. Watson lives down there?

A. It is rather this side of Mr. Watson's.

Q. Do you know where the Ormes live?

A. They live at Horsehead.

Q. You lived there six years ago?

A. It will be six years next October since I lived there. I lived in Woodville.

Q. How far is that from Horsehead?

A. About five miles.

Q. How far from where Tibbett lived?

A. About the same, I think.

Q. On what road is Woodville?

A. On the mail road that is now; the general road that goes from there to Washington.

Q. From where, from Horsehead?

A. Yes, sir.

Q. Does that come by Woodville, and by the place where Mr. Tibbett lived?

A. Mr. Tibbett does not exactly live on the road; but it is to the right of the road coming up to Horsehead.

Q. What is Mr. Tibbett's business, the old man?

A. Blacksmith.

Q. Did this young man ever work with him?

A. He did the time he was living there.

Q. Now, you say that in that neighborhood where he lived his reputation was always good for truth and veracity, and you never heard any thing against it?

A. I never heard to the contrary in my life.

Q. Did you ever hear anybody talk about it?

A. No, sir.

Q. Do you know when he left his father's?

A. No, sir; I do not.

Q. Did he leave his father's before you came away?

A. I do not think he did, but I cannot say positively about that.

Q. You never heard anybody speak of his truth at all?

A. No, sir; I never did.

JOHN W. KELLY,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. At the corner of Twelfth street and Maryland avenue, Washington city.

Q. How long have you lived there?

A. About a year and a half.

Q. What is your occupation?

A. I am employed by the Government as one of the bosses of the monument.

Q. Do you know John T. Tibbett, who was examined as a witness here?

A. I have known him seven or eight months. He is employed at our place now as a blacksmith.

Q. During all the time you have known him has he been in your employment as a blacksmith?

A. Not all the time. He has been three months or over at our place. He used to be upon Fourteenth street.

Q. You saw him before?

A. Yes; I used to see him there; I got horses shod there.

Q. Do you know persons with whom he associated?

A. No, sir.

Q. Do you know what is his general reputation?

Mr. BRADLEY. How can you ask about his general reputation when the witness does not know. I object to the question.

Judge FISHER. Let him be asked if he knows what Tibbett's general reputation is for truth and veracity in the neighborhood in which he resides.

Mr. BRADLEY. He has answered that he does not know the persons with whom Tibbett associates.

Judge FISHER. He may have answered that question, but that is not the question to be put. It is not whom a man associates with, but it is what the people in the neighborhood say of him, whether he associates with them or not.

Mr. CARRINGTON. That was only an introductory question.

Judge FISHER. The witness may understand that to mean persons with whom he is particularly intimate.

By Mr. CARRINGTON:

Q. Do you know his general reputation for truth among the persons in the neighborhood where he resided or worked?

A. I have heard him very well spoken of.

Q. In regard to truth?

A. Yes, sir.

Q. How have you heard him spoken of?

A. Well spoken of.

Q. Did you ever hear his reputation for truth questioned?

A. No, sir.

Cross-examined by Mr. BRADLEY:

Q. How do you know what his reputation for truth is if you never heard it spoken of?

A. No more than I heard people say; I always heard people speak well of him.

Q. About his truth?

A. I do not know so much about that.

Q. That is the whole point; you have known him about seven months, you say?

A. Thereabouts.

Q. And for about half that time you have had opportunities to see him?

A. Yes, sir; he has been down at our place about three months, I think.

Q. Have you ever heard people speak about his character for truth?

A. No, sir, I have not.

By Mr. CARRINGTON:

Q. I understand you never heard it questioned?  
A. I never did.

JAMES GIBSON,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?  
A. In the Third ward of this city, on K street, between Seventh and Eighth.  
Q. What is your occupation?  
A. Keeper of a restaurant.  
Q. Do you know John T. Tibbett, who was examined as a witness here?  
A. Yes, sir.  
Q. How long have you known him?  
A. About eleven months.  
Q. Do you know what his general reputation for truth among his neighbors is?  
A. I have never heard it questioned.  
Cross-examined by Mr. BRADLEY:  
Q. Do you know any thing about his reputation for truth among his neighbors in Maryland before he came here?  
A. I never heard any thing about him down there.  
Q. Have you not seen a number of them from there and heard them talk?  
A. No, sir.

ROBERT F. MARTIN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?  
A. In Uniontown, in the District of Columbia.  
Q. Do you know John T. Tibbett, who has been examined as a witness here?  
A. Yes, sir.  
Q. How long have you known him?  
A. About fifteen years.  
Q. Did you live down in Prince George's county?  
A. Yes; I was raised close to him.  
Q. And knew his father then?  
A. Yes, sir.  
Q. Did you know him while he was at work with his father in the blacksmith business?  
A. I did know him while he was at work for his father.  
Q. Do you know his reputation for truth among his neighbors?  
A. I do not know any thing about his reputation.  
Q. But you say you have known him for fifteen years. Now, I ask if you ever heard his reputation for truth questioned by his neighbors.  
A. Not until very latterly.  
Q. When?  
A. The last three or four months.  
Q. When was it?  
A. I never heard any thing about it until I saw it in the papers since this trial commenced.  
No cross-examination.

DANIEL GARNER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?  
A. In Prince George's county, Maryland.  
Q. Do you know John T. Tibbett, a witness who has been examined here?  
A. Yes, sir; I have known him ever since he was a child.  
Q. How near did you live to his father's house?

A. About four miles and a half, I reckon.

Q. Do you know his reputation among his neighbors there as a man of truth?

A. I never heard it questioned.

Q. You are a farmer down there?

A. I am a farmer and constable too.

Q. Of course, then, you are generally acquainted in that neighborhood?

A. Yes, sir; I have been in office twenty-five years.

Cross-examined by Mr. BRADLEY:

Q. Did you say you were an officer in Prince George's county?

A. Yes, sir.

Q. Have you been indicted and tried and convicted of malpractice in office there?

Mr. CARRINGTON. Stop, if you please.

Judge FISHER. (To the witness.) You need not answer that question.

Mr. MERRICK. I suppose he may answer or not, as he pleases.

Judge FISHER. I said he need not answer.

Mr. BRADLEY. It is entirely optional with him. He can answer or not.

Mr. CARRINGTON. I do not think that.

Mr. BRADLEY. I put the question whether he was indicted and tried last fall and convicted of malpractice in office and sentenced. He can answer it or not as he pleases.

Judge FISHER. (To the witness.) You need not answer unless you choose.

The WITNESS. I can get a recommendation from the county that I was the best officer ever was in it.

Mr. BRADLEY. That is not answering the question.

Judge FISHER. If you choose to answer, you can do so; if you do not, you need not.

The WITNESS. I won't answer it to please him.

Judge FISHER. (To the counsel for the defense.) That would not be proper evidence, gentlemen, at any rate. If he has been convicted of any crime, the proper way to impeach his testimony would be to produce the record of that conviction.

Mr. BRADLEY. Yes, if it disqualified him as a witness; but I can ask him the question whether he has been convicted, and he can decline to answer or not, as he pleases.

Judge FISHER. (To the witness.) Do you decline to answer?

The WITNESS. I do.

Mr. BRADLEY. That is all.

The WITNESS. I am an officer yet, and you cannot help it.

REUBEN S. IVES,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?  
A. In Prince George's county, Maryland.  
Q. How far from Mr. Tibbett, the father of the witness, John T. Tibbett?  
A. I suppose it is about eight miles.  
Q. What is your position there; do you hold any commission?  
A. I have been a justice of the peace; I am not now.  
Q. Do you know the witness John T. Tibbett, and how long have you known him?  
A. It has been five or six years.  
Q. Where did you know him?  
A. I knew him at his father's house and through that neighborhood, and have seen him frequently in different places.  
Q. Do you know his reputation among his neighbors for truth; and, if so, is it good or bad?  
A. I never heard it called in question. I have heard people speak of him very highly.

Cross-examined by Mr. BRADLEY:

Q. How came people to speak of him very highly if his reputation was never questioned?

A. I can tell you how I became acquainted—

Q. I do not ask what you know about him, but what people said generally?

A. But I must come at it to let you know how I know it. I was intimate with his father's family, and in that neighborhood frequently heard him, with the rest of the family, highly spoken of as being a man of good character.

Q. Did you ever hear anybody speak about his character for truth?

A. I never heard it mentioned.

Q. Then you never heard it talked about?

A. I never heard it brought in question as to his being a man of bad character.

Q. How long have you known him?

A. Five or six years.

JOHN L. KELLY,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. At the corner of Third and H streets, in this city.

Q. How long have you lived here?

A. Since the spring of 1862.

Q. Do you know John T. Tibbett?

A. Yes, sir. I knew him first in the summer of 1862.

Q. How did you form his acquaintance?

A. By hiring him.

Q. What is your occupation?

A. Foreman of the United States horse-shoeing shop.

Q. How long did you have him in your employment?

A. He was there two terms; I cannot exactly say how long as a horse-shoer.

Q. Did you know what his reputation for truth was among the persons with whom he associated; and, if so, state whether it was good or bad?

A. I would say good.

Cross-examined by Mr. BRADLEY:

Q. Did you ever hear any thing said about his truth?

A. No.

Q. You never had any cause to inquire into his truth?

A. No, sir.

Q. You say you have known him since 1862. How long was he with you?

A. He left in February. The last day he worked was the 10th of February, 1863.

Q. Have you seen any thing of him since?

A. I saw him again about six months ago, and have seen him frequently since.

Q. And you do not know any thing about him in the meantime?

A. No, sir.

Q. You do not know any thing about him before 1862?

A. No, sir.

EDMUND ROCKETT,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. I will ask you how old you are, as you seem to be a pretty old man?

A. I think I was born in 1791.

Q. Where do you live?

A. I live down in Prince George's county, Maryland, near Horsehead.

Q. Do you know this young man John T. Tibbett?

A. Very well. I knew him before he knew himself

Q. How near did you live to his father?

A. From two to three miles. I have been a regular visitor at his house and family all the time.

Q. Do you know his general reputation among his neighbors and associates for truth?

A. He bears as good a character in his raising as any other young man in the settlement.

Cross-examined by Mr. BRADLEY:

Q. Have you always lived in that neighborhood?

A. Yes, sir; for upwards of fifty years.

Q. You were not born there?

A. No, sir; I was not.

Q. You say you know the old man Tibbett?

A. Yes, indeed—a good, pious old man; as good a citizen as we have in this country.

Q. Do you know William J. Watson?

A. Yes, sir.

Q. Where does he live?

A. He lives in the neighborhood of Mr. Tibbett.

Q. Is he intimate in the family?

Mr. PIERREPONT. Do not answer that question, whether Mr. Watson is intimate in the family or not.

Q. (By Mr. BRADLEY.) You know the neighbors that visit at Mr. Tibbett's?

Mr. PIERREPONT. Do not answer that question. We have nothing to do with the neighbors' visiting.

Judge FISHER. I do not see that there is any relevancy in the question. Visiting the house has nothing to do with a man's reputation.

Mr. BRADLEY. I want to get at what the people in the neighborhood say of him.

Judge FISHER. It does not require that there should be any visiting in the house to ascertain his reputation.

Mr. BRADLEY. I am not satisfied about that. I do not see why I cannot ask this old gentleman the question on cross examination.

The WITNESS. A man who works for his daily bread does not want many visitors.

Q. (By Mr. BRADLEY.) Is that a pretty thickly-settled neighborhood down there?

A. Reasonably; thickly settled enough, agreeably to the soil of the land.

Q. How near to Mr. Tibbett do you live?

A. About from two and a half to three miles.

Q. Which way; towards Horsehead or this way?

A. I lived part of the time near the Horsehead, and since then I moved a little farther off, more towards Bryantown.

Q. You know everybody in that neighborhood?

A. Yes, sir; I do.

Q. And you knew this young man before he knew himself?

A. Yes, I did. I perhaps took him in my arms and danced him about. I used to go down regularly to his father's to get work done—wheelwright work—and backward and forward, and I am remarkably fond of children.

Q. And you have seen him all the way up from his babyhood?

A. Yes; I have seen him and heard from him all the time.

Q. And you never heard any thing against him?

A. Never that he had a bad character, but always that he was a good, moral citizen.

Q. And about his being a truthful man?

A. Yes; and when his country was in need he stood in defence of it.

Q. And you say you know all the people in his neighborhood, and you never heard any of them say any thing against him?

A. Not unless some secesh that were prejudiced against him.

Q. Is Mr. Watson secesh?

A. No, sir; and Mr. Watson does not say any thing against him.

## WILLIAM LLOYD,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Were do you live?

A. In Fourteenth street, near the National Monument, in this city.

Q. Do you know this young man, John T. Tibbett?

A. Yes, sir.

Q. How long have you known him?

A. About three months and ten days.

Q. How did you form his acquaintance?

A. Being employed at the same place.

Q. During your acquaintance with him have you had an opportunity to find out his reputation for truth; and, if so, state whether it is good or bad?

A. It is good.

Q. What is your business?

A. Carpenter.

Q. And you are employed at the same place where he is a blacksmith?

A. Yes, sir.

Cross-examined by Mr. BRADLEY :

Q. You say you have known him for three months and you have never heard any thing against his character for truth?

A. Not until I saw it in the papers.

Q. Do you speak of what other people said about him or what you know yourself?

A. Other people speak of him very well; give him a good character.

Q. It has been six weeks since he has been examined. Now, within the six weeks before that time did you hear him talked about any?

A. I have not heard any thing against him in the time I have known him.

## JOSEPH I. COLCLACIER,

a witness for the prosecution in rebuttal, sworn and examined:

By Mr. CARRINGTON :

Q. Where do you live?

A. In Washington, on S street, between Sixth and Seventh.

Q. Do you know John T. Tibbett, and how long have you known him?

A. I have known him personally since January last, I think.

Q. How did you form his acquaintance?

A. By working in the Government shop.

Q. What is your occupation?

A. Horse-shoeing. I am a blacksmith.

Q. You and he are in the same business?

A. Yes, sir.

Q. Did you have an opportunity to form some knowledge of his reputation for truth among his associates; and, if so, state whether it was good or bad?

A. I think I have. bad. I generally notice such things amongst men. I think his reputation for truth is excellent.

Cross-examined by Mr. BRADLEY :

Q. Have you heard it talked about?

A. There was no question about it in the shop.

Q. But you say it is excellent?

A. I say I think it is excellent.

Q. Have you ever heard any thing said about it?

A. Nothing at all.

Q. What makes you think it excellent?

A. I thought him to be a man of veracity.

Q. I do not ask what you believe, but what people say about him?

A. They do not say any thing. I never heard a bad word spoken against him in my life.

Q. And therefore you think his character is excellent?

A. I do.

## JOHN OGDEN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you reside?

A. At the corner of Seventeenth and E streets, in this city.

Q. How long have you resided here?

A. About five years?

Q. What is your occupation?

A. Blacksmith; but I am not working at it at the present time.

Q. How are you employed now?

A. I am watchman in the Quartermaster General's department.

Q. Do you know John T. Tibbett?

A. Yes, sir; I have known him since about the 1st of January.

Q. How did you form his acquaintance?

A. He was working with me at the same trade.

Q. Did you have an opportunity to hear any thing of his reputation among his associates for truth; and, if so, state whether it was good or bad?

A. I never saw any thing different from any other man. He always performed his duty with regularity. His conduct was always good so far as I saw it. I never heard any thing bad of him.

Q. Did you ever hear his character for truth questioned?

A. Never in my life.

No cross-examination.

## EUGENE BOWEN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you live?

A. At Monument lot, in this city.

Q. How long have you been living there?

A. Better than two years.

Q. How are you employed?

A. Mounted messenger for Colonel Bell.

Q. Have you been a soldier?

A. I have been.

Q. And lost an arm in the service?

A. I believe so.

Q. Do you know John T. Tibbett?

A. I have known him for about eight months.

Q. Where did you form his acquaintance?

A. I saw him occasionally at Fourteenth-street park, as I used to go up there to get my horse shod, and then he came into our department, and I have been pretty intimate with him there.

Q. You have been associating intimately with him since he has been in this department?

A. Yes, sir.

Q. How has he been employed in the department?

A. As a blacksmith.

Q. Did you have an opportunity to form a knowledge of his reputation for truth among his associates; and, if so, state whether it was good or bad?

A. I never knew an honest man yet who would doubt his word.

No cross-examination.

## JOHN E. ROBERTS

was called as a witness for the prosecution in rebuttal; but, after being sworn, was not examined.

Mr. PIERREPONT. Your honor will excuse us. There is some question as to how far we shall go with this kind of testimony. Perhaps we are bringing forward a greater number than is necessary.

Mr. BRADLEY. We have nothing to say about that. Mr. PIERREPONT. We are trying to shorten it, and not to lengthen it.

The court took a recess until to-morrow morning at ten o'clock.

## Thirty-Eighth Day.

WEDNESDAY, July 24, 1867.

The court re-assembled at ten o'clock a. m.

FRANCIS C. SPEIGHT,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In the city of New York.

Q. What is your position there?

A. I am captain of the twenty-ninth precinct in the Metropolitan Police department.

Q. How long have you been there?

A. It was twenty-three years the 17th of this month since I first joined, and I have been in the department, with the exception of about three years, ever since; and I have been in my present place about fourteen years.

Q. Have you heard of a man who calls himself Dr. Augustus Bissell.

A. I know a man called Dr. Bissell; I do not know about the Augustus.

Q. Is he the one who testified here on the stand?

A. Yes, sir.

Mr. BRADLEY. How does he know that?

Mr. PIERREPONT. (To the witness.) Do you know where he lives?

A. He keeps a drug store, I believe, on the corner of Twenty-Third street and Seventh avenue.

Mr. BRADLEY. Not the same man.

Mr. PIERREPONT. That is the place that he testified to.

Mr. BRADLEY. Turn to the evidence.

Mr. PIERREPONT. I am not going to turn to any evidence; I am going to give evidence.

Judge FISHER. It will be a question for you to discuss, whether the identity is made out.

Mr. BRADLEY. If they are going to offer any thing about the man's character they should identify him.

Mr. PIERREPONT. We shall identify him, if the gentleman will keep quiet, before a long while.

Mr. BRADLEY. Very well; go on.

By Mr. PIERREPONT:

Q. Has he been at other places in New York?

A. Yes, sir.

Q. What business has he been doing in New York?

A. He bought a place out of a man named Eaton, in Broadway.

Q. What place?

A. A public house; a drinking-house and restaurant.

Q. Did he attend to that?

A. He did not attend to that; but he sat about there. He was sitting about in the house, and it was understood that he furnished the money to buy it.

Q. How long was he there?

A. He must have been there seven or eight months.

Q. Do you know any thing about his reputation for truth among the people with whom he lived?

Mr. BRADLEY. Nothing else but truth.

The WITNESS. That is what I am here for.

Mr. PIERREPONT. That is precisely what I want; his reputation for truth.

A. I have heard his reputation spoken of frequently.

Q. How have you heard it spoken of?

A. I have heard him spoken of as a man of very bad reputation for veracity—a mysterious sort of man, that nobody knew much about. He was looked upon as a mysterious man; a bad man. I have had him pointed out to me.

Mr. PIERREPONT. As a policeman?

Mr. BRADLEY. I think this is highly objectionable.

I hope your honor will tell the witness what he is to testify to.

Judge FISHER. (To the witness.) You are confined to Bissell's character for truth and veracity.

By Mr. PIERREPONT:

Q. Is his character for truth and veracity good or bad?

A. Bad.

Cross-examined by Mr. BRADLEY:

Q. Whom did you ever hear speak of him?

A. I have heard several.

Q. Name one?

A. Mr. Campbell a jeweller, in Fourth avenue.

Q. What is his number?

A. 339 Fourth avenue, if I am not mistaken.

Q. Who else?

A. A man by the name of Gleason.

Q. Where is he?

A. He is a policeman in New York under my command.

Q. When did you hear him speak of Bissell?

A. Half-a-dozen times within the last two or three months.

Q. How long have you known this Dr. Bissell that you speak of?

A. It is about two years.

Q. And all you can recollect that he has been engaged in is, that at one time he furnished money to purchase out Eaton in Broadway, an eating-house, and that now he is keeping a drug store at the corner of Twenty-Third street and Seventh avenue?

A. I understand he is.

Q. Do you know any thing about that fact?

A. Not for a certainty. I never was in his store. He has told me so.

Q. How long has he been keeping that drug store?

A. I do not know.

Q. How long have you heard of his keeping a drug store there?

A. He cannot have been keeping it a great while, for he told me he was going to keep one on the corner of Twenty-Fifth street and Sixth avenue, and I find now that is occupied as a furniture store, and not as a drug store. He told me he had leased it.

Q. What do you know about his purchasing out the restaurant of Eaton?

A. Nothing more than that I was told so by Mr. Eaton, the gentleman whom he purchased it of.

Mr. BRADLEY. You are perfectly well aware that what anybody else told you is not evidence. What knowledge have you of it besides Mr. Eaton telling you of it?

A. Nothing more than that he was sitting about there and appeared to have control of it.

Q. When was that?

A. About a year ago.

Q. Have you read the testimony that he gave in this case?

A. I have.

Q. When was your attention called to the testimony he had thus given?

A. I have read the whole of the evidence very carefully; and when I came to see his testimony I recollected him.

Q. Then did you communicate to the authorities here?

A. I wrote to Mr. PIERREPONT on last Sunday, and I was waited upon on Tuesday morning, and subpoenaed. He could not have known any thing of that. I do not know whether Mr. PIERREPONT got the letter or not.

Mr. PIERREPONT. I did get it, but I had sent for you before.

The WITNESS. I was subpoenaed on Tuesday morning.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 88. WASHINGTON, FRIDAY, AUGUST 30, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 87.*

By Mr. BRADLEY :

Q. Could not a person have left here on Monday, and have got to New York and subpoenaed you on Tuesday morning easily enough?

A. They could have subpoenaed me easily enough; but the letter could not have got here, because I did not mail it until Monday, though I wrote it on Sunday.

Q. That is the only communication you had?

A. That is the only communication I had with any one. I had a telegram since then.

Q. That is the only communication you had prior to your being summoned?

A. I was summoned yesterday morning, and prior to that I had no communication with any one about this matter. No, I must correct that; I received a telegraphic dispatch at my house at twelve o'clock on Monday night, and on Tuesday in the forenoon I was subpoenaed. The telegram came to my house at twelve o'clock the night before.

Q. You say you have heard Bissell's character for truth spoken of?

A. Yes, sir.

Q. When did you ever hear his character for truth spoken of?

A. I have heard it spoken of several times in the last month, six weeks, or two months, and during the last year.

Q. Not only that he was a mysterious man, whom the people did not know any thing about, but that his character for truth was bad?

A. Yes, sir.

Q. Who did you hear speak of his character for truth?

A. I have heard Mr. Campbell and Mr. Gleason.

Q. How did the question as to his truth arise before those men? Were they complaining of his dealings with them or not?

A. If the court will allow me, I will explain how it came about.

Mr. PIERREPONT. Certainly; you are asked to explain.

The WITNESS. Dr. Bissell—

Mr. BRADLEY. This is which one—Campbell or Gleason?

A. Neither one of those men.

Mr. BRADLEY. I do not ask about any one else, but about those men.

A. I was going to explain that. Those men were talking about his connection with a bank in Hoboken.

Q. Campbell and Gleason?

A. Yes.

Q. And then they talked about his truth?

A. Yes, sir.

Mr. BRADLEY. I do not want any conversation between them; I only want to know the fact, whether they talked about his truth or not. How long ago was that?

A. Within the last two months.

Q. Do you know where he came from to New York?

A. I do not.

Q. Do you know where Waverly, in the State of New York, is?

A. I know there is such a place, but I am not aware that I know where it is.

Q. You say that his general reputation for truth and veracity is bad?

A. Yes, sir.

Q. And yet you cannot recollect who spoke of that general reputation, except those two men?

A. I do not recollect any that I can call to mind at present.

Q. Do you know any of the people with whom he associates—his companions in New York?

A. Not that ever said any thing about his reputation.

Q. Do you know any of those with whom he associates?

A. I do not know. They say he associated with Chris. Hogan.

Q. I ask you if you know?

A. I know Chris. Hogan.

Q. Do you know with whom Dr. Bissell associates?

A. That is one of the men that I heard he was intimate with. I have never seen them together.

Q. Do you know persons with whom he associates in New York? Not what you heard, but what you know.

A. I have seen him associating with a great many men that I did not know personally. I do not know any of his particular associates.

Q. Do you know the firm of Cassiday & Covell, in Warren street?

A. No, sir; I do not know them.

Q. Does your district extend to Warren street?

A. No, sir.

Q. The man of whom you spoke keeps a drug store on the corner of Twenty-Third street and Seventh avenue?

A. I have no doubt he kept there. He told me so. I never was in his store.

Q. You only know that from what he told you?

A. He told me so.

Q. When did he tell you that?

A. I should think it was about two weeks ago, to the best of my recollection.

Q. When you first saw him, do you know whether he was lame or not.

A. He was.

Q. Was he on crutches or not?

A. He was.

Q. You do not know of his being engaged in any other business?

A. No, sir.

By Mr. PIERREPONT :

Q. You were asked about a conversation that you had in relation to this man's character for truth, and you said it was in connection with something that was said about a bank in Hoboken. What was the whole conversation?

Mr. BRADLEY. I expressly said that I did not ask

for the conversation, but whether there was any thing about truth in it.

Mr. PIERREPONT. Now, what was said about his truth in that connection? Give us the whole of it.

Judge FISHER. Confine yourself to what was said in regard to his truth.

Mr. BRADLEY. I do not know Dr. Bissell at all, and I do not know that I shall make any objection to the whole conversation, for I intend to send for witnesses too. I have sent for Campbell and Gleason. I have no doubt the man is a fair and honest man. If he is, I will support him to any extent.

Mr. PIERREPONT. We shall have witnesses from all parts of the country about him. Now, I ask Captain Speight to state what was said in that conversation of which he has spoken about Bissell's character for truth.

A. The conversation was that Dr. Bissell had been imprisoned in reference to some certificates of deposit on a bogus bank, and he had turned State's evidence.

Mr. BRADLEY. Is that all?

Mr. PIERREPONT. That is all I am asking.

Mr. BRADLEY. Is that all the conversation? Go on and state all the conversation.

A. The parties that were talking about it said they would not believe him under oath. I remember Mr. Campbell said that.

PATRICK D. KILLDUFF,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. At 948 Broadway, New York.

Q. How long have you lived in New York?

A. Since 1858 the last time. I have lived there altogether about twenty years.

Q. Do you know Dr. Bissell?

A. Yes, sir.

Q. How long have you known him?

A. Two years this month; since the early part of July, 1865.

Q. Had you any business transactions with him?

A. Yes, sir.

Q. Do you know any thing about an eating-house that he had to do with?

A. Yes, sir.

Q. Do you know what his reputation is among the people with whom he lives for truth and veracity?

A. Yes, sir.

Q. Is that reputation good or bad?

A. Bad.

Cross-examined by Mr. BRADLEY:

Q. What do you mean by bad reputation for truth?

A. I do not consider that he is a man of honor.

Q. That is not the question.

A. I would not believe him under oath.

Q. Is he an habitual liar? Is that his reputation?

A. I would not believe him under oath.

Q. That is not the question. I do not ask you what you believe; but do you mean to say that his reputation is that he is a common liar?

A. Yes, sir, if it is to his interest.

Q. I want to know his general reputation as to telling the truth. Do you mean he is a common liar?

A. His reputation is bad.

Q. Do you mean that he is a common liar?

A. Yes, sir.

Q. How many people do you know that know him?

A. I know five or six, or six or eight, or eight or ten; I cannot remember their names.

Q. Among those five or six, or eight or ten, whom have you ever heard speak of him?

A. Mr. McMahon, Mr. Eaton, and a gentleman at the Everett House, whose name I cannot think of. I cannot remember the names of all of them. My acquaintance has been two years.

Q. Of the five or six people that know him that you know, how many did you ever hear speak of his truth; not his bad character or want of integrity, but in regard to his truth?

A. I never heard one.

Q. Never heard one what?

A. Never heard one speak of his good character.

Q. Did you ever hear any one of them speak of his bad character for truth—not his character as an honest man, a man of integrity, or a man of honor, but as to telling the truth?

A. They would not believe him under oath.

Q. Did these men all say so?

A. Yes, sir.

Q. You have given the names of two; who are the others?

A. I gave you Mr. McMahon; I gave you Mr. Eaton; I can give you Mr. Faulkner; and there is one more, but I cannot remember the names exactly, for I never charged my mind with them at the time.

By Mr. MERRICK:

Q. Where does Faulkner live?

A. The last I knew of him he was in Canal street.

Q. What was he doing?

A. Keeping a public house the last time I heard of him. He was off some years, but has returned to New York.

By Mr. BRADLEY:

Q. What is your business?

A. I keep a public house at 948 Broadway, New York.

Q. You have known Dr. Bissell about two years?

A. Yes, sir.

Q. Who came after you?

A. I do not know the gentleman's name; I was subpoenaed.

Q. How did it turn out that they knew that you knew any thing about Dr. Bissell?

A. I do not know, except by seeing my name on No. 1160 Broadway, a house I formerly kept in New York. From that, I suppose, I got into it. I do not know any other way. Some gentleman came there and subpoenaed me; that is all I know about it.

Q. You do not know how they came to be aware that you knew any thing about Bissell?

A. Because he purchased the house from me.

Q. But how did these people know that?

A. I do not know.

Q. You did not tell anybody?

A. No, sir.

Q. You read his testimony in the papers?

A. No, sir; my boy read it for me; I did not read it. That was the first notice I had of it.

Q. It was read to you?

A. My son read it.

Q. And then you spoke of it, did you?

A. No, sir, I had nothing to do with it. I may perhaps have made a casual remark to my child, or to my wife, but that was all.

Q. You do not know how it was found out that you knew any thing about him.

A. I do not know.

Mr. PIERREPONT. Do not answer any more of such questions unless the court say they are pertinent.

Judge FISHER. I have said heretofore that I did not see the pertinency or relevancy of questions of that character, to know how it was found out.

Mr. PIERREPONT. We object to them, then, on account of their consuming so much time.

Mr. BRADLEY. I renew the question and the court will rule upon it. Can I not ask the witness how it came to be known that he could give testimony in the cause?

Mr. PIERREPONT. It is not of any consequence how it was known, whether he communicated it or not.

Judge FISHER. The witness has already answered, though.

Mr. PIERREPONT. He has answered, and I want it to end here.

Mr. BRADLEY. I want a ruling of the court on that point.

Judge FISHER. I have ruled on it.

Mr. BRADLEY. Then I beg to have an exception noted.

By Mr. MERRICK :

Q. What Eaton do you refer to ?

A. Luther, I believe, is his name.

Q. Where does Eaton live ?

A. He is not in business now. The last I saw of him was about four weeks ago ; he is out of business at present ; he is in New York, though, I think.

JOSEPH B. STEWART,

recalled as a witness for the prosecution in rebuttal.

By Mr. PIERREPONT :

Q. You stated that you followed Booth out from the theatre on the night of the murder. Now, tell us what was the condition of the moon when you followed him out of the theatre, and the condition of the night as to its being cloudy ?

Mr. BRADLEY. Stop a moment. The same subject was spoken of in chief, and we have answered it by our evidence.

Mr. PIERREPONT. No, I believe we did not offer any evidence whatever in chief in relation to the condition of the night.

Mr. BRADLEY. I believe you did.

Mr. PIERREPONT. No ; but they did on the other side ; and showed that there were mare's tails in the sky.

Mr. BRADLEY. Never mind what we showed ; that is another thing ; the jury heard the evidence.

Mr. MERRICK. You have showed a great many mare's nests on the earth.

Mr. PIERREPONT. I think it will be found that we did not ask any question on the subject of the condition of the brightness of the moon.

Mr. MERRICK. Look at Sergeant Dye's testimony.

Mr. BRADLEY. I am very positive they did.

Judge FISHER. I think it was asked of Sergeant Dye.

Mr. PIERREPONT. We asked about the moon being up ; but as to the condition of the night, as to clearness or cloudiness, I do not think any question was asked ; but I am not as positive as my learned friend.

Mr. MERRICK. Has your honor read the testimony of Sergeant Dye as to his presence in front of Mrs. Surratt's house ? If so, you will see that he undertook to say that he recognized her that night ; and in that connection he said it was clear, and the moon was up.

Judge FISHER. He was asked, " Tell us what was the condition of the moon at that time ; " and he answered, " I cannot say exactly ; I disremember ; " and then his examination continued :

" Do you know whether it was full or different at the time ?

" A. It was light enough to see some distance on the street.

" Q. Do you know whether the moon was up ?

" A. Yes, sir ; I believe it was.

" Q. Do you know whether the moon was then at or about the full ?

" A. I cannot say."

Mr. PIERREPONT. I think it will not be found that we asked any thing on the subject of the cloudiness or clearness of the night.

Mr. BRADLEY. You asked whether a man could see persons at a distance or not. The question put to Mr. Stewart is about the moon.

Mr. BRADLEY, Jr. The question was asked of Dye, " Do you know whether the moon was up ? "

Judge FISHER. I have just read that. The question now asked I understand to be, What was the condition of the moon when this witness followed Booth out of the theatre, and the condition of the night as to its being cloudy.

Mr. PIERREPONT. If we have given any evidence of the condition of the night as to its being cloudy or not cloudy, we certainly are not entitled to give it now. My understanding is, that we have given no such evidence, but that they have given it on the other side.

Mr. BRADLEY. I do not object to the latter part of the question, as to the cloudiness of the night ; but to the first part of it, as to the condition of the moon.

Mr. PIERREPONT. Very well ; I will modify the question. (To the witness.) State the condition of the night—as to its brightness.

The WITNESS. The first thing which I observed—

Mr. BRADLEY. Just confine yourself to the condition of the night.

The WITNESS. In opening the door, the first thing which I observed was the condition of the night. My attention went direct to that with what I could see. I opened the door ; I looked to see what was outside. I was looking for the person that had just gone out of the door ; I recollect distinctly the way that it appeared to me, and as connected with the object of my movement. Looking up, the sky was lighting up ; it was lighter above than it was below ; in ranging my eye upward from the ground, the farther up I saw any object, the more I could see. I could see Booth's head ; I could see distinctly the knife in his hand as he crossed the alley-way.

Mr. BRADLEY. Now, can you not answer the question, what was the condition of the night, without going into all this detail ?

The WITNESS. I should like to give the reasons for my observation.

Mr. BRADLEY. We do not want any reasons just now.

The WITNESS. It was light enough to see distinctly the person on the horse, to see his arms, to see the motions of his hand, to see his working at the rein. It was light enough to see all that. His distance from me was about fifteen feet.

By Mr. PIERREPONT :

Q. How was the night as to its clearness at that time ?

A. At that time the night had the appearance of a moon coming light ; the moon was rising. It was not very high, but affording light sufficient to see as I have described.

Q. After that did you go about the streets ?

A. After that, when I returned to the theatre, I took my company and went out, and walked from the theatre home, as I could not find my carriage.

Q. Did you go to the Secretary of War's, or anywhere ?

A. I was going to say that when I arrived at my house—

Mr. BRADLEY. Is it possible that we are going all over this ground ? Cannot the question, whether it was a cloudy or dark night, be narrowed down to some point ?

Judge FISHER. It ought to be.

Mr. PIERREPONT. That is what I want to get at. (To the witness.) Just go on in any mode so as to get to the point of the clearness or cloudiness of the night ?

Mr. BRADLEY. I must object to this mode of getting at it, whether he went to the Secretary of War's or anywhere else. He can testify whether it was cloudy or not.

Judge FISHER. He can testify as to the clearness or cloudiness of the night ; and he can state why he recollects it. Any incident that impresses it upon his mind may be given in evidence, and ought to be given in evidence.

By Mr. PIERREPONT :

Q. Now, go on.

A. In walking from the theatre home it was light enough to see at a considerable distance persons going and coming ; to distinguish the size of persons as larger or smaller. It increased in lightness as I got up. When

I got home, I handed my family in the door and started at once to go down to Mr. Stanton's. I lived the second door from Thirteenth street, on K street. Mr. Stanton lived about half-way, or a little more than half-way, in the block on K street, between Thirteenth and Fourteenth. In crossing Thirteenth street, going to the corner of Franklin square, I could distinctly see persons in front of Mr. Stanton's house; so much so, that I did not cross over the street, but walked down opposite, and could see the persons there, and became satisfied that there was nothing improper there. I then turned and walked back, as I had said I would, to some police officer, who asked me to return to the police headquarters. In going back I walked pretty much the same route that I went home from the theatre on. I recollect distinctly that it was light enough to see people moving. Persons who would be on the opposite side of the street would pass me and I could see distinctly their appearance. On arriving at the police office, I recollect very well, just as I turned in on Tenth street, there was an excitement; somebody was pursued; it had some appearance at moments of being a difficulty. Those persons were as far from me as it is from where I stand now to E street. I could see persons distinctly moving, and had no difficulty in that particular. It was then lighter than it was when I first went out into the alley. I remained in the neighborhood of the police office until the gentleman in charge informed me that I need not remain any longer; that they would take statements, perhaps, the next day. I was in front of the police office most of the time, and there I had no difficulty in seeing persons from where the police headquarters were down to Pennsylvania avenue, or looking up the street, up to the neighborhood of the theatre. It was not a decidedly clear night, and there was a haze; but it was a moonlight night, and sufficiently light to have no difficulty in seeing persons at the distance and under the circumstances which I have described.

Cross-examined by Mr. BRADLEY:

Q. Were the gas-lamps lighted that night in the streets?

A. There was gas in the early part of the evening.

Q. Was the gas lighted at that time?

A. I do not think it was; but that would not—

Q. Do not reason about it; I am talking about memory now; was the gas in the street-lamps lighted at the time of the assassination?

A. I believe it was at that time and had been; but my impression is, that when I returned to my house there was no gas; it had been put out.

Q. When you went home, was the gas lighted, and was there not a lamp in front of Mr. Stanton's residence that night?

A. There was.

Q. Was it not a bright light?

A. There was a light in front.

Q. Was there not a strong, bright gas-light in front of Mr. Stanton's residence that night?

A. Not a very bright light, but there was a light there.

Q. Is not the burner at Mr. Stanton's stronger than the ordinary burners of the street lamps?

A. I am not sure but that it is.

Q. Then the people whom you saw at Mr. Stanton's you saw by that gas light?

A. When I got directly opposite Mr. Stanton's, I could see the people, by the gas, between me and the house.

Q. How was it when you got down to the house at the corner of Thirteenth and K—Mr. Lindsay's house?

A. I was on the opposite side.

Q. You lived on the south side of the street?

A. Yes, sir.

Q. Was there not a lamp burning on Franklin square, between Thirteenth and Fourteenth streets?

A. I would not tax my memory to say that there was.

Q. Were you in the shade of those trees?

A. I walked down under the shade of the trees.

Q. And from them you could distinctly see the persons collected in front of Mr. Stanton's?

A. Yes, sir.

Q. As you came back and went down to the police headquarters, was there not a strong light in front of the police headquarters?

A. There was a light in front of the police headquarters.

Q. A strong light?

A. Yes.

Q. Do you recollect, and can you state to the jury, whether there were not gas-lights all the way down the street from your house to the avenue, and from the avenue to the police headquarters?

A. I do not believe there was. If there was, it was not sufficient to attract my attention—to afford light as against the general light, reflected by the moon.

Q. Then you think the moon was so strong at that time that the gas-lights in the street would not have much effect? Is that it?

A. They would not be necessary to distinguish a person at some distance.

Q. I do not ask you about their being necessary to distinguish persons, but whether or not the moon light was so strong at that time that the power of the gas-lights was in some measure diminished.

A. I should think that would be the case if the lights were burning. My impression is that the lights were not burning generally in the streets on my return.

Q. Do you know at what time the moon rose that night?

A. I would not have known but for the condition of things when I went out; that fixed the thing.

Q. Do you know what time the moon rose?

A. I have never looked to satisfy myself; but I know that the moon was rising at twenty minutes after ten o'clock, and was up sufficiently to give light. My position was inside of those walls, in the rear of that building; and the light above was much stronger than the light below.

Q. That is, the moon was above you, and you were in deep shadow.

A. Yes, sir.

Q. Was there no light thrown from the theatre out into that alley?

A. No, sir.

Q. None at all.

A. None that would be of any service at all.

Q. Was there no light thrown from the theatre out into that alley?

A. None that would be of any service.

Q. Was there no upper light?

A. No, sir.

Q. Do you know whether there was a window in the back part of the theatre?

A. On returning to go into the theatre, after I had followed Booth some distance, I could see that there was a light from the window, but not very strong. It did not reflect back in that way.

Q. But you could see that there were lights through the window in the back part of the theatre?

A. Yes, sir.

Q. Did not that light lighten up the upper part of the air at the place where you were?

A. I think not.

Q. That light was high up in the theatre, was it not?

A. As high as this ceiling.

Q. And the light passing out of that would illuminate at some distance where there was a deep shadow close to the theatre, would it not?

A. It would contribute to increase the light.

Q. You cannot tell, then, the effect that light had in lighting up the retreating horseman?

A. It would be some assistance to doing that.

Q. Did you take time to reflect then that it was

the moon getting up, or what sort of light it was, as you looked up?

A. That was the impression made upon me at the time, and the close observation I made of the night from that time on for two hours, until I went home; and what I saw of the moon afterwards confirmed my impression.

Q. When you went back from the police office, what was the condition of the night?

A. It was still lighter than it was when I went down.

Q. Is that your memory about it?

Q. Yes, sir. I stayed up to one o'clock, and about one o'clock it commenced getting considerably darker.

Q. I understand you to say that there was a haze in the atmosphere?

A. Yes, sir.

Q. Was it very damp?

A. It was a heavy, humid atmosphere.

Q. Do you recollect the condition of the heavens—whether overspread by clouds or not?

A. I do not recollect seeing any stars or any thing of that sort. There was an intervening haze, but it was not a heavy cloud.

Q. Still so heavy that you do not recollect seeing any stars?

A. I do not recollect seeing any stars.

Q. Have you any idea how high the moon was at eleven o'clock?

A. At eleven o'clock; I think that would be about the time I returned to the police office; the moon was then what I would, perhaps, call an hour high.

Q. That does not give us much idea of the position of the moon; it depends on where she rose?

A. I do not know the astronomical terms sufficiently to say more than that the moon was then sufficiently high to reflect a more decided light on the earth than it was when I first went out.

Q. And she was plainly visible?

A. The moon was visible.

Q. And was lighting the earth?

A. Not as clearly as it would in the absence of such a haze.

Q. Did you make any memorandum of the condition of the atmosphere and moon that night?

A. I had no occasion to make a memorandum; but I made a very strong record in my mind.

ALMIRAN C. RICHARDS,

recalled for the prosecution in rebuttal.

By Mr. PIERREPONT:

Q. Can you state whether, between the 14th and 16th of April, 1865, Mr. Weichmann was arrested?

A. Not to my knowledge.

Q. Would you have known it if he had been arrested?

A. I ought to have known of it.

Q. Why ought you to have known of it?

A. The records of the office should show it.

Q. Is there any such thing in the records?

A. I have not examined particularly in reference to that. I can do so.

Q. Have you the records here?

A. I have.

Q. Examine them.

A. These records were kept by a detailed officer, Mr. Newman, at the time, now Lieutenant Newman. They are in his handwriting. [After examining the books.] There is no record of that name on the books on the 15th or 16th of April, 1865.

Q. Did you see Weichmann in your office on the 15th and 16th?

A. I had conversations with him on the morning of the 15th.

Q. Did you understand from McDevitt, or anybody else, that he was in charge, and was to stay at the office there?

A. I can state all the circumstances connected with it.

Mr. BRADLEY. Exactly; that is what we want.

A. When I came to my office in the morning, probably a little before nine o'clock, or after I had passed out and returned again, I found Weichmann in the second story, in my own private office; I think by himself at the time. Presently Mr. McDevitt, a detective officer, came in and introduced me to Weichmann. Either at that time, or immediately subsequent, we had a conversation as to the propriety of putting him under arrest. The result of our discussion and conversation was that we had not better inform him that he was arrested; that we wanted to use him to pursue the suspected assassins of the President. We did not intend that he should escape from our possession; but he was not informed, to my knowledge, that he was under arrest.

Q. You did not know, then, whether McDevitt told him he was in charge or not?

A. I have no knowledge of that.

By Mr. MERRICK:

Q. You knew he could not go home from the office?

A. I knew he could not pass out without our knowledge.

Q. And you had him in charge?

A. Yes; not to his knowledge, though.

By Mr. PIERREPONT:

Q. Was it the purpose that he should not know it?

A. It was our intention to hold him as a witness, for the reason that we found certain other parties were monopolizing all information, and we wanted to hold him because we thought we had not been treated exactly properly.

By Mr. BRADLEY:

Q. Are you aware that he said he was put in charge? Were you present at the examination at the Arsenal?

A. I was not examined there.

Q. Were you there when Weichmann was examined?

A. I did not hear any of his examination.

Q. Have you read that examination?

A. I cannot say that I have read it; I may have glanced over it. I have never read the evidence at the assassination trial.

Q. You do not know, then, whether he swore he was put in charge of any one or not?

A. I do not.

Mr. PIERREPONT. It would not make any difference whether he did or not.

Mr. BRADLEY. He testified to it.

The WITNESS. I do not know the fact that he was arrested.

By Mr. BRADLEY:

Q. When did he know that he would have to stay at your office?

A. Either Saturday or Monday night—the night after he had returned from down the country—I think something was said about his going somewhere to stay, and we persuaded him to remain in the office and sleep there in the office. I did not order him to do so, or tell him he must do so, but we persuaded him and told him it was best.

Q. You did not tell him not to go home?

A. Not to my knowledge.

Q. Who was there with him?

A. Mr. McDevitt, most of the time.

Q. Who else?

A. I have no recollection of any other person.

By Mr. MERRICK:

Q. What persuasion did you use?

A. I do not know. I think we stated to him that some of Baker's detectives might get hold of him. I think that was it.

Q. Did he sleep on the floor that night?

A. I think he did; but I do not know. I did not see him lying down. I did not stay there.

Mr. PIERREPONT. Did he show any reluctance?

Mr. BRADLEY. We object to that.  
Mr. PIERREPONT. Very well; I will not press it.  
That is all then.

MICHAEL MITCHELL,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Waterloo, Canada.

Q. How long have you resided there?

A. Since 1847.

Q. What is your business?

A. Land surveying and civil engineering.

Q. Do you know the general repute of Dr. McMillan for truth in that region?

A. I do.

Q. Is it good or bad?

A. It is good.

Q. Did you ever know any better?

A. Not in our country.

No cross-examination.

THOMAS BRAUSARD,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Waterloo, Canada.

Q. How long have you lived there?

A. Twenty-four years next month.

Q. What is your occupation there?

A. Notary.

Q. What is a notary there; it is different from a notary in the United States, is it not?

A. Yes; there is some difference. We hold a commission from the government, and our business is to make deeds and settle estates and a good many other things.

Q. Do you know Dr. McMillan?

A. Yes; I have known him since he lived there.

Q. Do you know what his repute there is as a man of truth?

A. Very good.

Q. Did you ever hear of any better?

A. No, sir.

No cross-examination.

EDMOND TRECHETT,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Montreal, Canada.

Q. How long have you resided there?

A. I was born there and always lived there.

Q. Do you know St. Marie?

A. Yes, sir; I know Henry Benjamin St. Marie.

Q. How long have you known him?

A. About twelve years.

Q. Do you know his reputation among the people with whom he lived and dwelt?

A. I have not seen him for a few years past, but his reputation was good when he lived there.

Q. For truth, I speak of?

A. For truth.

Cross-examined by Mr. BRADLEY:

Q. When did he leave there?

A. I think it was about 1862; I am not positive, but sometime in the summer of 1862, I think.

Q. What was he doing before he left?

A. He was employed in the Educational Department.

Q. Has he been back to reside there since he left?

A. I have seen him since, in 1865, I think; I have seen him but once.

Q. How long was he there then?

A. I met him in the street. I do not know how long he was in Montreal—a short time.

Q. Was his reputation for truth good in 1862, when he left, and after he left Montreal?

A. Yes, sir.

Q. Did you ever hear it spoken of?

A. I never heard any thing against him for truth.

Q. You do not know, then, whether people talked about him when he went away and after he went away?

A. No, sir; I met him but once.

Q. I am not speaking about your meeting him, but what the people of Montreal said about his character for truth and veracity when he went away in 1862?

A. I did not hear any thing against his veracity afterwards.

Q. Did you hear any thing said about him at all?

A. They said he had left the department, and taken away with him a certain sum of money; left for the States.

Q. Did he give any excuses for it; did he tell any stories about it; was there any talk of that kind?

A. All I heard was, that he had left for the States, and that he refunded the money. He sent a part of it, and his father paid the balance.

Q. When was that?

A. A month or two afterwards.

Q. Nothing was said then about his character for truth and veracity?

A. No.

By Mr. PIERREPONT:

Q. You say he refunded the money?

A. He sent back part of it, and his father paid the rest.

By Mr. MERRICK:

Q. Do you know that the balance was paid?

A. I do not know it myself, but I heard it.

ALEXIS BURNETT,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Montreal.

Q. You are a lawyer, I believe?

A. I am.

Q. Do you know a Mr. Nagle, from your country, a lawyer?

A. I do.

Q. Do you see him in the room?

A. I saw him a short time ago.

Mr. BRADLEY. He is here.

By Mr. PIERREPONT:

Q. You have seen him to-day, have you not?

A. I have seen him in this room.

By Mr. BRADLEY:

Q. Is not this the gentleman, sitting near me?

A. Yes, sir; I see him now.

By Mr. PIERREPONT:

Q. Did you know St. Marie?

A. I did.

Q. Do you know what his character for truth and veracity was in Montreal?

A. From 1853 or 1854, up to the time he left Montreal, I knew him all the time. His character and reputation then—both his general reputation and his character for truth—were very good.

Q. What is the general reputation of Mr. Nagle for truth and veracity?

A. I believe it to be good. I know it to be good. I know Mr. Nagle personally, intimately, and from what I know of him I know it to be good.

Mr. PIERREPONT. I speak of his repute; what people say of him. That is what I am asking about.

Judge FISHER. For veracity.

Mr. PIERREPONT. Yes; for truth and veracity.

The WITNESS. His reputation is good. I have heard some parties say some things against him.

Mr. BRADLEY. That will not do. Every man has enemies.

The WITNESS. I took this to be from enemies.

Mr. PIERREPONT. Have you had any conversation with him about this case?

Mr. MERRICK. Stop. I submit to your honor how far this can go.

Judge FISHER. I do not see the drift of the question.

Mr. PIERREPONT. The question is, whether this witness has had conversations with Nagle about this case. The drift is to follow it up by asking him what Nagle told him in relation to it, the purpose of which is to show that he was paid five hundred dollars in gold, as he told him. That is my purpose.

Mr. MERRICK. Let it go on, then, if that is the purpose.

Judge FISHER. You propose to prove that as a substantive fact, and not with the view of contradicting any thing stated by Nagle?

Mr. PIERREPONT. Yes, sir; that is the purpose.

Mr. MERRICK. Let it go on.

Mr. PIERREPONT. (To the witness.) Now, state your conversation with Mr. Nagle?

A. We had some conversation about this trial together.

Q. What did he say?

A. He told me that he had received a certain sum of money, which I believe to be \$500 or about \$500; about that figure.

Q. In gold?

A. In gold, I believe it was said.

Cross-examined by Mr. BRADLEY:

Q. Did he tell you what it was for?

A. I understood it to be for his services or fees in the case.

Q. Did he not add, "and for his expenses and the expenses of the witnesses who came here?"

A. There was nothing said about any witnesses who came here; but he stated to me that he would come here, and of course this was to cover his expenses also. I do not remember that other witnesses' expenses were mentioned.

Q. When did you have that conversation with him?

A. We had several conversations during the past four or five weeks.

Q. And in those conversations he told you he had received \$500 to cover his services and expenses in the case?

A. I say about that sum. I understood it to be for his services, fees, and expenses, because he stated then that he would have to come to Washington.

By Mr. MERRICK:

Q. You say that St. Marie's reputation was good up to the time he left?

A. Yes, sir.

Q. What did people say of him afterwards as a man who told the truth or told lies about any thing or things in general?

Mr. PIERREPONT. That is not the proper way of putting the question.

Judge FISHER. Very few of us, if you put that question as a test, the telling one lie in the course of our lives, would be able to prove our good character.

Mr. BRADLEY. I hope there are very few of us who would be charged with pocketing money intrusted to our care.

Mr. PIERREPONT. There have been a good many who have taken money and who have not returned it.

Mr. BRADLEY. Yes; I have heard of such.

Mr. MERRICK. The question is, What was his reputation, what did people say about him for telling the truth or falsehood after he left.

Mr. PIERREPONT. His general reputation.

Mr. MERRICK. I put the question in the right shape, I think.

Mr. PIERREPONT. I submit that you do not.

Judge FISHER. What is the question?

Mr. MERRICK. What did people say about him for telling the truth or falsehood, after he left?

Judge FISHER. Yes; it is proper to ask what was his general reputation after he left there for truth and veracity.

A. I understood his reputation after he left, on that point, was as good as before. That is, I never heard anybody say that he ever told an untruth.

Q. (By Mr. MERRICK.) Did you never hear anybody say he lied?

A. No; I never did.

Q. On that point you understood his reputation to be good after he left?

A. Yes, sir.

FRANCIS REESIDE,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. 610 Seventh street, Island, in this city.

Q. How long have you been residing here?

A. About ten years.

Q. What is your business?

A. Bricklayer.

Q. Do you know William E. Cleaver, a witness who has been examined here?

A. I do.

Q. How long have you known him?

A. Between ten and twelve years.

Q. Do you know his reputation in this community for truth; and, if so, state whether it is good or bad?

A. His reputation never was doubted before this case he has got into lately.

Mr. MERRICK. Before which case?

A. The trouble he has been in here; I suppose you are all aware of it.

Mr. MERRICK. I did not know whether you meant that case or this case. He has been in trouble in both of them.

The WITNESS. I do not know about the trouble.

By Mr. CARRINGTON:

Q. Have you ever heard any thing against his reputation for truth?

A. Never before that.

Q. Before that was his reputation for truth good or bad?

A. Good.

By Mr. MERRICK:

Q. You say you never heard any thing about his character for truth being bad before that?

A. I never heard any thing against his character for truth before that.

By Mr. PIERREPONT:

Q. That did not involve his character for truth at all?

A. In my opinion it did not.

Q. Did you hear any thing against his character for truth? Was that a question of truth at all?

A. No, sir.

By Mr. BRADLEY:

Q. Did it not give rise to a great deal of discussion about his general character for truth and everything else?

A. Not for truth. I am speaking of truth now, nothing else.

Q. And you did not hear his character for truth talked of then?

A. No, sir.

CHARLES KEMBEL,

recalled as a witness for the prosecution in rebuttal.

By Mr. CARRINGTON:

Q. Where do you live?

A. In Washington, on the Island.  
 Q. How long have you been living in the city?  
 A. All my life, pretty much.  
 Q. What has been your business?  
 A. Constable.  
 Q. You are pretty well acquainted then in the city, of course?  
 A. Yes.  
 Q. State whether you know William E. Cleaver, a witness who was examined here, and how long have you known him?  
 A. I have known him ten or twelve years; fully that time, I should think.  
 Q. Do you know others who do know him?  
 A. Yes, sir; I presume he had a large circle of acquaintances. A man in his profession would have.  
 Q. Was he a veterinary surgeon?  
 A. Yes, sir.  
 Q. Do you know his reputation in this community for truth and veracity; and, if so, state whether it has been good or bad?  
 A. I never heard it questioned much until the trial.  
 Q. Since his trial have you heard his reputation for truth questioned?  
 A. No, sir.  
 Q. Then you have never heard his reputation for truth questioned at all?  
 A. I never have.  
 No cross-examination.

HENRY GASS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?  
 A. At the corner of Eighth and D streets, in this city.  
 Q. How long have you lived here?  
 A. All my life. I was born and raised here.  
 Q. What is your business?  
 A. Confectioner.  
 Q. Do you know William E. Cleaver, a witness who was examined here; and, if so, how long have you known him?  
 A. I have known him about ten or eleven years.  
 Q. Do you know his reputation for truth and veracity in the community; and, if so, state whether it is good or bad?  
 A. As long as I have known him, I have never known any thing against him until this late trial here.  
 Q. After the trial, did you hear any thing about his reputation for truth?  
 A. No; I never heard any thing in regard to his truth or any thing of that kind.  
 Q. Is his reputation for truth good or bad?  
 A. It has been good before this.

Cross-examined by Mr. BRADLEY:

Q. Did you not say that you never heard any thing about it?  
 A. Not before this trial.  
 Q. You never heard any thing said against him?  
 A. No, sir.  
 Q. How far was your place from John L. Smith's office?  
 A. I live on the Island.  
 Q. Did you never live on Eighth street, above the avenue?  
 A. No, sir; I am at the corner of Eighth and D streets, on the Island.  
 Q. Where did Cleaver live then?  
 A. He lived at one time on Virginia avenue, near Tenth street, I think. At another time he lived on Seventh street, between D and E, and I think he has been living there lately.  
 Q. Do you know when he was inspector of horses down at Giesboro'?

A. I knew him then and sometime before that.  
 Q. Do you know when that was?  
 A. I do not recollect when it was that he inspected horses there.  
 Q. But you recollect that he was there as inspector of horses?  
 A. Yes, and I knew him before that.  
 Q. During that time did you see him and know him?  
 A. I do not recollect whether I saw him during that time or not.  
 Q. Did you never hear any thing about his truth and veracity in regard to his inspecting horses down there?  
 A. No, sir.  
 Q. You never heard any thing said about his passing horses down there?  
 A. No, sir.  
 By Mr. CARRINGTON:  
 Q. I understand you to say that you have known him ten or eleven years, and his reputation for truth was good?  
 A. Yes; good as far as I know.

ROBERT PYEWELL,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?  
 A. 412 D street, in this city.  
 Q. How long have you been living here?  
 A. Since 1843.  
 Q. What is your business?  
 A. Livery-stable keeper.  
 Q. Do you know William E. Cleaver, a veterinary surgeon, who was examined as a witness here?  
 A. Yes, sir.  
 Q. How long have you known him?  
 A. Fifteen or sixteen years.  
 Q. Do you know his reputation for truth among the people of this community?  
 A. Yes; I never heard it questioned until lately.  
 Q. State whether it was good or bad?  
 A. I always thought it was good.

Cross-examined by Mr. BRADLEY:

Q. He is an Englishman, is he not?  
 A. Yes, sir.  
 Q. And you are also?  
 A. Yes, sir.  
 Q. And you are his bail in the criminal case?  
 A. Yes, sir.  
 Q. Is there any understanding that Cleaver is to be benefitted in that case by working in this case?  
 Mr. CARRINGTON. Stop.  
 Mr. PIERREPONT. I think we shall not object.  
 Mr. CARRINGTON. I withdraw my objection to the question.

Mr. BRADLEY. I will first ask if you learned that from him?

Mr. CARRINGTON. I believe it my duty to object. I do not want these collateral issues. If the court thinks it evidence I will go into it, but I feel it my duty to object.

Judge FISHER. I cannot see that it is a proper question.

Mr. BRADLEY. To get my question on the record properly I will put it in this shape: Is there any understanding that Cleaver is to be benefitted in that case by working in this case, and have you learned that from him? I understand the question is objected to, and the objection is sustained. I desire to note an exception.

Judge FISHER. Very well.

C. V. HESS

recalled by the prosecution.

Mr. PIERREPONT. I ask the prisoner to stand up, and I want the jury to look at these two men. [The

prisoner and the witness both stood up in full view of the jury.]

By Mr. BRADLEY :

Q. How high are you, Mr. Hess ?

A. Five feet seven inches.

Mr. BRADLEY. (To the prisoner.) You are six feet ?

The PRISONER. I am.

Mr. PIERREPONT. I do not care about the height. The jury see the men.

JOHN W. COOMES,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you live ?

A. On Seventh street east, Navy Yard.

Q. How long have you been living in this city ?

A. Thirty-eight years—all my life.

Q. What is your business ?

A. Metropolitan Police detective.

Q. How long have you been connected with the Metropolitan Police in that capacity ?

A. The last seven or eight years.

Q. I suppose you are very well acquainted in the city ?

A. Yes, sir.

Q. Do you know William E. Cleaver ?

A. I have known him about seven or eight years.

Q. Do you know his reputation in this community for truth ; and, if so, state whether it is good or bad.

A. I never heard any thing said of Mr. Cleaver until the case against him ; you know about that.

Q. Had you ever heard any thing against his character for truth ?

A. I have had him summoned in several cases as a witness with regard to stolen horses, and I never heard him objected to.

Q. Is his reputation for truth good ?

A. I never heard it doubted.

Q. Did you know the persons with whom he associated ; and had you occasion to become well acquainted with the persons with whom he associated ?

A. Yes, sir.

Q. And you say his reputation is good ?

A. I never heard it doubted.

Cross-examined by Mr. BRADLEY :

Q. You never heard it said in those horse cases, "Send for Cleaver, he will swear it through ?"

A. No, sir ; I never heard that.

JOHN F. KELLY,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you live ?

A. In this city, on G street, between First street west and North Capitol street.

Q. How long have you been living in the city ?

A. I was born here.

Q. What is your occupation ?

A. I am lieutenant of the Metropolitan Police force, and have been in that position for five months ; I have been connected with the police six years.

Q. Of course then you are well acquainted in the city ?

A. Yes, sir.

Q. Do you know William E. Cleaver ; and, if so, how long have you known him ?

A. I have known him for three or four years, or probably more.

Q. And have you known persons with whom he associated ?

A. Yes, sir.

Q. Do you know his general reputation for truth and veracity in this community ; and, if so, state whether it is good or bad.

A. I have never heard it doubted.

Q. Is it good ?

A. I cannot say otherwise.

No cross-examination.

JAMES KELLEHER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you live ?

A. No. 22 Missouri avenue, in this city.

Q. How long have you been living here ?

A. Since 1836.

Q. What is your business ?

A. I have been, and still am, in the livery business.

Q. Do you know William E. Cleaver ?

A. Yes, sir ; I have had him employed many years.

Q. Was he ever a partner of yours ?

A. No, sir.

Q. How many years have you known him altogether ?

A. Fifteen or sixteen years.

Q. Are you well acquainted with the persons with whom he has associated in this community ?

A. Only in his line of business.

Q. State to the jury if you know his reputation for truth and veracity ; and, if so, whether it is good or bad.

The WITNESS. At present ?

Mr. CARRINGTON. During the time you have known him.

A. It is very bad at present, but not heretofore.

Q. For truth ?

A. Yes, sir ; for truth in every shape you can name it.

Q. Did you know him previous to this trial ?

A. I did.

Q. What was his reputation previous to the trial against him ?

A. Very good.

Q. You say his reputation for truth was good previous to the trial against him ?

A. I never heard it doubted.

Q. After the trial did you hear his character for truth or for some other quality questioned ?

A. Yes, sir ; frequently.

Q. You never heard it before during the sixteen years you knew him ?

A. No, sir.

By Mr. BRADLEY :

Q. There was no occasion before that time to call his character in question ?

A. No, sir.

Q. Do you know any thing about his being inspector of horses at Giesboro' ?

A. No, sir ; I never had any dealings with him except as a horse doctor.

Q. You employed him as a horse-doctor ?

A. Yes, sir ; that was all I ever had to do with him.

Mrs. SARAH E. KIMBALL,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you live ?

A. On Twelfth street, in this city.

Q. How long have you lived in this city ?

A. Since 1861.

Q. Do you know a colored woman by the name of Susan Ann Jackson, who has been examined as a witness here ?

A. Yes, sir.

Q. How long have you known her ?

A. Two years.

Q. Was she ever in your employment ?

A. For the larger part of two years.

Q. Now, state if you know her general reputation

for truth and veracity; and, if so, state whether it is good or bad?

A. I have never heard any thing against her.

Mr. BRADLEY. The question is, what people say about her?

A. I know nothing in regard to what other people say.

Mr. CARRINGTON. You knew her over two years, and never heard her reputation questioned?

Mr. BRADLEY. She has just said that she knew nothing about her associates. (To the witness.) Did you not say that you did not know any thing about what people said of her?

A. I did not intend to say so.

By Mr. CARRINGTON:

Q. What did you say?

A. I said I always considered her reliable.

Q. During the two years you have known her what has her reputation for truth been?

A. Good, as far as I know.

Mr. MERRICK. I do not think this is a correct course of examination, and I will submit to your honor the question whether, until there has been evidence given to impeach the character of a witness, the other side have a right to give rebutting evidence of general character. I think that unless the party assailing a witness gives evidence of the general character of that witness, in order to destroy the testimony, by proving general bad character, the party offering the witness has no right to give evidence of general good character.

Judge FISHER. The rule is that you cannot set up character until character is assailed.

Mr. MERRICK. That is what I supposed. This testimony, then, is of no moment.

Mr. CARRINGTON. I anticipated that objection, but your honor will remember that a witness was brought here for the purpose of contradicting Susan Ann Jackson, and for the purpose of discrediting her before the jury. If your honor entertains any doubt on that point, we can furnish you, I think, with authorities showing that where an effort is made to discredit a witness before the jury, either directly or indirectly, either by offering evidence as to his or her general reputation for truth and veracity or by contradicting the witness, we may, by way of rebuttal, offer evidence of the general reputation of the witness for truth and veracity.

Mr. MERRICK. I will submit to your honor, in reply, a single remark. I am not aware of the rule the gentleman refers to, and if there is such a rule, it is new to me; because, where evidence of contradictory statements is given it is proof, in the first place, of a particular fact, and puts in issue the particular fact; and the evidence of a contradictory statement does not always involve the question or the fact of corruption. In swearing here, the party may have sworn truly and may have stated falsely elsewhere, or may have sworn inaccurately here and stated accurately elsewhere. It is a question that goes to the memory, and also, if you choose, to the character; but it does not necessarily go to the character; it goes more directly to the memory and the recollection. My impression is, that the rule is, that before you can set up character, as your honor stated, character must be assailed. I may be wrong about it; the law may have changed; but that I understand to be the settled rule.

Judge FISHER. That is my notion about it; but it may be that the authorities consider that impeaching a witness by proving contradictory declarations may be regarded as an attack upon character, and therefore character may be set up; but I should like to see some authority for that position.

Mr. PIERREPONT. I have not looked at it lately, but my memory is that you will find the principle stated in Greenleaf on Evidence. It is certainly in some of the books.

Mr. BRADLEY. It has been ruled both ways in different States.

Mr. MERRICK. I know it is ruled in Maryland as I have stated.

Mr. PIERREPONT. This is the rule about it: that where a witness's character is not attacked in any way you cannot bring in evidence to sustain that character; but the courts have held that where I bring a witness to show that another witness gave a different statement of the same transaction at another time, that is an attack upon the veracity of that witness, and that consequently you may give in evidence the good character of that witness, resting very much on the same principle that in this case the defense could give in evidence the good character of the prisoner, although that question is not the question really in issue.

Mr. MERRICK. That rests upon a different principle.

Mr. PIERREPONT. You will find it is laid down to be the rule that an indirect attack upon a witness's credibility, by showing that the witness made a statement totally different at another time, may be met by evidence showing the good character of that witness for truth.

Mr. MERRICK. I submit to the court and suggest to the counsel on the other side, in view of the principle he states, this consideration: how will the testimony of the good character operate? Will it sustain the testimony the witness has given here, or sustain the statement which I proved she gave two days after the event? If you show that she has a good character for telling the truth, what does it prove? That she told the truth here, or that she told the truth then? I can use it as well as they.

Mr. PIERREPONT. You will have an opportunity to use it. We do not object to your using any thing we put in.

Mr. MERRICK. I only make the suggestion to show the fallacy of the principle you contend for.

Mr. PIERREPONT. Our simple object is to get it before the jury, and then you shall have every possible opportunity to use it before the jury.

Mr. MERRICK. Very kind indeed! I will use the argument to show that it is a *reductio ad absurdum*.

Mr. PIERREPONT. You will be able to use it. You did not argue against it, I suppose, because you could use it against us!

Mr. MERRICK. I do not want to consume time about it; I do not care the snap of a finger for it.

Mr. PIERREPONT. Nor I. If we are allowed to give the testimony now, it will be easy to erase it if your honor does not find an authority for it.

Mr. BRADLEY. I think perhaps one or two authorities may be found, but the uniform rule in Maryland and this District has been the other way. I think it is very rarely, in fact very seldom, that the question has come up.

Mr. MERRICK. My recollection is that Mr. Greenleaf states the rule as the gentlemen have said, but he states it on the authority of one or two cases in England; but the rule in Maryland has been inflexible the other way, and I have never known it to be departed from here.

Mr. CARRINGTON. I refer your honor to 1 Greenleaf, section 469:

"Where evidence of contradictory statements by a witness, or of other particular facts, as, for example, that he has been committed to the house of correction, is offered by way of impeaching his veracity, his general character for truth being thus in some sort put in issue, it has been deemed reasonable to admit general evidence that he is a man of strict integrity and scrupulous regard for truth."

Mr. MERRICK. What authority does he refer to for that position?

Mr. CARRINGTON. *Rex vs. Clark*, 2 Starkie's Reports, 241.

Mr. BRADLEY. The authority cited there is a *nisi prius* case, in 2 Starkie's Reports. I can have the book here in a minute, if the court desires to look at it. He also cites Phillips and Amos on Evidence, page 544, which

does not sustain the proposition of Mr. Greenleaf. The case in *Starkie* does not sustain it. The subject has been discussed before here, and it is perfectly familiar to my mind.

Mr. CARRINGTON. I will state to your honor that I had some little doubt about it, but Mr. WILSON differed with me, and thought the matter very clear. I was not clear about it myself, but the rule is laid down very explicitly by Mr. Greenleaf.

Mr. PIERREPONT. You will find it also in the last edition of Phillips.

Mr. MERRICK. Do you not recollect that your State has decided differently?

Mr. PIERREPONT. No; I do not.

Mr. MERRICK. In New York and Maryland and Massachusetts it has been settled the other way.

Judge FISHER. The inclination of my mind is that the principle laid down by Greenleaf is right. It strikes me that a contradiction of a witness goes directly to the veracity of the witness. He is put on his guard. Time, place, and circumstance are all named to him, that he may be put on his guard; and it is an attack on his veracity. The matter can be taken up on an exception if I am wrong.

Mr. PIERREPONT. Certainly.

Mr. BRADLEY. The gentlemen cannot help that. They are very willing to have the ruling in their favor. It is another very liberal offer!

Mr. CARRINGTON. Suppose it should happen to be wrong?

Mr. PIERREPONT. If it would be a fatal exception, we should be very derelict in duty if we were willing to have it taken.

Mr. MERRICK. Suppose your honor looks at the authorities and suspends the matter for the present.

Mr. BRADLEY. I have *Starkie's Reports* in court now. Your honor will find the case of *Rea vs. Clark* in the book, but not at page 241, the reference in Greenleaf. There is a mistake in the reference. I stated to your honor that the case itself does not warrant Mr. Greenleaf's inference from it. I now hand it to the gentlemen on the other side. It is a case of a character that I do not choose to introduce in this audience, but I hand it to the counsel, and it can then be submitted to the court. Your honor will find that Mr. Greenleaf has taken the marginal note and not the case itself.

Mr. WILSON. He also refers to Phillips and Amos.

Mr. BRADLEY. But the section he refers to does not touch the question; it is where the general character of the parties is in issue. It is one of the rare exceptions in which Mr. Greenleaf is mistaken. He is generally extremely accurate, but the authorities he here cites do not support his proposition.

Mr. CARRINGTON. There is a conflict of authorities, then; and the presumption is that Greenleaf is right.

Mr. BRADLEY. No conflict of authorities. No decided case has been produced yet.

Mr. CARRINGTON. It seems to me the distinction drawn by your honor is the correct one. If it appears to the satisfaction of the court that the object was not merely to test the memory of the witness, but that it was an attack on the character of the witness, however that attack may be made, it opens the door for rebutting testimony in support of the witness's character. That is the philosophical distinction.

Judge FISHER. This reasoning occurs to me to be good: A witness, upon cross-examination, is asked whether he has said thus or so to some other person on a prior occasion, and time, place, and person are specified. Then that person is offered as a witness to disprove what the first witness has said, and that goes before the jury. We cannot tell how the minds of different men are differently affected. One juror might be disposed to discredit the witness because he thought that his or her memory was indistinct or confused in regard to it. Other jurors, and probably the majority of jurors, the majority of men generally, would be dis-

posed to say, "If that witness, after having had a fair opportunity, all the circumstances being specified, being called to his particular attention, has said that which has been utterly and absolutely contradicted by another witness, it must be that the first witness was not a truthful person." At all events, such testimony would, in the minds of some, if not of most people, affect the character of the witness, and therefore I think this evidence is admissible.

Mr. BRADLEY. Your honor, then, overrules our objection, and we note an exception.

Mrs. KEZIAH WHEELER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. At the northeast corner of Twelfth and G streets, in this city.

Q. How long have you resided there?

A. It will be three months on the 1st of August. I moved to that house on the 1st of May.

Q. How long have been living in the city?

A. Three years.

Q. Do you know Susan Ann Jackson, a colored woman?

A. I do.

Q. How long have you known her?

A. Two years.

Q. Was she in your employment?

A. She was in the employment of my sister, Mrs. Kimball. I reside in her family.

Q. Do you know Susan Ann Jackson's general reputation for truth and veracity; and, if so, state whether it is good or bad?

A. Very good.

No cross-examination.

Miss KATE KIMBALL,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. At the corner of Twelfth and G streets, in this city.

Q. How long have you lived here?

A. Since 1864.

Q. Do you know Susan Ann Jackson, a colored woman?

A. Yes, sir.

Q. How long have you known her?

A. About two years.

Q. Do you know her general reputation for truth and veracity?

A. It is good.

No cross-examination.

SAM. JACKSON,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. WILSON:

Q. Is Susan Ann Jackson, who was examined here the other day, your wife?

A. Yes, sir.

Q. When were you and she married?

A. I was married about a fortnight after the President was killed, as near as I can get at it.

Q. Were you at Mrs. Surratt's house after the President was killed?

A. Yes, sir.

Q. When did you go there?

A. Monday night I was there.

Q. The Monday afterwards?

A. I went in there the Monday night after he was killed.

Q. How long did you stay there?  
 A. I stayed there all night.  
 Q. How long after that night?  
 A. Up to Wednesday morning; Wednesday morning I took my leave.  
 Q. Then you were there Tuesday and Tuesday night?  
 A. I was there Tuesday night and Monday night. Captain Smith gave me leave to go, I think, on Wednesday morning.  
 S. State why you stayed there during that time and why you went there.  
 Mr. BRADLEY. I do not know that that is of any consequence.  
 Judge FISHER. I do not see that it has any applicability.  
 Mr. WILSON. I want to show that he was there by compulsion—that he was arrested. Your honor will see its relevancy presently.  
 Mr. BRADLEY. Does it make any difference whether he was there under compulsion or not?  
 Judge FISHER. I can see how that might make a difference. If he was there under arrest or compulsion and could not get away, it might show that he was there every moment of the time.  
 Mr. WILSON. Exactly; that is the point. (To the witness.) Where were you in the house during that time?  
 A. I was in the basement part of the time, and part of the time I was up in the second story.  
 Q. Do you know Eliza Hawkins?  
 A. I saw her there.  
 Q. Did you see her there that Monday or Tuesday?  
 A. She came there Tuesday morning.  
 Q. At what time?  
 A. Tolerably early; it was not very late.  
 Q. Did you see her when she was in court the other day?  
 A. I was not here.  
 Q. You know her to be the one who testified the other day?  
 A. I heard so, but I did not see her testify.  
 Q. What was her first name?  
 A. I heard her name was Eliza.  
 Q. Had she lived with Mrs. Surratt before?  
 A. She named it that day that she had lived at Mrs. Surratt's.  
 Q. What time in the morning did she come there?  
 A. As near as I can recollect, between eight and nine o'clock; I do not think it was any later than that; it might be seven o'clock; I did not take particular notice, but I do not think it was any later than nine or ten.  
 Q. What time did she go away?  
 A. She never went away until Captain Smith gave her leave to leave Captain Scheetz's office. She was arrested there and carried there on Tuesday night.  
 Q. What time did she go from the house?  
 A. She left down at Captain Scheetz's office.  
 Q. What time did she leave Mrs. Surratt's house?  
 A. They took her down to Captain Scheetz's Tuesday night; took her, myself, and my wife.  
 Q. What time of night?  
 A. I guess it was between ten and eleven. It may have been later than that.  
 Q. Were you in the room with Eliza and Susan, who afterwards became your wife, all the time when Eliza was there?  
 A. I was.  
 Q. All the time?  
 A. Yes, sir; I stayed until she came away. She and me and my wife were the last that came away. I went there on Monday night, and after being arrested I moved away on Wednesday morning.  
 Q. Did you hear any conversation while you were there between Eliza and Susan about John H. Surratt?  
 A. Very little I heard. What I heard was about Mrs. Surratt.  
 Q. Did you hear any thing about John; was any thing said about John?

A. No, sir; there was not any thing said in my presence about John there.  
 Q. Nothing at all?  
 A. No.  
 Q. Did Susan say to Eliza—  
 Mr. MERRICK. On what page is the testimony you now propose to contradict?  
 Mr. WILSON. Page 573.  
 Mr. MERRICK. He was not present when that conversation took place.  
 Mr. WILSON. He says he was present all the time.  
 Mr. BRADLEY. (To the witness.) Did you stay all of two nights with those two women?  
 A. I stayed there two nights.  
 Q. In the same room with the women?  
 A. In the lower basement, and we were arrested there, and a guard placed at the door, who did not let anybody out or in.  
 Mr. MERRICK. There was no question put to Eliza in regard to any conversation she had with this man.  
 Mr. WILSON. That is not the question. The gentleman was not listening to me.  
 Mr. MERRICK. The counsel asked—  
 Mr. WILSON. I object to being interrupted.  
 Mr. MERRICK. I am objecting to the court about the question, and I have a right to state the objection.  
 Mr. WILSON. The gentleman showed by his question that he was not listening to the examination.  
 Judge FISHER. State your objection, Mr. MERRICK.  
 Mr. MERRICK. I object to the question. The gentleman asks if Susan Jackson said thus and so in his presence. The object is to show that the conversation Eliza spoke of did not take place, I suppose, of course. Eliza Hawkins testifies that Susan Jackson told her at a certain time certain things, which appear in the evidence. This man testifies that Eliza Hawkins was not there on Monday night, but came on Tuesday, and he says further that he heard nothing said about John Surratt. Now, I submit, can he be asked as to what conversation was had between Eliza Hawkins and Susan Ann Jackson in reference to which Eliza was not interrogated, and in reference to which it was not specified that he was present when it took place? That is my objection.  
 Mr. WILSON. If your honor listened to the previous questions, as I have no doubt you did, you remember this witness stated the time of the arrival of Eliza at the house, and the time she went away, and where she was while she was there; and he stated, moreover, in reply to a question by me, that he was in the room all the time she was there and until she was removed. Being in the room with these two women, it is certainly fair to suppose, particularly if it is followed up by another question, that he heard any conversation that took place between the two; and I propose, after asking him whether he heard this, to ask whether he would not have heard if any such conversation had occurred.  
 Judge FISHER. Confine the testimony of this witness now to the point whether he was in the room all the time from the time Eliza Hawkins came there until she left; whether she was out; whether he must or must not have heard all the conversation; and whether this particular conversation took place; but you cannot inquire in reference to other conversations.  
 Mr. WILSON. Certainly not. This is the only one I propose to inquire about.  
 Mr. PIERREPONT. It is for the very purpose of disproving that this occurred.  
 Mr. WILSON. (To the witness.) You have already stated that you were there all the time. You can state again whether you were or not?  
 A. Captain Smith's men came into the room we were in and commenced quizzing her and asking what she knew about Mrs. Surratt. She said that she knew nothing, but that she treated her well. I was there and I heard it.

Judge FISHER. He is going to tell a conversation, it seems to me.

Mr. BRADLEY. And not in relation to this matter at all. He says that when Eliza came there the officer took her into a room and asked her if she knew any thing about Mrs. Surratt.

The WITNESS. This here Eliza I am speaking of.

Mr. WILSON. I am going to ask the questions.

Judge FISHER. (To the witness.) Just answer the questions as they are put to you.

Q. (By Mr. WILSON.) Were you there when Eliza got there, and did you hear Susan say to Eliza that when she first came there Mr. Surratt was there, and that Mrs. Surratt asked her if he did not look very much like her daughter? Did you hear Susan say that to Eliza?

A. I did not hear that.

Q. Did she say that to Eliza?

A. No; I did not hear her say that. No, indeed, I never heard that.

Q. Did Susan say to Eliza that she had not seen him since that night?

A. No, sir.

Q. And that it was about two weeks before that?

A. No, sir.

Q. Did she say to Eliza that when she, Susan, went in where he (Surratt) was, to take in a pot of tea, it was two weeks before?

A. No, sir.

Cross-examined by Mr. BRADLEY:

Q. Did you hear all the talking that went on between Susan and Eliza all the time they were there?

A. Yes, sir.

Q. Every bit of it?

A. Yes, sir.

Q. You were not out at all?

A. No, sir.

Q. You were not out of that room all the night?

A. I was not out while she was there. She came in there in the morning of the night they took us to Captain Scheetz's office.

Q. I am talking about when she came there. Where were you then?

A. I was there.

Q. Where?

A. In the kitchen.

Q. And she came into the kitchen?

A. I was there, to the best of my knowledge?

Q. Who came with her?

A. Another woman?

Q. Who was that other woman?

A. I did not know her.

Q. Did she stay too?

A. To my memory she did. All that were in the house would not be let go out.

Q. I understand now that another woman came with her?

A. Yes, sir.

Q. And did that woman stay there all the time too?

A. All the time, pretty much.

Q. And went down to Captain Scheetz's office, and was discharged when you were?

A. Yes, sir.

Q. Were you present when those women were there, and did you hear all they said?

A. I was there during the time.

Q. All the time?

A. I was there all the time.

Q. And you heard all they said?

A. All that passed in my presence.

Q. Were you with them all the time?

A. I was.

Q. Day and night?

A. I was.

Q. Were you not up stairs?

A. I stayed down stairs in the basement.

Q. Were you not up stairs?

A. I did not go up.

Q. Did you not all go up to the second story?

A. We all went together to the second story. That was on Monday, but Tuesday night she did not.

Q. But on Monday night you went up into the second story?

A. All.

Q. Do you mean that these two women went up then?

A. These women did not go up to the second story on Tuesday night.

Q. You did not go out of that house from Monday night?

A. I did not leave the house.

Q. You did not go out of that house from Monday night until Wednesday morning?

A. I went out Tuesday night down to Captain Scheetz's office.

Q. Who took you down there?

A. They took the whole party down. That was the night they were taken down. She was taken Tuesday night. I was taken Tuesday night and Monday night.

Q. Were you taken down to the office twice?

A. I was taken down twice; she once and I twice—me and my wife twice.

Q. Then you were taken down there once before Rachel or Eliza Hawkins came?

A. Yes, sir.

Q. The next day you did not go out of the house at all?

A. I did not leave.

Q. I do not ask you about leaving, but did you go out of the house at all; did you go into the yard?

A. No, sir; not after I came.

Q. Not outside the door?

A. After she came along I never left the house.

Q. And all that time you did not go out of the house from Monday night, except when taken to the office, until Tuesday night?

A. No, I did not leave the house after I came.

Q. Did not go out of the door?

A. After I came there I never went out.

Q. You heard all the conversation?

A. I heard every thing that passed.

Q. What did they talk about?

A. She was telling how Mrs. Surratt treated her. She said she treated her pretty good.

Q. She spoke to your wife about that?

A. She spoke that way. The soldiers inside were quizzing her. There was a guard, you know, and they were quizzing her about what kind of a woman Mrs. Surratt was, and how she treated them. She spoke that way to my wife and me—all of us that were in the house, three or four of us in there, in the kitchen basement.

Q. Whom did she tell this to, to the guard or to your wife?

A. To all of us.

Q. The guard and all?

A. Yes; the guard was in at that time.

Q. Did you have any thing to eat during that time?

A. Oh, yes.

Q. Did you have any water?

A. Yes, sir.

Q. Who went out and got the water?

A. My wife gave me the water.

Q. Who went out and got the water?

A. The water was in the house, in the hall. I got the water in the house.

Q. You did not go out to get it?

A. I did not go out to get any thing.

Q. You heard every word that passed between those three women?

A. I did; and there was not any thing particular more than I have stated—no particular argument more than I speak of now.

Q. And those three women stayed there all day without talking?

A. There was not any talk passed more than that.

Q. Three women sat there all day long and did not talk?

A. There was not any particular talk passed that I knew of, more than that.

Q. Did anybody go to sleep?

A. No, sir; my wife was working—cooking for those soldiers.

Q. Cooking all day?

A. Cooking the best part of the time; and when she was not cooking she was ironing Mrs. Surratt's things.

Q. Did they go into the dining-room at all?

A. No, sir; she never left unless they called her to go up stairs. Sometimes, perhaps, an officer would call her, and she would go up to them, and she would return back again.

Q. And then come and sit down where you were?

A. No, not sit down, but she attended to her work. She was working the whole time, ironing and cooking.

Q. What time did you go down to the police office on Tuesday evening?

A. It was Tuesday night. We went sooner then, I think, than we did on Monday night. Monday it was quite late.

Q. Who went with you?

A. We all walked together. The officers went down with us.

Q. Did you go with your wife?

A. Yes; all went together.

Q. With whom did Eliza go?

A. All went along together.

Q. And you heard all the conversation then?

A. All that passed.

Q. So that from early on the morning of Tuesday until you went down to the police office that night you do not remember any conversation that passed?

A. No; I do not remember any thing more particular than what I have explained now.

Q. Do you recollect any thing else?

A. Nothing else more than common talk.

Q. You did not hear John Surratt's name mentioned at all?

A. I did not hear his name mentioned that day.

Q. By neither of them?

A. I did not hear her mention his name.

Q. Neither Eliza nor Susan?

A. No; not on that occasion.

Q. You did not hear either mention it?

A. Not that day I did not.

Q. Did Eliza have her dinner there?

A. I cannot remember seeing her eat.

Q. Do you not think she ate any dinner?

A. I cannot remember seeing her eat. She might have eaten something. She was scared bad, as I was, Monday night. My scare was over then.

Q. Was any other woman there when you went there Monday night?

A. No other but my wife. We were the only two there that night.

Q. Did the woman who was there next day come with Rachel?

A. Yes, sir.

Q. You do not know who she was?

A. I do not know her. It was the first time I had ever seen her in my life, and I would not know Rachel now if I saw her.

Q. Have you never seen her since?

A. I have seen her at night once since, out of doors; never in the house.

By Mr. ALEXANDER, a juror:

Q. Where was the wood or coal kept that was used to make the fire to cook and iron by?

A. It seems to me like it was kept somewhere in the back yard. I saw my wife go out in the back yard.

Q. Who went out to get it?

A. My wife always made the fire. She kept the fire up that day, and the front door was not opened by her.

By Mr. BRADLEY:

Q. How did you find out the name of that woman, Eliza Hawkins?

A. I did not know her name when she called, and not until I heard she was here. I did not know her name personally; only that day her name was spoken of, but I forgot it. She was called Eliza, but I had forgot her name, as much so as any other stranger.

Q. Who called her Eliza then?

A. She was called Eliza down there.

Q. Who called her that name?

A. That was the name she was introduced to me by.

Q. Who introduced her to you?

A. She introduced herself to me as Eliza.

Q. That was the way you knew what her name was?

A. I knew what her name was, but I would not have mentioned it in the court-house unless they mentioned it that night. I would not have known what colored woman was there, because so many people are named Eliza.

Q. But you recollect that her name was Eliza?

A. Yes, sir; she was called Eliza, at least.

The court took a recess for half an hour, re-assembling at 1:25.

ALPHONSO DONN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. I live in Washington, at the corner of Eighth and D streets.

Q. What is your occupation at present?

A. I am door-keeper at the Executive Mansion, and have been for about four years.

Q. What was your business previous to that?

A. I was a Metropolitan policeman.

Q. How long were you connected with the Metropolitan Police?

A. About three years.

Q. Do you know John Lee, a witness who was examined here?

A. I know John Lee.

Q. How long have you known him?

A. About three or four years.

Q. In what capacity did you know him?

A. He was then a detective.

Q. Did you have opportunities to see him frequently?

A. I have been in his company.

Q. Do you know the persons with whom he associated?

A. He associated with a great many. He came up to the President's House very often. He has called on the President very often.

Mr. BRADLEY. Did he associate with the President?

Mr. CARRINGTON. Wait till I get through, if you please, Mr. BRADLEY. (To the witness.) Did you know John Lee's general reputation for truth and veracity; and, if so, state whether it was good or bad?

A. According to my best knowledge, I think it was very good.

Cross-examined by Mr. BRADLEY:

Q. Was he not appointed a justice of the peace here?

A. Yes, sir.

Q. Did he not act as a police justice here?

A. He was a justice of the peace; I cannot remember how long back.

Q. Did you know him when he was in Baker's detective force?

A. I knew pretty much all of Baker's detectives.

Q. Did you know him when he was under Colonel O'Beirne, the provost marshal?

A. I think I did.

Q. What opportunities had you of knowing his character among those people with whom he associated?

A. I only know to the best of my knowledge what

I have seen of him. I never heard a person speak any harm against him; but he is a gentleman that will joke, or something of that kind.

GEORGE W. THEAKER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. In Georgetown. I was born and raised there; I have lived there all my lifetime.

Q. What is your occupation?

A. A restaurant-keeper.

Q. Are you pretty well acquainted in Georgetown?

A. Yes, sir.

Q. Do you know John Lee, a witness who was examined in this case?

A. Yes, sir.

Q. How long did you know him?

A. To the best of my knowledge, three years.

Q. In what capacity was he acting at the time you formed his acquaintance?

A. He was a justice of the peace. At first he was a detective when I knew him.

Q. Did you know his general reputation for truth and veracity; and, if so, state whether it was good or bad?

A. I never knew any thing bad of him. He always treated me as a gentleman.

Q. What did people say generally about him?

A. I never heard anybody say any thing about him before this trial.

Cross-examined by Mr. BRADLEY:

Q. Did you live in this city or Georgetown at that time?

A. In Georgetown.

Q. Where was he a detective and police justice?

A. Under the Government somewhere in Washington city.

Q. Were you carrying on the restaurant business in Georgetown while he was a detective in Washington?

A. Yes, sir; and I keep it now.

Q. You say you never heard any thing against him?

A. Not before this trial.

Q. Did you never hear any thing in relation to his truth in the matter of passing horses?

A. I did not; I never heard any thing about him before this trial.

Q. What opportunities had you of knowing any thing about him?

A. I associated with him once in a while. I met him at Mr. Butler's several times.

Q. You knew him three or four years ago; not lately?

A. The first time I got acquainted with him was in Washington.

JOHN REEFEE,

a witness for the prosecution in rebuttal, sworn and examined

By Mr. CARRINGTON:

Q. Where do you live?

A. On Capitol Hill, in this city.

Q. How long have you been living there?

A. Seven years.

Q. What is your business?

A. Selling cattle and sheep.

Q. You are a butcher?

A. Yes, sir.

Q. Do you know William E. Cleaver, a witness who has been examined in this trial?

A. Yes, sir, I know him; I have known him the last two or three years.

Q. Do you know his reputation for truth and veracity; and, if so, state whether it is good or bad?

A. I do not know. I know him when I see him, but I am not acquainted with him any further.

Q. You do not know any thing of his general reputation?

A. No, I do not.

Mr. CARRINGTON. Then I was mistaken. I thought you were summoned for that purpose.

CHARLES H. MERRELL,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. No. 378 Eighth street, in this city.

Q. How long have you lived here?

A. I have lived in the District of Columbia about fifteen years.

Q. What is your business?

A. I have heretofore followed the water; I am not following it at present.

Q. Do you know William E. Cleaver?

A. I do. I have known him about twelve years.

Q. Do you know his reputation for truth and veracity; and, if so, state whether it is good or bad?

A. I never heard any thing against it until this trial.

Q. Do you know persons with whom he associated?

A. I do. I have seen him and been in company with him.

No cross-examination.

GEORGE F. WALDO,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Waverly, New York.

Q. How long have you lived there?

A. About twenty years.

Q. Do you know Dr. Bissell?

A. I have known him.

Q. How long?

A. Part of the time for eight years—not all the time.

Q. Where did you know him?

A. In Waverly.

Q. What was he doing in Waverly?

A. He came there as a physician first.

Q. Tell when or about when he came to Waverly?

A. I think it was in the summer of 1858.

Q. How long did he stay there?

A. I should think about two years then.

Q. Tell the jury what reputation he acquired there generally as a man of truth and veracity?

A. It was bad.

Q. Was it not very bad?

A. I should say so.

Cross-examined by Mr. BRADLEY:

Q. When you speak of general reputation, what do you mean by it?

A. I mean the general report.

Q. What was commonly said about him?

A. Yes, sir.

Q. Do you know any thing about his suit against the Erie Railway Company?

A. Yes, sir; I know something about it.

Q. Were you in any manner concerned in that?

A. No.

Mr. PIERREPONT. I know the witness says no, but at the same time we may as well stop that subject here; it is entirely irrelevant.

Judge FISHER. I think that is a question which directs itself towards the ascertainment of the temper and disposition of this witness towards the witness whose character is being inquired into.

Mr. PIERREPONT. If he had any interest in that suit?

Judge FISHER. Yes, if he had any interest in the suit.

Mr. PIERREPONT. If that was the question, I do not object.

Q. (By Mr. BRADLEY.) You say that in the course of the two years he was there he acquired a bad reputation for truth?

A. Yes, sir.

Q. That is, he was reputed to be a common liar?

A. Yes, sir.

Q. Would you believe him if he stated any fact to you not of any interest at all; would you believe that he could tell the truth?

A. Yes, sir; I believe he could under some circumstances; where he was not interested I would perhaps believe him.

Q. Then his bad reputation for truth was where he was interested; is that what you mean by it?

A. Yes, sir; but I think he had very little regard for truth any way.

Q. But would you believe him in ordinary things?

A. Not generally.

Q. Was his reputation such, that if, for instance, he told you your horse was in the ditch out of town there, you would go after him and look him up?

A. I should question it some.

Q. If you were down the street, and you were to meet him hurrying along, and he was to tell you there was a fire at your house, would you move along any faster?

A. I probably should.

Q. When you say his reputation was bad for telling the truth, that he was a common liar, do you mean that he was not worthy of credit, and that you would not believe him on oath?

A. Yes, sir.

Q. What business are you engaged in?

A. I am a druggist.

Q. Did he deal at your shop?

A. He did.

Q. Did you have any quarrel with him?

A. No, sir.

Q. No quarrel or disagreement of any kind?

A. No, sir.

Q. Where is Waverly?

A. On the New York and Erie railroad, about two hundred and fifty miles west of New York city.

Q. How far from Owego?

A. Eighteen miles.

VINCENT M. CORYEL,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. I reside in the village of Waverly, and have resided there about eighteen years.

Q. Did you know Dr. Bissell, who lived there?

A. Yes, sir.

Q. Do you know the reputation that he got there among the people for truth and veracity?

A. Yes, sir; I think I do.

Q. Tell the jury whether it was good or bad?

A. His reputation was bad; very bad, for truth and veracity.

By Mr. CARRINGTON:

Q. What is your business in that village?

A. I am at present a superannuated preacher of the Methodist Episcopal Church.

No cross-examination.

CHESTER T. BLISS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. I live in Waverly, and have lived there more than two years.

Q. What is your occupation?

A. I practice medicine. I am a doctor.

Q. Did you know any thing about a Dr. Bissell, who lived there?

A. I formed Dr. Bissell's acquaintance nearly three years ago.

Q. Do you know the reputation he acquired for truth and veracity there—what the people generally said about him?

A. I have frequently heard him spoken of, and never in any other way than with discredit with regard to his word?

Q. Was his reputation good or bad?

A. I should think it was bad.

Q. Was it very bad?

A. I should think it was very bad.

No cross-examination.

WILLIAM MANNERS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In Waverly.

Q. How long have you lived there?

A. Something like seventeen years.

Q. What is your occupation?

A. I carry on the grocery and baking business.

Q. Do you know a Dr. Bissell, who lived there?

A. I believe I do.

Q. Do you know what reputation he acquired among the people there for truth and veracity—what they generally said about him?

A. I never heard much good about him.

Q. Did you ever hear much bad about him?

A. A great deal.

Q. What was his general reputation—good or bad?

A. Bad.

No cross-examination.

JAMES J. REEVE,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In Waverly.

Q. How long have you lived in Waverly?

A. About eighteen years.

Q. What is your occupation?

A. I am a hardware merchant.

Q. Did you know a Dr. Bissell, that lived there some time?

A. Yes, sir.

Q. Do you know what kind of a general reputation for truth and veracity he acquired among the people?

A. Not good.

Q. Was it bad?

A. Yes, sir.

No cross-examination.

Mr. PIERREPONT. There are some witnesses from the Observatory who were to be here at precisely two o'clock; but that hour has not yet arrived, and we have no others here at present.

Mr. BRADLEY. As the prosecution have no witnesses in court, and we have quite a number attending from Elkton, we will, with the consent of the prosecution, introduce those witnesses now, so as to save the time of the court.

Mr. PIERREPONT. Very well.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 89. WASHINGTON, SATURDAY, AUGUST 31, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 88.*

GEORGE R. HOWARD,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside ?

A. I reside in Elkton, Maryland.

Q. How long have you lived there ?

A. With partial exceptions, in Elkton and its neighborhood about forty-five years.

Q. During the late war, state whether you took any active part and on which side ?

A. I was a very ardent friend of the Union ; contributed what I could in the way of influence and effort towards maintaining the Union.

Q. Did you or not go into the military service ?

A. I did.

Q. And served until your health gave way, as I understand ?

A. I raised a regiment in 1862, under the second call of the President, took them into active service, and remained with them until February, 1863, when ill health compelled me to resign.

Q. Did you know Stephen F. Cameron, who has been examined as a witness in this case ?

A. Yes, sir ; I did know him.

Q. How long did you know him ?

A. I cannot say how many years ; half a dozen probably ; but I cannot say certainly.

Q. Did you know him up to the time of his leaving Elkton ?

A. The last I saw or knew of him was, I think, in 1861, but what portion of the year I cannot remember.

Q. Had you opportunities to know the estimation in which he was generally held in that neighborhood as a man of truth and veracity ?

A. I knew him very well personally, frequently met him and conversed with him.

Q. Did you mingle in the same society ?

A. Pretty much so.

Q. Then you had opportunities of knowing the general estimation in which he was held as a man of truth and veracity ?

A. I think my opportunities were about as good as those usually had by people of that place.

Q. State, if you please, whether his general reputation was good or bad ?

A. I never heard any thing said against his veracity or honesty. He was considered an eccentric sort of man ; he was very energetic in whatever he undertook, but was considered somewhat erratic. People did not always agree with him in his notions, and censured him sometimes for them.

Q. But as to his character for truth and veracity, you never heard it called in question ?

A. I never heard it called in question.

Q. Would you have any hesitation in believing him on oath ?

A. None whatever.

No cross-examination.

DANIEL BRATTON,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside ?

A. In Elkton, Cecil county, Maryland.

Q. How long have you resided there ?

A. Between twenty-seven and twenty-eight years.

Q. In what business are you engaged ?

A. I have been a merchant and a farmer. I am now a real estate agent ; I buy and sell real estate—operate in that way.

Q. Did you know Stephen F. Cameron at Elkton ?

A. Yes, sir.

Q. Had you opportunities to learn the general estimation in which he was held among his fellow-citizens as a man of truth and veracity ?

A. I think I had. I did business at the warehouse where he was doing business, buying and selling grain. I sold grain, and was frequently in conversation with him ; very frequently met him.

Q. You knew pretty much all the people there in town ?

A. I am acquainted with the people generally through the county.

Q. State what his reputation was for truth and veracity, whether good or bad ?

A. I never heard it called in question until I heard it in connection with this trial. I never heard his reputation for truth and veracity questioned before.

Q. Would you believe him on oath ?

A. I would not have the slightest hesitation about it.

No cross-examination.

ELI COSGROVE,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside ?

A. I reside in Cecil county, Maryland.

Q. How near to Elkton ?

A. Within fifteen miles at present.

Q. Are you frequently in Elkton, and do you know the people there generally ?

A. I resided there from 1861 to 1866.

Q. Prior to 1861 where did you reside ?

A. Where I do now, near Port Deposit.

Q. Were you frequently in Elkton, and did you know the people there generally ?

A. I knew the people there generally.

Q. Did you know Stephen F. Cameron ?

A. I had a slight acquaintance with him. I was not intimately acquainted.

Q. Did you know his general reputation in society as a man of truth ?

A. I know nothing particularly in reference to his character. I was not intimately acquainted with him.

Q. I do not ask particulars, but what people said of him as a man of truth and veracity?

A. I have heard very little of Mr. Cameron.

Mr. BRADLEY. Then I will ask you no further. I had not seen you, but the other gentlemen I had seen.

By Mr. MERRICK :

Q. Were you sheriff of Cecil county?

A. I was elected in 1861.

Q. Previous that time, in your canvass you knew the people of your county very generally?

A. I knew the people of the county. My canvass was in 1861.

No cross-examination.

JOHN PARTRIDGE,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside?

A. In Elkton.

Q. How long have you resided there?

A. Since 1837.

Q. It what business are you engaged?

A. In grain and guano-dealing.

Q. During that time did you know Stephen F. Cameron?

A. Very well.

Q. Did you know the estimation in which he was generally held among the people of the town as to truth and veracity?

A. I never heard his truth or veracity doubted.

Q. Would you have any hesitation in believing him on oath?

A. None at all.

Cross-examined by Mr. PIERREPONT :

Q. Are you in any way connected with him?

A. I was connected with him in business.

Q. How?

A. In grain and guano-dealing.

Q. Did he marry your daughter?

A. No, sir; I have none.

Q. I understood so. He was clerk to his father-in-law?

A. The business was conducted for the benefit of himself chiefly.

Q. Were you in the same-house?

A. Yes, sir.

Q. You have not seen him there since 1861, I suppose?

A. No, sir.

Q. Is his wife there?

A. Yes, sir.

Mr. BRADLEY. I object, and I ask that that question and answer be stricken out. It has nothing to do with this issue.

Judge FISHER. Of course not.

Mr. BRADLEY. Then I hope it will not be repeated. This is the second or third time already, I think.

Mr. PIERREPONT. I guess more than that.

Mr. BRADLEY. If more than that, the more shame for it.

Judge FISHER. The last question and answer will be stricken out.

R. G. REESE,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside?

A. In Elkton.

Q. How long have you resided there?

A. About twenty years, I think.

Q. Did you know Stephen F. Cameron when he resided there?

A. Yes, sir.

Q. Had you opportunities to know in what estimation he was held by his townsmen?

A. Yes, sir; I was pretty intimate with him during his whole residence there, I believe.

Q. What was his character for truth and veracity?

A. I never heard it doubted. He was an eccentric man, but I never heard his truthfulness doubted.

Q. Would you have any hesitation in believing him on oath?

A. None at all.

Cross-examined by Mr. PIERREPONT :

Q. Did you take the same side with him in the war, or different sides?

A. I suppose I took different sides from him in the war.

Q. Which side did you take?

A. I was considered a sympathizer with the South, but I do not think that I was, except to a certain extent. I thought the war was wrong, and did not believe it would eventuate in perpetuating the Union.

WILLIAM G. PURNELL,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK :

Q. Where do you reside?

A. In Elkton, Maryland.

Q. How long have you resided there?

A. Seventeen years.

Q. What have you been engaged in for the last four or five years?

A. I have been in the army part of the time, and part of the time in the mail service of the United States.

Q. What rank had you in the army?

A. I enlisted as a private and was discharged as a captain of infantry.

Q. And you are now in the mail service of the United States?

A. Yes, sir.

Q. Did you know Stephen F. Cameron when he lived in Elkton?

A. I knew him.

Q. Did you have an opportunity of forming an opinion with regard to the general estimate in which he was held as a man of truth and veracity?

A. Yes, sir.

Q. Did you associate with the same people that he did?

A. I do not know that I did; I associated with him a great deal.

Q. And you and he knew the same persons?

A. Yes, sir.

Q. What was his character as a man of truth and veracity?

Mr. PIERREPONT. His general reputation, what other folks said, not what you thought.

Mr. MERRICK. Yes, what other folks said generally?

A. I have no knowledge of what other folks said.

Q. Did you ever hear it called in question?

A. I never heard it called in question.

Q. Would you have any hesitation in believing him on oath?

A. Not a particle.

Q. I mean from what other folks have said of him?

Mr. BRADLEY. From his general reputation?

Mr. PIERREPONT. He says he has not heard what other folks said of him; and whether he would believe him on oath must not rest on his view, but on what he has heard other people say.

Mr. MERRICK. No, I do not want it to rest on his view, but from the general character Cameron bore in

Elkton as a man of truth, I ask this witness if he would believe him on oath.

The WITNESS. Certainly I would.  
No cross-examination.

THOMAS DRENNEN,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside?

A. Near Elkton, Maryland, within one mile of the town.

Q. Are you in the town a great deal?

A. Every day.

Q. Do you know the people there generally?

A. I do.

Q. Prior to 1861 where did you reside?

A. In Elkton.

Q. What business were you engaged in up to 1861?

A. A merchant.

Q. Did you know Stephen F. Cameron there?

A. I knew Mr. Cameron very well and his family, and had business with him often.

Q. Did you know those with whom he associated?

A. Yes, sir; I associated in the same circle he did. I have been to parties and dances with him.

Q. You had, therefore, opportunities of knowing the estimation in which he was generally held there as a man of truth and veracity?

A. I had.

Q. Was that character good or bad?

A. Good.

Q. Would you have any hesitation in believing him on his oath.

A. Not at all.

Cross-examined by Mr. PIERREPONT :

Q. You did not dance with a clergyman there?

A. I danced with Mr. Cameron.

Q. Was he not a clergyman?

A. Not at that time, I believe.

Q. When did he become a clergyman?

A. I cannot say when.

Q. He danced during all the time you knew him?

A. He did dance when I was there at parties.

Q. You did not know that he was a clergyman when he was dancing there?

A. I did not say he was a clergyman.

Q. I know you did not; you say you did not know the fact?

A. I was not aware that he was a clergyman at that time.

By Mr. MERRICK :

Q. What was he engaged in at that time when you knew him in Elkton?

A. He was engaged with his father-in-law, Mr. Partidge, in the grain business, acting as clerk. I looked upon him as a very good business man, a little off-handed at times like some men.

JOHN R. HOGG,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK :

Q. You are from Cecil county, Maryland?

A. Yes, sir.

Q. How long have you lived in Cecil county?

A. About forty-five years.

Q. What is your occupation?

A. I have been a railroad man for the last thirty years.

Q. Did you know Stephen F. Cameron when he lived in Elkton?

A. I did.

Q. Did you have opportunities of knowing his general reputation as a man of truth and veracity?

A. I knew him very well, and I knew whom he associated with every day.

Q. What was his general character as a man of truth and veracity?

A. Very good. He was looked on to be a very strict church man.

Q. His character was very good for truth and veracity?

A. Yes, sir.

Q. Would you, from his general character, believe him on his oath?

A. Oh, yes, sir.

Cross-examined by Mr. PIERREPONT :

Q. When he was looked upon as a very strict church man, what was he doing?

A. At one time he thought the church that was there was too old for their society, and he went to work and got subscriptions, and the ladies had a fair, and they built a new church, and that church generally went by the name of "Cameron's church." I now, generally, when speaking about it, although he has been away since 1861, speak of it as "Cameron's church."

Q. Was there any thing erratic or singular about him?

A. Any thing that he would undertake to do, he would try to do more than anybody else.

Q. Was he a clergyman?

A. I never heard him preach; I have heard people say he preached; I have heard him pray, but never heard him preach.

Q. Do you know where he went?

A. I can only say what I heard.

Q. Where did he go?

A. He went South.

Q. And joined the Southern Confederacy?

A. I heard that.

Q. When did you last see him?

A. I think I have not seen him since 1861.

Mr. PIERREPONT. I will state to your honor, that we are detained by the railroad witnesses refusing to obey the subpoena of the court. We yesterday applied to your honor for an attachment, and it was ordered, and it was sent as speedily as possible, but it has not yet been returned. This is all that delays us. But for it we could close in a very short time.

Mr. MERRICK. Could you close to-day?

Mr. PIERREPONT. Easily; and we could have closed long ago if we had had these witnesses. We have had a great deal of difficulty in getting information from that road for some reason. I do not know what the reason is.

Mr. MERRICK. What road is it?

Mr. PIERREPONT. The road between Sunbury and Baltimore. Every obstacle has been thrown in the way of getting proper information; so I am told by those we have sent. The men for whom we obtained attachments were subpoenaed regularly, and should have come here under the subpoena, but refused to come.

Mr. MERRICK. Is Mr. DuBarry here?

Mr. PIERREPONT. I do not know. We have not sent for him.

Mr. MERRICK. We sent for him, and supposed he would stay here.

Mr. PIERREPONT. He knows nothing about these entries. He did not make them. I put a witness on the stand whom we supposed could testify to the entries, but he could not, and we were obliged to send for the conductors who made them.

Mr. BRADLEY, Jr. One of your colleagues told me that he had sent a messenger for Mr. DuBarry. He came on our telegram before. We summoned him.

Mr. PIERREPONT. I did not know that DuBarry had been subpoenaed; but if he were here he would be of no use, for he did not make the entries.

Mr. BRADLEY. He was here yesterday.

Mr. PIERREPONT. If no more witnesses come in

presently, we must ask for an adjournment until tomorrow.

Mr. CARRINGTON. Some witnesses are now in.

Mr. PIERREPONT. I did not know that.

ALFRED G. HATFIELD,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. I formerly lived in Philadelphia. I am now in the Treasury Department here as a clerk.

Q. How long have you been in Washington city as a clerk in the Department?

A. About two years; since I left the army.

Q. Are you and your father living together?

A. Yes, sir.

Q. Do you know John Lee a witness who was examined here?

A. I have known John Lee for about fifteen years in Philadelphia and here. I met him here after coming here.

Q. In what capacity did you know him in Philadelphia?

A. He was a constable there.

Q. Did you know persons with whom he associated in Philadelphia?

A. He associated with a great many. His business led to that. He did business for a great many.

Q. Did you know his general reputation for truth and veracity; and, if so, state whether it was good or bad.

A. I never heard it questioned. He always had a great deal of business, and amongst influential men. I never heard a question of him before this trial.

Cross-examined by Mr. BRADLEY:

Q. Do you recollect his having been indicted and convicted there at any time?

Mr. CARRINGTON. I object to that. Your honor has ruled on that point frequently.

Judge FISHER. He can only speak of the man's general reputation for truth and veracity.

Mr. BRADLEY. He says he has never heard it questioned. Now, I ask him if he has not heard or known of his being indicted and convicted in Philadelphia, and I will ask him what for. It may be about this very point.

Mr. CARRINGTON. Certainly a man cannot be indicted and convicted for telling a lie.

Mr. BRADLEY. He may be for perjury.

Mr. CARRINGTON. But that would hardly be general reputation. It would be a specific act.

Mr. PIERREPONT. The question is general reputation.

Mr. BRADLEY. This witness says he never heard it called in question. That is the point to which I wish to ask his attention.

Judge FISHER. You are asking him now upon cross-examination to prove a fact which could only be proved by the record, whether he was convicted of perjury.

Mr. CARRINGTON. He does not ask about perjury.

Mr. BRADLEY. I wished to know if he had heard of that, and therefore whether he had heard his character for truth discussed, to refresh his memory.

Judge FISHER. You may ask whether he has ever heard it discussed; you cannot ask whether he heard of his being tried and convicted of perjury.

Q. (By Mr. BRADLEY.) Have you never heard his character for truth discussed in Philadelphia?

A. No, sir.

Q. Did you live in his neighborhood?

A. I have been frequently with him, and he used to come to my store; I kept a drug store at the time, and he came there frequently.

Q. How long ago was that?

A. That was in 1851 or 1852, when I first became acquainted with him.

Q. How long did he continue then to live in Philadelphia?

A. I think for a period of eight or nine years; I can remember meeting him occasionally there, and then meeting him here in Washington.

Q. So that he must have lived there about 1860 or 1861?

A. Yes.

Q. And up to that time you never heard any thing said about his character for truth and veracity?

A. No, sir, I did not.

WILLIAM HARKNESS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where did you live, and what was your occupation, on the 14th day of April, 1865?

A. I was boarding in Washington; I was on duty at the time at the United States Naval Observatory.

Q. Were you making observations of the weather?

A. No, sir.

Q. Of the night?

A. I was making observations of the stars during that night.

Q. Now, state the condition of the sky between the hours of nine and twelve o'clock.

A. From nine o'clock until twenty minutes past eleven, when I went off duty, I can state the weather only from the observations that were made. From twenty minutes after eleven to twelve I have got other means.

Q. You can confine yourself to the time between nine o'clock and twenty minutes after eleven.

A. During that time the weather was tolerably clear—not perfectly clear; some clouds were floating across, but it was clear enough to observe some very small stars.

Q. Do you know when the moon rose?

A. I made a memorandum in one of the books which I have here.

Q. Look at it.

A. [After examining a book.] It rose about twenty minutes before nine.

Q. As it was Good Friday, you can tell about how near the full the moon was.

A. The moon was full on the 10th, at nineteen minutes past eleven p. m.

Q. What was the condition of the night at 9:45?

A. I have an observation at 9:43 and one at 9:49. At 9:43 I observed a very small star, one not visible by the naked eye at all, and it could not be seen except in a clear atmosphere. It must have been pretty clear to see that.

Q. What was the observation at 9:49?

A. That was a star that is also invisible to the naked eye—Vesta, one of the asteroids.

Q. What was the state of the atmosphere then?

A. At the place where that star was it must have been clear, or I could not have seen it.

Q. At eleven o'clock?

A. At eleven o'clock exactly I observed another star that is also invisible to the naked eye.

Q. And that proved what?

A. That where that star was it was clear.

Q. At 11:18?

A. That was the last observation I made that night. It was a double star, and the observation shows that at the time I observed it there must have been a light cloud floating over. I observed one of the components, which takes a very good telescope to see. It is altogether invisible to the naked eye.

By the COURT:

Q. What time did I understand you to say the moon rose on the night of the 14th?

A. About twenty minutes before nine.

By Mr. PIERREPONT:

Q. Before nine or ten?

A. Before nine.

Cross-examined by Mr. BRADLEY:

Q. I understand you have a memorandum in your book of the time the moon rose?

A. No, sir. The memorandum of the time the moon rose does not depend on my personal knowledge. I take that from the Nautical Almanac.

Q. When did you make the entry in your book?

A. I made that entry to-day.

Q. Now, coming back to that night, was there anybody superintending the observations, or did you have charge of them?

A. At the Observatory at that time there were three instruments running every night.

Q. I am asking who had the general superintendence that night?

A. The particular instrument I was on I had charge of. Each observer has charge of his own instrument.

Q. Did you report to anybody?

A. No, sir; I do not report to anybody there.

Q. Did you make your report to the officer in charge of the Observatory, or keep your books yourself?

A. There is no officer in charge of the Observatory at night. Each observer is supposed to be in charge of his own instrument. He goes to work and keeps charge.

Q. Does he make any reports afterwards?

A. The observations are entered up in books like this, and they are published in the annual observations. This is the original note-book I made.

Q. And from the original note-book you make up the report which is published?

A. Yes, sir.

Q. Was Professor Eastman employed there that night?

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

Q. State to the court and jury in what part of the heavens those stars were to which you have referred?

A. They were on the meridian. If you want to know about the altitude, I shall have to look at the books. The last one I observed passed nearly through the zenith.

Q. That was a double star?

A. Yes, sir.

Q. Where was Vesta?

A. I shall have to look at the book to tell?

Q. Just look at it for a moment?

A. It was on the meridian, about twenty-two degrees south of the zenith.

Q. At what time did you observe Vesta?

A. At 9:49.

Q. And when the double star?

A. At 11:17

Q. The intermediate star, between the observation of Vesta and the double star?

A. There was one at 9:54 and one at 10:12.

Q. Where was the one at 10:12?

A. That was about thirty-six degrees south of the zenith.

Q. Near the meridian?

A. On the meridian. All these observations were on the meridian.

Q. And all of them south?

A. I cannot say that. All you have asked me about were south.

Q. Look and see if they were all south?

A. All south except the last one, which was about ten minutes north of the zenith.

Q. And they were all on the meridian? Your observation was at the time they passed the meridian?

A. Yes, sir.

Q. Do you recollect the condition of the lower portion of the heavens, whether there were clouds or not?

A. No, sir, I cannot make any statement as to that.

Q. Do you recollect whether the moon was obscured or not for two hours after she rose?

A. It could not have been obscured all the time. That is evident. There were some floating clouds, but the moon must have shone.

Q. And these floating clouds, as I understand you, were on the meridian near the zenith, twenty-two degrees south. These floating clouds might have been there and yet it be perfectly clear in the east where the moon was?

A. I do not know that I ever saw floating clouds confine themselves entirely to the meridian.

Q. I do not say that they confined themselves to it; but I supposed the whole western hemisphere might have been filled with clouds and yet it appear perfectly clear in the east. Might it not be so?

A. That is possible.

Q. Then there might have been clouds on the horizon at the east without there being any clouds in the meridian?

A. Yes, sir, it might have been so.

Q. And you cannot say now whether that was the case or not?

A. No, sir, I do not pretend to say.

Q. Why did you stop shortly after eleven?

A. I stopped shortly after eleven because it got so cloudy that I could not do any more work.

Q. State whether it was a clear or hazy night.

A. According to the best of my recollection, at the time I stopped working, which was about twenty minutes past eleven, the sky was covered with very thin clouds, and looked slightly hazy, but it was not a foggy night.

Q. There is a distinction between haze and fog?

A. Yes, sir.

Q. Therefore I asked you about haze, not fog?

A. You might say it was hazy perhaps.

Q. Was it very moist?

A. My recollection of it is that it was rather a damp night.

Q. You have no recollection of clouds nearer the horizon; and it is only because you saw those stars on the meridian, that is, due north or south from the place of observation, that you can recollect taking the observation?

A. As to clouds or weather, I can say nothing prior to about twenty minutes past or half-past eleven, except from these notes that I have given you.

Q. These notes give you no information as to the condition of the weather, except the single fact that you could see those stars?

A. On the meridian; that is all—nothing whatever except that.

By Mr. PIERREPONT:

Q. You told us about the time the moon rose; we do not understand sidereal time?

A. The time I gave you was mean time.

Q. Was the time you gave of the rising of the moon according to the time we generally compute by?

A. The time you generally reckon by.

Q. What time exactly was it that the moon rose?

A. The time of the rising of the moon I get in this way—

Mr. PIERREPONT. I do not care about going into that. I only want to know if you know that to be the time?

A. It must have been within five minutes of twenty minutes to nine, one side or the other.

Q. Which side?

A. I cannot say; it takes sometime to make the calculation.

Q. You have not made the calculation?

A. Not rigorously, to say that I am sure I am right.

Q. But when you say twenty minutes to nine, do you mean either twenty minutes before or after?

A. No; I mean that it may have been fifteen minutes to nine or twenty-five minutes to nine.

Q. Have you any means of telling which way the wind was blowing?

A. No, sir; you can get that from a meteorological register. I have no minute of it.

Q. Which way was the moon in relation to those stars you have named?

A. The moon was east of the meridian. It had not come to the meridian yet.

By Mr. BRADLEY:

Q. Do you recollect at all the arc which was described by the ascension of the moon that night?

A. You mean how far up it would be?

Q. Yes.

A. The moon was pretty far south. Its highest point did not differ a great deal from forty degrees of altitude.

Q. Did it get higher than thirty-six degrees?

A. It would be somewhere in that neighborhood. It was pretty well south that night.

HIRAM McCULLOUGH,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Elkton, Maryland.

Q. How long have you resided there?

A. Since 1831.

Q. I believe you represent that district in Congress?

A. I do.

Q. Do you know Stephen F. Cameron?

A. Yes, sir; I have known him since, I think, the winter of 1855-56.

Q. Have you or not had an opportunity of knowing his general reputation for truth and veracity in Elkton?

A. I have had, I think, as much as any man that ever lived in the town.

Q. Was his general reputation for truth and veracity good or bad?

A. It was good when he lived there. He has not been in Elkton since 1861.

Q. He went South in 1861?

A. So I understood.

Q. From his general character, would you have any hesitation in believing him on oath?

A. Not the least in the world.

No cross-examination.

CHARLES ELLIS,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. At Elkton, Maryland.

Q. You have been in the service of the United States?

A. I have been in the army as a surgeon.

Q. Did you know Stephen F. Cameron, who lived in Elkton?

A. I did.

Q. Did you have opportunities of forming an opinion with regard to his general reputation for truth and veracity there?

A. Oh, yes, sir. I knew him intimately; saw him constantly.

Q. Did you associate with the same people that he did?

A. Yes, sir.

Q. What was his general reputation for truth and veracity, good or bad?

A. Good.

Q. From his general reputation, would you have any hesitation in believing him on oath?

A. None whatever.

Q. He left Elkton in 1861?

A. I believe he did.

Q. Do you know where he went?

A. I believe he went South. I met him in the South afterwards.

Q. What time did you meet him?

A. I met him the day after the battle of Gaines's Mills.

Q. Did you meet him after the battle of Cold Harbor?

A. Yes, sir.

Q. Were you taken prisoner at the battle of Cold Harbor?

A. I was.

Q. Did you meet Cameron at that time?

A. I met him a day or two after.

Q. State what was his manner of treatment of you and the Union prisoners.

Mr. PIERREPONT. Stop.

Judge FISHER. Is it objected to?

Mr. PIERREPONT. Yes, we object.

Mr. MERRICK. Of course they object. I did not expect they would consent to let it in, but I thought I would try.

Mr. PIERREPONT. You thought it was legal evidence, did you not?

Mr. MERRICK. No, I thought it was illegal; but I thought you might consent by possibility.

Mr. PIERREPONT. To illegal evidence?

Mr. MERRICK. You have offered a great deal on your side.

Mr. PIERREPONT. We did not succeed in getting it in.

Mr. MERRICK. Oh, yes; you have got it all in or held under advisement.

No cross-examination.

JAMES R. BROWN,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Elkton, Maryland. I have lived there and in the neighborhood, within a mile and a half of it, about twenty years.

Q. Have you held any office there, or do you now?

A. I am a magistrate at the present time, and reside in the town of Elkton now.

Q. Do you know Stephen F. Cameron?

A. I do.

Q. How long did you know him?

A. I do not recollect how long, but during the whole time he lived there and I lived there. I do not recollect the exact time.

Q. Did you have an opportunity of forming an opinion with regard to his general reputation for truth and veracity in that community?

A. I never heard it doubted until within the last ten days or two weeks.

Q. I mean his reputation when he lived there?

A. I never heard it doubted when he lived there.

Q. From your knowledge of his general reputation, would you have any hesitation in believing him on oath?

A. So far as I know, I would not.

No cross-examination.

AARON G. TATE,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Elkton.

Q. Did you know Stephen F. Cameron?

A. I did.

Q. How long did you know him?

A. About two years.

Q. Did you have opportunities of forming an opinion with regard to his general character for truth and veracity?

A. I did.

Q. What was his general character for truth and veracity—good or bad?

A. Good.

Q. From that general character, would you have any hesitancy in believing him on oath?

A. Not the slightest.  
No cross-examination.

JOSEPH B. CANTWELL,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Elkton, Maryland.

Q. How long have you resided there?

A. Fifty-one years.

Q. That is about as long as you have lived anywhere, I reckon?

A. Just about.

Q. Did you know Stephen F. Cameron, who lived in Elkton?

A. Very well.

Q. Did you have opportunities of forming an opinion in regard to his reputation for truth and veracity?

A. I had. I transacted business with him.

Q. Did you know the same people in Elkton that he knew?

A. Very well.

Q. And associate in the same society?

A. Yes, sir.

Q. Mix with the same persons?

A. Yes, sir.

Q. Now, state what his general character was, whether it was good or bad?

A. It was good, as a general thing.

Q. From what you know of his general character, would you have any hesitation in believing him on oath?

A. Not the slightest.

Q. As some question is raised about sympathies, I will ask you what were your sympathies in the late war?

A. I was a Union man during the war.

Q. Out and out, were you not?

A. Out and out.

No cross-examination.

DAVID SCOTT,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Elkton. I have been living there since 1851.

Q. Do you know Stephen F. Cameron?

A. Yes, sir.

Q. How long did you know him?

A. I think I knew him from 1856 or 1857; about that time.

Q. Did you have opportunities of forming an opinion with regard to his general reputation for truth and veracity?

A. I think I had.

Q. Did you meet and associate with the same people he did?

A. Yes, sir.

Q. And mix in the same society?

A. Yes, sir.

Q. State to the jury what his general reputation was, good or bad?

A. I think it was good.

Q. Would you have any hesitation, from his general reputation, in believing him on oath?

A. Not the slightest.

Cross-examined by Mr. PIERREPONT:

Q. When did he first go there to live?

A. I am not certain about the year. I think it was 1855 or 1856.

Q. Do you know where he came from?

A. Not certainly; I think from New York.

Q. Do you know what he did when he came there first?

A. He went into the grain business with his father-in-law.

Q. What else did he do? Do you know? Did you know him in any other business?

A. I think he studied for the ministry during that time.

Q. At Elkton?

A. Yes, sir, at Elkton and at New York.

Q. Was he carrying on business at the same time?

A. No, sir.

Q. Did you ever hear any talk about his character as a truthful man? Did you ever hear that discussed before this trial?

A. I do not know that I ever heard it discussed.

Q. Was there any thing peculiar about him in any way, connected with his mode of stating facts?

A. Perhaps there was some slight peculiarity. Mr. Cameron was an enthusiastic kind of man, fond of excitement and change. That is about the only peculiarity I know about him.

JOHN M. MILLER,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Elkton. I have resided there since 1856.

Q. Did you know Stephen F. Cameron there?

A. Yes, sir; I knew him for several years.

Q. Did you have opportunities of forming an opinion in relation to the general estimate in which he was held as a man of truth and veracity?

A. I had.

Q. Did you associate with the same people he did?

A. Yes, sir.

Q. Mix in the same society?

A. Yes, sir.

Q. State to the jury whether his general character for truth and veracity was good or bad?

A. Good, so far as I know any thing about it?

Q. From his general character, would you have any hesitation in believing him on oath?

A. Not the slightest.

Q. What were your sympathies during the late war?

A. I was a Union man.

Q. Very decided, were you not?

A. I was very decided. I separated from my old Democratic party on that question, and was a Union man throughout the war.

Mr. MERRICK. I am glad you are a Union man, but I hope you will not keep separated from the democracy.

The WITNESS. I am still a Union man, supporting President Johnson in his efforts to restore the Union.

Cross-examined by Mr. PIERREPONT.

Q. What was Mr. Cameron doing there when you knew him?

A. I never knew him engaged in any particular occupation except for a short time, or some period, I do not know how long, he was with his father-in-law in the grain business.

Q. What was he doing the rest of the time?

A. I do not know what he was doing.

Q. Did you ever hear his character discussed as to his peculiarities?

A. He had some eccentricities of character.

Q. Did they run into the line of exaggeration?

A. Not that I ever heard of.

Q. Did you hear what they were?

A. Well, he had an active mind; he was a stirring

man. He seemed to be a man who was fond of roaming and roving about. I knew no other peculiarity. He did not seem to be a man who was suited to settle down to any particular business. I never knew any other peculiarity.

Q. And he roved away from there, did he not, early in 1861?

A. I believe he did leave there in 1861.

Q. Has he roved back?

A. No, sir; he has never come back, that I know of.

JAMES B. GROOME,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. I reside in Elkton, Maryland.

Q. How long have you lived there?

A. I was born there, and never resided elsewhere except when away at school or absent on temporary business.

Q. And your father lived there sixty years before you, I believe?

A. Sixty-six years, but not all that time before me. He lived forty years or thereabouts before I did.

Q. Did you know Stephen F. Cameron?

A. I did.

Q. Had you opportunities of forming an opinion in regard to the general estimate in which he was held as a man of truth and veracity?

A. I had. I lived in the same town with him, associated with the same people, heard him often talked about, and never heard his veracity questioned in the least; and hence I should say it was good, on that general reputation.

Q. From his general reputation, would you have any hesitation in believing him on oath?

A. On that general reputation I would not have the least.

Q. You are a member of the Constitutional Convention of Maryland, I believe?

A. I am.

Cross-examined by Mr. PIERREPONT:

Q. Did you ever hear him discussed?

A. I have heard him discussed.

Q. Have you heard a great deal said about him?

A. I have heard him criticized, and criticized in no amiable spirit, but never with reference to truth; that question I never heard raised.

Q. When did he come there?

A. He came there, I should say, about 1855 or 1856. The earliest date at which I can positively fix his being there was the spring of 1857.

Q. What did he do?

A. He was a grain merchant or assistant grain merchant.

Q. Assistant to whom?

A. To General Stites. I think I recollect that fact; I will not be positive about it; I know he had some connection with General Stites in the grain business.

Q. What else did he do that you knew?

A. No active business, I think; as was stated just now, he was rather a versatile genius; very fond in those days of attending parties and being active in their management.

Q. You mean social parties?

A. Social parties.

Q. Do you mean dancing and things of that kind?

A. Things of that kind.

Q. He was active in those?

A. At that time.

Q. How long did he stay there?

A. He stayed there from the time I first knew him until 1861 or 1862; I should not like to be positive which.

Q. Have you ever seen him there since?

A. No, sir.

By Mr. BRADLEY:

Q. You were asked about his being engaged in dancing and other parties: do you know any thing, from your own knowledge or the reputation of the neighborhood, of his studying divinity after that?

A. I know he has studied divinity; I think I have heard him preach; I know the fact, though, that he was a deacon in the Episcopal Church.

Q. Did he at that time engage in those parties?

A. No, sir; he went to the other extreme.

By Mr. PIERREPONT:

Q. Were the man's changes sudden from one extreme to the other?

A. I thought they were rather sudden.

By Mr. CARRINGTON:

Q. What is your business?

A. I am a member of the bar. I now represent in part Cecil county in the Constitutional Convention at Annapolis.

SAMUEL B. FORD,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Elkton, Maryland. I have lived there since 1852, I think, but I am not sure as to the date.

Q. Did you know Stephen F. Cameron?

A. Yes, sir, I knew him.

Q. Had you opportunities of forming an opinion in regard to the general estimate in which he was held as a man of truth and veracity?

A. I think so.

Q. Did you associate with the same people that he did?

A. I did.

Q. Mix in the same society?

A. Yes, sir.

Q. Met him in social life?

A. Yes, sir.

Q. State whether or not his general reputation was good or bad as a man of truth and veracity?

A. It was good.

Q. From his general reputation, would you have any hesitation in believing him on oath?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. Did you hear him discussed a good deal in your region?

A. Sometimes he would be talked about.

Q. From the way people talked of him, did you think him to be a very reliable and truthful man?

A. Yes, sir.

Q. That was your impression?

A. I never saw any thing about Mr. Cameron but what was correct.

Q. I am speaking about the discussion you heard?

A. That is the character he bore.

Q. Were they discussing him in relation to his truth-telling?

A. I do not know that I ever heard him discussed on that subject in my life.

Q. Do you know when he went away from there?

A. I know about the time he went away.

Q. Do you know what sent him away?

A. I do not.

Q. Nothing has brought him back as yet, has there?

A. He has not been back to my knowledge.

Mr. BRADLEY. He is pardoned now; he will go back.

Mr. PIERREPONT. Pardoned for what?

Mr. BRADLEY. For joining the rebellion and being a chaplain in the rebel service—pardoned because he has repented.

REUBEN D. JAMOR,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK :

Q. Where do you reside ?

A. In Elkton. I have resided there all my life.

Q. Did you know Stephen F. Cameron ?

A. I did.

Q. Had you opportunities of forming an opinion in relation to the general estimate in which he was held there as a man of truth ?

A. I think I had.

Q. Did you associate with the same people ?

A. I think I did.

Q. And mix in the same society ?

A. I think I did.

Q. Was his general character for truth and veracity good or bad ?

A. It was good.

Q. From his general character as a man of truth and veracity, would you have any hesitation in believing him on oath ?

A. Not the least.

Q. What were your sympathies during the war ?

A. Entirely with the Union.

Q. You were a decided Union man, were you not ?

A. Out and out.

Cross-examined by Mr. PIERREPONT :

Q. Did you hear Cameron generally discussed ?

A. I never heard a word about him.

Q. Did you not hear him talked about ?

A. Not at all. I never heard his character discussed.

Q. In any way ?

A. In any way.

Q. Not any of his traits or peculiarities ?

A. No, sir. If any little party was to be got up, Mr. Cameron could do it probably better than any other man—any little festival, or any thing of that kind.

By Mr. BRADLEY :

Q. Do you know any thing of his studying for the ministry afterwards ?

A. I do not know much about it.

Q. When you speak of his getting up these little parties, do you not mean that it was in the earlier part of your acquaintance with him ?

A. If we wanted to get up a little festival or any thing of that kind, he was always on hand.

Q. Was that in the earlier part of your acquaintance with him ?

A. Yes, sir.

By Mr. PIERREPONT :

Q. That capacity and that employment of getting up those things continued as long as you were acquainted with him, did it not ?

A. Occasionally so.

R. G. REESE,

a witness for the defense in sur-rebuttal, recalled.

By Mr. BRADLEY :

Q. Were you a member of the Episcopal church in Elkton ?

A. I was.

Q. After Mr. Cameron took orders did you see him in Elkton ?

A. Yes, sir.

Q. Did you ever then see him engaged in any thing improper ?

Mr. PIERREPONT. Do not answer that.

Mr. MERRICK. They have attempted to show—

Mr. PIERREPONT. We have not attempted to show any thing ; we have simply cross-examined your witnesses.

Mr. BRADLEY. Let it go.

PERRY LITZENBERG,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. MERRICK :

Q. Where do you reside ?

A. In Elkton. I have lived there since the spring of 1853.

Q. Did you know Stephen F. Cameron ?

A. I knew him when he lived there.

Q. Did you have opportunities of forming an opinion of the estimate in which he was held by the people there ?

A. I saw a good deal him ; I saw him every day, more or less.

Q. Did you and he mix with the same people ?

A. To some extent.

Q. What was his general character for truth and veracity ?

A. I never heard it doubted until yesterday.

Q. From his general character, would you have any hesitation in believing him on oath ?

A. Not the least.

Cross-examined by Mr. PIERREPONT :

Q. Did you visit at the house where he lived ?

A. Yes, sir.

Q. Was he married ?

A. He was said to be.

Q. When was he married ?

A. I do not know that.

Q. Do you know whether his family are living there ?

Mr. MERRICK. Stop.

Judge FISHER. Oh, you had better let him go.

Mr. PIERREPONT. Very well.

The court took a recess until to-morrow morning at ten o'clock.

Thirty-Ninth Day.

THURSDAY, July 25, 1867

The court re-assembled at ten o'clock a. m.

ARTEMUS STEVENS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you reside ?

A. In Lennoxville, Canada.

Q. How long have you been residing there ?

A. Ever since I was born.

Q. What is your occupation ?

A. Farmer.

Q. Do you know Dr. McMillan ?

A. I do.

Q. Where did you form his acquaintance ?

A. At Lennoxville.

Q. How long have you known him ?

A. I have known him over seven years.

Q. How was he employed in Lennoxville when you knew him there ?

A. He was there as a practicing physician.

Q. Do you know his general reputation in that community for truth and veracity ; and, if so, state whether it was good or bad ?

A. As far as I know, it was good.

Q. Very good ?

A. Very good.

No cross-examination.

WILLIAM HARKNESS,

a witness for the prosecution in rebuttal, recalled at his own request.

Mr. CARRINGTON. You have already been examined, Professor Harkness, before the jury, and they know who you are and how you are employed. I un-

derstand you desire to correct a statement which you made yesterday in your testimony.

A. Yes, sir; I merely wish to state that there was a confusion between mean and sidereal time in giving the time when the moon rose on the night of the 14th of April, 1865. In mean time the moon actually rose at one minute and four seconds past ten o'clock. At that time the upper edge of the moon came above the horizon.

By Mr. BRADLEY:

Q. That is in mean time?

A. Yes, sir.

Q. Was the sidereal time twenty minutes before nine, which was the hour you stated yesterday?

A. No. The time I gave was not exactly sidereal time. I had to take a certain quantity from the Nautical Almanac, and that quantity I supposed to have been given in sidereal time; but I find that it was really given in mean time. I applied the correction to reduce it to mean time, which produced the error into which I fell yesterday.

Q. What was the sidereal time of the rising of the moon?

A. I cannot tell you exactly; it was about one hour and thirty-two minutes later.

Q. Your error did not arise from the difference between mean and sidereal time, but from the data on which you made your calculation?

A. Yes, sir; that was it.

By Mr. MERRICK:

Q. Did not the moon, in point of fact, rise at ten minutes past ten, mean time?

A. No, sir; in point of fact it rose at one minute and four seconds past ten, mean time.

By Mr. CARRINGTON:

Q. I do not know much about astronomy, but I am requested to ask you one question: At fifteen minutes past ten, how many diameters was the moon above the horizon?

Judge FISHER. I think you do not want to know any thing more exact about the rising of the moon; there is only three minutes' difference in all the calculations.

Mr. BRADLEY. Not quite two minutes.

Judge FISHER. One almanac which has been produced puts it at 9:59; Professor Eastman estimated it at 10:02; and now this witness puts it at ten o'clock one minute and four seconds.

Mr. BRADLEY. There is a difference between him and Eastman of fifty-six seconds.

Judge FISHER. About the difference "betwixt tweedledum and tweedledee."

Mr. CARRINGTON. I suppose there is no objection to the witness answering my question.

Mr. BRADLEY. It does not throw any light on the point how many diameters above the horizon the moon was at fifteen minutes after ten. He would have to make a calculation to come at it.

The WITNESS. I have not made the calculation, but I could give a rough idea. The moon would be about above the horizon at five minutes past ten, and it would rise its own diameter in about three minutes, so that it would be about three diameters, or something like that, above the horizon at fifteen minutes past ten.

Mr. MERRICK. You say that the moon rises its own diameter in three minutes?

A. In about three minutes.

Mr. MERRICK. That is, it passes over its own diameter in that time?

A. Yes; I may not be strictly accurate, but it is about that.

JOSEPH N. DUBARRY,

recalled as a witness for the prosecution in rebuttal.

By Mr. PIERREPONT:

Q. You were called before, for the defense, and sworn, were you not?

A. Yes, sir.

Q. Have you the same records with you now that you had then?

A. Yes, sir.

Q. Tell the jury what railroad connection there was between Sunbury and the city of Washington on the 13th and 14th of April, 1865—what mode of coming to Washington from Sunbury.

A. By the Northern Central railway, the road of which I have charge, and, from my knowledge of the connections, the Baltimore and Ohio railroad.

Q. What other way?

A. The Northern Central railroad leads from Sunbury to Baltimore.

Q. Is there not another mode, connecting with the New York train at Philadelphia?

A. We cross the Pennsylvania railroad at Marysville, which leads to Philadelphia.

Q. Then is there not a road from Sunbury through Pottsville?

A. There are coal-roads leading in that direction.

Q. And from Pottsville to Reading?

A. The Reading railroad leads from Pottsville to Philadelphia.

Q. Then is there not the Catawissa railroad?

A. I know there is a Catawissa railroad; that road does not leave my line.

Q. But you know that road?

A. I know there is such a road.

Q. Does not that road strike yours just north of Sunbury?

A. It connects at Milton with the Philadelphia and Erie railroad.

Q. Where is Milton?

A. About twelve miles west of Sunbury.

Q. Now, tell us how many roads there are from Harrisburg to Philadelphia?

A. My knowledge of the railroads is that there is the Pennsylvania railroad line, and then a road from Harrisburg to Reading, and thence by the Reading railroad to Philadelphia; and those latter roads are under the management of the Philadelphia and Reading Railroad Company.

Q. Where does the New York through train strike the Reading road—on which side of Philadelphia?

A. I can only speak of that from general knowledge.

Q. I ask for that?

A. It crosses the branch of the Reading railroad north of Philadelphia.

Q. Does it take the branch and go around the city?

A. The New York trains pass over what is called the connecting railway around the city of Philadelphia.

Mr. BRADLEY. You mean around the banks of the Schuylkill?

A. They cross over between the Delaware and the Schuylkill by a railroad called the Connecting railroad, connecting the Philadelphia and Reading railroad with the other system of roads on the Schuylkill.

Mr. BRADLEY. Was that road there in 1865?

A. That was not in existence at that time, to my knowledge.

By Mr. PIERREPONT:

Q. Was the Bloomsburg road then in existence?

A. There is a railroad called the Lackawanna and Bloomsburg railroad. I know of a road by that name.

Q. Where does that strike your road?

A. That leaves the Philadelphia and Erie railroad at Northumberland.

Q. How far is Northumberland from Sunbury?

A. Northumberland is two miles west of Sunbury.

Q. And does that connect with Philadelphia?

A. I can only speak from general knowledge. I have never been to Philadelphia over that route.

Q. I ask for that general knowledge?

A. That road crosses the Catawissa railroad at Rupert.

Q. And in that way connects?

A. It crosses that road, which is a Philadelphia route.

Q. Would that connect with Philadelphia—crossing in that way—is my question?

A. Yes, sir. There is a connection between the roads at that point.

Q. Have you any means of knowing whether a special train ran on the 13th of April, 1865, from Elmira to Williamsport?

A. I can only testify in regard to trains by referring to my record.

Q. Have you any record?

A. I have the records of that day.

Q. Have you any records to show that fact?

A. The record of the 13th of April, 1865, shows that there were two passenger trains, called the first and second mail, that ran between Elmira and Williamsport.

Q. Tell when they left?

A. The record says, "time,"

Q. What is "time?"

A. My recollection is that it was about eight o'clock in the morning.

Q. What was the next train?

A. There were two freight trains called "local freights."

Mr. BRADLEY. If there were two passenger trains, did both leave at eight o'clock?

A. They are specified as leaving on "time." The letter "T" is there.

By Mr. PIERREPONT:

Q. What was "time?"

A. The first and second mail trains left on time, about eight o'clock.

By Mr. BRADLEY:

Q. Both of them?

A. Yes, sir; so the record is.

By Mr. PIERREPONT:

Q. What time did the special train leave?

Mr. MERRICK. He does not say there was any special train.

Mr. PIERREPONT. I ask him whether he knows that there was a special train?

A. There were two passenger trains, called the first and second mail, that left that day, running on the same schedule, I presume from this.

Q. Do you know any thing about the special train?

A. I do not know any thing of a special train. I would desire at this time to correct the evidence I gave when I was on the stand before, if I have permission to do so.

Messrs. PIERREPONT and MERRICK. Certainly. The WITNESS. The question was asked me then if I was in Elmira on the 13th, and I answered "No." Since that time I have sent for telegraphic dispatches of that date, and I find that I promised to be in Elmira at that time, and I believe I was in Elmira on the 12th and 13th.

Mr. PIERREPONT. But you do not remember it?

A. I can fix it by no circumstance.

Mr. PIERREPONT. It is not very important. Now, come down to Sunbury, and tell us when the freight train left Sunbury in the afternoon of the 13th of April, 1865.

A. At four o'clock and thirty minutes p. m., by the record.

Q. Tell us when the passenger train left on the same date?

A. A passenger train left Sunbury, by the record, at 12:13 on the night of the 13th or morning of the 14th; that was a. m., 14th April.

Q. When did that reach Baltimore?

A. From the record at 7:25 on the morning of the 14th, at Bolton station.

Cross-examined by Mr. BRADLEY:

Q. I do not understand much about these cross roads; but we will take your direct road. I understand you do not recollect being in Elmira, but from

telegrams you see that you said you would be in Elmira on the 12th and 13th?

A. Yes, sir.

Q. Have you any recollection, in the month of April, 1865, of coming from Elmira to Williamsport with a special engine, on what is called a caboose?

A. I can fasten it by no circumstance.

Q. Would no memorandum be made in your office of such a transaction?

A. I keep no diary of my own movements.

Q. But would not the running of an engine and special train to Elmira and back appear somewhere on the books?

A. It certainly should.

Q. Have you or not diligently searched for it?

A. I have the records of the movements of the trains at that time.

Q. Have you not diligently searched to see if a train went up on the 12th and came down on the 13th; and do you find any such record?

A. Yes; I find that there was an extra train, as it is called, that went up on the 12th; left Williamsport in the morning.

Q. What time did it leave?

A. By the record it left there at ten a. m.

Q. When did it return?

A. By referring to the record on the 13th there was a first and second section of mail train south.

Q. That you have mentioned as leaving Elmira at eight o'clock or about eight o'clock?

A. About eight.

Q. Was there any special train on that day?

A. There is no record of such a train.

Q. And your records ought to show if there was a special train run on that day from Elmira to Williamsport?

A. Yes, sir.

Q. Now, I will ask you further, did you ever see the prisoner at the bar on that road?

A. I never saw him before I came here.

Q. If he had come from Elmira to Williamsport with you on the 13th, is it possible he could have done it without your seeing him in the car?

A. It is possible he could.

Q. How is it possible?

A. I might have been on a passenger train or a special car.

Q. But the point is, whether he could have come in the caboose where there was nobody else but yourself?

A. I do not know that I would have noticed him if there were many in the train.

Q. That is in the passenger train; but supposing you to have come down in a special train from Elmira, in a caboose; was there any place of concealment in the caboose?

Mr. PIERREPONT. You need not answer that question, because there is no fact whatever to base it upon.

Mr. BRADLEY. Yes, sir; read Mr. Strayer's testimony.

Mr. PIERREPONT. Read any body's testimony and you will find no such fact.

Mr. BRADLEY. I refer your honor to Mr. Strayer's testimony. He spoke of a single car with two windows on each side, sometimes called a caboose.

Mr. PIERREPONT. You will not find the word "caboose."

Mr. BRADLEY. You may not find the word, "caboose," but you will find "a single car with two windows on each side, sometimes called a caboose." If the gentleman denies that, he must deny the record.

Mr. PIERREPONT. I do not deny any thing about a car, but I deny that there is any evidence that this man came in a caboose alone, or any thing of the kind.

Mr. BRADLEY. I have not said he was alone. Strayer said he ran down a special train with Mr. DuBarry, the train consisting of an engine and a car with two windows on each side, and I think he spoke of it as a caboose. He said he took Mr. DuBarry up and

brought Mr. DuBarry back the next day, and that that was the only train except the passenger train. If that is not the evidence, I misunderstood it.

Mr. PIERREPONT. He did say that he took him up and that he brought him back in the special train.

Judge FISHER. I understood him to say that he ran up from Williamsport to Elmira on the 12th and returned from Elmira to Williamsport on the 13th with an engine and a caboose car, that is, a car that had been used for the transportation of soldiers, with a window on each side.

Mr. PIERREPONT. And what else was in the train he did not know.

Mr. BRADLEY. Then I was right, although I was expressly contradicted just now.

Mr. PIERREPONT. I expressly contradict it again, that there is any evidence that he came alone in a caboose.

Mr. MERRICK. Allow me to state to your honor the way that testimony ran. They found that Surratt was in Elmira—

Judge FISHER. Let us find the testimony.

Mr. MERRICK. I will state it.

Mr. BRADLEY. Let it be read, if it can be found.

Mr. MERRICK. They found that he was in Elmira on the 13th; they found that the passenger train left Elmira in the morning at eight o'clock of the 13th only; they then had to get some other train to bring him out of Elmira on that day, so as to have him here on the morning of the 14th.

Mr. PIERREPONT. Is there any evidence that we had to get up some other train? We are on evidence now.

Mr. MERRICK. Allow me to get through.

Mr. PIERREPONT. You must confine yourself to the evidence.

Mr. MERRICK. They then proved that a special train went up from Williamsport to Elmira on the 12th with Mr. DuBarry in it. They then proved that it came down from Elmira to Williamsport, leaving Elmira on the morning of the 13th, with Mr. DuBarry in it; who else was in it the witness, Strayer, did not know. They then proved that soon after that special train reached Williamsport, Drohan saw the prisoner wanting to cross the ferry; and they proved by the conductor, that after reaching Williamsport, some one came to him and was very anxious to cross the river; circumstances all tending to show that the prisoner had come down in the special train in company with Mr. DuBarry in the caboose. I think your honor will see that this is the exact statement of the case.

Mr. PIERREPONT. When your honor looks at the evidence, you will not see any such thing.

Judge FISHER. Tell me where to find the evidence; I do not see the evidence of Mr. Strayer here in my book.

Mr. MERRICK. The book is not indexed, but I will try to find it for you.

Mr. PIERREPONT. It is paged.

Mr. MERRICK. It is paged, but that does not help the thing much. I will try to find it; but I see the book is some days behind.

Mr. PIERREPONT. Suppose counsel go on and ask any questions about facts. What I am objecting to is suppositions; I do not object to any facts.

Judge FISHER. We all agree that the witness Strayer swore to having run a special train from Williamsport to Elmira on the morning of the 12th, and having returned with that train with one car attached to the engine, as I recollect; it may be that there were others—

Mr. PIERREPONT. He did not fix whether there was one or more.

Judge FISHER. There was a car attached to the engine, he says, and Mr. DuBarry was brought down in that special train on the 13th, according to his testimony.

Mr. PIERREPONT. That was not the testimony, that he was brought down.

Mr. MERRICK. I am sure that was the testimony.

Mr. PIERREPONT. If that was the testimony I am very much mistaken. He said he did not know that Mr. DuBarry was there, but he supposed he was.

Judge FISHER. I think you are right about that.

Mr. MERRICK. Perhaps that is so.

Judge FISHER. Now, you wish to ascertain whether Mr. DuBarry was on that special train or not, in the first place. Is that the idea? And then, if he was there, whether it was possible for somebody else to have been there without his knowledge?

Mr. BRADLEY. He answers that he has no recollection of coming from Elmira to Williamsport on that day. Now, I put the question to him, whether, if he came down by that train, any one could have come on the train without his knowing it—on that caboose?

Judge FISHER. I think that is a fair question.

Mr. BRADLEY. (To the witness.) If you came down from Elmira to Williamsport on that day, could any one have come in that single car without your knowing it?

A. I think not. I cannot recall the circumstance of my having been on that train.

Q. But you are distinct in your memory that you never saw the prisoner at the bar until you saw him here?

A. Very decided. I never saw him before.

Q. You have been interrogated as to the connections from Sunbury to Baltimore. Now, I will ask you whether your road is or is not the most direct route?

Mr. PIERREPONT. Wait a moment. Does your honor admit that this last answer is evidence, when he says now that he has not any memory of having been on that train? He not having any such memory, can they ask him a suppositious case of what must have happened if he was on it, when he says he has no memory of having been on it, and have it evidence? I ask for a ruling; that is all.

Judge FISHER. As it is a matter which is in doubt in relation to the fact whether Mr. DuBarry came down on that train or not, as the witness who testified on that subject before did not know any thing about it and could not tell whether he came on it or not, I think this is a fair question.

Mr. PIERREPONT. And he himself cannot tell whether he came down in it or not.

Mr. MERRICK. Let the court get through.

Judge FISHER. I think it is a fair question to ask whether, if he did come on the train, it was possible for somebody else to have come along and he not know it.

Mr. PIERREPONT. Then your honor rules that it is a proper question. I wished it not so to have been ruled and appear to have been done without objection. That is all.

Mr. BRADLEY. I wish the ruling to stand as it is.

Mr. PIERREPONT. Very well; I am willing. I only did not wish it to appear to have been made without objection.

Mr. BRADLEY. (To the witness.) What is the most direct and most expeditious route from Sunbury to Washington?

A. I believe it to be by the way of the Northern Central railroad to Baltimore and thence to Washington.

Q. Do you know any other route which could bring a party through within say four hours' difference in time?

A. I have no data upon which to answer that question. I have no schedule of the other routes. I can answer it only from general knowledge.

Mr. BRADLEY. I speak of general knowledge, such as you have been giving to the prosecution. From your general knowledge of the railroad system of the State of Pennsylvania, and your immediate connection with its great central artery, can you state whether or not this is the shortest route by at least four hours?

Mr. PIERREPONT. Do not state that unless you know, because it depends, of course, upon the connections of trains; and if you do not know the connections you certainly cannot state it.

Mr. BRADLEY. When I come to that it will be time enough to interrupt me.

Mr. PIERREPONT. I object to this as it stands.

Judge FISHER. The witness can only state of his own knowledge as to the usual time made on the routes.

Mr. PIERREPONT. I do not see that he has any knowledge of the usual time.

Mr. BRADLEY. I do not mean to ask him as to the precise time of departure of each connection, or the time-tables on each road; but he has traveled over each route, and from his knowledge of the system of railroads connecting with his own, I wish to know whether there is any route as short as this by four hours.

Mr. PIERREPONT. If this witness will state that he has the least knowledge of the time of leaving, that he knows that in April, 1865, anywhere between the 10th and the 20th—I do not care what date he chooses to take along there—if he says that he knows it would take a certain number of given hours, and it would be shorter than this, I am willing that he should state it, if he knows that of his own knowledge.

Mr. BRADLEY. I suppose you are very willing that he should make it shorter; but I want it longer.

Mr. PIERREPONT. I am not willing that he should make it shorter or longer, unless he knows the fact of his own knowledge.

Mr. BRADLEY. When we speak of knowledge, I do not understand the court to limit the witness to his practical knowledge of the working of different trains—

Mr. PIERREPONT. He must know by railroad tables or something.

Mr. BRADLEY. Allow me to express what I have to say to the court. I am cut right off in the middle of a sentence. They have given testimony, not from Mr. DuBarry's personal knowledge of the connections between Sunbury and Philadelphia. He expressly stated that he had no actual knowledge of it; but from general knowledge of the routes he has given the various lines of road. I confine him to those routes about which they have interrogated him, and I will put the question in this form: By any one of the routes by which you could reach Philadelphia from Sunbury, could you get to Washington in a space of time within four hours of the time it would take to come directly from Sunbury to Washington by the Northern Central railway?

Mr. PIERREPONT. I object to that question, and wish to be heard upon it, if you are through. I have not asked one word of the time of any of those roads; I have simply asked the witness to tell how Sunbury was connected; not a word about the time, except on his own road; and the reason I did not ask was that I found he did not know, and he does not know, and therefore he cannot give it.

Mr. BRADLEY. My answer to the argument is that the witness has been interrogated as to those connections and branches from the main central road at Sunbury, and between Sunbury and Harrisburg and Philadelphia, and he said, "I have no personal knowledge of the routes themselves; I have not traveled over them; but I know there are such routes." Now, I ask him as to the same routes, whether by the same means of knowledge he can or not state that they are longer or shorter than the one I indicate.

Mr. PIERREPONT. I asked him nothing of the time, and he knows nothing of it.

Judge FISHER. You may ask the witness any question about which he has been interrogated or has given testimony in his direct examination, or any thing which will go to show his temper or disposition, or to test the accuracy of his memory in relation to those things about which he has testified. Further than that you cannot go.

Mr. BRADLEY. I think I do not design to go further, if your honor will pardon me, and if I have gone further, I will withdraw my question which goes to that extent. I desire to ask Mr. DuBarry again, modifying the question: From the same sources of which you have spoken of the roads from Sunbury to Philadelphia, can you state whether a passenger leaving Sunbury by the Pennsylvania road could reach Washington as soon as he could by the Northern Central road?

Mr. PIERREPONT. Do not answer the question.

Judge FISHER. That is the other question indirectly; it is the same thing, except the limitation of hours. You want to know which is the shortest line. That matter has not been inquired into by the counsel for the prosecution.

Mr. PIERREPONT. Simply because the witness did not know; if he had known I should have inquired about it.

Mr. BRADLEY. I only want a ruling of your honor upon it. I think, when they have interrogated the witness as to routes, I can ask him, from the same sources of knowledge, whether those routes would lead to the end as rapidly as the other.

Judge FISHER. You may ask whether a person traveling by one of those roads could reach Washington by the 14th, because that would be strictly in reply to the direct examination.

Mr. PIERREPONT. If he knows.

Mr. BRADLEY. That was my question, in substance.

Mr. PIERREPONT. I do not object to asking any thing he knows. My objection is, that he does not know any thing about the time of those roads.

Judge FISHER. That is for him to say, whether he knows any thing or not.

Mr. BRADLEY. I will put the question in this shape: From the same sources of knowledge of which you have spoken, of the route from Sunbury to Philadelphia by the Pennsylvania road, can you state whether a passenger leaving Sunbury by that route would reach Washington as soon as he could by the Northern Central road?

Judge FISHER. That is not strictly in reply to the examination-in-chief, and therefore the court will rule that question to be inadmissible. But if you wish to ascertain from the witness whether a person could arrive in Washington on the 14th in that way, that would be admissible.

Mr. PIERREPONT. I do not object to that, if the witness says he knows. Speaking of the fact that a railroad exists is a totally different thing from speaking of the time at which the trains on that road run. The only fact which I proved, or attempted to prove, was the railroads existing and connecting with each other, except on his own road, where he knows the time. I never asked him a word as to the time on the other roads, as your honor will remember.

Judge FISHER. What is the object of asking the question whether this or that railroad exists or not? It is to know and determine from that whether there was a possibility of the prisoner arriving here on the 14th.

Mr. PIERREPONT. But I have to show the time, and I cannot show it by a witness who does not know it, for I talked with him before I put him on the stand, and I knew he did not know it.

Mr. BRADLEY. They have asked the witness as to his general knowledge of particular routes, and the whole question now is whether we can pursue that inquiry.

Judge FISHER. You can pursue that general knowledge so far as it has been inquired into on the other side; that is all.

Mr. BRADLEY. The whole inquiry there was as to the existence of the roads. Can we not find out from his general knowledge of the trains that ran on those routes, whether by taking those routes and going around by Philadelphia, passengers would get here as

soon as they would by coming down directly on the Northern Central road?

Mr. PIERREPONT. If I had asked a word on that I should not object.

Mr. BRADLEY. I do not ask you; I am talking to the court; and I think I have been interrupted enough.

Judge FISHER. It would not be strictly in reply to the examination-in-chief.

Mr. BRADLEY. Then your honor rules out the question. I except to the decision.

By Mr. MERRICK:

Q. What time did you say the passenger train left Sunbury for Harrisburg and Baltimore that night?

A. Twelve o'clock and thirteen minutes.

Q. What time did it reach Baltimore?

A. 7:25 in the morning.

Q. Is there any other route from Sunbury to Baltimore by which a passenger leaving Sunbury at twelve o'clock and thirteen minutes at night could reach Baltimore at 7:30 in the morning?

Mr. PIERREPONT. I object to that.

Mr. MERRICK. I want to see if I understand the ruling.

Mr. PIERREPONT. There is no difficulty in understanding this or getting at it. I had interrogated this witness before I put him on the stand, and if he had known the time I should have wanted to get it from him; but I knew he did not know it, and I object to the question, unless the witness says he does know. If he does know it, I shall be glad to hear him say so.

Mr. MERRICK. Then let me ask this: From your general knowledge of the running of those railroads are you able to answer the question?

Mr. PIERREPONT. General knowledge will not do.

Judge FISHER. He must testify of his own personal knowledge. I do not know what is meant by "general knowledge."

Mr. MERRICK. I take those words from the examination-in-chief.

Mr. PIERREPONT. I did not ask a question on general knowledge as to time.

Mr. MERRICK. Not on that, but on other points.

Mr. PIERREPONT. If so, I asked it erroneously.

Judge FISHER. It ought not to have been asked. I do not know what is meant by "general knowledge."

The WITNESS. I have no record of those roads.

By Mr. MERRICK:

Q. Independently of any record, have you any personal knowledge of their running in 1865? You certainly traveled from Sunbury to Philadelphia sometimes?

A. I do not know whether I went to Philadelphia in 1865; I do not recollect that I did.

Q. Have you sufficient personal knowledge to answer the inquiry to the satisfaction of your own conscience?

A. I know that it takes about four hours from Harrisburg to Philadelphia; that is about the running time of their trains.

Q. And from Philadelphia to Baltimore how long does it take?

A. I have not passed over that road in several years past but twice, and then it was in coming to this place.

Q. From Harrisburg to Baltimore, what is the time on the Northern Central railway?

A. About four hours.

Q. It takes about the same time, then, to go from Harrisburg to Philadelphia that it does from Harrisburg to Baltimore?

A. Yes, sir.

By Mr. BRADLEY:

Q. You gave us the time that the passenger trains left Sunbury for Harrisburg; can you give us the time when the freight trains left Sunbury for Harrisburg on

the night of the 13th of April or the morning of the 14th?

A. The freight train left Sunbury at 4:30 p. m. on the 13th of April.

Q. When did that get to Harrisburg?

A. Those trains do not run to Harrisburg. They go to Marysville.

Q. Was there any close connection at Marysville between Marysville and Harrisburg?

A. I do not recollect their freight schedules at that time.

Q. The freight train left Sunbury at 4:30; have you any means of showing at what time that freight train or persons coming by that freight train could reach Harrisburg?

A. By tracing the trains out I could fix it.

Q. How far is Marysville from Harrisburg?

A. Eight miles.

Q. Across the river?

A. On the opposite side of the river.

Q. What time did it arrive at Marysville?

A. The record specifies "time." By the schedule it would have been 9:20 p. m.

Q. What was the next freight train the same day?

A. That was the last freight train that left Sunbury that day.

Q. The next train then was the passenger train at 12:13 midnight.

A. Yes, sir.

Q. When did that train arrive in Harrisburg?

A. I have not the notice of the arrival time, but I have of the leaving time. That was 3:30 a. m.

Q. Between 9:20 p. m. of the 13th and 3:30 a. m. of the 14th, what train left Harrisburg south?

A. No trains left Harrisburg. Our freight trains do not run through Harrisburg.

Q. When did that train leaving Harrisburg at 3:30 arrive in Baltimore?

A. At 7:25.

Q. There was then no means furnished by your railroad to reach Baltimore before 7:25 in the morning to a passenger leaving Sunbury at any time after four o'clock the day before?

A. No, sir.

Q. What time did the trains leave Harrisburg for Philadelphia on the 13th and 14th of April, after noon of the 13th?

A. I have no schedule of the Pennsylvania road that would enable me to answer the question.

Q. Can you from memory state what time the trains for Philadelphia left Harrisburg?

A. I would not like to testify in regard to schedules from memory.

Q. You say that the Pennsylvania road and your road intersect at Marysville, eight miles above Harrisburg?

A. We cross the Pennsylvania road at Marysville.

Q. Then a passenger for Philadelphia, coming down the river to Marysville, would have to go to Harrisburg, and wait for the train going from Harrisburg to Philadelphia?

A. On some trains he would, and on others he would not.

Q. What other route would he take, without going there?

A. Some of our trains ran to Bridgeport, and then crossed the bridge to Harrisburg, as we do now.

Q. In April, 1865, where would passengers from Marysville take the Pennsylvania road to go to Philadelphia?

A. At Marysville.

Q. And run down the same road as the Northern Central part of the way?

A. No, sir; the Pennsylvania railroad to Philadelphia.

Q. Now, go back up the river: Where does the Pottsville and Reading road intersect your road? At Marysville?

A. We do not touch that road directly.

Q. Where does the road from Harrisburg to Reading, and thence by Reading to Philadelphia, start from your road? Does it not go from the same depot as yours?

A. I do not understand the question.

Q. Where does the road from Harrisburg to Reading, and Reading to Philadelphia, leave your road?

A. It leaves the connection of our road at Harrisburg. We have a connection with Harrisburg across the Cumberland-Valley bridge, and that road starts from Harrisburg,

Q. Then you connect with it at Harrisburg?

A. Yes, sir.

Q. Do you know the time from Harrisburg to Reading?

A. I have passed over the route.

Q. You can tell how long it took to run it?

A. It took two hours and a half.

Q. Do you know what the time is between Reading and Philadelphia?

A. I have gone up that road, but never went down.

Q. The Catawissa road, I understand, strikes at Milton, twelve miles west of Sunbury. Where would passengers from Sunbury take that road.

A. They would have to go west on the Philadelphia and Erie road to Milton.

Q. They would not come down your road at all.

A. No, sir.

Q. They would have to run west to Milton, and there take the Philadelphia and Erie road?

A. Yes, sir.

Q. Is there any connection between your road and the Catawissa road?

A. No direct connection. They start twelve miles from the terminus of our road.

GEORGE S. KOONTZ,

recalled as a witness for the prosecution in rebuttal.

Mr. PIERREPONT. Will you tell us your business. Although you have once told it, we want to recall it, as it is some days since you were examined.

Mr. BRADLEY. I hope we shall not go over any more of the evidence.

Mr. PIERREPONT. I suppose it is quite proper to recall what his occupation is. I do not believe the jury remember it, one of them. I do not.

Mr. BRADLEY. There is hardly one of the jury that does not know him.

Mr. PIERREPONT. I did not know his business when I recalled him, and when he came on the stand now I did not know that I had ever seen him before. I suppose I may ask him what his occupation is.

Judge FISHER. Yes.

By Mr. PIERREPONT:

Q. What is your occupation?

A. I am general agent of the Baltimore and Ohio Railroad Company in Washington.

Q. State at what time the trains left Baltimore for Washington on the morning of the 14th of April, 1865?

A. The first train left on the 14th at 4:20 a. m., and reached Washington at 5:45 a. m. [Looking at a time-table.] The regular leaving time for that train was 3:35.

Mr. PIERREPONT. I do not care for the regular time; I want to know the actual fact. I care nothing for the time-table. That is of no value, and you can lay it aside. I want to know the truth, and not imagination from the table.

The WITNESS. I give you no imagination at all, sir.

Mr. PIERREPONT. I say I do not want that, because it would be imaginary.

The WITNESS. I shall give you the truth.

Mr. PIERREPONT. I know you will. You do not understand me. I say I do not want any thing

from the table, for that would be an imaginary mode of getting at it, inasmuch as the table was not the correct time of leaving.

The WITNESS. I beg pardon, sir.

Q. The train did not run according to the table, did it?

A. No.

Mr. PIERREPONT. You quite misunderstood me.

Mr. BRADLEY. I certainly understood you in the same way the witness did.

Judge FISHER. I understood Mr. PIERREPONT to mean that he wanted the time from the record, which spoke verity, and not from the time-table, which might be wrong.

Mr. PIERREPONT. Yes, and which is wrong.

Mr. BRADLEY. The time-table is not wrong.

Mr. PIERREPONT. (To the witness.) Did the train run according to the time-table that day?

Mr. BRADLEY. That is another thing.

The WITNESS. It did not leave according to the time-table.

Q. (By Mr. PIERREPONT.) When did it leave?

A. 4:20 a. m.

Q. When did it arrive in Washington?

A. 5:45.

Q. When did the next train leave Baltimore?

A. 5:30 a. m.

Q. When did that arrive in Washington?

A. 7:20 a. m.

Q. When did the next train leave Baltimore?

A. 7 a. m.

Q. When did that train arrive in Washington?

A. 8:43 a. m.

Q. When did the next train leave?

A. 8:12 a. m.

Q. When did that arrive in Washington?

A. 10:25 a. m.

Q. When did the next train leave Baltimore?

A. 9:40 a. m.

Q. When did that arrive in Washington?

A. 11:30 a. m.

Q. The next?

A. The next left at 4:35 p. m., and arrived in Washington at 5:50 p. m.

Q. Now, turn to the morning the 15th of April, 1865, and tell when the trains left Washington in the morning for Baltimore?

A. The first train left at 6:15 a. m.

Q. When did it reach Baltimore?

A. 10:15 a. m.

Q. When did it leave Baltimore?

A. I do not know.

Mr. MERRICK. What train left Baltimore?

Mr. PIERREPONT. The same train that left here at 6:15 a. m.

The WITNESS. That is a local train between Washington and Baltimore, and makes no connection, unless with the Northern Central railroad.

Q. (By Mr. PIERREPONT.) When did the next train leave Washington?

A. At 7:30 a. m.

Q. Was the one you have just spoken of detained?

A. Yes, sir; detained at the Relay House by order of General Tyler.

Q. How long?

A. I cannot state, unless by reference to the time-table.

Q. Was it not detained several hours?

A. Yes, sir.

Mr. MERRICK. Refer to your time-table.

Mr. PIERREPONT. Yes, if you have any means of information, tell us how long it was detained?

A. That train was due at Baltimore at 8 a. m., and it reached Baltimore at 10:15. It was two hours and fifteen minutes behind. The train that left Washington at 7:30 a. m. reached Baltimore at 2:40 p. m.

Q. How long was that detained?

A. That train was due in Baltimore at 8:55 a. m., and did not get there till 2:40 p. m.

Q. Was it detained all those hours?  
A. Yes, sir; detained at the Relay House by order of General Tyler.

Q. The next train?  
A. The next train left Washington at 8:15 a. m., and reached Baltimore at 2:50 p. m. It was due in Baltimore at ten a. m.

Q. The next?  
A. The next left Washington at 11:15 a. m., and reached Baltimore at 3:05 p. m.

Q. Have you any knowledge as to the leaving of those trains from Baltimore for Philadelphia and New York?

A. I have not. The 11:15 train was due in Baltimore at 12:45 p. m., and did not arrive until 3:05 p. m.

Cross-examined by Mr. BRADLEY:

Q. Are those the same trains to which you referred before as having been thoroughly searched and guarded when they left here?

A. Yes, sir.

Q. Each train?

A. Yes, sir.

Q. And I understand both detectives and soldiers were along with them?

A. Yes, sir.

By Mr. PIERREPONT:

Q. Between Washington and Baltimore?

A. Yes.

CHARLES F. WETMORE,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. 18 Clinton Place, New York city.

Q. Do you know Dr. Bissell, who testified here?

A. I do.

Q. Are you the gentleman referred to as having been engaged in conducting a suit for him against the Erie Railway Company?

A. Yes, sir.

Q. How long have you known him?

A. I have known him since December, 1863.

Q. Has he ever been your physician?

A. Never.

Q. Have you any letters or memoranda with you which you brought from New York, which tend to fix dates?

A. I had some letters, which I handed to Mr. Foster. [The letters were handed to the witness.]

Q. Were they letters that you wrote?

A. Yes, sir.

Q. Can you tell the jury whether, on the 14th of April, 1865, Dr. Bissell was in Elmira hunting witnesses for his suit?

A. I think not.

Q. Why?

A. The reason I think not is because my impression, after seeing his testimony in this case, was that he was mistaken, and—

Mr. BRADLEY. If Mr. Wetmore was his counsel, and this information was received in the relation of client and counsel, it is not to be exposed here, I suppose.

Mr. PIERREPONT. There is not any confidence between client and counsel as to the fact whether the client was in Elmira or was in the counsel's office on that day.

Mr. BRADLEY. The information he received in regard to Mr. Bissell, in his relation of counsel to client, is sacred. I do not know any thing about Mr. Bissell; I do not care about him, except to see justice done.

Mr. PIERREPONT. That is exactly what we are trying to get at.

Mr. BRADLEY. And I want it done in the proper mode.

Mr. PIERREPONT. If Dr. Bissell was in New York that day, he certainly was not in Elmira.

Judge FISHER. Any statements made to counsel by his client in regard to matters pertaining to that relation, are, of course, confidential.

Mr. BRADLEY. And is not all the information which came to him during that relation of counsel to client, and having any sort of connection with it, also confidential?

Judge FISHER. Any thing communicated in that capacity is.

Mr. PIERREPONT. I have not asked him for any thing that was communicated.

Judge FISHER. Any thing that was communicated by the client to the counsel, relating to that suit or any suit which the counsel had for the client, of course would be sacred; but any thing else, any other knowledge that he might have, would not be.

Mr. BRADLEY. Knowledge of other facts which came to him during that relation and growing out of that connection?

Judge FISHER. Not unless it was some information that he derived in the investigation of a suit. It must pertain, in other words, to the relationship of counsel and client.

Mr. BRADLEY. All I mean to say now is this: Mr. Wetmore himself is a counsellor-at-law, and he can understand whether the matter is privileged or not.

Judge FISHER. He ought to know just as well as we do.

Mr. MERRICK. We do not care a copper about it. Mr. Wetmore will determine the thing by his own conscience.

The WITNESS. I would not reveal any thing that was communicated to me professionally.

Mr. MERRICK. Of course not. If Mr. Bissell made a mistake, let it be shown.

Mr. PIERREPONT. I do not propose to make a mistake. I do not propose to ask him any thing communicated by anybody.

Mr. BRADLEY. If Bissell swore falsely, let him go; I do not care a snap of my finger about him, and I would rather he should be exposed than not.

Mr. PIERREPONT. (To the witness.) Now, tell the jury what is your reason?

A. My reason is, that yesterday, after having been subpoenaed the night before in this matter, I went to the office of Mr. Eaton, who was the counsel opposed to me in that case of the Erie railroad, and asked Mr. Eaton—

Mr. BRADLEY. I must interpose.

Mr. PIERREPONT. We will not ask what Mr. Eaton said. We can send for him.

A. Mr. Eaton presented to me these letters, which I wrote to him on 11th, 12th, and 13th of April, 1865, and also the 26th and 27th.

Q. Have you examined them?

A. I have examined these letters.

Q. Do they refresh your memory on any fact?

A. They do not exactly refresh my memory, but they confirm me in my impression.

Q. What is that?

A. That Dr. Bissell was in my office during those times, and also the fact that Mr. Eaton came there and saw him; but I cannot fix the date Mr. Eaton was there.

Mr. BRADLEY. What days?

A. The 11th, 12th, and 13th of April, 1865. I wrote to Mr. Eaton, and he presented these letters to me yesterday, which confirmed me in the impression that Mr. Bissell was at that time in my office, and that we were endeavoring to settle the Erie railroad suit.

Q. (By Mr. PIERREPONT.) Did you settle it?

A. We did.

Q. When was it settled?

A. June 5, 1865.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 90. WASHINGTON, MONDAY, SEPTEMBER 2, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 89.*

Q. Do you know the doctor's character for truth and veracity among the people who know him?

A. I have heard the character of Dr. Bissell very much canvassed.

Q. What did you find it to be—good or bad—from what people said about him?

Mr. BRADLEY. That will not do. He says his character was very much canvassed. Mr. Wetmore understands the rule very well. It is what was his general reputation.

The WITNESS. I must say his general reputation was bad.

Q. (By Mr. PIERREPONT.) Was it very bad?

A. It was.

Cross-examined by Mr. BRADLEY:

Q. In settling that suit was Dr. Bissell satisfied?

A. Yes, sir.

Q. Has there been any disagreement between you and him about it?

A. Not the slightest.

Q. He has never complained?

A. I never heard any complaint in the world. He always said he had been satisfied. I settled it on the 5th of June, 1865, and gave him his money on the 6th, which was \$5,100. I have the check in my pocket for fifty-one hundred dollars, which was the amount, the company paying me my costs and fees. That was part of the settlement.

Q. You say you have heard his character very much canvassed, and that his general character for truth is bad?

A. Yes, sir.

Q. When did you hear that subject discussed?

A. I first heard that subject discussed in 1864 or the early part of 1865, about the time that the suit was talked about being settled.

Q. Did that discussion grow out of that suit to a great extent?

A. The two witnesses I am now referring to came to me voluntarily—

Q. What two witnesses?

A. They came to me and told me they were the chief witnesses in this Erie railroad case for Dr. Bissell.

Q. I do not inquire about them. I want to know his general reputation. Did that canvassing of his character in a great measure grow out of his controversy with the Erie railroad?

A. No, sir; nothing, except these two witnesses who were witnesses for Dr. Bissell in that case.

Q. Were they railroad employees?

A. No, sir; they were witnesses for Dr. Bissell in that suit against the road, and they came to see me about it.

Q. But you heard his reputation generally discussed, and that was a discussion as to truth and veracity?

A. Yes, sir.

Q. Where did Bissell reside at that time?

A. Bissell resided, when he first came to me, in Waverly, New York. The next that I knew of him he came to settle this suit, and I had him to go to the Brandreth House in New York. After the suit was settled and he received his money, he removed or boarded in a house which was kept by a Mrs. Payne, a widow lady.

Q. Without going into details, he lived in the city of New York somewhere, and in Waverly first?

A. I cannot tell you, except that he resided in Waverly when he first came to see me, and subsequently in New York city.

Q. Do you know whether he was or was not, in April, 1865, actively engaged in getting up testimony in that case?

A. I do not think he was, and my reason is that we were about settling the case.

Q. You did not settle it till June?

A. We did not.

Q. You think, then, that two months before that he was not preparing for the case?

A. I think not, because he had all the witnesses provided and prepared in 1863 and 1864.

Q. Have you any recollection of having told him not to converse freely about his case with anybody?

A. I always told him that.

Q. Did you also tell him to look for witnesses? Did you hear of any brakeman that was not enumerated among the witnesses he had seen?

A. No, sir; I do not remember that he had ever spoken to me about a brakeman.

Q. Or that you ever heard of one?

A. I do not remember that I did.

Q. Your inference from your letters is that he was in New York on the 11th, 12th, and 13th of April?

A. Yes, sir; that is my impression.

Q. Have you any recollection of whether he was there on the 14th and 15th?

A. I have an impression that he was there on the 15th?

Q. Is there any thing in your memoranda showing that he was there on the 14th?

A. No, sir; nothing more than the fact that I was writing these letters to Mr. Eaton for the purpose of getting the case settled.

Q. The letters are dated the 11th, 12th, and 13th?

A. Yes, sir.

Q. Do you know what time the Erie train leaves New York?

A. I do not.

Q. Or how long it takes a man to go to Owego?

A. I do not.

Q. Have you known any thing of him since the settlement of that suit?

A. Oh, yes, sir.

By Mr. PIERREPONT:

Q. You have been asked whether you and he parted in good feeling. When did he last call to see you?

A. Last Sunday morning he called to see me at my house in Clinton Place, and yesterday he called at my office about one o'clock.

## WILLIAM ELMER,

a witness for the prosecution in rebuttal, affirmed and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In New York.

Q. Do you know Dr. Bissell?

A. I do.

Q. Do you know his general reputation among the people who know him for truth—what they generally say of him?

A. I know what they say of him.

Q. What is his reputation, good or bad?

A. Bad.

Q. What degree of bad?

A. They talk very badly about him.

Cross-examined by Mr BRADLEY:

Q. Do they talk about his being a common liar?

A. I have heard such talk.

Q. That is commonly said about him?

A. Yes, sir.

Q. Generally said about him?

A. No, not generally; but I have heard several say it.

Q. I want to know what is generally said.

A. So far as I have heard his character spoken of as to truth, it is bad.

Q. That will not do, unless you can speak of what is generally said of him among those who know him.

A. So far as I know, it is bad.

Q. And how far do you know?

A. I have, perhaps, heard a dozen or more speak of him.

Q. When?

A. Within the last two years.

By Mr. PIERREPONT:

Q. Did you ever hear any but one opinion about him?

A. No, sir.

## GEORGE W. McMAHON,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In Communipaw, New Jersey. I lived formerly in New York city.

Q. What were you doing in New York city?

A. I was a cattle broker.

Q. What other occupation had you there?

A. I had a saloon with Dr. Bissell at 1160 Broadway.

Q. You and Dr. Bissell had it together?

A. Yes, sir; and Mr. Faulkner also had an interest.

Q. Do you know the doctor pretty well?

A. I do.

Q. Do you know what kind of a character he acquired generally for truth and veracity?

A. Bad.

Q. Did you ever hear of any worse?

A. No, sir.

No cross-examination.

## FRANCIS X. ARCHAMBAULT,

a witness for the prosecution in rebuttal, sworn and examined:

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Montreal, Canada East.

Q. How long have you lived in Montreal?

A. About eight or nine years.

Q. What is your occupation?

A. I am an advocate—a lawyer.

Q. Do you know Mr. Nagle, who testified against Dr. McMillan here?

A. I know Mr. Sarsfield B. Nagle, an advocate in Montreal.

Q. Is he here now?

A. Yes; he is sitting yonder.

Q. Did you have any conversation with him about his relation to this case?

A. I had a private conversation with Mr. Nagle; I do not know that I am bound to tell here what he said to me on that day. I would not like to do so. If the court compels me to do it, I shall have to do it.

Mr. BRADLEY. Certainly, tell it all. We do not object to it; Mr. Nagle says you may tell it.

The WITNESS. I do not like to state it. If I am bound to do so, I shall.

Mr. BRADLEY. Mr. Nagle asks you to tell it.

The WITNESS. If I am asked by Mr. Nagle specially to tell it, I will. I met Mr. Nagle the very same morning of the day when he left Montreal to come here, and he told me that he was coming here as a witness. I understood that he was coming here as a witness in the case of Mr. Surratt, and that he told me that he was bringing up with him a certain number of witnesses; and I do not know on what occasion, but he told me he had a certain amount of money for his costs and for the costs of the other witnesses.

By Mr. PIERREPONT:

Q. How much?

A. I may have been mistaken, but I understood at the time he first received a draft for a thousand or two thousand dollars, I think; and, the amount not being sufficient, he got another one to complete the matter, to bring up the witnesses.

Q. Do you know St. Marie?

A. I do know St. Marie. He was studying law with me, at the same time with my brother.

Q. Do you know his reputation as a man of truth among those with whom he lives?

A. Yes, sir; I never knew any thing wrong against Mr. St. Marie. I have known him several years. His reputation was always very good.

By Mr. BRADLEY:

Q. You say you know Mr. Nagle very well.

A. I know him pretty well.

Q. What is his reputation for truth there?

Mr. CARRINGTON. We have not asked on that point.

Mr. MERRICK. You did ask it.

Mr. CARRINGTON. And you objected to it.

Mr. BRADLEY. Well, I do not care any thing about it.

## T. J. LOGAN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. You are a member of the Washington bar, I think.

A. Yes, sir.

Q. Did any circumstance happen on the night of the assassination of the President that led you to observe the moon at its rising?

A. Yes, sir.

Q. Tell the jury what its condition was between the hours of ten and eleven, and the condition of the night as to brightness or otherwise.

A. I did not notice the condition of the moon very particularly, but the condition of the night I did. About ten o'clock I noticed the moon rise. Previous to that I noticed the condition of the weather very particularly.

Q. How was it before the moon rose?

A. Remarkably clear.

Q. How was it afterwards for an hour?

A. I do not know about that. I was not up after that.

Q. But how was it for an hour after the moon rose?

A. About an hour after the moon came up it was exceedingly brilliant.

Cross-examined by Mr. BRADLEY:

Q. Did you see the man in the moon?

A. No; I did not. I did not know there was a man there.

Q. Was it full moon?

A. No; it was not full.

Q. How far from it?

A. About four days after full moon.

Q. Could you see the lights and shadows in the moon, if there was not a man there?

A. Oh! I did not come here to be quizzed about nonsense! I do not think there is a man in the moon.

Mr. BRADLEY. I think myself all this matter about the moon is nonsense. It is moonshine.

The WITNESS. It seems to be your policy to make moonshine out of it.

Mr. PIERREPONT. (To Mr. BRADLEY.) Your policy is to make out that it did not shine.

WILLIAM H. BRAYTON,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In New York.

Q. Do you know Dr. Bissell; and, if so, how long have you known him?

A. I have known him a little over a year.

Q. Have you been thrown with him? Do you know the people with whom he associates?

A. Yes, sir.

Q. Do you know his general reputation for truth among them?

A. I have heard it mentioned a great deal and spoken of.

Q. What was his character for truth, good or bad?

A. Very bad, as far as I have heard.

Cross-examined by Mr. BRADLEY:

Q. What is your business?

A. Produce commission merchant.

Q. Where do you live?

A. 263 West Fortieth street.

Q. In what way have you known Bissell? Have you been connected with him in business or had business transactions with him?

A. I have had business transactions with him, and my brother was a partner of his in the drug business for a short time.

Q. Within a year past?

A. Within a year past. A partner of Bissell's wife, I should rather say.

Q. And you have heard him spoken of a good deal?

A. Considerably during that time.

Q. And always bad?

A. When his character has been spoken of, as far as truth is concerned, it has been bad.

No cross-examination.

CHARLES A. TINKER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation in 1865, and what is it now?

A. Telegrapher.

Q. In this city?

A. Yes, sir.

Q. State whether, on the 13th, 14th, 15th, and 16th of April, 1865, there was telegraphic communication between Elmira and Washington?

A. There was telegraphic communication.

Cross-examined by Mr. BRADLEY:

Q. Did you receive any telegrams?

A. Yes, sir.

Q. So that you know communication was open?

A. I do know that it was.

Q. What office were you in?

A. In the War Department office.

Q. Was that in common use?

A. Yes, sir; we were working the wires that were being worked by the commercial companies, sending our dispatches over the same wires they were working.

Q. Would a telegram sent to me come through the War Department?

A. No, sir; it would come through the office down town. The reports for Government officers came direct from New York and Elmira to the War Department.

Q. You were a telegraph operator at the War Department for business connected with the Government?

A. Yes, sir.

Q. But not for private business?

A. No, sir.

MORELL MOREAN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation in 1865, and what is it now?

A. I am a telegraph operator, and was at that time.

Q. In what office were you telegraph operator in April, 1865.

A. In the general office of the American Company, in this city.

Q. State whether, on the 13th, 14th, 15th, and along there in April, 1865, there was telegraphic communication between Washington and Elmira?

A. Yes, sir; there was.

By Mr. BRADLEY:

Q. Are the records still preserved?

A. Yes, sir.

JOHN GEORGE,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation on the morning of the 15th of April, 1865?

A. I was through baggage-master between Washington and New York.

Q. When did you leave Washington?

A. I left Washington on Saturday morning, the 15th, at 7.30.

Q. Where were you delayed?

A. At the Relay House.

Q. How long?

A. That I am not able to state exactly, but we arrived in Baltimore at 2.40 p. m.

Q. When did you leave Baltimore?

A. We left the President-street depot at 6.40 in the evening.

Q. Do you remember when you reached New York?

A. We reached New York about five o'clock on Sunday morning. It might have been a few minutes after that.

Q. How long behind time were you?

A. We might have been a few minutes behind time by that train. We were not detained after we left Baltimore.

Q. But you were detained before you got to Baltimore?

A. Yes, sir; we were detained at the Relay House, or Washington Junction. By that means we missed the train that left Baltimore on Saturday morning. We should have been in New York at half-past five in the evening, but did not get there till next morning.

Q. Then it was a difference of twelve hours?

A. Just about.

Mr. BRADLEY. I do not understand what rebut-

ting proof this is, and therefore I object to it. I have been waiting for the development of it, but I do not understand what this is to rebut.

Judge FISHER. I am left to form my own conclusions about it in the absence of anything said on the other side. I should like to hear, though.

Mr. BRADLEY. I shall move to strike it out unless there is something else. I cannot conceive how it rebuts any thing we have offered in evidence.

Mr. PIERREPONT. We can see how it connects with the boat and train that went up to St. Albans.

Mr. BRADLEY. But that was brought out in the examination-in-chief. If that is your object, we will stop it here at once.

Mr. PIERREPONT. It has something to do with the fact that the prisoner was not in Elmira on the 14th and 15th.

Mr. BRADLEY. What on earth has the fact of a train leaving here on the morning of the 15th, and getting to New York the next morning, got to do with his being in Elmira or anywhere else?

Mr. PIERREPONT. Because if he got to some other point he was not in Elmira. There happens to be a mathematical truth on that subject, that no man can be in two places at the same time.

Mr. MERRICK. Yes, and I think you will find that out before this case closes.

Mr. PIERREPONT. We have found it out already.

Mr. BRADLEY. I am very much afraid that that is true, and therefore you may as well give up your case.

Mr. PIERREPONT. We are glad to hear that it is true.

Mr. BRADLEY. I do not see exactly the appositeness of the observation. I rise to a legal question: I want to know how this rebuts any thing offered on the part of the defense.

Mr. PIERREPONT. It tends to show, or will tend to show when it is presented, that this man was not in Elmira on the 14th, notwithstanding Dr. Bissell did say so. I admit that I cannot get rid of the fact that Dr. Bissell did swear so.

Mr. BRADLEY. It is not very material whether Dr. Bissell said so or not, or whether he told a falsehood, or whether he is the most deliberate and palpable and willful liar that ever was seen. We have proved the fact by four independent witnesses, whom they have not yet sought to impeach, and until they can get rid of that testimony it stands uncontradicted. How this tends to show that he was not in Elmira at that time is one question. The other question, which is much more pertinent, is this: In the opening of their case they undertook to show how he got to Canada and by what train. It was, therefore, part of their case to show that he left Washington in time to reach that train upon which they say he reached Montreal; and it will not do for them to split up their case and offer one end of the route in chief, and then, after the close of the defendant's testimony, when he has no opportunity to prepare himself, (independent of any other reasons,) to offer evidence connecting him with the train upon which they showed originally he went to Montreal. I hold that if there is any thing well settled in regard to rebutting proof, it is that you cannot offer in evidence a part of your case in chief and then offer evidence in the conclusion by way of rebuttal in support of that evidence-in-chief, if it would have been admissible as evidence-in-chief. I take that to be a settled rule of law. Now, this was part of their evidence-in-chief. They undertook, at the outset, to show the presence of the prisoner in Washington on the whole of the 14th, from between eight and nine o'clock in the morning until between ten and eleven o'clock at night; they undertook to show that he fled from Washington and reached Montreal on the 18th. They, therefore, assumed the burden; and it is too late for them now to attempt to introduce evidence in corroboration of their evidence-in-chief.

I therefore rise, not for the purpose of making any nice point; not for the purpose of trying any witty conclusions with the counsel on the other side; not for the purpose of eliciting his commentary on any of the witnesses, but to a simple, naked, legal proposition; and throughout this case, in addressing the court, I have sedulously endeavored to avoid commentaries on the testimony. If what I have said just now was a commentary upon the testimony, it was due to what fell from counsel on the other side.

Mr. PIERREPONT. If your honor please, I do not understand that when we are proving a case of this kind, and it comes out as a part, and a natural part, of the case that the party sought to be charged was in the city of Washington, it follows that we have got to prepare in the opening of our case to meet an *alibi*. I never heard any thing of the kind in the law before. I never heard that you were to assume that an *alibi* was to be attempted. When an *alibi* is attempted, then it is time enough for you to rebut the *alibi*, and any fact that will go to show, or tend to show in a legitimate manner, that the man was not in Elmira, is a proper fact to go to the jury in rebuttal. Any fact that will tend to show to the jury that he was at the given time somewhere else, is a proper fact to go to the jury to show that he was not in Elmira, on the simple principle that a man cannot be in two places at the same time. We were not to anticipate that an *alibi* would be attempted. It is one of two defenses which are nearly always attempted. Insanity is one, an *alibi* the other, which are always interpolated in all murder cases. In such cases the defense seems to be always either insanity or *alibi*. But we are not obliged to prove that the man is sane; and if we were to introduce a witness to show that he was sane, and the other side should undertake to show that he was insane, it would be rebutting evidence to show that he was not insane. If we show in the course of the trial that the man is at a particular place aiding and abetting in the murder, and the other side then introduce witnesses for the purpose of showing an *alibi*, we have a legal right in rebuttal to introduce any fact inconsistent with the *alibi*, and that is what this is.

Mr. BRADLEY. Will your honor indulge us for a moment, that we may get some books here which will, I think, satisfy my learned brother that for once he is at fault.

Mr. PIERREPONT. If I am satisfied I shall certainly say so.

Mr. MERRICK. I do not expect to produce that result, but when the books come we expect that your honor will be satisfied.

Mr. PIERREPONT. Does the learned counsel say that if we were to bring a witness that took breakfast with him in New York on the 15th, we could not show it in contradiction of the *alibi*?

Mr. BRADLEY. I do mean to say so in express terms, and I say it has been expressly ruled on argument that you cannot do so.

Mr. PIERREPONT. I do not mean to say that any thing has been expressly ruled. I am not so confident as my learned friend. I only submit that according to my judgment such is not the law.

Mr. BRADLEY. It has never been my good fortune to occupy a seat on the bench, and therefore I cannot be instructed like the gentleman on the other side; but in my poor reading I have read cases directly in point, and I propose to show them to the counsel on the other side and to your honor. When he finds a case the other way, it will be time for us to talk about it. But at present, with my poor information, bowing always with deference to the learning of the bench, I undertake to say that the principle which I have laid down is settled law, and I can show it by the authorities.

Judge FISHER. You can call another witness if this witness is through with.

Mr. BRADLEY. No; I want to strike out this evidence. The books will be here in a few minutes.

Judge FISHER. The usual time for a recess has arrived, and we may as well take it now.

The court thereupon took a recess for half an hour, re-assembling at 12:50.

Mr. MERRICK. We understand that a good deal of this evidence which has been given in is not evidence in rebuttal, but in regard to matters in reference to which the prosecution could have given testimony in the first instance, and is cumulative and corroborative. As to the proof with regard to the telegraph lines, whether the various offices were in operation or not, I know of nothing that the defense gave in evidence to which that is in reply; and it could not well reply to any thing except something relating to telegraphs, and we gave no proof whatever in reference to that. If it was intended as preliminary to evidence to support McMillan's testimony, which was to the effect that Surratt had telegraphed to Booth from Elmira, it is not competent, but it should have been given in on their examination-in-chief, and was part of their case-in-chief, being corroborative of a fact proved by themselves, or attempted to be proved; for I will not acknowledge that what Dr. McMillan says is by any manner of means proved.

They further attempt to show the time of the running of the train from here to New York. What, in the evidence of the defense, does that rebut? What has the defense proved with regard to the time of the running of those trains? Not one word. As your honor stated, you were left to conjecture. So are we. But the counsel intimated that it was their purpose (which intimation conforms to our conjecture) to show that Surratt was at some time or other on that part of the route from here to Montreal. If that is their purpose, then again it is not in reply; and even if it should be in one aspect apparently in reply, in another it is cumulative and corroborative, because they attempted, in their examination-in-chief, to put him on the other end of that same route. The Government, in making out their case, and attempting, as they said in their opening they would do, follow the prisoner from the place of the commission of the alleged offense to the place of his refuge, took him up on the route at a point nearest the place of his refuge, and attempted to prove his presence on that route in chief; and then, after having got through with their examination-in-chief, they now seek to go down to the other end of the route and attempt to prove him on that end. When the case was opened, the counsel for the prosecution stated that they would follow the prisoner from Washington city to his place of refuge, and from there across the ocean through France, Italy, and Egypt. They did, in their proof, attempt to follow him through Italy and Egypt. They proved him to be in Italy, and attempted to prove him to be in Canada, and then attempted to prove him to be on the route, in the United States, from New York to Montreal. Having done that, can they leave the other part of the route, from Washington to New York, untouched, until they come to their rebutting proof? I submit that the question is too plain for argument.

But they say that we have proved an *alibi*; and that, we having proved an *alibi*—having proved that the prisoner was in a certain place at a certain time—they may, in rebutting that, prove that he was in any other place at that time. There are two answers to that. In the first place, in their opening they stated that they anticipated the *alibi*, and that they intended to produce proof to meet the anticipated *alibi* by showing where he was. In the second place, where an *alibi* is proved by a prisoner charged with the commission of crime, it is no rebuttal to that proof to show that the prisoner was at the place where the crime was committed at the time alleged, or to show that he was anywhere else at the time of the alleged crime. Why, your honor? It is not in reply, for the reason that the proof that he was in the place where the crime was

committed at the time of its commission is essential to the proof of his guilt. Unless he was present where the crime was committed, he could not have committed the crime, whether it be murder or larceny. If it be a crime which it is necessary that a man should commit himself, either by actual or constructive presence, proof of actual or constructive presence is essential proof-in-chief to establish the charge laid in the indictment. Counsel for the prosecution felt and recognized the principle; they spent much time and much labor, with bad instruments, in attempting to prove that the prisoner was here at the time the crime was committed. But they may say, "even although we cannot prove that he was at the place of the crime, because, his presence there being essential in order to establish his guilt, it was testimony-in-chief, yet we may prove that he was anywhere else than where you proved him, because that would disprove your *alibi*." I answer, that would also disprove your case, and you cannot disprove your own case. They may say, "we cannot prove that he was in Washington, but we may prove that he was in New York; we cannot prove that he was in Washington, because that proof was incumbent upon us in chief; but we can prove that he was in New York, because, you having proved that he was in Elmira, if we prove that he was in New York at the same time, it rebuts your proof that he was in Elmira, and therefore it is directly in rebuttal." Aye, but it is also legitimately in defeat of the allegation that he was here whether he was in Elmira, New York, or elsewhere at the time of the crime. If he was in New York, or Elmira, or elsewhere at the time of the commission of this offense, he was in a condition where he could not have participated, and where there cannot be a verdict of "guilty" on this indictment by any possible rule of law. And whether they prove it or we prove it, if the fact is proved, the fact stands, and the acquittal follows as an essential consequence.

I do not deem it necessary to do more than to refer to a single authority upon this subject, and that is an authority to be found in 5 Carrington & Payne, page 299, the case of *Rex vs. Hilditch*. I have the case before me in the 24th volume of English Common Law Reports, page 330. The statement of the case is brief, and I will read it:

"Indictment for a robbery. The case for the prosecution had been closed, and the defense of the prisoners was an *alibi*; viz., that they were at a public house at a considerable distance from the place at which the robbery was committed.

"W. J. Alexander, for the prosecution, wished to call a witness in reply, to prove that he saw all the prisoners near the spot at which the robbery was committed, and that therefore they could not have been at the public house."

Your honor will see that this case covers both of the grounds I have indicated. The charge was a robbery. The defense established an *alibi*. The proof was that the parties charged were at a public house remote from the place of the robbery. Alexander, for the Government, claimed the right to introduce witnesses to show that they were not at the public house, but that they had been seen near the spot at which the robbery was committed, at a spot nearer than the public house, at a spot from which it might be possibly presumed they could get to the place of the robbery. But it was not rested on that ground. The counsel did not even attempt to put it upon the ground that he could disprove the *alibi* by showing that the prisoners were either at the place of the robbery or at a place from which they could be presumed to have gone to the spot of the robbery; but he undertook to meet the *alibi* by proving that the parties were somewhere else than at the place where they had proved themselves to be, and somewhere else than at the place where the robbery was committed. What said the court?

"Mr. Justice TAUNTON. Proving that the parties were near the place at which the offense was committed is evidence-in-chief, and not evidence in reply. Whatever is a confirmation of the original case cannot be given as evidence in reply; and the only evidence which can be given as evidence in reply, is that which goes to cut down the case on the part of the defense, without being any confirmation of the case on the part of the prosecution."

What is the case of the prosecution here? The case of the prosecution is, that this murder was committed on Friday night; that on Saturday morning Surratt left the town; that he fled to Canada; they attempted to prove his flight to Canada; and any other proof putting him on the route to Canada or proving his flight from Washington, is proof in confirmation of their case, and cannot be introduced under the pretext of its being in reply to the *alibi*.

I said I should refer your honor to only one authority. I will, however, refer to another—a decision in this court, or rather in the court that preceded this. In the case of Gardiner the same question came up, and the court pronounced this opinion:

"The court is of opinion that the witness, having been cross-examined by the defendant's counsel only partially as to having seen the mining title in Lagunillas, its appearance, &c., may be now examined by the United States to rebut the evidence since adduced by the defendant; viz., the production of a compared copy of the mining title itself, with the testimony in reference to it; *provided*, he has any thing of that description to say which he has not already sworn to. His evidence must be confined, however, strictly to the subject-matter of the defense; for the general rule is, that the evidence in reply must bear directly or indirectly upon the subject-matter of the defense, and ought not to consist of new matter unconnected with the defense and not tending to control or dispute it.' This rule was adhered to very closely by that great lawyer and judge, Baron Garrow, on a trial of an indictment for larceny, when the case for the Crown rested entirely on the fact of the stolen property being found in the house of the prisoner soon after it was lost, and a witness for the defense proved that the prisoner bought the property from a third person, who was called by the counsel for the Crown to prove, not only that the prisoner did not buy the property of him, but that he saw the prisoner steal it. It was held that this evidence was only admissible as far as it went to dispute the case set up on the part of the prisoner; that is to say, that the prisoner did not buy the property of him. (2 C. and P., 415; 12 E. C. L., 197.) The fact of his stealing the property was certainly evidence-in-chief; but was it not also rebutting evidence? For, as Phillips observes, 'the stealing of the goods by the prisoner would be strong evidence that he did not buy them.' Taunton, J., in another case, said: 'Proving that the parties were near the place at which the offense was committed is evidence-in-chief, and not evidence in reply.' Whatever is a confirmation of the original case cannot be given in evidence in reply. The only evidence which can be given in reply, is that which goes to cut down the case on the part of the defense, without being any confirmation of the case on the part of the prosecution."

He then refers to the case which I have already cited, and he refers also to a decision of Judge Grier, in 2 Wallace, Jr., which I did not bring with me, but to which I will beg your honor to refer, in which Judge Grier uses this expression: that it is like renegeing with cards; you prove part of your case and keep the other part back to take the party by surprise. He uses that illustration from the game of whist.

This being the rule, it comes down to the inquiry whether or not the evidence now offered is legitimately evidence-in-chief. Is it not a confirmation of their original case? What was their case? Their case was the commission of a murder here. What did their opening state the case to be? A murder here, proved by flight from here. The flight was an element of proof. The fact that the prisoner fled was a circumstance in order to show his guilt; it was relied upon by my friend in the opening; it was relied upon in the proof. Where did he fly? He fled from this to Canada, and they put him on the route. Can they, having put him on part of the route, come back now and put him on the rest of it? In other words, can they renege as to a part of the case which would have gone to show his flight from Washington, and, having proved that part of his flight beyond sixty miles from Washington, then come back and prove his flight within the sixty miles nearest to Washington? I submit to your honor that upon these principles of law the evidence offered and much that is already in is inadmissible.

Mr. BRADLEY. Before counsel on the other side proceed, I have a simple observation to make that they may notice it. I understood this suggestion to be made: "Can we not prove that he breakfasted in New York on the 16th?" I say it would throw no light on the subject of inquiry; for he could get from Elmira to New York just as well after the morning of the 15th, as he could from Philadelphia, and be in New York on the morning of the 16th.

Mr. PIERREPONT. Let me understand exactly what motion is made. Is it something about the telegraph lines?

Mr. MERRICK. I say that all that testimony about the telegraph lines is not admissible.

Mr. PIERREPONT. And you move to strike it out? I do not want to argue any thing but what is before the court.

Mr. MERRICK. I move to strike that out, and also make an objection to the testimony of the baggage-agent.

Mr. BRADLEY. The question arises in this way: We could not tell where the baggage-agent's testimony was to lead until he closed. As soon as it was in I objected to it; I could not do it before, because I did not know what was coming; I then followed it by a motion to strike out that witness's testimony. On consideration, we also propose to strike out the testimony in regard to telegraphic communication, because it is not in reply to any part of the case made by the defense.

Mr. PIERREPONT. You make that motion now, to strike out the testimony as to the telegraph?

Mr. BRADLEY. Certainly; I did not know that it was too late. I did not make the objection at the time it came in *sub silentio*. We move now to strike it out.

Mr. PIERREPONT. If your honor please, I do not propose to spend a great deal of time in arguing the general propositions of this case, until, as I said before, the evidence is closed, because, when the evidence is all in, we shall know what we are arguing; before it is all in we cannot know. There has been an attempt, I have observed, from the beginning of the cause, to try to draw us into a general discussion; at least, it seems so to me; I do not know that it is so; but there appears to me to have been an attempt to draw us into a general discussion of the cause all through. That is the way it has struck me. Now, I think the fit time, and the only fit time, for that is when the evidence is all in, and then it all bears upon it. For that reason I confine myself now to the question before the court, to wit: whether this testimony of the baggage-master is properly in evidence.

The counsel says that no evidence can be given by us now which tends to confirm our original case. If he lays that down as a broad and universal proposition, and if he undertakes to cite any English authority on that subject, I respectfully submit to your honor that there is no such thing in law, nor reason, nor sense. It would be a very nice proposition of law to be presented in a court of justice, that, if you had evidence which in itself was legitimate otherwise, it would not be legitimate if it tended to confirm your original case, and to make that the test of whether it could be legitimate or not that it tended to confirm your original case! There is always a great deal of evidence in rebuttal that does tend to confirm your original case; and to say that no such evidence, if otherwise legitimate, can come in, would be simply nonsense.

There may be evidence offered in rebuttal which is illegitimate, and yet which would tend to confirm the original case. That evidence, of course, it would be improper to receive: but the question always is, whether the evidence offered is legitimate evidence in rebuttal. The test of that never is whether it tends to confirm your original case or not. It might tend to confirm the original case, or it might not; but the fact that it did, would have no bearing upon it one way or the other, as every man's reason will see.

Now, my learned brother, in his address to your honor, is speaking about time as though all this was confined to one single day. He says that we proposed and did offer evidence, that on the 14th of April, 1865, Surratt, the prisoner, was in this place; and that now we cannot offer any evidence to show that he was anywhere else on the 15th or 16th, as I understand him, for the reason that we offered evidence to show that he was

here on the 14th. I think that is fairly his argument. He says we cannot show that he breakfasted in New York on the 16th; we cannot show that he went on this train on the 15th. Why? Because we showed that he was here on the 14th, and, therefore, it would be disproving our original case! I do not understand that proposition. I do not believe my learned friend will hold to it, when he reflects, as a good proposition. We have not offered any evidence in rebuttal to show that he was here on the 14th. We are not proposing to offer any evidence to show that he was here on the 14th. We have plenty of that. They put Mr. Cass on the stand here for the purpose of showing that he was in Elmira on the 15th. We had offered no evidence about where he was on the 15th; but they undertook to show that he was in Elmira on the 15th. We are proposing to show that he was somewhere else on the 15th, and hence was not in Elmira, and thus rebut the presumption that he was in Elmira; and it has nothing to do with tending to confirm our original case that he was here on the 14th. We do not wish to place him here on the 15th. We have never pretended or claimed that he was here on the 15th. It is to show that he was not in Elmira on the 15th. That is what the offer is; that is what the evidence is for. And very swiftly after the evidence was in, and after showing that this train was delayed instead of hastened, my learned friends saw the bearing of it; and my learned friend, who had been talking to your honor quite eloquently heretofore in relation to "magic chains," began to discover that the iron chain was ready to close its links; and then he was startled at what he was discovering; and he will find that we shall close the links, and that the chain will bind him from the hour that he left Elmira until he came to Washington, and tie him again in Burlington, St. Albans, and Montreal; and that is what he is trying to get rid of. He does not wish the links of that iron chain to close. He never feared the "magic chain."

Now, if your honor please, any thing that tends to show that he was in Elmira on the 15th, which is legitimate evidence, is, as I say, rebutting evidence, and is proper evidence, and it has nothing to do one way or the other with confirming our original case. It is of no consequence whether it does or does not; and the proposition that, if it did incidentally tend to confirm our case, that would make it illegitimate, if it is otherwise legitimate, is absurd.

Next, in relation to the telegraphs, my learned friend, the same counsel who has spoken here now, has repeatedly—I think this is the fourth time since the cause commenced—been pressing us on this subject, that we must prove the prisoner here in Washington; and he has been talking of and treating this case as though it were the ordinary case of a few men who had got together to murder a farmer down in the country for the purpose of stealing fifty dollars out of his chest. He will find, I fancy, when this cause comes to be argued, and presently, that this is something widely different. We are not trying that kind of a case. That is not the case that we have before the court; that is not the case made on this indictment. They come here now and undertake to prove that this prisoner was in Elmira, and they tried to show that he was there for some purpose connected with the rebel prisoners then confined in Elmira, and they undertook to show, and bring witnesses here for the purpose of trying to make the jury believe, that he was in Elmira not only on the 13th, when he was, but on the 14th, when he was not; and if, when I come to the evidence in this case as now in, I do not demonstrate that he was in the city of Washington, and that he was not in Elmira, and that as he must be either in some place or other, and if he was not in the city of Washington he must be somewhere else, and as I will prove he was not anywhere else, he must have been in the city of Washington—if I do not make that a demonstration, I will pledge myself never to try

another cause while I breathe. A demonstration! Yes, an absolute demonstration.

Mr. BRADLEY. I will take your pledge.

Mr. PIERREPONT. I say that he was in Washington on the 14th; that he was not in Elmira, but that he was here, and was nowhere else; and I will show it by the evidence already adduced. My friend has never been very much troubled, I say, about the "magic chain," but he could see the iron links as they were made one by one, and he understood them, too.

If your honor please, they offered evidence for the purpose of showing that he was in Elmira. Suppose he was there—suppose that, for the moment, we concede the fact that he was in Elmira; he was one of these conspirators engaged for the purpose of overthrowing this Government, and in the fell pursuit of that plan of overthrowing this Government and throwing this land of ours into bloody anarchy, he was in Elmira trying to release the rebel prisoners as his part of the same damned scheme to enthrone treason and murder over this land—can we not show the fact that he could communicate by telegraph between Elmira and Washington? That is what I offered that evidence for, and it is legitimate evidence. And if they have proved him, as they claim, in Elmira, I have the right to show the connection between Elmira and the city of Washington by telegraph.

Mr. CARRINGTON. If your honor please, I will detain you a very few moments in the discussion of this question. The question submitted to the court is whether the testimony which we now propose to offer is rebutting. I am not prepared to concede the proposition of law, that offering to prove a relevant fact during the examination-in-chief precludes us from the privilege of proving that fact by our rebutting testimony. I concede the proposition as stated by the learned counsel for the prisoner, that we are not permitted, by way of rebutting testimony, to offer in evidence a fact essential to the case, and which, therefore, we should have offered during the examination-in-chief. To make myself clearly understood by the court, I will say that if we offer in evidence a fact relevant, but not essential, we may offer rebutting testimony in answer to the case made by the defendant. It is assumed by the learned counsel for the prisoner that it was essential to the prosecution to prove the presence of the prisoner in the city of Washington on the 14th of April when the murder was committed. That question I do not propose now to discuss. It is true that, as we understand this case, by thirteen witnesses we did offer evidence-in-chief showing conclusively, at least in our judgment tending to show, the presence of the prisoner on the 14th of April in the city of Washington. Whether that was essential to the prosecution is an entirely different question. That it was relevant, and a most important and material fact tending to show the co-operation of the prisoner with this conspiracy of which he had previously been a member, and which resulted in the death of the President, there can be no question. But your honor will observe that now we do not propose to give in evidence any fact relating to what occurred on the 14th of April, 1865. This testimony is in relation to what occurred subsequent to the assassination. They have given evidence, as my colleague has already stated, tending to show that the prisoner was in the city of Elmira on the 15th of April. They have also endeavored to satisfy the jury that it was a physical impossibility for him, having fixed him in Elmira on the 13th, to be in the city of Washington on the 14th; and I suppose a physical impossibility that he should have escaped from the city of Washington on the 15th. In other words, the proposition of the other side is, that on the 15th of April the prisoner was in the city of Elmira. Surely if it was essential to our case—which I do not admit—to prove his presence in the city of Washington on the 14th, it was no part of our original case to show where he was on the 15th.

If we gave evidence to show that he fled, a circumstance always admissible in evidence for the purpose of showing the guilt of the prisoner, it was not essential to maintain the prosecution; it was relevant and important, but not essential.

My proposition, then, is that it was no part of our original case to show where the prisoner was on the 15th of April. The defense having undertaken to show where he was on the 15th of April, and it not having been essential to our original case to show where he was on that day, may we not now, by way of rebuttal, offer in evidence any fact tending to rebut this hypothesis of the other side? If, then, this evidence tends to show that he could not have been in Elmira on the 15th, surely it is rebutting evidence. We have already given in evidence testimony of many witnesses showing where he was on the 18th. We have given in evidence the testimony of a witness who proved his admission that he left the city of Washington on the 15th. We have traced him to the Burlington depot, by testimony about which there can be no question, on the 18th. We showed him in Montreal on the 18th. Having shown that he left here on the 15th, and having shown where he was on the 18th, and they having undertaken to show where he was on the 15th, may we not now offer rebutting evidence for the purpose of showing where he was on that day, and where he was during the whole intermediate time between the 15th and the 18th? The object of this testimony—your honor sees it from this statement—is this: he having left here on the 15th, having been detained, as this baggage-master states, and we having shown that he was on the direct route to Montreal, for the purpose, as all the evidence tends to show, of making his escape, it would bring him where we have shown him by witnesses to have been on the 18th. And these facts, considered altogether, are entirely inconsistent with the theory that he could have been in the city of Elmira on the 15th. The testimony is strictly in answer to that proposition.

Begging pardon for having detained your honor so long, and not desiring to discuss these general propositions, I submit the question.

Mr. BRADLEY. May it please your honor, I have listened with very great respect to what has fallen from my brothers on the other side, as I always do, in the hope that I should ascertain what it is they are after. I do not know that I can better answer what has been said than by giving a simple recapitulation of the evidence on the part of the United States and the defendant in reference to this point. What I shall have to say after recapitulating it will be another matter.

The Government assumed to show that the prisoner at the bar was here on the 14th of April, 1865. How far they have given any credible evidence to sustain that proposition is a question for the jury. I do not mean to discuss that now. They introduced witnesses to show the fact. They undertook to show that he fled on the 15th. I call your honor's attention particularly to that. They undertook to show that he fled on the 15th. That was evidence-in-chief, if I can understand any thing.

Mr. CARRINGTON. But not essential.

Mr. BRADLEY. Does it become essential afterwards, is the question. They attempted to show that he was here on the 14th, participating in this transaction, and that he fled on the 15th. They offered evidence to show that he went to Montreal on the 18th, and that he was in the Burlington depot on the night of the 17th, or between the 17th and 18th. Their evidence-in-chief, then, so far as it is worth a doit, is that he was here on the 14th, and they found that was necessary, or else they would not have done it; and also that he fled on the 15th; that he escaped in the disguise of an Englishman; that he reached Montreal on the 18th, spending the night of the 17th and 18th in the depot at Burlington, and therefore they have in

chief given testimony to the very facts they offer to prove now. In reply to that, we have offered testimony to show that in point of fact all this story is false; that he was not here on the night of the 14th; that he was in point of fact in Elmira on the night of the 14th; that he did not flee on the 15th, but was in Elmira on the morning of the 15th. The learned counsel who first addressed you says he was there on a bad mission. Now, upon the trial of a man for an alleged murder we are told he is put upon his trial, not for that, but for a conspiracy to overthrow the Government. The proposition is monstrous. It shocks all our sense of right and justice. He is either on trial for murder, or he is not on trial at all; and no weight can be given to the accusation of murder, because they impute to him other faults, or other vices, or other crimes. When the Government comes into this court seeking to take the life of a man upon false pretences, it is time that every honest man should speak out—lapping their tongues in the blood of the innocent because they impute to him some other offense.

I do not mean to be drawn away even by this excursion from the legal question at issue, and that is this: when the Government in chief has undertaken to prove that he was here on the 14th, and we have met and repelled that accusation, and when the Government has in chief attempted to show that he left here on the morning of the 15th, and we have met and repelled that accusation, is it competent now for the Government to adduce proof to show that he did leave here on the 15th? They have exhausted their proofs. They were bound by every consideration of justice, by every rule of evidence, by every thing which can bind the Government to put a citizen on his guard against a false accusation, to introduce that evidence in chief, and not wait to rebut evidence offered for the defense to meet the case made in chief. That most able and clear-headed man, highly educated and profound lawyer, Judge Grier, never uttered a truer illustration than when he said it was like reneging, holding the trump back in their hand in order to take the trick. If that is infamous at cards, how much more infamous must it be when it is used to take away the life of a man!

I have nothing to say in defense of this prisoner if he is guilty of this charge—not a word; I would not touch him; I would not look at him; I would not speak for him; I would not open my mouth in his defense. But I have no idea of having his life sacrificed because of imputed guilt, imputed by the learned counsel who first addressed you upon this question. He tells you that this prisoner set up as a defense that he was in Elmira in regard to rebel prisoners in Elmira. Why not let in that proof to the jury? Why exclude us from showing upon what business the prisoner was engaged in Elmira; how he came to be there; how long he was there; and all he did while there? What! make that the handle of an accusation against him, when they have ruled out the proof for the defense on that very point?

The gentleman tells us that from the beginning of this case we have sought to bring on a general battle; he is for light skirmishes; and yet he pours in all the thunder of his artillery in this case upon the devoted head of this poor man. He denounces him beforehand as a villain and an assassin; he denounces him as a coward—a defenseless man tied with chains; like a little boy in a menagerie, pointing at the lion and saying, "Roar away." He speaks of the course taken by my colleague and what he has said; he speaks of him contemptuously about a "magic chain," and talks about a "chain of iron." When he first spoke of that, I told him he would have to forge more links, and he has failed so far to do it.

May it please your honor, if I am warm, I have a right to be so. I have a young man's life in my hands who has not been proved guilty, and I think, by the admissions of counsel here, who is not guilty. When

he attempts to show that the prisoner was in Elmira at that time, engaged upon other business, and makes that a ground of accusation against him, he takes away the tomahawk and scalping-knife, and gives him a shield for his defense. I do not mean that the blood of an innocent man shall rest upon my hands for the want of a bold and animated defense.

Now, let us look a little further at this matter. Do the gentlemen meet the proposition by any authority? What is our proposition? What is it to every intelligent mind not darkened by prejudices so strong as to shut out truth and reason? The Government of the United States have, in the opening, offered evidence-in-chief to prove that Surratt left here on the morning of the 15th; they cannot deny it. Now, after we have repelled that, they seek to fortify themselves by some other proof. And what is the evidence now which is objected to? First, that there was telegraphic communication between Elmira and Washington at that time. Did they not offer evidence-in-chief, by the revelations of that man McMillan, that Surratt had told him that he had telegraphed Booth from Elmira?

Mr. WILSON. To New York.

Mr. BRADLEY. To New York? Where is the telegraphic operator? Where are the records of the office? If it was New York, upon what earthly ground do they seek now to show that the telegraph was in operation between Elmira and Washington? What evidence is that to rebut? The learned counsel do not take the trouble to tell us what it is to rebut; they only say it is evidence. Evidence! It must be evidence to rebut some proof on the part of the defense. Will any one of the three gentlemen, or their coadjutors, be good enough to tell us what evidence we have offered which is to be rebutted by proof that the telegraph was in operation between here and Elmira at that time. I waited in momentary expectation, as the testimony was being given, that it would be followed by some fact connected with this case; and therefore I did not object to it at the moment. But I ask again, and I ask triumphantly—I do not know how many there are, but I ask of all the counsel on the other side, and each one separately—tell me, gentlemen, if you please, what single portion of our testimony is to be rebutted by the proof of this telegraph being in operation. Two counsel have spoken and neither of them has indicated what it was. Shall I turn your honor to what they do say about it? It is child's play with a case of this kind.

The learned counsel who opened the argument on the other side says, "they insist we must prove him to be in Washington." Suppose we do insist upon it? Has that any thing to do with the evidence we have offered? What particle of proof are they answering? Not our argument. They do not bring evidence in rebuttal to meet arguments—they do not bring evidence in rebuttal to meet propositions on the part of the defense. They bring evidence in rebuttal to meet some new fact developed by the proof for the defense, and which evidence would not have been evidence-in-chief. Do I state the proposition correctly or not? My learned brother (Mr. PIERREPONT) can answer. He has decided the question over and over again. Rebutting evidence is evidence as to some new fact brought out by the defense, which evidence would not be evidence-in-chief.

Mr. PIERREPONT. It might be or might not be.

Mr. BRADLEY. No, sir; if it might be, it cannot be rebutting evidence, because it is evidence-in-chief, and there is no distinction between evidence-in-chief and rebutting evidence upon the ground he takes, to which I shall advert presently. He talks a great deal about legitimate and illegitimate proof. I say the test is, was any piece of testimony evidence-in-chief, was it admissible in chief, or is it contradictory of the defense set up, and not confirmatory or cumulative of the original case?

Mr. PIERREPONT. It may be both.

Mr. BRADLEY. No, sir; not both, so far as au-

thority goes, at least, and so far as the reason that I have heard to-day goes. They talk of it as an attempt to subvert the Government. Are we on trial for treason? I agree it was a great crime. I agree it was monstrous. I agree that none but madmen could have committed it. But is it treason? If it is, then I do not know the definition of treason. But if it be treason, I say indict this man for treason and try him by the laws which govern treason, and not by the laws which govern in cases of homicide. We have statutes on the subject of treason; we have statutes which throw guards and protections around the humblest and the highest. We have statutes which provide for the form of trial for treason in some respects, and especially in regard to witnesses; and we never should have had this troop of witnesses if they had indicted us under the law of treason. We should have been advertised beforehand, and we should have known what witnesses were to be put upon the stand. We should not have been under the necessity of trying to call them back; but, advertised beforehand, we should have struck them man by man as they came.

Is it treason? If it is not treason, but a case of murder of the most aggravated character, I agree; still, I ask, what has the telegraph to do with it in reply to any part of our defense? That is the point to be determined here; not whether it would have been evidence-in-chief, but what portion of our case is the fact that the telegraph offices were open in Washington and Elmira to rebut? The learned counsel says that he was certainly there on the 13th, and he was in the city of Washington on the 14th. Concede, says he, that he was in Elmira—that he was a conspirator trying to overthrow this Government; that the rebel prisoners were to be set free in the cause of treason and rebellion—he will demonstrate from what has already been shown in this case that the prisoner was here on the 14th! I challenge him to it. I propose to close the case here now, without the sur-rebuttal proof which we expect to offer, and I challenge him to show that "iron chain" which is to link the prisoner, and show that he was in the city of Washington on the 14th and came from Elmira. I defy—yes, sir, in the strongest terms that human language can utter—I defy human ingenuity to weld a chain out of the proof they have here, to bring this prisoner from Elmira to this city on the morning of the 14th of April. I defy them to weld a chain which can bring him here at all on the 14th of April. Unless my recollection of Cocker, the old arithmetic which we used to study when I was a boy, has all been displaced by new discoveries, I defy human ingenuity to bring that man from Elmira here after ten o'clock, after eight o'clock, after two o'clock, or any other hour, at Elmira, on the 13th. And I add to the defiance a denial that he was in Elmira, or could have got to Elmira in time to have taken either of the trains which they have spoken of now. They start him on the 12th, at three o'clock, from Montreal. I defy the gentleman to forge any chain that can link Montreal and Elmira so as to bring this prisoner there in time to take the ten o'clock, or half-past ten o'clock, train at Elmira, on the 13th. I know the distances; I know the time-tables; and I defy them to bring him there before eight o'clock that evening at the earliest.

But what has this telegraph to do with all this? That is what I want to know. All this is said on the subject of the telegraph being open. Is the telegraph to be used to forge that chain? Upon what possible view? Neither reason, sense, nor law, authorizes the conclusion we seek to draw, says the learned counsel. I ask upon what reason, sense, or law can this telegraph be used to show that the prisoner came from Elmira here on the 13th, unless he came upon the telegraph? I do not know but that they may make a telegram of him. They cannot get him here in any other way.

I ask, then, if the court please, upon what part of our testimony the gentlemen can lay their hands to

show that this evidence about the telegraph being in operation is in rebuttal? Will it show that he was not in Elmira on the evening of the 13th, the whole of the 14th, and the morning of the 15th? Will it show that he was in Washington at any intermediate time? They do not pretend to say so; but they fly off, charging that we have sought to bring on a general battle; that my brother has throughout this case sought to bring on this general battle. They fly off in this extravagance without one single argument, or suggestion of a reason why the fact of the telegraph being in operation is in rebuttal. As I have said, I have listened with great respect and attention to find out what it is they are after and what they mean; but I cannot discover, unless it is their purpose in this condition of the case, before the evidence is closed, to make a speech to prejudice the minds of the jury.

I dispose of the telegraph, then, if the court please. Now, upon that both the gentlemen say—indeed I do not know whether the learned gentleman who spoke last is district attorney or not; he has not had the conduct of this case, certainly; but the gentleman who was lately district attorney and his learned associate (whichever of them is district attorney in this case)—both say that on the 13th of April Surratt was in Elmira. If Surratt was in Elmira on the 13th, they are bound to show that he could get here on the 14th before night, because they have undertaken part of that case, unless they want to renege again. They say it is not necessary for them to show that he was here on the 14th. I take issue, if your honor please. I take issue upon a principle of law which is laid as deep as any principle of the common law. I take issue upon what I hold to be constitutional rights not yet taken away. I take issue upon a constitution which guaranties to us the protection of law. And I maintain that in order to convict this prisoner, they must show that he was either here present, aiding, assisting, helping on this horrible crime, or that he was within reasonable reach to afford assistance, with intent to afford it; and they know that to be the law, and my learned brother the district attorney will not in his place deny that that is the law. If that is the law, and if they are bound to show either that he was here present assisting, or that he was within such convenient distance as to afford aid and comfort and assistance to the party who committed the crime, or to assist him in his escape—I say if that be the law—and I hold it to be settled by such repeated adjudications that no court on earth can now overturn it—then the gentlemen were bound to have shown in chief that he was here, if they could do it, or, if they could not show that he was here, to show that he was within convenient distance; and they knew it. We have given evidence tending to show that he was not here, and that he could not have rendered assistance at that time. Can they rebut it? Was it not part of their case-in-chief to show either that he was here or that he was within such convenient distance and in such circumstances that he could have afforded assistance, either in effecting the crime or in the escape of the criminal? If that was their case-in-chief, can they, having withheld all proof of that kind, now offer it in rebuttal?

We are not assisted here by any elementary writer on the other side, and I refer your honor again to the opinion of Mr. Justice Taunton in a case on all fours with this: "The case for the prosecution had been closed, and the defense of the prisoners was an *alibi*, viz., that they were at a public house at a considerable distance from the place at which the robbery was committed." The case of the prosecution was closed; the defense of the prisoner was an *alibi*—that he was in Elmira, in the State of New York, not only at a considerable, but at a great distance from the place where the crime was committed. For the prosecution it was sought "to call a witness in reply, to prove that he saw all the prisoners near the spot at which the robbery was committed, and that therefore they could not

have been at the public house." What is the argument here? They propose to call a witness to show that the prisoner was at New York, and therefore could not have been at the place where he says he was—Elmira. It is impossible to separate the two cases. In the case before Mr. Justice Taunton, the prisoners' defense was an *alibi*—that they were at a public house at a considerable distance from the place where the robbery was committed. The prosecution offered to meet that *alibi* by showing that the prisoners were at a different place at the time when they said they were at the public house, "and that therefore they could not have been at the public house." Here we prove the prisoner to be in Elmira, and they offer witnesses to show that he was in New York; and therefore they say—that is their argument—he could not have been in Elmira. Now, let me show to you how that very learned judge treated that proposition, which is this proposition:

"Proving that the parties were near the place at which the offense was committed is evidence-in-chief, and not evidence in reply."

Proving that this party was in Washington or within convenient distance to render assistance to this crime was evidence-in-chief, not evidence-in-reply. To prove that he was in New York—I do not say what they are going to prove about New York—to prove that the trains ran from Washington to New York, and that the train which ought to have arrived on the evening of the 15th did not reach there until the morning of the 16th, proves what? That the prisoner might have gone by that train, as he might have hid himself somewhere in the caboose coming down from Elmira to Williamsport with Mr. DuBarry, when Mr. DuBarry did not see him! Proving that the train ran, and that he might have gone by that train, is what I object to, because that is to bring him near the place where the offense was committed, and that is evidence-in-chief. Now, the learned judge proceeds:

"Whatever is a confirmation of the original case"—

I call the attention of counsel to this, and whatever his opinion of the English judges may be, he will appreciate the intellect, the long experience, the great, high character of the judge who delivered this opinion:

"Whatever is a confirmation of the original case, cannot be given in evidence in reply."

The learned counsel says it can. He says that is not the test. Mr. Justice Taunton says it is the test. Another learned judge, in the 12th volume of English Common Law Reports, in the case of the *King vs. Stimson*, which is also to be found in 2 Carrington & Payne, says the same thing. That most laborious and excellent judge, pure citizen, upright, good man, the late judge of the criminal court of this District—than whom no man more laboriously pursued these questions of evidence, whose record is rich with his researches, containing, perhaps, references to cases examined by himself more numerous than the record of any judge I have ever seen—that learned judge, pursuing this same inquiry thirteen years ago, came to the same conclusion.

Mr. PIERREPONT. We agree to the law as he lays it down in that case.

Mr. BRADLEY. They agree to the law as he lays it down in that case. Just now they told us that was not the test, and I wrote down the very words from the mouth of the gentleman.

Mr. PIERREPONT. What I denied was that the test was what you stated it from the English cases.

Mr. BRADLEY. I spoke of the English law, and the very language of the gentleman was that the test is not whether the evidence tends to confirm the original case. Driven from that refuge, I want to know what the test is. The language he used was, "The test is not whether it tends to confirm the original case." This learned judge, Mr. Justice Taunton, says: "Whatever is a confirmation of the original case cannot be given in evidence in reply." Is not that a test?

Mr. PIERREPONT. That is not the case that I say

I agree to. What I agree to is the law as laid down by Judge Crawford.

Mr. BRADLEY. I will notice that directly. Now, let us see what a predecessor of the judge from whom I have just quoted had said. I refer to the language of Mr. Barron Garrow, in the case of the *King vs. Stimson*, 2 Carrington & Payne, 197; and also in 12 English Common Law Reports, 415. We all know his reputation, especially as a criminal judge.

"On the trial of an indictment for larceny, when the case for the Crown rested merely on the fact of the stolen property being found in the house of the prisoner soon after it was lost, and a witness for the defense proved that the prisoner bought the property from a third person, who was called by the counsel for the Crown to prove not only that the prisoner did not buy the property of him, but that he saw the prisoner steal it, it was held by Baron Garrow that his evidence was only admissible as far as it went to destroy the case set up on the part of the prisoner; that is, to show that he did not buy the property."

Mr. Phillips, in his Treatise on Evidence, criticizes that ruling; and he says that the fact that the witness saw the prisoner steal it was just as much a denial of the allegation that he had bought it as though he had said he did not sell it to him; and therefore he thinks that testimony ought to have been admitted. I give you the words of Judge Crawford, who follows this statement of that case by a reference to the decision of Mr. Justice Taunton, which is cited with approval, from 5 Carrington & Payne; and then he adds:

"These are cases which seem to involve, at first glance, a less strict adherence to the rule; but a careful examination of them will show that it governed the courts in their decisions. The witnesses can say nothing of what the alcalde or officer in charge of the mining title communicated to him. That is pure hearsay."

He then goes on to rule, "that as the Government had given in evidence the facts in regard to this mining title, they cannot recall the witnesses to confirm by any fact the testimony already adduced."

I may refer your honor also, in this connection, to the decision of Mr. Justice Grier, to which I have already alluded. It will be found in 2 Wallace, Jr., Circuit Court Reports, page 169, in the case of the *United States vs. Hawway*. The decision was by the circuit court, where Judges Grier and Kane were on the bench.

Now, if the court please, I will recapitulate what I desired to present on this question, and I hope I shall have no occasion at any time to depart from the strict rules of a legal discussion.

On the examination-in-chief the United States offered evidence tending to show that the prisoner was here on the night of the 14th, and left here on the morning of the 15th, and on the evening of the 17th reached Burlington, Vermont, on his way to Canada, and that he arrived in Canada on the 18th of April. We have offered evidence to meet that case. They now propose to show, what was part of their case-in-chief, that on his way to Canada he went by rail from here to New York, and reached there on Sunday morning, the 16th. It was part of their case-in-chief, because they were bound to show either his actual presence or his being convenient to the place of the crime. They say it is in reply to the evidence which we gave showing an *alibi*, and that he was in Elmira on the morning of the 15th. We say that is met directly by repeated decisions, and I submit the case to your honor.

Mr. PIERREPONT. If your honor please—

Mr. MERRICK. We have the close of the argument.

Mr. PIERREPONT. I am not going to reply to your argument. It is true, as the learned counsel has said, that we do propose to prove that the prisoner was in New York on the 16th. The witness is a woman. She is not here yet. She was expected here to-day, but she is not well, and we expect her by the next train or the morning train. But the counsel offers us a challenge that we close the case here. We accept it.

Messrs. BRADLEY and MERRICK. Agreed; the case is closed.

Mr. BRADLEY, Jr. I should like to give an ex-

planation in regard to Mr. Nagle, or to let him make it himself to the jury before the case is closed.

Mr. PIERREPONT. We want it either one way or the other; closed or not closed.

Mr. BRADLEY. Then it is closed. Now, I propose to submit it to the jury without argument.

Mr. MERRICK. Yes, sir; we will submit it without argument.

Mr. BRADLEY, Jr. If your honor please, I desire, before the case is closed, to make a statement to the court, not as evidence, but by way of repelling an assault which has been most unjustifiably, and, in my judgment, most unprofessionally, made upon Mr. Nagle. The gentleman who leads the prosecution is well aware that I went to Canada for the purpose of procuring witnesses in this case. I now state to the court, in the presence of the gentleman, and I trust he will recollect it hereafter, that I found it necessary to employ aid there for the purpose of discharging the duty which devolved upon me; and, to attend to the matter in my absence, I selected a gentleman of standing and reputation in that community, Mr. S. B. Nagle. I found that he was an important witness in the case; that he was a professional man; and that he was the person best qualified to serve my purposes, namely, to secure the attendance of witnesses from Canada. Those witnesses, having no interest whatever in this matter, required that I should pay them in advance their attendance fees for coming to this court; and they required that the money should be paid in gold, the only currency recognized in that province, and that all their personal expenses should be paid. I made the necessary provision, by depositing with a broker in Montreal the money that would be necessary to start them on their mission to Washington; and I have supplied from time to time such funds as I was advised were necessary for that purpose. Your honor is well aware that owing to the difference in the currency, there is a heavy loss entailed upon us in that way. There were six or seven witnesses to be produced here. In order to accomplish the purpose, I directed the broker to recognize Mr. Nagle's drafts upon me for whatever amount was found to be absolutely necessary. Those drafts have been sent here, recognized, and paid. I trust that under these circumstances the character of a gentleman coming from a foreign country is not to be sneered upon, or any imputations cast upon him by anybody, counsel or otherwise.

Mr. BRADLEY. I only want you to add, that it did not all come from the contribution; a great part of it came out of our own pockets.

Mr. MERRICK. I am sorry to confirm that.

Mr. BRADLEY. And I will give as much more.

Judge FISHER. Gentlemen, do you propose to proceed with the argument?

Mr. BRADLEY. We propose to submit the case without argument.

Mr. CARRINGTON. If your honor please, we conceive it to be our duty to argue this case, and not throw the responsibility of deciding it altogether upon the court and jury. The jury are entitled to the assistance of court and counsel. We propose to argue the case, though it is certainly a very painful and disagreeable task.

Judge FISHER. What is to become of the question you have just been arguing so laboriously?

Mr. BRADLEY. If the case is closed, I suppose the testimony is to be ruled out; but I will agree to submit it as it is.

Mr. MERRICK. The jury may take it all, and we will withdraw the motion to strike out. Let the jury have all the testimony and take the case just as it is.

Mr. CARRINGTON. I have speaking enough to do, and it would be exceedingly agreeable to shirk the duty of arguing the case. I am not at all well; but I feel that I should be doing injustice to the jury, and I should not be doing my duty, if I did not ask that the jury should have the benefit of Judge PIERREPONT'S

views and the court's views, and if I did not render such assistance myself, humble as it may be, to the jury, as I could in a matter so important; and I should like also to hear the views, and I think it is due to the public that we should have the views, of the counsel who represent the prisoner.

Mr. BRADLEY. Do you understand that we do not stop here?

Mr. CARRINGTON. We mean to argue it.

Judge FISHER. I understand that so far as the evidence is concerned the case is closed.

Mr. MERRICK. And our proposition further is, that the jury should take it just as it is, and leave the court-room now without a word from anybody.

Mr. CARRINGTON. That we decline, of course.

Mr. MERRICK. Now, I wish to ask your honor in regard to one thing that I desire to understand. What is the rule to be adopted in the case as to the number of speeches allowed to each side? I suppose two counsel will be allowed to address the jury.

Mr. CARRINGTON. That has been the rule.

Mr. MERRICK. But if the defense do not choose to reply to the argument of the first counsel, is not the case then with the jury? Two speeches may be allowed to each side, if the Government insist on going on and arguing the case; but I ask your honor whether it is not the rule that, if the defense do not choose to reply to the opening speech, that is the end of it?

Judge FISHER. The general rule is that the prosecution have the opening and the conclusion.

Mr. BRADLEY. But if there is only one speech, that is the opening and conclusion.

Mr. PIERREPONT. The difficulty about that in this case would be this: My learned friend the district attorney and myself have made a division of the case; he takes one portion of it, and I one portion. This is a case that has occupied a very large number of weeks, and we have neither of us made any presentation of any portion of it to the jury; and for one counsel to undertake to go through with the whole burden of it certainly should not be expected in a trial of this great length; and we have necessarily to divide it.

Mr. BRADLEY. All I can say in regard to that is, that it would be exceedingly unfair for them to divide their case, and open one part of it only in the beginning, and reserve the strong part for the conclusion, when we have no opportunity to reply.

Mr. MERRICK. If they do that, we have a right to answer the concluding speech.

Mr. PIERREPONT. We will reserve the weak part.

Mr. MERRICK. If they do not open in full, we shall have the right to close on them.

Mr. PIERREPONT. I have never heard of any rule of law, and I do not believe my learned friend has, where, when a case is presented and the evidence is all in, counsel were not allowed to reserve any comments on the evidence to the very last, if they chose. It is the law alone that is required to be presented in the opening.

Mr. BRADLEY. We wish to understand your honor's ruling on the point made by Mr. MERRICK. If there shall be on the part of the prosecution an opening of the case, and the defense shall not reply, is or is not that the close of the case—the opening and the conclusion?

Judge FISHER. That is an entirely new question to me. I have never seen that done anywhere.

Mr. MERRICK. It was done here in the Gardiner case, and I have had it done on me time and again.

Mr. BRADLEY. I do not profess to speak about any rule, but I know that I have done it myself, and I can enumerate at least three cases in which it has been done.

Mr. MERRICK. I have done it myself time and again.

Mr. BRADLEY. If that is the rule, we understand where we are.

Mr. MERRICK. We want to know the rule before we go on.

Mr. BRADLEY. I hope the court will announce to us what the rule will be in that respect.

Mr. CARRINGTON. If your honor is in doubt upon the subject, as we consider the question of some importance, I should like to be heard briefly.

Mr. BRADLEY. Upon the question raised by Mr. MERRICK?

Mr. CARRINGTON. Yes.

Mr. BRADLEY. Well, make it very brief. If that is not the opening and conclusion, I do not know what is.

Judge FISHER. The question of evidence that has just been argued is a very important one. I do not see, though, that in the present state of things it is of any great importance to decide it, if the case is closed, because there has been no connection made between the prisoner and this car that went from here by the rebutting evidence. Of course I do not wish to judge about the evidence-in-chief, but so far as the witness who was on the stand last was in reply to the testimony for the defense, so far as his testimony goes, he said nothing about the prisoner being on this car; and whether the prisoner was in New York on the morning of the 16th or not does not appear from the testimony. I cannot see that it is of any great importance that that question should be decided. It is the same thing with reference to the telegraph. Although the witness who was on the stand immediately preceding the last one proved that the telegraph was in operation between here and Elmira, nothing was said about any telegrams passing between anybody at those two points.

Mr. BRADLEY. And he said the records were all perfect.

Judge FISHER. I cannot see that it is important practically to decide that question. If, however, the counsel insist upon a decision of the subject, I will give it to-morrow. I should like to have time to look into the authorities. I should like particularly to look into the case in Wallace which has been referred to; for Judge Grier is authority that I, of course, very highly respect. I should like to look into the question, and give a decision after full advisement and full consideration.

Mr. BRADLEY. In regard to the other question, about counsel addressing the jury, I want to have it settled. My brother Mr. MERRICK is not willing to submit the case if we are compelled to make four speeches—if all of us are to speak; and certainly if there are going to be two speeches on the other side, we must be heard.

Judge FISHER. Do you say he is not willing to submit the case?

Mr. MERRICK. To close the case.

Mr. BRADLEY. Not if we are to have four speeches.

Mr. PIERREPONT. What do you mean by "close?"

Mr. MERRICK. I will submit the case now, and let it go the jury.

Judge FISHER. Then the proposition was not to close the case absolutely, but only conditionally.

Mr. CARRINGTON. I do not think that was the challenge made by Mr. BRADLEY.

Mr. MERRICK. I want to know what the rule is in regard to the speeches.

Judge FISHER. Let us understand the other matter first. There was a proposition made, as I understood—an unconditional proposition, by Mr. BRADLEY—to submit the case now; that is, to close the testimony on both sides. That was the way I understood it.

Mr. BRADLEY. No, sir; what I meant was to submit the case, and let Mr. PIERREPONT make out his proposition. That was my distinct offer; but I do not want to have four speeches in the case. I said I would submit it now, and let him make out his case.

Judge FISHER. Then the case is not closed.

Mr. PIERREPONT. Very well; the case is not closed.

Judge FISHER. If that was Mr. BRADLEY's understanding, the case is not closed; but I thought his challenge was that you should close the testimony on both sides.

Mr. PIERREPONT. Perhaps I did not understand it. Judge FISHER. I suppose you understood it so?

Mr. PIERREPONT. We certainly did.

Judge FISHER. But it seems they did not understand it so.

Mr. BRADLEY. My proposition was distinct to close the evidence here and let Judge PIERREPONT make out his case, reserving to us a reply, of course. But I did not expect to have four speeches made upon us, and do not now.

Judge FISHER. Then it was not an unconditional offer.

Mr. MERRICK. We may get to an understanding, if we know what is the rule which your honor will adopt on the other point: Where the United States opens and the defense does not reply, if the defense deem it expedient not to do so, has the United States the right to another speech?

Mr. PIERREPONT. I want to understand one thing at a time. I want to know, first, whether the evidence is, or is not closed?

Mr. BRADLEY. The gentlemen can understand it as they please. We made a distinct offer.

Judge FISHER. Mr. BRADLEY says his offer, as intended by him, was simply that the testimony should now close on both sides, and that the prosecution should undertake from that to show their case to be a conclusive one.

Mr. PIERREPONT. I do not know that I shall undertake any thing. I want to know whether the evidence is closed.

Judge FISHER. Am I right?

Mr. BRADLEY. That is just what I said.

Mr. PIERREPONT. We shall get to an understanding on that point if we only know that they mean one way or the other way. They shall have it exactly as they please.

Mr. MERRICK. Then, let it go to the jury now. That is the way I want it.

Mr. PIERREPONT. I am talking of the closing of the evidence.

Judge FISHER. Do you mean that you will take up the gauge as thrown down by Mr. BRADLEY?

Mr. PIERREPONT. I mean to take it as I understood it was thrown down, and as your honor understood it was thrown down. But if they wish to withdraw from that, and say it was a misunderstanding, and that they did not so understand it, then the case is open for further evidence.

Mr. BRADLEY. I do not wish to withdraw any thing; and if the counsel had ears he would have heard that I said I would close the case here, and let him make out, if he could, the proposition which he stated; and I challenged him to do it.

Mr. PIERREPONT. I think we all had ears.

Mr. BRADLEY. Then you did not understand; that is all. I do not think you wanted to understand.

Mr. PIERREPONT. I think we all understood it one way. We understood it the same way.

Judge FISHER. Then you must go on with your testimony, and it will become necessary for me to decide the question of evidence which has been raised and discussed here this afternoon. I propose to decide that to-morrow morning, after full reflection and deliberation on the subject.

Mr. BRADLEY. Will your honor make any rule on the question as to the argument before the jury. If you will do that, we can tell at once what we shall do.

Mr. PIERREPONT. Wait until we get to it.

Mr. BRADLEY. I did not ask you; I was appealing to the court.

Mr. PIERREPONT. I submit we have a right to be heard.

Judge FISHER. You are asking me to rule on a question that has not yet presented itself.

Mr. MERRICK. The reason we ask you to make that ruling, is because I think it very likely that if your honor rules on that question it may save time and facilitate some other arrangement. For that reason we bring it forward and ask your honor to determine as we have understood the rule to be, as we have stated it to be to your honor. I will not repeat what I said, but if this is the proper time for your honor to determine the question, we should, under the peculiar circumstances, like to have your ruling.

Judge FISHER. I know it is very pleasant for counsel, when they cannot agree among themselves, to ask the court to make an agreement for them.

Mr. MERRICK. We do not ask for an agreement.

Judge FISHER. But you are asking me to make a decision in advance, so as to facilitate an agreement.

Mr. MERRICK. Certainly.

Mr. PIERREPONT. It would have been just as proper to call upon your honor early in the case to make it.

Judge FISHER. Yes, you might as well have called upon me in the beginning. I have enough responsibility in the case to decide questions as they arise. In view of the fact that the testimony has not yet been closed on either side, it will be necessary for me to decide the question of evidence which was raised and discussed a while ago; and I do not propose to do that until to-morrow morning. I wish to have time to consult authorities and reflect on the subject. If you have any other witnesses to be examined now, it will be satisfactory to me and probably to the jury that you should go on and examine them to-day, and I will decide this question of evidence in the morning; and the testimony given to-day will be allowed to stand or be stricken out, according to that decision.

Mr. BRADLEY. I do not like to rely upon my memory alone; and therefore I wish to bring before the court the authorities to which I referred generally on the point suggested just now. In the trial of George Ragley, in the criminal court of this District, for murder, at the January term, 1856—

"Mr. Ingle, on the part of the United States, having addressed the jury, Mr. Cox, said the counsel for the defense proposed to submit the case to the jury without further argument.

"The counsel for the United States were precluded from addressing the jury further, according to the decision of this court in the case of *The United States v. Gardiner*, pages 65 and 66."

Mr. WILSON. There is no doubt about that.

Mr. BRADLEY. I wish you had said that before; it would have saved us some trouble.

Mr. PIERREPONT. When we get to that question we shall be heard upon it.

Mr. BRADLEY. At page 55 of this same volume is the Gardiner case:

"When Mr. Fendall, district attorney, had closed his argument,

"Mr. Bradley, of counsel for the defendant, said that he understood the court had decided, that in case the counsel for the defense waived the right to address the jury, it would prevent any further argument on the part of the United States, and therefore we shall, on the part of the defendant, submit the case and absolutely decline to address the jury.

"The circuit court having decided that if counsel for the defendant do not address the jury, the counsel for the plaintiff, having made the opening argument, are not entitled again to argue to the jury, their further right being simply to reply; the court so decided."

It was fully discussed, occupying a page of this book; and that was the decision.

Mr. PIERREPONT. When we get to that question, we shall try and make it perfectly plain. Now, if your honor will allow us, we will go on with our testimony.

Judge FISHER. Very well.

WILLIAM ROBERTS,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Were you in Elmira in the month of June last?

A. Yes, sir.

Q. About what time in June were you there?

A. I got to Elmira on the 1st of June.

Q. Did you see Mr. Joseph Carroll, a tailor, there?

A. Yes, sir.

Q. Did he say any thing to you about meeting the prisoner?

Mr. MERRICK. Where is the testimony you now propose to contradict?

Mr. PIERREPONT. On page 616.

Q. (By Mr. PIERREPONT.) Did you go with Mr. Knapp, the deputy marshal, to the store of Mr. Carroll, the tailor?

A. I went with Mr. John Knapp, the city marshal, to Stewart & Ufford's store, where I saw Mr. Carroll at work.

Mr. BRADLEY. I object to this testimony. It is wholly irrelevant and collateral.

Mr. PIERREPONT. I will read from the testimony of Carroll, on page 616:

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

A. I did not.

Q. Neither of them?

A. No, sir.

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

A. I did not.

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

A. I did not.

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

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

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

A. I do not distinctly remember."

(To the witness.) Now, state whether you were present there with Mr. Knapp.

Mr. BRADLEY. Whether he was present or not is of no sort of consequence. The questions put to Carroll there were purely collateral and irrelevant.

Mr. MERRICK. And I call your honor's attention to another circumstance. He says, "I do not distinctly remember."

Mr. PIERREPONT. I turn your honor now to page 619, on the subject of the time at which Carroll said he saw the prisoner.

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

A. I think I might have told him.

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

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

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

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

Now, I propose to ask this witness if he was present at that conversation.

Mr. MERRICK. One of the objections applies to that.

Mr. PIERREPONT. The ground of its being collateral cannot apply.

Mr. MERRICK. One of the objections I say applies. The witness Carroll said he got the date from the books of Mr. Ufford being in New York, and he says, "I think I told him the 13th and 14th." Your honor remembers how the counsel pressed him for something positive, and how he declined to give it, because he could not recollect.

Mr. PIERREPONT. It was not necessary that he should be positive about it to allow us to contradict him.

Mr. MERRICK. You propose to contradict him, and where that is the case the statement contradicted must be a positive one.

Mr. PIERREPONT. No; the law is that, even where a witness says he does not remember, you can show that he made a different statement.

Judge FISHER. Let us read what was said by Carroll:

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

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

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

A. I think I did.

Q. Can you remember whether you did or not?

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

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

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

Q. Do you think you told him the 12th and 13th?

A. I do not think I did.

Q. What do you say about that?

A. I do not remember.

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

A. I do not know.

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

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

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

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

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

A. I do not remember that I did.

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

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

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

[Question objected to by Mr. MERRICK as having been already answered.]

"The Court said the witness might be asked about each date separately."

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

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

Q. Is that the best of your recollection, that you did.

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

Mr. PIERREPONT. Best recollection is just as good as most positive recollection.

Mr. MERRICK. Not by a good deal.

Mr. PIERREPONT. I submit it to your honor.

Mr. MERRICK. I submit it to the court, and I think your honor has already decided it. The reason of the rule is, that contradiction is for the purpose of impeaching. That I think your honor ruled yesterday, and that being the ground of it, your honor allowed evidence to be given to sustain the character of a witness who was contradicted here by proof of contradictory statements. If that evidence can have the effect of impeaching—can go to that extent of justifying proof of character, as showing to some extent moral corruption—the statement made by the witness which is contradicted must have been a positive statement, and it must not be such a thing as "I may or may not have done it; I think I did." "What is your best recollection?" "Well, I do not know." "But I must have your best recollection." "Well, my best recollection is that I did; I think I did." What sort of a contradiction would it be to prove that a witness thus pressed was mistaken in what he said on the stand? Would any living creature say there was any sort of moral turpitude if you could prove that he had been in error on the stand when he told you over and over again that he did not mean to be positive, and you are pressing him to say something positive, and he finally says, "if you will have my best recollection, my best recollection is thus and so; but I only think so; I cannot say so positively, nor swear so positively."

Mr. PIERREPONT. To show that a witness is mistaken is one of the chief objects in showing that he made a different statement. My learned friend seems to suppose it is all on the ground of moral turpitude. The law does not rest on that in the smallest degree, except in an incidental way, and that is not what the evidence is ever offered for. The evidence is offered to show that the witness, having made a different statement at a different time from the one he has testified to, may be mistaken in what he now states, and he may be honestly mistaken. It does not necessarily follow, because a witness makes a mistake, that he is a man of moral turpitude; but when you show that a witness has made a different statement at one time from what he makes at another time, an inference of moral turpitude may or may not be derived from that fact, growing out of the circumstances of the case and the belief of the jury under all the circumstances whether it was a mistake by accident, by forgetfulness, by failure of memory, or whether it was a mistake designed. If it was a mistake designed, there is moral turpitude in it. If it was a mistake of memory, and he made a differ-

ent statement at a different time when his memory was fresher, it goes to show that he might be mistaken, and that he probably was mistaken. Now, on the point of whether you can contradict a witness where he does not state a thing positively, nothing is better settled than that.

Mr. BRADLEY. Let us have the authority.

Mr. PIERREPONT. It is never necessary for a witness to state on the stand any thing positively, and a witness never does in legal contemplation state any thing beyond his best recollection.

Judge FISHER. I think the case is decided by the case of *Crowley v. Page*, 7 Carrington & Payne, 791. I will read a reference to it from Roscoe's Criminal Evidence, page 183:

"Where the witness merely says that he does not recollect making the statements, evidence to prove that he did in fact make the statements is inadmissible; there must be an express denial. Per Tindal, C. J., *Pain v. Beeston*, 1 Moo. & Rob., 20.

"But where a witness was asked as to a statement which he neither admitted nor denied, Parke, B., held that evidence of the statement was admissible, observing, 'If the rule were not so, you never could contradict a witness who said he could not remember.' *Crowley v. Page*, 7 C. & P., 791."

If that be true, where he says, if his memory does serve him, it was thus and so, it seems to me a fair case of contradiction.

Mr. BRADLEY. I wish we had had this argument yesterday on our side. Yesterday the argument was exactly the other way.

Mr. PIERREPONT. I never argued but one side.

Mr. BRADLEY. When they called witnesses to sustain Susan Jackson, it was on the ground that she had been impeached by our calling a witness to contradict her. We had that side of the case then, and we thought we got along tolerably well.

Judge FISHER. Is it supposed that this thing of making assertions in court decides a question one way or the other?

Mr. BRADLEY. Your honor misunderstands me. I never dreamed of such a thing. I say I wish I had had the gentleman's argument on our side yesterday. I did not speak of the ruling of the court. I understood the ruling of your honor then to be, that it was admissible to support her character, because the testimony of a contradictory statement tended to impeach her. That being so, the argument made here now is inconsistent with the argument made yesterday; for it is said now it is not intended to impeach, but to show a want of recollection. That was our argument yesterday; and we thought that if it did tend to impeach, even although it was not for the purpose of showing moral turpitude, they could not, although the fact might have less weight, call witnesses to support her general character. Now, I want to apply that argument to the case to-day. The witness Carroll said over and over again, "I cannot fix the date except by Stewart & Ufford's books, but I know it was while Mr. Ufford was absent." He was asked, "Was it the 12th?" "I cannot say." "The 13th?" "I am not certain." "The 14th?" "I am not certain." Then he is asked, "To the best of your recollection, was it the 13th or the 14th?" and he says, "It was the 13th and 14th;" that is my best recollection, that is, speaking from the record of these books; it was during the absence of Mr. Ufford. The gentleman on the other side argues that this testimony tends to show what reliance is to be placed on his memory. Can we then call witnesses to sustain the character of Carroll? There comes the test. Can we call witnesses to show that Mr. Carroll is a perfectly fair and truthful man?

Judge FISHER. I do not decide this point on the argument of the gentleman. [Mr. PIERREPONT.] I decide it on this ground: if, where a witness obstinately refuses to say whether he did or did not speak thus and so, you can call another witness to prove that he did say thus and so, *a fortiori*, if he says, "I did say it; I could not have told him otherwise; if my recollection serves me, the best of my recollection is

that I did tell him the 13th and 14th," that statement may be contradicted. I should not put it on the ground of the argument of the counsel, with all due deference to him; I should put it on the ground I have stated.

Mr. BRADLEY. It was in reference to that I wished to call the attention of the court. I have said all I intended to say on the other point. Taking the case of Carroll, it is not the case of a reluctant witness, but one who said he fixed the dates by the book. He said, "Mr. Ufford left on the 12th, and returned on the 15th, and it was between those dates that the prisoner was in the store." He is asked, "Do you think it was the 12th, 13th, or 14th?" "Well," he says, "the best of my recollection is that it was the 13th and 14th." Now, is it proper for them to show that he did not say the 13th and 14th, when he states that he told the men so? It is not denied that he told them he could not fix the date except by reference to Stewart & Ufford's books, and that, referring to them, Mr. Ufford left on the 12th and returned on the 15th, and he was answering altogether, answering all the way through, from that fact. He was not a reluctant witness, not a recalcitrant witness, but a witness desiring to speak the truth, and yet speaking with uncertainty as to what he had said to parties who talked with him about the thing. I agree that if, as in a case before Lord Abinger, there was any reason to suppose this witness was intending to withhold the truth, it would present a very different aspect; but take that whole cross-examination, go through it, and it is for your honor to say whether the man was a fair witness or not, whether he meant to speak out what he could recollect. The ground on which Lord Abinger admitted such testimony was because the witness there was evidently intending to evade and say things to prevent contradiction. If there was any thing in this case of that sort about Carroll, your honor saw the witness, and of course will rule according to the impression made on your mind.

Judge FISHER. I think the question is admissible.

Mr. PIERREPONT. The rule has been that, even if he said he did not remember, he could be contradicted.

Mr. BRADLEY. You laid down the rule just the other way yesterday.

Mr. PIERREPONT. Where a witness, when pressed, will not give any answer, but says, "it is my best recollection," that is just as good as though he said it with the utmost positiveness.

Mr. BRADLEY. But you said the rule was inflexible yesterday, that a man who did not remember—

Mr. CARRINGTON. Greenleaf said so.

Judge FISHER. The question is decided. Go on with the examination.

Mr. CARRINGTON. According to Greenleaf there is a conflict of authorities.

Mr. PIERREPONT. (To the witness.) Now, state what Carroll said on that occasion.

Mr. BRADLEY. No; ask him the question, did he say so and so.

Mr. PIERREPONT. Very well. Did he say it was the 13th and 14th?

A. He did not mention any dates.

Q. Could you state what he said as to dates?

Mr. BRADLEY. Carroll was not asked what he said further than that.

Mr. PIERREPONT. Well, I will ask this, did he tell you that it was the 13th?

A. He was not talking to me. He was talking to Mr. Knapp.

Q. Did he say that to Mr. Knapp in your presence?

A. I did not hear any thing about the 13th mentioned.

Mr. MERRICK. You said he did not mention any date, as I understood you.

A. Yes, sir.

Mr. PIERREPONT. Did he say whether he could give dates or not?

Mr. MERRICK. What does that contradict?

Mr. PIERREPONT. What Carroll said in relation to dates.

Mr. MERRICK. Where is that question in the book?  
Mr. PIERREPONT. The question put to Carroll was this:

“Q. Do you remember you told him it was the 14th at all?  
“A. If my memory serves me, I think I did.  
“Q. Is it the best of your recollection that you did?  
“A. My best recollection is that I did. I think I told him it was the 13th and 14th.

Now, my question is, whether he did say it was the 13th and 14th?

Mr. BRADLEY. This witness has answered twice that Carroll did not mention any dates, and I object to any thing further.

Mr. PIERREPONT. Very well, that answers that part. Then on page 622 Carroll was asked, “Did you tell either Mr. Covell, Mr. Knapp, or Mr. Roberts that you could not identify him,” and he answered, “I did not. I never spoke to Roberts. I did not tell that to either of them.”

Mr. BRADLEY. Did he speak to Roberts? That is the question.

Mr. PIERREPONT. My question is this, Did he say that he could not identify the prisoner?

Mr. MERRICK. Did he tell you that he could not identify the prisoner?

Mr. PIERREPONT. Or Knapp, or Covell, or you, either, at that time?

Judge FISHER. In your presence?  
The WITNESS. Nothing of that kind; there was no conversation of that kind.

Q. (By Mr. PIERREPONT.) State whether he said that the prisoner was there on two days.

Mr. BRADLEY. Where is the passage that is to contradict?

Mr. PIERREPONT. The passage is on page 619.

Mr. BRADLEY. You have just been over all that ground; the court read it just now.

Mr. PIERREPONT. On that page is this:

“Q. What did you state to Mr. Knapp about the date when you saw that man who you thought might be the prisoner? When did you tell him you saw him?  
“A. I think I told him the 13th and 14th of April.”

Mr. BRADLEY. Your honor will observe that the very identical question has been asked and answered twice, that he heard nothing about dates, as far as he recollects.

Mr. PIERREPONT. Now, my question is, Did Carroll state those two dates, the 13th and 14th.

Mr. BRADLEY. I object.

Judge FISHER. The answer of the witness is that he said nothing about dates; or, rather, the witness says he heard nothing about dates.

Mr. PIERREPONT. The question is, Did he give those two dates?

Mr. BRADLEY. I object to the question; the witness has answered three times.

Judge FISHER. But his answer is simply that he did not hear any thing about dates.

Mr. BRADLEY. Then why press, “Did he give any dates?”

Mr. PIERREPONT. I do not want any misunderstanding about whether he says he did or did not give those two dates, or either of them. Did he name either of them?

Judge FISHER. He may answer categorically.

Q. (By Mr. PIERREPONT.) Did he name the 13th and 14th of April?

A. He spoke of them all together; he did not name them separately.

Q. The question is, Did he say that he saw the man on the 13th and 14th?

A. He said that Mr. Ufford was in New York, and that was the way he got at it.

Q. My question is, Did he name the 13th and 14th; did he say that he saw him on those days?

A. When Mr. Knapp asked him about it, he replied that that was the way he got at it, that those were the dates Mr. Ufford was away.

Q. My question is, Did he say that he saw him on the 13th and on the 14th?

A. I do not think he made use of any date.

By Mr. MERRICK:  
Q. He said that he got at the time by looking at the book and seeing when Ufford was in New York?

A. Yes, sir.

JOHN W. BROWNING,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What is your occupation?  
A. I am a clerk in the office of the Commissary General of Prisoners.

Q. Do you know whether, as late as the 14th of April, 1865, any confederate prisoners were left at Elmira?

Mr. BRADLEY. Do not answer that question.

Mr. MERRICK. Your honor has ruled upon all that before.

Judge FISHER. It is objected to, I presume, on the ground that it is not in reply to any evidence offered by the defense.

Mr. BRADLEY. It is objected to on the ground that the prosecution ruled out and prevented us from giving any evidence upon that subject.

Judge FISHER. The evidence of General Lee was ruled out altogether. Of course, if this is intended in reply to that, it cannot be given in, because there is nothing to which it can reply.

Mr. PIERREPONT. The proposition is to show the number of confederate prisoners, 5,000 and odd, confined at Elmira on the 14th of April. That is the object of it and no other; to show that on the 14th of April, 1865, there were 5,000 and odd—

Mr. BRADLEY. I hope the gentleman will not go on and state any thing about it after the court has ruled it out. I do not care if there were 50,000.

Judge FISHER. (To Mr. PIERREPONT.) I ruled out the testimony of General Lee on your objection.

Mr. PIERREPONT. The proposition was to show what the prisoner was there for.

Mr. MERRICK. Has not your honor decided the question?

Judge FISHER. Yes.  
Mr. MERRICK. Then, I think, it is time for argument to cease.

Mr. PIERREPONT. Sometimes it is proper to have argument after a speedy decision.

Mr. BRADLEY. It is not proper to make a statement after the decision.

Mr. PIERREPONT. I have heard it done sometimes.

Mr. MERRICK. I do it myself, with great deference, but never without permission.

Judge FISHER. I cannot see what connection the fact that there were 5,000 rebel prisoners confined at Elmira on the 14th of April has with this case, unless it be in reply to the evidence offered by the other side, of General Lee, and which was ruled out on the objection of the prosecution. I should have no hesitation in admitting it if I could see its relevancy.

Mr. BRADLEY. Let them open that part of the case, and we will not object.

Mr. PIERREPONT. I will make a specific offer. I offer to show that there were 5,025 rebel prisoners confined at Elmira on the 14th and 15th of April, 1865. It is overruled, I understand.

Judge FISHER. Yes, sir.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 91. WASHINGTON, TUESDAY, SEPTEMBER 3, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 90.*

Mrs. MARTHA A. FITHIAN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you live ?

A. At the corner of Tenth street and C street south, Washington.

Q. Did you formerly live in the city of Philadelphia ?

A. Yes, sir.

Q. What was your former husband's name ?

A. Alderman Joseph Shermer.

Q. Did you know John Lee while he lived in Philadelphia, while your husband was an alderman and Lee was an officer ?

A. Yes, sir.

Q. Did you know his reputation among the people there for truth and veracity ; and, if so, state whether it was good or bad.

A. I knew his reputation as an officer under my husband.

Judge FISHER. The question is as to his reputation for truth and veracity—his general reputation—what people generally said about him as being a man of truth and veracity ?

A. It was good at the time he was an officer under my husband.

JOHN E. HATFIELD,

a witness for the prosecution in rebuttal, affirmed and examined.

By Mr. CARRINGTON :

Q. Where do you live ?

A. No. 339 Tenth street, in this city.

Q. How long have you been living in Washington ?

A. I have been off and on here since 1863.

Q. What is your occupation now ?

A. I am doing nothing now ; I am living with my son.

Q. Did you formerly live in Philadelphia ?

A. Yes, sir ; I lived there for a number of years.

Q. Did you know John Lee in Philadelphia.

A. Yes, sir.

Q. How long did you know him ?

A. I think about seventeen or eighteen years.

Q. Did you know his general reputation among the people there for truth and veracity ; and, if so, state whether it was good or bad.

A. To my knowledge, I never heard it questioned.

Cross-examined by Mr. BRADLEY :

Q. Did you know him when he was here as one of Baker's detectives ?

A. Yes, sir ; I met him.

Q. Were you intimate with him—did you know his associations ?

A. I met with him frequently.

Q. Did you know the officers and men with whom he associated of Baker's force and O'Beirne's force ?

A. I did not ; I saw him in the office or at the front door of the office.

Q. Did you know the people that he was mingling with there ?

A. No ; I saw him in company with some of the detectives, but I did not know their names.

WILLIAM T. PARKER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you live ?

A. At the corner of Seventh and T streets, in this city.

Q. How long have you been living in Washington.

A. Since 1864.

Q. You are a clerk in the Treasury Department ?

A. Yes, sir.

Q. Where did you formerly reside ?

A. In Philadelphia.

Q. Did you know John Lee, formerly a magistrate here ?

A. Yes, sir.

Q. Did you know his reputation among the people with whom he associated for truth and veracity ; and, if so, state whether it was good or bad.

A. I never heard it questioned.

Q. How long did you know him ?

A. Ever since I was a little boy.

By Mr. BRADLEY :

Q. Did you know him here when he was in Baker's detective corps or under Colonel O'Beirne ?

A. I did not know him when he was in the detective service here.

WILLIAM T. PARKER, SR.,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you live ?

A. In Philadelphia.

Q. What is your business there ?

A. I was in public business twenty-odd years ; kept a restaurant at Sixth and Chestnut streets.

Q. Did you know there John Lee ?

A. Yes ; I knew him as an officer in Philadelphia when I was in public business.

Q. How long did you know him ?

A. I knew him for a number of years ; I cannot tell how long.

Q. He was an officer there ?

A. Yes, sir.

Q. Did you know his reputation for truth and veracity there ?

A. I never heard it questioned.

By Mr. BRADLEY :

Q. Did you know him while he was here in the detective service?

A. No, sir.

The court took a recess until to-morrow morning at ten o'clock.

#### Fortieth Day.

FRIDAY, July 26, 1867.

The court re-assembled at ten o'clock a. m.

Judge FISHER. Before we took a recess yesterday, witnesses were examined by the counsel for the prosecution, to prove, in reply to the testimony offered by the defense, that the telegraph line between Washington and Elmira, New York, was in good working order, and that communications were passed to and fro between these two points on the 12th, 13th, 14th, and 15th of April, 1865, and witnesses were also examined who testified as to the running of the trains between Washington and New York on the 15th and 16th of April, 1865. After the evidence had been given by the witnesses, the counsel for the defense moved that it be stricken out, upon the ground that it was not responsive to the testimony offered by the defense to establish an *alibi* on the part of the prisoner. In support of their motion, the counsel for the prisoner contend that the rule by which evidence offered in reply is to be admitted or rejected is, that no evidence which might have been addressed originally in support or confirmation of the charge laid in the indictment can be received by the court as evidence in reply, and that the only evidence which can be given in reply is that which goes to cut down the case on the part of the defense, without being in any way confirmatory of the case on the part of the prosecution. In support of that proposition *The King against Hilditch and others*, 5th Carrington & Payne, 299; and the case of *The King against Stimpson*, 2d Carrington & Payne, 415; and the case of *The United States against Hanway*, 2d Wallace, Jr., 139; and the case of *The United States against Gardiner*, 3d Crawford's Opinion, page 62, were relied upon.

These are all *nisi prius* cases; the first is the case of *The King against Stimpson*, decided by Baron Garrow, on the trial of an indictment for larceny, when the case for the Crown had settled solely on the fact of recent possession of the stolen articles by the prisoner, who, by way of defense, called a witness who had proved that he had bought the property from a third person. In reply to this testimony for the defense, the counsel for the Crown called said third person to prove not only that the witness did not buy the property of him, but that he saw the prisoner steal it. Baron Garrow held that this last evidence was only admissible so far as it went to destroy the case set up on the part of the prisoner; that is to say, that the witness for the Crown could only be allowed to testify that the prisoner did not buy the property of him, and could not be allowed to testify that he saw the prisoner steal it, because the latter evidence would be a confirmation of the original case, and that it was only allowable to give in reply evidence which goes to cut down the defense, without being a confirmation of the original case. The case of *The King against Hilditch and others* was decided by Justice Taunton upon the authority of the case of *The King against Stimpson*. As I said before, these are mere *nisi prius* decisions, and, able and learned as Baron Garrow and Justice Taunton may have been, I undertake to say they are utterly without reason to support them. They are both summarily disposed of by Mr. Phillips in his *Treatise on Evidence*, (page 410.) in which, speaking of Baron Garrow's decision, he says: "The stealing of the goods by the prisoner would be strong evidence that he did not buy them." So it may be remarked of the case decided by Justice Taunton, that the evidence offered in reply to the evidence of an *alibi* set up by the prisoners in that case, although it showed a confirmation of the original case, was cer-

tainly proof that the prisoners were not where the *alibi* attempted to place them.

I think that a moment's reflection will show that both these decisions, hurriedly made as they were, without argument or consideration, are inconsistent with sound reason, common sense, and good policy. Certainly no person who has ever attempted the duties of a prosecuting attorney can fail to appreciate the unreasonableness of these decisions. It is utterly impossible for the prosecution before the trial to know the whereabouts of the accused for days or weeks before the commission of the act charged against him, or to anticipate the various contrivances which may be resorted to by way of defense; and it is unjust, as well as unwise in policy, to require that the prosecution should meet all these defensive contrivances, and have witnesses in attendance, at great expense, for that purpose, or for the purpose of proving the whereabouts of the prisoner for days together, in order to make out his original case, or else be deprived of his evidence in reply.

Let us take the case decided by Baron Garrow as an example. The prosecution then, having found the property in the recent possession of the prisoner, had a right, by the rules of law, to presume that he had stolen it, and had the right there to rest his case, and, in the absence of defensive proof, to demand a verdict of conviction. As theft is an offense almost always committed with the greatest secrecy, he might have summoned the entire vicinage without being able to find a witness who saw the act of larceny, and to say that when the prisoner had undertaken to show that he had bought the property of a third person, that the third person could not testify that he saw the prisoner steal the property, is a refinement of charitable construction wholly inconsistent with good sense and sound policy.

The decision of Justice Taunton is even more unreasonable. There the prisoners were indicted for robbery committed in a particular locality. They attempted an *alibi* at such a distance from the place where the robbery was alleged to have been committed as to make it impossible for them to have been present there. Justice Taunton decides that the prosecution could not prove them to have been near the place of the robbery, because that would tend to prove that they committed the robbery by proving that they were near enough to have done it, thus driving the prosecution to admit the *alibi* and abandon the case, or disprove the particular *alibi* offered in defense, by showing them to have been at a place still farther away from the scene of the robbery than the attempted *alibi*, and thus making for the prisoners even a better defense than they made for themselves. In this case it was no part of the original case for the Crown to show where the prisoners were at any other time than that at which the act of robbery was committed. The Crown was not obliged, and it would have been improper that it should have attempted, to go into the history of the prisoners one hour before the commission of the act.

The case in 2d Wallace, Jr., is altogether different. There the Government cut its case in two by proving the act committed by Hanway, which they alleged to be treason, and withholding the evidence of pre-concert on his part in proving their original case, and offered this evidence of pre-concert only by way of reply to defendant's evidence, and Judges Grier and Kane rightly decided that the proof was inadmissible. The true rule on this subject may be inferred from the brief but sensible opinion of Judge Kane, who says: "The two elements of the crime are the act and the pre-concert. It is for the prosecution to make out both, and by making evidence of pre-concert they fail in their original case. The evidence which is now offered is merely to prove that pre-concert; it was an indispensable element of the original case. It seems to me, therefore, that it cannot be introduced as rebutting evidence."

In the case cited from Judge Crawford's Opinions, all that was decided there was that testimony introduced

in reply should conform strictly to the defense, and meet what it had advanced, and he cites with favor the rule laid down by Phillips, that the evidence in reply must bear directly or indirectly upon the subject-matter of the defense, and ought not to consist of new matter unconnected with the defense, and not tending to control or dispute it. In my opinion, any evidence may be given in reply which tends to disprove the matter set up in defense, and which it was not necessary to have proved in making out the original case.

In the case which we are now trying it was not necessary to prove that the prisoner at the bar was ever in New York city or elsewhere than in Washington; it was not necessary to prove that he came here from Elmira on the 13th and 14th. It was sufficient for the original case to prove that he was here participating in the deed of murder, and unnecessary to trace his history further either in the past or future. When it is attempted to show that he was at Elmira, or some other place in the State of New York, at such a time as would have made it impossible for him to be present here at the time of the murder, common sense would certainly dictate to men of but ordinary intelligence and reflection that to prove him on the cars coming in this direction at such a time as would place him here on the night of the murder is directly responsive to the matter set up in defense.

I shall, therefore, not strike out the evidence given as to the running of the trains between here and New York, as delivered yesterday, unless the counsel for the prosecution shall have failed in some way to connect the prisoner with one of those trains.

The testimony respecting the telegraphic communication between Elmira and Washington, whereby it was possible for the conspirators to communicate with the prisoner, stands upon the same footing, and will be stricken out if the prosecution shall fail to connect the prisoner with the conspiracy by that instrumentality.

Mr. BRADLEY. I beg leave to mention to your honor that we did not object to the evidence they offered showing the means of communication between Elmira and Washington. Your honor adverts to that. There is no objection to that.

Judge FISHER. I thought that was objected to also.

Mr. BRADLEY. No, sir; it was the telegraphic communication between Elmira and Washington and the transportation from here to New York on the 15th of April, 1865. I desire an exception to be noted to the ruling of the court.

FRANKLIN FRAZER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Montrose, Pennsylvania.

Q. What is your profession?

A. Attorney-at-law.

Q. What is your present office?

A. I am now practising as an attorney-at-law.

Q. Have you been prosecuting attorney there?

A. Yes, sir.

Q. How long have you lived there?

A. It is my native place.

Q. Do you know Dr. Bissell?

A. I have had but very little personal acquaintance with him.

Q. Do you know his general reputation for truth and veracity?

A. I know his reputation about Montrose for truth and veracity from about 1856 up to about 1862.

Q. From 1856 to 1862 what was that reputation about Montrose?

A. It was bad.

Q. Was it very bad?

A. He was not considered worthy of belief.

No cross-examination.

G. B. ELDRED,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. In Montrose, Pennsylvania.

Q. How long have you lived there?

A. Some thirty years.

Q. Do you know Dr. Augustus Bissell, who was examined here as a witness?

A. I know Dr. Augustus Bissell.

Q. Do you know his reputation in that region as a man of truth?

A. While he was living there, for some five or six years, in that vicinity, I knew it.

Q. What kind of a reputation did he acquire in those five or six years?

A. A bad one.

Q. Was it very bad?

A. I think it was for truth.

Q. I forgot to ask you, what was your business?

A. I am prothonotary of the court.

No cross-examination.

GORDON Z. DIMOCK,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What is your occupation?

A. Physician.

Q. Where do you reside?

A. Montrose, Pennsylvania.

Q. Did you know the reputation of Dr. Bissell, for five or six years, when he lived there?

A. I did.

Q. State to the jury whether it was a good or bad one?

A. A very bad one.

No cross-examination.

C. CUSHMAN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In Montrose, Pennsylvania.

Q. What county is that in?

A. Susquehanna county.

Q. What is your occupation?

A. Cabinet-maker.

Q. How long have you lived there?

A. Forty-three years.

Q. Do you know the reputation which Dr. Bissell, who testified here, acquired while he lived there for some five or six years?

A. Yes, sir.

Q. Was it good or bad?

A. Bad.

Q. Was it very bad?

A. Yes, sir.

No cross-examination.

Dr. J. W. COBB,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. What is your residence?

A. Montrose, Pennsylvania.

Q. What is your occupation?

A. Physician.

Q. Do you know the reputation which Dr. Bissell acquired in that region, while he lived there, for truth and veracity?

A. It was bad.

Q. What degree of bad?

A. Very bad.

No cross-examination.

A. D. BUTTERFIELD,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. Montrose, Pennsylvania.

Q. How long have you lived there?

A. Ever since I was born.

Q. Do you know the reputation which Dr. Bissell acquired, while he lived there, for truth?

A. I do.

Q. Will you tell us whether it was a good or a bad one?

A. A bad one.

Q. Was it very bad?

A. It was.

By Mr. CARRINGTON:

Q. What is your business?

A. I am a merchant.

No cross-examination.

J. R. FLETCHER,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside and what is your occupation?

A. I reside in Montrose, Pennsylvania. I keep a livery stable.

Q. Have you lived there many years?

A. I have lived in Montrose nine months.

Q. Do you know any thing about the reputation of Dr. Bissell there for truth?

A. I do not know much about it in Montrose, only what I have heard. I formerly knew him in Bradford county.

Q. Do you know about it there?

A. Yes, sir.

Q. Will you tell us what town in Bradford county he lived in?

A. Leraysville, Pike township.

Q. Was he raised there?

A. No, sir; I was.

Q. Did he have a reputation there of any sort?

A. He had a pretty bad one.

Q. Was it very bad?

A. It was very bad; I knew him six years ago, in Leraysville, in Bradford county.

Cross-examined by Mr. BRADLEY:

Q. What were you going to say about him? You were going to say something about him. He had a bad reputation, you say, for truth and veracity?

A. Yes, sir.

Q. I thought you were going to say something else.

A. No, no.

Q. How long ago was that?

A. When I first became acquainted with him, in 1860.

Q. Did he live there then?

A. Yes, sir; I think it was in 1860 or 1861 he moved into Leraysville. He came from Waverly, I think, to Leraysville.

Q. He did not live at Montrose then from 1856 to 1862?

A. I think not; I never knew him when he lived in Montrose; I never saw him but twice in Montrose.

Q. You think you knew him in 1860 or 1861?

A. I think I did.

Q. At that time he was living in Leraysville, Pike township, Bradford county?

A. Yes, sir.

Q. How long did he live there?

A. I think his family lived there about three years, and he was there a good share of the time.

Q. He was there about three years; that is, for three years after 1860 or 1861?

A. Yes, sir.

Q. You did not know him before that?

A. No, sir; only I heard there was such a man.

Mr. PIERREPONT. We want to put in evidence here, if your honor please, the Statutes at Large of 1865.

Mr. BRADLEY. The Statutes at Large are not matters of evidence.

Mr. PIERREPONT. They are matters of evidence if we choose to make them matters of evidence.

Mr. BRADLEY. No; you cannot make them matters of evidence.

Mr. PIERREPONT. We can make them evidence.

Mr. BRADLEY. I never heard of it before. I learn law every day, though.

Judge FISHER. The court must take judicial notice of them.

Mr. BRADLEY. Can they make a general statute evidence?

Mr. PIERREPONT. Yes, we can make a general statute evidence.

Mr. BRADLEY. I object to it.

Mr. PIERREPONT. The court can take judicial notice of it without its being evidence, but they can take notice of it when it is made evidence, and it may be made evidence.

Mr. BRADLEY. I object, and the court may rule upon it.

Judge FISHER. I cannot see the purpose for which it is made evidence, when the court and jury must take judicial cognizance of the statutes.

Mr. PIERREPONT. The purpose of it is this: In this statute is the act in relation to the reward in this case and the time of its being withdrawn; that is all. I do not care in what mode it gets before the court and jury, but I suppose I am bound to offer it in evidence on that point.

Mr. CARRINGTON. As I understand, the court will take judicial cognizance of it, certainly.

Judge FISHER. Yes.

Mr. PIERREPONT. We relieve ourselves from any doubt about it by offering it in evidence.

Mr. BRADLEY. I suppose the evidence will be read to the jury, and if they are going to read all the statutes of that year, I do not want to stay. When they begin, I shall go away and take a recess.

Judge FISHER. I presume the gentlemen have the right to read that to the jury in their argument, if they wish to make an argument, and we can take judicial notice of it.

Mr. PIERREPONT. That is all we want.

Mr. BRADLEY. That is deciding the question beforehand. They offer the statutes of that year in evidence. I object to it.

Judge FISHER. Very well. I do not see what is the use of taking judicial cognizance of an act of Assembly or an act of Congress if it cannot be used. You take notice of the fact that Washington city is in the District of Columbia. Of course, you take notice of it for the purpose of using it in argument, if necessary.

Mr. MERRICK. I suppose, if they want to use any part of it as evidence, they have a right to read it to the jury, and they can read it now.

Mr. BRADLEY. Let the offer be read, and my objection to it.

Mr. PIERREPONT. We offer in evidence volume 13 of the Statutes at Large, the part relating to the award in this case. I cannot name the statute until I get the book. I believe it is on the last page.

Judge FISHER. We had better have that, so as to see what it is. It is not worth while to offer the whole pamphlet.

Mr. PIERREPONT. We wish only to read that part, and we have stated what we wish to read, and are quite indifferent as to the mode by which it is read.

Mr. BRADLEY. What is the ruling? My objection is to that, and I wish a ruling upon it.

Mr. CARRINGTON. Wait one moment. I do not want to lumber the record with any unnecessary exceptions.

Mr. BRADLEY. Do you mean to say you can offer in evidence things of which the court will take judicial notice?

Mr. CARRINGTON. No; just the other way. I say the court takes judicial notice of it.

Mr. BRADLEY. Do not embarrass the case. I want to know what the ruling is on that.

Mr. CARRINGTON. I do not want a ruling at present. Greenleaf says that very thing.

Mr. BRADLEY. I object to it. I want the ruling of the court on it, and then we can proceed to something else.

Mr. CARRINGTON. Your honor does not want to rule on it when it is unnecessary to do it.

Mr. BRADLEY. Then it is withdrawn.

Mr. PIERREPONT. The offer to read it in evidence is not withdrawn.

Mr. BRADLEY. That is another question, the offer to read it in evidence. If they want to read it in evidence, they must read it now.

Mr. PIERREPONT. We have sent for it.

Mr. BRADLEY. Then, again, if the court please, I have another objection to it. Unless it is a fact of which the court can take judicial notice, I object to it as not being rebutting proof.

Mr. PIERREPONT. It will be rebutting proof to the testimony of Cameron.

Mr. BRADLEY. Not at all. Cameron only says he heard it had been withdrawn. He did not say one word about the manner of its being withdrawn, or the fact that it had been; he only said he heard it had been withdrawn. They cannot offer any rebutting proof to that.

Mr. MERRICK. He says he told McMillan that he had heard it, in order to prevent McMillan from pursuing Surratt with a view of getting the reward; he did not know it.

Mr. WILSON. First he said it had been withdrawn.

Mr. BRADLEY. [After a pause.] Are we to wait until the statute is found?

Judge FISHER. I want to see the precise statute.

Mr. PIERREPONT. We propose to put in evidence page 778 of the United States Statutes at Large, vol. 13, Appendix No. 5.

Mr. MERRICK. Is that a statute?

Mr. PIERREPONT. It is an order.

Mr. BRADLEY. [After examining it.] That is not evidence, if the court please. It is no part of any statute at all. It is merely an order signed, "E. D. Townsend." That is what they offer in evidence. That book is the Statutes at Large, published by act of Congress, and that might be used in evidence; but that paper appended to it is no part of a statute, no part of an act of Congress.

Mr. PIERREPONT. I suppose that that is as much a part of the acts of this Government as any other that is published in that volume, so far as relates to the sanction of the Government.

Mr. BRADLEY. I have nothing to say further than to make the objection.

Mr. CARRINGTON. If your honor please, in my view of it, and I think it proper to state it, the court will take judicial notice of the proceedings of Congress and of the executive departments. I was trying to refer to the note showing that the collection of Little & Brown is the accredited publication. I have seen it, and there is no doubt about it, that this is the accredited book containing the acts of the different departments of the Government. The court will take judicial notice of it as such, and it may be read to the court or

jury without further proof, whether it is an act of Congress or an act of any one of the departments. It says so in so many words.

Judge FISHER. There is a resolution of Congress, passed September 26, 1850, which authorizes Little & Brown to publish the annual Statutes at Large.

Mr. BRADLEY. We admit that that is the authorized publication of the Statutes at Large. We object to the addendum. I have no doubt that that is an authoritative book so far as the resolution of Congress extends, but no further.

Mr. CARRINGTON. I submit to your honor that it is an authoritative book so far as it professes to give the official action of any department of the Government, and that the court will take judicial notice of what is therein recorded as the act of any department of the Government.

Mr. BRADLEY. I have nothing further to say.

Mr. CARRINGTON. I do not think I am mistaken about it, and I think I can refer your honor to authority which is conclusive.

Judge FISHER. I am inclined to let the book in. This book is printed under the authority of the State Department, authorized by an act of Congress, sent out to the world under executive authority, and we take what it contains to be verity.

Mr. BRADLEY. Note an exception.

Mr. PIERREPONT. Mr. WILSON and Mr. CARRINGTON are now out about some witnesses who are expected to arrive, but are not here. If the other side have any impeaching witnesses, they might go on as they did the other day.

Mr. BRADLEY. We propose to wait now until you close the rebutting evidence. Never mind what witnesses or evidence we have. The case has assumed a new aspect entirely.

Mr. MERRICK. (To Mr. PIERREPONT.) Do you propose to read that order to the jury?

Mr. PIERREPONT. Yes; and I will read it now:

[General Orders No. 164.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,  
WASHINGTON, November 24, 1865.

Ordered, That—

I. All persons claiming reward for the apprehension of John Wilkes Booth, Lewis Payne, G. A. Atzerodt, and David E. Herold, and Jefferson Davis, or either of them, are notified to file their claims and their proofs with the Adjutant General for final adjudication by the special commission appointed to award and determine upon the validity of such claims, before the 1st day of January next, after which time no claims will be received.

II. The rewards offered for the arrest of Jacob Thompson, Beverly Tucker, George N. Sanders, William G. Cleary, and John H. Surratt, are revoked.

By order of the President of the United States:

E. D. TOWNSEND,  
Assistant Adjutant General.

Mr. BRADLEY. I have made a two-fold objection to that, and I desire to have an exception noted to the ruling of the court.

GEORGE GREEN,

a witness for the prosecution in rebuttal, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In Waverly, New York.

Q. What is your occupation there?

A. I have been policeman and constable of the borough for the last three years, or going on three years.

Q. Have you known a Dr. Augustus Bissell?

A. I have.

Q. Have you conversed with him?

A. I have.

Q. Have you conversed with him about this murder of Lincoln?

A. I have.

Q. Do you know what his reputation is in that region for truth?

A. It is considered very bad.

Q. Have you had any personal conversation with him

in relation to his feelings about the murder of Mr. Lincoln?

Mr. BRADLEY. Hold on there. It is bad enough to kill the man for want of truth without trying to stab him afterwards.

Mr. PIERREPONT. Well, you can take the witness.

Mr. BRADLEY. I do not want him. (Laughter.)

Judge FISHER. Call another witness.

Mr. CARRINGTON. If your honor please, we have several important witnesses on the way. I do not know whether it would be proper for me to state what we expect to prove by them. I could state it from information received, but it is not my habit to say any thing—

Mr. BRADLEY. Do you mean that they are here or do you want indulgence?

Mr. CARRINGTON. They are on the way. I will state to the court that we will close our case now, with the understanding that if those witnesses arrive, if the counsel on the other side will agree, we will examine them. If not, we will reserve the right to make the application to the court before the case is closed.

Judge FISHER. Do you propose to close the case here now?

Mr. CARRINGTON. We will now close the case, reserving the right, if those witnesses arrive before the case is closed, to examine them.

Judge FISHER. When you close you close, unless you have some arrangement with the other side.

Mr. CARRINGTON. I did not know whether your honor had decided that question. It is in the discretion of the court. I know that your practice has been to hold us pretty closely to the rule, and if we close, not to open the case again, and I do not wish to argue against the practice of the court; but still, if those witnesses should appear to-morrow morning, before the counsel for the prisoner have closed their case, it will be a question whether we will be allowed the privilege of examining them.

Mr. PIERREPONT. We must make application if they arrive, and let the court decide it.

Mr. CARRINGTON. Exactly; we shall make the application if they do come, and it will be for your honor to say whether they can be examined.

Judge FISHER. Do you not expect them here until to-morrow morning?

Mr. CARRINGTON. No, sir; but we do not feel that it is right for us to detain the court.

Mr. PIERREPONT. No train comes in until six o'clock this evening; so that it amounts to the same thing.

Judge FISHER. A train arrives about this hour.

Mr. PIERREPONT. Not from New York.

Mr. CARRINGTON. Then, sir, upon consultation with my associates, we have determined to close the case now, reserving, however, the right to make this application to the court to examine these witnesses if they should appear in court before the case is closed, and it will be then for your honor to say whether we shall examine them or not.

Mr. BRADLEY. Do I understand you, gentlemen, to say that you have no witnesses in attendance now?

Mr. CARRINGTON. I believe not a single one.

Mr. BRADLEY. I should like to know—never mind, though.

Mr. CARRINGTON. I do not know of any.

Mr. BRADLEY. Perhaps I do know something. May-be I know more about it than you.

Mr. CARRINGTON. That we have witnesses?

Mr. BRADLEY. You close your case, I understand?

Mr. CARRINGTON. Yes.

Mr. BRADLEY. Very well. Just note it, Mr. Clerk. May it please the court, this takes us entirely by surprise; for we were notified yesterday that they were going to bring various witnesses about the line between here and New York and other matters, and therefore we have summoned witnesses to be here to-morrow

morning, anticipating that they would certainly occupy all the day if the evidence was admitted which your honor has ruled should be admitted. We will ask indulgence for a short time, until we consult and see what we can do under such circumstances. I am disposed to close the case at once—I state that frankly—without waiting for the testimony in behalf of Dr. Bissell. He is an utter stranger to me. I summoned him upon information I received from New York. It is due to him that he should have an opportunity to meet this terrible assault upon him. If he does not, I say frankly I shall ask leave to withdraw his testimony. He is the only witness who has been imposed upon us yet, if he has been. I have communications from New York and Waverly that witnesses will be here; but we must ask the court to indulge us now for a brief consultation. We desire half an hour to talk the matter over.

Judge FISHER. Very well; the court will take a recess for half an hour.

The court accordingly took a recess for half an hour, re-assembling at twelve o'clock.

Mr. BRADLEY. We shall be able to proceed but a short distance, if your honor please, with our sur-rebuttal, and it will be confined exclusively to the character of Dr. Bissell. Some of his friends and neighbors have arrived here and others are on the way. The greater part of them cannot get here, I am afraid, before eight o'clock to-morrow morning, or probably six o'clock in the evening. We propose to examine those who are here, and then go on with the questions already submitted to the court, as to striking out the evidence which has been suggested for the consideration of your honor, and thus employ the time of the court; and, if the witnesses come in before the summing up of the case is begun, of course we shall have a right to introduce them as part of our case. At present we will examine some witnesses from Waverly, who have just arrived covered with dust, and who are very unwilling to come into court just now; but we propose to examine them at once, and save the time of the court.

ALVA JARVIS,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. I reside in the village of Waverly, New York.

Q. How long have you resided there?

A. About twenty-three years.

Q. Do you now hold, or have you lately held, an official position there?

A. I have held the office of justice of the peace and other offices.

Q. For a number of terms?

A. Yes, sir.

Q. Are you generally acquainted with the inhabitants in Waverly?

A. Very well; I know the people generally.

Q. Do you know Dr. Augustus Bissell?

A. I do.

Q. How long have you known him?

A. I knew him before I came there a year or two, and I have known him ever since. I have known him probably twenty-five years, at least.

Q. State if you have had opportunities of learning the estimation in which he is held by the people of that neighborhood as a man of truth and veracity.

A. Yes, sir.

Q. State what his general reputation is, among those people, as a man of truth and veracity.

A. His general reputation as a man of truth and veracity, among the most respectable part of the community, or at least a portion of them, perhaps a majority of them, is to be considered good.

Q. Would you have any hesitation in believing him on his oath from that general reputation?

A. No, sir; I should not. I have had a great deal to do with him, and have kept an office in his building, and had an opportunity, perhaps, to know him as well as any one in Waverly.

Cross-examined by Mr. PIERREPONT:

Q. Did you know the witnesses who came here the other day to testify from Waverly?

A. I did.

Q. Were they the respectable portion of your inhabitants?

A. Generally so, but men of strong prejudices.

Q. Now, if I understood you, you said that a majority of the respectable portion spoke well of him?

A. I did say so.

Q. Was that what they generally said? Did the majority speak well of him?

A. I never heard any thing against Dr. Bissell's character until this trial commenced.

Q. Before this did the people speak well of his general character—generally?

A. Generally so. There were a few individuals that made attacks upon him.

Q. You say you knew these people who came here the other day, and they were as respectable as any you have there?

A. Pretty generally.

Q. Do you know any more respectable people than those?

A. I know as respectable.

Q. Do you know any more so?

A. I do not know that I could say I do particularly.

Q. You say you have known him twenty-five years. Where did you first know him?

A. In Connecticut.

Q. Where?

A. In Litchfield county, at his father's place.

Q. What was he doing?

A. He was then living with his father.

Q. What was he doing twenty-five years ago?

A. I do not know that he was doing any thing more than that his father had a large farm, and I happened there in that town and called on him on business.

Q. When did you next know him?

A. I next knew him in Waverly.

Q. When did you first know him in Waverly?

A. It was about ten years ago, I should think.

Q. What was he doing in Waverly?

A. He came there as a physician.

Q. Did he stay there as a physician?

A. He did, for three or four years, I think.

Q. What then did he do?

A. He purchased a building and went into the saloon business.

Q. Keeping an eating and drinking-house was it?

A. Well, he kept ale, &c.

Q. Did you ever go into the place while he was there?

A. Yes, sir.

Q. Frequently?

A. I had an office in his building.

Q. Where he kept this saloon, this eating and drinking-place?

A. No, sir; there was a partition between.

Q. But in the same building?

A. Yes, sir.

Q. You were a justice of the peace?

A. I am not now.

Q. Then were you?

A. Yes, sir.

Q. While he kept that eating and drinking-saloon you had some opportunity to know about him, had you not?

A. Yes, sir; I thought so.

Q. Do you know why he quit being a doctor and went to the eating and drinking-saloon business?

A. I do not know that it would be evidence, but, as I understood, he thought it would be an object to purchase that building and go into that. He said he did

not intend to follow it up for a living, but was going to fit it up and start it, &c.

Q. How long did he keep at it—starting it?

A. I should think probably two years or so.

Q. After he got it started what did he do?

A. He rented it.

Q. Then what did he do?

A. He left Waverly pretty soon after that.

Q. Do you know where he went to?

A. He went to Pennsylvania, and was there a short time with his friends, and went from there to New York.

Q. Did he ever return to the doctoring?

A. Not at Waverly.

Q. You said that these people were people of prejudices, did you not?

A. I think they are men of pretty strong prejudices.

Q. What do you mean by that?

A. Religious prejudices.

Q. Do you mean that they are irreligious?

A. No, sir, I do not.

Q. They are rather in favor of religion?

A. They had a little difficulty with Mr. Bissell in the Methodist church, and it created a difficulty between them.

Q. Did he bear a good repute among them for truth?

A. I do not know. I do not know any thing to the contrary.

Q. Did you ever hear them talk about him as a man of truth?

A. I never did, not any of those who were here.

Q. Did you hear people generally discuss him as a man of truth?

A. I never heard his truth and veracity doubted.

Q. Did he bear a good character as a man of truth?

A. I do not know that I ever heard any particular discussion upon it.

Q. Do you wish to tell these jurymen that he bore a good character as a man of truth, the same as ordinary men of good character did?

A. I do.

Q. When you speak of prejudices, you mean religious and not political prejudices, do you?

A. Oh! I have not alluded to politics at all.

Q. In this late war, did you take any side?

A. No, sir.

Q. You did not take any side for the Union?

A. If you will give me my own way, I will tell you how I was.

Q. That is exactly what I want to know?

A. I never saw a day that I wished the rebels to succeed, and I have said frequently that I never saw a day that I wished them to succeed.

Q. Did you ever see a day you wished the Union armies to succeed?

A. Certainly.

Q. Did you favor that side?

A. I favored it as far as I had any thing to do with it.

Q. Had you not any thing to do with it, living there in Waverly, New York?

A. I was the means of getting a good many recruits, getting our men.

Q. You took that side, did you, in favor of the war?

A. I favored it as far as that.

Q. Did you take sides in favor of the war or against it?

A. I did not take sides against it.

Q. Did you take sides in favor of it?

A. If either way, I did.

Q. Were you understood to be on that side?

A. I was not.

Q. You were not understood to be on that side?

A. No, sir.

Mr. BRADLEY. What side?

The WITNESS. On the Republican side.

By Mr. PIERREPONT:

Q. You were pretty strongly the other side?

A. No, sir; I was not at all.

By Mr. BRADLEY :

Q. You were a very decided Democrat?

A. I have always been a Democrat.

Mr. PIERREPONT. I do not ask you about your politics. I ask you about your sympathies in the war?

Mr. BRADLEY. He has answered that.

The WITNESS. I have never stated or thought that I wished the rebels to succeed.

Q. Did you express yourself on the subject of the conspirators who were tried?

Mr. BRADLEY. I do not know that that is proper.

The WITNESS. I am perfectly willing to answer any thing.

Mr. BRADLEY. I do not see the end of it at all.

Judge FISHER. I hardly think that a fair subject of investigation.

The WITNESS. I am perfectly willing to answer.

Mr. BRADLEY. So I understand, but I have something to say about that too. We shall never get through if we go on that subject.

Q. (By Mr. PIERREPONT.) Did you ever hear of Dr. Bissell being indicted?

Mr. BRADLEY. I object to that, whether he ever heard of it or not.

Judge FISHER. The same question was ruled out the other day.

Q. (By Mr. PIERREPONT.) Were you at Rochester at the trial?

A. No, sir.

Q. Did you not hear a trial where Dr. Bissell was a party?

Mr. MERRICK. Do not answer that question.

Q. (By Mr. PIERREPONT.) Were you not present?

A. I was not.

Q. Did you not hear any thing about his character for truth discussed by the people?

Mr. MERRICK. Do not answer that. I object to the question.

Judge FISHER. He cannot speak about any evidence that was given on a trial.

Mr. PIERREPONT. No, not the evidence. (To the witness.) You did not hear his character for truth discussed after that trial?

A. I did not know he had a trial.

Q. You knew there was some trial?

A. I understood so.

Q. Did you hear his character among the people discussed after that trial as a man of truth?

A. I did by a good many.

Q. Did you hear them speak well of his character for truth?

A. I did by a good many; perhaps fifteen or twenty.

Q. Was it one way that you remembered it?

A. I have heard his character spoken well of.

Q. Did you hear it spoken well of for truth?

A. I did.

By Mr. BRADLEY :

Q. Now, tell the jury who you heard speak well of him?

A. I heard Squire Whittaker, Squire Paine, Senator Bristol, Mr. H. S. Butts, Mr. Edson, Mr. Clothier, and various others that I do not now exactly remember.

Q. Are they among your respectable citizens or not?

A. Yes, they are.

By Mr. PIERREPONT :

Q. Did you hear the other parties speak well of him for truth?

A. I have heard some.

Q. Were they your respectable citizens?

A. Some were and some were not.

Q. Were they generally your respectable citizens?

A. No, sir.

Q. Were they as respectable as those who came here the other day?

A. Some of them were and some of them were not.

G. B. PENNELL,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY :

Q. Where do you reside?

A. I reside in Waverly, Tioga county, New York—in the vicinity of Waverly, not exactly in the village.

Q. How long have you resided at Waverly?

A. I have resided in the vicinity of Waverly for the last thirty-three years.

Q. While residing there, did you know Dr. Augustus Bissell?

A. Yes, sir, I have known him.

Q. Did he reside in Waverly?

A. Yes, sir.

Q. Had you means and opportunities to know what the general opinion of the people was as to his truth and veracity?

A. I had some. I was not intimately acquainted with him for some two years of the time.

Q. Did you know the people of the town of Waverly generally?

A. I did, most of them. A great many of them I do not know.

Q. Was that general reputation good or bad, as a man of truth and veracity?

A. I heard nothing bad until lately.

Q. When you say "until lately," what time do you mean?

A. Since this trial commenced and a trial in Buffalo. That was the first I ever heard any thing said.

Q. Then the subject was discussed?

A. Then the subject was discussed.

Q. Now, from the general character you have heard of him, would you believe him on his oath?

A. I would.

Q. You speak of a trial in Buffalo. Was that the Erie railroad trial?

A. I think that was not in Buffalo.

Q. You do not know, but only from hearsay?

A. I do not know what trial only by hearsay.

Q. How along ago was that?

A. A few weeks since I think I heard it discussed. I heard that some men went out there and testified that they would not believe him under oath.

Q. It was this spring and summer that you first heard any thing against him?

A. Yes, sir.

Cross-examined by Mr. PIERREPONT :

Q. What did you hear said against his truth—that they would not believe him under oath?

A. I heard that certain gentlemen had sworn to that effect.

Mr. BRADLEY. That will not do. Strike that out.

Q. Do you know what this Buffalo trial was about, about which you have been interrogated?

A. I do not; I would not like to say.

Q. You have said you heard something about it. Did you hear it was a trial in which he himself was one of the accused and turned State's evidence?

A. No, sir; I did not.

Q. Did you hear what it was?

Mr. BRADLEY. I object to that.

The WITNESS. I might.

Mr. BRADLEY. Let us have it settled at once. What difference does it make whether he heard the trial was of such a character or not? He has heard a discussion as to the truth and veracity of the party, and that is the point of inquiry here.

Mr. PIERREPONT. About the trial was brought out in chief.

Judge FISHER. Yes.

Mr. BRADLEY. It came out without my asking him about the trial. Then I asked him when that trial

was. He says a few weeks ago, or this summer, or spring. That is all I asked.

Judge FISHER. What was said about his being connected with a trial would not be evidence. What people said about him though, at the time, or subsequent in time, would be.

Mr. BRADLEY. That I agree to.

Q. (By Mr. PIERREPONT.) Did they say in connection with that trial that they would not believe him under oath?

A. I did not hear anybody say so, but I have heard—

Mr. BRADLEY. That is enough.

Q. (By Mr. PIERREPONT.) Did you hear his character for truth discussed?

A. I would not like to say I had much.

Q. Have you some?

A. As I stated before, I heard it said—

Mr. BRADLEY. What you heard said will not do.

Mr. PIERREPONT. Yes, it will exactly do. That is all there is about reputation, what he heard.

Mr. BRADLEY. The court will say.

Judge FISHER. You may state what you heard people say about him in discussing his truth.

Mr. BRADLEY. That I have not objected to.

Q. (By Mr. PIERREPONT.) What have you heard them say about him?

A. All I think I ever heard was in connection with that trial after that trial.

Q. What was it?

A. I could not say that there was any thing, only that men had sworn—I had not testified, but I heard men had testified—

Mr. BRADLEY. That is exactly what the court tell you is not evidence, but the gentleman is determined to get it in some way or other.

The WITNESS. I would not say I heard it discussed a great deal, or much, if any.

Q. (By Mr. PIERREPONT.) Where do you live?

A. I reside about a mile and a half from Waverly.

Q. What is your business?

A. Farmer.

Q. How often were you in Waverly?

A. I resided almost in Waverly for the three years that I was acquainted with Dr. Bissell.

Q. How often are you now at Waverly?

A. I am in there almost every day.

Q. What was Dr. Bissell when you knew him?

A. He was practising some as a physician; I should think not a great deal, but some.

Q. What else was he doing?

A. He had a little grocery—a kind of beer-saloon; I think he sold beer.

Q. He practised as a doctor and kept the beer-saloon at the same time?

A. Yes, sir; some, I know; how much I could not say.

Q. Do you know of any reason, or what the difficulty with his practice was; whether it had any connection with his want of character for truth?

Mr. BRADLEY. I object to that.

Q. (By Mr. PIERREPONT.) Do you know whether he then had a good character for truth?

A. He had, so far as I knew.

Q. Did you know much about it?

A. I was not intimately acquainted with him.

Q. Do you know what other folks thought about him?

Mr. BRADLEY. As to his truth and veracity?

A. I never heard any thing against him as a man of truth and veracity. He had some very strong political enemies, I knew.

Q. (By Mr. PIERREPONT.) What politics was he of?

Mr. MERRICK. Do not go into that.

Q. (By Mr. PIERREPONT.) What do you mean by strong political enemies?

A. Different politics.

Q. Who do you know of different politics that were his enemies?

Mr. MERRICK. Do not answer that question. I object to it. Let the court decide.

Judge FISHER. We had better keep partisan politics out of the case.

Mr. MERRICK. If you want to bring it in, let us have it in fairly and squarely.

Q. (By Mr. PIERREPONT.) Do you know which side he took in the war? Was it on the subject of his sympathies in the war on which the discussion arose?

Mr. BRADLEY. That I object to also.

Judge FISHER. You had better confine yourself to examining into his character for truth and veracity.

Mr. PIERREPONT. Well, I will confine it to that. (To the witness.) Did you hear many people talk about him?

A. I have heard him talked about as much as any man, for what I know of.

Q. Did you hear the subject of his character for truth discussed much?

A. Not a great deal; I do not know as I did any.

Q. Do you wish to tell those jurymen that he bears among your people as good a character as ordinary good men do?

Mr. MERRICK. For truth?

A. Yes, sir; I think I should not hesitate at all—

Q. I did not ask you whether you hesitated, but whether you say so.

A. I do not hesitate to say so.

Q. I ask you, will you tell those gentlemen that he bears as good a character as ordinarily good men bear for truth?

A. He did while he was there, for any thing I know.

Q. Did you know any thing about it?

A. Yes, sir; I knew some.

Q. What did you know?

A. I knew him.

Q. Did you know what other people said of him?

A. I do not recollect that they said any great deal about him any more than about any other man.

NELSON T. PENNY,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. I reside in the village of Waverly, New York.

Q. How long have you been living there?

A. I have lived there six years last April.

Q. Did you know Dr. Augustus Bissell there?

A. I knew him when he was there.

Q. Had you opportunities of knowing how he was held by the people of the place as a man of truth and veracity?

A. I had the same opportunities with him that I had with the rest of our village folks.

Q. From that general reputation as to truth and veracity, was it good or bad?

A. I never heard the character of Dr. Bissell canvassed for truth and veracity in my life while he was there. I never heard his reputation called in question as a man of truth and veracity while he was there.

Q. From your knowledge of his general reputation, would you believe him on his oath?

A. I would, just as soon as I would any man of our village.

Cross-examined by Mr. PIERREPONT:

Q. Where do you reside—in the village?

A. I reside in the village.

Q. What business do you do?

A. I am not engaged in any particular business at present.

Q. What have you been in?

A. I have been living in the village, and I was in a market part of the time since I have been there.

Q. How do you mean?

A. When I first went to Waverly I went into a meat-market.

Q. You kept a meat-market?  
 A. Yes, sir; and since that time, for a small part of the time, I have been in a drug-store. Since I have been out of the drug-store I have been engaged in no particular business.  
 Q. Had you any connection with Dr. Bissell?  
 The WITNESS. How do you mean?  
 Mr. PIERREPONT. In business?  
 A. While I was in the market Dr. Bissell used to deal with me some.  
 Q. Any other?  
 A. No, sir; I think no other.  
 Q. While you sold meat he used to buy of you sometimes?  
 A. Yes, sir; sometimes.  
 Q. Did you know what business he did there?  
 A. When the doctor first came there he was practising medicine, I think.  
 Q. What do you think he did next?  
 A. The next thing that he was in, was the keeping of this saloon or grocery. He had a little grocery, and, I think, a beer-saloon attached to it.  
 Q. Will you explain what you mean by "grocery."  
 Do you mean an eating and drinking-house?  
 A. No, sir; that was not it.  
 Q. What do you mean?  
 A. He was keeping some little teas and sugars to sell, and some toys and candies and nuts—a sort of little grocery, and this beer-saloon attached.  
 Q. Was there any eating there?  
 A. There might have been, but not that I know of. I was in there but very seldom.  
 Q. Did you, during the time he was keeping this beer-saloon, hear him talked of?  
 A. No more than my other neighbors.  
 Q. Have you heard him talked of within the last year as a man of truth?  
 A. Not until within a very few days—not to exceed four days, I think.  
 Q. You did not hear any thing about that Buffalo matter?  
 A. I was absent from home at the time, and did not hear any thing of it.  
 Q. Have you not heard any thing since?  
 A. Nothing only what I heard within a day or two, and very little of that indeed.  
 Q. Have you heard much said about his character for truth?  
 A. But very little, indeed.  
 Q. You did not hear other people talking about him one way or the other?  
 A. The day before yesterday I did.  
 Q. I mean heretofore?  
 A. No, sir; I never heard Dr. Bissell's character called in question that I know of before.  
 Q. Do you know the gentlemen who came here to testify from your place?  
 A. I know a number of gentlemen that I have understood have been here to testify.  
 Q. Do you know what kind of characters they have?  
 A. I know they are men of fair reputation as our citizens.  
 By Mr. BRADLEY:  
 Q. You know nothing about prejudices or quarrels existing in the church, in which Dr. Bissell was mixed up?  
 A. I do not know that they ever had any quarrels. I do not know any thing about that. They may have had, or may not have had.

DR. C. M. NOBLE,

a witness for the defense in sur-rebuttal, sworn and examined.

By Mr. BRADLEY:

Q. Do you reside in the village of Waverly, New York?

A. Yes, sir.  
 Q. You are a practicing physician there?  
 A. I am.  
 Q. How long have you been residing in Waverly?  
 A. It is about fourteen years since I first came into the village of Waverly. I have been near there for the last eighteen years.  
 Q. During that time did you know Dr. Augustus Bissell?  
 A. I first knew him about seven years ago.  
 Q. How long did that acquaintance continue—from that time forth?  
 A. Yes; I was personally acquainted with him for about five years, I think, and then when he went to New York I knew him by reputation until now. I mean I was acquainted with him, but not personally.  
 Q. While he was residing in Waverly, had you opportunities to know in what estimation he was held by the people there as to truth and veracity—his general reputation?  
 A. I think I had. I had as good an opportunity as any one.  
 Q. Was it good or bad?  
 A. As good as any man in the place. I had as extensive an acquaintance myself as any man in Waverly, both in the village and out.  
 Q. Did you ever attend him as a physician?  
 A. I have been called in council with him in cases, and I have attended him himself.  
 Q. You have been in consultation with him as a physician?  
 A. Yes, sir.  
 Q. And have attended him himself?  
 A. Yes, sir; frequently.  
 Q. Now, state from the general reputation he bore there, whether you would believe him on his oath?  
 A. I would have no hesitation in believing him under oath; not the least. I never heard any thing against him?  
 Cross-examined by Mr. PIERREPONT:  
 Q. How long have you lived in Waverly?  
 A. Between thirteen and fourteen years—about fourteen.  
 Q. What have you been doing there?  
 A. Practising medicine.  
 Q. Have you ever been indicted?  
 A. Not that I know of.  
 Q. Have you ever been arrested for any crime?  
 A. I do not know that I ever have.  
 Q. You know whether you have or not?  
 A. I have not.  
 Q. Has there not been a charge against you there for a particular kind of practice?  
 A. No, sir; never.  
 Q. What is your first name?  
 A. My name is C. M. Noble—Carleton Monroe.  
 Q. You have known Dr. Bissell some seven years?  
 A. Yes, sir; he lived there about seven years.  
 Q. You say there has been no charge against you there for practising abortion?  
 A. Never.  
 Q. Nor anywhere?  
 A. No, sir.  
 Q. What was Dr. Bissell doing when you knew him?  
 A. Practising medicine first. He came there as a physician.  
 Q. How long did he practice?  
 A. He came there well recommended.  
 Q. I did not ask you how he came recommended. I asked you how long he practised?  
 A. He practised more or less all the time he was there, although his practice was interrupted somewhat by another business after about four or five years.  
 Q. What interrupted his practice?  
 A. He went into another business.  
 Q. What business?  
 A. He kept a grocery and saloon.

Q. That grocery and saloon rather interrupted the business, did it?

A. Of course.

Q. Were you in partnership with him?

A. I was not.

Q. Had you any thing to do with any business with him?

A. Never.

Q. Do you practise medicine now?

A. I do.

Mr. BRADLEY. Just state whether it is a large or small practice.

Mr. PIERREPONT. Wait one moment. When I am through there will be a good opportunity to do so. (To the witness.) Now, will you tell us when he left there?

A. I do not know that I can tell you exactly. I have not any dates with me, but I think it was between two and three years ago.

Q. Do you know where he went to?

A. He went away, in the first place, to some place in the northern part of Pennsylvania, where he had formerly lived and practised, and from there to New York.

Q. I noticed that you stated that you doctored him a good many times?

A. That I had been called in council a great many times with him, and had doctored in his family.

Q. Did you not say, "a good many times?"

A. I was called in the family frequently.

Q. Did you say that you had doctored him a good many times?

A. No; I did not mean to be understood so.

Q. What do you mean by "understood?"

A. I mean I was called in his family, and doctored him personally, and had a good many times been called in council with him in his cases.

Q. Where were you called in council with him?

A. In different cases.

Q. Where?

A. In Waverly, generally.

Q. What case?

A. There was a case of diptheria, I recollect.

Q. Whose house was it? We want the name and time.

A. I do not know but I would have to refer to my books to find out that, although I can remember two or three now.

Q. You may state those?

A. I recollect one family by the name of Gutches.

Q. I want you to give the family, because I want to know something about it?

A. I have been called in several times.

Q. You can think of one?

A. I was called in to see Mrs. Gutches. She is now dead.

Q. Can you tell us some living person?

A. The family of William Curran.

Q. Is he alive?

A. He is.

Q. What business does he do?

Mr. BRADLEY. Where is this to stop on the question of a man's veracity?

The WITNESS. I think he is living in Waverly yet.

Mr. BRADLEY. One moment. I wish to interpose an objection. The counsel might just as well have asked the gentleman who was on the stand just now who dealt with him for meat and whom he sold it to.

Mr. PIERREPONT. I did not choose to do so.

Mr. BRADLEY. You could have done that just as well as this.

Judge FISHER. I suppose the object of the cross-examination is to test the memory of the witness.

Mr. BRADLEY. The memory of the witness as to the character of a party with whom he was in daily intercourse!

Mr. PIERREPONT. Exactly, and the truth of it

too—to sift it. (To the witness.) Now, tell us who Curran is?

A. He is a man who lives there in Waverly.

Q. What is his business?

A. I rather think he is a hostler now. Yes, he belongs to one of the hotels or liveries.

Q. What case was it in his family?

A. A case of diptheria.

Q. Was it his wife?

A. No.

Q. Daughter?

A. No; a child, a case of diptheria.

Q. Was it a son-child or daughter-child?

A. I could not tell you now; it was some years ago.

Q. How old was it?

A. I could not tell you now; it was some years ago.

Q. Tell us some other cases where you got in consultation with him?

A. The case of John Gutches. I think he is alive.

Q. Where does he live?

A. I could not tell. He did live in Waverly.

Q. Does anybody live in Waverly in regard to whom you had these consultations with Dr. Bissell?

A. I think there are a good many.

Q. Tell us who they are?

A. I could not without my diary or my book to refer to.

Q. Was this when he kept the beer-saloon that you were called in consultation with him?

A. One of them was.

Q. Was it in the beer-saloon that you were called?

A. No, sir.

Q. Was this John Gutches in the beer-saloon when you were called in?

A. No; I think not.

Q. Where was he?

A. He came to my house.

Q. Who did?

A. The doctor and young Gutches.

Q. They came together?

A. Yes.

Q. Then it was a case of consultation where they could walk to your place?

A. Oh, yes; although the young man had been out of health for a long time.

Q. But they came up there for consultation?

A. Yes.

Q. Was he keeping a beer-saloon then?

A. I think he was. I do not know, but I think that young man has died since of consumption. He was in very feeble health, although able to be around.

Q. Can you give any others as to whom you were called in consultation while he kept the beer-saloon?

A. It was while he kept the beer-saloon that Professor Hamilton, of Bellevue hospital, came and saw him himself after he had met with the accident on the railroad.

Q. After who had?

A. Dr. Bissell himself.

Q. I am asking you about your being called in consultation with Dr. Bissell?

A. I misunderstood you. I do not think of any more now, although there are more cases.

Q. But you cannot tell?

A. Not without getting my books.

Q. And you do not know whether they are alive or dead?

A. I think of some cases that are alive.

Q. After that consultation? [Laughter.]

Mr. BRADLEY. If your honor please, I do think it is wrong to insult a witness on the stand, who is as respectable a man as the counsel is himself, from the information I receive from that country.

Mr. PIERREPONT. Which counsel?

Mr. BRADLEY. I mean you, sir. I understand that his associations and intercourse with society are as highly respectable as those of the counsel himself, who insults him in this manner.

Mr. PIERREPONT. I do not know what the counsel is talking about.

Mr. BRADLEY. Then you are very ignorant. I am talking about your insulting a witness on the stand.

Mr. PIERREPONT. I have asked him a proper question. If it is not proper, he will apply to the court; and if it is not proper, then your honor will rule it out. I submit I have asked him a proper question, and none but a proper question.

Judge FISHER. You asked him if the party was alive after the consultation?

Mr. PIERREPONT. Yes, sir; and I have a right to ask the question, and I have a right to sift the truth of this to ascertain whether there is a word of truth in it, and I have a right to do it without this kind of interruption.

Mr. BRADLEY. You have no right to do it. You have no right to insult a witness under my protection, and if I were a witness I would return it to you.

Mr. PIERREPONT. The witness is under the protection of the court.

Judge FISHER. Gentlemen this will not do.

Mr. BRADLEY. If I were a witness I would return it to you.

Mr. PIERREPONT. I do not know what you as a witness would do. I cannot say about that.

Mr. BRADLEY. I say I would do it.

Judge FISHER. You cannot interrupt the court in this way.

Mr. BRADLEY. I will not allow a witness to be insulted in that way.

Mr. PIERREPONT. I submit to your honor whether when cross-examining a witness I am to be interrupted by the counsel in this way.

Judge FISHER. I do not see any impropriety in the question you put to the witness.

Mr. BRADLEY. Did you notice the manner in which it was put?

Judge FISHER. I did not see any thing improper about the manner. There might have been something, but I did not observe it.

Mr. BRADLEY. Did your honor hear the question and observe the manner in which it was put?

Judge FISHER. I did not observe the manner.

Mr. MERRICK. Let me state the question. I do not know that your honor heard it distinctly: "Is the man alive after that consultation?" Does it not imply that the consultation of this physician was enough to kill him or any other man?

Mr. PIERREPONT. I do not know what the gentlemen may choose to imply from it. They say he is a good doctor. If he is, it does not imply any such thing.

Judge FISHER. Go on with the examination of the witness.

Mr. PIERREPONT. Now, we will go on a little further, if we can without being interrupted.

Mr. BRADLEY. [In a low tone.] I will interrupt you whenever I think proper.

Mr. PIERREPONT. I shall apply to the court that you do not interrupt all the time.

Judge FISHER. Let Mr. PIERREPONT go on with the examination of the witness.

Mr. BRADLEY. When he said he would go on without being interrupted I spoke privately, and told him I would interrupt him when I thought proper.

Judge FISHER. We do not want any private quarrels to interrupt the examination of the witness.

Mr. BRADLEY. I do not want the observations of the counsel to go on without being interrupted.

Judge FISHER. I think the counsel will not make many observations, if you will allow him to go on.

Mr. BRADLEY. I do not mean to get in any excitement or quarrel.

Judge FISHER. I would not; let the case go on without interruption.

Q. (By Mr. PIERREPONT.) Now, will you, if you can, give me another person about whom you were

called in consultation with Dr. Bissell after he kept the saloon?

A. I do not know that I can without my diary.

Q. Can you tell why he quit the business of a doctor and went to keeping a beer-saloon?

Mr. BRADLEY. Is that within the range of cross-examination?

Q. (By Mr. PIERREPONT.) Had it any thing to do with his bad character for truth?

A. No, sir, I do not think it had. There were a good many of us in a small village, and he did not have the same advantage that the rest of us had in length of time. We had the advantage of him in length of time, and he could not get as much practice as the rest of us, and he thought it profitable for him to take that, so as to make business.

Q. It had nothing to do with his bad character?

A. I do not think it had.

Q. Now, will you tell those gentlemen whether his character for seven years in that village was a good character?

A. I could not say that it was not; I have always considered it good.

Q. I am speaking of general reputation.

A. It was good—just as good as that of the men who came here to say it was bad. I am acquainted with both parties.

Q. Do you say it is generally so considered?

A. I think it is by the best men in our place, that his character is just as good as that of those men.

Q. Do you know the men who came here?

A. I do.

Q. Were they men of good character?

A. I think they are; I would not hesitate to believe them.

By Mr. MERRICK:

Q. Would you hesitate to believe Dr. Bissell on oath?

A. I would not; nor the men who came here.

Mr. BRADLEY. Those are all the witnesses who have arrived yet; others are in the cars, I suppose.

Judge FISHER. How many witnesses do you expect?

Mr. BRADLEY. I expect from the town of Waverly nine, I believe; from the city of New York, seven or nine.

Judge FISHER. Do you expect them here to-night?

Mr. BRADLEY. It is hardly possible that they can get here to-night; they cannot leave Elmira, I understand, until this evening at 5:40, and cannot reach here until to-morrow morning; and I am by no means positively certain that they can get here at that time. We have telegraphed to expedite them and hurry them up. All we can possibly do is to work by the telegraph line. I sent yesterday to New York for the witnesses. This morning I received a telegram stating that they would not come unless they were sure their expenses would be paid, and received a formal subpoena. I have sent a subpoena by telegraph for them, and they will be here to-morrow morning. I do not know that I would ask the indulgence of the court on account of the case alone, but I think it due to this witness, taken by surprise, as he evidently has been, that he should be allowed to defend his character.

Judge FISHER. I do not know that I have any right to ask—

Mr. BRADLEY. I will answer frankly any question.

Judge FISHER. You can answer it or not, as you choose. Do you wish to give testimony in relation to Dr. Bissell?

Mr. BRADLEY. All the witnesses relate to that question except one. I deal perfectly frank with the court. I do not mean to offer any evidence except to that one point, and one other witness; a single witness to be examined. Throughout I have had no concealment in the case at all. I think I have shown a very fair, open hand all the way through.

Judge FISHER. You come to a stand-still to-day.

Mr. BRADLEY. We might occupy the residue of the afternoon, and profitably occupy it, by taking up the question as to the striking out of certain evidence. It must be disposed of at some time or other, and, as there is nothing left but this testimony in regard to character, I suggest that we take it up now.

Mr. CARRINGTON. There is but one point, you say, about which you wish to offer evidence besides the character of Dr. Bissell.

Judge FISHER. Yes, and that is the character of some other witness.

Mr. BRADLEY. I do not know that I shall put him on the stand when he comes. I do not know that it will be necessary.

Mr. PIERREPONT. I want to know whether we fully understand that all these other witnesses relate solely to the character of Dr. Bissell. If they do, then of course we know that it would have nothing to do with the main issue, and could not affect the argument.

Judge FISHER. That is what Mr. BRADLEY says.

Mr. BRADLEY. I need not repeat what I have stated.

Mr. PIERREPONT. I did not hear except what you said of one.

Mr. BRADLEY. Of all.

Mr. CARRINGTON. Very well.

Judge FISHER. All except one are to be examined touching the character and reputation of Dr. Bissell.

Mr. PIERREPONT. Then, all relate to character.

Judge FISHER. That one is touching the character of some other witness, as I understand.

Mr. BRADLEY. Yes, sir; the witness himself, in fact, recalled. We are debating about it, whether it is necessary to recall him or not. It is not necessary to state it to them, but that is the purpose.

Mr. PIERREPONT. We do not see any objection.

Judge FISHER. Proceed with the argument.

Mr. BRADLEY. We propose to add now to the pieces of evidence we have already moved to strike out, the two pieces of evidence which I mentioned yesterday, in regard to the telegraph and the transportation from here to New York. I understood your honor to say that, unless they offered some evidence connecting the prisoner with that, it would be stricken out. It is hardly necessary to discuss that question.

Mr. PIERREPONT. On all these questions of striking out we shall want to be heard, as the evidence is now in. There has been no other opportunity to discuss it.

Mr. BRADLEY. All the evidence is in, except as to the character of one witness.

Mr. MERRICK. I cannot find the motion to strike out.

Mr. BRADLEY. I think I can recapitulate them: First, the evidence in regard to the assault upon Mr. Seward; second, the evidence in relation to Jacob Thompson; third, the evidence given by McMillan as to what Surratt said to him about the shooting of Union soldiers and the affray with the gunboat, and the hanging of the telegraph operator; fourth, all the evidence relating to the telegraphic communication between Elmira and Washington on the 13th, 14th, and 15th of April, 1865, given yesterday; fifth, the evidence given yesterday in relation to the transportation of passengers from this city to New York on the 15th of April, 1865; sixth, the letter picked up at Newbern, North Carolina, the Duell letter, signed "No. Five;" seventh, all that portion of the evidence relating to Atzerodt and the transactions at the Kirkwood House. If, in the discussion, any question should arise about any other portion of evidence that I may have omitted, as I have no memoranda here, I will beg leave to supply it.

Judge FISHER. The jury might go to the hotel if they think proper.

Mr. MERRICK. Certainly, whilst this discussion is going on.

A JUROR. Shall we come back to-day?

Judge FISHER. No. There will be no evidence to-day. You will come back to-morrow morning at ten o'clock. You have no objection, gentlemen?

Mr. CARRINGTON. No, sir.

[The jury then retired to their hotel.]

Mr. BRADLEY. If your honor please, I do not deem it necessary for us to discuss this evidence, but to state our view of the propositions of law, and submit to the court how far this evidence is applicable to them. We understand that this is an indictment for murder; not for a conspiracy, not for a conspiracy to murder, but for a murder; and therefore the evidence must tend to show either that the party charged committed the act himself, participated in the commission of it, or was rendering aid and assistance at such convenient distance that he could render, and was there for the purpose of rendering aid and assistance. If that is the law governing this case, as we suppose it to be, then no portion of this evidence can be admissible, for it is wholly immaterial whether the same parties committed an assault upon Mr. Seward that night or not. The prisoner is not indicted for that. It does not tend to throw any light upon the question of the fatal assault made upon the President. And in like manner the testimony in regard to Mr. Thompson; and in addition to that I may add that there is not a particle of proof in the cause, so far as we understand the evidence, after a careful examination of it, connecting Mr. Thompson, directly or indirectly, with Surratt. If there is any such evidence it has escaped a very diligent search. So in regard to Atzerodt and the transaction at the Kirkwood House, where, if there was a preparation to kill, there was no overt act of an assault upon the then Vice President, or any attempt to execute any crime. There is no particle of proof of it; but if there were it was a totally distinct and separate offense, having no connection with the principal one upon which the prisoner stands charged. So in regard to the other pieces of evidence to which I have adverted, except the two last. None of them have any relation to the party being present at, or consenting to, or assisting in, the perpetration of the offense with which he is charged. And finally, as to those two pieces of evidence introduced yesterday, they are merely generalities, without any application of a single fact touching the prisoner at the bar. Having stated these general propositions, I shall be very glad to hear what can be said on the other side in support of their motion to retain the evidence.

Mr. PIERREPONT. If your honor please, I think this is the proper time for this discussion, as the learned counsel on the other side has suggested, and I have always been quite willing that when the evidence was in these questions should arise. I have diligently opposed the argument of these questions until the evidence was in, because it would be quite impossible to tell what evidence would bear upon the case until it was all in.

It must have attracted the notice of your honor, as it has of my learned friend, the district attorney, and myself, that the counsel on the other side have been repeatedly speaking about "this trial for murder," and talking of what it was absolutely necessary to prove under this indictment, and what could not be proved. They have endeavored to treat it as though this was an ordinary indictment of two persons who had combined together for the purpose of killing some man in his house to rob him. If I understand the announcement of their views of the law governing this case—and, if I do not, I hope they will correct me now as I state them—they present to your honor the view that the prisoner is indicted for the murder of Abraham Lincoln, and that it stands precisely the same as it would if the prisoner had been indicted under a charge of having been joined with Atzerodt to murder any man down in the country for the purpose of getting his money. I so understand their proposition. Now, if I am not wholly mistaken upon the law that is to gov-

ern this case, and upon the indictment under which we are to try the case, it is as widely different from that as any two things well can be, and is lifted as far above it as the difference between the killing of any person in a street brawl and the killing of a king on his throne, or the Pope while he was performing High Mass in the Vatican.

Now, what is it that we have been here about for nearly two months? I think there will not be a success in belittling this case down to any ordinary felony. What is it that we have been about? What is it that we have been trying here? What is it for which this prisoner stands indicted under the third and fourth counts of the indictment? A conspiracy was formed, as we all well know, for the purpose of overthrowing the Government of the United States, for the purpose of throwing this country, by the destruction of its government, into anarchy and confusion, for the purpose of aiding the traitors and enemies of this country to trample down the Government—to destroy our country—to kill and murder its chief, for the purpose of destroying and murdering the Government. A conspiracy was formed for that purpose; and in carrying out that conspiracy—a part of which was to destroy the President of the United States—combinations were made and plans were laid between the city of Washington, the city of Richmond, the city of New York, and various places in Canada—a conspiracy formed of quite a number of different persons for the purpose of perpetrating one of the greatest crimes ever known in the Christian world. In the perpetration of this terrible crime it became a necessity to take the life of the President of the United States; and a part of this felonious, damning scheme against civilization and against humanity was to destroy him, and to take the life of the Secretary of State. That is what we came here to try one of these conspirators for. While engaged in the perpetration of this great crime, they committed a murder, and, having committed that murder, they are tried for that murder, which they perpetrated in attempting to carry out the other great crime.

For illustration, suppose that Mr. Alexander, one of these jurymen, not now in the room—there is no indelicacy in alluding to him or any other man—were robbed in his house; that the robber who went to his house went for no purpose but to rob him of his money, he supposing that the gentleman whose house he went to rob in the night-time, was in Baltimore, and he went there for the very purpose of committing the robbery, because Mr. Alexander was away, and having no intent whatever to murder Mr. Alexander, he being the last man in the world that he wished to see in the house when he enters; and as this robber at midnight enters Mr. Alexander's house, Mr. Alexander gets up and the robber kills him. Has he not committed a murder? Would he not be tried for murder? Would my learned friends here say that he could not be tried for murder, when he went there with the full belief that Mr. Alexander was in Baltimore, when, as I say, Mr. Alexander was the last man on the face of the earth he would wish to meet in the house; but he meets him, and in attempting his robbery, he kills him. Has he not committed a murder? The principle is familiar to every lawyer.

Suppose in this District, in the city of Washington, your honor's horse is stolen, and a man stands outside of the limits of this District for the purpose of taking the horse that is brought over the line of the District. The man is indicted for horse-stealing, and my learned friends come into court to defend him. "Indicted for horse-stealing" they exclaim. "Why he was not in the District. You have not shown that he was here at all; he was outside in Maryland, under that jurisdiction; he has not stolen any horse in Washington; how can you indict him for it?" You go to Maryland and undertake to indict him there. Maryland says, "He never was in your District, and your horse was not

stolen in Maryland, and you cannot indict him here." The man is all right, then.

Or, he stands over the line, your honor or any other gentleman of eminence and position is passing near by, and from hostility, or from any other motive, he shoots across the line thirty yards and kills the man. He is not in the District of Columbia. When he comes within your jurisdiction, cannot you take him and arrest him and have him tried for murder? Does not every lawyer know that? It does not need authority. Your honor is familiar with it. The man who helps away is the man engaged in stealing the horse, just as much as though he took him, although he was not in the jurisdiction; and the moment he came within the jurisdiction your honor would seize him by the power of this court, try him, convict him, and execute him, if he had committed a murder, or imprison him if he had committed the theft.

In this motion, it is proposed to strike out the evidence, first, in relation to the assassination of Mr. Seward. They say the assassination of Mr. Seward has nothing to do with this case; that it is not plain that Surratt assassinated Mr. Seward; it is not plain that Surratt went into the house and plunged the knife into the neck of Mr. Seward; it is not plain that Surratt broke the skull of Mr. Frederick W. Seward. It is not claimed that he hacked the servants in that house and the other inmates; it is not claimed that from the terror which he caused when she saw her murdered father, the daughter, Fannie, who stood there, died a little while after, and that the wife died from the same shock. It is not claimed that he did that; but it is a part of the evidence in this case that it was a part of the scheme and conspiracy in which this man was engaged that Secretary Seward should be assassinated, and it was done in carrying out that scheme. When the signal-whistles were given, and when Surratt called the time, and when the horseman went from the theatre up towards H street and turned to Mr. Seward's house, that was as much a part of the scheme as the shooting of Mr. Lincoln by Booth when he came out of the drinking-place, having fortified himself by the brandy which he took. And yet the gentlemen move to strike it out, and say it has nothing to do with this case.

They likewise move to strike out next the evidence of the confession that was made by the prisoner to McMillan relating to the murder of Union prisoners. Now, let us see whether that is proper to be stricken out. In the first place, it rests on one principle on which it can not be stricken out under any circumstances; and that is, that when a confession is given, you must give the whole confession; you cannot give a part of it. Now, let us give a test of it. Suppose, instead of his stating that he, with this woman, in cold blood, murdered these helpless Union prisoners, who he said had just come from a swamp and were nearly starved to death, and left them rotting on the railway, he had said that, seeing these poor fellows coming sick and weak and meager from the swamp, and knowing they were struggling to get home to their fathers, their mothers, or their wives, his feelings towards them grew so tender that he gave them food and gave them drink and helped them on their way; would they not insist that that should be left in the evidence; and could I move to strike it out and get it out? They are entitled to all that tells for them in it, and all that would tell for them in it; they are entitled to the whole, and we are entitled to the whole; and in a confession relating to the same general subject, all must be given in evidence, and not a part. It is not for the defendant to come and say, "I will select from the words which I uttered, and you shall take that part, and that only; but the part that I do not wish against me shall all be stricken out, and that only telling in my favor shall be left." No principle is better established than that in any confession of this kind the whole confession must be given.

But, further on this subject: Whenever a murder is committed, or any other great crime, we never expect that the crime will have been done by all those engaged in it in a very open manner. That is not the way crimes are committed; they are done with secrecy, and the fell purpose is never known, as a rule, until it is afterwards developed by facts and by circumstances. When a murder is committed, we undertake to find out who committed the murder; and, in order to find out who committed the murder, one of the first things that we ever do is to find out what was the motive of that murder; what were the feelings of the party who is charged with having committed the murder towards the murdered man. That is one of the first steps we ever take in a trial for murder. We find out, and we learn that between these two neighbors the feelings were hostile; they were bitter; they were relentless; they were of long standing or of recent origin, as the case may be; and these facts are always pertinent in evidence for the purpose of showing the probabilities, and whether or not the man charged with the murder was properly suspected and likely to have been the one.

What was the great crime here? It was the murder of Mr. Lincoln and the assassination of the Secretary of State, with the design of overthrowing this Government; and, in order to ascertain who were engaged in this conspiracy, and who were engaged in the murder, they being conspirators, and it being committed in carrying out the conspiracy and thus made murder, we inquire what were the feelings of the parties towards the thing against which they were conspiring. Nothing is more plain than that you can always give that in evidence, to find out what was the feeling of the party towards the thing, I repeat, against which he conspired. What was it, as shown by such evidence as this? Here was a man living under the shadow of the Capitol, the arm of the Government protecting him and his mother and his sister; living in the city of Washington; boarding the clerks of the very department of the Government themselves, and drawing their supplies therefrom; and yet the young man goes off, when we are in the midst of war and of peril; and, when he tells it himself, as an evidence going to show what were his feelings towards the Government, towards that thing against which he had conspired, and in the carrying out of which the murder was done, nothing is more proper and more pertinent to be given in evidence than his own statements going to show his feelings towards the Government and those who were engaged in its support. On no possible principle could it be ruled out, even if it was separate and independent; but, when you take it as part of his confession, it is quite out of the question; and the rest of it all relies upon the same principle. I leave it, then, so far as relates to that confession.

We next come to the question about Jacob Thompson. We have shown Jacob Thompson's relation to the enemies of this Government. We have shown that by General Grant. We have shown his position in Montreal. We have shown that Surratt went there with \$70,000 and \$30,000, making \$100,000, and from his own statement that he went there from Benjamin and from Davis, in the Confederacy. We have shown that he carried that amount of money with him. There is no denial, or pretence of it, that he did not. We have shown that he, without any means, or his mother having any at all, as they themselves have shown, was living and using and handling sums of money, and carrying it between the enemies of this country and the friends of our enemies in Montreal, he being the bearer of the dispatches himself, and the bearer of the money himself. That goes to show the relations which he had, the feelings which he entertained, the practices in which he was engaged, the business in which he was employed; all tending to show and to prove his hostility towards that thing against which he and others conspired, and in carrying out that conspiracy committed a foul murder. Under no possible circumstances

can such evidence be stricken out. It comes in as a part of the case. It comes in to show the *animus* and the feeling.

Your honor knows very well that this principle has long since been established, even in the most ordinary cases of trade. I alluded the other day to the case of Houghtaling, which was reported early in Hill. This was the question: A man was sued for committing a fraud. Mr. Houghtaling was the plaintiff. Mr. Houghtaling sued Mr. B. and claimed that the goods were obtained from him by fraud. When the trial came on, it was offered to be proven that Mr. B. had, a week or ten days or a month before that, obtained goods from another man, no way connected with this whatever, and he had not paid for them; and that some weeks after that he obtained goods from another man and had not paid for them. The question then came up, and the argument was made immediately by his counsel: "To be sure, Mr. Houghtaling was cheated out of his goods, perhaps by Mr. B.; but Mr. Astor had nothing to do with that, from whom the other property was obtained by fraud. What business or right have you to bring that in? That is not a part of this case. Mr. Astor is not suing here. Mr. Houghtaling is suing Mr. B. What has showing that he cheated somebody else to do with this case, and that in the one instance he did it before this debt, and in the other did it after this?" That question went through with the fullest discussion, with the gathering of all the English law on the subject, and the case was finally and fully settled in the highest court, and it has remained the law since. It is the law in England; it is the law in this country; it is the law wherever there is any criminal law of which we have heard. You will find the case of *Michael vs. Pinner*, the case of *Hall vs. Naylor*, and several others reported in recent New York Reports on this subject; and this is the rule and the principle laid down: That where a man has even committed a fraud upon another man, you have the right on that trial to show that he has committed a fraud upon another man before that; that he committed a fraud upon another man after that; and that he committed frauds relating to totally different subjects and at totally different times; the only question being whether they were somewhere in the vicinity. The reason of the rule is this: They say, although it is not in proof that Mr. Houghtaling was cheated out of his goods, yet it shows the *quo animo*, which is the word of the law on the subject, and is to be admitted in evidence for the purpose of raising the presumption or showing that that was the mind with which the fraud was committed; and that other frauds committed before and committed after on totally different men, relating to totally different subjects, may all be given in evidence for the purpose of showing the *quo animo*, that is, the *animus* with which the man acted. Much more in a criminal case is it always to be given in evidence. You can prove any of these facts and circumstances which will tend to show the feeling, the motive, the reason that led to the high crime that is charged.

We now come down to the next, which is the motion to strike out the evidence that there was telegraphic communication between the city of Washington and the city of Elmira on the 12th, 13th, 14th, and 15th of April, 1865. When the prosecution were proceeding with their case they did not give that in evidence; they could not give it in evidence; there was no reason for giving it in evidence. There was no more reason for giving in evidence the fact that there was telegraphic communication between Elmira and the city of Washington than there was to show that there was telegraphic communication between the city of Washington and any other place. Possibly it might have been admitted in evidence, but I should have had some difficulty, if your honor had asked me for what reason I gave it, to state a reason. But the reason is quite apparent now. They come here, and undertake by Dr.

Bissell to prove that the prisoner was there on the 14th of April. Dr. Bissell swears to it; there is not any doubt about that; and he swears to it strongly, positively, and without any doubt. So strong was he, that he told us that when he got up to the prison and saw the prisoner dressed up, he told Mr. BRADLEY that he did not want to look at him any longer; he was perfectly satisfied. No doubt he was. I guess he was equally satisfied before he left New York and before he saw him. But he swore to that fact. It stands in the case that Dr. Bissell has sworn that he saw him there at that time. Hence, under the legal views which I entertain of this case, and which, I trust, will be entertained by the court, as they seem to be well laid down in the books, it may become a matter of some importance to show upon the record the fact that there was easy and rapid communication between Elmira and the city of Washington. If there was no truth in it, and if there were no evidence of that whatever, then it would not be; but there is evidence of a man swearing to such a fact. I do not suppose anybody believed it, but still it stands in the case. It stands there as a part of this record, sworn to by Dr. Bissell positively, that he saw him there on that day. Now, if he were there on that day, and if it could be shown on the other side that as between Elmira and the city of Washington there was a barrier of mountains higher than the Himalayas, and that there was no possibility of any communication between them at all, no way of reaching by communication, by rail or otherwise, it would be a fact of some significance going to show that there could not have been between the place of the murder and the place where Dr. Bissell swore the prisoner was, any communication that would at all involve him. Now, we have shown that there was easy and rapid communication between these places. It came in without any objection whatever, and it was not until after several other witnesses had been examined that any thought or motion was made to strike it out in any way; and then the motion was made to strike out that evidence; the counsel on the other side probably discovering what possibly might be the object of the evidence. The object of the evidence was to prove that there was easy and rapid communication between this place and Elmira, for the purpose, if anybody should believe a word of the statement which Dr. Bissell made, of showing that even although that might be true, yet with the communication which then existed by rail and by telegraph one party might perform his part of the conspiracy just as well at Elmira as in the city of Washington. It might have been a part of this conspiracy, out of which grew the murder of Abraham Lincoln and the assassination of Secretary Seward, that the party should be there for the purpose of trying to raise confusion by the release of rebel prisoners, by the burning of the city at a different point, by burning the city of New York; or, standing anywhere on the border, for the purpose of giving information, for the purpose of covering the escape of the other conspirators, for the purpose of performing his part in the great drama of this terrible crime; and wherever he was performing it he was as guilty as though he had pulled the trigger that blew the brains out of the head of Abraham Lincoln. Any one familiar with the law knows that that is so.

The next relates to the Duell letter; but I will take them in a different order: The next but one relates to what occurred at the Kirkwood House, and the doings of Atzerodt. Now, Atzerodt has been proved here, if

anything can be proved by evidence, to be one of the conspirators in this crime. I believe he has received his punishment and gone to his long account. He was believed by all the country and was proved by a competent tribunal to have been one of the conspirators. He has been proved here in this court to have been one of the conspirators; and every act, saying, doing, declaration, or circumstance connected with his acts is proper evidence relating to the other conspirators. It seems to me that some new light must have fallen upon my learned friend's mind since we commenced the trial of this cause. We have been trying this cause now for nearly two months, and we have been day by day giving in evidence the statements of the co-conspirators. We have proved the conspiracy, and proved it in a way that nobody seemed to have any doubt about it; and I understood it to be conceded by the other side that there was a conspiracy, and one which even they wanted to prove had been put in writing. We have proved these parties in the conspiracy beyond all possibility of question. We have joined Surratt tight and firm in that conspiracy—the very man who put the arms in the place; the very man who hid those things with which Booth fled; the very man in whose house it was concocted; the very man from whose house these men issued when they went to the crime; the very man who was there in front of the theatre; the very man who was engaged in putting the bar up (and that testimony has not been impeached in the least) to keep out any rush of the people that might come in to the relief of the murdered President. All that has been proved as a part of this conspiracy, and yet, they say that the acts and doings of Atzerodt who was proved to be one of the conspirators, should not be allowed in evidence. I do not think that needs much debate.

I next come to the Duell letter, as it is called. Your honor will remember that when we offered that letter we expected to prove by an expert in whose handwriting the letter was. It relates to this subject. It is pertinent to it. It is important, if we could have shown in whose handwriting this letter was. We failed to do so. The expert whom we brought did not turn out to be the one who had compared that writing, and the other one we could not get, and we were not able to prove the handwriting. I call your honor to witness that I have never, in any instance where I knew it, asked your honor to make any ruling that I did not believe to be law. I have never asked your honor to exclude evidence that I did not believe should be excluded; and in the progress of the case I have had here in this court the taunts, the reproaches, the contumely thrown on myself and my associate in every way, and indirectly on the court, because your honor's rulings chimed in with the law, and because I was not plainly offering evidence which I knew to be illegal, and therefore did not offer. In God's name, why should you not have ruled with me, when I never made a request that ought not to have been ruled with me, and kept myself as strictly as I could, with the knowledge that I could gain, within the strictest rules of law? And should I be reproached because the rulings have generally been as I asked them, when I have been so careful that I should ask nothing wrong? And now I say to your honor, with the same frankness that I have attempted to show in the whole of this case, that I do not think we have completed the evidence relating to that letter, because we failed to prove the handwriting, and therefore I believe it should be stricken out.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 92. WASHINGTON, WEDNESDAY, SEPTEMBER 4, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 91.*

I forgot the item of transportation, and it was an important point too. In relation to that subject of the transportation, it was very plain, I think, that your honor did not perhaps at first see the object for which that evidence was introduced. We did not complete all that we expected to do; but if this cause continues until to-morrow morning, it is likely that we shall, if we are permitted to do so. But whether we complete it or not is not a matter, so far as relates to the evidence, of the smallest moment. It was legal and proper to show what train left Baltimore and went to New York the next morning after the murder. That, as a fact, was proper to be shown in evidence. We showed that that train left, but that it was detained, and that it did not reach New York until twelve hours after its time. It is an important fact. In the first place, it was important to know whether a train did leave, and we showed the time of its leaving. It was important to know whether the train did reach there; and it is important to show that. Now, that being a substantive fact that we have proven, what comes in? We were not obliged to show that that passenger train carried Surratt; but we had the right to show that it ran, and that it might have carried Surratt; and we did show that it ran; we showed when it ran; we showed when it was delayed, how long it was delayed, and when it reached the city of New York. We have had, early in the case, the train that went from New York and the boat that left Whitehall. When we come to put this evidence together, your honor will see that the detention of this train to the city of New York brought it right in connection with Whitehall and sent that boat to Burlington, where Joseph Lyons and this prisoner Surratt slept together that night and lost the pocket-handkerchief. It is a part of the evidence of transportation in this case to show what transportation then ran; and although we have not yet put him in that train, we have the right to show that there was a train in which he could have been put.

Mr. CARRINGTON. If your honor please, I do not propose now to discuss the grave questions of law involved in this investigation, as it is my purpose fully to argue the case before the court and jury at the proper time. The simple question now submitted to your honor is, whether certain items of testimony objected to should be stricken from the record. If those items of testimony are calculated in any way to enlighten the minds of the jury in regard to the questions of fact submitted to them for their decision, they are properly in evidence by a familiar rule of law, upon which it is unnecessary that I should submit any authorities to the consideration of the court. I will confine myself simply to the proposition, whether these items of testimony are relevant, or, in other words, calculated in any way to enlighten the minds of the jury in regard to the questions of fact submitted to them for their decision.

It has been truly said by the counsel for the prisoner that this is an indictment for murder. In regard to the particular character of this indictment I shall have something hereafter to say. Assuming that, then, for the purpose of the argument, although there is a count in the indictment charging a conspiracy to kill and murder, and that, in pursuance of said conspiracy, the said conspirators did kill and murder the deceased as therein charged, I state, as a general proposition of law, that it is competent for us in every indictment for murder to show that the prisoner was prompted by express malice. I may give in evidence his declarations or his acts, either one or both, calculated in any way to enlighten the minds of the jury as to the simple question whether he was actuated by express malice in the perpetration of the murder.

By way of illustration, if your honor please, suppose I offer in evidence the fact that the accused deliberately armed himself with a deadly weapon and proceeded towards the house of A for the purpose of committing the crime of murder upon him. I offer then to give in evidence the fact that on the way towards the house of A he drew his weapon and deliberately shot B, a person whom, perhaps, he had never seen, and against whom he could entertain no feelings of personal hostility. Would not that fact be admissible in evidence for the purpose of showing express malice—not a feeling of personal enmity or hatred against the party assailed, but for the purpose of showing malice, which means nothing more nor less than devilishness, a hostile spirit against the world, or, in the strong and expressive language of the law, “a heart regardless of social duty and fatally bent on mischief;” or, as my colleague has very well expressed it, the *quo animo* with which the party acted? I repeat, that if, while moving towards the commission of the crime—if, after having conceived the scheme and having entered upon its preparation, he gives evidence of general malice, a heart regardless of social duties, it is always admissible in evidence.

Now, if your honor please, what is true in regard to a single individual is equally true of an association of individuals, animated by the same spirit and moving to the same end. We charge in this indictment and maintain that this was a conspiracy to kill and murder, and in pursuance of that conspiracy they did kill and murder the deceased; and that the prisoner at the bar was a member of that conspiracy. It is sufficient for the purposes of my argument before your honor to assume that he was a member of that conspiracy. What part he acted is a question which I shall hereafter discuss before the jury. Having proved the existence of the conspiracy, having proved the connection of the prisoner with it during the existence of the conspiracy, after he has conceived the crime, while moving towards the perpetration of the crime, upon the principle to which I have already adverted, every act, every declaration made use of, either by him or by those with whom he co-operated, tending to show express malice, is admissible in evidence before the jury. Will the proposition be denied, that, while the con-

spiracy existed, while the prisoner was a member of it, while the prisoner, in connection with his co-conspirators, was moving toward the commission of the murder charged in this indictment, every act, every declaration of any one, showing the spirit which animated that conspiracy, is admissible in evidence, for the purpose of showing the malice by which they were actuated.

Now, if your honor please, our theory is—and it is not a new theory—that this conspiracy was a great artificial person, in legal contemplation. It assumed individuality in the eye of the law. Your honor would not deny that, in an association of persons for purposes of trade or commerce, the act or declaration of any partner, within the scope of the partnership, is the act and declaration of all. I have an authority here from the Supreme Court of the United States. I refer to 12 Wheaton and 2 Peters, where the principle is clearly enunciated that, in criminal cases, the principle, *qui facit per alium facit per se*, equally applies.

Judge FISHER. What page do you refer to?

Mr. CARRINGTON. The book is over at my office. I did not intend to argue it. I can refer your honor to it in a moment. There are a number of authorities on that point. I think it is rather anticipating the question, because, as I said, the only question here is whether these items of testimony in any way tend to enlighten the mind of the jury.

Mr. MERRICK. Do those authorities apply to a criminal case?

Mr. CARRINGTON. Unquestionably. *The United States vs. Gooding* is one of them. The principle is clearly settled, and I shall discuss it hereafter. Now, then, apply that principle to the facts of this case: and, first, in regard to that portion of the evidence relating to the attack upon Secretary Seward. I shall do it very briefly, and your honor will see the relevancy of it upon a moment's reflection.

Mr. PIERREPONT. Mr. CARRINGTON, as his honor has called for that authority, I should like to give it. I had alluded to that, because I had expected to discuss these questions on the general legal questions; but, as you have spoken of it, your honor will find the case of *The United States vs. Gooding*, in 12 Wheaton, 460, and the case of *The American Fire Insurance Company vs. The United States* in 2 Peters, 355, and there is also a case in 3 Connecticut, page 8, in which Chief Justice Hosmer goes very fully into this subject, and says in express words that it relates precisely the same to criminal as to other cases.

Mr. CARRINGTON. There is no doubt, I think, about the principle, and we can satisfy your honor, if it be true, that what is true in regard to a single individual is equally true in regard to an association of individuals animated by the same spirit and moving toward the same end. Upon the principle to which I have adverted this testimony is clearly relevant. Now, let us apply the facts of this case, so far as it may be necessary to aid your honor in determining the admissibility of the evidence, to the principle which I have asserted. We have proved the existence of this conspiracy and the object of it, and here I might remark, it matters not whether it was to kill and murder, or whether for any other unlawful purpose, if it did result in the violent death of the deceased, it is sufficient for the purposes of our argument. We have shown the connection of the prisoner with this conspiracy. We have placed him by the testimony of one witness—and, in regard to the credibility of that witness it is a matter to which your honor, in the discharge of your duty, has nothing to say—in front of Ford's Theatre, on the 14th of April, calling the time. We then see Booth entering the theatre and firing the fatal shot. The whistle sounds. That whistle, or one similar to it, is found in 541 H street, the rendezvous of these conspirators. At the sound of the whistle, as the signal—whether that be so or not is a question of fact hereafter to be decided by the jury; that is our theory—at

that signal Lewis Payne, with whom the prisoner had co-operated, with whom he was upon most intimate terms, and who was second in rank, perhaps, to the prisoner at the bar, if we concede to Booth the first position in this infernal conspiracy—Payne, their co-conspirator, at the sound of the whistle, enters the house of the Secretary of State, forces his way by his faithful nurse, his wife, and his daughter, mutilates the body which was then almost lifeless, escapes, and returns to the arms of Mrs. Surratt, the rendezvous from whence they had all issued for the common purpose of perpetrating this horrible crime. How can the jury escape the conclusion that they were all parts of one transaction; that there was a conspiracy of which they were all members? The prisoner calls the time; Booth murders the President; the whistle sounds; Payne attempts to murder the venerable Secretary of State, but by a miraculous interposition of Providence he escaped. What was this but the joint action of these conspirators towards the perpetration of a common purpose? Was it ever heard that a court, upon a charge of murder, would exclude from the consideration of the jury any part of one whole transaction? Why? If it be true as we assert, and as we expect to satisfy your honor, that the act of one conspirator was the act of all, and that, therefore, malice on the part of any of these conspirators would be malice on the part of each individual one, the greater the conspiracy the greater the malice.

If this conspiracy was to kill the President of the United States, the law implies malice from the diabolical nature of the act. If we show declarations or acts of any of the conspirators *dum ferret opus*, while the conspiracy is in operation, showing general malice, express malice, is it not competent to be offered in evidence to this jury? If we can prove one degree of malice, the court will not place any limitation upon us, and we may go to whatever extent we may think proper for the elucidation of our case, in establishing that point. If I can show that they threatened the President of the United States once, if I can show that on the way they recklessly fired into a body of men whom they thought friendly to the President of the United States, or persons whom they did not know, once, I can show that they did it a hundred times; and upon this principle I may show every act which your honor will say there is any evidence tending to show was the common act of all, calculated to illustrate the state of mind under which they acted at the time.

And so with regard to these declarations of the prisoner. If what I have said in regard to the members of this conspiracy be true, *a fortiori* would the declarations of the prisoner during the existence of the conspiracy, indicating the condition of his mind, a devilish spirit, be admissible in evidence for the purpose of showing malice. I have read the law to very little purpose, if, in a charge for murder, I may not show acts of cruelty and cowardice for the purpose of proving express malice. If a murderer, moving towards his horrid and bloody purpose, stops by the way to indulge a cruel and fiendish spirit, what is the familiar principle? Cruelty and barbarity are the strongest evidences of express malice. Then, if it be true, as we assume—and these are questions of fact for the jury—that during the existence of this conspiracy and while the prisoner was co-operating with it, a hireling in the service of the Southern Confederacy, and preparing to shed innocent blood for money—if, on his way to the city of Richmond, while a member of the conspiracy, he stops by the way, and for his amusement, or for the gratification of a wicked spirit, shoots down unarmed Union soldiers, while, with their pinched and starving faces perhaps they were imploring his mercy, does it not show cruelty, cowardice, malice; and if it shows that it is admissible in evidence before this jury. I assume that this was during the existence of the conspiracy; and that is a question of fact for the jury, provided we have offered any evidence tending to show that at that time

the conspiracy was in existence and he was a member of it. It is unnecessary for me to argue to your honor that that conspiracy did then exist, for you remember the testimony of Mrs. Clermont, Mrs. Benson, and others, and you remember the testimony of the witnesses connecting the prisoner with the conspiracy. Subsequent to the existence of the conspiracy, and subsequent to his connection with it, he makes use of these declarations, and commits these acts, which show the state of his mind and the spirit by which he was animated; and therefore, upon the principle to which I have adverted, they are admissible in evidence before the jury.

This applies to all the items of testimony, unless it be, perhaps, as to the connection of Mr. Jacob Thompson with this conspiracy. You have already heard an argument on that question, and I do not propose to trouble your honor with it further. I am not so clear about that as I am of the other propositions.

In regard to the Duell letter, I fully concur with my colleague, that we have failed to prove that, and therefore we are perfectly willing that it should be stricken from the record, for I re-echo the sentiment which he has so feelingly and eloquently expressed, that while it is difficult for me to look upon one whom I regard as the assassin and the murderer of the greatest patriot and philanthropist that ever lived, of a man whom I not only honored as President, but loved as a man, I shall endeavor to do him justice, and we will ask for no evidence which we believe the law will not admit properly before this jury, and we are willing that that should be stricken from the record. My learned colleague will bear me witness, that upon a consultation as to whether we should offer certain evidence similar to that which was offered by the counsel on the other side, I objected, because I did not think it properly admissible. It has never been my purpose by an offer to prejudice the case of the accused. I agree with one of the witnesses, that his crime is a crime against society and civilization. I believe him guilty. I think I can prove it to twelve honest men of my country; but I shall do it by fair and honorable means; and even if I had the power, I would not invoke from your honor, for whom I entertain not only sentiments of respect, but feelings of warm personal regard, the enunciation of any principle inconsistent with the law of the land.

Lastly, I allude to—it may be a work of supererogation, as it has been so clearly and forcibly represented by my colleague—this item of testimony relating to the transportation from the city of Washington to the city of Elmira. It has been assumed by the learned counsel for the prisoner that it is necessary for the purposes of our case to fix the prisoner at the bar in the city of Washington on the 14th of April. I have no objection to stating the proposition on our side now, so that my friends on the other side may understand it, that his presence here was not necessary to convict him of this offense. I have authorities upon that point. If there was a conspiracy to murder, and he, a member of that conspiracy, performed his part, never experienced genuine repentance and conversion, but continued a member of the conspiracy until the fatal shot was fired, by the law of nations, by the law of this land, upon every principle of reason, philosophy, and even of common sense, he is guilty of murder; and no American judge, or English judge, would decide otherwise. But, sir, out of abundant caution we traced him to the city of Washington on the 14th of April, and here he was, and we will satisfy the jury of it, I think, though it is unnecessary.

But, more than that, sir; we having fixed him here, they having endeavored to show that he was elsewhere on the 14th of April, 1865, out of abundant caution we show that he could not be, and in all human probability was not, where they attempt to fix him, in the city of Elmira. They introduce one John Cass to prove that he was in Elmira on the 15th of April. It

is not my habit to assail the integrity of witnesses, nor do I propose probably to assail the integrity of this witness. But we undertake to show that he was mistaken, and we offer rebutting evidence on that point. This does not relate to what occurred previous to the assassination, on the day of the assassination, but what occurred subsequent to the murder. What occurred on the 15th is no part of our case. If we had offered evidence on that point, it might have been relevant and not objectionable; but it was no essential part of our case to show where he was on the 15th.

Mr. MERRICK. What rebutting evidence was that?

Mr. CARRINGTON. That is the very thing I am coming to now. We show that he left here on the 15th. We show that he was in Burlington on the 18th by a host of witnesses, I may say—some five or six in number. Perhaps I speak hyperbolically in saying a "host of witnesses," but by a sufficient number of witnesses. Your honor will see by inspecting the map that that is the direct route from the city of Washington to the city of Montreal, and that he was escaping for his life. It is perfectly competent, in answer to the theory set up by the defense, to show that he was delayed; as we showed by the baggage-master, having left here on the 15th, that he was delayed; and by making the calculation—that map is in evidence, and the time-tables are in evidence—your honor will find that when we estimate the time it would take to arrive in Burlington from the city of Washington, leaving here on the 15th, making the estimate by the light of these detentions, it would bring him in Burlington, where the witnesses who recognized him, and where that dumb witness the handkerchief placed him, on the 18th of April, 1865; utterly inconsistent with the idea that a man fleeing for his life would take that circuitous route to Elmira or Canandaigua or any where else. However, these are questions of fact. I do not propose to disturb your honor with them now.

Thanking your honor for your attention, I conclude simply with repeating the principle upon which I started, that you will see by a review of all this evidence that it is calculated to show the *animus* which pervaded this artificial person of which the prisoner was a member; and a portion of it shows his *animus* at the time they were moving towards the commission of the crime which culminated in the death of the President of the United States.

Mr. MERRICK. May it please your honor, I shall be very brief in reply to the counsel upon the other side; for, unless I am altogether in error in reference to the law, the questions are too plain for discussion.

The learned counsel on the other side assumed an air of great frankness in acquiescing in your honor's striking upon the waters of North Carolina. I must confess that I was somewhat amused at the self-complacent gratification which he expressed when he reflected upon the humane and considerate course he represented himself as having pursued through this case, and the extraordinary consideration he had manifested for your honor in never asking any other decision than what he knew to be law. I will not question his sincerity in that; but I must confess that some of the rulings of your honor have been more widely at variance with my ideas of law, in this case, than in any case it has ever been my good fortune to try, and that all of that character have been, I think, injurious to the prisoner's interests. But that is not for me to comment upon; for I submit with the most passive acquiescence to whatever the court decides. It has been, however, my gratification to know that the counsel has called upon your honor time and again to make rulings from which your honor shrank, and against which your honor set your face with commendable judicial firmness.

The learned counsel says, as the basis of his consideration of this question, that we regard this case as a case of simple murder; as the murder of a man in his house for the purpose of getting his property. He is

right, sir. We do regard it as a case of murder, and it is nothing else; for we must get our information as to what it is from the record. He says it is as widely different from an ordinary case of murder as the killing of a king upon his throne, or the Pope at high mass. My learned brother must descend from the lofty height he would tread and come into the ways of ordinary criminal justice. We have no king in America; we have no pope. To kill a king is treason; to shoot at a king is treason; to compass his life is treason. To combine for the destruction of the American Government, and in attempting to accomplish the destruction of the American Government to kill the President is part of treason; but in the criminal law the President is a man, and nothing but a man. I know that these ideas of royalty have dazzled the visions and shaken the minds of some of our people in later days; but I do sincerely hope that they may never come to be practically incorporated ideas into American policy; and that, at all events, they may be kept away from its criminal jurisprudence when the weak and the helpless are on trial for their life.

If you mean to charge us with treason, indict us for treason. If you indict us for treason, we have certain rights and privileges which under an indictment for murder we have not. We have the right upon an indictment for treason to a list of the witnesses—a right by law; a right we asked in this case, and your honor decided that in a murder trial we had not such a right. We asked it in the name of charity; but the request was like the wailings of the dove amidst the tempests of the hurricane. They would not give it to us, for they preferred that we should see them strangers, knowing we should strike them if we knew them before they came upon the stand. Thank God, we had time to strike them afterwards, and we have laid at the feet of the attorneys for the United States a mass of the most corrupt battalion that was ever summoned to support a cause in a criminal court.

If you mean to charge us with treason, indict us for treason. We have then under that indictment another right, a right by law to be acquitted unless you have two witnesses to some overt act of treason; in a murder trial there is but one witness needed. Will the counsel, under the pretence of an indictment for murder, claim to convict us of treason? Will he come and claim for the Government, under an indictment for murder, the benefit of a conviction for treason, and deny us the privileges which in an indictment for treason we would have? Has the Government of the United States descended so low that it seeks to consummate a judicial murder by a fraud upon its own laws?

Such an idea was never contemplated by my learned friend the district attorney when he framed this indictment. He, habituated to walk the ways of criminal jurisprudence as lawyers ordinarily understand them, framed an indictment for murder and for nothing else. A new enlightenment has come from the North, to break upon him and to change this indictment and darken it with the hues of treason.

Why, sir, the name of Abraham Lincoln, mentioned in this indictment, is mentioned without the prefix or association of "President of the United States." You ask me if I regard it as the murder of a simple man. I do. And why? Because your record, which is the only notice to me of what your indictment is, tells me I am indicted for the murder of Abraham Lincoln. Who is he? The record does not show the fact. He is a man in the king's peace, that is all; a man in the peace of the law. You do not pretend to us in your indictment that he holds any official position by virtue of which the killing of him as an individual attaches an additional enormity to the crime of the killing. You tell me simply that he is an individual that I have slain against the laws of my country.

Why, then, should you seek to travel out of the record? Do you think, gentlemen, you need all this

outside material to garnish up a failing case? Then deal justly; deal according to the spirit of a great Government, of which you, Mr. District Attorney, are an officer, and bid the bond go free. If you need these external elements of argument, these external ideas that belong not to the case, to make up by prejudice what is wanting in fact, rise to the measure of the dignity of your office and maintain that, rather than seek the small and vain gratification of a verdict.

Says my learned brother on the other side, "We come to try one of the conspirators for being engaged in this great crime; we try him for murder as a part of that scheme." Why, in the name of God, your honor, what law is that? Where is the indictment for his conspiracy? You try him for being engaged in a conspiracy! You have indicted him for murder, not for conspiracy. Conspiracy to murder is one crime; murder is another; treason is a third; conspiracy to commit treason is a fourth. They are all separate and isolated offenses, each having its characteristic marks and well understood in the law. Do you tell me, sir, that under an indictment for murder you come to try this man for a conspiracy against what you call the "nation's life?" If you mean to try him for any thing else but murder, give me an indictment, that I may know the offense; conform to the law. The Constitution of the United States provides—I hope my brothers respect it; I know it is sometimes regarded as waste paper, and I know that much has been said of political sentiments in reference to that Constitution; but for some of those whose political sentiments have been sneered at here, as I have myself, who feel somewhat like them, I would dye every word of that Constitution in my heart's best blood, and never have seen the day when I would not do it, whether that blood were drawn by dagger pointing from the North or from the South:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation," &c.

Have you informed me of the nature and cause of the accusation? You tell me it is for murder in the record. In your argument you tell me it is for treason, conspiracy, compassing treason—compassing murder. The counsel refers to the third and fourth counts in the indictment. Your honor will see that the third and fourth counts contain various allegations of a combination between certain individuals to kill Abraham Lincoln as matter of inducement; but the substance of the count is this:

"And so the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, the said Abraham Lincoln then and there, in manner and form aforesaid, feloniously, willfully, and of their malice aforethought, did kill and murder," &c.

Then the fourth count declares:

"And the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, the said Abraham Lincoln then and there, in manner and form aforesaid, feloniously, willfully, and of their malice aforethought, did kill and murder."

That is all the indictment is. The first count is against Surratt for having killed Mr. Lincoln with his own hand; the second against Surratt and Booth for having killed him; the third and fourth against them all for having killed him; but the indictment throughout is for murder, and nothing but murder. If my learned brothers on the other side, representing this great Government, are simply seeking the vindication of society against one charged with a violation of its laws, I trust they will do the Government the credit, and themselves the honor, of not passing beyond the accusation, nor straining the principles of law that apply to the case.

Having shown your honor now that this is simply an indictment for murder, with regard to the testimony applicable to the attack on Mr. Seward, the learned counsel on the other side says with great pathetic feeling, "Cannot we show that Payne, in his attack on Mr.

Seward, so shocked Miss Seward that she fell dead, and death soon followed in her track in the person of her mother, and that all that was part of this conspiracy, and this prisoner is to be charged with all that?" I answer, No, your honor. The question is, "Is he guilty of the murder of Abraham Lincoln?" And these gentlemen have no right to put in the record that which is calculated to stir up men's hearts, and by the fumes of feeling obscure the operations of judgment. You want the cold and simple fact; and the twelve men who sit in that jury-box are to come out from the atmosphere of feeling as though they passed from the atmosphere of the world, and to look simply at the facts presented, and determine from the facts, did the man commit the act with which he is charged? Why was the evidence of the attempted killing of Mr. Seward introduced? Why was all this dramatic effect of bringing that family upon the stand? Nothing in the world but for the purpose of operating upon the feelings of men, and wringing from their hearts that grief for the dead which would aid in the perpetration of another murder.

The United States should stand the impersonation of that image of Justice, chiseled by the artist, with its eyes blinded, holding the sword in one hand and the scales in the other, looking neither to the right nor to the left, and hearing nothing but the fact that would guide it in the direction of justice, and treading the path-way without seeing, impelled only by the internal voice of truth. In the heart of the honest juror and the honest judge Feeling dies at the mandate of Judgment, and no sentiment rises to obscure the logical reasoning upon facts. And yet all this is introduced to color the case and prejudice the minds of the jury and the public. It has nothing to do with it. Where is the connection? The prisoner is charged with the murder of Lincoln. They have attempted to show that there was a conspiracy to murder Lincoln; no conspiracy, as far as I have heard of, to murder Seward. There is no charge in the indictment of such a conspiracy. In the indictment the conspiracy laid is a conspiracy to kill the President.

Says the counsel, "Every thing that was done by the conspirators is evidence." No, sir; they know that is not the law. What is done in pursuance of the conspiracy is evidence; but what is done by the conspirators outside of the conspiracy is not evidence. Suppose these conspirators, in the absence of one of them—suppose even in the absence of Booth himself, granting that there was a conspiracy—had got together and murdered another individual, not originally contemplated in the conspiracy, would that have affected the party not present? No, sir; and you know it would not. You know that nothing but what is in pursuance of the conspiracy can affect the conspirators, unless it is done by the parties themselves.

Mr. CARRINGTON. No, sir.

Mr. MERRICK. I misunderstood you. I did my friend credit at first. I thought he denied that I was right. I am glad to hear that I am.

Mr. CARRINGTON. No, you are mistaken. If you want me to say any thing, I will tell you what I do think about it.

Mr. MERRICK. Then, sir, I take that back, and I do not care what he says: I say he knows I lay the law down right. I will do him that credit. He may have the discretion of reticence; but I give him the credit of sufficient judgment to appreciate the principle. If there is a conspiracy to do an act, whatever is done in pursuance of the conspiracy, where the parties are charged as conspirators, may be given in evidence; but that which is not done in pursuance of the conspiracy, but outside of it, is not evidence, except as against the parties doing it. This indictment charges a conspiracy to murder Abraham Lincoln. That is the only conspiracy. That is the inducement in the indictment, not the substance of the charge. They are, then, by the indictment, limited to the conspiracy to kill the

President. The indictment is for the killing of the President. All that is done looking to that particular act may be given in evidence, if your honor sees that there is a connection established between the prisoner at the bar and those who did the act, or the prisoner at the bar and the conspiracy; but nothing beyond it.

The next point—I follow the order they have laid down—is as to the murdering of Union soldiers. Says my learned brother the district attorney on the other side, "Shall we not show the malice of this man's heart, by proving that when these poor half-starved creatures were escaping from the swamps he shot them and left them on the road?" It would be a pity to take that out of the record, on his account. He will dress it up most elegantly. But we do not want material in this record for rhetoric; we want material for justice. Says the counsel who first addressed your honor, "Cannot we prove that fact to show his feeling?" His feeling to whom? His feeling to Mr. Lincoln? What has his shooting a Union soldier got to do with his feeling to Abraham Lincoln? Is every man that gets into a quarrel with a Union soldier showing his feeling towards the President of the United States? The counsel seems unable to rid his mind of the idea that we are living in a royal government, and unable to rid himself of the idea that the whole entire army was only a part of the *personnel* of the President, and that the President was here, in free American, the Lord's anointed, and from that same ointment drops went forth over the whole army, and he who touched the smallest soldier touched the lofty head. That is not so. There is nothing in all that. If you can show the feeling of the party accused against the party murdered, show it; but not by indirection, and his feeling as to other parties.

My learned brother the district attorney takes up the idea and goes beyond what I had supposed he would go, and says that he can show that his heart is generally wicked, that the party is possessed with the devil, in order to prove malice. No, sir; you cannot do any such thing. Malice, in law, means willfulness. A jury sitting in a criminal case are not like a jury in a civil case, when a party sues for damages, for libel, or slander, or assault and battery, and when the jury may give vindictive damages because of the intensity of the malice; but in a criminal case they find simply the verdict of guilty or not guilty. Malice in criminal law means willfulness, means intention. Did he do the act intentionally? And in the eye of the law, if my learned brother and I should have a quarrel this minute, and five minutes after that quarrel he should kill me, he would be just as guilty as though he had lain in wait for me for two years cherishing all the devilish malice of which the human heart is capable. Our criminal law draws no distinction between degrees of malice; that is done by the civil law. It is on the other side to show a want of malice. When you come to sue an individual for libel, or slander, or defamation of character, the court will say to the jury, "You must find for the plaintiff, if you believe the defendant to have been guilty as charged in the declaration, and you can give vindictive damages according to malice, or take that into consideration;" you may prove, in order to show the malice in a case of slander, the utterance of similar sentiments before, at a prior date; in case of libel, the publication of other sentiments; or, in case of either, the publication of a statement that would indicate the feeling of the heart. But when you go before a jury in a criminal case, you do not go before the jury to measure a man's malice. You go before the jury to ascertain whether he violated the law, and whether he did it willfully, knowingly; and maliciously is but another word for willfulness. In a private quarrel, then, or a sudden brawl, one instant of malice, one instant of willfulness, one instant of purpose upon my part to kill my antagonist, followed by death, is malice, as large as the criminal law can make it, except under the statutes of some of the States, where it is divided; here it is not.

But even if that were true, if you could show degrees of malice to the party killed, could you show that the man was generally bad, and ought to be hung any how? That is the argument of my friend. Says my learned brother, "He is indicted for killing Abraham Lincoln. Very well. Now, I want to show that he shot some Union soldiers sometime in 1865, sometime before Lincoln was killed; that prior to that he killed a telegraph man; that prior to that he killed a horse because he was too old to go with him; and that prior to that he rode another horse to death. In other words, I want to show generally that his heart is so black that it ought not to continue to beat." Then, sir, why do you not indict him generally? All these things are separate offenses. Answer me, your honor. If he did kill these Union soldiers, and if he should be acquitted on the indictment for killing Lincoln, can he plead *autrefois acquit* if indicted for killing the soldiers? Would not an indictment lie against him for killing the soldiers?

Suppose I am possessed with the devil. Sometimes I am, but not to the extent I am going to indicate. I kill Judge Terry; the next day I kill Mr. Ennis; the next day I kill Mr. Middleton, and am indicted for killing Mr. Middleton. Will my learned brother say, he can go back and prove that I killed the other two men in order to show the malice with which I killed Mr. Middleton? An indictment will lie against me for the killing of all three, and the testimony in the case must be confined under each indictment to the killing of the man charged to have been killed in the indictment.

Mr. CARRINGTON. That was not my proposition.

Mr. MERRICK. As distinct as it could have been made. He wanted to prove that the man's heart was devilish, filled with malice. Now, he is charged with killing Lincoln. How would it be evidence of malice against Lincoln if he did kill the soldiers, which I do not believe, and I do not believe he ever said so; for McMillan's statement is no proof, as we shall show when we come to discuss his cross-examination, if we do discuss it. We do not care about the impeachment; but we will show on his cross-examination—

Mr. CARRINGTON. If my friend will allow me, I will state my proposition.

Mr. MERRICK. You may re-state it or state another.

Mr. CARRINGTON. No, I will only state that. I know my friend is very quick and can answer it, but I merely want to state it so that it may be distinctly understood. I said this: That if a man armed himself with a deadly weapon and was proceeding towards the house of A for the purpose of taking his life, and on the way shot a person whom he had never seen before, and against whom he had no enmity, I might give that fact in evidence to show the disposition and temper of his mind at that time; and I applied it to a conspiracy, an association of individuals. If, during the conspiracy, the prisoner was a member of it and acting with it, and, while acting with the conspiracy towards the common design, he was guilty of some act of cruelty at that time, it might be given in evidence to show his spirit.

Mr. MERRICK. I do not believe it to be law; but, with all respect to you, it is not this case. If Surratt, when he shot those Union soldiers, was on his way to the house of Mr. Lincoln to kill him, and the shooting of the Union soldiers at the time will shed any light upon the condition of Surratt's mind when he killed Lincoln, according to the principle enunciated by my learned friend, it ought to come in, but not unless it does. That is the case he states. I do not believe that even as he states it it is law. I would not concede any such principle. But, even as he states it, it does not apply to this case.

Again, your honor, in order to have it applied in the way he states it, he would have to show that the killing of the Union soldiers was a part of the conspiracy. Has he shown it? Was that a part of the conspiracy? Was it agreed on among the conspirators? If that was a part

of the conspiracy, then all the other conspirators are liable for what Surratt did on that voyage. But my learned friend will not contend that that was a part of the conspiracy. I cannot conceive how it can have any thing to do with this case; and I must confess, whilst I give my learned brothers credit for sincerity in all they say, I find it very difficult to bring my mind to a conviction that they believed it was competent when they insisted that it should go in.

But, says the counsel, "You must take all the confession." Aye, sir, all of the confession in the one conversation. McMillan made his statement, as your honor will see, of what this man said to him, and then, when the counsel pressed him as to other conversations spread over the whole voyage, he put this out as something he knew would help to damn the character of the prisoner at the bar and excite prejudice against him. The counsel says, "If it was any thing good, you would insist upon it; if it was any thing bad, you do not want it." Aye, sir; I would insist on the free confession of all that have testified in this case, if I could get it. He has had the privilege of putting in whatever this poor boy's butchered mother said; I have not. When I offered what she said, they said, "No; you cannot prove it. We can prove what will benefit our side; but you shall not throw the mantle of a mother's declarations over the child standing in the prisoner's dock." I would have proved her declarations. Aye, sir, I would have proved that, when tottering from her dungeon to the scaffold, with the world behind her, and nothing in the front but that God before whom she was to appear, she solemnly asseverated that she was innocent of the crime for which she was being killed. I would have proved it, sir. You did not think then of the principle you talk of now. I thought I ought to have been allowed to prove it—not by law, for I thought your honor would rule it out. I thought it was not competent, probably, according to law; but I did think that this great Government of the United States, with twenty-five or thirty millions of people, and the mightiest power in the world, arraigning one poor boy for the violation of its laws, might have allowed to fall from heaven the last declaration from the lips of his mother that it had sacrificed. I did think they might have allowed me to prove it, and let the jury say what they thought of it.

Next is the telegraphic communication. My learned friend said they wanted to show the telegraphic communication between Elmira and Washington, because the prisoner might have communicated by telegraph; he was in Elmira, and might have telegraphed to Booth here, and might have been doing something in Elmira in furtherance of the conspiracy. My learned brothers have been enlightened on another point of law. They have been enlightened on a point of possibilities and probabilities. When I offered the Canandaigua register, with his name on it on the 15th of April, and proved his handwriting, and showed that he had been out of the country for the whole time since, except when he was in prison, they said, "Oh, no; that will not do; he made that evidence for himself." "But," said I, "gentlemen, here is the register; here is his handwriting under that date; and he might have written it at that date, and therefore it ought to go to the jury as a circumstance." "Oh, no," they said, "he could not have written it that day; that will not do." Now they have changed their minds. They want to show that there was a telegraphic communication, and that Surratt might have telegraphed over the line to Booth in Washington, and might have communicated that he was there doing something in furtherance of the conspiracy. The objection to that is two-fold: First, that it is too remote. As your honor said, in your opinion this morning, they must connect the prisoner directly with the telegraphic communication before they can be allowed to show that there was one; in the second place, he could not have been doing any thing in Elmira which

would justify this jury in finding a verdict of guilty. Your honor stated in the opinion you delivered this morning that they might prove that Surratt was in New York on the 15th, or anywhere but in Elmira on the 14th, or anywhere but in Washington, for the reason, that to prove that he was in Washington was an essential part of their case and could be given in chief. They could not introduce proof that he was in Washington in rebuttal. Why? Because that he was here was an essential element of their case and proof-in-chief. And I say that the gentlemen will find, when the authorities to which they have referred in Connecticut and elsewhere are sifted, no such principle as they contend for. Murder done a hundred miles away from the victim! There is but one possible way in which it can be done. Mr. District Attorney understands it. If I prepare the poisoned dish and set it out at the table of my learned brother in Washington city to-night, and take the cars for New York and take my breakfast in New York to-morrow, and he takes his supper from that dish, then I am guilty of the murder, because my hand did the work in Washington.

Mr. PIERREPONT. Suppose you sent it to him from New York, then what?

Mr. MERRICK. Possibly that might be the same. But if I sent a reasonable creature to do the deed, you know it is not the same.

Mr. PIERREPONT. I know it is.

Mr. MERRICK. I know it is not, and I will produce authority upon authority to prove it. The difference is this: The one is done by an instrument that has no volition; by an instrument, by a material thing, the dish, the poison; and in the other case I send a reasonable creature to do my bidding, and he may do it or he may not do it; and being a reasonable creature, although I bid him do it, the law attaches to him who does the act a higher degree of crime, and makes him the principal and me accessory before the fact. That is law, sir. There is no doubt about it. If that is not the law, then there is no such thing as accessory before the fact.

Mr. CARRINGTON. We will show the difference.

Mr. MERRICK. Show it.

Mr. PIERREPONT. We will.

Mr. MERRICK. I will follow it from Lord Hale down to the present day, and I will show his honor such a list of authorities and adjudications that he cannot resist. In this case I want to stand upon the old foundations of the English law. I want to stand upon those and nothing else. I am amused to find the officers of the Government here, feeling that they have broken down upon the presence of the prisoner in Washington, falling back upon a principle that no reasonable judge in America can sustain. They cannot supply the want of Lee and Cleaver's testimony with bad law. They cannot do that, neither the representative of the Government nor the representative of some of the officers of the Government.

Now, as to what occurred at the Kirkwood House, that rests upon the same rule as the attack upon Mr. Seward. There is no conspiracy charged here to kill Mr. Johnson; and the allegation of an attempt upon his life is a very speculative thing at best. My learned brother says that Atzerodt has been convicted by a competent tribunal, and gone to his long account. I did think that my learned brother had rid himself of some of those ideas that seem to weigh with such perilous power upon the judgment of a portion of our people. I did not expect to hear the learned gentleman utter in a court of justice, after the decision in the case of Milligan, the sentiment that Atzerodt was tried by a competent tribunal. I respect the members of that tribunal; but, sir, there were grave errors committed about those times; grave errors that history will record, for the commission of which good men trembled for the future of our liberty, trembled more than they did even when "the life of the nation was assailed," as the gentleman says, in the death of the President. But one

court, the last bulwark of freedom—the great immovable, unshaking pillar of the Republic—stood firm when every other part trembled in the storm. One court stood firm against that error, and has pronounced the supremacy of civil over military law; and that military commission goes down to history branded as an illegal convocation of men exercising no authority upon the lives of their fellow-citizens. The fact that he was convicted before that commission can have no weight in showing that he was or was not a member of this conspiracy, if conspiracy there was. But what he did had nothing to do with the prisoner at the bar, had nothing to do with the alleged conspiracy in this indictment to murder Abraham Lincoln.

Says the counsel, "Atzerodt was at Mrs. Surratt's house; he went from there to murder Mr. Johnson, and therefore he was part of the conspiracy." "Mrs. Surratt's house," says the counsel, "which was even, whilst the rendezvous of these traitors, boarding some of the clerks of the Federal Government,"—boarding the patriotic Weichmann—God save the mark! Why, your honor, I cannot discuss that proposition at all. What logic was there in it? What was there in that to satisfy your honor that Atzerodt was connected with Surratt in the attempted murder of Johnson? Says the counsel, "The rendezvous of this conspiracy was at Mrs. Surratt's; they went forth from there upon their devilish work; and Mrs. Surratt, while she nurtured them, also boarded a Union clerk." I will show what manner of Union clerk he was; and I will say no more concerning him; for when this trial is over, I think he will leave this court-room with the profound pity of every kindly heart.

"Letter No. Five" my learned brothers withdraw.

The transportation from here to New York, the learned counsel says, should be proved because Surratt was at the other end of the line, and they want to show that he could have got over this end and reached the point where they prove him to be at. As I stated to your honor when that question was up, they have no right to divide their case, and prove him to be at one end of the line in their examination-in-chief, and leave the proof that he was at the other end of the line for the rebuttal. They should have traced him along the entire line in the first instance, and it is fairly in reply to nothing that we have proved.

I think I have gone over all these points. I had not reflected upon what I was to say in regard to them. The motion was made, and it was my design to have submitted it to the court. What I have said has been drawn forth by the remarks of my learned brothers on the other side. I will say now, that I do sincerely hope that some of that kindness and fairness which my learned brothers on the other side represented that they felt and entertained, may not only hereafter in this cause be felt and entertained, but be manifested. I do hope that the United States Government will not bow its dignified head to the humiliation of attempting to trick a prisoner out of his life.

The court took a recess until to-morrow at ten o'clock.

#### Forty-First Day.

SATURDAY, July 27, 1867.

The court reassembled at ten o'clock, a. m.

Judge FISHER. I may as well announce now, that after to-day the passes that have been issued heretofore will be of no worth. There will be a new set from Monday. We have been so over-crowded here sometimes as to make it almost impossible to breathe. I wish also to announce, that during the argument of the case, if there should be any argument, we do not wish to have the course of proceeding interrupted by any display of approbation or disfavor. We do not want any improper or unbecoming conduct in any way, and to prevent the occurrence of any thing of that sort, the marshal will have his force so stationed about the room that if any thing does occur that is improper the

party that is guilty of the improper conduct will be immediately taken and put out of the room. We must preserve the order and decorum of the court. Are you ready, gentlemen, to proceed?

Mr. BRADLEY. I am very sorry to be obliged to state to the court that I have received quite a number of letters, eight altogether, and a telegram showing that the witnesses whom we expected cannot be here this morning. I have letters from Waverly, from Owego, and a telegram from New York. The witnesses are on their way, but it was impossible for them to get here this morning. I ought to state, perhaps, also, that some of these witnesses are persons who have been appealed to by witnesses on the stand, as having expressed unfavorable opinions of Dr. Bissell, who have been visited since, and are on their way to say what they think and know about him. It is not proper for me to state what they will say. It is very material to us that we should have Mr. Wetmore again, who was examined the day before yesterday, and from whom I have received a letter dated at Baltimore. He had agreed to stay over, and not only was notice given to him in open court, but I afterwards saw him and had a conference with him, and he agreed to stay until the next day. He writes to me from Baltimore as follows: "I was so ill that the doctor advised me to go home. I got as far as here, and had to lay over, with a bilious attack and fever. I shall be compelled to remain rather than go further. I feel it my duty to inform you of it." His presence is material, and very material, in the present posture of the case. I do not know in what shape to present any application to the court for indulgence; but under the circumstances, I appeal to your honor to exercise such indulgence as you can, to enable us to meet and repel a most sudden and unexpected attack, of which we could have had no notice, coming from witnesses living at remote distances, and as to which we have acted promptly, without an hour's delay; so much so that some of our witnesses were here yesterday, and others are on their way. It is not only material to the case itself, but it is due to the witness who has been assailed to give him a reasonable opportunity to present from among his friends and neighbors and acquaintances such testimonials as he may be entitled to as to his character and credit. I have a letter from him this morning, in which he says, "The witnesses are despatched." I received a letter from him yesterday, stating that he thought he could not get them despatched. He writes me by to-day's mail. After referring to a number of witnesses, he says: "They will come. I will get all the witnesses off if possible to-night." That was written last night.

I ought to state also to your honor that I have received a letter from a gentleman at Watertown, New York, who, I suppose, is on his way here, who will support the character of Dr. Bissell. The main fact is that he was present at Elmira when Dr. Bissell was present on the 14th of April, and saw him there.

Mr. CARRINGTON. If your honor please, as I understood the agreement—I may be mistaken about it—the case was held open until this morning for the purpose of allowing the counsel for the prisoner to offer evidence sustaining the character of Dr. Bissell, and also the testimony of one witness in reference to the character of some person, whose name was not mentioned, examined on behalf of the prisoner. That being the agreement, I feel it my duty to ask your honor to enforce it. I will state that we have other witnesses; but I am not disposed to hold the case open or request it of the court, thinking that the public interests require that there should be a speedy termination to this long and tedious investigation. Neither side can claim that your honor has not been exceedingly indulgent to us; but we are to remember that there are a great many persons in jail and a great many persons to be tried, and notwithstanding the transcendent importance of this case, if it appears to the conscience of your honor that we have had an oppor-

tunity to present all the material evidence to the jury, it strikes me that there should be a conclusion of the matter this morning.

Mr. BRADLEY. I can state now with more precision, perhaps, that from the city of New York there are nine witnesses on their way; there are from Waverly, I believe thirteen, and from Owego three, besides Dr. Bissell himself. I take the liberty to state also, that these letters are from gentlemen of known character, one of whom is well known in this city.

Mr. CARRINGTON. I am not disposed to question that in the least, but I think this case has illustrated the unreliable nature of testimony in reference to the general character of witnesses for truth and veracity. It is not a very important point. Of course it is a matter of the very first importance, where the character of a party has been assailed, to support it. I would be the last person in the world to find fault with the learned counsel for the prisoner who desire to use every professional effort to sustain the character of a person whom they introduced here as a witness. I felt it to be my duty to do it in a similar case. But when there have been witnesses examined both in favor of and against the character of that witness, I submit would it be a wise and discreet exercise of the judicial discretion to postpone the case for the purpose of allowing cumulative testimony to be introduced. Surely the jury has heard enough on both sides to form a proper estimate of the character of the different witnesses who have been examined here. After all they judge more from the bearing of the witness upon the stand, and from his responses to the questions put to him in his examination, than by these witnesses who speak merely as to general reputation.

Mr. PIERREPONT. If your honor please, when the court adjourned yesterday it was with the specific agreement and understanding, ordered by your honor and now in the minutes, that the case was put over until this morning for the purpose of enabling the other side to get their witnesses here on one single subject, and that was introducing witnesses sustaining the character of Dr. Bissell, they having examined several upon that subject; and that was all. With that, as your honor will remember, and the jury will remember, the case was to close; and the day was spent yesterday in the mode in which your honor well remembers; and now this morning comes, and the witnesses are not here. It is on a subject which surely is not one of any very great moment as to whether a man will believe another man on oath. The question is, whether the jury will believe the man who has testified on oath. So far as my experience goes, to have men come here upon the stand and state whether they would believe a man on oath or not, I do not believe ever produces the slightest influence upon one of the gentlemen on the jury. These gentlemen will believe or disbelieve him from the way he testified in his direct and in his cross-examination; and it will not have much influence that somebody else comes up who might feel particularly gratified to be in a position where he could say he would not believe a man on oath, or he would believe him on oath. The question is whether the jury will believe him on oath; and it is not a very vital question whether somebody else would do so or not.

Mr. BRADLEY. They offered evidence by Mr. Wetmore tending to show, according to his recollection, that Dr. Bissell was in New York on the 11th, 12th, and 13th of April. I expect to prove by one of these witnesses, Judge Munger, of the city of Owego, that Dr. Bissell was in Owego on the afternoon of the 14th of April and paid him a sum of money.

Mr. PIERREPONT. The case is not upon any such question as that.

Mr. CARRINGTON. I submit to your honor as a question of law and practice, after there is an agreement that the case is to be closed between counsel and the court, and after it is entered upon the minutes of the court, will your honor postpone the case for the pur-

pose of allowing the introduction of cumulative evidence? That is the point. Now, it is a cardinal rule that no court will grant a new trial merely in consequence of cumulative evidence, even where the offer is to present cumulative evidence upon a material and important point. I doubt whether it would be a proper exercise of the discretion of the court to continue it after the agreement to which I have referred. And, surely, where they offer to introduce cumulative testimony in regard to what I repeat is not a very important and material point, it would be, I most respectfully submit, an unwise exercise of the judicial discretion further to postpone the case. I might state that we have witnesses who are prepared to testify against the character of Dr. Bissell, men of the highest standing; and if your honor grants indulgence to them for the purpose of sustaining the character—

Mr. WILSON. They are here.

Mr. CARRINGTON. Now, will your honor open the case for the purpose of allowing us to introduce cumulative testimony on that point? It is a bad rule that does not work both ways; for if we have closed the case, by the repeated decisions of your honor—and I know no judge who is more punctilious on that point—I do not think you will ever allow me to prove the venue if I omitted to do it, after I formally close my case. We having closed it, would you open it for the purpose of allowing us to introduce cumulative testimony as to the general reputation of this witness in regard to truth and veracity? I would not ask it. Will you now, after they have closed their case formally; for when they announced to the court that this morning their witnesses would be in the city by five o'clock—

Mr. BRADLEY. I beg your pardon. I said I hoped they would be here. I did not say they would be here.

Mr. CARRINGTON. I stand corrected. I did not hear distinctly. I thought the gentleman said five p. m. But I am corrected. I do not know whether he spoke positively or on his best information.

Mr. BRADLEY. I said it was very doubtful whether we could get them here before evening.

Mr. CARRINGTON. That is sufficient. I do not pretend to state what he said exactly. But, at all events, I take it that it is a formal conclusion of the case by the counsel for the prisoner, and I ask your honor not to open it.

Mr. BRADLEY. I would have refrained, and would be very glad to avoid what may become a necessity. Mr. Wetmore stated on the stand that he had settled all accounts with Dr. Bissell, and there was no misunderstanding or disagreement between them. I hold in my hand the protested check of Mr. Wetmore in favor of Dr. Bissell for \$500, protested in October, 1865; and I want an explanation of it; and I want to get that in evidence.

Mr. PIERREPONT. That cannot be on the character of Dr. Bissell.

Mr. CARRINGTON. I cannot see the relevancy of it.

Mr. BRADLEY. It can affect the former relation which existed between Wetmore and Bissell, and show what that relation is now.

Mr. PIERREPONT. It is not on the character of Dr. Bissell.

Judge FISHER. Gentlemen, I have, I think, been disposed in every way to be indulgent on both sides in regard to this case. If I had exercised my discretion otherwise, the case probably would have been over before this. But last week I gave some two, or three, or four days to the counsel for the defense, and this week I have given some two or three days' indulgence to the counsel for the prosecution. Yesterday, or the day before, I believe the day before yesterday, a proposition was made to close the case at that time by the counsel for the defense and accepted by the counsel on the other side, but there was a misunderstanding about it in re-

gard to the argument. As that was the only cause why the arrangement was not entered into, I do not think there could be any prejudice done in this case one way or the other if I should now refuse to grant any further indulgence, having granted an indulgence of one day already to the counsel for the defense to have their witnesses here to-day to be examined on one point, nine witnesses from New York and one from some other place, to testify to the character of Dr. Bissell. The case would have been closed but for that indulgence granted yesterday. We have been thus indulgent at the expense of the jury and the expense of the Government, and there ought to be some end to the case. And now, if you have no further witnesses to offer, we will have to close the case.

In regard to the motion that was made to strike out certain testimony in the case, which was argued yesterday; there were seven items of evidence objected to. The first was the evidence relating to the attack by Payne upon Secretary Seward. The second was the evidence relating to Jacob Thompson. The third was the evidence relating to the shooting of Union soldiers, and the telegraph operator, and persons sent in a small boat from a gunboat while Surratt was to be crossing the Potomac river. The fourth was the evidence relating to telegraphic communication between Elmira and Washington. The fifth was the evidence relating to the transportation of passengers to New York from Washington on the 15th of April, which was given in on Thursday. The sixth was the letter picked up in North Carolina, called the "Letter No. Five." The seventh was the evidence relating to Atzerodt and what he is said to have done at the Kirkwood House.

In regard to the first point, the evidence relating to the attack made by Payne upon Secretary Seward; and the last point, the evidence relating to Atzerodt's conduct at the Kirkwood House, those items I shall allow to stand, upon the ground that there is evidence in the cause tending to show that those acts, the attack upon Secretary Seward and the attempted attack upon the Vice-President, whatever it amounted to, were all one and the same scheme or plot. If there had been one indictment here against all these parties for the murder of Abraham Lincoln, another for the assault with intent to kill Secretary Seward, and another for assault with intent to kill the then Vice-President, Mr. Johnson, there could be no doubt about the fact that you could give in evidence all about each one of those matters, if you had evidence first tending to prove that they all arose out of one conspiracy, or one concerted scheme or plan. Therefore, those two items are admitted upon that ground.

As regards the second item, that relating to Jacob Thompson, I have looked over the printed evidence; it may be I have not looked as carefully as I should have done; but I can find nothing in the evidence which connects Jacob Thompson with the conspiracy, or with the prisoner in regard to the conspiracy. Therefore that item will go out.

The third is the evidence relating to the shooting down of Union soldiers on the railroad by Surratt and others, testified to in the evidence of Dr. McMillan in what he says was the confession of Surratt, made to him. In looking over the testimony of Dr. McMillan, it would be impossible to tell whether this was said in the same conversation wherein he made other confessions more pertinent to the case or not. We are bound to take it just as we find it in the testimony, and on that ground, on the ground that it is impossible to separate it from the other, and say that it was given at a different day by way of another confession, I think the evidence ought to be left to stand; and also upon the further ground that there is evidence in the cause tending to prove that there was a conspiracy, a plot, a scheme, or a concerted plan of action, whatever you may choose to denominate it, not only to take the life of the President of the United States, but other head officers of the Government; it was a plot against the

United States Government; and the shooting of the Union soldiers might tend to prove the motive, the malice that the individual who shot them bore towards the Government.

The fourth is the evidence relating to the telegraphic communication between here and Elmira. I understood it was between here and New York and New York and Elmira.

Mr. PIERREPONT. No; here and Elmira. The evidence was merely showing telegraphic communication upon those days.

Judge FISHER. Is there any evidence to show how that communication went, *via* what place?

Mr. PIERREPONT. No; the mere facts are shown, as you will see by the evidence, that there was telegraphic communication upon those days between here and Elmira.

Judge FISHER. I do not see any thing in the evidence of the defense which would call for this evidence by way of rebuttal, and therefore that will be stricken out; and the evidence relating to the transportation of passengers, which was given in on Thursday, will be stricken out on the same ground.

The letter picked up in North Carolina, "No. Five," it is admitted by the counsel for the prosecution, ought also to be stricken out. That disposes of the seven items of testimony. As regards the fourth item, if it had been the telegraphic communication between New York and Elmira, I could understand why that would be admissible, because it might be in rebuttal, by way of supporting the testimony of Dr. McMillan.

Mr. BRADLEY. To which we had not replied, the court will observe. That was evidence-in-chief.

Judge FISHER. The item is ruled out.

Mr. BRADLEY. I desire to have an exception noted to the ruling of the court as to those which are admitted.

Mr. MERRICK. Now, your honor, with regard to the exceptions which we have taken, I suppose it is necessary that they should be put in some formal shape. Under our rule of practice it is necessary that the judge should sign the exceptions, and I believe before the jury retire.

Judge FISHER. Is that the rule of the court on the subject?

Mr. MERRICK. That is the rule of law, and I apprehend it is applicable to this court. I think your honors have decided that they need not be sealed, but they must be signed—

Judge FISHER. Before the retiring of the jury?

Mr. MERRICK. Oh, yes; except by agreement of counsel.

Mr. PIERREPONT. We can agree to have it done.

Mr. MERRICK. I reckon we had better do it now. I prefer to give in these things as we go along, because there are likely to be misunderstandings. If we pursue the open ways of the law it can lead to no misunderstanding.

Judge FISHER. Very well. They will take some time, I suppose.

Mr. MERRICK. Mr. BRADLEY, Jr., is preparing them now. I think he is nearly through.

Mr. CARRINGTON. Do I understand your honor to say that you will suspend further action until the exceptions are prepared? I am not aware that there is any rule of law requiring it.

Mr. PIERREPONT. I suppose they can be handed to the court when prepared and signed.

Judge FISHER. It is not necessary that they should be signed before the argument.

Mr. MERRICK. No, sir; there is no rule about that at all. I believe there are about a hundred and odd exceptions.

Mr. CARRINGTON. We want to make as rapid progress as we can.

Judge FISHER. Well, we are ready for the argument to the jury.

Mr. MERRICK. Has your honor disposed of that other question which we submitted?

Judge FISHER. What was that?

Mr. MERRICK. As to the order of the argument and the relative rights of counsel under certain circumstances.

Mr. CARRINGTON. If your honor has any doubt on that subject, we desire to be heard upon it.

Mr. MERRICK. I understand the practice to be uniform. Now is the proper time to settle it, as it will affect the movements of counsel probably.

Mr. BRADLEY. (To the counsel for the prosecution.) If you want to be heard on that point, you had better address the court at once.

Mr. PIERREPONT. We have very little to say on that point, at least so far as I am concerned. The learned district attorney will address your honor upon that subject. I have but a word to say about it. This case is one of such magnitude as has certainly never been tried before in America, and in magnitude it has never been surpassed in any country in the world. That is quite certain. All parties will agree to that, I think. It is one of proportions vast, in every view in which you consider it. It has occupied a great deal of time. The evidence is scattered over a great many days, and it is quite impossible that the jury, or that any mortal man that ever lived, can keep in his mind and can place in logical form the evidence that has been given in this case, and which now stands in this case, unless it is put together by those who have condensed it, who have digested it, and who have labored upon it.

Judge FISHER. I do not think this question is up before me yet. In looking over the notes of Judge Crawford the other day, I found that such a motion was made in two or three cases, but I believe the motion was always made after the counsel for the prosecution had opened the argument to the jury.

Mr. MERRICK. That is true, your honor; but as I was not advised what certainly would be the rule followed by your honor, I thought it proper before the question came up in the shape of a motion to learn from your honor what that rule was, because knowing the rule beforehand would enable counsel to govern their conduct understandingly; and I apprehend in a matter of this sort, which does not relate to the jury, and does not relate to the facts in the case, your honor would be very ready to give counsel any information that would facilitate their conduct.

Judge FISHER. If it is a matter which rests in the discretion of the court alone, I should not be disposed to apply a rigid rule, under the circumstances of this case. It is certainly one of the most voluminous cases in respect to the testimony, and there may be some very interesting and intricate questions of law connected with it, for aught I know; and, in view of the state of the weather, I think, if the counsel for the defense do not choose to reply to the counsel for the prosecution, the latter can go on with two speeches; because it would be a very burdensome duty for one to perform to argue this case in all its aspects on either side. If it is the right of the defense to cut off one of the counsel for the prosecution, they must maintain that right, and it shall be maintained, if I can see that it is their right. I have never seen any thing of that sort in my practice, and never heard any thing of the sort before this matter was mooted here; but it seems to me if the counsel for the prosecution deem it the duty of both of them to argue the case to the jury, to divide their labor, they ought to have the privilege of doing so; and the fact that the counsel on the other side do not choose to reply or to make an argument to the jury ought not to cut off the counsel for the prosecution from stating their full case as they best can.

Mr. BRADLEY. The effect of that would be that we should not be advertised at all.

Mr. CARRINGTON. Allow me to say a word. If your honor please, there is no agreement, as I under-

stand it, that I shall present a portion of this case, in the ordinary sense of that term. I shall endeavor, in presenting this case, to give a general view of it in such a way that the learned and eminent counsel who represent the prisoner may have an idea of our views of the case; but, of course, it will be impossible for me fully to elaborate and to illustrate the various questions of law and of fact which are involved in this investigation. There is no principle of law, that I am aware of, and there is no rule of this court—and we have printed rules of the court—which gives the counsel for the prisoner the privilege of cutting off the argument of the counsel for the prosecution after one speech has been made. I think it due to the public, I think it due to the honorable judge who presides at this tribunal, I think it due to the jury, that the United States attorney, humble as he is, should give them the benefit of what little information he may have on this subject; and it is certainly due that the eminent gentleman with whom I am associated should present his views upon a question of such immense magnitude. I should feel that an injustice had been done to the cause, if this learned gentleman, my senior, specially employed by the Government, and who is capable, I think, of rendering—I may say without disrespect to the court—some assistance to your honor and to the jury, were not heard, and the entire responsibility were left with you and with them. It is also due to the public that the views of Mr. BRADLEY and Mr. MERRICK—gentlemen so eminent in their profession—upon these questions should be known. I say, in all candor, that I desire to hear them. I desire to hear these questions discussed. Unfortunately, I am in a feeble state of health at this time, and have reason to regret it in view of the severe task before me; but I could not conscientiously, I could not consistently with my sense of duty to the public, cast the entire responsibility of this case upon the court and the jury.

Mr. BRADLEY. I was about to observe that the very statement and argument on the other side affords, in my humble judgment, a powerful reason why the course should not be adopted which has been suggested on the part of the prosecution. If this case be of that magnitude and importance which is claimed for it on the part of the prosecution—if it involves such momentous questions affecting the whole country, if it involves grave questions of law which have never yet passed into judgment—it is of the utmost importance on the part of the accused that he shall be fully advertised beforehand of all the grounds to be taken against him. True, the weather is oppressive; we are all exhausted by a long and laborious trial; and it may be that it would be a heavy labor upon any gentleman to undertake himself to expose the whole of this case, and it may be that it would be well to divide it; but I submit that that division should precede the defense.

Mr. CARRINGTON. I do not intend to divide it.

Mr. BRADLEY. In cases of divided labor, it is where the defense divide the labor, but the plaintiff or the prosecution cannot do so.

Mr. CARRINGTON. I distinctly say there is no agreement to divide the labor. I will endeavor to present the points of the case.

Mr. BRADLEY. I understood the suggestion as coming from the senior counsel for the prosecution, and as having had some influence in the mind of your honor, that the labor would be very great for one man, and that it would be fair to divide it. I assent to it. I ask, then, that both the counsel may be heard before the defense, and then, if either of them chooses to reply, after we have the whole ground of the prosecution exposed to us, after we see the propositions, the authorities, the array of the proofs, and have replied to them, with my free consent either of the gentlemen or both may reply; but to divide it and throw upon the district attorney one portion of the case, reserving possibly the gravest and most material part of the summing up

after the arms of the defense are tied, would be, in my humble judgment, great injustice towards the accused. I do not know what arrangement the gentlemen have made between themselves. The district attorney has heretofore, with one exception, always closed the case. I know of but one case in which it was not so—the case of Gardiner, where Mr. Fendall and Mr. May made an arrangement by which Mr. May, who had been in Mexico, closed the case.

Mr. CARRINGTON. In Vanderwerken's case, in which Mr. Davidge was associated with me, I allowed him to close the case, and Mr. Carlisle gave me a very severe exhortation for it.

Mr. BRADLEY. You deserved it, I think, richly, and always will, if you give up your place to your associate counsel. I do not know what order the gentlemen have proposed for themselves; but it is due to the case, from what has fallen from them this morning, that the accused should be fully advertised beforehand of all that is to be said, not in words, but in substance, against him. I therefore humbly suggest that, if the labor is to be divided, both the counsel shall address the jury before we are called upon to reply.

Mr. PIERREPONT. If your honor please, I do not suppose the rules of the conduct of a cause differ in this court from the rest of the civilized world. I fancy not; and, if not, the case is very plain. The other side are never entitled in any case to any view that the prosecution may choose to take of the evidence except so far as it involves questions of law. The evidence is before us all; it is all printed; and, if it were not printed, it would make no difference. We are not obliged to comment upon the evidence until we close. We are obliged to present them with our legal views and the general bearing of the testimony on those legal views. Beyond that we are not obliged to present any evidence in the cause, for all sides have the evidence, and nobody is surprised by the presentation of the evidence. I never heard of it being different anywhere, and I cannot understand why there should be an application to change the order of things in this case different from what has been the custom and practice in all the courts so far as I ever heard.

Mr. MERRICK. We have not made any application to change the order of things. We have only asked that your honor shall declare what is the rule of the court. I have understood, if you will permit me a single moment, that Judge Wylie, in holding the criminal court—whether I am right or not, I do not know—had established the rule of practice that, if the district attorney did not speak and the defense did, the district attorney could not reply to it. I think his honor, Judge Wylie used the rule that the opening was one thing, and that the other was a reply; the speech of the defense followed the opening; the closing speech was a reply; and, if there was no speech for the defense, there could be no reply, for there was nothing to reply to. I was so informed a few days since.

Mr. CARRINGTON. I will state my recollection of that decision. It was made by Judge Olin, I think. They referred to Judge Crawford. My brethren of the bar know my respect for the venerable judge. I do not like to state merely from memory, but I recollect that Mr. Barton Key once told me, that before he was district attorney he was defending some one, and Mr. Fendall, who was then district attorney, made the opening speech, and he determined not to reply. Mr. Fendall immediately got up and made another speech, and the judge allowed him to do it. The man was convicted; and I recollect Mr. Key, in his peculiar way, telling me that he felt so bad about it that he got up at nights, so distressed was he that he had not advocated the case of his client under a general misapprehension. If that be so, Judge Crawford's view of the subject is not inconsistent with that of your honor. But as I understand the ruling of Judge Wylie or Judge Olin, it is this—I do not recollect distinctly

whether it was under Judge Wylie or Judge Olin—that if I did not open the case, I had no right to reply unless I gave notice beforehand; but if I said to the counsel on the opposite side, "I have nothing to say in this case; it is entirely plain to my mind; I do not think it necessary for me to argue it; but if you speak I will reply," the judge gives me that privilege.

Mr. MERRICK. I can explain to Mr. CARRINGTON the case to which he refers of Mr. Key.

Mr. CARRINGTON. Do you recollect the case?

Mr. MERRICK. No, but I can explain it. I understand the principle differently. I have seen the principle put in operation. Where there are two counsel in the case, for instance, and one of them opens, and takes it for granted that the defense is going to reply, and the defense does not reply, the court will then say, as a general rule, "the other counsel cannot speak except by arrangement, but you may go on and either complete the speech you have begun or make another; you have got a right to talk, and talk as long as you please." So in Mr. Key's case, where Mr. Fendall opened for the prosecution and Mr. Key declined to reply, the court said Mr. Fendall might go on and make as long a speech as he pleased, or half a dozen in one, but after he got through Mr. Key had the right to reply.

Mr. PIERREPONT. Then it amounts merely to this: In a case where there is a great deal of testimony, instead of the one going on another takes his place, just as those reporters relieve each other, and just as other people do. I submit to your honor there is no iron rule

or law on this subject, and it lies entirely in the discretion of the court. I have no doubt that in an ordinary case, if the district attorney should open the case to the jury, and the other side should say they would submit it as it stood, your honor might say, if you saw fit so to say, "There will be no other speech on the subject." No doubt your honor could say so, and would say so. Your honor has the power to say so in this case, and I am not going to urge the matter at all. I was expected to speak and close the argument in this case by the arrangement which the district attorney proposed to me. On his proposition to me that I should do it sometime ago, the case has been arranged in that way on his suggestion, at his request, coming from his own self to myself; and that is the way it was arranged. I am not anxious to speak in this case in this hot weather surely; and if your honor will relieve me by saying I shall not speak, I shall not complain. I merely wish to have it appear before the public that I am willing to speak. If your honor forbids it, I have nothing to say.

Judge FISHER. Gentlemen, there is always trouble when we undertake to depart from the old beaten track in regard to practice. I think you had better go on in the usual way.

Mr. MERRICK. That is just my inquiry, what is the usual way?

Judge FISHER. The usual way is for the prosecution to open the case to the jury, the defense to reply, and the prosecution to close. You will proceed, Mr. CARRINGTON, if you are ready.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 93. WASHINGTON, THURSDAY, SEPTEMBER 5, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 92.*

### SPEECH TO THE JURY

OF THE

HON. E. C. CARRINGTON,

*United States District Attorney.*

### ARGUMENT FOR THE PROSECUTION.

*Saturday, July 27, 1867.*

Mr. CARRINGTON. May it please the court, and you, gentlemen of the jury: I have reason to regret the state of my health in view of the task before me, but I shall, notwithstanding, endeavor to do my duty. Permit me at the threshold, as the official organ and representative of this Government—not in the way of flattery, but in the integrity and sincerity of my heart—to return you my sincere and cordial acknowledgments for the becoming manner in which you have generally borne yourselves during this long, tedious, and painful investigation. Your courteous, dignified, and solemn bearing is a proper and eloquent rebuke to the spirit of levity which, I regret to say, has sometimes pervaded this audience; and is alike worthy of imitation and of the highest commendation.

I am not surprised that the learned counsel for the prisoner should offer to submit this case without argument, for error is easily exposed, while truth loses nothing from discussion. It was, I think, the advice of an old and experienced lawyer, to "submit a bad case, but argue a good one." The principle is embodied in that familiar and common-place effusion of the poet:

"Truth, crushed to earth, shall rise again:  
The eternal years of God are hers;  
But Error, wounded, writhes with pain,  
And dies among his worshippers."

Their hope, and their only hope, gentlemen of the jury, was that, in groping through this labyrinth of evidence without the guidance of court or counsel, you might find something like a reasonable doubt. But a simple analysis of the testimony is all that is necessary to expose the fallacies of the defense, and to establish the guilt of the prisoner at the bar so clearly that he who runs may read.

Before proceeding to the argument, I shall be pardoned, I trust, for offering a word of explanation. It has been, as already intimated, the custom in this District for the United States attorney to close the discussion in every case where the Government is interested. To this rule of practice there are notable exceptions. In the celebrated case of *The United States vs. Gardiner* my friend and venerable predecessor in office Philip R. Fendall, Esq., accorded the privilege of making the concluding address to the Hon. Henry May, with whom he was associated on that occasion. In the case of *The United States vs. Gilbert Vanderwerker*, in which I was opposed by the ablest counsel at the bar,

I yielded the post of honor and responsibility to Walter Davidge, Esq., a gentleman eminent for learning and ability in his profession; and I understand from his honor, who presides over this tribunal with so much courtesy and dignity, that when he was attorney general of the Commonwealth of Delaware he paid this compliment to a gentleman older than himself when he invited him to assist him in the discharge of his official duty. I make these remarks in regard to a question of professional etiquette and propriety, about which gentlemen of the profession entertain a difference of opinion, because, so long as I occupy my present official position, I desire to avoid everything which might excite or appear to deserve an expression of disapprobation from this honorable court or my brethren at the bar. The distinguished gentleman, who is my senior in years, and who has been specially employed by the Government to aid in this important prosecution, will, gentlemen of the jury, deliver the concluding argument to you. I now bespeak for him that kind and respectful attention which the importance of the case demands, and to which he is eminently entitled in view of his high personal and professional character. If I err, you will see from the remarks which I have already made that I err in good company and on the side of professional modesty and courtesy.

The learned gentleman who opened the case on the part of the prisoner remarked, in the course of his address, that they had exhibited some feeling of indignation in view of certain facts which he disclosed, and of which he assumed we had no personal knowledge. If any thing has occurred in the course of this investigation to excite a feeling of honest indignation, we have no objection to a proper and reasonable exhibition of it. It is the privilege and it is often the solemn and painful duty of counsel to assail boldly, and to denounce the character and conduct of witnesses. But no honorable gentleman should take advantage of his position at the bar to do injustice to an individual who happens to be in the unfortunate attitude of a witness upon the stand. I make no such accusation against the learned gentleman. It is a question which addresses itself to his own judgment, conscience, and honor, and every lawyer should be his own judge of his professional duty.

Mr. BRADLEY. What do you refer to? I do not understand you at all.

Mr. BRADLEY, Jr. Nor I either.

Mr. MERRICK. None of us understand.

Mr. CARRINGTON. I am speaking of the reference made to the witnesses by Mr. BRADLEY, Jr., in his opening address. By a parity of reasoning, gentlemen, and upon the same principle, it is the privilege and often the duty of the prosecuting officer to denounce the parties indicted and arraigned for high crimes and misdemeanors, but it would be improper for counsel to treat such matters as personal, and to indulge in personal or offensive remarks to each other, for reasons too obvious to mention.

Entertaining these sentiments, I shall endeavor on this occasion, as I hope to do on all occasions, to meet

the learned counsel in kind and courteous, but open, bold, and manly argument. I shall endeavor to present this case in a spirit of justice and fairness to the accused, but I shall speak of this traitor, murderer, and assassin, his associates in crime, and the rebel spy who comes here to shield him from the consequences of his crime, as they deserve. I cannot regard this cruel, miserable murderer and assassin as a representative man of the South; as an embodiment and impersonation of southern honor and southern chivalry; and if an attempt should be made by smiles, by innuendoes, or, as Hamlet says, "by any other such ambiguous giving out," to present him to the imagination of this jury as an embodiment and impersonation of southern honor and chivalry, I call upon you to spurn it as an insult to every honest man born and reared upon southern soil. Southern men do not justify assassination and cold-blooded, deliberate, cruel murder. I am aware that I address southern men, with southern sympathies—I say this in no offensive sense—but loyal men, men true to the laws and the Constitution of our common country. What honorable man—North, South, East, or West—will proclaim to the civilized world that he justifies, palliates, or sympathizes with a traitor, a spy, and an assassin; who shed, as I shall show you, innocent blood for money? That there were some honorable confederate officers and soldiers I am free to admit, for I thank God that I do not cherish in my heart a sectional sentiment; I would not abuse a northern man before a southern audience, nor would I abuse a southern man before a northern audience; and I ask the question, What honorable confederate officer or soldier has taken that stand to shield this assassin from the consequences of his crime? A spy, fresh from Morgan's band of murderers, horse-thieves, and guerrillas, with unblushing effrontery, has alone come here to represent to an American jury and an American audience that this is a man to be treated as a lion and a hero. Give me a jury of honorable confederate soldiers—give me a jury of young rebels, with arms in their hands, who entered into this fierce and cruel war under the delusion that they were doing God's service, many of them honest and honorable men, misled by wicked, designing, and ambitious politicians—and let me tell the sad story of this cruel murder, and they would hang this wretch as high as Old John Brown or Haman.

Born, gentlemen of the jury, on the soil of the Old Dominion, I am endeared to her by the strongest, tenderest, and holiest ties that could entwine around the human heart. There lie entombed the bones of my ancestors, and of my own honored father, who carried to his grave the fearful yet honorable wounds he received while fighting, not for a section, but for this whole country. Feebly endeavoring to imitate his example, and to follow his precepts, during the cruel war that swept over the face of our country I was true to the federal cause; not because I loved Virginia less, but this Union more; because I honestly believed that the true honor and interest of my native State were involved in the preservation and perpetuation of the Federal Union. I never found that I injured myself in the estimation of a northern gentleman or lady by boldly avowing my personal affection for the people of my native State. I differed with them upon principle; but with regard to this all honorable men can agree: that the murder and the assassination of any man, whether he be President or a feeble, unpretending American citizen, sitting by the side of his wife, is a crime which deserves the anathemas and the indignation of every man who has a heart to love and a soul to feel for the honor of his country.

Who are the men—of course I make no allusion to counsel—who sympathize with this prisoner and his horrid crime? The original secessionists, the persons who filled this land with widows and with orphans—the Ramsey-Snivels of the country—who stirred up strife among brethren, and whose coward hearts quailed

in the hour of battle and of danger. Perhaps party spirit may pervade this audience. I trust it does not. I call upon you, gentlemen, to exorcise the infernal spirit from the halls of justice; preserve the integrity and purity of the judicial ermine, and wipe this deep and damning stain from the escutcheon of your country.

I beg your pardon, gentlemen, for having detained you thus long with these prefatory remarks. To you I know that words of admonition are unnecessary. You fully understand and appreciate the magnitude of the issue submitted to you for your decision. The scene before us is as solemn as the grave. You behold in the person of the prisoner at the bar a dying man. He has forfeited his life to society by a deed of blood and horror almost unprecedented in the annals of ancient or modern history. The voice of reason and of public justice alike demand this satisfaction to an outraged and violated law. We must be cruel only to be kind; we must punish the guilty only to protect the innocent.

You have been subjected to a searching examination by one of the honorable judges who presides at this tribunal, and in response to the interrogatories submitted to you, you have sworn to decide this case according to the evidence, appealing to the Searcher of all hearts to test the sincerity and integrity of that impressive and solemn adjuration. I was struck with the language and manner of one of your number when the question was put to him. I know him, and have known him long. He said, "I will decide this case according to the law and the evidence." Those were his very words. Let me say here that it is a matter of mutual congratulation that a jury has been selected agreeable to both parties—the representatives of the wealth, the intelligence, and the commercial and business character of this community; gentlemen against whose character, as has already been intimated, there cannot be a whisper of suspicion. I would trust you with my life and my honor; I will trust you with the honor of my country. But did you not make a mistake? You have never read a law book in your life. How then can you decide according to the law? Yet that is your oath. Take care; not for a world would you violate that solemn obligation. How are you to decide according to the law, never having made the law your study. The national legislature has wisely provided against that difficulty. A gentleman learned in the law—who has given days and nights, months and years, to the investigation of this abstruse and complicated science, distinguished for his morality, as every judge should be, (for his responsibilities are equal to those of a minister of the gospel who proclaims the glad tidings of salvation,) under the solemn obligation of an official oath—tells you what the law is. You look to him exclusively, for the responsibility rests entirely with him. He enunciates and elucidates the principles of law by which this case is to be tried and decided. A juror who swears to decide according to the law, and departs but a hair's breadth from the instructions of the court, and decides according to his own abstract notions of right and wrong—pardon me for saying so; I do it in no offensive sense—commits the awful and Heaven-daring crime of perjury. The witness who swears falsely to save or destroy the life or liberty of the accused commits the crime of perjury. The judge who willfully misrepresents the law commits the same crime. The juror who departs from the instruction of the judge—pardon me for repeating, gentlemen—commits the same awful and Heaven-daring crime. If I should willfully misrepresent the law for the purpose of misleading the judge, I should commit a great sin in the sight of God and my country; but I am liable to err, and it is for the judge to determine the mooted questions between us; your province being simply to ascertain whether the facts which he declares essential to the conviction of the prisoner appear in the evidence. If they do, you will render a verdict respon-

sive to the spirit of those instructions, leaving the consequences to Him who knows the end from the beginning and orders all things aright.

Now, I undertake to show (mark me, for I make the statement fully sensible of all the responsibilities that attach to my official position) that every fact which this judge will and must say, if he decides according to the law—is essential to the conviction of the prisoner, has been established by evidence, clear, conclusive, crushing, overwhelming. I undertake to show that every link (to use Mr. BRADLEY's favorite expression, "I never quibble about words,") has been forged by as honest licks as the blacksmith forges a chain, to bind the prisoner at the bar to the body of the atrocious crime charged in this indictment. Every privilege has been accorded to the prisoner which the benignant spirit of our institutions, sanctioned by the wisdom and experience of ages, accords to every party charged with the commission of crime. He has had a jury mutually selected by us, to which there can be no objection. He has been defended by eminent counsel, with a zeal, eloquence, and ability alike creditable to their country and to the high and honorable profession which they dignify and adorn. We have, then, gentlemen of the jury, every assurance that you will discharge the high and solemn duty which devolves upon you with intelligence, firmness, and fidelity.

Before proceeding to the discussion of the several propositions of law and questions of fact involved in this discussion, although I am aware that I may be wearying you, I shall be pardoned, I trust, for making a few additional preliminary observations.

Do you remember the feelings which inspired your hearts when the telegraphic wires first whispered the glad tidings that the national cause had triumphed over that cruel and causeless attempt at the nation's life; when you realized the fact that peace—sweet, gentle peace—had returned once more to take up its abode in our beloved and bleeding country? Do you remember how your bosoms heaved and thrilled and swelled with emotions of patriotic pride and pleasure as the booming cannon proclaimed the gratitude of a brave, generous, loyal, and devoted people? Do you remember the prospects, so bright and joyous, so full of life and light and hope, as the war clouds were seen passing away to the shades of eternal night, and the rainbow of peace appeared to our delighted vision, spanning the whole political horizon? Do you remember the feelings which seemed to possess your very souls as your wives and children bowed with you around the family altar to offer the incense of praise and adoration to the God of our fathers and our God for His great deliverance; for it has been truly said that "it was the Lord's doing, and it was marvellous in our eyes." In that hour of the nation's jubilee, when a song of triumph seemed to rise from the great heart of the American people to Heaven, tell me, gentlemen of the jury, did you not feel your heart instinctively turned and warmed towards that great and good man who had been mainly instrumental, in the hands of the Almighty, for the salvation of your country? I do not ask what your feelings for him previously may have been. I know that he was the object of special hatred and malice to the enemies of your country. I know that no words of denunciation and abuse were too opprobrious to be heaped upon his devoted head; but, to indulge a familiar paraphrase, all his feelings seemed to lean to mercy's side. Hear him give expression to the feelings of his heart, in those memorable words, so familiar to the public ear, and which ought to be inscribed in letters of gold on the portals of your national Capitol, "With malice towards none, with charity for all, let us with firmness pursue the right, as God gives us to see the right." "This Duncan was so clear in his great office, and bore his faculties so meek, that his virtues seemed to plead like angels, trumpet-tongued, against the deep damnation of his taking off." He needs no eulogium to embalm

his memory in the hearts of his countrymen. There it will remain green and fresh forever and forever. I speak to men who, perhaps, may have differed from him politically. You knew him personally. The name of Abraham Lincoln will be remembered by the world, in the strong and expressive language of another, "while liberty is a blessing and tyranny a curse." Behold that tall, familiar figure. I know to whom I speak. The time was when it created in your minds a feeling of political hostility, and perhaps of personal enmity, for you considered him the representative of a hostile party; but you gradually learned to respect, then to honor, and at last to love the kind, gentle, and generous soul it represented. Tell me, did you ever have any transactions with him? Was he not kind, gentle, patient, forbearing, and charitable? It was a standing order, if I have been correctly informed, that wherever he was, or however employed, he was always to be seen where a question of life or death was concerned.

However this may be, he thinks proper to exercise the privilege of the humblest citizen in the community, in company with his own wife. Almighty God! has it come to this, that an American citizen cannot feel safe while he walks, or sits, or sleeps by the side of his own wife? In the sacred presence of woman—and be it said to our eternal credit that no nation is more courteous and more honorable in their bearing to the fair sex than the American people—in her company, with a few invited friends, for the purpose of getting a little recreation from his labors, he goes to a place of public entertainment in the very midst of the national metropolis, and almost within sight of the presidential mansion. He is unconscious of the slightest design upon his life or personal safety. *Heu! mens hominum nescia futuri.* What and whom has he to fear? He is received with acclamations by his assembled countrymen; in the language of the witness Major Rathbone, with "vociferous cheering." He is escorted to a private box specially prepared for him, decorated and adorned with the American flag, the emblem alike of freedom and protection. There he is. The American Union has survived the shock of contending armies, and "the untold dangers of treason, rebellion, and privy conspiracy"—borrowed words, but familiar in the history of the Church. There he stands upon the very summit of human prosperity, dignity, grandeur, and glory. His enemies are at his mercy and under his feet. But, mark you, no word of bitterness escapes his lips.

Tell me, if you can, of an unkind, ungenerous, or uncharitable sentiment he has ever expressed. If I have been correctly informed he remembered that the hour of victory is the hour of magnanimity. At that time his heart was overflowing with sympathy and love, not only for those misguided men who rushed madly into the rebellion in obedience to the orders of their commanders whom they did not understand, regardless because unconscious of their great crime and its consequences, but even for those cruel and bloody traitors who raised their parrioidal arms against the Government which had never harmed, but which had ever shielded and protected them. Of him I might say, as was said of another distinguished public character, under somewhat similar circumstances, "O, what an elevation! but alas, alas, what a fall!" Our joy is suddenly turned into deepest sorrow. The emblem of freedom which recently floated so proudly over land and sea is draped with the emblems of mourning, and a nation in tears follow their beloved and honored chief to a patriot's and a martyr's grave.

Gentlemen of the jury, shall I review the horrid details of this cruel and bloody tragedy? It is daguerreotyped upon your minds and memories. Perhaps even now, like some horrible panorama, it is passing before your imaginations. Like Sergeant Dye, it may have disturbed your thoughts by day and your dreams by night. See him, seated as I have already described. At that very time, as the great dramatist represents the murderer of the good King Duncan, the assassin is steal-

ing upon his secure hour; the instrument of death is levelled at that noble head which had guided the ship of State through the storm of civil war to the haven of permanent and honorable peace; and, as I have heard a somewhat similar scene described, "you see the flash, you hear the report of a single pistol, and the disembodied immortal spirit of Abraham Lincoln stands before the Judge of all the earth." We can follow him no longer, gentlemen of the jury, it is said, with our mortal vision; but may we not without impiety indulge the hope that the eye of faith can follow the great patriot and philanthropist to the bosom of the blessed Saviour; for His mission upon earth was a mission of mercy. He left the realms of glory in part to burst the bondsman's chains and to set the captive free.

Gentlemen of the jury, where are the men and the women who committed this awful and Heaven-daring crime? I do not ask who fired the fatal shot; I do not ask who conceived it; I do not ask who matured it; but where are the men and the women, however remotely connected with this crime, as a witness has strongly said, "against society and against civilization?" The Satan of this infernal conspiracy has gone to hell, there to atone in penal fires forever and forever for his horrid crime; but the Beelzebub still lives and moves upon the face of this green earth, as the dramatist says, "to mock the name of man." In John H. Surratt, the prisoner at the bar, you behold the Beelzebub of this infernal conspiracy. Second he may be in rank and power, but none the less in hatred, malice, and revenge—those red and bloody demons lurking in every wicked, base, depraved, and malignant heart, and prompting to the commission of those crimes which shock and outrage human nature. He was false to his country while professing allegiance to its laws and institutions, and false to his Government while enjoying its favor and protection. He was not one of those misguided young men who, in the honest belief that they were doing God's service, armed themselves like gallant soldiers to fight in what they believed to be a righteous cause. He was false to the mother who bore him, whom he deserted in the hour of danger and of distress. The gallows upon which she expired should have been his throne. There he might have palliated or irradiated with some show of gallantry and parental affection the horrid crime he had committed. But, false to every sentiment of truth, of honor, and of patriotism, he seeks to save his wretched life in the plains of Italy or the sands of Egypt. But the avenger of God pursues and overtakes him. This deeply injured and insulted Government stretches its long and strong arm across the ocean which rolled between him and the home he had dishonored, and he is here to-day before an honest jury of his country to pay the demands of an outraged and a violated law. I arraign him as the murderer and the assassin of Abraham Lincoln; for, when John Wilkes Booth fired the fatal shot, where were the other conspirators, including the prisoner at the bar? It matters not where they were. However, a good deal has been said about that, and this question will be hereafter more fully discussed. Every man was at his place, performing his part toward the execution of their common bloody purpose. This conspiracy may have been an infant at first, and gradually assumed the proportions of a giant, stretching its long and strong arms from the lakes to the gulf, and from ocean to ocean. One may have been standing, as I have heard it strongly expressed, in the Arctic circle, another in the prairies of the West, and another in the everglades of Florida. In legal contemplation, it was one great artificial person, animated by the same spirit and moving towards the same end. Every conspirator was a member; and the act of one was the act of all. If this be so, as I shall hereafter discuss, by the law of God and of nations every man connected with it is equally guilty of this horrid crime, which filled the great heart of Christendom with horror.

Now, permit me, gentlemen of the jury, to proceed more in detail to the argument of the propositions of law and questions of fact involved in this investigation. I undertake, first, to satisfy his honor that the legal consequence of the facts which I assume to be proved is the guilt of the prisoner at the bar. Secondly, I shall undertake to satisfy you, gentlemen of the jury, that the facts which I assume in my argument to the court have been proved beyond all rational and reasonable doubt. If I succeed in maintaining these two propositions, I am entitled to a verdict of conviction. This being the order of my argument, I submit to your honor the following propositions of law:

1st. If the jury believe from the whole evidence that Abraham Lincoln received a wound from a pistol fired by John Wilkes Booth, in the city of Washington, on or about the time named in the indictment, which resulted in his death, in pursuance of a conspiracy to murder or assassinate said Lincoln, of which conspiracy the prisoner was a member, and that the prisoner was at the place and performed the part assigned him toward the execution of the common design, they should find him guilty as indicted, no matter what distance may have separated the conspirators, or how far apart they may have been at the time the wound was inflicted as aforesaid.

2d. If the jury believe that the object of said conspiracy was to abduct the said Lincoln, then President of the United States, with a general resolution on the part of the conspirators to resist all who might oppose them in the execution of their common design, and that while engaged in said unlawful conspiracy, one of the conspirators, without the knowledge and contrary to the wishes of the other conspirators, and the original plan and purpose of said conspiracy, killed the President as aforesaid, the jury should find the prisoner guilty as aforesaid.

3d. If the jury believe from the evidence that, at the time President Lincoln was killed as aforesaid, the prisoner was either actively or constructively present, encouraging, aiding, abetting, and maintaining the principal murderer, they should find him guilty as indicted, although he was neither an ear nor an eye-witness to the transaction.

4th. If the jury believe from the evidence that President Lincoln was killed as aforesaid, in pursuance of said conspiracy, of which the prisoner was a member, he being either actually or constructively present at the time, it is a legal presumption that such presence was with a view to render aid, and it lies on the prisoner to rebut such presumption by showing that he was there for a purpose unconnected with the conspiracy.

5th. That the defense of *alibi* being an affirmative defense, the burden of proof rests upon the defendant to establish it to the satisfaction of the jury by a preponderance of the evidence.

Mr. MERRICK. Are those all your legal propositions?

Mr. CARRINGTON. Those are all of mine. I have not had time to consult fully with my learned associate on the subject.

Mr. PIERREPONT. Before the other side open, we will put in, of course, whatever legal propositions we have.

Mr. MERRICK. Gentlemen, have you any other legal propositions that you are now ready to present?

Mr. BRADLEY. [After a pause.] Do I understand that those are all the legal propositions which are to be discussed before the court?

Mr. MERRICK. I ask the counsel if they have any others that they are now ready to present, and I can get no reply.

Mr. CARRINGTON. These are all I have. If Judge PIERREPONT has any, I am not aware of it. He may differ with me on some of these questions of law, and he may have views upon them that he wishes to present.

To you, gentlemen of the jury, I submit the follow-

ing questions of fact. They are very simple and very easy of solution:

1st. Does it appear from the evidence that the assault charged in the indictment was made in the manner and about the time there stated, and within the jurisdiction of this honorable court?

2d. Does it appear from the evidence that the wound which the deceased received, as charged in the indictment, caused his death?

3d. Does it appear from the evidence that the assault and death were the result of a conspiracy, of which the prisoner at the bar was a member?

4th. What was the original character, plan, and purpose of the conspiracy?

5th. If it be true that the prisoner was a member of this conspiracy, what part did he perform in the general plan?

6th. Where was the prisoner, in point of fact, at the time the assault charged in the indictment was made? Was he in a foreign commonwealth, or was he in the city of Washington, District of Columbia?

7th. Has not the prisoner at the bar confessed his guilt expressly and by implication?

The court took a recess for half an hour, re-assembling at one o'clock.

Mr. CARRINGTON. When the court took a recess, if your honor please, I had stated propositions of law and questions of fact which I proposed to discuss to the court and the jury. I will now, following the order of my argument, proceed to consider the several propositions of law which I have submitted for the consideration of the court.

In regard to my first proposition of law, I will remark, that it can be maintained both upon principle and authority. Assuming, for the purposes of the argument, that the prisoner was a member of this unlawful and criminal conspiracy which resulted in the death of the deceased as charged in the indictment, and which I may safely assume, for it is proved beyond all question, as I shall hereafter show, I think, to the satisfaction of the jury, it follows that he is either an accessory before the fact, an accessory after the fact, a conspirator merely, or a principal. It matters not whether he was a principal in the first or second degree, for practically there is no difference between the two; both, in the event of a conviction by the jury, being liable to the same sentence and the same punishment. I assume, for the purposes of the argument, that I can satisfy this jury that he is not entirely guiltless, not entirely disconnected with this criminal conspiracy; and, for the purpose of making myself more clearly apprehended, permit me here briefly to recapitulate. Assuming that he is guilty, he must either be an accessory before the fact, an accessory after the fact, a conspirator merely, or a principal either in the first or second degree. Now, then, was he an accessory before the fact? Judging from the intimation of the learned counsel who addressed your honor yesterday afternoon, (I allude to Mr. MERRICK,) with his usual eloquence and ability, it was shadowed forth that, if guilty at all, the prisoner at the bar was an accessory before the fact. He very clearly and ably illustrated his view of the distinction between a principal and an accessory before the fact. Now, your honor, I put this question: Was he an accessory before the fact? What is an accessory before the fact? I refer your honor to the definition in Wharton's Law Dictionary:

"An accessory before the fact is one who, being absent at the time of the commission of the felony, yet procures, counsels, or commands another to commit a crime. Absence is necessary to make him an accessory, for if he be present he becomes a principal."

Whether he be constructively or actually present is immaterial. If he is there actually or constructively present, he is not an accessory before the fact, but a principal in the second degree. For the purposes of illustration I might refer to Bishop on Criminal Law, where this degree of criminality is very accurately

defined, and where he has elucidated the distinction between the different grades of offenses. It is a subject, however, which is so familiar to your honor, that I think it is unnecessary for me to proceed with any argument to satisfy the court that the prisoner at the bar could not be an accessory before the fact. Your honor will observe from the definition to which I have referred, that an accessory before the fact is one who contributes his will towards the execution of the criminal design, but does no act at the time the crime is committed; he does no act in aid of the principal of the first degree. I grant you (for I desire to be perfectly fair) that an accessory before the fact, at the time he counsels or commands the commission of the act, may furnish arms to the principal in the first degree for the commission of the offense. But the distinction is this: An accessory before the fact is one who merely contributes his will at the time the deed is conceived, and has advised, or counselled, or commanded. But if, in addition to contributing his will, he does some overt act in aid of the principal felon at the time the felony is committed, then he ceases to be an accessory before the fact, because he not only contributes his will, but he contributes both will and act at the time the crime is committed. And that is all the difference between an accessory before the fact and a principal in the second degree. Your honor understands it; it is unnecessary for me to refer to any authority upon that point. It is clear, then, if the prisoner did perform some part in the commission of the offense at the time it was committed by the principal in the first degree, he cannot be either an accessory before or after the fact. Now, then, is he merely a conspirator? My learned friend, (Mr. MERRICK,) in his argument to your honor, yesterday afternoon, very properly said that conspiracy is one offense, and murder another. To conspire to commit a felony is a misdemeanor. Where a party conspires with others to commit either treason, felony, or any thing else, and confines himself to the mere conception of the crime, a combination to commit it, I concede that under our law he is merely a conspirator and has only committed a misdemeanor. The offense, your honor will observe, is complete when the conspiracy is formed, and every one who engages in it is a conspirator, and is guilty of a misdemeanor. But if, in addition to engaging in a conspiracy to commit a felony, the conspirator performs some act towards the commission of the felony, continuing a member of the conspiracy until the felony is committed, he is a felon. When the felony is committed, the misdemeanor is merged in the felony. From that time the conspirator changes his character of conspirator for that of a felon. The line of demarkation between the two degrees is very distinct. So long as the individual confines himself to the act of conspiracy to commit a felony, as my learned friend (Mr. MERRICK) very truly and ably argued, he is guilty simply of a misdemeanor. But when he goes a step further, and does some act towards the commission of the felony at the time the felony is actually committed by one of the co-conspirators, he ceases to be a mere conspirator and becomes a felon. Perhaps I am repeating; but in an argument of this kind it is pardonable. The conspiracy being merged in the felony by the commission of the felony, the character of conspirator is lost in that of murderer, when a murder is committed by any member of the conspiracy, while the accused is a member of it and continues to perform his part towards the execution of the common design. The argument is not only sound and reasonable, but I submit, I hope with becoming modesty, that it is philosophical. It is conformable certainly to all the analogies of the law.

It may be stated as a general proposition, that the rules of evidence and the principles of law applicable to civil cases are equally applicable to criminal cases. In the application of civil justice, your honor would not hesitate to declare that every member of an associa-

tion formed for purposes of trade or commerce, or any kind of business, is bound by the acts of his partners within the scope of the partnership. Although it seemed to excite the indignation and a burst of eloquent denunciation from my learned friend (Mr. MERRICK) yesterday afternoon, I assert that by a parity of reasoning, where a number of persons form an association and conspire and combine together to commit the act of murder, the act of each towards the execution of the common design is the act of all. The foundation-stone on which the argument rests is the principle embodied in that familiar maxim of the law *qui facit per alium, facit per se*; which, I maintain, upon principle and upon authority, applies equally to criminal and civil causes.

I am aware that it may be contended that in order to constitute a party a principal in the second degree to a felony, it must appear that he not only aided and abetted the principal in the first degree, but that he was also present, either actually or constructively, at the time the felony was committed. I concede it, and the whole question then resolves itself into this: What does the law imply by this expression of "constructive presence?" My learned friend (Mr. MERRICK) yesterday afternoon gave his views in reference to the meaning of these words. It is proper for me to state in a spirit of candor that we differ *toto caelo*; and I think I can satisfy your honor—I say it with all due deference—that the counsel is in error, and that constructive presence is not to be understood in the limited and unphilosophical sense in which he has interpreted it in his able argument to the court.

Now, then, what does the law imply by these words "constructive presence?" I maintain that when a conspiracy is formed to commit a murder or any other felony, and the murder is actually committed by one of the conspirators, every other conspirator who is co-operating—mark, if your honor please, and that is a question of fact for the jury—who is co-operating in the conspiracy and acting his part in the general plan at the time the felony is committed, is in legal contemplation constructively present, no matter where he was at the time the murder or felony was committed. The question is not where the conspirator was at the time the murder, which was the object of the conspirators, was committed. But the material questions, and the only material questions, are—first, was he a member of the conspiracy? Second, did he perform his part in the general plan; for, if the accused was a member of the conspiracy and performed his part in the general plan, it can make no manner of difference, so far as his guilt is concerned, how far distant he may have been from the other conspirators at the time the felony was committed. As was suggested to me, the distance between the accused and the other conspirators might be important as a question of fact to aid the jury in ascertaining whether he was a member of the conspiracy; but if, in point of fact, it appears that he was a member of the conspiracy, acting a part in it, it matters not as a question of law where he was at the time the murder was committed.

Suppose, by way of illustration, that in the judgment of the conspirators he could render more effectual aid at some point a thousand miles from the city of Washington than he could here, upon that hypothesis would he not be a member? The conspirators who contemplate the commission of a great offense know where each conspirator can be most useful, and if they place one in New York and another in New Orleans, does that disposition of their own forces, as they believe to the best advantage, relieve them, or any of them, from their liability to the law of the land? And certainly, sir, in this time, when railroads and the telegraph have annihilated space and time, this principle, as I shall maintain, settled by the highest judicial tribunal, in an opinion rendered by the most eminent judge in the land, acquires additional force. The conspiracy, as I have already argued, was a great artificial person, of

which each conspirator was a member, and the act of each one was the act of all. The act of Booth was the act of all the conspirators, including the prisoner at the bar. The crime, then, which he committed was committed in the city of Washington, in legal contemplation, and within the jurisdiction of this honorable court.

Now, if your honor please, having given you generally my views, I will refer you to a few authorities. I said I could maintain the proposition of law both upon principle and authority. I am sure that neither your honor nor the learned counsel whom I have the honor to oppose will charge me with presumption for saying that I think I have satisfied the court, upon reason and philosophy, that the argument is sound. I have only now to refer, in confirmation of the views I have submitted, to some of the authorities. The first elementary book to which I shall call your attention is I Bishop on Criminal Law, third edition, section 601, on the question of the distinction between a principal in the first and second degree and an accessory before the fact, on which there has been a great deal of law-learning exhausted. This eminent author says:

"When there is one who sustains the ordinary relation of principal—that is, one who did personally the act in his own presence—no other individual will be also a principal by reason of having aided and abetted him in the thing done, unless he were sufficiently near to render, if necessary, some personal assistance."

We will show what he means by that.

"If the will of such other individual contributed to the act, the test to determine whether the law deems him a principal rather than an accessory is, whether he was so near, or otherwise so situated, as to make his personal help, if required, to any degree available."

The principle here enunciated is this: If he is "otherwise so situated," if he is in a condition to render assistance towards the commission of the offense to any degree, however minute, he is not an accessory before the fact, but a principal in the second degree. This author clearly recognizes, and as distinctly enunciates as the English language can enunciate it, the principle that the distinction between the two classes of individuals—an accessory before the fact and a principal—is this: Did he merely contribute his will, or did he, in addition to the contribution of his will, do some act, or was he so situated that he could do some act, towards the commission of the offense committed by the principal in the first degree? If, then, according to this learned author, he could in the city of New York, in the city of New Orleans, or elsewhere in the United States, by telegraphic communication or otherwise, render any aid, however minute, towards the commission of the offense contemplated by the conspiracy, he continuing a member of the conspiracy until it culminated in the crime of murder, he is a principal in the first degree.

Now, if your honor please, I refer you to Wharton's American Criminal Law, in the edition I have page 67; in another edition page 127. He says:

"All those who assemble themselves together with an intent even to commit a trespass, the execution whereof causes a felony to be committed, and continue together, abetting one another, till they have actually put their design into execution, and also all those who are present when felony is committed, and abet the doing of it, are principals in felony. So, if several persons come to a house with intent to commit an affray, and one be killed while the rest are engaged in riotous or illegal proceedings, though they are dispersed in different rooms, all will be principals in the murder. And where persons combine to stand by one another in a breach of the peace, with a general resolution to resist all opposers, and in the execution of their design a murder is committed, all of the company are equally principals in the murder, though at the time of the fact some of them were at such a distance as to be out of view. Thus, when a number of persons combine to seize with force and violence a vessel, and run away with her, and, if necessary, to kill any person who should oppose them in the design, and murder ensues, all concerned are principals in such murder. So, to use the language of an able judge, where divers persons resolve generally to resist all officers in the commission of a breach of the peace, and to execute it in such a manner as naturally tends to raise tumults and affrays."

Mark, if your honor please, the language of the author here:

"and in doing so happen to kill a man, they are all guilty of murder."

Why?

"For they who unlawfully engage in such bold disturbances of the public peace, in opposition to and in defiance of the justice of the nation, must at their peril abide the result of their actions. Malice, in such a killing, is implied by the law in all who were engaged in the unlawful enterprise; whether the deceased fell by the hand of the accused in particular, or otherwise, is immaterial. All are responsible for the acts of each, if done in pursuance and furtherance of the common design. This doctrine may seem hard and severe, but has been found necessary to prevent riotous combinations committing murder with impunity; for where such illegal associates are numerous"

Mark the reasoning:

"It would scarcely be practicable to establish the identity of the individual actually guilty of the homicide. Where, however, a homicide is committed by one or more of a body unlawfully associated, from causes having no connection with the common object, the responsibility for such homicide attaches exclusively to its actual perpetrators.

"If, as it was laid down in another case, during a scene of unlawful violence an innocent third person is slain who had no connection with the combatants on either side, nor any participation in their unlawful doings, such a homicide would be murder, at common law, in all the parties engaged in the affray. It would be a homicide, the consequence of an unlawful act, and all participants in such an act are alike responsible for its consequences. If the law should be called upon to detect the particular agents by whom such a slaying has been perpetrated, in a general combat of this kind, it would perpetually defeat justice, and give immunity to guilt. Suppose, for instance, a fight with fire-arms between two bodies of enraged men should take place in a public street, and from a simultaneous fire innocent persons, their wives or children, in their houses, should be killed by some of the missiles discharged, shall the violators of the public peace, whose unlawful acts have produced the death of the unoffending, escape, because from the manner and time of the fire it is impossible to tell from what quarter the instrument of death is propelled? Certainly not. The law declares to such outlaws, you are equally involved in all the consequences of your assault on the public peace and safety. Is there any hardship in this principle? Does not a just regard to the general safety demand its strict application? If men are so reckless of the lives of the innocents to engage in a conflict with fire-arms in the public highway of a thickly-populated city, are they to have the benefit of impracticable niceties, in order to their indemnity from the consequences of their own conduct?

"The distinction between principals in the first and second degree, it has been said, is a distinction without a difference; and, therefore, it need not be made in indictments."

Now, what is the principle? Shall I re-state it to your honor? Where a number of persons engage in a riotous or dangerous conspiracy to the public peace and safety, and death ensues by the hand of one, his act, in legal contemplation, is the act of all, although the other conspirators were neither ear nor eye-witnesses at the time the act was committed. If that be the principle, where is the limitation? There is no better authority than this. If that be true, the distance that separates them is entirely immaterial as a question of law. The principle here is, that in the case I have supposed, if they neither saw nor heard, nor ever contemplated the commission of the offense, they are all guilty. If being one mile absent from the scene of the murder does not render him irresponsible for the consequences of the act committed by the co-conspirators, two miles does not alter the principle, and a hundred or a thousand miles will not alter it. Why? I have only to answer in the language of this author: Public safety demands that the men who engage in dangerous riots or conspiracies shall be responsible for the acts of all their co-conspirators, although not ear or eye-witnesses of the transaction. Now, if that be sound law, does it not apply to this case? A conspiracy is formed, as my colleague has truly and eloquently said, to strike at the nation's life, by striking down its federal head and representative—a conspiracy, the natural, the probable, the almost inevitable consequence of which is murder, riot, violence, bloodshed. In such a conspiracy, this learned author says, every man proved to be involved in it, whether an ear or eye-witness or not, wherever he may be, is equally guilty with the man who struck the fatal blow or fired the fatal shot. And, in the language of this author, it would be strange if the law were otherwise.

Let me put a hypothetical case. A number of persons conspire together to enter the house of this honorable judge, or of the humble prosecuting attorney, who may have been unfortunate enough to give offense, although I try never to do so. We both have friends. The result of such a conspiracy, in all human probabil-

ity, is murder. For would my friends allow me, or would your honor's friends allow your honor, to be abducted from your house by violence without resenting it? The probable consequence of such a conspiracy, I say, therefore, is murder; and this author says whoever is connected with such a conspiracy, the probable consequence of which is as I have stated, is guilty, wherever he was; for I maintain that the degree of distance is immaterial, having settled the principle that it is not necessary for him to be either an ear or eye-witness.

If that be so in regard to a private individual, (and I hope, for the honor of the American nation and our criminal jurisprudence that no other principle will ever be enunciated by an American judge,) when a conspiracy is formed to murder—imagination revolts at the contemplation of so horrible a crime—the federal head and representative of the American nation, to strike at the nation's heart by murdering the President of this great Republic, what is it? A dangerous conspiracy, as this author says, the probable consequence of which is, and I trust in God ever will be while we have men with hearts to love their country and hands to defend it, the taking of human life; for if the law is inadequate to protect the representative of the American nation, my voice would be heard appealing to arms. But the law does protect the representative of the nation against such dangerous conspiracies. Being a dangerous conspiracy, the inevitable consequence of which is violence and bloodshed, every man involved in it, whether an ear or eye-witness or not, wherever he may be, is guilty of murder, and shares the guilt of the man who fired the fatal shot.

I do not want any better authority than Wharton; but I will give your honor a little more. My friend Mr. MERRICK has talked about the old English common law. I believe we have made some progress in criminal jurisprudence, as we have in other things; but I will fight him on his own ground—the law then and the law as it is now. I refer your honor to Hale's Pleas of the Crown, vol. 1, p. 439, and I invoke your honor's grave and serious consideration to these questions. We do not intend to mislead your honor; but we intend to satisfy you that the principles for which we contend are right:

"Therefore it remains to be inquired—1. Who shall be said to be present."

That is the question which I am discussing before your honor.

"2. Who shall be said to be abetting, aiding, or assisting to the felony."

"1. As to the first: if divers persons come to make an affray, &c., and are of the same party, and come into the same house, but are in several rooms of the same house, and one be killed in one of the rooms, those that are of that party, and that came for that purpose, though in other rooms of the same house, shall be said to be present. *Dalt. cap. 93, p. 241.*"

There is an enunciation of the principle that it is not necessary for them to be ear or eye-witnesses; they are near enough to render aid. But let us go a little further:

"The Lord Dacre and divers and others came to steal deer in the park of one Pelham."

A very inconsiderable offense, certainly, in comparison with the one which we are now considering.

"Rayden, one of the company, killed the keeper in the park, the Lord Dacre and the rest of the company being in other parts of the park. It was ruled that it was murder in them all, and they died for it. *Crompt. 25, a. Dalt., ubi supra, 34 H. 8, B., Coron., 172.*"

Why? They may have been miles away. If one mile, where is the limitation? A hundred or a thousand miles make no difference. The case rests upon this principle to which I have invited the attention of your honor—that where men enter into a dangerous conspiracy, and continue to co-operate until a crime is committed, the public safety requires that every man should be held responsible for the act committed by his co-conspirators, irrespective of their original purpose, or of the distance which may have separated them at the time the felony was committed. If that be the

principle of the old English law in regard to the case there stated, *à fortiori* does it apply to the case at bar. Shall I fortify this principle by reference to further elementary authorities? I have others at hand. You see the books before me. But as my strength may probably be exhausted before I shall be able to conclude, I will come down to the Supreme Court of the United States, whose decisions are authoritative upon this court, and are the law of the land. First, if your honor please, I refer to 2 Peters's Supreme Court Reports, page 363. I will not read the syllabus; I presume your honor is familiar with the case. It is the case of *The American Fire Insurance Co. vs. The United States*. As I do not wish to waste my strength, I will only read so much as I think applicable to this case. I only want to state the principle. The Court say:

"The objection to the evidence of Davis is so fully answered and repelled by this court in the case of *The United States vs. Gooding*, 12 Wheaton, 468, that it seems necessary only to refer to that decision. That was a criminal prosecution against the owner of a vessel under the slave-trade act of Congress, and an objection was taken by his counsel to evidence of the acts and declarations of the master of the vessel, who was proved to have been appointed to that office by the defendant, with an authority to make the fitments for the vessel.

"The principle asserted in the decision of that point and applied to the case was, that whatever an agent does or says, in reference to the business in which he is at the time employed, and within the scope of his authority, is done or said by the principal, and may be proved as well in a criminal as a civil case, in like manner as if the evidence applied personally to the principal."

Your honor sees the distinction. The principle is this: If I employ an agent for a lawful purpose, and, while in the prosecution of my business, he commits a crime, I am irresponsible; it is his act, not mine; for the law does not presume, though he is in my employment, that I authorized him to commit a crime. But if I employ an agent in an unlawful enterprise and he violates the law, his act has a retrospective operation to the time when he was employed by me. I am responsible for the consequences of which I was the original cause, having employed him for an unlawful purpose. If in the prosecution of this unlawful enterprise he commits murder or any other crime, his act is mine. That is the principle *qui facit per alium, facit per se*. Mark, if your honor please, where the principal employs him for an unlawful purpose. Now, apply it to this case. Every conspirator is the agent of his co-conspirator. Some one conceives this atrocious crime from which we turn with horror. Booth, more gallant than the rest, if I may apply such a term to an assassin and a murderer, undertakes to fire the fatal shot. The prisoner, in response to an order from him, comes from the city of Montreal to Washington, co-operating in this conspiracy until the murder is committed. Each one was the agent of all. The original purpose being unlawful, the Supreme Court of the United States has declared that, toward the perpetration of the common purpose, the act of the agent is the act of the principal, and the act of every conspirator, then, is the act of every other.

But that is not all. Permit me now to refer to Wheaton, which is directly to the point, and after I have given your honor the decision of the Supreme Court of the United States upon a principle so clear, I think my task has been discharged. I refer your honor now to 12 Wheaton's Supreme Court Reports, page 468. It is hardly necessary for me to read the syllabus of the case. Your honor will do that at your leisure. It is the case of *The United States vs. Gooding*—a criminal accusation, charging him with violating the slave act. The principle was there clearly enunciated by the highest legal tribunal in the land, that, the principal having employed his agent for an unlawful purpose, every act which he committed, even in a foreign commonwealth, was the act of the principal, although safely ensconced in the bosom of his family in the city, perhaps, of New York, and safe from danger, though trading in the blood, the hopes, and the happiness of human beings. What does the court say?

"It is to be observed that, as preliminary to this testimony, evidence had been offered to prove that Gooding was owner of the vessel, that he lived at Baltimore, where she was fitted out, and that he appointed Hill master, and gave him authority to make the fitments for the voyage, and paid the bills therefor; that certain equipments were put on board peculiarly adapted for the slave-trade, and that Gooding had made declarations that the vessel had been engaged in the slave-trade, and had made him a good voyage. The foundation of the authority of the master, the nature of the fitments, and the object and accomplishment of the voyage being thus laid, the testimony of Captain Coit was offered as confirmatory of the proof and properly admissible against the defendant. It was objected to, and now stands upon the objection before us."

The very point my friend is now making.

"The argument is that the testimony is not admissible, because in criminal cases the declarations of the master of the vessel are not evidence to charge the owner with offense, and that the doctrine of the binding effect of such declarations by known agents is, and ought to be, confined to civil cases."

What does the Supreme Court of the United States say to that?

"We cannot yield to the force of the argument. In general, the rules of evidence in criminal and civil cases are the same."

Well did my eminent colleague, who, of course, is more familiar with the law than I am, state with confidence the proposition upon which we rely, and which is the great central legal truth involved in this discussion, that whatever an agent does within the scope of his authority binds his principal and is deemed his act.

I read again from the same decision:

"Whatever the agent does within the scope of his authority binds his principal and is deemed his act. It must, indeed, be shown that the agent has the authority, and that the act is within its scope; but, these being conceded or proved, either by the course of business or by express authorization, the same conclusion arises, in point of law, in both cases. Nor is there any authority for confining the rule to civil cases. On the contrary, it is the known and familiar principle of criminal jurisprudence, that he who commands or procures a crime to be done, if it is done, is guilty of the crime, and the act is his act. This is so true, that even the agent may be innocent when the procurer or principal may be convicted of guilt, as in the case of infants or idiots employed to administer poison. The proof of the command or procurement may be direct or indirect, positive or circumstantial; but this is matter for the consideration of the jury, and not of legal competency. So, in cases of conspiracy and riot, when once the conspiracy or combination is established, the act of one conspirator in the prosecution of the enterprise is considered the act of all, and is evidence against all."

Your honor will observe that the principle here enunciated is the one to which I have already invited the attention of the court, that where the principal employs the agent for an unlawful purpose, and if, in the prosecution of this unlawful purpose, the agent a thousand miles away does any thing towards the consummation of the end proposed, it is, in legal contemplation, the act of the principal.

Now, having given your honor the elementary authority and decisions of the Supreme Court of the United States, I undertake further to show, that this principle has been distinctly enunciated by that eminent jurist, for whom I have heard your honor express the highest respect, and whom, of course, I could do no otherwise than venerate, having been taught to admire and revere him from my early infancy. I allude to the decision of that eminent jurist and good Christian man Chief Justice Marshall, in the Burr case.

Mr. MERRICK. I will take that law.

Mr. CARRINGTON. Very well. I know that you did allude to it, but we interpret the decision of that eminent jurist differently.

I submit, if your honor please, that this doctrine is maintained by the Supreme Court of the United States in the case of Bollman and Swartwout, reported in 4 Cranch, by Chief Justice Marshall, he referring to this same case of the Burr trial; and I submit that you cannot avoid that conclusion when you come to closely examine and understand the opinion of that eminent jurist on that memorable occasion. I refer, for the sake of convenience, to the compendium of the Burr trial prepared by our fellow-townsmen Mr. J. J. Coombes, page 357:

"It may be safely asserted that no decision in this country, having the weight of judicial authority, has gone a single step beyond the proposition laid down in the opinion of the Supreme Court, per Marshall, C. J., in the case of Bollman and Swartwout. And that proposition, as interpreted by the same eminent jurist in Burr's case, is in substance this: That when war is actually levied by an 'assem-

blage of men' in a 'posture of war,' for a treasonable object, any one who, being leagued in the general conspiracy, performs any overt act, constituting a 'part' in such fact of levying war, however remote from the scene of action, or however minute that part, is guilty as a principal traitor."

Now observe, if your honor please, the principle here decided is, that where the charge is conspiring to commit the crime of treason, the accused is guilty if two facts are proven: first, that he was leagued in the conspiracy; and, second, that he performed some overt act in pursuance of the common design. In that case, the act of each conspirator, in pursuance of the common design, is the act of all, no matter what distance may have separated them. I contend that this principle equally applies, whether the conspiracy be to commit the crime of treason or the crime of murder. I boldly assert that proposition, and I think I can demonstrate it to the satisfaction of the court. I am aware of the answer that may be made to this proposition; it was anticipated by my eloquent and learned friend (Mr. MERRICK) in his discussion to the court yesterday afternoon. I am aware it may be said that in the crime of treason there are no accessories before the fact, but that all are principals. Here is my answer: I grant that at common law there was a reason for this distinction; but I maintain that in this country the reason for the distinction no longer exists, and the reason ceasing, the law itself ceases. By the common law, the crime of treason consisted in compassing or imagining the king's death, as very clearly elucidated by the learned counsel who addressed your honor yesterday afternoon. I refer your honor (but will not take time to read it) to 4 Blackstone, 54, side paging 77.

By the Constitution of the United States, the crime of treason consists in levying war against the United States and adhering to its enemies, giving them aid and comfort. The difference, if your honor please, is this—doubtless your honor anticipates it: at common law an act of the will amounted to treason. To will the king's death was treason. Not so in this country. By the Constitution of the United States there must be something more in addition to the act of the will; there must be some overt act to constitute the crime of treason. Now, if an overt act is essential to the crime of treason, it must be committed within the jurisdiction of the court, and under all the circumstances necessary to render any other felonious act an indictable offense by the judicial tribunal before which it is considered. If an overt act is essential to the crime of treason, the presence, either actual or constructive, of the person who commits the overt act, is equally essential. In other words, if actual or constructive presence is necessary to render a party a principal in the second degree to the crime of murder, the same actual or constructive presence is necessary to render a party a principal in the crime of treason, because in either case, by the law of this land, it is equally necessary that there should be an overt act, with a criminal intent, committed within the jurisdiction of the court. Judge Marshall expressly declares in the Burr trial, that a party to a treasonable conspiracy, who performs any part in the general plan, however minute or however remote from the scene of action, is constructively present. While in conversation with a gentleman learned in the law, he suggested this point to me, since which I have considered and elaborated it, and it seems to me the argument is complete. By implication, he decides that in any felonious conspiracy, whether to commit murder or any other felony, every conspirator who performs his part, however minute or however remote from the scene of action, is constructively present. Why? Because in either case it is the criminal act with a criminal intent, and not the conception of the crime merely, which constitutes the guilt of the accused.

And here I may be permitted to respond to the very eloquent burst of my learned friend (Mr. MERRICK) yesterday afternoon; and I do not say this in the way of flattery or in any spirit of sarcasm, for it was very forcibly and very handsomely presented to the court.

He demands to know if this man was indicted for treason, and he says that my eminent colleague has cast over the crime of murder the hue of treason. Sir, it is an indictment for murder, and I meet the issue plump. But treason is an element in this offense, properly to be considered by the court in interpreting the law, and by the jury in estimating the quality of the crime, whether it is characterized by express malice—that feature which distinguishes murder of the highest degree from the crime of manslaughter. I maintain that there was a treasonable conspiracy, and, if your honor will mark my argument, you will see that I am dealing fairly, and not appealing to prejudice. I contend there was a treasonable conspiracy, of which the prisoner was a member; that he conspired with others to commit the crime of treason; to give aid and comfort to the enemy in time of war treacherously, while enjoying the favor and protection of this Government; giving aid and comfort to the enemies of the country for money; conspiring not only the death of our beloved and honored President, but of the commander-in-chief of the American army. Engaged in a treasonable conspiracy, and while endeavoring to commit treason, he misses his higher aim and commits the crime of murder. Having committed the lesser crime, and being indicted for the lesser crime, I can give evidence of the higher crime; first, to aid your honor in the interpretation of the law applicable to the case; and secondly, that it may aid the jury in determining the guilt of the offense committed by the prisoner at the bar.

If, then, he was engaged in a treasonable conspiracy—and there can be no doubt of it—if he was indicted for treason he would be convicted for treason. For I boldly affirm as an American lawyer, proud of my country and her institutions, that when war is levied against the Federal Government, either by foreign enemies or domestic foes, the man who strikes at the commander-in-chief of the American army is a traitor, and deserves a traitor's doom. He was a traitor engaged in a treasonable conspiracy. If so, it is conclusive upon this question, because Judge Marshall has decided that where there is a treasonable conspiracy the conspirator, however remote from the scene of action, is guilty of the offense, and is constructively present. If, then, he was engaged in a treasonable conspiracy, by the decision of Judge Marshall, he is constructively present and within the jurisdiction of this court. And being constructively present within the jurisdiction of this court, having indicted him for murder, or, if we had indicted him for a misdemeanor or any other crime, the court would say, "by the decision of the highest tribunal in the land you are constructively present, and I will deal with you as present, and will punish you according to the character of the crime charged in the indictment and proved against you."

Mr. MERRICK. Will it interrupt the course of your argument to ask a question with regard to that decision?

Mr. CARRINGTON. I would prefer not.

Under such circumstances, the court would tell the jury, as a matter of law, if you believe this was a conspiracy to murder the President of the United States, and he was connected with it, he was constructively present. The questions of fact submitted to you are not whether he was actually here; but, first, whether he was a member of this conspiracy; and, secondly, whether the object of that conspiracy was to murder or to do any act of personal violence to the President of the United States, then commander-in-chief of the American army.

I will dismiss the first proposition of law upon the argument and authorities which I have submitted. I come now to my second proposition, as follows: If the jury believe that the object of said conspiracy was to abduct the said Lincoln, then President of the United States, with a general resolution on the part of the conspirators to resist all who might oppose them in

the execution of the common design, and that, while engaged in said unlawful conspiracy, one of the conspirators, without the knowledge and contrary to the wishes of the other conspirators and the original plan and purpose of said conspiracy, killed the President as aforesaid, the jury should find the prisoner guilty as indicted. In addition to the authorities to which I have already referred your honor upon this point, I would refer to 1 Russell, p. 28. In fact, I hardly think it necessary to refer to any authority, because it is an elementary principle, and one which is clearly stated in the reference I have already given in Wharton. The principle is this: If an individual violates the law of the land in a manner indicating a reckless disregard of his obligations to society, and takes life, he is guilty of murder, though that was not his original purpose, upon the principle that a man shall not be permitted to apportion his own wrong. It is sound, not only in law, but in philosophy and religion. He is responsible for the probable consequences of his own unlawful act. By way of illustration, if a man engages in a violation of the law, intending to do an injury to any person, and it is a misdemeanor which is not *malum in se*, and undesignedly takes human life, he is guilty of manslaughter. I have discussed that proposition before your honor, and you are perfectly familiar with it. If he engages in the violation of the law in a reckless manner, showing a disregard of his obligations to society, and undesignedly takes human life, he is guilty of murder; or, if he engages in an unlawful enterprise, committing an act *malum in se*, and undesignedly takes human life, he is guilty of murder. And what is true with regard to an individual is equally true with regard to an association of individuals, animated by one spirit and moving towards the same end. It is all traceable to that familiar principle of law and of sound ethics, that a man shall not be permitted to apportion his own wrong. He shall not violate the law, and, if it results more disastrously than he contemplated, say, "I am irresponsible for the consequences of my wrongful act, because I did not intend it should extend as far as it actually did." Therefore, if a number of persons conspire together to engage in an unlawful act, and, while thus engaged, one takes life, his act is the act of all, and all are equally guilty, co-operating at the time of the higher crime committed, although not originally intended, provided the act is committed during the existence of the conspiracy and while engaged in the commission of the act originally intended.

This might be illustrated in a variety of ways. I refer to Wharton again. Suppose there is a dangerous riot; that a number of persons assemble together for the purpose of violating the law in some comparatively unimportant matter—for the purpose of resisting what they conceive to be an oppressive law, or for the purpose of doing an injury or personal violence to some individual, and, while thus engaged in this riotous act, the probable consequence of which would be violence or bloodshed, one of them commits murder or takes human life, contrary to their original purpose; that act is the act of all, and it is murder or manslaughter, according to the circumstances of aggravation or extenuation attending the commission of the act.

To illustrate further, suppose a number of persons should conspire to go to the house of one of the gentlemen before me, and by violence carry him away, I care not where; it is a dangerous riot—it is a dangerous conspiracy. The natural and probable consequence is a disturbance of the public peace, for no man, not even a peaceable and quiet man like myself, would allow, without resistance, a body of men to come to his house and take him away from his wife and children. I would resist it to the death, and should be justified by the laws of God and man in so doing; and, if my life should be taken, where is the honest jury that would not avenge this injury to one of the humblest citizens of the country by wreaking the vengeance of the law

upon the head of every man engaged in such an unlawful enterprise; *à fortiori*, where a number of men combine together in the midst of war—when brother is armed against brother; when men are on their knees praying to Almighty God for peace—to go to the house of the President of the United States and by force abduct him and carry him to his enemies (though many in the South learned to love and honor him, and indignantly resent this insult) by violence, to do him this injury and offer him this insult, the natural consequence of which is bloodshed, if human life is taken, every man involved in that dangerous conspiracy, upon the principle which I have asserted, though it was no part of the original plan, is guilty of murder. For although I am not addicted to boasting, and am neither a quarrelsome nor a fighting man, yet while I had a heart to beat, and an arm to strike, if I had seen men armed attempting by violence to take Abraham Lincoln from his position in the United States to the enemies of his country in the South, I would have fought for him to the death, and the inevitable consequences would be murder, bloodshed and death.

The Bible says, I believe, and that is the fountain of all law, shall a man be permitted to scatter arrows, firebrands, and death, and then say, "I am in sport?" So I say, shall a man offer insult, indignity, violence to the honored head and representative of the American nation, and when his life is taken, say, "Oh, I did not intend that." The law fixes the intent, and stamps upon his brow the mark of Cain. Hear him: "Oh, I am not guilty of murder; my object was comparatively an innocent one; I only intended to insult, assault, kidnap, abduct, and imprison the President of the United States and turn him over kindly and gently to the tender mercies of traitors and rebels in arms, who were waging a fierce and cruel war against the nation's life, whose hearts were filled with malice, and whose hands were reeking with loyal and innocent blood. I only intended to insult the American nation. I struck at the nation's heart, but missed my aim and only killed a man. I aimed at the highest crime known to the laws of God and man—treason—but only killed a poor old man as he sat by the side of his wife, (as my friend Mr. BRADLEY said, and I regret that he said it;) it is no worse to kill him than to kill a common vagabond in the sight of God." Surely my friend did not intend to re-echo the infamous sentiment of Anna Surratt, that it was no worse to kill Abraham Lincoln than any negro in the Union army. I shall not eulogize him further. It is enough to say that he was the constitutionally-elected President of the greatest nation upon the face of the habitable globe, and a blow at him was a blow at me, at you, and at every man who has a heart to love his country. Kindly and respectfully do I dissent from the sentiment of my friend; indignantly do I repudiate the imputation upon the man whose memory should be dear and whose character should be sacred to every American citizen.

"Oh, no; I aimed at the highest crime, but I committed one of lower grade. I am a lion, a hero, an impersonation of the lost cause, an embodiment of southern honor and southern chivalry." Why, sir, the bodies of the rebel dead who fought, as I honestly believe, under a delusion, believing that they were doing God service, (for I knew some of them; they were my friends and associates in early life, and tears of blood could I weep over their graves,) if such a wretch should be held up as the representative of their cause, and they made to justify murder and assassination, would turn in their untimely and bloody graves. I repeat, give me honest confederate soldiers, with arms in their hands, and they would indignantly scorn and spurn the idea that this wretch was the representative of the cause for which they had sacrificed their dearest hopes and their best and most beloved friends.

"Oh, no, sir, I only intended"—that is the argument, if there is any argument in response to this proposition—"to strike terror into the armies of the Union by

depriving them of their beloved, their trusted, and honored commander-in-chief. I only intended to disorganize society and to destroy forever the last hope of freedom that cheered and animated the civilized world, and while engaged in these comparatively innocent plans and purposes, I unfortunately—for it was the act of my associate, not my act—killed the President. It was a slight mistake, and that is my apology. But it makes very little difference, for it was nobody but Abraham Lincoln, and my sister says it was no more to kill him than any negro in the Union army. I do not regret it; I am rather proud of it. I intend to serve Andrew Johnson as Abraham Lincoln served—I boast of it to French Canadians and Englishmen, who are the avowed enemies of my country." As St. Paul says, he is one of those sinners who glory in their shame.

Would not this, if your honor please, be a libel, a mocking libel, upon the administration of criminal justice in this country?

I can anticipate the answer that may be given. Perhaps it may be said that this argument would apply to all who were engaged in the rebellion. Not at all. First, he was no belligerent, with the rights of a belligerent; and, second, he was engaged in a conspiracy whose purpose was not merely against the Government, but personal violence to an individual. There is a difference between treason and treachery. Some of the best men that ever lived might be called traitors. Honest men have committed great sins. I can readily imagine how a young man living in the South, educated by preachers and politicians—and I regret to say it, because I have been raised up with the highest veneration for the ministry, that some of the most blood-thirsty men were preachers—I can understand how a young man living in the South would be persuaded by them and by eminent statesmen to whom he had looked up from his infancy, and whom his father had taught him to revere as the apostles of his country, that it was his duty to go and sacrifice his life in a wicked cause. But how a man with one sentiment of honor, living here—his mother, his sister, and himself, and all that he held dear, under the protecting ægis of the Government, having vowed allegiance to it—could treacherously become the hireling of its enemies, and consent to murder its federal head and representative for money, is beyond my conception. This jury understand the difference between "treason" and "treachery." They have discussed, as they had a right to discuss, politics and to denounce the conduct of politicians on both sides as much as they choose. But every honorable man knows by intuition how horrible it is for a man to desert his friend while professing friendship. If my friend offend me, like a man of true honor I go to him and say to him face to face and beard to beard, "You have done me wrong;" but if I go, pretending to be his friend, and secretly do him an injury, every honest man, and certainly every honest woman, (for women understand this by intuition,) would scout me as a villain. The man who honestly believed that this Government had done him and his native State wrong might honorably avow himself a rebel. I think it would be very foolish; how wicked it would be, it is for God hereafter to settle. But for a man to profess allegiance to this Government, live under it, and then treacherously endeavor to ruin it and to murder its representative, is a crime, in my judgment, of unspeakable atrocity, which can be measured only by the all-searching eye of Him before whom we must all appear to render an account of the deeds done here in the body.

If your honor please, I dismiss the second prayer and come to the third, which is: If the jury believe from the evidence that at the time President Lincoln was killed as aforesaid, the prisoner was either actually or constructively present, encouraging, aiding, abetting, and maintaining the principal murderer, they should find him

guilty as indicted, although he was neither an ear nor an eye-witness to the transaction.

The object of this prayer is simply to invoke from the court an interpretation of the technical term constructive presence in a more restricted sense than that in which I have just considered it. Surely if he was a member of this conspiracy, and was in the city of Washington at the time the murder was committed, he was constructively present. I have already asked your honor to decide that he was constructively present if he was a member of the conspiracy, performing his part, however far he may have been from the scene of the murder; *a fortiori* (and I put this here for abundant caution) if he was in the city of Washington, he was in legal contemplation not only constructively, but actually present. That is a principle so clear, and one with which your honor is so familiar, that I will refer to no authorities and will not argue it.

I now come to my fourth proposition of law, which is: If the jury believe from the evidence that President Lincoln was killed as aforesaid, in pursuance of said conspiracy, of which the prisoner was a member, he being actually or constructively present at the time, it is a legal presumption that such presence was with a view to render aid, and it lies on the prisoner to rebut said presumption by showing that he was there for a purpose unconnected with the conspiracy.

Your honor will observe that the point in that prayer is in reference to the burden of proof. We have proved the actual presence of the prisoner in the city of Washington on the 14th of April. If I prove that a conspirator is present at the time that the felony which is the object of the conspiracy is committed, my task is done. It is unnecessary for me to show that he did a single act. The law presumes that he is there for the purpose of co-operating with his fellow-conspirators, and further presumes that he performs his part; and it shifts the burden of proof upon the prisoner to explain his presence. Your honor understands it. I may remark that I argued that proposition before Judge Wylie, and he had no hesitation in deciding it as I requested. It is settled beyond all controversy in the case reported in 9 Pickering, 496, of *The Commonwealth vs. Knapp*, a case with which your honor is perfectly familiar, illustrated by the splendid ability and eloquence of the great American orator and jurist Daniel Webster. I refer now, for the sake of convenience, to a note in Roscoe's Criminal Evidence, 213, where the principle is distinctly enunciated. The note contains a quotation from 9 Pickering, and states the principle so clearly and so fully, that I deem it unnecessary to produce the reported case, with which, I doubt not, your honor and the learned counsel are entirely familiar. The note is this:

"But if a conspiracy be proved, and a presence in a situation to render aid, it is a *legal presumption* that such presence was with a view to render aid, and it lies on the party to rebut it by showing that he was there for a purpose unconnected with the conspiracy.—(*Commonwealth vs. Knapp*; 9 Pick., 496.)

Assuming, then, if your honor please, that the prisoner at the bar was a member of this conspiracy, of which I submit there can be no doubt; assuming that he was in the city of Washington, of which I assume there can be no doubt—it being proved, as I shall show hereafter to the jury, by thirteen witnesses; and if the court grants the construction which I ask, as my fifth proposition of law, that the burden of proof is upon them to establish the *alibi* by a preponderance of evidence—and they having introduced only three witnesses to our thirteen—I assume, beyond the probabilities of successful contradiction, that he was in the city of Washington on the 14th of April, 1865; assuming these facts, then, to be proven, I repeat, my task is done. The testimony of Sergeant Dye, which I may have occasion hereafter to explain, would be entirely unnecessary, for it is unnecessary for me to show that the prisoner raised his hand or opened his mouth. It is a legal presumption, which is concluded in the ab-

sence of satisfactory evidence showing the jury that he was here for a purpose unconnected with the conspiracy, that he was here for the purpose of performing his part towards the execution of a common design. And why? The reason is obvious; your honor will anticipate it. I heard it illustrated very forcibly in this way: If a man starts a dangerous machine for a wicked and wanton purpose, he is responsible for all the injury it does during its progress. He is presumed to do it for a wicked purpose. He is responsible, and the court holds him to that responsibility until he proves by affirmative testimony to the satisfaction of an honest jury that he has done all in his power to check its onward dangerous progress. Apply that illustration to this case.

Mr. MERRICK. As the learned district attorney seems somewhat fatigued, I think it but proper that we should ask your honor to take a recess until Monday morning, to enable him to conclude his argument.

Mr. CARRINGTON. The gentleman is very kind. I will conclude my argument on the questions of law, and then gladly yield for that purpose.

I now apply the illustration to this particular case. If a man engages in a conspiracy such as I have endeavored feebly to describe, and such as I think I can show by an analysis of the evidence presented in this case, if he is present in the city of Washington at the time the alleged murder is committed in pursuance of that conspiracy, the law presumes that he is here performing his part towards the common design, and shifts the burden of proof on him to show that he was here for a purpose entirely disconnected with the conspiracy. How is that to be shown? By affirmative, satisfactory, complete evidence that, experiencing genuine repentance and conversion, he has retired from the conspiracy and discharged himself from all obligation for their acts. In this case we expect to show that there was no such evidence. That admirable compendium of theology which embodies my religious creed says that repentance is turning from sin "with full purpose of and endeavor after new obedience," manifested by confession and faith. There must be evidence that this man turned from the conspiracy and confessed it, because there is no genuine repentance without confession. They are twin sisters, and go hand in hand together; and when they dawn in the believer's heart, they accompany him through the whole journey of life until they are lost in the full blaze of an eternal reality. He never repented—he never confessed, except when across the ocean and safe from danger, as he fondly supposed, and then he gloried—that is no confession—in his achievements in crime. He boasted that he had been instrumental in the murder of the President of the United States, and had offered an insult to every loyal American citizen.

Thanking your honor, and you, gentlemen of the jury, for your attention thus far, and having completed all I desire to say in regard to these propositions of law, and thanking the learned counsel for the prisoner, who has so kindly interposed and moved that your honor grant me further indulgence, I will suspend my remarks for the present, and will proceed on Monday, if I can, to argue the questions of fact which I have enumerated, and which in my judgment are submitted for the consideration of this jury.

The court thereupon took a recess until Monday morning at ten o'clock.

#### Forty-Second Day.

MONDAY, July 29, 1867.

The court re-assembled at ten o'clock a. m.

Mr. CARRINGTON. May it please the court and you gentlemen of the jury: I regret exceedingly that it was not your privilege, gentlemen, to spend a peaceful and quiet Sabbath in the bosom of your families; but I feel assured that there is no one of those whom I now have the honor of addressing who entertains any

feeling of resentment towards the counsel for the Government for insisting upon the argument of the various questions of law and fact involved in this investigation. Indeed it appears to me, upon reflection, that it would have been a base desertion of duty, and indeed would have been cruel and unjust to you, if we had devolved upon this jury the exclusive responsibility of deciding questions of such magnitude as are involved in this case, without the assistance of court or counsel. In no spirit of presumption do I undertake to give you the little assistance in my power, but acting, like yourselves, under the solemn sanction of an oath, and feeling the obligation resting upon me thereby, I could not conscientiously leave the entire duty to be discharged by you without giving you the benefit of all the aid in my power. It seems to me that the moral sense of the community would have been shocked—and from what I know of you personally, I am satisfied that you yourselves would have been disappointed—if we had submitted this case without invoking the instruction of the court upon the questions of law, or aiding you in the examination and interpretation of the testimony which has been introduced within your hearing, both on the part of the prosecution and the prisoner.

Having completed my argument upon the propositions of law, as I understand the case submitted to his honor for his decision, I now proceed to discuss the questions of fact, which in my judgment are submitted to you for your decision. First, Does it appear from the evidence that the assault charged in the indictment was made in the manner and about the time there stated, and within the jurisdiction of this honorable court? In regard to this question, gentlemen of the jury, I have very little to say. I have already endeavored feebly to portray that scene at Ford's Theatre on the night of the 14th of April, 1865, and which I fancy is indelibly impressed upon your minds and memories. The principal assassin, John Wilkes Booth, on entering Ford's Theatre on the fatal night of the 14th of April, 1865, unsuspected by any one, (for it was a night of universal rejoicing and of national jubilee,) makes his way without opposition through the crowd, places his hand upon the bolt, and without difficulty opens the door of the box where sat the President of the United States with some friends, which door, if you believe the testimony of the honorable Judge Olin and the other witnesses, had been prepared for his easy access, and for the more certain execution of his fell and cruel purpose. He enters the box, levels the instrument of death, and pours its murderous contents into the head of the representative of the American Republic. Without a murmur or a groan your dying President in a few brief hours passes from time to eternity. Without a word of warning, without opportunity to breathe a prayer for the salvation of his soul—for the very best of us, even those whose hearts are altars from which the incense of praise, adoration, and supplication continually arise to Heaven, feel that they cannot appear before the infinitely Holy One without the robe of that imputed righteousness of Him who died that they might live—he bows his head and dies as he had lived, without a word expressive of hatred, malice, or revenge towards his bitterest enemies. The sad tidings are borne upon the telegraphic wires to the remotest portion of the civilized world. Strong men are bowed down with grief, and the mother instinctively strains to her bosom her darling infant child, impresses a mother's kiss upon its brow, and implores the protection of Heaven. When did such a thing ever occur before?

Why should I harrow up your feelings in portraying a scene which, as American citizens and Christians, you can never forget? It has been graphically described by Colonel Joseph B. Stewart, of our own city. If he had been successful in his effort to seize the murderer, and had once got him within his herculean grasp, he never would have stained the soil of my native State with his accursed blood. Making his escape, he

insults the memory of the dead and the living by exclaiming "*Sic semper tyrannis!*" a motto conceived by the noblest men who ever lived, and one which nerved their arms and cheered their hearts in the holiest cause that ever warmed the heart or nerved the arm of the patriot soldier. This terrible scene has been described to you, gentlemen of the jury, by Major Rathbone, and by many other witnesses whose testimony is familiar to you, and which it will be unnecessary for me to recapitulate.

Nor do I think it necessary that I should detain you in the discussion of the second question submitted to you for your decision. I have only to refer you to the testimony of Dr. Barnes, Surgeon General of the United States, who testifies that the wound inflicted under the circumstances which I have detailed resulted in the death of the deceased, as charged in this indictment. You have seen the instrument of death, the flattened bullet, and the fragments of skull—all that remain of him whom, I say boldly, you learned to love. Why should I detain this jury with the discussion of self-evident propositions? If I had the eloquence of Daniel Webster or William C. Preston, I could not portray more forcibly and eloquently than the witnesses have the horrid circumstances attending this cruel and bloody tragedy.

I now come to the third proposition. I know you will listen to me, gentlemen of the jury. My voice is feeble, my health is poor, and I will therefore have to speak slowly and deliberately; but I know whom I have the honor to address. I know you personally. So does my friend Mr. BRADLEY. We both trust you. You will "hear me for my cause, and be silent that you may hear" and understand.

I come, then, to the third proposition. Does it appear from the evidence that the assault and death were the result of a conspiracy of which the prisoner at the bar was a member? That is the great question. If I satisfy you, gentlemen of the jury, that this assault and murder was the result of a conspiracy—it matters not whether to murder or to do any other personal violence—and the prisoner at the bar was a member of that conspiracy, my task is done; he is guilty of murder. Almighty God forbid that the day shall ever come when an American or an English judge, to whom we look for our precedents and our rules of practice, should decide that it was not a case of murder. Let me ask, then, "What is conspiracy?" I hold in my hand a work of unquestioned authority, and with the permission of the court I will read an extract from it on this subject. I read from 3 Greenleaf, section 389:

"A conspiracy may be described in general terms as a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. It is not essential that the act intended to be done should be punishable by indictment, or, if it be designed to destroy the man's reputation by verbal slander, or to seduce a female to elope," &c.

You will observe, then, gentlemen of the jury, that a conspiracy is a concert or combination of action between two or more persons to commit an unlawful act, or to commit a lawful act by unlawful means. If, then, you believe from the whole evidence that the prisoner at the bar conspired with others—mark you, not that he was a member of the conspiracy when it originated, but if at any time during the existence of the conspiracy he combined or co-operated with others to commit an unlawful act, and the unlawful act is committed, he is responsible for the consequence. If, then, you believe from the whole evidence that the prisoner at the bar, in connection with others, conspired or combined, either to murder or to abduct or to do other violence to my friend Mr. Barr or Mr. Bohrer (jurors) or to the President of the United States, Abraham Lincoln, and while co-operating in that conspiracy, performing his part toward the execution of the common purpose, human life is taken, he is guilty of murder. Where would be our safety, where would be the safety

of your wives and children, if the law were otherwise? Now apply that principle to the facts of this case.

The first scene of this bloody tragedy is laid on Pennsylvania avenue, in the month of April, 1864. Can this be so in this Christian age and in this Christian community, where, however we may differ, we profess to worship the Prince of Peace as the only true, living God? Here, in the metropolis of the nation, on Pennsylvania avenue, in April, 1864, three men are overheard in private mysterious conversation. The subject is the murder of Abraham Lincoln, President of the United States. One suggests as the instrument of death a telescopic rifle. "Oh, no," says another, "we might kill his wife and child." His heart was touched with pity. O, the gentle savage! In this remark he was illustrating what the great poet has said, that the toad, ugly and venomous, has a precious jewel in its head. "No," replies the other; "we will rid this country of husband, father, wife, and child, if necessary to the execution of our purpose." Perhaps he may have alluded to poor little "Tad," whom you have seen here as a witness upon the stand; for that little boy is associated in our memory with his murdered father. You have felt the inexpressible tenderness of a father's love. You know how that kind old man loved his youngest child. "We will murder all, if necessary to the execution of our bloody purpose," exclaims one. Do you doubt it, gentlemen of the jury? This does not depend upon the testimony of any imported witness, or even on that of a northern man or woman, but upon the testimony of a lady born and bred in your own city—Mrs. McClermont, an unimpeached and unimpeachable witness, against whose testimony there could not be a breath of suspicion. If the face is an index of the human heart, you could form an accurate judgment of her character and the integrity of her testimony. With the artless simplicity of innocence and truth she tells her simple story. What do you see? In April, 1864, malice, hissing hot; murder conceived and contemplated against the President of the United States. And who constituted that party? John Wilkes Booth was one. Who was he? The intimate friend and associate of the prisoner at the bar, and the pet of Mary E. Surratt. Another was George A. Atzerodt, the "pet" of the ladies at No. 541 H street, for they gave him the *sobriquet* of "Port Tobacco." The third, Herold, who, when escaping from his work of death, to refresh himself, drank the whisky provided by Mary E. Surratt, at the same time arming himself with weapons prepared and concealed for him by the prisoner at the bar. I am not now treading upon any disputed ground. Oh, gentlemen of the jury, do not let us trifle with the most solemn things that can engage the human heart. You know what I state to be true. If there is any faith in human testimony, you must know that this conspiracy was conceived as far back as April, 1864, and that it was a year old at least before this bloody deed was committed.

Where was the second scene in this horrible tragedy? It was laid in the city of New York, on Third avenue, illustrating the truth of what I said in my exordium, (as Mr. BRADLEY was kind enough to designate my opening remarks,) that this conspiracy extended from State to State, and, as we expect to show you, from ocean to ocean. A lady is riding in the cars with her daughter. You have seen her. She is married to a Canadian gentleman, and living in Canada, and therefore not expected to have any special interest in the honor of the American Republic. Casually passing along in a Third-avenue car, in company with her child, she sees two men who attract her attention. They are disguised; they are armed. The subject of the conversation is the murder of Abraham Lincoln, the President of the United States.

Mr. PIERREPONT. Then just re-elected.

Mr. CARRINGTON. Yes, sir, then just re-elected.

Two letters belonging to these men fall in the car, by one of those mysterious providences which, we know

from history, if not from experience, so often happen to lead to the detection of the guilty, and which forcibly illustrate the truth of what is so beautifully expressed by the great poet of nature, "Murder, though it hath no tongue, speaks with most miraculous organ." She picks up these letters. She carries them to Winfield Scott, a man whom you knew and whom you loved; a man whom I was taught to revere, for he was the friend of my father. He says they are of importance, and carries them to the authorities. They are examined. They are now in evidence before an honest and intelligent jury. Let me read them to you:

"DEAR LOUIS: The time has at last come that we have all so wished for, and upon you everything depends. As it was decided before you left, we were to cast lots. Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback—*Abe must die, and now.* You can choose your weapons. The cup, the knife, the bullet. The cup failed us once, and might again. Johnson, who will give *this*, has been like an enraged demon since the meeting, because it has not fallen upon him to rid the world of the monster. He says the blood of his gray-haired father and his noble brother call upon him for revenge, and revenge he will have; if he cannot wreak it upon the fountain-head, he will upon some of the blood thirsty generals. Butler would suit him. As our plans were all concocted and well arranged we separated, and as I am writing—on my way to Detroit—I will only say that all rests upon you. You know where to find your friends. Your disguises are so perfect and complete, that without *one* knew your face, no police telegraphic dispatch would catch you. The English gentleman *Harcourt* must not act hastily. Remember, he has ten days. Strike for your home, strike for your country; bide your time, but strike sure. Get introduced, congratulate him, listen to his stories; not many more will the brute tell to earthly friends. Do any thing but fail, and meet us at the appointed place within the fortnight. Enclose this note together with one of poor Leenea. I will give the reason for this when we meet. Return by Johnson. I wish I could go to you, but duty calls me to the West; you will probably hear from me in Washington. Sanders is doing us no good in Canada.

"Believe me, your brother in love.

"CHARLES SELBY."

"St. Louis, October 21, 1864.

"DEAREST HUSBAND: Why do you not come home? You left me for ten days only, and you have now been from home more than two weeks. In that long time only sent me one short note—a few cold words, and a check for money, which I did not require. What has come over you? Have you forgotten your wife and child? Baby calls for papa until my heart aches. We are so lonely without you. I have written to you again and again, and, as a last resource, yesterday wrote to Charles, begging him to see you and tell you to come home. I am so ill, not able to leave my room: if I was, I would go to you wherever you were, if in this world. Mamma says I must not write any more, as I am too weak. Louis, darling, do not stay away any longer from your heart-broken wife.

"LEENEA."

Gentlemen of the jury, you heard this lady express the opinion, when the photograph of Booth was shown to her, that he was one of the parties in that car. But for the purpose of my argument I care not who it was. The point I am discussing before you, and you have intelligence enough to understand it, is the existence of this conspiracy, its character, plan, and purpose. What was it? By solemn vows these conspirators mutually pledged themselves to murder Abraham Lincoln, with the pistol, the dagger, or the cup. Do you remember in this connection the testimony of the druggist, that Herold at that very time was the clerk of an apothecary who furnished medicines to the President of the United States? "If the dagger or the pistol does not serve your turn, resort to the poisonous weapon, the cup," is the language of one of the conspirators. Murder was their object, and they were regardless of the means which were employed for the consummation of their bloody end. His wife, with woman's instinct, feeling that her husband—Lewis Payne, the bosom friend of the prisoner at the bar—was engaged in an unlawful and bloody purpose, appeals to him by his plighted vows at the altar, by the love he owed their child, to turn, leave his wicked companions, and to be true to his country and his Government, which protected them and their infant child. But he was deaf to this appeal. Bent upon his murderous purpose, urged on, as I shall show you, by a power which a young man perhaps of a fanatical turn of mind is incapable of resisting, he goes on until this murder, which fills the land with tears and with mourning, is consummated.

Is it necessary, gentlemen, that I should go further

to prove the existence of this conspiracy? I could rest it upon the concurrent testimony of these two ladies alone. But that is not all. Let us leave the city of New York; let us return to the metropolis of this great Christian nation, where the spires of temples rise to Him who came to preach peace and good will upon earth. I ask you to pay a visit to 541 H street, the third scene in this bloody tragedy. I know not to what use that house is now devoted; but if I had my way, I would formally consecrate it to the Goddess Cloacina, for it could not be devoted to a more appropriate deity. Visit that place, gentlemen, and what do we see? The first figure that strikes the eye is Lewis Payne, with his herculean frame, the Moloch of this infernal conspiracy, whom Milton describes as the fiercest and strongest spirit that fought in heaven. Who is next? Atzerodt, the Belial of this horrid conspiracy, of whom Milton writes:

"in act more graceful and humane;  
A fairer person lost not heaven; he seemed  
For dignity composed and high exploit:  
But all was false and hollow; though his tongue  
Dropped manna, and could make the worse appear  
The better reason, to perplex and dash  
Maturest counsels, for his thoughts were low,  
To vice industrious, but to nobler deeds  
Timorous and slothful; yet he pleased the ear,  
And with persuasive accent thus began."

I do not know whether this is an accurate description of George A. Atzerodt, but judging from the evidence, he was the "pet" of the ladies at No. 541; so much so that they gave him the *sobriquet* of "Port Tobacco." Who next? There was Howell, the blockade-runner, who lived in habitual violation of the law, I would call him "Mammon," for he seemed to have no higher aspiration than whisky and money. Who next? There sits old Satan, high above the rest, "in shape and gesture proudly eminent." Close by his side is Beelzebub, of whom Milton says:

"than whom,  
Satan except, none higher sat, with grave  
Aspect he rose, and in his rising seemed  
A pillar of state; deep on his front engraven  
Deliberation sat and public care."

I repeat it, and I intend to demonstrate it so clearly that this jury cannot escape the conclusion, that John H. Surratt was second to John Wilkes Booth in rank and power; equal in malice, hatred, and revenge—those red and bloody demons lurking in every wicked, depraved, and malignant heart, and prompting to the commission of those crimes that shock and outrage human nature.

Who next do you see? O, that it were not so, that an American woman should be found in such company, giving her countenance and support to the cruel and bloody purposes of this infernal conspiracy. But there she is. Yes, there is Mrs. Slater. I know no infernal deity whom she could properly personate; for it has been truly said that hell has no fury like a depraved and wicked woman. I hope I shall not be understood by these remarks as casting any reflection upon the fairer sex, for I yield to no living man in admiration for true female character. Gentle, virtuous, pious woman is the most beautiful object in creation; but when she yields herself to the devil, she becomes, of all objects, the most offensive and revolting. I have heard it said that the sweetest and fairest flower that blooms in the prairies of the West, when it begins to fade, emits the most fetid and offensive odor; and so with woman—when she casts aside her womanly nature and enters into a hell-inspired plot, she is, of all objects, the most offensive and disgusting, the depth of degradation being in proportion to the immense elevation from which she falls. Now, I appeal to every one before me, has the vocabulary of the English language words adequate to express the indignation of an honest and patriotic man against this wicked woman, who, for her amusement, requested the prisoner at the bar to shoot down, in cold blood, unarmed Union soldiers while they were returning to their families and their

homes from rebel dungeons, and while, perhaps, with their pinched and attenuated forms and quivering lips, they earnestly implored mercy. Gentlemen, it is a gratifying truth, which has been frequently illustrated during this cruel civil war, that the gallant soldier will with his own hand cure the wounds which he inflicts from a sense of duty. A brave man's heart melts with pity when he sees his bitterest foe under his feet and completely at his mercy. But here are a woman and a man murdering, in cold blood, unarmed Union soldiers. I care not, however, whether they be Union or rebel soldiers, the crime is just as shocking and heinous. They were men in distress, and appealing to his clemency. That alone should have deterred him. Had he been a courageous, honorable man, instead of shooting, he would have afforded them protection and relief, whether friend or foe.

You will observe that the question to which I have just invited your attention depends upon the testimony of Miss Honora Fitzpatrick. Do you doubt her? She is a native of your city; the daughter of Mr. James Fitzpatrick, a gentleman of the highest character, and personally known, perhaps, to all of you. Gentlemen, you cannot doubt any fact which I have presented and elaborated thus far in the course of my argument.

I come now to the fourth scene of this bloody tragedy. It is laid at Ford's Theatre. There you see the prisoner at the bar in company with this unsuspecting young lady, who, doubtless, had her father's permission, and who was unconscious of the company with which she was associating in the innocent pastime of witnessing a dramatic performance. John Wilkes Booth enters. He does not address himself to the lady, neither does he converse with any of the company where they are seated, but calls the prisoner aside and holds a private conversation with him. What was it? No ear heard it but that ear which hears every sound. You know what it was, however, for you have learned what passed at previous interviews of this private character, as well as at subsequent ones. Need I say to you then that that conversation was regarding the proposed murder of Abraham Lincoln, then President of these United States.

But let us pass on to the fifth scene. And here allow me to remark—and I am sure his honor, as well as my learned colleague, will agree with me—that a jury may infer from the circumstances attending the murder alone the existence of a conspiracy. On the night of the 14th of April, 1865, I have these parties at Ford's Theatre, the scene of this awful tragedy; the prisoner at the bar is there calling the time. I know there is some conflict of testimony in regard to this, and I shall notice that hereafter. I assume that he was there doing this very thing; but whether he was or not is immaterial to the issue, for I have shown that he had then formed his connection with the conspiracy which was in full blast. John Wilkes Booth enters the theatre and fires the fatal shot, as I have already described. A whistle sounds. A whistle producing a similar sound is found at the house of Mrs. Mary E. Surratt. At that signal Lewis Payne, in another quarter of the city, invades the sacred precincts of the family circle of the Secretary of State, forces his way by the agonized wife and astounded daughter, and raising his murderous arm strikes at the faithful nurse who was making a gallant defense for his loved and suffering master. The assassin enters the sick chamber; he strikes with the fury of a demon at the emaciated form of a feeble and attenuated old man. I care not what your feelings for him may have been in consequence of difference of views on political subjects; he was a man, an old man, in his own house, which by the laws of England and America is a man's castle; there in the sacred presence of his wife and daughter the murderer strikes wildly, madly, and is only prevented by the efforts of the faithful nurse from taking the life of his weak, unsuspecting victim. By a miraculous interposition of Providence, however, the venerable Secretary recovers

from the blows thus inflicted, and is spared to his country and his race. But the shock was too great for the mother and daughter, and they soon go, almost hand in hand, to an untimely grave. The assassin escapes. Where does he go? To the arms of Mary E. Surratt, the mother of the prisoner at the bar. With the smell of innocent blood on his garments, reeking with the blood of an American citizen, he goes to the general rendezvous, whence they had all issued upon their common mission.

Gentlemen of the jury, tell me, have I not by these three ladies, and by the testimony of Colonel Morgan and Captain Wermerskirch, unimpeached and unimpeachable, proved the existence of this conspiracy, and the connection of the prisoner at the bar with it? You will observe I have not as yet alluded to the testimony of Weichmann. Without his testimony the case is complete. Without his testimony a jury of honest rebels with arms in their hands would decide the existence of this conspiracy and the prisoner's connection with it. But I come to his testimony. What right have you to discard it? I do not address ignorant men; and, while I mean no disrespect to any class of my fellow-citizens, I know that ignorant men are carried away by their prejudices; but educated, intelligent, honest men (I hope I may be allowed to say that much without being accused of flattery) are not in a solemn matter of this kind to be influenced by prejudices. I remind you of your oath: "I will decide according to the law and the evidence." You have no right, gentlemen—and I say this within the hearing of his honor, and subject to his correction if I am wrong—to discard the testimony of a witness, unless, first, it appear upon cross-examination and by his deportment on the stand he is unworthy of your belief; second, unless his general reputation for truth and veracity has been successfully assailed; and, third, unless it is proved clearly to your satisfaction that he has made different statements in regard to the prominent and material facts of the transaction to which he testifies on different occasions; fourth, unless a different state of material facts is proved by other witnesses. Now, apply that test to Louis J. Weichmann. First, gentlemen of the jury, reasoning from the intimation of Mr. MERRICK in his argument to the court, it will be attempted to prove to you that Louis J. Weichmann was an accomplice. I indignantly repel it. I do so in justice to this young man, whose character is as dear to him as yours to you or mine to me, and surely a father cannot bequeath to his son a richer legacy than a pure and unsullied reputation. Wealth and honor sink into insignificance in comparison with it. Weichmann an accomplice! It has been said, and truly said, that it was fortunate for the United States that a Union clerk, now a Union officer in the employ of the Government, indorsed by the first men in this country, happened at that time to be boarding at the house of Mrs. Mary E. Surratt. Not intending to be hyperbolic, among all these infernal spirits—for where was ever such a set of spirits before collected this side of hell—he was, like Abdiel,

—"faithful found,  
Among the faithless, faithful only he."

If Weichmann had been a co-conspirator, two things are irresistible: First, John Surratt would have made him a confidant. He would have taken him to that sociable at Gautier's saloon, and, as suggested by my colleague, [Mr. PIERREPONT,] in Baltimore. He would have held in his presence those mysterious private conversations with Booth, Herold, and Atzerodt, which not he, but Miss Honora Fitzpatrick swears to. He would have told him that he was lurking in Washington when he pretended to be in Elmira. Why, do you not at once see, gentlemen of the jury, that if Weichmann had been a liar, how easy it would have been for him to have sworn, "I saw the prisoner here on the 14th of April, 1865?" But he did not see him, and for the simple reason that the prisoner took care not to let him see him.

But—will Mr. Weichmann pardon me; I mean no disrespect to him—let us suppose he was an accomplice. My theology, my hope, my comfort, and my consolation is, that if I repent, turn, and confess, my sins will be blotted out. Without that hope, “we would be,” as St. Paul says, “of all men most miserable.” After the culmination of this conspiracy, Louis J. Weichmann met the officers face to face. He told them all he knew. He went with them in pursuit of the prisoner, and, like a true American citizen, he comes here, although they were once friends and school-mates, and testifies against him; “not because he loved Cæsar less”—pardon the comparison—“but Rome more.” But is that all? Do you not remember that, during these mysterious interviews between the conspirators, which were witnessed by Louis J. Weichmann, he went and remonstrated with Mrs. Surratt, and she replied, “John is with this party,” or words to that effect, “and Booth is crazy upon one subject.” What she further said I shall have occasion hereafter to speak of.

But now I ask you this question—and that is the best test of a witness's veracity—Has he been contradicted in regard to any prominent and material fact in this entire transaction? I have the honor to speak in the presence of ministers of the Gospel, and we are told by the most celebrated theologians that the best evidence of Scripture truth is substantial concurrence with circumstantial variety. None of the evangelists agree in all the immaterial events of our Saviour's sojourn and history upon earth, (I make the allusion in no spirit of irreverence or levity,) but all agree in regard to the prominent facts in the history of the Saviour of the world. This very discrepancy in immaterial matters is held to be the strongest and most conclusive evidence of Scripture truth, for the reason that where a number of persons agree in regard to immaterial matters, the conclusion is irresistible that they have colluded together for the purpose of deception. But where they agree in regard to prominent matters, and differ in regard to immaterialities, if I may so express myself, the conclusion is irresistible that they never conferred together, and that each one details the impression made upon his own mind at the time of the occurrence. I will illustrate it. Mr. Ball [a juror] and I are walking down the street together. We see a fight. I give my statement of it, and he gives his. We agree in regard to the prominent facts, but we differ in regard to the immaterial circumstances connected with it. Did you ever see two men give the same account of a fist-fight that occurred within their personal observation? Never in your life. This is a homely and familiar, but truthful illustration. Now, I say that Louis J. Weichmann has not been contradicted, and I defy the gentlemen to point to one single prominent fact in regard to this transaction where Weichmann has been contradicted by any credible witness introduced on behalf of the prisoner.

Let us briefly review his testimony. Before doing so, however, I beg to call your honor's attention to what Greenleaf says on the subject of an accomplice. I read from 1 Greenleaf, section 382:

“There is one class of persons, *apparently accomplices*, to whom the rule requiring corroborating evidence does not apply, namely, persons who have entered into communication with conspirators, but, either afterwards repenting or having originally determined to frustrate the enterprise, have subsequently disclosed the conspiracy to the public authorities, under whose direction they continue to act with their guilty confederates until the matter can be so far advanced and matured as to insure their conviction and punishment. The early disclosure is considered as binding the party to his duty; although a great degree of objection or disfavor may attach to him for the part he has acted as an informer, or on other accounts, yet his case is not treated as the case of an accomplice.”

Your honor will observe, as will you also, gentlemen of the jury, that there are two principles here enunciated. First, if the man is an accomplice and repents during the existence of the conspiracy and gives information, that exonerates him from all liability; and you will observe that this is founded not only in reasons of public policy, but in sound ethics.

Mr. BRADLEY. Do I understand you to say that Mr. Weichmann testified any thing about this before the conspiracy was at an end? I do not understand your point exactly.

Mr. CARRINGTON. My idea is that he had nothing to do with the conspiracy, and testified just as soon as he knew any thing about it. Of course, if he was a member of the conspiracy, knew what was going on, and did not confess until the object of the conspiracy was consummated, his day of probation had passed, and it was too late to make it then so that it would avail him. It would then be like the death-bed repentance of the sinner, or rather like the spirit repenting after it had passed from this earth into eternity. He could repent before a higher tribunal, before a Being who is infinitely just and infinitely merciful; but when the crime is complete, and he participated in it, repentance will not avail him before a human tribunal. But I say all the circumstances of this case show that Weichmann was not in any way connected with this conspiracy.

Again, gentlemen of the jury, the defense have most signally failed in their attempt to show that he had been arrested. It seems that McDevitt—I do not intend to say any thing against him, for he is a very good officer—in the excitement of the moment informally arrested Weichmann, as he should have arrested every one at the house of Mrs. Surratt. Just so soon as my little boy came into my room on the morning of the 15th, and with tears in his eyes told me that the President was dead, I, being a peace officer, at once went down and examined into the evidence, and I know parties were arrested upon mere suspicion. At that time every honest man's heart was in his mouth, and he was doing all he could to search out these offenders against society and civilization. But after Weichmann was arrested by McDevitt he went to the headquarters of the police, and at the mere request of Major Richards he remained there all night, manifesting no disposition to escape, and indicating no evidence of guilt.

Let me recapitulate briefly the testimony of Weichmann, for my purpose is to show you that he is corroborated in regard to every prominent and material fact in this entire transaction, from its inception to its consummation. I could not help being somewhat amused at the cross-examination of this witness by Mr. BRADLEY, Sr., whose great ability we all know, not only in the management of a cause, his eloquence in pleading it, and the learning which he displays in arguments before the court, but in the cross-examination of a witness. But I appeal to you as honest men, did not Louis J. Weichmann bear himself up manfully in that trying ordeal? Mr. BRADLEY looked daggers at him, but he used none. The old gentleman found himself foiled for once, as I think I can satisfy you, in discrediting this young man. I of course do not impute to Mr. BRADLEY any such uncharitable purpose as seeking to do it unfairly, for he would scorn to do that; but we all make mistakes in the heat of battle at the bar. I repeat, Weichmann came through the fiery furnace well tried. I do not want to eulogize him too much, and say that he was pure gold, but this I can say, that he has been corroborated and confirmed by the witnesses examined both on behalf of the prosecution and the prisoner.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 94. WASHINGTON, FRIDAY, SEPTEMBER 6, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 93.*

After this digression, gentlemen of the jury, permit me to recapitulate his testimony. The first fact to which he testifies is the great central truth established by a host of witnesses, among others by Miss Honora Fitzpatrick, that sweet and innocent girl, whom they themselves have credited by making her their own witness, that No. 541 H street was the rendezvous of these conspirators. I shall show you that she was mistaken in regard to one point; it is not very material however. I know she contradicts Weichmann in regard to an immaterial point, but she confirms him with regard to all material matters, and the testimony of such a lady as she is is sufficient for me. I do not want anything more; for when a good, pious, innocent girl or woman comes upon that stand and testifies to a fact, it is just as good to me almost as a declaration from the Bible itself. I say it not irreverently. I repeat, that she confirms him in regard to the great central fact, that 541 H street was the rendezvous of these conspirators. Now, when I place conspirators together, when I show the act which they threatened committed, what more do you desire? In regard to this fact Louis J. Weichmann is confirmed. Secondly, he testifies to the intimate relations between the prisoner and the other conspirators. Who contradicts him with reference to that? He says he saw Lewis Payne and John H. Surratt fencing with bowie knives, and armed with revolvers, with spurs, and with all the artillery of war. Who denies it? These dumb witnesses, that speak with most miraculous organ in thunder tones, confirm the truth of his testimony upon this point. In the third place, he testifies to the mysterious meetings and conversations, and to the ciphers and geographical projections, when, doubtless, devising their future plan of operations, at the National Hotel in this city, after he formed the acquaintance of John Wilkes Booth upon the introduction of the prisoner at the bar, and of Dr. Mudd, of whom I have nothing to say. Who contradicts him? Dawson confirms him, for he produces a card bearing the name of John H. Surratt which fell from the pocket of the vest of John Wilkes Booth—one of those miraculous interpositions which the God of heaven makes that his ministers upon earth may exact vengeance upon those who dare to defy the laws of God and man.

In the fourth place, he testifies to the interview at the theatre between Booth and the prisoner a few weeks previous to the assassination. Who contradicts him? Miss Honora Fitzpatrick confirms him, testifying to substantially the same thing, as you doubtless recollect.

Fifthly, he testifies to the interview between the prisoner and Payne, when they entertained themselves by fencing with bowie knives, and at the same time exhibiting revolvers and spurs. In this connection I will read from the record, because I think this is very important. I read from the testimony of Weichmann, on page 377:

"Q. You were in your room up stairs?

"A. Yes, sir. I said, 'It is.' He [Payne] then looked at me, and immediately observed, 'I would like to talk privately to Mr. Surratt.' I then got up and went out of the room, as any gentleman would have done. The following day, the 15th March, on returning to my room from my work, I found a false moustache on my table. Not thinking much about it, I threw it into a toilet box that was there. From the appearance of things around my room, I knew John Surratt was at home. I then went up into the back attic, and just as I opened the door I saw Surratt and Payne seated on the bed, surrounded by spurs, bowie-knives, and revolvers. They instantly threw out their hands, as if they would like to conceal them. When they saw it was me they regained their equanimity.

"Q. Where did those things lie?

"A. They were on the bed.

"Q. State what those things were.

"A. Eight spurs—bran-new spurs—and two revolvers."

Now, gentlemen, bear that circumstance in mind, in connection with the others to which I have invited your attention. I ask, who contradicts him in that?

Again, I would call your attention to the sociable at Gautier's. It seems they did not desire Weichmann's company either there or at the theatre. I will simply refer to page 378, in this connection, without reading it. You probably recollect it.

I now refer you to a written declaration, which speaks for itself. As to how much this tells, gentlemen, against the prisoner, it is not my purpose now to speak, because you will have to read this by the light of the surrounding circumstances. I read from page 381 of the record:

"New York, March 23, 1865.

"To — Wickman, Esq., 541 H street:

"Tell John to telegraph number and street at once.

"J. BOOTH."

Evidently he is alluding to the prisoner at the bar. It is a mysterious communication, which proves nothing of itself, but which is of momentous importance, as you will see, when read by the light of the surrounding circumstances and the other written communications to which I shall hereafter invite your attention. Weichmann's first name is not given. The last name of the prisoner is not given. He does not state to Weichmann what he wants with "John." It is very brief, but it is very comprehensive. Weichmann then spoke to Surratt in reference to this subject:

"There were two things about the telegram that struck my attention. My first name was omitted, and my last name was not spelt correctly. It was spelt 'Wickman.' I knew of no party in New York who could send me a telegram. I had no acquaintance there. I opened the envelope and I saw it was from Booth. I did not know why he should address me a telegram. I showed it to several of the clerks in the office, and I took the telegram home that day and showed it to Surratt."

"Q. What did he say?"

"A. I told him I thought it was intended for him. I asked him what number and street were meant. The telegram reads, 'Telegraph number and street at once.' He says, 'Don't be so damned inquisitive.'"

You will observe here, gentlemen of the jury, these two facts: that when the prisoner is informed by Weichmann of this mysterious telegram which he had received from Booth, and is specially requested at that time by Weichmann, his personal friend and the friend of his mother, to tell him the object and the meaning of it, he refuses to tell him any thing about it, but says, in reply, "Don't be so damned inquisitive." He then

parts company with him, goes off, and what is the next fact? I ask your attention to what follows. It explains this telegram. It shows that Booth was communicating with the prisoner in reference to Lewis Payne; that they were preparing quarters where he could be concealed until their plans were consummated, and he could aid in the execution of their bloody purpose.

"A. That same evening he asked me to walk down the street with him. We went as far as Tenth and F, when he met a Miss Anna Ward. He then walked back from Tenth and F streets to Ninth and F streets with me, and went into the Herndon House and called for Mrs. Murray."

Now, gentlemen of the jury, what do these facts prove? Let me recapitulate them. John Wilkes Booth, in the city of New York, telegraphs to the prisoner at the bar in Washington to prepare a room for a certain mysterious person whose name he does not disclose to his room-mate and bosom friend. Who is that person? A man imported, I believe, from Florida, Lewis Payne. "Coming events cast their shadows before." Booth, in New York, telegraphs to his tool to prepare a room where he may conceal one of their instruments. He is concealed. Whenever he leaves it, he either goes to Mrs. Surratt's or enters upon his bloody errand to the house of Secretary Seward, where he endeavors to strike the fatal blow. I speak from the record. I appeal to the evidence. I refer to Mrs. Surratt's visit to the Herndon House. Weichmann, ignorant of what was going on, asks who the party was at the Herndon House. Atzerodt tells him, for he is a foolish fellow, who does the rough work, notwithstanding he was a sort of pet and fancy man with the ladies. Atzerodt makes the fact known to Weichmann, and Mrs. Surratt reproves him for doing so, thereby confessing, in vindication of Weichmann's character, that he (Weichmann) was not a safe person in whom to confide the secret of conspiracy. Weichmann swears that Atzerodt told him it was Payne; and is he not confirmed? Miss Honora Fitzpatrick says that, on returning from church in company with the old lady and others, she requested that the young ladies should remain outside upon the street while she stepped into the Herndon House. Mrs. Murray, the proprietress of that hotel, testifies that she never knew Mrs. Surratt, or any member of the family. Why did Mrs. Surratt go there? Was it not to see the man whom her son had concealed there in obedience to the order of the chief assassin, John Wilkes Booth? Do you not see them, gentlemen, like a bunch of herrings—I beg pardon for using such a commonplace expression—Booth ordering the concealment of this man, Surratt concealing him, his mother nursing him as you would a game-cock to fight for the amusement of a vulgar public, and then his entering Mr. Seward's house and striking this cruel blow?

Putting all these facts together, how can you escape the conclusion that it was, in the language of Mr. Greenleaf, a concerted action of many men bent upon an unlawful—aye, a cruel and murderous purpose? Am I not right about this? Let me read from page 385 of the record:

"Q. Did you go with her to church at any time, and, returning, stop anywhere?"

"A. Yes, sir; after the 27th. I do not remember the particular evening Anna Surratt, Miss Jenkins, Miss Fitzpatrick, Mrs. Surratt, and I had been to St. Patrick's church, on the corner of Tenth and F streets.

"Q. What occurred in returning?"

"A. On returning she stopped at the Herndon House, at the corner of Ninth and F streets. She went into the Herndon House, and said that she was going in there to see Payne.

"Q. Mrs. Surratt said that?"

"A. Yes, sir.

"Q. Tell what occurred.

"A. She did go, and she came out.

"Q. How long was she in there?"

"A. Perhaps twenty minutes.

"Q. Did you see her when she came out?"

"A. Yes, sir.

"Q. Where were you waiting?"

"A. We walked down Ninth street to E—the party did—and down E to Tenth; and then returned to the corner of Ninth and F, and met Mrs. Surratt just as she was coming out of the Herndon House.

"Q. Did she join you?"

"A. Yes, sir; and went home with us.

"Q. To her house?"

"A. Yes, sir.

"Q. Did she say any thing to you?"

"A. No, sir."

Now, I ask you if he is not confirmed by Miss Honora Fitzpatrick. It is true that she did not know Payne; and she did not know for what purpose Mrs. Surratt went into this house; but she testifies to the fact that she went there; and Mrs. Murray testifies to the fact that she was not acquainted with any member of the family. Is not this confirmation strong as proof of Holy Writ?

In the next place, you find that Weichmann testifies to the fact that Atzerodt and Payne were at the Herndon House. I might, in this connection, refer to pages 385 and 386 of the record.

Again, on the 3d of April he testifies to the interview with Surratt. I refer to page 387. That was the last time he saw him, until he recognized him in this court upon trial for his life.

On the 5th of April he saw Booth at Mrs. Surratt's house. He testifies to having seen those war maps, which indicate that they had prepared themselves with all the paraphernalia necessary to the execution of their cruel and bloody purpose, and with regard to this he is not contradicted.

On the 11th of April he drives Mrs. Surratt, at her request, to the village of Surrattsville. Who contradicts him? Is he not confirmed? He says that as the old lady left the house she brought down a little package, requesting him to be very careful lest he might break it.

Mr. BRADLEY. That was on the 14th.

Mr. CARRINGTON. I will come to the 14th. Weichmann did not know what it was.

Mr. PIERREPONT. She said it was Booth's.

Mr. CARRINGTON. He did not know what it was. She said it was Booth's. They go to Surrattsville. It is given to Mr. John M. Lloyd.

Mr. BRADLEY. Will you turn to the testimony where he testified that she said that?

Mr. CARRINGTON. I was not aware of it. Mr. PIERREPONT suggested that to me.

Mr. MERRICK. Judge PIERREPONT will give us the reference.

Mr. BRADLEY, Jr. "I must go back for those things of Booth's."

Mr. PIERREPONT. You are right.

Mr. CARRINGTON. She said it was Booth's. Let us see if he is not confirmed. They go to Surrattsville, and a package is delivered to the custody of John M. Lloyd, upon whose testimony I shall hereafter dilate more fully. This little package turns out to be a field-glass; and after the dead body of Booth is transferred from the State of Virginia to the city of Washington, and recognized by Dr. May, who had performed a surgical operation upon him in the course of his lifetime, this very field-glass, which Weichmann testifies Mrs. Surratt carried to Surrattsville and conceded was for Booth, is found in the possession of a young lady to whom he had made it a present. Is not that the testimony?

Mr. BRADLEY, Jr. No, sir; we will put you right at another time.

Mr. CARRINGTON. I believe I am mistaken about that; but, at all events, it is traced to his possession and identified by Colonel Baker, as you all remember, and perhaps by Colonel Conger also.

In the next place he testifies to the departure of the prisoner at the bar and Mrs. Slater for the Southern Confederacy, where he expected to receive a clerkship, it does not clearly appear from the record whether for himself or for Mrs. Slater; thus admitting that he was a hireling in the service of the Southern Confederacy, although living, as has been properly said, under the shadow of the Federal Capitol and professing allegiance to the Federal Government. Is Weichmann contradicted in regard to that? No; but, on the con-

trary, confirmed by their own witness, Mr. David C. Barry. The very man whom they had brought here to contradict him confirms him. Mr. Barry says that he had a son in the rebel army whom he desired to see, and under whose auspices does he attempt to secure an interview with the confederate authorities? The first man to whom he applies is the prisoner at the bar. In company with him he goes down to Elizabeth City, I believe it was, thus showing he had communication with the two authorities; showing, as Weichmann testified, that he and Mrs. Slater were combined, as he was with Booth, not only to murder the federal head and representative of the American Republic, but to strike at the heart of the American nation itself.

It is true there are some little immaterial discrepancies in the testimony as to who broke the buggy, how it was broken, and who mended it, as also regarding the relative positions of the parties at the time, and with reference to the particular dates when certain things occurred; but these discrepancies are only with regard to immaterial matters. I put this question to you, gentlemen; answer me as honest men determined to do justice; I appeal to that golden rule of morality, "Do unto others as you would have them do unto you;" you may at some time be witnesses on this stand: Is there a man upon this jury who could not be contradicted as to dates and the relative position of parties at the time a certain transaction occurred, and in regard to conversations? Suppose I were to have a conversation with you, sir, to-day. We are both honest men. I go upon the stand and attempt to repeat the substance of the conversation we had together. Would an honest jury brand you or me as a perjurer because we happened to differ in regard to a matter which it is impossible the human memory could retain?

Now, gentlemen, we come to another fact to which Weichmann testifies. He says that Mrs. Surratt, in a state of excitement, asked him to pray for her intentions. Did Mrs. Surratt say that to him or not? Has he lied? It is an awful thing to charge a man with the Heaven-daring crime of perjury. Do it, if you believe it, however. If Weichmann has testified to that, he has testified either truthfully or falsely. It is a matter that he could not forget. Is it not natural that she should have said it? This thing of conscience, that silent monitor which whispers in the human heart, and will, when this poor body is mouldering in the grave, live with us through the endless ages of eternity, is a most mysterious agent, and seemed to greatly trouble Mrs. Surratt on this occasion. I think I have read in the celebrated novel of Kenilworth, by that great poet, writer, philosopher, and philologist, Sir Walter Scott, that the wicked Varney, the most corrupt man that ever lived, either in reality or in romance, after he had murdered a man, stole his purse. He had gone but a few steps when conscience pricked him. He returned, and laid the purse of gold by the body of his murdered victim, and remarked, "It only illustrates how mysterious are the workings of conscience." Although Mrs. Surratt, as I intend to show, was bent on murder, she felt the necessity of Divine assistance. I know, gentlemen, your feelings on that subject. One of your number expressed his; but I am willing to trust him. But I will say further, it does not matter whether Mrs. Surratt was guilty or not. That is not the question now. It is as to whether he is guilty. However, I shall have something to say about Mrs. Surratt, and I shall endeavor to deal with her justly and in a spirit of charity. Although cherishing murder in her heart, she felt the necessity of Divine assistance, and it is not strange. Men and women sometimes look to God when they are about to commit a crime, especially if it is done in a spirit of fanaticism; and that is the most charitable construction that can be placed on the conduct of these parties. I believe she did invoke the prayers of her friends, when she realized the awful crime which her co-conspirators were about to commit, or perhaps had actually committed. Who contradicts Weichmann on that point?

Miss Honora Fitzpatrick is brought here for that purpose. What does this young lady say? "I did not hear it." God forbid that I should charge this young lady with testifying untruly. My friend (Mr. PIERRE-ROUX) suggests to me that Mrs. Surratt was walking up and down the room at the time. The testimony of Miss Fitzpatrick is negative against affirmative testimony. Who ever heard of contradicting a witness in that way? Suppose one of you should swear to a fact, and I should come into a court of justice and swear that I did not see or did not hear it; who is to be believed? The man who testifies affirmatively.

Mr. Greenleaf, in his excellent treatise on evidence, illustrates this principle in this very familiar and homely way: I am sitting in this room; I swear that I heard the clock strike; five witnesses come upon the stand and swear that they did not hear it strike. If you regard me as an honest man you must believe me. And why? Because affirmative is better than negative testimony, and is to be given the preference. The rule of law and the rule of the Christian religion places the most charitable construction upon the conduct of men, and where two witnesses differ, you should reconcile their various statements with truth, if possible; and the man who testifies affirmatively is to be received in preference to the one who testifies negatively, because I might have heard the clock strike and you might not have heard it.

If it is not out of place in a grave case of this sort I might illustrate the principle by the anecdote of the Irishman. I do it in no spirit of levity. One witness swore that he committed larceny, and he was convicted by an honest and intelligent jury. Patrick expressed his surprise that he should be convicted upon the testimony of one man who swore that he saw him commit the crime, when he could bring a hundred to swear that they did not see him. [Laughter.]

Weichmann also testifies that on the 14th of April he heard footsteps coming up the steps. He believes they were the footsteps of a man. He does not know whose they were. Who contradicts him? Miss Fitzpatrick says she believes they were the footsteps of a woman, or does not know that there were any footsteps at all.

Mr. BRADLEY, Jr. What?

Mr. CARRINGTON. I forget what her testimony is on that point. It is negative, at all events. She did not hear and he did hear.

Mr. MERRICK. She says she did hear.

Mr. BRADLEY, Jr. Do not misquote the testimony.

Mr. CARRINGTON. I forget what that testimony is. I do not want to misquote it.

Mr. BRADLEY, Jr. You ought not to attempt to quote it if you forget it.

Mr. CARRINGTON. Probably not. I should like to turn to that now.

Mr. MERRICK. She says she heard the footsteps.

Mr. CARRINGTON. What kind of footsteps did she say they were?

Mr. MERRICK. A man's footsteps, and the man brought a package for Miss Jenkins.

Mr. BRADLEY. And she saw Miss Anna Surratt go up and bring the package for Miss Jenkins.

Mr. CARRINGTON. I do not think that very material. I accept the amendment of the gentlemen, because I do not wish to contend about what I consider immaterial matter.

Again, Weichmann has testified to Mrs. Surratt's admission that Booth was an instrument in the hands of the Almighty to punish this proud and licentious people. Has he lied about that? I do not know whether he has or not. That is a question for you to decide. No witness contradicts him. There is negative testimony upon that point. If he has, I shall show you that it does not exculpate the prisoner, or, if necessary to satisfy you, Mrs. Mary E. Surratt. There is evidence sufficient without that. For the purposes of this case I would have discarded the testimony of Weichmann altogether; it was unnecessary; but out of abun-

dant caution we give his testimony, because you are entitled to hear it. Do this young man the injustice, if you choose, of discarding his testimony. I would protest against it as an act of injustice to an honest man, who has only done his duty and who has not been contradicted. But blot it out from this record, and the damning proof of conspiracy, murder, and treason still darkens the annals of your country's history; for it will be a part of the history of your country; and I appeal to you to wipe it out by the verdict of an honest American jury; stamp upon it the seal of your unqualified disapprobation.

In regard to the trip to Canada with Holahan and others, Weichmann is confirmed by a host of witnesses, to whose testimony I shall have occasion hereafter to refer. I do not think it necessary upon this point to detain you with any consideration or elaboration of the respective testimony of these different witnesses.

I refer you now, gentlemen of the jury, to the telegrams on page 401. The first is:

"NEW YORK, March 13, 1864.

"Mr. McLAUGHLIN, 57 North Exeter street, Baltimore, Md.:  
"Don't you fear to neglect your business. You had better come at once."  
J. BOOTH."

The next is as follows:

"NEW YORK, March 27, 1864.

"Mr. McLAUGHLIN, No. 57 North Exeter street, Baltimore, Md.:  
"Get word to Sam to come on. With or without him, Wednesday morning we sell—that day sure—don't fail."  
"J. WILKES BOOTH."

Now I call your attention to the following letter, on page 402:

"SURREATTSVILLE, Md., April 14, 1864.

"Sir: I have this day received a letter from Mr. Calvert intimating that either you or your friends have represented to him that I am not willing to settle with you for the land. You know that I am ready and have been waiting for the last two years, and now if you do not come within the next ten days I will settle with Mr. Calvert and bring suit against you immediately. Mr. Calvert will give you a deed on receiving payment.

"M. E. SURREATT,

"Administratrix of J. H. Surratt.

"Mr. JOHN NOTHEY."

I read further, from the same page:

"Q. Look at this card, and see if you know this handwriting. [Card shown to witness.]  
"A. That is the handwriting of John H. Surratt."

The card, being one identified by the witness Dawson as having fallen from the vest pocket of Booth, was read and placed in evidence, as follows:

"J. HARRISON SURREATT: I tried to get leave, but could not succeed."

I now read the letter, to be found on page 405:

"SURREATTSVILLE, November 12, 1864.

"DEAR AL: Sorry I could not get up. Will be up Sunday. Hope you are getting along well. How are times—all the pretty girls. My most pious regards to the latter; as for the former, I care not a continental d—n. Have you been to the fair; if so, what have we won? I'm interested in the bedstead. How's Kennedy? Tight, as usual, I suppose. Opened his office, I hear. Fifty to one 'tis a failure. Am very happy I do not belong to the firm. Been busy all the week taking care of and securing the crops. Next Tuesday, and the jig's up. Good-bye, Surrattsville. Good-bye, God-forsaken country. Old Abe, the good old soul, may the devil take pity on him."  
JOHN H. SURREATT.

"LOUIS J. WEICHMANN, Esq., Washington City, D. C."

Now, gentlemen, let me briefly recapitulate, as I understand them, the facts disclosed by these communications, to which your attention has been invited. First, you see that John Wilkes Booth is in communication with McLaughlin. In the next place, he leaves a card at the door for the prisoner, telling him to "get leave." What does that mean? It is in evidence before you that the prisoner at the bar was at that time in the employ of the Adams Express Company, where an honorable career was opened to him. He urged the superintendent to give him permission to leave for a short time, which he declined to do. His mother urges it, and the honest man, who needed the assistance of young, able-bodied gentlemen in the transaction of his business, and saw that it was against the interest of the prisoner at the bar to retire, remonstrated, but he takes "French leave." Why? His chief—the man at whose command he had concealed Lewis Payne, the man with whom he acted in the murder of the Presi-

dent and the attempted murder of the Secretary of State—had left a card with the direction on it, "Don't mind your business; get leave." He leaves, and Weichmann is confirmed. He embarks in this unlawful enterprise. Hand in hand, and with one heart, they go through this bloody business until it is consummated in the murder of the President of the United States. Gentlemen of the jury, have I not established to your satisfaction the third point in my argument? Have I not proved an unlawful conspiracy between John Wilkes Booth, Lewis Payne, and John H. Surratt—I shall not speak of the others yet—either to murder or do personal violence to the President of the United States and his constitutional adviser the Secretary of State?

Having proved the conspiracy and the prisoner's connection with it, I come now to my fourth point, to wit: What part did the prisoner act in this conspiracy? Permit me to say, however, that it matters not what part he acted, for, under the decision of Chief Justice Marshall, if at all connected with the conspiracy, and he acted his part, however minute, he is guilty of the whole. Out of abundant caution, however, I propose to argue the fourth point.

I have said, and I repeat, that he was the Beelzebub of this conspiracy, second in rank and power to John Wilkes Booth. I do not like to use harsh expressions. My colleague, Judge PIERREPONT, and myself, in speaking of the prisoner at the bar, said he was a coward. The senior counsel for the prisoner reproved us for it. The idea he presented was that it was like a boy assailing a lion who was caged. I admit the principle, and I would scorn to deny it, that it would be unmanly and dishonorable in me unnecessarily to wound the feelings or to insult a man who was in my power. I know that this sentiment will find a response in every brave and manly breast. On the other hand, I am under a sworn obligation to prosecute; and what does that mean?

Mr. BRADLEY. Not to call names.

Mr. CARRINGTON. Stop for a moment.

Mr. BRADLEY. He might be a coward, and not an assassin.

Mr. CARRINGTON. I have great respect for my friend, and a reproof from him is always worthy of consideration from a young member of this bar. It is my sworn duty to denounce crime and criminals in apt and appropriate terms. The Bible tells me to cherish a spirit of charity and forbearance; but that same Bible tells me to do my duty, and to denounce, when it becomes my duty, in proper and appropriate terms, those who violate the laws of God and man. Have I done wrong? If I have, I am the last man in the world who would refuse to confess and make reparation. I say, and I should be suppressing the truth, in my judgment, if I said otherwise, that an assassin is a coward. I say that the man who would shoot down an unarmed husband and father in the presence of his wife, pouring the murderous contents of the pistol in the back of his head, is a coward. I say a cruel man is a coward. Not longer ago than yesterday evening I was talking with a gallant confederate officer whom I knew when a boy—a Union man, who spoke for this Union, but who, like other young men, thought it his duty to fight for the State of Virginia after it had seceded—and he told me that this war illustrated the truth which I expressed this morning, that a federal or a rebel officer who saw his enemy in his power would extend a hand to relieve him. I say, if McMillan is to be believed, and I assume he is to be believed and shall show it, and the prisoner at the bar shot down, unarmed Union soldiers or unarmed rebel soldiers who were starved, in cold blood, he is a coward. If my friend will give me any other word by which I can convey an honest feeling of indignation against the conduct of the prisoner, I will reject this term and employ that. Entertaining my opinion of his conduct, I could not, without suppressing the truth, employ any other

term characteristic of his conduct and expressive of my feelings of indignation against him. I never have, I think, in the whole course of my life, except in the solemn discharge of duty, used insulting words to another; for I know something about it. I know how galling it is, not because I have often felt it, but I know it by intuition, as every honorable man does.

I will now, if agreeable to your honor, suspend my remarks for the present, and proceed with my other points after the recess.

The court took a recess for half an hour, re-assembling at 1:30.

Mr. CARRINGTON. If your honor please, and gentlemen of the jury, when we took a recess I had arrived at the fourth point. With the permission of the court, and craving your indulgence, gentlemen of the jury, before proceeding to the discussion of that proposition, I desire to discuss a question which, though not essential to this case, may be considered by you, in view of the manner in which it has been treated, as one of considerable importance. The learned counsel for the prisoner, who opened the defense, spoke of Mrs. Mary E. Surratt, the mother of the prisoner at the bar, as a murdered woman. Mr. MERRICK, in his address to the court yesterday afternoon, speaking of the same person, called her a butchered woman. Permit me now, gentlemen of the jury, to ask you a single question by way of illustrating the unjust imputation cast upon the honest gentlemen who were charged with the solemn and important duty of trying those prisoners who were charged with being in this conspiracy to murder the President of the United States. Suppose after you have rendered a verdict of guilty against the prisoner at the bar—as I think you will do when you come to understand the clear, conclusive, crushing, and overwhelming evidence against him—a lawyer should rise in his place, before this honorable court, and denounce you as a set of murderers. Suppose that, carried away by the ability and eloquence of the learned counsel of the prisoner at the bar, adopting their theories, which they honestly entertain and which they will present to you, you should acquit the prisoner of the horrible crime charged against him in this indictment, and I should rise in my place and denounce you as a set of perjurers, what a feeling of honest indignation would it excite in your bosoms. This is purely a hypothetical case, for I am sure that neither of the honorable counsel for the prisoner would make such an accusation; and I think I may safely say, before a Washington jury and a Washington audience, that I should be incapable of casting such an imputation on a jury of my countrymen. Yet, if not expressly, by implication, the learned counsel for the prisoner has charged those honorable men with the crime of murder. In obedience to an order of the Executive, for which they were in no way responsible, neither understanding nor pretending to understand the principle of law by which that tribunal was organized, certain officers of the army of the United States, under the solemn obligation of an oath, undertook the most awful duty which could perhaps devolve upon human beings. After a calm, impartial, and intelligent consideration of all the facts adduced in evidence before them, they pronounced Mary E. Surratt guilty of murder.

Mr. BRADLEY. I am not aware, if your honor please, that there is any evidence in this case showing any such judgment or any execution of it.

Mr. CARRINGTON. This is strictly in response to the argument of the learned counsel.

Mr. BRADLEY. What we may have said in argument to the court is one thing; what we say to the jury is founded on the evidence here, I hope.

Mr. CARRINGTON. Then I do most kindly and most respectfully, but most emphatically, repudiate the unjust imputation that Mary E. Surratt has been murdered, as was alleged by one of the counsel, and butchered as alleged by another. Where is the evidence to

justify it? If they have a right to make this accusation, have we not a right to repel it? For what purpose is it introduced before this jury? Is it an appeal to your prejudices? I make no such accusation against the gentlemen. They charge it home upon us that she was a murdered and butchered woman. I deny it; and I undertake to prove to the contrary.

Mr. BRADLEY. It is all open, then. That is all I want.

Mr. MERRICK. The whole record is open.

Mr. CARRINGTON. Why, then, the interruption of the learned counsel?

Mr. BRADLEY. Simply because there was no evidence on the subject, and we might be stopped in reply. It is now open, I understand.

Mr. CARRINGTON. Why the allusion?

Mr. BRADLEY. Because it is open.

Mr. CARRINGTON. Who cast the first stone?

Mr. MERRICK. That was before it went to the jury.

Mr. BRADLEY, Jr. Mr. WILSON cast it.

Mr. CARRINGTON. In the presence of this jury, I regret that it should have been necessary for an American woman to be executed by the judgment of an American tribunal. That verdict has been rendered by an American tribunal, and the consequence of it was the execution of an American woman. I know the character of the American people. I know that imagination revolts at the execution of one of the tender sex. But when the daughter of Herodias murdered John the Baptist, she deserved death. When Lucrezia Borgia darkened the history of her country by her horrid crimes, she deserved death. And when Mary E. Surratt murdered Abraham Lincoln, the great moral hero of the age in which he lived, the patriot and philanthropist of the nineteenth century, she deserved death. There is no man who has a heart more capable of love for woman than myself. . . . But when she unsexes herself, when she conceives, when she encourages, when she urges on, and is instrumental in committing, the crime of murder, she places herself beyond the pale of protection. The best wife who ever lived, according to Milton, our great mother Eve, is thus represented as speaking to her husband:

"What thou biddest,  
Unargued I obey; so God ordains:  
God is thy law, thou mine."

I believe in submission on the part of woman; submission to her God, to the laws of her country, and her husband. But when a woman opens her house to murderers and conspirators, infuses the poison of her own malice into their hearts, and urges them to the crime of murder and treason, I say boldly, as an American officer, public safety, public duty, requires that an example should be made of her conduct. A murdered woman! Who composed that military commission? They are no better men than you are, but you will not be offended with me if I say they are as good men as you are, or I, or any of us.

Here is a list of them: Major General David Hunter, Major General Lewis Wallace, Brevet Major General August V. Kautz, Brevet Major General Robert S. Foster, Brigadier General Albion P. Howe, Brigadier General T. M. Harris, Brevet Brigadier General James E. Ekin, Brevet Colonel C. H. Tomkins, Lieutenant Colonel David R. Clendennin, Brigadier General J. Holt, Judge Advocate General, John E. Bingham, special judge advocate, Brevet Colonel H. L. Burnet, special judge advocate.

I say, gentlemen of the jury, that they are all men holding commissions under the Government of the United States, and they are presumed to be honorable men. The law declares that every private citizen, and every public officer who is a servant of the American people, is presumed to be honorable until the contrary is proved. Your officers, your men, your representatives in the American army, in a case which will travel upon the telegraph wires perhaps to the four quarters

of the world, have been denounced, if not expressly, by implication, as murderers and butchers, who took the life of an innocent woman. If so, when you come to try them and you believe it, say it; but that is not the question submitted to you now. She may be innocent, and the prisoner at the bar may be guilty. The subject was introduced collaterally by the learned counsel, for what purpose I know not, except for effect. Before you brand these gentlemen with the character of murderers, see that you have relevant ground to act upon. Take care, you may be in the same situation. I would not charge, and I do not think that my friends would, upon reflection, charge, men who are placed under such a solemn obligation with such a dereliction of duty.

It has been said that this military commission has been pronounced by the Supreme Court of the United States an illegal tribunal. What has that to do with the action of these officers? What has that to do with your action? What pertinency can it have to the issues now submitted to you for your decision?

But, gentlemen of the jury, let us first consider the character of this crime, and then I will consider briefly the connection of Mrs. Surratt with it. I do not desire to say much about her; she is gone to her grave, her spirit has passed before the eternal Judge. Do you remember some four years ago, in passing down Pennsylvania avenue, you might have seen a little wagon drawn by a single white horse, a small squad of soldiers marching with arms reversed to the shrill scream of the fife and the melancholy music of the muffled drum. They are bearing some soldier who has fallen in his country's cause to his long, silent home, there to sleep until aroused by a trumpet louder than the bugle-blast of war. Go in imagination to New England, and see that mother weeping over the untimely, bloody grave of perhaps her only boy; go to the sunny South, that bright and beautiful land, where the flowers bloom, now marred with gory graves, once the seat of loyalty and religion, now where horror sits plumed. Who caused it? Was it these gallant boys who met each other with arms in their hands and who now weep in common over the graves of the fallen, and meet each other like brothers? No! no. It was the wicked women and men who stirred up the strife among brethren, and urged them to war, to murder, and assassination. Of this, gentlemen of the jury, there can be no doubt; you know it, you feel it. We are one people. I endorse the sentiment of the immortal Daniel Webster: "I know no South, no North, no East, no West; I know but the country, the whole country, and nothing but the country." I love this country, from the smallest pebble that glitters upon the ocean's shore to the old pine tree that rears its solitary form upon the mountain's barren breast. We are one in a common ancestry and a common renown; we ought to be one in feeling, in sentiment, and in affection. I say it is these wicked women and men who are responsible for the untold horrors that thrilled your hearts, and filled this land with widows and orphans.

Now, gentlemen of the jury, let us review the connection of Mrs. Mary E. Surratt with this assassination. I feel the delicacy of the ground upon which I stand. I know this jury. I know that you dislike to consider this question which has been forced upon you. I did not want to do it. My duty is to prosecute the prisoner, but one of the counsel has said that she was murdered, and another that she was butchered, and it therefore becomes my duty to trace her connection with this crime, and then leave it to you to say whether she was guilty, (though not relevant to this case,) and if so, the quality of the crime which she committed. First, I will call your attention to a fact to which I have already adverted: that her house, 541 H street, was the rendezvous for these conspirators. Now, gentlemen, will you pause for a moment, and let me ask you how you can reconcile it with innocence? You remember the law, that it is not how much the party

did, but whether she had any thing to do with it. Can you, I say, reconcile it with innocence that this woman's house should have been the rendezvous for such characters as John Wilkes Booth, Lewis Payne, Atzerodt, Herold, and John H. Surratt? Would you not know by intuition; would not you know by their conversation; would not your judgments and your hearts tell you who they were and what they contemplated? That is a great central truth, which I defy the learned counsel for the defense successfully to assail. Secondly, who furnished the arms with which the bloody deed was done? When Macbeth murdered the sleeping Duncan, he placed the blood-besmeared daggers by the side of the sleeping grooms, that his loyal friends, arising from their slumbers, seeing these blood-besmeared daggers by the side of the sleeping grooms, might fix the crime upon them and never suspect him. The woman who furnishes the arms—the woman who puts an arm into the hand of her lover, her son, her brother, or her husband, and urges him on to the deed—by the law of God and man, is equally guilty with the one who with his own hand perpetrates the crime. Do you believe John M. Lloyd, or disbelieve him? My friend Mr. BRADLEY, Jr., who opened this case, said he was a common drunkard; but, mark you, he was the tenant and friend of Mrs. Surratt.

Mr. BRADLEY. Who says friend?

Mr. CARRINGTON. I will show who says it, if my friend will only sprinkle cool patience upon his hot distemper.

Mr. BRADLEY. I will try. I will let the boil break.

Mr. CARRINGTON. I will prove it. When I was examining that witness, and proposed to ask him certain questions in reference to Mrs. Mary E. Surratt, he said, "Mr. Carrington"—for he knew me personally—"I don't wish to speak about Mrs. Surratt, for she is not on trial." I said, "Go on, Mr. Lloyd." He declined. I appealed to the court, and the court said that it was his duty to answer. He was her tenant; he lived in her house; he drank her liquor. Why, it is in evidence that John Surratt, Herold, and John M. Lloyd played cards and drank together. You all know what Robert Burns says on that subject in his celebrated poem of Tam O'Shanter, in speaking of Tam O'Shanter's friend:

"Tam lo'ed him like a vera brither.  
They had been fou for weeks thegither."

He was the friend and boon companion of the prisoner at the bar, the tenant and confidential agent of his mother, unwilling to testify against her when put under the solemn sanction of an oath; but when required to do so he speaks out. He says certain arms were furnished him by the prisoner at the bar; that he concealed them, the prisoner showing him where they could be safely concealed; he protesting at the time against it, apprehensive that it might get him into some personal difficulty. The mother knew of the transaction, for on the 14th of April we have Lloyd's own testimony that she asked him where those shooting-irons were, for they might soon be needed, or words to that effect.

Gentlemen, I am not speaking for reputation, but to convince you. I say, first, that her house is the rendezvous; and, secondly, she furnishes arms, or knows of their being furnished. On the night of the 14th of April Booth and Herold leave the city of Washington, flying for their lives. Booth had broken his leg as he sprang from the private box where the President of the United States was seated to the stage upon which the actors were performing. Herold was his companion. Fatigued and jaded, they needed a little refreshment. They knew where to get it—at Surrattsville. They called for whisky from the agent and friend of the prisoner and his mother, and drank it out of the very bottle which she herself had left in the custody of Lloyd, stating to him at the time that it would soon be called for. She gives them a home, gives them arms,

gives them whisky, not to nerve, but to refresh them after the commission of their horrid crime. But Booth, in making his escape, needs something more than whisky and arms. It is necessary that he should secrete himself as he traveled through the country, and that he should see persons approaching him from an immense distance. He needs a field-glass, and has it delivered to him by the friend and agent of Mrs. Surratt. She herself left it there on that very day for that purpose. Is that all? Booth is captured; he is shot; an arm is taken, if not from his dying grasp, from near his person. It is brought into this court and identified as the very arm which had been provided for him by the prisoner at the bar, under the circumstances to which I have just referred.

Is that all? That is enough. I may have something more to say about this spirit of sickly, mawkish sentimentality, as it is called. Is not that enough? That is not all. Mrs. Surratt goes to her home; the officers of justice, by a sort of intuition, find their way to 541 H street. While they are there an individual, in the disguise of an honest workman, who made a living, one would suppose, by the sweat of his brow, makes his appearance. It excites suspicion, and he is arrested. He turns out to be Lewis Payne, the very man who had been quartered at Mrs. Murray's house—the honest Irish lady whom you saw here, and who, when she received him, was entirely unconscious of his true character, but who was imposed upon by the conjoined efforts of Booth, Surratt, and Mrs. Mary E. Surratt, which would prove her at least an accessory after the fact. Taken altogether, it proves that she was engaged in the conspiracy. When he is arrested—and he says he came there for the purpose of digging a ditch, for which purpose he had been employed by the lady of the house—she is asked, “Do you know this man?” There is no disguising that; that depends on evidence which is irrefragable, which cannot be assailed successfully. Raising her hands to heaven, she exclaims, “I do not know him.” How often has this court held that falsehood is one of the darkest badges of guilt? She denied all knowledge of the man who fled to her for protection; whom she had quartered in the city; by whom she had in part executed the cruel, bloody purpose of this infernal conspiracy. Put all these facts together, gentlemen of the jury, and how can you avoid the conclusion that she knew of this conspiracy and acted some part in it? The law is, that if she acted any part, however minute, she was guilty.

Now, you will observe that I have not referred to the testimony of Weichmann. But when you consider these facts in connection with his testimony and her solemn admission, you see the criminal stands confessed. O, that it were not so! How can you tolerate an attack on honorable men, who condemned her on testimony so conclusive as connected with a crime which Mr. BRADLEY in his argument has characterized in strong and eloquent terms of denunciation. I would not undertake to say that a jury had erred in convicting Mrs. Surratt under such circumstances.

Gentlemen, I do not speak disrespectfully of woman; you are all, like myself, probably, married men. A woman's weapon is her tongue. Charlotte Corday, it is true, with her own hand inflicted the death-blow upon the fierce and bloody Murat. Jael, with her own hand, struck dead Sisera, who was an enemy to the chosen people of Jehovah. Helen Mar assumed the dress and wielded the sword of a knight, that she might fight by the side of the man whose virtue was proof against her wiles. But these are exceptions to the general rule. Her tongue, that sword of fire, is the weapon with which she sows the seeds of bloodshed and violence and discord. With her tongue did Mary E. Surratt stimulate these young men to crimes of blood and horror. Do you realize, gentlemen of the jury, the responsibility resting upon you? Here we are in the presence of gentlemen and ladies, perhaps of little boys

and girls. You are educating public sentiment. I heard that remark made—and it impressed itself upon me—by a venerable old gentleman upon a case somewhat similar to the present. I call upon you as conservators of the public peace, as Christian men, to say to women, keep your proper place; submit to the laws of God and of your country; train your children to love their country as they do their God. But if you dare to raise your arm, to unsex yourself and engage in a conspiracy against the nation's life and the nation's honor, to make a widow of one of your own sex, to strike down the father and husband in the presence of his wife and child, I call upon this honest jury of my countrymen to spurn that spirit of mawkish sentimentality which would allow a crime like this to go unrebuked, and a great criminal to go unwhipped of justice. Vindicate the laws of your country, and maintain the integrity of the judicial ermine.

I dismiss this subject, gentlemen of the jury, for you understand it. I have nothing to do particularly with Mrs. Surratt. If they had thought proper to spare her, I would not have referred to her. I am trying this case; but before proceeding to my fourth point I thought it proper to say something on this subject as my attention has been called to it.

My fourth point is the plan, character, and purpose of this conspiracy. Upon this point I shall be very brief, for if you listened to my argument before the court and comprehended it, as I am sure you did if you paid attention, you will have recollected that it is immaterial whether the object of this conspiracy was murder or personal violence to the President of the United States. If the learned counsel for the prisoner should undertake to argue before you that there was a conspiracy to abduct the President, of which the prisoner was a member, but he never intended to kill him, it is entirely immaterial; for, I repeat, when a man engages in an unlawful and dangerous enterprise of this kind, and human life is taken, the law of the land holds him responsible for the consequences, of which he was the unlawful and original cause. I do not know how I can illustrate this better than in this way: If a number of parties set out to go to your house, and by personal violence take you from the presence of your wife and children, and you resist it, the natural consequences would be violence and bloodshed; and if, while they are engaged in the perpetration of such an unlawful purpose—the result of a previous conspiracy—death is the consequence, all the parties engaged are guilty of murder.

Mr. MERRICK. Mr. CARRINGTON, allow me to interrupt you, for the purpose of understanding you. I really do not, and would like to understand your view. Do you mean to say to the jury that if there was a conspiracy, with a design of the prosecution and accomplishment of one purpose, and some of the conspirators entered upon another and a different purpose, all the original conspirators are guilty; or do you mean to say that all the conspirators who conspired for one purpose are responsible for whatever may be done in the prosecution of the original design of the conspiracy? To illustrate—

Mr. CARRINGTON. I understand you perfectly.

Mr. MERRICK. I do not think you apprehend it yet. I will illustrate it in this way. You have several times in your argument referred to a conspiracy to abduct and a conspiracy to kill. Now, suppose there was an original conspiracy to abduct, and no effort was made to accomplish the abduction, and some of the conspirators changed that original design to a conspiracy to kill, and the killing was in consequence of an agreement to kill, and not as an incident in the abduction, do you hold all the original conspirators to the plan of abduction responsible for the killing?

Mr. CARRINGTON. I understand you perfectly.

Mr. MERRICK. I would not have interrupted, except that I desire to understand you.

Mr. CARRINGTON. It would fatigue me, and would only involve a repetition of the argument to answer that.

Mr. MERRICK. I merely desire to understand your argument. I really do not comprehend it. I ask for information.

Mr. BRADLEY. We ask it that we may know what we are to meet.

Mr. CARRINGTON. I will state very briefly that my argument is this: If the original plan of the conspiracy was to abduct the President of the United States, or to do him any personal violence, and the prisoner was a member of that conspiracy, and continued to cooperate with it until the effort was made to abduct, and in the attempt to abduct his life was taken, although contrary to the general plan, they are all guilty of murder.

Mr. BRADLEY. In the attempt to abduct?

Mr. CARRINGTON. In the attempt to abduct.

Mr. MERRICK. I understand you now.

Mr. CARRINGTON. You do not want me to go on any further.

Mr. MERRICK. No. I understand you that the killing must be in the attempt to abduct.

Mr. CARRINGTON. I do not think you understand exactly.

Mr. BRADLEY. If we do understand you aright, you give up the case; that is all.

Mr. CARRINGTON. I hope you understand me, gentlemen of the jury. The difference between the gentleman and myself is this: He says that the killing must be in the attempt to abduct. You understood my argument, that if there was a conspiracy to do the President of the United States any personal violence whatever, and if, during the existence of the conspiracy, the prisoner being a member of the conspiracy, an attempt is made by any of the conspirators to do him any personal violence and he is killed, *à fortiori* they are all guilty.

Mr. BRADLEY. We understand you now, I think. You may proceed.

Mr. CARRINGTON. As I have argued to you, gentlemen of the jury, all the written evidence shows that in 1864 the original plan was to murder the President of the United States.

Mr. BRADLEY. We asked about the proposition of law; it is not a question of evidence at all.

Mr. MERRICK. I do not agree with your proposition of law even as explained; but, then, I wanted to understand what your theory was.

Mr. CARRINGTON. I come now, gentlemen of the jury, to the fifth point in my case, which, as I have already intimated, is in my judgment an immaterial point; for if I am right in the view of the law which I have taken, I might safely rest the case upon the points I have already submitted to your consideration. But it is my duty in preparing every criminal case to present every point that arises, in order that I may have the opinion of the court and of the jury upon it. My opinion is worth nothing except as advisory. Upon matters of law the opinion by which you are governed is that of the court, and it is your opinion of the facts which is important in the determination of the case. Therefore it is my duty to prove every point, if I can, by fair and honorable means; although, in my judgment, it was unnecessary to prove that the prisoner at the bar was present actually in the city of Washington on the 14th of April, 1865, yet out of abundant caution we have offered evidence upon that point, and I think established it beyond all contradiction. You will observe that it is not for us to prove how he got here. It is not for us to prove how he got away. If it was necessary to prove this point at all, all that would be incumbent upon us would be to fix him here, and that shifts the burden of proof on the opposite side and devolves upon them the duty of showing that it was impossible for him to get here and impossible for

him to get away. I have fixed him here by thirteen witnesses. Mark that, gentlemen. I have fixed the prisoner at the bar in the city of Washington on the 14th of April, 1865, by thirteen witnesses.

And before I proceed to discuss this testimony let us see if we did not trace him here. On the 12th of April, 1865, he was in Montreal, at the St. Lawrence-Hall Hotel. Mr. Sangston, the clerk of that hotel, says that he left at 3:30 for the New York train. This you cannot doubt. Dr. McMillan testified to his admission that this was in response to a letter from Booth that it was necessary for them to change their plan of operations, and that he should come on to the city of Washington; thereby admitting that he was at that time a member of the conspiracy. By the concurrent testimony of Sangston and McMillan he leaves Montreal April 12, at 3:30, in obedience to a summons from his chief, for the purpose of changing his plan of operations—if previously to abduct, now to murder; because the result has a retrospective effect, and shows what was the plan of operations which they then contemplated. According to the testimony of St. Marie he left the city of Washington on the 15th of April. According to the testimony of Maurice Drohan, having left Montreal, as stated, on the 12th, at 3:30, he is seen at the ferry near the city of Williamsport on the 13th. I could not help being struck with the manner of Mr. BRADLEY when this witness was put upon the stand. It was a piece of acting which would have done credit to Edwin Forrest. "Go away; I don't want to ask you a single word." You recollect it. You recollect that honest Irishman. I am of Irish descent myself. An Irishman will drink whisky and fight, but an Irishman is not apt to tell a lie. What right have you to doubt his testimony? Who contradicts him? Have they dared to assail his reputation for truth and veracity? Did Mr. BRADLEY dare to cross-examine him?

Mr. BRADLEY, [Laughingly.] No, indeed.

Mr. CARRINGTON. Has he been contradicted? I do not want to excite a spirit of levity, for the occasion is too solemn. On the contrary, was he not confirmed by the train-master, who said that a man came to him very anxious, and inquired when the trains would run between that city and New York and Washington. He supposed that the man was a rebel spy or confederate soldier, and did not wish to give him any satisfaction, and he put him off. He believed that the prisoner at the bar was that man. I grant that he did not identify him positively; but he said that he looked like the man—that he believed him to be the man. One witness identifies him positively, and another says he looks like him. Now, gentlemen, let me recapitulate. Sangston starts him; Drohan sees him on the way; another witness expresses the belief that he saw him; other witnesses prove that the trains were then running from Elmira, where he is conceded to have been on the 13th, and where he admits to Dr. McMillan that he was. They prove that special trains—construction trains and gravel trains—were running from Elmira to Williamsport, from Williamsport to Sunbury, from Sunbury to Baltimore, and from Baltimore to Washington. One witness starts him, one sees him on the way, and a host of witnesses show he could get here. St. Marie swears to his admission that he was here and left the next day. Now, have we not got him here pretty well?

Ah, gentlemen, neither the declamation and the powerful eloquence of my friend Mr. MERRICK, nor the tremendous logic of my old friend Mr. BRADLEY, the Ajax Telamon of the bar, can get over such evidence as this. I appeal to the facts. We have him here, then, and, as I have said, we have thirteen witnesses who saw him here.

Mr. MERRICK. I should like to ask my friend one question. I want to know what time he makes it from Montreal to Elmira.

Mr. CARRINGTON. Really, I do not recollect

about that. I only speak of the time when he left there. You do not expect me, I hope, to show every thing.

Mr. PIERREPONT. Go ahead. Do not allow yourself to be interrupted.

Mr. CARRINGTON. They have a habit of interrupting, and I have to take it good-naturedly.

Mr. MERRICK. I would not interrupt, were it not that I wanted to understand you and help the enlightenment of the truth.

Mr. CARRINGTON. I do not know that I can explain that point. All I wish to do is to show that he was here, and we have thirteen witnesses who saw him here. Let us see who they are: David C. Reed, Susan Ann Jackson, Vanderpoel, Cleaver, Wood the barber, Rhodes, who is understood to belong to that eminently respectable class of our fellow-citizens called henpecked husbands, and I do not think it is any thing to his discredit, St. Marie, Sergeant Dye, Grillo, John Lee, Ramsell, Heaton, Coleman. Here, gentlemen, are thirteen witnesses, who place him in the city of Washington—eight positively, and five to the best of their knowledge and belief; and, as my friend Mr. PIERREPONT suggests, at different places and at different hours, and the testimony of no one is inconsistent with that of the others. There has been an attempt to attack several of these witnesses. As I have before stated, my learned friends had the right to attack the witnesses, if they conceived it to be their duty to do so, and to discredit them before this jury; but before you discredit them you must see that they are successfully attacked.

The first witness upon the list is David C. Reed. Now, my friend Mr. BRADLEY, Jr., in his opening address, was guilty of an inconsistency in his statement of the character of this witness, and I will satisfy him of it before I am through. In that speech he charged that David C. Reed was a notorious gambler.

Mr. BRADLEY, Jr. Isn't he?

Mr. CARRINGTON. Are not the jury sworn to decide this case according to the evidence? Where is the witness who has dared to assail the general reputation of David C. Reed for veracity; a man known in this city—an honest man and a truthful man. Do you suppose if they could have attacked a man who has lived twenty or thirty years in the city of Washington, who comes from the State of Virginia, who used to drive a stage there between two prominent points, who has a family here, a wife and children, they would not have attempted to do it? Mr. MERRICK, in his speech the other day, said he had laid a mass of corruption at the feet of the court and jury in assailing our witnesses. Gentlemen, if they could have done so successfully, why did they not attack Reed? They dared not attempt it.

Mr. BRADLEY. I beg your pardon; we could have done it very successfully.

Mr. CARRINGTON. You did not do it.

Mr. BRADLEY. I know that, and we had good reasons for it.

Mr. CARRINGTON. Well, sir, you did not do it, and I have the right to infer that it was because you could not do it. The rule of law is, *expressio unius est exclusio alterius*. You have brought no witness here to assail his character, and I have the right to conclude that if you could have assailed it you would have done it. David C. Reed, therefore, stands before this jury unimpeached and unimpeachable; and if this honest jury disbelieve him, and treat him as a perjurer, what guaranty have you for your character when placed under similar circumstances? Suppose the learned counsel here, in a case in which you were a witness, should get up and make the same accusation against you, and, without bringing a witness to the stand, ask the jury to discredit your testimony; what safety would there be for human character? What does Reed swear to? You cannot disbelieve him. Why, gentlemen of the jury, it was a distressing sight. Did not you see

that tall, brawny man, when he took the stand, almost overcome with emotion? My colleague noticed it, and remarked it to me. His voice was tremulous with emotion. He had known that prisoner from youth. He had known his father. He had no earthly motive to testify against him. He was not a northern man, inflamed with prejudice against him, but a man in your own city, born upon southern soil—a man, I believe, loyal to the cause of the Union—a man against whom as a witness not a breath of suspicion can be raised. He says he knew the boy's father; that he knew the prisoner from his boyhood; and he swears positively that he saw him here on the 14th of April, 1865.

Mr. MERRICK. No; he says he thinks he did.

Mr. CARRINGTON. I will turn to his testimony.

Mr. MERRICK. He says he thinks he saw him; that is all.

Mr. BRADLEY. And he understood he was thirty-five years of age. Now you see why we did not interfere with him. We did not attack Grillo, either, or Ramsell, Heaton, or Coleman. We did not attack anybody who did not swear point blank that he saw him here.

Mr. CARRINGTON. In order that there may be no misapprehension, I will read from his testimony on page 159:

"Q. In what city do you live?

"A. In Washington city.

"Q. How many years have you lived here?

"A. About thirty.

"Q. Do you know the prisoner at the bar by sight? [Prisoner made to stand up.]

"A. I do.

"Q. How long have you known him by sight?

"A. Since quite a boy.

"Q. Since you or he was quite a boy?

"A. Since he was quite a boy.

"Q. Were you in the city of Washington on the day of the murder of the President?

"A. I was.

"Q. Did you see the prisoner at the bar on that day in Washington?

"A. I think I did.

"Q. Where did you see him?

"A. I saw him on Pennsylvania avenue, just below the National hotel. I was standing, as he passed, just in front of where Mr. Steer keeps the sewing-machine store.

"Q. Which way was he going?

"A. From towards the Capitol.

"Q. About what time of the day of the 14th was it?

"A. It was about half-past two, as near as I can recollect—between two and half-past two.

"Q. Had you a nodding acquaintance with him at all?

"A. I had; I knew him, and I suppose he knew me. There was no intimate acquaintance at all. I recognized him when I met him.

"Q. As he passed, did you recognize him or he you?

"[Question objected to by Mr. BRADLEY as leading.]

"Q. As he passed, state what occurred.

"A. There was a recognition; whether it was by him or me first I am unable to say.

"Q. State whether it was by both.

"A. I could not state positively whether I nodded first or he did; we both nodded.

"Q. Will you state whether there was any thing about his dress or equipments on that occasion which attracted your attention?

"A. There was.

"Q. Will you tell the jury what it was?

"A. What attracted me more particularly was his dress rather than his face. I remarked his clothing very particularly.

"Q. What was there about him that attracted your attention?

"A. The appearance of the suit he wore—very genteel; something like country-manufactured goods, but got up in a very elegant style—the coat, vest, and pantaloons.

"Q. Was there any reason why you noticed his clothes? If so, state it to the jury.

"A. I cannot say there was any thing particular except his appearance, so remarkably genteel. I was rather struck with his appearance.

"Q. State whether he was on foot or on horseback.

"A. He was on foot.

"Q. What was there on his feet?

"[Question objected to by Mr. BRADLEY as leading.]

"Objection overruled.]

"A. I suppose he had boots or shoes. As he passed from me I turned and looked at his feet. He had on a new pair of brass spurs.

"Q. Now describe these spurs.

"A. They were plain, common brass spurs; nothing very particular about them except the rowel.

"Q. What was there about the rowel?

"A. The rowel was very large and very blue; they evidently were bran new.

"Q. What was upon his head?

"A. He had on a felt hat. It was not one of these very low-crowned hats; it had a rather wide brim—a sort of a drab-color felt hat.

"Q. State whether the brim was a stiff or limber one.

"A. It was a stiff-brimmed hat.

"Q. Which way did he go after passing you?

"A. He was passing up the avenue towards the Metropolitan Hotel from where I was standing.

"Q. State whether his gait was rapid or slow.

"A. It was not very rapid; an ordinary pace in walking; nothing very hasty."

Now, gentlemen, if this is not a most positive, circumstantial, descriptive recognition of the prisoner, I cannot understand the English language. I would give more credit to testimony stated in this way than I would to a man who swore positively that he saw him, without being able to describe his dress and appearance. According to the testimony of David C. Reed, at that hour of the day the prisoner at the bar was on Pennsylvania avenue, booted and spurred and prepared for action. Gentlemen, the responsibility is with you. That is the testimony of one witness, and I shall show you hereafter that there is not a scintilla of evidence contradicting it. Dispose of it as you please; whatever disposition you make of it I shall be satisfied. My duty and desire is simply as an honest man to aid you, as I am required to do, in the discharge of the obligations resting upon you.

The second witness is Susan Ann Jackson. She identifies him positively. She states not only that she saw him, but that she heard his mother say, "That is my son." This witness cannot be mistaken. It is for you to say whether she has committed the crime of perjury. If you think she has, say so. There has been no attack upon her general reputation for veracity by witnesses speaking directly to that point. We have introduced to you several ladies with whom she lived, and who have given her a high character. And in this city, where servants are so inordinate, when the mistress of a household comes forward and testifies to the general character of a woman having such a face as this girl has, I should be disposed to give credence to her statements. They have attempted to contradict her by one Eliza Hawkins, I grant you, but Eliza Hawkins has been contradicted on the other hand by Samuel Jackson, the husband of Susan Jackson. I am not prepared to say that a husband would swear to a lie to confirm his wife. I would not like to be tempted to swear to save my wife's life. A man might commit perjury to save the life of his wife, but I do not think he would commit that crime merely to confirm the statement of his wife. Eliza Hawkins attempts to contradict her by stating a certain conversation. I have endeavored to illustrate to you that this is the most uncertain way in the world in which to contradict a witness, and this man Samuel Jackson swears that he was in the room and heard no such conversation. I grant you there is negative and affirmative testimony; but it is for you to say, when a witness swears positively to a fact about which she could not be mistaken and about which, if she has incorrectly testified, she has committed the crime of perjury, whether you will reject her testimony because another witness comes forward and attempts to contradict her by professing to repeat a certain conversation which she had with her.

The third witness is Vanderpoel; and after the remark that was made by my friend Mr. BRADLEY, Jr. in reference to his examination, I must attack him a little in a friendly way. In his opening address, after denouncing Vanderpoel, he pointed his finger at me and said, "This gentleman did not contradict him when he made a statement somewhat inconsistent with the truth." A person not knowing the relations between us would suppose that the gentleman intended to charge me with allowing this man to state a falsehood, and not correcting him when I was cognizant of it. I do not think it necessary to vindicate myself against any such charge even in the estimation of my friend.

Mr. BRADLEY, Jr. You did allow him to state a falsehood, that you knew to be a falsehood, and did not correct him.

Mr. CARRINGTON. Let us see if he did. I will show

you that the gentleman does great injustice to the witness and great injustice to me. Vanderpoel was asked whether he had been summoned to the city of Washington. It never occurred to me that the question was asked for the purpose of contradicting him. I never thought of such a thing until the counsel in his opening address made this remark. Vanderpoel said he had never been summoned, but that he had come voluntarily; and it turns out that he never was summoned; that he knew of this matter, and, as he explained on cross-examination, his conscience hurt him, and he thought it his duty to come here and make an explanation. He wrote a letter to me, informing me that he believed he knew something of it, and I sent a telegram to him to come and he would be paid. He did come on; and now I submit to you, gentlemen of the jury, and to the candor of the gentleman, whether, if he had intended to contradict him, he should not have asked him if he did not receive a telegram from me? Then the witness would have been put on his guard, and if he had contradicted it I should have corrected him. I scorn the imputation that I would allow a man to state a falsehood upon the stand and I not correct him. I understand from Mr. WILSON that he received the fees and mileage allowed by law and nothing more. Now, let me ask, by whom is the reputation of this witness for veracity assailed? He told you he came from the city of New York. It was conceded by Mr. BRADLEY, Jr. in his opening remarks, that he belonged to one of the most respectable families in that great commercial emporium. It seems his father was personally known to my eminent colleague, (Mr. PIERREPONT.) Vanderpoel himself was in the office of an eminent attorney in that city. There was every opportunity to assail him, but no effort was made to do it. And how do they attempt to contradict him? First, they attempt to show that he was mistaken in the kind of tables he describes; that he said they were round tables, when, in fact, they were square tables, where he attended this bacchanalian exhibition on the 14th of April. You remember that he, being a stranger, did not attempt to fix the place, and upon examination we find that both in Teutonia Hall and in Winter Garden—

Mr. BRADLEY. You never proved any thing about Teutonia Hall.

Mr. CARRINGTON. I think so.

Mr. MERRICK. Not a particle.

Mr. CARRINGTON. I am not quite sure.

Mr. PIERREPONT. Yes, we did, and we will read it.

Mr. CARRINGTON. I understand that there is testimony that both in Teutonia Hall and in Winter Garden round tables were used, and that at both those places they had music, and that girls danced there in the afternoon occasionally as well as at night.

Now, gentlemen, do you suppose a man who had been a lieutenant in the army of the United States, a man who had been a lawyer by education, or a merchant, or an honest mechanic, or any business man, who had been associating with gentlemen, who has an honest father and I suppose a pious mother—for an honest man is apt to have a pious wife—a young man in the morning of life, with all his hopes and prospects before him, would volunteer to come on here from the city of New York, before this honorable judge and before this honest jury, in presence of the district attorney, before a gentleman from his own city, and before such counsel as Mr. BRADLEY and Mr. MERRICK, who could expose him if he dare to lie, and tell a falsehood about a matter in reference to which he could be so easily contradicted? Gentlemen of the jury, are you not as sure as that you are now living, from the testimony of Vanderpoel, that the prisoner at the bar was in this city on the 14th of April? No; I will not say that; for you might be mistaken about it. But is it not powerful testimony, fixing the prisoner at the bar in Washington on the 14th of April, in company with John Wilkes Booth, in a music-saloon, stimulating himself with liquor preparatory to the perpetration of

the great crime which they had so long cherished in their hearts and which was now almost ready for consummation?

Who is the next witness? William E. Cleaver. Now, I intend to express to this jury no opinion which I do not honestly entertain. I intend to express to you my honest convictions, and then I shall have discharged my duty to God and man, and the responsibility lies at your door. I say frankly that I would not convict any living man upon the uncorroborated testimony of William E. Cleaver. I do not wish to do him injustice, and perhaps I may be wrong in saying this. Some of you, perhaps, heard my denunciations against him. But, gentlemen of the jury, it is my duty, when I understand a bad man knows a fact, to put him before you, and it is for you to say whether you will believe him or not. He may have had a motive to swear falsely, but my friends will not charge that I gave him any. But where a bad man swears to a fact and is corroborated, the court and jury have a right to it, and the prosecuting attorney is false to his duty if he excludes it from their consideration. You remember that it was brought out on cross-examination that it was through the perjurer Sanford Conover, to whom he told confidentially what he knew, that the fact of his information in regard to this transaction came to our knowledge. It did not come directly from him, for I would hold no communication with such a person; you know that. But, gentlemen, his testimony is before you; treat it as you please; strike him from the record if you think proper, and there is enough behind; but if he is confirmed, and testified under the circumstances to which I have referred, can you do it? That is for you to settle, not for me.

I was somewhat amused, however, at the witnesses brought here to assail his general reputation for truth and veracity. Who were they? Bill Horner, the quack, the modern Esculapius, who has invented a medicine by which he is killing the good people of the city of Washington; Harry Middleton, a man who has coined money upon the tears of widows and orphans—who has spent his life in dealing out liquid fire in a little restaurant or groggery in the city of Washington, if I am not mistaken; John C. Cook, a neighbor of mine, and I do not intend to say any thing against him; I do not intend to allude to his first business, for that is an exciting subject. He is a very clever sort of man, a very nice man, but he is a horse-trader, and they are the very last men that I would call upon ordinarily to prove the character of any one for truth and veracity. But I dismiss Cleaver, and leave him in your hands. Do what you please with him.

Who is the fifth witness? Wood, the barber. I do not know whether he is a white man or a colored man.

Mr. BRADLEY. He is a good witness.

Mr. CARRINGTON. Thank you, Mr. BRADLEY. That is the kindest thing you have said yet. He is a good witness. The gentleman himself cannot resist the force of his testimony.

Mr. BRADLEY. I beg your pardon there.

Mr. CARRINGTON. The integrity of his testimony—

Mr. BRADLEY. I beg your pardon there too.

Mr. CARRINGTON. Well, I was too fast. We differ as usual.

Mr. BRADLEY. I think you have proved that the prisoner could not get here by the time in the morning that Wood swears to.

Mr. CARRINGTON. It is not worth while for Mr. BRADLEY and myself to argue that question now. We differ, and it is not worth while for us to argue that question now. It is an honest difference between honest men, and we are now appealing to honest men to settle it between us. Can this man Wood be mistaken? I ask my colleague to read his testimony. I want to comment upon it.

Mr. BRADLEY. What I meant to say was, that you proved that the prisoner could not get to Baltimore

before 7:35 in the morning, and he could not get here before ten o'clock.

Mr. PIERREPONT read as follows from the evidence of Charles H. M. Wood:

“Q. What is your business?”

“A. I am a barber by trade.

“Q. Have you been a barber in the city of Washington for some time?”

“A. Yes, sir; ever since I have been in the city.

“Q. How many years?”

“A. Since December, 1862.

“Q. Where was your barber-shop in April, 1865?”

“A. I came here on a Saturday, about the first of September, 1862, and I engaged to go to work at Messrs. Booker & Stewart's barber-shop, on E street, near Grover's Theatre, next to the old Union building.

“Q. In this city?”

“A. Yes, sir.

“Q. Are you working at the same shop now?”

“A. No, sir; I now have a barber-shop under the Ebbitt House, near Fourteenth street. I am now in business for myself.

“Q. Did you know Booth by sight before the assassination?”

“A. Very well, sir.

“Q. Did you ever cut his hair?”

“A. I have, frequently.

“Q. Did you ever shave him?”

“A. I have.

“Q. You knew him well?”

“A. Very well, sir.

“[The prisoner at the bar was here requested to stand up, which he did.]

“Q. Have you ever seen that man [pointing to the prisoner at the bar] before?”

“A. I have.

“Q. On the morning of the assassination did you see him?”

“A. Yes, sir.

“Q. Where did you see him?”

“A. I saw him at Mr. Booker's barber-shop.

“Q. What did you do to him?”

“A. I shaved him and dressed his hair.

“Q. Will you tell us who came into the shop with him, if anybody?”

“A. Mr. Booth came in; there were four persons who came together.

“Q. Who were the four persons besides Booth and Surratt?”

“A. A gentleman I take to be Mr. McLaughlin; they called him ‘Mac,’ and from his appearance, I having seen the picture of Mr. McLaughlin, I should think it was him.

“Q. Did he tell you where he had come from that morning—McLaughlin?”

“A. They were speaking of Baltimore; the conversation between them was in reference to some Baltimore—

“Q. Between whom?”

“A. Between Mr. Booth, Mr. McLaughlin, and Mr. Surratt. The other gentleman that was with them had nothing to say; he sat down nearly in the rear.

“Q. Did you ever see the other man afterwards?”

“A. I never saw either of the parties afterwards except this gentleman. [The prisoner.]

“Q. Who was the other man; do you know?”

“A. I did not know him.

“Q. You may describe the man.

“A. He was a short, thick-set man, with a full round head; he had on dark clothes, which we generally term rebel clothes, and a black slouched hat.

“Q. Did you cut Booth's hair that morning?”

“A. I did; I trimmed his hair round and dressed it.

“Q. Won't you tell the jury what occurred between Booth and Surratt while you were trimming Booth's hair?”

“A. There was nothing particular that occurred.

“Q. What was said?”

“A. While I was waiting on Mr. Booth, Mr. Surratt was sitting just in the rear of me; the thick-set man was sitting to the left of the looking-glass, just in the rear of my chair. The glass was next to the wall, and Mr. Surratt was on the right side of the glass, the other one on the left hand. There were not any words particularly that I remember said or interchanged; but when I had got through waiting on Mr. Booth, he (Mr. Booth) got out of the chair and advanced towards the back part of the shop; Mr. McLaughlin was in that direction, doing something about the glass. Mr. Surratt took my chair immediately on Mr. Booth's getting out. During the time I was spreading my hair-gown over him, and making other preparations for shaving him, this other young man, rather tall, with dark hair—I think not black, but dark brown hair—rather good looking, with a moustache, was figuring before the glass; he had on a black frock-coat, and putting his hand in his pocket he took out two braids; a black braid with curls he put on the back of his head, allowing the curls to hang down; he then took the other braid and put it on the front; it had curls also, and they hung on the side. When he had done this he said, ‘John, how does that look?’

“Q. Whom did he address as John?”

“A. I do not know whether it was Mr. Surratt or Booth, but in making the remark, he said ‘John.’ I turned round and said, ‘He would make a pretty good-looking woman, but he is rather tall.’ Says he, ‘Yes,’ in rather a jocular manner, laughing at the time. He seemed to look taller to me when he put on these curls than he did before, though I had not taken particular notice of him before that. This time Mr. Surratt said to me, ‘Give me a nice shave and clean me up nicely; I am going away in a day or two.’

“Q. Will you state, when he said ‘Clean me up nicely,’ what his condition was as to being clean or not?”

“A. He seemed to be a little dusty, as though he had been traveling some little distance and wanted a little cleaning and dressing

up, as I am frequently called upon by gentlemen coming in after a short travel.

“Q. Did he say any thing to you about Booth?”

“A. Yes, sir.

“Q. What was that?”

“A. He asked me if I noticed that scar on Booth's neck. Says I, ‘Yes.’ Says he, ‘They say that is a boil, but it is not a boil; it was a pistol-shot.’ I observed, ‘He must have gone a little too far to the front that time.’ This gentleman [Mr. Surratt] observed, ‘He like to have lost his head that time.’ I then went on and completed the shaving operation. I shaved him clean all round the face, with the exception of where his mustache was. He had a slight mustache at the time.”

Mr. CARRINGTON. Now, I think, gentlemen of the jury—

Mr. BRADLEY. Just go on a little further with that testimony, will you.

Mr. CARRINGTON. I am almost too tired.

Mr. BRADLEY. I want you to read the whole examination. There are but a very few sentences further. There is a material part which you have not come to.

Mr. CARRINGTON. Now, gentlemen of the jury, I think you will see from the testimony of this witness that he could not be mistaken, and if he has testified untruly he has committed the crime of perjury. It is certain that he saw John Wilkes Booth, for he had that scar which has been identified, and no man could grease that head and rub and dress it and ever forget it. No man could see that face and converse with him under such circumstances and forget it. It does seem to me that the testimony of this man is absolutely conclusive. No juror will believe he has committed the crime of perjury. No juror can believe that he is mistaken, in view of the detailed account which he has given of the interview between the prisoner at the bar, John H. Surratt, and himself on that occasion. I do not think it necessary to detain you longer in reference to the testimony of this witness.

The sixth witness is Rhodes. There has been no attack upon his general reputation for truth and veracity. I grant you that he is contradicted by a good many witnesses in regard to certain matters of fact, but he is confirmed, you will observe, by others.

Mr. PIERREPONT. He is not contradicted on any matter of fact.

Mr. CARRINGTON. I understand from my colleague that in his view of the case he is not contradicted by any witness. Then I do not make that concession. I recollected the fact of his testifying to the curtain being up and others testifying to its being down. But he is an honest man. It would be utterly impossible for me to go over the testimony of all these different witnesses. I must leave something for the jury to do. I am sure that the counsel on the opposite side will present their theory of the case, and I have only to present generally my views in reference to these witnesses. But I assert again that Mr. Rhodes is an honest man, and if he is contradicted at all it is in reference to immaterial matters.

The next witness is St. Marie; and let me ask you who contradicts him? Certain witnesses were brought here for the purpose of assailing his general reputation for truth and veracity. Who are they? The first one is Mr. Nagle. His person seems to be sacred, and my friend Mr. BRADLEY seemed to make it a personal matter if we undertook to assail him.

Mr. BRADLEY. I am not aware that Mr. Nagle said a word about St. Marie. If he did, it has escaped my attention.

Mr. CARRINGTON. It was in reference to McMillan. I am mistaken, and I will make the *amende honorable*.

Mr. BRADLEY. It is just the same; go on.

Mr. CARRINGTON. No, it is not just the same, because I do not wish to mis-state it. He certainly testified as to the character of one them. It was McMillan, and I stand corrected.

There are, however, two or three witnesses who testify to the general reputation of St. Marie for truth and veracity; but you have seen other witnesses here who

tell you that when he was a law student in the city of Montreal they knew him well, and that he was a man of high character for truth and veracity, and that this imputation upon his honor arose from some little circumstance that occurred while he was in the educational board, as it is called. That is in evidence before you. It is also in evidence before you that he made restitution; and where is the honest juror who will not believe a man because in his youth he may have committed a sin of which he has repented and made ample restitution? What motive has he to swear away this man's life? They were brother Zouaves in the service of his Holiness the Pope. Why should he come here to falsely swear away his comrade's life? The witnesses who have been brought here on the part of the Government have triumphantly sustained his character before this jury.

The next witness is Sergeant Dye.

Mr. BRADLEY. I see you are tired, and there is no chance of your getting through to-day.

Mr. MERRICK. Let us adjourn.

Mr. CARRINGTON. I am very tired. I cannot finish the argument to-day, and should like to do so to-morrow.

Judge FISHER. You had better go on until four o'clock. Every time you take a recess at night you consume a whole day.

Mr. CARRINGTON. Just as your honor says. I will go on, or try to do it, but I am very much exhausted.

Mr. MERRICK. I beg leave to interpose in behalf of the counsel on the other side. To argue a case in this warm weather is very laborious, and if our suggestion can have any weight in behalf of counsel on the other side we will, as a matter of professional courtesy, interpose that suggestion.

Judge FISHER. I did hope that this case would come to a conclusion this week; but if we go on at this rate it will take the balance of the month of August.

Mr. CARRINGTON. Your honor will see how it is. In arguing these general propositions of law and of fact, I conceive that it is my duty, as I am sure the counsel on the opposite side will conceive it to be theirs, to sustain the character of these witnesses. I must present these points, and I have endeavored to do it as concisely and as rapidly as I could. I am trying to do my duty, and if the court thinks that I ought not to speak any longer, I am willing to quit, but I have not presented the whole case yet.

Judge FISHER. If you do not feel able to go on, we will have to accommodate you.

Mr. BRADLEY. We had better stop now; we will not make any progress to-day.

Mr. MERRICK. I do as I would be done by.

Mr. CARRINGTON. I am very much obliged; I know you are a very courteous gentleman.

Judge FISHER. The court will take a recess until to-morrow morning at ten o'clock.

The court accordingly took a recess until to-morrow morning at ten o'clock.

#### Forty-Third Day.

TUESDAY, July 30, 1867.

The court re-assembled at ten o'clock, a. m.

Mr. CARRINGTON. May it please the court, and you, gentlemen of the jury: I hope, gentlemen, that you all feel refreshed after your slumbers of the night, and will be able to bear patiently with me in commenting further upon the testimony which has been given. I will be as brief as I possibly can consistently with my sense of duty.

Yesterday afternoon I was discussing the point of the personal presence of the prisoner at the bar in the city of Washington on the 14th of April, 1865, and there having been a general assault upon most of the witnesses who were examined on behalf of the prose-

cution in reference to that point, I felt it to be my duty to briefly consider *seriatim* the character of each witness, in order that you might have my views generally in regard to the persons who had been brought here by the power of the Government to testify in a case in which they could have no personal interest, and, in my judgment, no motive to swear away the life of the prisoner at the bar. The witness upon whose testimony I was commenting at the time the court adjourned was Sergeant Dye. Who is he, gentlemen of the jury? It is in evidence before you that he was a soldier who had won honorable distinction in the service of his country, being promoted, I believe, from a private soldier to the rank of a non-commissioned officer. A young gentleman of rank and education, who receives a commission, perhaps, in consequence of his family connections and his position in society, and who vindicates his reputation, is worthy of credit, and I would be the last one in the world to pluck a single laurel from his brow; but the young farmer-boy or mechanic who enters as a private soldier and fights his way up to the rank of a non-commissioned officer comes before an honest and discriminating jury of his country under most auspicious circumstances. Show me the private soldier who has been promoted to the rank of first sergeant, one of the most responsible positions in the line, and I am ready at once to give credence to his statements and to endorse his character. Where is the witness who has appeared to assail Dye's general reputation for truth and veracity? I repeat, with reference to this young gentleman, what I said yesterday afternoon, that, judging from the vigorous assault made by the learned counsel for the prisoner upon all the witnesses introduced on behalf of the prosecution, where they thought it could be successfully made, and judging from the declamatory and inflammatory declaration of the able and eloquent counsel who addressed the court on Friday afternoon, that he had stricken down "a mass of corruption at the feet of the prosecution," we have reason to infer that if there was a witness between heaven and earth who would have dared to assail the general reputation of Sergeant Dye for truth and veracity, he would have been placed upon that stand and required to speak within your hearing. No such witness having been produced, the conclusion is irresistible that his character is above suspicion; aye, far above the hope of successful assault. He stands before you, then, unimpeached and an unimpeachable witness. You saw the searching and trying cross-examination to which he was subjected by Mr. MERRICK, and well did he earn the compliment which I afterwards heard paid him: "You must have been a brave soldier upon the field of battle, for you have borne yourself manfully under the most trying ordeal." Who denies that he is a man of nerve, of courage, and of truth? The great philosopher and philologist, Dr. Samuel Johnson, has said that a man without courage is destitute of every other virtue. A man without courage is like a woman without chastity; and the converse of the proposition is equally true. Show me a courageous man, and I will point you to a truthful one. "Liar" and "coward" are synonymous terms. "Gallantry" and "veracity" are almost convertible terms. It is true that some intimation was made calculated to cast a cloud of suspicion upon the character of this young gentleman by the learned counsel for the prisoner; but is it necessary that I should remind this jury again and again that the statements of counsel are not evidence, and that you are sworn to decide according to the law and the evidence? I might kindly and respectfully rebuke the learned counsel for the prisoner. What right had he, where there was no evidence—and I mean no disrespect in saying it—to publish a libel against a brave and gallant soldier, who came here in obedience to his country's call, as he went upon the field of battle, to bear testimony against the man who had assailed his country's honor? We were prepared to show, had any attempt been made to assail him,

that he is honest, brave, and truthful, and that he bears a reputation among his neighbors, where a man is always known best, worthy the exhibition which he made upon the witness-stand in the course of his examination.

During his examination he said that he had seen the pale face of the prisoner at the bar in his dreams. Judging from the expression of countenance I then observed on the part of the learned counsel, this may be made a subject of attack. Now, I speak to you as men of experience and practical wisdom, and I ask if it is not conformable to your own personal experience and observation, that where a transaction occurs calculated to make a deep and lasting impression upon the mind and memory, the image of it is represented, as it were, by a mirror in the silent watches of the night? The young gentleman illustrated the principle most eloquently himself: he said that he had dreamt of the girl who became his future wife. No man ever loved a woman without dreaming of her. No man ever loved his country without dreaming of some scene presented to his own observation where there was an assault made upon its honor, its dearest interests, and highest and holiest hopes. I had scarcely stepped out of the courtroom, when a gallant Union soldier stepped up to me and illustrated it. He said: "During the first battle in which I was engaged, a friend fell dead at my side, and often have I dreamt of that painful scene." Is it strange that a young man who had tested his devotion to his country by risking for it all that a man has—his hopes, his interests, his life—should dream of the man who had endeavored to dishonor that country by murdering its federal head and representative? In my opinion, gentlemen of the jury, poets are often philosophers; and this very principle is illustrated by the celebrated English poet Dryden:

"Glorious dreams stand ready to restore  
The pleasing shapes of all you saw before."

The sentiment may be good, but I do not think the poetry is, if I may be pardoned for undertaking to criticize the translator of Virgil and the contemporary of Pope. It is much more happily expressed, I think, by the great American journalist, wit, and satirist, Mr. G. D. Prentice:

"When Sleep's calm wing is on my brow,  
And dreams of peace my spirit lull,  
Before me, like a misty star,  
That form floats dim and beautiful."

I have seen the idea represented upon canvas. A young soldier, far away from family and friends, is bivouacked for the night, perhaps upon the bloody field of battle. He is lulled to sleep by the melancholy music of the groans of the dying. Upon the wings of fancy he is transported to his happy home; his wife and children come to him with words of tenderness and love. But, hark! the stern reveille sounds the alarm to arms; he rouses, and alas! "'tis but a dream." I say the very fact that Sergeant Dye dreamt of this scene, the very fact that he had the candor to acknowledge it, shows that his heart was in it, and that it made an impression upon his mind as well as upon his heart; that he remembered it and was now telling to an honest jury of his country the truth, the whole truth, and nothing but the truth.

Shall I review his testimony, gentlemen of the jury? You all remember it. It is important, and I will briefly recapitulate it. On the night of the 14th of April, 1865, he was in company with Sergeant Cooper, his friend and companion, by whom he is confirmed. By the old Jewish law, when God himself established a theocratic form of government, under which He was not only the spiritual but the temporal head of His chosen people, it was provided "by two witnesses shall a man die." On the night in question, passing casually by Ford's Theatre with Sergeant Cooper, his attention is attracted by some one looking into the carriage of the President. Without going through all the details, suffice it to say that he hears some one cry "Ten

o'clock, and ten minutes past." It was very well calculated to arrest his attention. There is a God above us. The gas-light was blazing; he needed not the light of the moon, for man, the agent of the Almighty on earth, had prepared the means of detection. He heard it cried a second and a third time. Just then the person who uttered that cry, or gave that command, was in such a position to the gas-lights that his features could be distinctly recognized. "I saw him," he says; "the face was indelibly depicted upon my mind and memory. I dreamt of him;" and then, assuming an air of indignant disdain that his veracity should be questioned by Mr. MERRICK, he says, "That is the man." "A few moments afterwards," he said, "I heard the sad tidings that the President of the United States had been murdered. On my way home I had a conversation with a lady. I met some policemen, interchanged a few words with them, returned to my camp, and communicated the sad intelligence to my commanding officer." He, regarding him as a messenger of bad tidings, exclaimed in a moment of excitement, "You are a damned liar; it can't be so; the President of the United States is not murdered; I cannot, I won't believe it."

This, gentlemen of the jury, is his plain and simple story. Do you believe it? There is not one man upon that jury who believes for a single moment that Sergeant Dye has committed the crime of perjury. As honest men, appreciating the value of human character, you will not stamp upon this young man's brow that awful crime. Is he mistaken? I grant you if he is contradicted you have a right to say so. The burden of proof is on them to successfully contradict the witness. Have they done it? I shall meet them fairly. First, they introduce a Mrs. Lambert, of this city. Of that lady I shall not breathe an unkind or disrespectful word. But mark, gentlemen, she speaks of a different hour, as is suggested to me, and she is wrong as to time, and wrong as to place. Besides, in the language of Holy Writ, "out of their own mouths do I condemn them." How do you reconcile the testimony of Mrs. Lambert with the testimony of that smoking Dutchman?—I do not say this disrespectfully, but because I do not recollect his name; it begins with a "K." He swears that he was sitting in front of his house, smoking his cigar. It took him half an hour to smoke it. He did not retire until long after the point of time fixed by Sergeants Dye and Cooper as the time when they passed by the house of Mrs. Surratt; nor did he desist from the pleasure of smoking until he heard the voice of his wife up stairs, "Old man, come to bed;" and this was a summons which no loyal husband could disobey. How do you reconcile the testimony of these two witnesses? The Dutchman swears that no conversation occurred. Mrs. Lambert swears that a conversation did occur. One cuts the throat of the other. I take it that they are both truthful, for I am not in the habit, as you all know, of assailing witnesses unless I feel forced to do so; but as they differ, the conclusion is that they are both mistaken. Just so clearly as two plus two are equal to four, these two witnesses, brought down to contradict Sergeant Dye, show that he has spoken truly, and is not mistaken in regard to the facts to which he testifies; especially when he is confirmed and corroborated, as I expect to show you, by a host of witnesses.

But I hurry on. You will observe, gentlemen, that I have gone through with the testimony of eight witnesses, though in a very brief manner; and here, if you will pardon a common expression, I want you to "stick a pin." I want you to remember this in your retirement, that eight witnesses swear positively that they recognized the prisoner at the bar on the 14th day of April, 1865, in the city of Washington. I will repeat their names: David C. Reed, Susan Ann Jackson, Vanderpoel, Cleaver, Wood, Rhodes, St. Marie, Sergeant Dye. They are positive. There were five other witnesses who do not swear positively, but, as I under-

stand their testimony, to the best of their knowledge and belief, which is quite as reliable, where a number concur, as testimony positively identifying the prisoner. Of these the first is Scipiano Grillo, a member of the orchestra at Ford's Theatre, against whose reputation there has not been a breath of suspicion—a Roman by birth, an American by adoption. Shall I refer to his testimony? It is very, very strong, but not positive; "I believe that is the man." If I state the testimony too strongly I shall be corrected. The next one is John Lee. Poor, poor man! All the thunders of their artillery were leveled against his devoted head, and yet he did not swear positively. Did you observe that poor Lee, when he took the stand, was modest, and all he said was, "I believe that is the man?" Why this awful attack upon his character? The gentlemen thought it necessary. I do not complain, for they are the best judges of their professional duty. Who is John Lee? You have heard witnesses from the city of Philadelphia who knew him in younger and better days. You have seen old Mr. Hatfield and his son, and the other two gentlemen who knew him well—one of them, I believe, from boyhood. You learned that he was an officer faithful to his trust, enjoying the confidence and esteem of the good people in the City of Brotherly Love. He emigrates to Washington. He is made a justice of the peace. He is made chief detective in the metropolis of the nation, in time of war and great national excitement—an office, as all will at once see, of great responsibility. How could he occupy that position at such a time without giving offense and making enemies? Perhaps some of you were arrested and put into the Old Capitol, as many good men were upon suspicion.

Every officer who was charged with the delicate and offensive duty of watching the movements of his fellow-citizens and bringing them to justice, if he had reason to suspect their conduct, made enemies; and it is not surprising that John Lee should have had his enemies here. Show me a public officer who has no enemies, and I will show you an officer who is not worthy to be trusted. The man in public office who does his duty makes enemies of bad men; and unfortunately, alas, for poor human nature, they constitute a majority; but his consolation is that good men and good women sustain him, and he has the hope of that recompense and reward, in comparison with which all earthly honors sink into utter insignificance.

I know nothing about John Lee particularly. He may be a bad man, but, mark you, the witnesses who testify against him are generally those who served with him as officers. Colonel O'Beirne, a most excellent and worthy gentleman, as we all know, testifies that he heard his character harshly spoken of; but Colonel O'Beirne did not say he would not believe him on oath. Now, I put the question to you, gentlemen. You have got to settle this; it is not for me. I will ask you this question, and you can answer it for yourselves when you go to your retirement: Do you think that any human being who recognizes the existence of a God, and a state of future rewards and punishments, would come all the way from the State of Mississippi, and after placing his hand upon this book, and appealing to the God of heaven to attest his sincerity and integrity, falsely swear away the life of an individual who had never done him the slightest harm in the world? What earthly motive could John Lee have to falsely swear away this man's life? Brought from the State of Mississippi, from the bosom of his family and from his business, by the strong arm of the law, he comes here and bears his testimony. Will an honest jury stamp him with the crime of perjury? If you do it, take care. You know the value of human character. If he deserves it—courage, say it like men; but beware how you do an act of gross injustice to an individual who happens to occupy that unfortunate and solemn position. I do not intend to charge a single witness on the other side with perjury. I do not think I have ever

done it in the course of my professional career here more than once or twice.

But, gentlemen, I must hasten on. The next witness is Mr. Ramsell. You saw him. He does not testify positively. Indeed, his testimony is very indefinite and uncertain, I believe; but it is a fact to be considered by this jury, in connection with all the other circumstances in evidence before you. No one will say aught against him.

The next is Mr. Heaton. You saw him, gentlemen of the jury—a young officer here in one of the Departments of the Government, with a handsome, expressive face. To look at that man you would see that he was incapable of telling an untruth. He is put upon the stand, and Mr. BRADLEY does not even think proper to cross-examine him, for he is so good a judge of human nature that he saw at once this man was telling the truth, and if he could assail him at all, it would only be by satisfying the jury that he was mistaken.

Mr. BRADLEY. What did he prove?

Mr. CARRINGTON. I have not time to read it, because I am anxious to conclude soon. He is not positive, but I understood his testimony to be very, very strong. He believes and thinks the prisoner to be the same man he saw in front of the theatre when the President's carriage drove up. That is just the way I would swear. I would be afraid to swear positively; I would swear to the best of my knowledge and belief, and let the jury determine from all the circumstances; for you decide, gentlemen, as I shall hereafter show you, not upon possibilities, but upon probabilities. There is a great misapprehension about the criminal law on this subject, for I know that jurors often have the idea that we must prove a case beyond all reasonable possibility. That is not the law. I shall hereafter show you what the law is on that subject.

The next, and on this branch of the case the last, witness is Mr. Coleman. You saw him, gentlemen of the jury. He is a gentleman evidently in a delicate state of health, but with a bright, expressive eye, and a most amiable, intelligent, and excellent gentleman. Before expressing his opinion he requested that the prisoner might stand up. He then said, "I think that is the man."

I have now gone through the list. Permit me at this point to ask you a few questions, and I will then dismiss this part of my subject. Eight witnesses swear positively; five to the best of their knowledge and belief; thirteen witnesses concur in testifying to the presence of the prisoner in Washington on the 14th of April, 1865; and, as my friend Mr. PIERREPONT suggests, each one at a different hour and at different places. Have all these witnesses lied? It is possible, but not probable. Are all these witnesses mistaken? It is possible, but not probable; and, I repeat, you will decide upon probabilities, and not upon possibilities. There is one other question that I will ask you. Let us concede, for the purposes of the argument—and I beg pardon of the witnesses for doing so—that they are all corrupt. Do you remember the old maxim, "Fight the devil with fire?" Did you see Surratt on that day? Is there a gentleman of high position in society who did see him? Certainly not. He was an assassin, the companion of cut-throats and murderers. The men who saw him were honest men, but detectives, whose business it was to watch such characters, and young men who would be seduced into music-saloons, where such characters would naturally resort. They feared the light of open day. He would not have dared to show himself to gentlemen in high position in society. Reed happened to see him on the street as he passed by, disguised to some extent, because he wore a peculiar dress, which attracted Reed's attention. Vanderpoel, a young and, it may be, a dissipated fellow, going into a music-saloon, the very place where such men would go under such circumstances, sees him drinking with the assassin Booth.

Gentlemen of the jury, I have proved, first, the exist-

ence of this conspiracy; second, the object of it, which was, if you believe the testimony of Mrs. McClermont, to murder, and which continued to be its plan, if you believe Mrs. Benson, showing, too, by the result, that it was the original plan to which they persistently adhered. The change in the plan of operations, to which Booth alluded when he wrote to Surratt in the city of Montreal, was not from abduction to murder, but from the telescopic rifle to the cup, to the pistol, to the dagger. It was murder at first; it was murder in the interim; it was murder to the last. I argued, out of abundant caution, and I say now, that even if it were not so, if he continued a member of the conspiracy up to the time of its fatal consummation, he was guilty of murder, if the result was the violent death of the victim whom they had selected for the gratification of their malice. Having, then, shown him here in the city of Washington, in addition to these facts, I next proceed to show you the part he did perform in this bloody tragedy, although it is not essential to the case; for, as I have told you, if he performed any part, however minute, he is guilty of the whole. I will now briefly recapitulate the testimony upon that point. It is, to some extent, a repetition of what I have already said in reference to the connection of Mrs. Surratt with this conspiracy.

John H. Surratt had a family and a home in the metropolis of the nation. I will not say that he is a coward at heart, for that seems to be offensive. Constitutionally timid, he needed assistance. Booth was a drunkard, a vagabond, a desperado, but he had nerve and brute courage. Surratt furnished a rendezvous where these conspirators met to hold their bloody councils. Booth appeared there to infuse his spirit into their bosoms. Surratt, afraid to strike the fatal blow with his own hand, furnished arms. Booth used them. Surratt, judging from his own disposition that artificial stimulus was necessary, not in person, but by one with whom he was co-operating, furnished whisky; Booth and Herold drank it. Surratt furnished a rope; Booth did not need it. One of the Surratts furnished a field-glass; Booth used it as he escaped for his life from the city he had polluted by shedding innocent and precious blood. Booth died by the hand of justice, not regularly, but by an interposition of Providence. As his body lay weltering in its blood, a weapon is taken from him which had been furnished him by Surratt. Tell me, *par nobile fratrum*, which of the two is the worse. My theology teaches that if a man neglects the laws of God and goes to hell, he meets his just deserts; but the man who urges his brother on the downward road deserves a double condemnation. I said that Surratt was the Beelzebub and that Booth was the Satan of this infernal conspiracy. Perhaps I owe the prisoner an apology; he may have been the Satan and Booth the Beelzebub. With one heart, hand in hand, they go through this bloody business. The difference between them was just the difference between a bold and bad man and a timid one, and that is all. To use a vulgar expression, Booth "died game," like a true fanatic; but I do not extenuate his conduct on that account. He deserved to die a felon's death.

"Vaulting ambition, which o'erleaps itself,  
And falls on the other"—

was his sin. His favorite sentiment, I have heard, was the one expressed by a dramatist—

"The aspiring youth that fired the Ephesian dome  
Outlives in fame the pious fool that raised it."

Surratt's sin was avarice, for he was a spy, as Booth never was, in the service of the confederacy, and handled gold as the price of his country's dishonor. Booth's last prayer—and I hope I shall be pardoned for the allusion, for any thing of that sort always touches my heart—was a prayer for his mother's blessing. Surratt deserted the mother who bore him in the hour of danger and distress. Booth's last words were, "Tell my mother I died for my country, and did what I believed to be best." "Poor, hunted down, can God forgive me?"

Perhaps He may, but man cannot." Surratt fled, and boasted to the enemies of his country that he had dishonored the land that gave him birth, that he had torn the bosom of his own mother; for one's country is his mother. Was not that enough? You murdered the man who never harmed any one except in his country's cause, and only then when he was forced to do it. But no! See the malice still burning in his heart. Hear him exclaim, "The day will come when, returning to my native shores with immunity, I will serve Andrew Johnson as Abraham Lincoln has been served. My hands are reeking with the blood of the federal representative of the American Republic, but I am not satisfied; I will have the blood of the successor in office to my noble and martyred victim." If it be true, gentlemen of the jury, that any connection, however minute, with this conspiracy, is sufficient in legal contemplation to bind him to the body of the crime charged in this indictment, *a fortiori* when these facts prove him the chief conspirator, does it not inflame your minds almost beyond the power of restraint; for I speak to men who can appreciate true honor and nobility of soul, and who have hearts to love their country, and spirits honest, fairly, mildly, but sternly to rebuke an insult against its dignity and its honor.

But, gentlemen of the jury, I beg pardon for having detained you so long. I come now to the last point in my case on the part of the prosecution, and I then desire, with the permission of the court and of my colleagues, to review the defense, for there is a question of law there involved, maintained by the counsel for the prisoner, which I desire briefly to notice.

Gentlemen of the jury, has not the prisoner at the bar confessed his guilt? That is something which all of us can understand. Confessions are of two kinds, verbal or express confessions and implied confessions, arising from the conduct and deportment of the prisoner. Now, I undertake to satisfy you from the evidence in this case that both expressly and by implication the prisoner at the bar has confessed his guilt. In the language of Holy Writ, "out of his own mouth do I condemn him." Come, then, gentlemen, and let us reason together. Confession in some sort or another is almost the irresistible and inevitable consequence of sin and guilt. The good man who has offended the laws of a benignant and merciful Deity, upon his knees confesses in secret silent prayer. You all know this by experience. It is this alone which relieves the burdened conscience. The bad man who lives not in the fear of God, but rather in the fear of his fellow-man, who has committed some great crime against society at some unguarded moment, when he believes no human ear hears the pulsations of his heart, and the secret whisperings of that mysterious agent within him, when no eye sees the contortions of his face, so expressive of the silent workings within, will confess little by little to his friends and to his companions, if for no other purpose, for relief. It comes out by degrees. "God, who works in a mysterious way," and who has agents upon earth for the execution of His own high and holy purposes, employs the proper means. They are brought to light, and the criminal who has dared to defy the laws of his God and his country, stands, by his own declarations and conduct, confessed before the law.

First, then, has not the prisoner at the bar in words confessed his guilt? Permit me briefly to review the testimony upon that point. The first witness upon that subject is young Tibbett, formerly a resident of Maryland, now usefully employed at his trade in the city of Washington. He testifies that some time previous to the assassination he heard Mrs. Surratt say in the prisoner's presence, that she would give a thousand dollars to have Abraham Lincoln killed. On another occasion, he testifies that he heard the prisoner at the bar, when the news of a great victory had arrived, say that the leader of the northern army ought to be in hell. I am not appealing to your party prejudices; for I think every man who favored peace, every man who wished to stop bloodshed, every man who had a heart to love his race, desired, unless he was under some delusion, the preservation of the Federal Union. In time of peace I might have seen the vessels of this Republic bearing bread to the starving millions of the Old World; and, a sight infinitely higher and holier still, the vessels of the young Republic ploughing old ocean freighted with the Bread of Life to the heathen perishing in his blindness. In war, I have seen the gallant sons of America from the noble North, from the great and growing West, rallying to their country's call. I have seen the companions of my youth in the South, under a delusion, rallying gallantly to a false cry, engaged in bloody contest with the children of those men whose fathers had fought side by side, and shoulder to shoulder, for the creation of this Republic, which all good men then desired to preserve and perpetuate. What, then, according to the testimony of the witness, was the feeling of the prisoner at the bar? "The leader of the northern army"—that did not mean a sectional army, for in "the federal army" there were southern as well as northern men, men from Delaware and Maryland and Virginia and Kentucky, as well as Ohio—"the leader of this army ought to be in hell." At such a time, an hour of national jubilee, when every patriotic heart was swelling with gratitude and emotion, to give expression to such a sentiment, and in such coarse and wicked language, shows a heart, to use the strong and expressive language of the law, "regardless of social duty, and fatally bent on mischief." And at whom was this aimed? Was it at the President of the United States? Perhaps it was at that gallant and noble man who is beloved North and South, East and West—that brave son of Ohio, General Ulysses S. Grant, then lieutenant general of the federal army. I care not, for the purposes of my argument, to whom the allusion was made. Let it have been aimed at one or the other, it showed the same heart, the same malice, and gives color and character to the foul murder which was afterwards committed, and which he aided, maintained, and promoted. Now, gentlemen, do you believe young Tibbett? Will you pardon me for asking that question? I grant you that witnesses were brought here to assail his general reputation for veracity; but he proved a character of which any man might be justly proud. Their name was legion who came here in a spirit of honest indignation to maintain the character of this young and gallant soldier.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 95. WASHINGTON, SATURDAY, SEPTEMBER 7, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 94.*

The whole country side rushed to resent the imputation so unjustly cast upon him. Of course, I do not intend now or ever to arraign counsel, for they examined witnesses who spoke in terms of derogation of Tibbett. That they had a right to do. Shall I allude to those witnesses who came here to repel the assault on him? I do not intend to go over them; I will allude to the testimony of a single one. Do you remember old Mr. Edmund Rockett? Ah! you will never forget that face. Seventy-six winters have rolled over his head. He remembers when our fathers fought for this Republic. He cannot harbor in his breast any feeling of sympathy for those who are the enemies of the country which cost so much blood and treasure. With emotions of pride and pleasure, he saw the boy whom he had dandled on his knee in years of helpless infancy leave his father's roof, dressed in his jacket of blue, to strike a blow for his country's cause. He knew the old man as a pious, faithful, honest citizen; and like father, like son. An honest father, who does his duty, will be apt to have a son who will do him credit. Did you not see how the old man's eyes were suffused with tears as he indignantly exclaimed, "There was not a better boy; he served his country in its hour of need, and none but scoundrels would dare to cast an imputation upon his character." I want no more beautiful and eloquent tribute to the character of a young man. Ah! gentlemen of the jury, do you believe him? I brought him here to prove a fact, as my duty required me to do. He has proved it. Mark it; I will drive it home to you: "I will give a thousand dollars to see Abraham Lincoln killed. The leader of the army that was fighting for your homes deserves to be in hell." And why? Because he had done his duty. If that does not look like a confession, when taken in connection with the other facts to which I shall hereafter invite your attention, I do not know what a confession is.

Who is the next witness on that point? Edward Smoot, a gentleman from the State of Maryland, no very willing witness; for it seems he had been either in the office of Mr. MERRICK, or had met him on the street, and Mr. MERRICK told him that he was after him with "a sharp stick." It is an awfully dangerous thing, calculated to intimidate a man, for my friend Mr. MERRICK to get "after him with a sharp stick." But, nothing daunted, he takes the stand, for he is under oath, and I intend to make him tell the truth. He is testifying against his old friend and neighbor, and against his feelings. What does he say? "I heard John Surratt say, 'If the Yankees knew what I was doing, they would stretch this neck of mine.'" Ah! we sometimes have premonitions of our future fate. God, for His own wise and mysterious purposes, often does poor suffering man this kindness. Yes, if they had known what he was doing, they would have stretched his neck! Then, by his own confession, having done what he afterwards

did, "the Yankees," in this case Washingtonians, men living in the city bearing the honored name of the Father of his Country, in vindication of law, of justice, and their country's dignity and honor, will do to him what he confessed he deserved. God grant that the day may never come when such a crime, thus proved, thus confessed, shall be allowed by an honest American jury, who have moral courage enough to do their duty, to pass unrebuked.

Who is the next witness upon this point? Dr. McMillan. And who is Dr. McMillan? A French Canadian; but he has Scotch blood in his veins, and, like Scotchmen, he is a man of principle and of courage, and has a tender feeling for the American Republic. He is a man of education, of high social connections, and intercourse. Who attacks him? One Mr. Nagle is brought here for the purpose of assailing his general reputation for truth and veracity. My friend Mr. BRADLEY, Jr. intimated that it would be rather dangerous for us to attack Mr. Nagle. Notwithstanding this timely warning, however, I intend to attack him. But as I do not want any personal difficulty with my friends, I will endeavor, and I am vain enough to think I will succeed, in satisfying him that he is wrong. No apprehension of personal difficulty can prevent me from doing my duty; not if you form a regiment of men. But I will satisfy my friend that he is wrong. Here I am nearly all the year prosecuting cases. A witness is introduced by the counsel on the opposite side, and I think it my duty to attack him. If I think so, it is unnecessary for me to say to a Washington audience, or wherever I am known, that I am going to do it. The counsel on the other side rises, and says that he will make it a personal matter.

Mr. BRADLEY, Jr. I said no such thing, and I intimated no such thing. You are blowing a bubble to burst yourself upon it.

Mr. BRADLEY. Let it pass. What was said is written down.

Mr. CARRINGTON. I am glad the gentleman has disclaimed it, for I say that it is the duty of a lawyer boldly to assail the character of a witness when he thinks his duty requires it. How could lawyers undertake to make such attacks a personal matter between themselves. I could not do it, for if I were to act on that principle I would have numerous fights at every term of the court, and the pay I get would not compensate me for any thing of that kind.

Now, how in regard to that witness? I shall do him justice. He is a lawyer, and if he is a personal friend of Mr. BRADLEY, and I formed his acquaintance, I should extend to him that kindness and courtesy which one gentleman would expect from another; but when he is a witness I shall strike him just so hard as I believe he deserves to be stricken. It is in evidence before you that he was employed as one of the counsel in this cause. To this I can have no objection. It was perfectly right that the gentlemen should employ any one they thought proper. It is in evidence before you that he received a fee of \$500, and, according to the testimony of one witness, a thousand or two thou-

sand dollars. To this there could be no objection. They have a right to pay him any thing they please; and he has a right to charge for his services whatever he thinks those services are worth. But this is what I object to, that a lawyer employed, feed, in a case, should take the stand to assail the general reputation of a witness on the other side for truth and veracity; that he should take this stand, a "feed" lawyer in the case, to assail the general reputation of Dr. McMillan, who was his peer in social position; a physician, a man of education, and moving in the same rank in society with himself. Now, I put the question to you: Was there ever a lawyer in the city of New York or in Washington who took the stand to assail the general reputation of the witness on the opposite side for truth and veracity? I grant that a lawyer may take the stand to prove a fact in the cause, within his own personal knowledge, and that is often done. In this instance, however, instead of acting the part of a lawyer, getting up witnesses, and pleading his case, he comes here to blacken by his testimony a gentleman introduced as a witness on behalf of the prosecution. I say, without intending any disrespect to any one, that such action is, in my opinion, indelicate and unprofessional, and that a jury should receive such testimony with many grains of allowance, and when it is given for the purpose of blackening the reputation of a gentleman such as Dr. McMillan is proved to be, they should discard it entirely. But why should I detain you longer about this? We have shown you what a man McMillan is; and who, in a court of justice, ever proved a higher character? His conduct shows what he is, as does the sentiment he expressed, "I considered this a crime against society and civilization, and I felt it to be my duty to give this information." Now, I ask you as American citizens, do you harbor any feeling of prejudice against a gentleman, wherever he lives, or whence he comes, because he felt it to be his duty to give information against the miscreants who attempted to ruin your country and to insult you by the murder of your chief executive magistrate. Was not he right, and do you not indorse the sentiment he expressed, and his course of conduct from the inception to the consummation of this matter? I believe McMillan; this jury will believe him. And what does he say? I ask Judge PIERREPONT to be kind enough to read what I have marked from his testimony.

Mr. PIERREPONT. At page 467 he says:

"I remember his stating that he at one time was told in Montreal that he would meet a lady in New York; that he met the woman in New York; he came on to Washington with her; from Washington he started on the way to Richmond with her and four or five others; that after a great deal of trouble they managed to cross the Potomac; that after they got south of Fredericksburg they were driven on a platform-car drawn or pushed by negroes. As they were drawn along they saw some men coming towards them—five or six, if I recollect aright. They ascertained that these men were Union prisoners, or Union soldiers escaped from southern prisons; they were, he said, nearly starved to death; that this woman who was with them said, "Let's shoot the damned Yankee soldiers." She had hardly said the word when they all drew their revolvers and shot them, and went right along, paying no more attention to them."

At page 468:

"Q. Did he give you any account of crossing the Potomac at that time? If so, state it.

"A. I remember his stating one day that there were several of them crossing the Potomac in a boat—it was in the evening, I believe—when they were perceived by a gunboat and hailed. They were ordered to surrender or else they would be fired upon. They immediately said they would surrender. The gunboat sent a small boat to them; that they waited until the boat came immediately alongside of them, then fired right into them, and escaped to the shore.

"Q. What do you know about a telegraph communication down there discovered by these parties?

"A. I remember one day he said that he was with a regiment of rebel soldiers one evening; that after sunset he and some others went into an orchard or garden close by to pick some fruit; that while sitting on the ground they heard the ticking of a telegraph, or what they supposed to be a telegraph machine; that they went down to the headquarters of the regiment and reported the fact; that the party in command ordered some soldiers to go to the house connected with the orchard and search it; that in the garret of the house, in a closet, they found a Union soldier; that they found he had an underground wire, and was working a telegraph; they took him down and shot him or hung him, I forgot which."

At page 469:

"Q. Did he say any thing about what he would do if an English officer, at the request of the United States, should take him in England?

"A. One day, in talking of the mere possibility of his being arrested in England, he said he would shoot the first officer who would lay his hand on him. I remarked, if he did so he would be shown very little leniency in England. Said he, "I know it, and for that very reason I would do it, because I would rather be hung by an English hangman than by a Yankee one, for I know very well if I go back to the United States I shall swing."

At page 472:

"Q. Did he say any thing to you in relation to his own escape?

"A. He said that he arrived at St. Albans one morning a few days after the assassination.

"Q. What, if any thing, did he tell you occurred in St. Albans that morning, a few days after the assassination?

"A. He said that the train was delayed there sometime, and that he took advantage of it to go into the village to get his breakfast; that while sitting at the public table, with several other persons, he saw that there was a great deal of talking and excitement among those who were at the table with him.

"Q. Did he tell you any thing about a handkerchief as he was going out from the breakfast-room?

"A. He said he got up from the breakfast-table, walked into another room, and just as he was about passing from the room he heard a party rushing in, stating that Surratt must have passed or must then be in St. Albans, as so and so had found his pocket-handkerchief in the street with his name on it.

"Q. What then did he say?

"A. He said that at the moment, without thinking, he clapped his hands on a courier-book, in the outside pocket of which he was always in the habit of carrying his pocket-handkerchief, and that he found out that he had really lost his pocket-handkerchief.

"Q. And then what did he tell you?

"A. He said that then he thought it was time for him to make himself scarce.

"Q. Did he tell you in what way he then made himself scarce?

"A. I understood him to say that he made for Canada as soon as possible.

"Q. Did he tell you to whose house he went?

"A. I remember that he told me that he went to one Mr. Porterfield's, in Montreal."

At page 471:

"I remember that he said they were important dispatches for Montreal, which had been intrusted to him in Richmond. What they were, I have not knowledge of at all.

"Q. Did he say what day of the week of the assassination he was there?

"A. He told me that he was there at the beginning of the week of the assassination.

"Q. Did he tell you what he received and from whom he received it?

"A. He stated that he received a letter from John Wilkes Booth, dated "New York," ordering him immediately to Washington, as it had been necessary to change their plans and act promptly.

"Q. Did he tell you what he did?

"A. He told me he started immediately on the receipt of the letter.

"Q. Did he tell you any thing that he did on his way to Washington; and, if so, what?

"A. The first place he named was Elmira, in the State of New York.

"Q. Did he state any thing that he did there?

"A. He told me that he telegraphed to John Wilkes Booth, in New York.

"Q. Did he tell you what he learned?

"A. He told me that an answer came back that John Wilkes Booth had already started for Washington."

Mr. CARRINGTON. You will perceive, gentlemen of the jury, that in this testimony there are several confessions. I do not think it necessary to allude to the conversation with reference to the murder of the Union soldiers, or to the murder of this telegraph man, to both of which reference has been made.

The third point is that he distinctly confesses to Dr. McMillan that he had done a deed which deserved capital punishment. He says that he would rather be hung by an English hangman than by an American hangman, as he knew he would be if he returned to the United States. What clearer admission could there be of his guilt, of his having done some act deserving death, and from which he was then making his escape? And this is the only act to which reference was made. The conclusion, then, is irresistible that it was a confession that by committing this act, by his connection with this conspiracy, he deserved death. Now, what more do you want, when he condemns himself, and says that an American hangman would hang him, and therefore he flies to England! There, I repeat, is his own interpretation upon his own conduct. What higher and stronger and clearer confession can an American jury desire?

In the fourth place, gentlemen of the jury, does he not clearly confess his guilt when he says to Dr. McMillan, "I received a letter from Booth stating that it was necessary that we should change *our* plans of operation;" or "That it was necessary that they should change *their* plans?" Booth does not say in his letter to Surratt, "I intend to change my plans; I intend to change the plan between Atzerodt, Herold, and myself;" but "*our* plan," coupling him with it; and by responding to that letter, as he did when he left Montreal for the city of Washington, he confessed the original plan was his, and the original plan, according to the testimony of Mrs. McClermont and Mrs. Benson, was murder by cup, by pistol, or telescopic rifle. They did come, and they did change their plan from the telescopic rifle and the cup to the pistol and the dagger. There is one other witness upon this point—St. Marie. Now, I ask you, who contradicts him? I have already, I believe, alluded to the character of the man, and therefore it is unnecessary that upon this point I should detain you longer. Do you believe him? If you do believe these four witnesses, there is an end of the case. St. Marie swears that the prisoner at the bar admitted to him that he left Washington on the morning of the 15th. Put these confessions all together, and what do they prove? His presence, his co-operation, his flight, and his own conviction that he had done an act worthy of death, and that no honest American jury could refuse or hesitate so to decide. Escape it, if you can. But is this all, gentlemen? I have said to you that there is such a thing known to the law of the land as "implied confession," confession arising from the conduct and deportment of the person. This subject is most beautifully, eloquently, and philosophically treated by that illustrious statesman, eloquent orator, and able jurist Daniel Webster; and I ask permission to read a brief extract from a speech which is familiar to us all. Perhaps there are many here who as school-boys have read it and declaimed it. It illustrates this proposition so clearly that I will read it.

Mr. BRADLEY. What do you read from? We want the reference?

Mr. CARRINGTON. I am going to read the extract from a school-book, but it is quoted correctly. If you doubt its accuracy—

Mr. MERRICK. We only want to know where to find it.

Mr. CARRINGTON. It is in the speech of Mr. Webster in the case of *The Commonwealth vs. Knapp*. The case is reported in 9th Pickering. Mr. Webster—

"An aged man, without an enemy in the world, in his own house and in his own bed, is made the victim of a butcherly murder, for mere pay. \* \* \* The fatal blow is given, and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassin's purpose to make sure work. \* \* \* He explores the wrist for the pulse. He feels for it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it, as he came in, and escapes. He has done the murder; no eye has seen him, no ear has heard him. The secret is his own, and it is safe!

"Ah! gentlemen, that was a dreadful mistake. Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner where the guilty can bestow it, and say it is safe. Not to speak of that Eye which pierces through all disguises, and beholds every thing as in the splendor of noon, such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that 'murder will out.' True it is, that Providence hath so ordained, and doth so govern things, that those who break the great law of Heaven, by shedding man's blood, seldom succeed in avoiding discovery. Especially, in a case exciting so much attention as this, discovery must come, and will come, sooner or later. A thousand eyes turn at once to explore every man, every thing, every circumstance connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the slightest circumstance into a blaze of discovery.

"Meantime, the guilty soul cannot keep its own secret. It is false to itself; or, rather, it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares not acknowledge to God or man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him; and, like the evil spirit of which we read, it overcomes him, and leads him whithersoever it will. He

feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears his workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence.

"When suspicions from without begin to embarrass him, and the net of circumstances to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed; there is no refuge from confession but suicide, and suicide is confession."

Now, permit me a slight paraphrase: there is no refuge from confession but flight, and flight is confession. When he fled, it was to relieve himself by confession. His flight was confession *à fortiori* when considered in connection with these verbal confessions to which I have referred, his dyed hair, his spectacles, his starting at seeing a man whom he supposed to be a detective, for

"Suspicion always haunts the guilty mind;  
The thief doth fear each bush an officer."

But a greater than Shakespeare has spoken on this subject: "The righteous is bold as a lion; but the guilty fleeth when no man pursueth." How forcibly, if the Word of God need illustration, was this illustrated in the conduct of the prisoner at the bar as we see him on board of an English vessel, under the English flag, plowing his way from his native shores for safety; as though a murderer who has stained his conscience with such a crime can ever be safe. Ah! it was a dreadful mistake to suppose himself even then secure. He starts; and when McMillan asks him, in surprise, "Why do you start? Of what are you apprehensive?" He replies, "I believe there is an American detective on board." "For what" very naturally inquires Dr. McMillan. "What have you done?" Hear what he said: "I have done more things than you are aware of; and, very likely, if you knew them all they would make you stare," or something to that effect. If there is power in the English language to convey the secret of the human heart, was he not then and there disclosing it to Dr. McMillan? "I have done a deed at which my own guilty soul revolts; and although you are a physician, a man of education, of courage, and of nerve, hear it, and it will make you stare!"

Should I speak upon this case any longer with such confessions? Is it not strange that, just when the American nation has been congratulating the Emperor of France and the Czar of Russia on their escape from assassination, I should be found standing here almost three days arguing before an American jury to have them vindicate the majesty of the law, and avenge the murder of the chief executive magistrate of the greatest nation upon earth, and one in view of whose high moral character the crowned heads of Europe should "pale their ineffectual fires?" It is an insult to your intelligence, almost an insult to the American nation, that the United States attorney should stand here, and in his feeble way urge a jury of his country to strike down tenderly but surely the murderer of your martyred President, while the blood of Abraham Lincoln cries to Heaven for vengeance. Is the language too strong? I speak in the language of Holy Writ when I say "vengeance." As I read this Bible, it condemns private vengeance, but commands public vengeance; and I will prove it, if it is not irreverent. I have a right, gentlemen, to refer to the Bible in a court of justice, for it is a law-book; and I hope you will not consider me as doing it in any spirit of levity. It is indeed a cardinal law-book; and no laws which are inconsistent with the laws of the Bible are tolerated in a Christian community. I read from Romans, chapter 13:

"Let every soul be subject unto the higher powers; for there is no power but of God. The powers that be are ordained of God.

"Whoever, therefore, resisteth the power resisteth the ordinance of God, and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to evil. Will thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same.

"For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil."

But, gentlemen of the jury, I happened to hear this question discussed by a personal friend of mine, one of the ablest ministers in the city of Washington and in the country, a man whom I love dearly. He is the mildest, most patient, and gentlest-tempered man that I ever saw in my life. In the course of his sermon he discussed the subject of capital punishment. It was impressed on my memory. I have a pretty good memory. After hearing a sermon or speech, I can get up almost immediately afterwards and repeat it in words or in substance. It struck me forcibly, and I took notes of it. It struck me as exceedingly able; and when this mild old gentleman, with his big voice, thundered his anathemas against that mawkish spirit of sentimentality, as it is called, which assumes to be more merciful than the God of all mercies, it was really refreshing to me; and it was like an oracle speaking. I do not know that I can give you his entire argument or his precise language; but I will endeavor to give you that, interspersed, it may be, in part, with my own views and language, to show you that I am right on this subject. It is a question which you ought to understand, and which the community ought to understand. As a peace-officer, I am determined myself, by the grace of God, to submit to the law, and determined, if I have power, to enforce, within my limited jurisdiction, obedience and subserviency to law, for it is the spirit of lawlessness which, in my humble judgment, was the secret cause of the untold woes that have cursed our common country. If judges and jurors will only enforce the law with a stern, steady, firm, and honest hand, we shall have no wars, and this will be a land of peace and plenty. But now hear me; I read this because I know whence it comes:

“The argument of the opposition is, man cannot take what he cannot restore. That is true, but God can. And if God has authority to take human life, he can delegate that authority to his agents upon earth.”

The reverend gentlemen read the very verses to which I have referred:

“The Bible, in the 13th chapter of St. Paul’s Epistle to the Romans, declares that the civil magistrate is God’s minister or agent upon earth; and certainly God can delegate to that minister or agent the authority to take human life, if he thinks proper to do so. No one can deny this proposition, unless he is prepared to deny the existence and the almightiness of God. The only question, then, is, has God in point of fact delegated to the civil magistrate, his minister upon earth, the authority to take human life in certain cases? About this we can have no doubt, if we believe that the Bible is the word of God, for in that word this authority is delegated in language so clear that he who runs may read—both in the Old Testament and in the New Testament. In the book of Genesis we find these clear and emphatic words: ‘Whoso sheddeth man’s blood, by man shall his blood be shed.’ In the 13th chapter of Paul’s Epistle to the Romans we find this language, referring to the civil magistrates: ‘For he beareth not the sword in vain.’ Now, what is the meaning of this passage? In those days capital punishment was inflicted by means of decapitation with a sword, and this instrument is spoken of in the Bible as symbolic of that mode of punishment.

“Again, what is the object of punishment? It is not, as some suppose, to reform the criminal. The reformation of the criminal is one object of punishment, to be sure, but is not the primary, but only a secondary consideration. Punishment is principally retrospective; it is intended to strike crime, which is an evil itself; to avenge—that is the word—some wrong done to society, because God commands it. God forbids private vengeance; no man has a right to avenge his own wrongs; but he positively commands public vengeance; he commands the civil magistrate to avenge wrongs against society. Mark the language in the 13th chapter of Paul’s Epistle to the Romans: ‘For he is the minister of God, a revenger to execute wrath upon him that doeth evil.’ ‘Vengeance is mine, and I will repay, saith the Lord;’ and my minister, the civil magistrate, shall be my avenger upon earth, to ‘execute wrath upon him that doeth evil.’”

The first great object of punishment, then, is to strike crime, because God commands it; because He, in His infinite wisdom and goodness, has commanded the civil magistrates, His ministers and avengers upon earth, to avenge this wrong to society and civil government, His own appointed institution. The second object of punishment is to deter the wicked by the terror of example. The third to protect society against one who is dangerous to its peace and good order. Fourth, the reformation of the prisoner. The object of the criminal code, the gallows, the jail, and penitentiaries, was not for the benefit of criminals, but for the benefit of

society. You, then, gentlemen of the jury, being the duly authorized agents of the civil magistrate for the enforcement of the law, are the ministers of God, divinely commissioned by Him to avenge this wrong done society, and to execute wrath upon the evil-doer. If, then, through timidity, or want of moral courage, or morbid sensibility, or an affected sentimentality—pardon me for these words—you are false to the teachings of religion, you are unfit for your present high, solemn, and sacred trust. You must not suppose, gentlemen, that I think it necessary to apply such harsh words to you. I am expressing my general views on this important subject.

I am aware that there are certain modern philanthropists who, in a spirit of mental amiability, maintain the doctrine that murderers should go unwhipt of full justice, or that some milder punishment should be substituted in the place of the death penalty. But they, in a spirit of wicked presumption, assume to be wiser than the Ruler of the universe and more merciful than the God of all mercies. Jails and penitentiaries were not intended to be boarding-houses for the instruction of criminals. The Bible contains the best code of laws that was ever promulgated for the government of man; and whenever statesmen depart from its teachings, they run either into despotism on the one hand or anarchy on the other.

But while the Bible enjoins submission to the authority of the civil ruler on the one hand, it forbids despotism on the part of the civil magistrate on the other. It says that he shall be a minister for good to him who doeth well. Whilst it enjoins submission as a duty on the part of the citizen, that injunction is not inconsistent with the right of revolution when a proper case is presented, but only upon the great principle of self-preservation, and then by fair and honorable means; never by murder and assassination. And while the Bible forbids private vengeance, it permits the citizen to protect himself from injury and insult by appealing to the civil magistrate in the proper manner. And while the Bible enjoins submission to law as a duty, it teaches that disobedience is sometimes a duty—when the ruler commands what is morally wrong, what is opposed to the Divine law, the principle being that we should obey God rather than man. This does not mean or necessarily imply permission to resist the law, but to disregard it and take the consequences. Daniel disobeyed the command of King Nebuchadnezzar, and then took the consequences, going to the lion’s den; but God was there to protect him. The three Hebrew children, Shadrach, Meshach, and Abednego, disobeyed the order of King Nebuchadnezzar, but took the consequences and quietly entered the furnace heated seven times, and the Son of God was there to save them from harm. The apostles preached the cause of their blessed master, their crucified but risen Redeemer, in direct opposition to the command of the civil magistrate, but took the consequences; for when the officers came to arrest them they made no resistance. The early Christians adhered to their religion in the midst of persecution, but took the consequences, marching with calm and heroic courage to the stake of martyrdom. Our Saviour paid tribute to Tiberius Caesar, although a dark, cruel, and bloody tyrant, and notwithstanding there was some doubt as to his right to the throne. Claudius had been poisoned, Caligula had died a violent death, and Nero was a monster of crime and cruelty. Government is an institution of God. Hobbes, the eccentric philosopher, says that a state of nature is a perpetual warfare; therefore reason suggests the necessity of civil government. Paley maintains that government is the result of compact; but the Bible says that government is the appointment of God. God having appointed this Government, you being his ministers upon earth, if this man has committed the crime of murder, God declares that it is your duty, as His minister, to execute wrath upon his head. It is not your act. Fain would you have avoided this

solemn and painful duty. God, in his providence, has placed you in this position; you are his ministers. If you believe the crime has been committed by the prisoner at the bar, and you should in a spirit of mawkish sentimentality refuse to execute the law, you assume to be more merciful than the God of all mercies.

Now, gentlemen of the jury, have you any doubt in regard to the guilt of the prisoner? Men of Washington, you feel this high and solemn duty. Do you not know that this conspiracy existed and that he was a member of it, and acted a part? Do you not know that in pursuance of the conspiracy this murder was committed? Oh! it was a cruel, cruel blow that stilled that kind and gentle heart. I now ask you, have you a doubt? What is the meaning of "doubt?" Pardon me for addressing you on this topic, because it is a question which is frequently misunderstood by jurors. I have said, and I repeat, that the question submitted to the jury is not whether the prisoner at the bar is possibly innocent, not whether he is proved to be guilty to a demonstration—though I surely think he is, if guilt can be capable of demonstration—but the question is, are all the probabilities in favor of that conclusion? Do all the material facts and circumstances point to his guilt? If so, he is proved guilty with that degree of certainty and accuracy which rises "proof beyond a reasonable doubt" in legal contemplation. In order, gentlemen, that the principle may be clearly illustrated to you, I ask my colleague to read to you the very first section of Greenleaf on Evidence, a work of undoubted authority, one of the horn-books of the profession, to which the attention of the young lawyer, perhaps next to Blackstone's Commentaries, is first directed.

Mr. PIERREPONT:

"The word *evidence*, in legal acceptance, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. This term and the word *proof* are often used indifferently, as synonymous with each other; but the latter is applied by the most accurate logicians to the effect of evidence, and not to the medium by which truth is established. None but mathematical truth is susceptible of that high degree of evidence called *demonstration*, which excludes all possibility of error, and which, therefore, may reasonably be required in support of every mathematical deduction. Matters of fact are proved by moral evidence alone, by which is meant not only that kind of evidence which is employed on subjects connected with moral conduct, but all the evidence which is not obtained either from intuition or from demonstration. In the ordinary affairs of life we do not require demonstrative evidence, because it is not consistent with the nature of the subject, and to insist upon it would be unreasonable and absurd. The most that can be affirmed of such things is, that there is no reasonable doubt concerning them. The true question, therefore, in trials of fact, is not whether it is possible that the testimony may be false, but whether there is sufficient probability of its truth; that is, whether the facts are shown by competent and satisfactory evidence. Things established by competent and satisfactory evidence are said to be proved."

The note to this section refers to Gambier's Guide to the Study of Moral Evidence, and says:

"Even of mathematical truths, this writer justly remarks, that though capable of demonstration, they are admitted by most men solely on the moral evidence of general notoriety. For most men are neither able themselves to understand mathematical demonstrations, nor have they ordinarily for their truth the testimony of those who do understand them; but, finding them generally believed in the world, they also believe them. Their belief is afterwards confirmed by experience, for whenever there is occasion to apply them they are found to lead to just conclusions."

Mr. CARRINGTON. I beg leave also in this connection to refer you to the opinion of Chief Justice Shaw, a jurist of eminent ability, in his charge to the jury in the celebrated case of Professor Webster, who was indicted for the murder of Dr. Parkman. I read from page 287 of the Webster trial:

"Now, then, gentlemen, what is reasonable doubt? It is not possible doubt, only because everything is doubtful. It is that doubt which, after the entire consideration of all the evidence has been taken, leaves the jury uncertain. It is not a mere probability, arising from the doctrine of chances, that it is more likely to be so than otherwise; but a reasonable moral certainty—that is, a certainty that weighs upon the mind, weighs upon the understanding, satisfies the reason and judgment, that, without leaving any other hypothesis, the facts are such as to implicate the defendant, and not to implicate anybody else."

I should like, if I could refer to the case, to present you a document in which the doctrine as to reasonable

doubt was discussed by the learned judge who presides in this court. I put it in my note-book and meant to bring it here. In it the doctrine is discussed and ably and properly presented.

This principle is further illustrated by the learned author to whom I have referred by the anecdote of the King of Siam. When an ambassador called to see him, he stated that in his country the water sometimes became so hard that it would bear a man. The good king said, "Well, up to this time I had considered you an honest man; but now you have told such a falsehood that I cannot trust you again, for it is a thing I never saw, and none of my courtiers and none of my people ever saw such a thing before, and I won't believe it."

You will observe, gentlemen of the jury, that a reasonable doubt does not mean a speculative doubt. The question is not whether, notwithstanding all the evidence, the prisoner may be innocent. All that the law requires is that there should be a moral certainty. In the language of Mr. Greenleaf, "the transactions of life are not capable of mathematical demonstration." I must produce evidence sufficient to satisfy the judgment and conscience of a reasonable man. If you are so satisfied that you would act upon it in the matter of the highest personal concern, that is sufficient. If your own interests were at stake, could you say that this man was innocent? No, no. If there is faith in human testimony, his guilt has been proved beyond all rational and reasonable doubt. There is no difficulty on that subject; and I now invoke—although it is not formally submitted in my list of prayers—an instruction from the court upon that point; for, in my opinion, it is always the duty of the judge to instruct the jury upon the doctrine of reasonable doubt, as there is nothing about which there is greater misapprehension. Why, gentlemen, if you acted upon such a principle as that, there would be no such thing as securing the punishment of criminals. It is a favorite theme for declamation by eloquent counsel for the prisoner. You hear them talk about "reasonable doubt," and the jury are often, in the kindness of their hearts and the tenderness of their natures, carried away by it. They cannot bear the idea of shedding blood, forgetting that they are the ministers of God, and that it is not their act; but, feeling that there is some reasonable responsibility resting upon them, they seize hold of this thing called "reasonable doubt," and too often act upon it. But, gentlemen, will you pardon me for saying that that is very wicked, unless such a doubt exists as is recognized by the laws of the land? I then ask, do not all the material circumstances of this case point, as I have heard it said, "with fearful and unerring certainty to the guilt of the prisoner at the bar?" There is no such thing as mathematical demonstration in the ordinary transactions of life. The law says that even a mathematical problem, strictly speaking, is incapable of demonstration; and all of us who have studied Legendre's Descriptive Geometry know that the notion that mathematical propositions are capable of demonstration is more an idea than a truism. As I heard it strongly said the other day, the evidence in this case is enough to hang a whole regiment of Zouaves. If there is faith in human testimony, and you look through the medium of the evidence, you see this man's guilt as plainly as I see the hand which I now hold up before my eyes. There is no escape from it, except by discrediting nearly all the witnesses; and there is not relevant and sufficient ground for that.

Now, if your honor please, I will proceed briefly to review the defense, and then, with a few further remarks, I propose to leave the case with the jury, so far as I am concerned. If your honor is disposed to take a recess to-day, I suppose you may as well do it now.

Mr. PIERREPONT. I will state, that it is probable there will be abundance of time to-day, not only for my friend to conclude, but for me briefly to present all the legal views on which we wish to rely, and which

the other side are entitled to before they begin. They will be very brief. The learned district attorney has been over the ground so fully that I shall say very little on the subject of the law, and only present the authorities.

The court took a recess for half an hour, re-assembling at 1.25.

Mr. CARRINGTON. If your honor please, gentlemen of the jury, there are theories and questions which I might discuss, but which I will not now detain you to do, particularly as I am to be succeeded by a very able gentleman who will supply any deficiencies in my argument. I doubt whether it is entirely fair and professional in me to anticipate the defense, except so far as it was shadowed forth by the gentleman who opened the case on the part of the prisoner, and who, as I understood his argument, submitted five propositions. Do not be alarmed gentlemen; I do not intend to discuss them. I have already done so to a great extent. He first made an attack upon our witnesses. This I have already answered, and I hope successfully. He next appealed to your sympathies, I will not say your prejudices, by referring to the mother of the prisoner as a murdered woman. This I have also answered, and I hope successfully. In the third place he expressed a sentiment, which, I submit, with entire kindness and respect to the learned counsel, was quite inconsistent with the dignity of the occasion, and with the character of an honorable man whose fate we all deplore—the victim of this cruel and bloody conspiracy. To this I have, I think, already sufficiently alluded in the course of my remarks.

Mr. BRADLEY. To what do you allude?

Mr. CARRINGTON. I allude to the remark, that it was no worse in the eye of God to kill Mr. Lincoln than any vagabond in the streets. I do not know that I state it exactly, but I do substantially.

Mr. BRADLEY. I understood the principle stated to be, that God was no respecter of persons. I have been taught so.

Mr. CARRINGTON. I am not disposed to quarrel with the gentleman about that. It is my duty to submit the question, gentlemen of the jury, and you are to consider it.

The fourth proposition was, that it was practically, physically impossible for the prisoner to make his way here by the 14th of April, and I suppose physically impossible for him to make his escape in view of the obstructions in the roads at that point of time between the city of Washington and the city of Montreal. The fifth proposition is an *alibi*, that he was at some other place—the city of Elmira—where they have attempted to show he was on the 14th of April, 1865, when this alleged murder, charged in the indictment, was committed.

I propose briefly to discuss the last two propositions. You have only, gentlemen of the jury, to run your eye over this map to see that the direct route from the city of Washington to Montreal is by New York, Albany, Burlington, St. Albans, and Rouse's Point. And if from the evidence you have heard you will estimate the time it would take a man to travel through by these points from Washington to Montreal, in connection with the evidence in reference to the detentions which must necessarily have occurred between the 15th, when he started from the city of Washington, and the 18th, when he arrived in Montreal, you will find that he is placed precisely on the 18th of April where Blinn, Chapin, William Conger, Albert Sowles, and Edward Sowles all place him, and where Hobart recognized two persons under the circumstances which he states, showing that it was the prisoner at the bar fleeing for his life from the United States to the province of Canada. The idea that he could have gone to the city of Canandaigua, you will see by casting your eye over this map, is, for three reasons, perfectly unreasonable. If he had been in Canandaigua, escaping for his life, he would

have gone directly to the lakes, taken an English steamer, and escaped to Toronto, where he would have been, as he supposed, beyond the reach of the American authorities. He would not have taken that circuitous route to Montreal.

First, then, the route which we prove he did take is the most expeditious and natural route; secondly, if he had been in Canandaigua, he would have crossed immediately to Toronto and not to Montreal; and, thirdly, if he was in Canandaigua on the 15th, it was utterly impossible, or at least improbable, that he should have been in Burlington and St. Albans on the 18th of April, 1865. No, gentlemen, the witnesses to whom I have referred, and that silent dumb witness the handkerchief, bearing the name of John H. Surratt, all confirm the fact that he took the direct route from Washington to Montreal, where he was concealed by Father Boucher, of whom I shall say nothing, for he is a minister of God. You must pass upon his conduct yourselves; but the law says, that he who knowingly harbors a murderer is an accessory after the fact.

I now come to the only remaining point in the defense: Was he in the city of Elmira on the 14th of April? To this I have two answers; first, if he was there, it is immaterial; he is still guilty, according to my view of the law. That is a question for his honor to decide, and I shall acquiesce in his decision, whatever it may be. Secondly, in point of fact, he was not there on the 14th of April, 1865. This is a mixed question of law and of fact. Fortunately for you, gentlemen of the jury, the entire responsibility of deciding that question does not rest upon you; fortunately for his honor, the entire responsibility of deciding that question does not rest upon him; but it is a divided duty you are called upon to discharge. First, then, permit me briefly, with all modesty and respect, to render some assistance to his honor. An *alibi* is an affirmative defense. As has been suggested to me, I have already argued that proposition successfully before his honor; I have his decision, and he is estopped now from denying it. The burden of proof is upon the prisoner. Having proved him a conspirator; having traced him here; having shown him in this city, and having traced him to Montreal; relying upon an *alibi*, they must prove it, some judges say, beyond a reasonable doubt, but I think with the same degree of accuracy and certainty with which the Government is required to establish a *prima facie* case of guilt. Certainly they must establish this affirmative defense by a preponderance of evidence. Let me refer you to an authority. I refer your honor to the Webster Trial, p. 286, where that learned jurist Chief Justice Shaw gives a very accurate and philosophical definition of the term "*alibi*."

"The next rule to which I ask your attention is, that all the facts must be consistent. What has happened may happen again; what is impossible could not have happened, and, therefore, the facts must be consistent with each other. Considering them to be the facts upon which the conclusion depends, if any one fact is wholly inconsistent with the hypothesis of guilt, it of course breaks that chain of circumstantial evidence, and puts an end to the case. Of this character, gentlemen, is an *alibi*. And what is an *alibi*? A man is charged with crime. He says I was elsewhere—*alibi*, the Latin word for elsewhere. Well, if that be true, that cannot be consistent with the fact of his being there at that time. At precisely eight o'clock, on a given evening, he is proved to be in one place; therefore he cannot be in another place at precisely the same hour. That has been the source of a vast deal of contrariety, because an *alibi* is easily suggested. With a little contrivance, and a little arrangement of proof, a person may seem to have been in one place, when he was in another. If the *alibi* is proved, then it is a certain conclusion, because a person cannot be in two places at the same time. Therefore, showing him to be in one, shows him not to be in the other. But whenever such proof is attempted, there must be the most rigid and strict inquiry whether the fact is proved to the satisfaction of the jury; and false testimony in the attempting to prove that a man was in another place from his real one is open to all the various suggestions of contrivance, such as the appearance of sudden riding from one place to the other, and various other modes of that description."

Now, I recall your honor's special attention to page 291. I ask my colleague to read what I have there marked.

Mr. PIERREPONT. Your honor will remember that in the Webster case a large number of respectable

witnesses—as respectable and as honest people as were living in Boston—swore to an *alibi*.

Mr. CARRINGTON. More numerous than in this case; and yet he was found guilty.

Mr. BRADLEY. That does not affect the law of the case.

Mr. PIERREPONT. Chief Justice Shaw says, page 291:

“There are two circumstances which apply to proof of *alibi*. In the first place, there is the uncertainty which applies to the fact, not to say any thing about an intentional misleading, but a witness is always liable to be mistaken. Then, in order to establish the fact, it must be proved beyond a reasonable doubt that the party was seen at the precise time and place where he is alleged to have been seen by the witness. And that is the difficulty with regard to proof of *alibi*. There is always room for the difference of time to be explained, owing to the difference of time-pieces, which sometimes vary from five to ten minutes.”

Mr. CARRINGTON. Let me repeat, “in order to establish the fact, it must be proved beyond a reasonable doubt.” Chief Justice Shaw enunciates the principle in this most important trial, which attracted more attention than any other in the United States since the trial of Aaron Burr, that where the prisoner relied upon an *alibi* he must prove it beyond a reasonable doubt. I do not care to go as far as that, though I think your honor has gone that far. I say that he should at least prove it by a preponderance of evidence. I appeal to a decision given by your honor, in which you declared that, being an affirmative defense, it must be proved, if not beyond a reasonable doubt, at least by a preponderance of evidence; and that decision is conformable to all the analogies of law, and to the rulings of this court in similar cases. I refer your honor to the case of *The United States vs. Foley*, tried in this court when Robert Ould was the United States attorney, and his honor Judge Merrick, the brother of my distinguished friend who represents the prisoner, was upon the bench. The defense of insanity was set up, and Judge Merrick decided that the burden of proof was upon the prisoner to establish that defense beyond a reasonable doubt, or at least by a preponderance of evidence. There was an appeal from his decision to the circuit court, and his decision was unanimously confirmed by your venerable predecessors in office, Judges Dunlop, Morsell, and Merrick. In the case of *The United States vs. Mary Harris*, which attracted considerable attention at the time, in which the defendant was represented by very able counsel, I invoked the same instruction from Judge Wylie, referring to the same decision of this court, and the records will show that that learned judge upon that occasion enunciated the same principle—the principle being, that sanity being the normal condition of the human mind, the *prima facie* case is that the prisoner was sane, and the burden of proving insanity is shifted to the prisoner, and he must show it at least by a preponderance of the evidence. I could refer to decisions in the American Leading Cases, but I think it unnecessary; for you will be governed by the rule *stare decisis*, and stand by the decisions of this court. If the principle is not precisely the same, it is analogous; for in this case, having established a *prima facie* case against the prisoner, it shifts the burden of proof, and he must at least establish the *alibi* by a preponderance of the evidence. I invoke that instruction from your honor to the jury.

Now, gentlemen, apply that principle to the facts of this case. Five witnesses are introduced to prove an *alibi*. As I have said, I do not intend to charge any of them with perjury. It is not right that I should, unless I am very clear on the subject. Charity is the bond of perfectness; it unites all the other Christian graces in one beautiful harmonious whole. The rule of law is, that where there is a conflict of evidence you should reconcile the conflicting statements of witnesses with truth, if you possibly can. It is a rule of law which owes its origin to the benignant spirit of the Christian religion, which is the fountain whence all our justice flows. Now, then, the burden of proof is on them. We prove the presence of the prisoner in

Washington by thirteen witnesses; they prove his presence in Elmira by five; all honest, all truthful, or, if you please, some dishonest on both sides. The weight of evidence is on our side. If, then, the burden of proof be on them, they fail to prove the *alibi*, and this jury cannot, without violating the law, decide otherwise by their verdict. But, gentlemen, two of these witnesses, Stewart and Atkinson, do not pretend to say he was in Elmira on the 14th of April. Their testimony is that it was on the 13th or 14th, they are uncertain which. Only three of their witnesses, Cass, Carroll, and Bissell, swear to his presence in Elmira—three against thirteen; a preponderance of ten witnesses in our favor. If the burden of proof be upon them—and I do not think his honor can decide otherwise—how can you escape the conclusion that by the evidence (and that is what you decide by) the prisoner was on the 14th of April, 1865, in the city of Washington. They have three witnesses. I will put David C. Reed against John Cass. Reed was a tailor in the city of Washington; Cass, a tailor in Elmira; both honest men. It is for you to say which is mistaken. The man who testifies with the majority has the weight of evidence in his favor. Carroll saw him twice, I believe. I place Wood, the barber, against Carroll. Who imputes dishonesty to Wood? He greased him, he rubbed him, he talked with him. Is he mistaken? Both being honest men, which is mistaken? You, gentlemen, must decide. You will decide in favor of that man who is with the majority, if the court tells you that the burden of proof is on the defense to establish their *alibi*. Cass and Carroll never saw him before in their lives; Cass and Carroll saw him when he was disguised. Reed knew the boy and the father; Wood knew Booth personally, and saw the prisoner longer, and under circumstances better calculated to make an indelible impression upon the mind and memory. Judge ye between them. Ah, gentlemen, you cannot escape it if the law be as I have enunciated, and his honor cannot escape it unless he is prepared to ignore the decision of Chief Justice Shaw, than whom, perhaps, no jurist stands higher in the United States of America.

Last comes Dr. Bissell. I intend to say nothing unkind about him. Mr. BRADLEY brought a physician here to sustain his character, and in consequence of a remark made by my colleague he seemed to think we had dealt unjustly by that witness. Mr. BRADLEY shakes his head. I do not intend to do injustice to him, but I say that if a physician should come here and tell me that he had held a consultation with the keeper of a lager-beer saloon or an ale-house, I would not let him practice upon my pointer dog, if I had one. Suppose, for instance, I should call Dr. Howard to visit my sick child—with his mild, gentle face leaning over the bedside of him who is so dear to me. He says, with the candor of a Christian physician—and all physicians should be candid under such circumstances—“Mr. CARRINGTON, your child is very sick; I desire to hold a consultation.” With the tears in my eyes, with my heart in my mouth, I say, “Do it, of course; who do you desire?” “I would like to have old Colonel Gerhardt, who keeps the lager-beer saloon.” Dr. Bissell, by his own confession, ran a double machine, sold the liquor or bad ale to his patients, and then cured them. I would rather have Gil Blas and old Dr. Sangrado in a consultation over a sick child. It was a happy hit, and I do not think my friend should have taken it unkindly when Judge PIERREPONT asked if the patient could survive such a consultation. It was a piece of wit that would have done credit to John Philpot Curran, and I do not think my friend will, on reflection, take offense at it. This witness may be an honest man, but I would not like to trust him as a doctor, nor would I like to trust him to sustain the reputation of a person with whom he was so closely allied as Dr. Bissell, however honestly he might speak; for when physicians and lawyers practice together they learn to love each other,

and do not see their mutual faults. But, gentlemen, I place lawyer Vanderpoel by the side of Bissell. There is a Roland for your Oliver. Whom will you believe? The lawyer? I do not say that they are more worthy of belief than any other class of individuals. But who is unimpeached? Is it the doctor, who kept an ale-house and invented an article, and invented an improvement in a very useful article of domestic economy? Then there are three against three; ours are better—just as good, at any rate, and we have ten behind. They bring up three men; I send forward three champions to meet them. They die together. I have got a regiment of ten behind, and victory perches upon my banner. You cannot escape it, gentlemen of the jury; the weight of evidence is in our favor upon that point, and being so, according to a principle of the law which I have invoked, they have failed to establish their defense with that degree of certainty and accuracy which the law requires.

Gentlemen of the jury, I have endeavored to give you my own views. I regret that I have not conferred more fully with my associates; it might have been better, or it might not. I have not had an opportunity to converse with them more fully. At all events, I hope I have expressed their views. I have referred to some authorities. I have occasionally had opportunities to talk with others who are interested in this matter, who have given me suggestions which I have endeavored to extend and elaborate. I have referred to legal authorities and to the written declarations of others, which I thought might tend to illustrate the principles discussed and to impress them upon your minds, your imaginations, and your memories, sometimes giving credit to the authors from whom I borrowed, and at other times omitting to do so, as I now propose to do in the few remaining observations which I shall submit for your consideration.

I was very glad, gentlemen of the jury, that the learned gentleman who opened this case for the prisoner manifested an inclination to resent the imputation which we have often heard upon the loyalty of our fellow-citizens in the District of Columbia. Here, though we differ in most points in this case, we stand on common ground. When secession first raised its horrid head at the South, and it was threatened that the President of the United States could not be safely inaugurated in the city of Washington, the citizens of the metropolis indignantly resented it as an insult to them, and, under a military organization equipped by your own fellow-citizens, aided by a small band of regulars under the command of General Winfield Scott, Abraham Lincoln was safely inaugurated, as his predecessors were, on the eastern portico of the Capitol. When rebellion assumed the fearful form of revolution, and the President of the United States called for seventy-five thousand men, the very first to respond to their country's call were the Union volunteers of the District of Columbia. When it became our painful duty to invade the "sacred soil," with bleeding hearts, the first men who passed beyond the District line were the Union volunteers of the District of Columbia. The great orator, patriot, philologist, and Christian gentleman, Edward Everett, declared that Massachusetts enjoyed the melancholy pleasure of having offered the first blood to the Moloch of war—first to create and then to perpetuate this glorious Union. I would not pluck one laurel from the wreath that entwines the brow of the Old Bay State. It may be so; but the first blood that was shed in this cruel civil war upon the enemy's soil, when brothers had assumed the attitude of belligerents, was the blood of a Washingtonian, a Union volunteer from the District of Columbia. The District of Columbia raised, in proportion to its population, more Union troops than any State in this Republic. After the battle of Bull Run—I may mention this—my friend the senior counsel for the prisoner

and myself, in company, holding then commissions, went up and offered our services to aid in protecting this city from invasion. When the national legislature thought proper to pass a law requiring every juror to take a certain oath of loyalty to the Constitution and the Union, not one man ever hesitated, except, perhaps, in a single instance, to subscribe to this iron-clad and terrible oath, under which you, gentlemen of the jury, act to-day. True to your country in time of war, be true to her in time of peace; for the triumphs of peace far transcend in honor and importance the triumphs of war. The soldier who in time of war nobly exposes his own life and sheds his brother's blood in his country's cause does well; but the Christian man, judge, and juror, who himself submits from principle to the law, executes it, and enforces obedience to it, gives an exhibition of moral courage infinitely beyond any demonstration of courage ever made upon the bloody field of battle.

There was a gentleman in my house from the Pacific coast not long ago, who in the course of conversation spoke very enthusiastically in reference to the great and growing resources of that section of the country. As he was leaving me he said, "Come and see me. I wish to talk further with you on this subject. It will stimulate you in your speech," or words to that effect, alluding to this very case; "for it will show you we have got a country worth taking care of." It did not fail to make its impression upon me. He was right, gentlemen. We have a country worth taking care of. Behold it, stretching its long and strong arms from the regions of eternal snow to a land of perpetual spring and flowers, washed upon one side by the proud waves of the Atlantic and on the other by the mild waters of the Pacific, her noble mountains rearing their lofty heads to the heavens, piercing the storm-clouds, and filled with inexhaustible mines of mineral ore; her valleys teeming with beauty and verdure; her inland seas and noble rivers, upon whose bosoms the wealth of the world may be borne; her beautiful harbors, where it is said the navies of the world might ride with ease and safety; rich in all that the human heart could conceive or desire; oh! it has been truly said by America's greatest orator, "It is a land upon which a gracious Providence has emptied the horn of abundance, that peace, contentment, and plenty should sit smiling at every door." I may not give his precise words, but it was the sentiment he invoked.

Now, let me ask you, gentlemen, what is this country worth if its highest officers are to be at the mercy of the assassin's dagger? What is this country worth if the representative of the nation, elected by one party, cannot be protected anywhere upon this western hemisphere, where this crime has been committed? It has been said that this Union was baptized in blood, the blood of our fathers; it has been preserved in blood, the blood of their children. But what is this Union worth if your sons fight for its preservation and you fail by the execution of its laws to restrain and punish its enemies? I charge you by the solemn memories of the past, by the glorious hopes of the future, by the manes of the honored dead who have fallen in the service of the republic, vindicate the majesty of the law, maintain the integrity and purity of the judicial ermine, and wipe this deep and damning stain from the escutcheon of your country. I repeat, we must be cruel in order to be kind; we must punish the guilty to protect the innocent. Stern, inflexible justice is true mercy; justice to the guilty is mercy to the innocent. I charge you, then, gentlemen of the jury, assign to the prisoner at the bar, the blood-stained and guilty prisoner at the bar, that punishment which he deserves by the laws of God and man, for the great crime which he has committed in the face of heaven and of earth. He is a murderer, and deserves a murderer's doom.

Mr. PIERREPONT. I will occupy your honor but a few minutes in presenting what of legal view we have yet unexpressed. I read to your honor on the subject of *alibi*, in addition to what we have already read, from Wills on Circumstantial Evidence, a book of excellent test, and most fertile in its citation of authorities. I find it convenient to cite from the Law Library, vol. 41, page 51 of the volume; the marginal paging is 115:

"An unsuccessful attempt to establish an *alibi* is always a circumstance of great weight against a prisoner, because the resort to that kind of defense implies an admission of the truth and relevancy of the facts alleged, and the correctness of the inference drawn from them; and where the defense of *alibi* fails it is generally on the ground that the witnesses are disbelieved and the story considered to be a fabrication. \* \* \* It is not an uncommon artifice to endeavor to give coherence and effect to a fabricated defense of *alibi*, by assigning the events of another day to that on which the offense was committed, so that the events being true in themselves are necessarily consistent with each other, and false only as they are applied to the day in question. A learned writer reports a case where a gentleman was robbed, and swore positively to the prisoner, but, nevertheless, the completest *alibi* was proved. The witnesses, examined separately, all spoke to the same minute circumstances transpiring whilst the prisoner was in their company on the day and hour of the robbery, and in particular that a church bell for funerals was tolling, which, in fact, tolled almost every day at that particular hour when the robbery was committed. The prisoner was acquitted. A year afterwards the gentleman, seeing the prisoner in a little shop, went to him and gave him his word that, as now all danger was over, if he would tell him the truth no injury should happen to him, but the contrary. The man said, 'I did rob you; the *alibi* was concerted. I knew it was false, and when the jury turned round to consider the verdict, I felt a shuddering within me unlike any thing I had ever felt or believed I could feel.'"

I read further from page 53 (side paging 120.) After speaking on which side mercy always went, he says:

"And on the other hand, how much more easy it is to get up a false story of *alibi*, where the whole to be proved is the presence of the prisoner at a particular place at a particular time, than a false account of all minute particulars relating to so many different matters, which is necessarily implied in the proof of a false charge against the prisoner."

I read further from page 71 (side paging 168:)

"Of all kinds of exculpatory defense, that of an *alibi*, if clearly established by unsuspected testimony, is the most satisfactory and conclusive, since it excludes the possibility of the truth of the accusation. A defense of this nature is often entertained with distinct suspicion, because it is easily concocted, and frequently resorted to falsely. It is essential to the establishment of an *alibi* that it should cover the whole of the time of the transaction to which it relates, so as to render it impossible that the prisoner could have committed the act; it is not sufficient that it renders his guilt improbable."

I next read on this same subject from Alison's Practice of the Criminal Law of Scotland, page 624:

"The defense of *alibi* is of all others the most decisive when duly substantiated; but the evidence adduced in support of it requires to be minutely considered, and the plea is not to be sustained unless the circumstances were such as to render it impossible that the crime could have been committed. One of the most ordinary pleas resorted to by a panel is that of *alibi*; and, doubtless, when duly qualified and fully proved, it is among the most effectual of any; but it requires to be carefully scrutinized, both as to the sufficiency of the evidence and the inference to be drawn from the facts if fully proved, because the plea is not conclusive unless the *alibi* is circumstanced and qualified in such a manner as makes it not only unlikely, but impossible that the panel could have done the deed at the time and place libeled."

The phrase "panel" is used in Scotland instead of "defendant."

"because the proof of *alibi* is in most cases a direct impeachment of the veracity of the prosecutor's witnesses, which is not to be admitted on light grounds; and because it is a plea of that short and simple sort with respect to which the panel's witnesses can very well contrive a uniform and false story."

Again, page 626:

"In the next place, it is essential that the plea of *alibi* shall be adequately proved. In judging of this matter the court and the jury have chiefly to consider the character of the witnesses who speak to the fact, the manner in which they give their evidence, and the comparative weight due to them and the witnesses for the prosecution. It is frequently no easy matter, even by the most skillful examination, to detect the falsehood of an *alibi*. By making the witnesses speak to the events which really took place on a particular day, and merely applying them to the day libeled, they are sometimes able to present a story to the jury which hangs together remarkably well in all its parts, and wears all the air of truth, because the events described are true in themselves, in relation to each other, and only false when applied to the particular day. The only way in

which it is possible to expose an artfully got-up imposture of this description is by a minute and rapid cross-examination of the witnesses applied to the circumstances previously detailed in evidence by the witnesses for the prosecution, in order to detect falsehood in some inconsiderable and not previously considered particular."

I shall have occasion, when I come to these witnesses, to comment on the law here laid down.

"Frequently the trick may be exposed by asking the *alibi* witnesses, after they have fully and minutely narrated the events of the day libeled, to give an equally detailed account of the preceding and succeeding days."

I shall have occasion to speak of Dr. Bissell in this connection before I am through with him.

"And their total inability to do that shows that, with reference to that particular day, they must have been practised upon. Of course the weight due to their testimony is increased if they can point out some particular circumstance, as by an examination before the magistrate a few days after in relation to the matter libeled, or by hearing that the accused was apprehended upon the charge, and being thus led to turn what they knew in it over in their own minds, which led to its being fixed in their memory."

I now read from page 627:

"But after all the jury are frequently reduced to the difficult and painful duty of weighing the testimony on the one side against that on the other; and, in doing so, it is their duty on the one hand to recollect that the presumption of law, as well as of justice, is against the prosecutor; and, therefore, if the evidence on both sides is equal, or nearly so, they should incline to the side of mercy; and on the other, how much more easy it is to get up a false story of *alibi*, where the whole to be proved is the presence of the prisoner at a particular place at a particular time, than a false account of all the minute particulars relating to so many different matters which is necessarily implied in the proof of a false charge against a prisoner."

If your honor please, in relation to the other points of law, my learned friend has discussed them so fully and so ably that I do not propose to occupy the time of the court or the jury now; I simply propose to read the points as I have written them down, and refer the counsel on the other side to the pages of the authorities, without spending the time necessary to read them. They will have the fullest opportunity, therefore, for the examination, even without my reading. In my judgment, this case, although very long, is like every other long case that I ever saw. It will be found, when the rubbish is taken out of it, and it comes to be sifted, to resolve itself into a few of the most simple propositions, commending themselves to the common sense of men, and not requiring any very minute discussion of legal principles to arrive at a just conclusion. Now, what is the real question before this jury? I apprehend it to be nothing more than this: Was the prisoner engaged in, and aiding and abetting the conspiracy which resulted in the killing of Abraham Lincoln? In my judgment, this covers the entire case. If this prisoner was engaged in the conspiracy, aiding and abetting, which resulted in the killing of Abraham Lincoln, he is guilty, and there is no mode of getting rid of it. No one will dispute that the conspiracy is established; I think that will not be debated. The conspiracy then being established, the rule of law is:

First. That each confederate in the conspiracy is liable for the acts of every co-conspirator, and the declaration of each may be given in evidence against every other. And though the conspiracy may have been formed years before the prisoner ever heard of it, yet, having subsequently joined in the conspiracy, he is in all respects guilty as an original conspirator. I shall refer to authorities presently; many of them have already been read.

Second. That when several persons are finally confederated in a conspiracy, they are like one body; and the act of each hand, the utterance of each tongue, and the conception and purpose of each heart, touching the common plan, is the act of each and all; and every one of the several persons forming the confederate body is responsible for the acts, sayings, and doings of each and of all the others, and each is the agent of every other.

Third. That a conspiracy to kidnap, abduct, or mur-

der the President of the United States, in time of rebellion or other great national peril, is a crime of such heinousness as to admit of no accessories, but such as to render all the conspirators, their supporters, aiders, and abettors, principals in the crime. Such is the common law of England, and such is the law of this country. I have a word to say upon this proposition. This is the first time in the history of our country where an opportunity ever has occurred to announce this great legal truth. It has occurred in France; it has occurred in England; but it never occurred in the history of our country before. My learned friends on the other side have tried all through this case to lay aside every consideration, both moral and legal, touching this great question of an attempt to overthrow the Government by the murder of its head. They cannot escape it; and your honor cannot escape it; and the country will call upon you and ask you not to escape it; and they will hold you responsible if you dare attempt to escape it. It is the first time, I say, that this great law doctrine has ever been brought before a court in the United States. It has been in England. It is the law; and it comes to your honor for the first time to announce this law. No other President has been murdered by a conspiracy to assassinate the head of the Government, for the purpose of destroying the Government, and any man or any judge who will treat this as a simple, ordinary crime, having no other qualities in it than those of a common murder, for the purpose of stealing a sum of money from a man's closet, do not understand the principles of law which should govern nations or the laws which bear on governments. They do not understand the law which my learned friend read from that holy Book, if they suppose that the cases are precisely alike. I will refer presently to the authorities upon this point, as upon each point.

Fourth. That such conspiracy, either to abduct or to kill the President, and thus to overthrow the Government and promote anarchy in the nation, is a crime of such a nature as to render every supporter of the conspiracy a principal in the crime, and liable for all the consequences of a murder perpetrated by a co-conspirator while carrying out the common design, though no such murder may have been originally intended, and though the accused conspirator had never personally participated therein.

Fifth. That a killing by a co-conspirator, in pursuance of a common plan to abduct, makes each conspirator guilty of the killing, though no such crime was contemplated by the other conspirators. It is shocking to justice, and to every moral sentiment, to hear it uttered in a court of justice that where a man has been engaged in a crime which resulted in murder, if that man did not intend to murder, therefore he is innocent. Such never was the law, thank God. Such, we hope in God, it never will be. Test it, your honor. A set of vile men conspire together for the purpose of the highest kind of crime, in one sense, and in another not so high, to abduct the daughter of one of these jurymen for a vile purpose, and in the course of that abduction and the restraints they place upon her she dies in her agony, and they say, "Oh! my God, we had no idea of killing her." It was the last thing in the world we wanted, to kill the girl; we wanted something else." And then come in my learned friends, and say, "Oh, these young men did not intend to kill her—not a bit of it." They intended something else, but in carrying out their unlawful purpose she died, and they are her murderers. Will any one undertake to say they are not? Will any one undertake to say in law they are not murderers? What doctrine is this, to be brought before a court of justice in the capital of the country? A man says, "I did not intend the precise thing that happened: I intended to violate the law. I intended to commit an infamous crime. I intended to commit a felony; but I never intended these results to follow." The law says, "Thou shalt obey the law, and when you

disobey it you shall take the consequences of that disobedience. If in disobeying the law any one is killed, a murder is committed, and you are the murderer." Such is the law. As I said the other day, a man enters a house in the night-time for the purpose of committing a robbery. He does not want to kill anybody; all he wants is to get some money. His daughter is a servant in the house, and she screaming to give the alarm of the midnight robber, he shoots her dead at his feet. He did not know she was his daughter; he did not mean to kill his daughter. Although a robber, he loved his daughter as dearly as your honor loves your own. Has not he committed a murder, and would not your honor condemn him for murder, and would not the jury say he was guilty? He went there, not to murder his daughter, but to rob Mr. Alexander, and his daughter, a servant in the house, is killed, and her father is the murderer.

Sixth. That the personal presence of the prisoner in Washington is not necessary to his guilt in this case. He could perform his part in the conspiracy as well at Elmira as at Washington, and be equally guilty at one place as at the other. That if he left Montreal in obedience to the order of his co-conspirator, Booth, to aid in the unlawful conspiracy, it matters not whether he arrived in time to bear his allotted part or not. Being on his way to take his part, any accident which may have delayed him does not change his guilt. I will ask my learned friends to meet that proposition when they come to reply, and answer it upon any legal proposition or upon any authority.

Mr. BRADLEY. You have the affirmative; I would like to see your authority for it.

Mr. PIERREPONT. You will, presently.

Seventh. That, in legal contemplation, each conspirator is present where the crime is committed towards which the confederates had conspired, or which was committed as a consequence of the confederated plan, though, in fact, the conspirator on trial may have been absent when the acting conspirators did the deed. I understood my learned friend to argue to your honor the other day, that where a crime was committed by a person out of the jurisdiction, unless done by an unconscious agent, the party doing the act was not guilty. I so understood him; he will correct me if I am wrong.

Mr. BRADLEY. Repeat it if you please.

Mr. PIERREPONT. I understood Mr. MERRICK to say that if the party used an unconscious agent he was guilty; if a conscious agent, that he was not guilty.

Judge FISHER. I may be mistaken about it; but I understood Mr. MERRICK to say in respect to that subject, that in that case the party would not be guilty as principal; but would be as accessory.

Mr. MERRICK. That is what I said—an accessory before the fact.

Mr. PIERREPONT. Well, not guilty as a principal. I submit that he is guilty, under the law and under the authorities as a principal. Now, let us see. There lives in the city of Washington a rich man whose wife has attracted the notice of a fashionable idler in Baltimore, whose humble means match not his haughty mind. He wants more money. He succeeds in fascinating the wife of the rich man in Washington, and they enter into a conspiracy to put the old man in the grave that they may enjoy his money and their unholy love. The man remains in Baltimore; but he prepares the poison and sends it to the wife in Washington, and she with her jeweled hand mixes it with his coffee in the morning and he dies, and they soon are married. Does my friend say that the moment he comes within the jurisdiction of this court he cannot be arrested and the guilty pair tried as conspirators and murderers? If so, he says it against authority, against reason, against principle, against common sense.

Now let us see further. He sends the poison by mail

to the man whom he wishes to murder, and the man takes it without the intervention of the wife, and dies. Is he not, then, guilty as a principal, and the moment he comes within your jurisdiction can you not arrest him and hold him responsible for that murder? Further: he sends it to the wife and the wife mixes it in the cup, and, by mistake, drinks it herself and dies. Has he not committed a murder then, and would you not hold him the moment he reaches your jurisdiction, and have him tried for murder? In the pursuit of his unlawful purpose, if with the poison he killed one he did not intend to kill, he has committed a murder. Further: on a holiday, children are out here on the railroad playing; they are gathered in great numbers—a Sunday School, if you please; and some vile man standing just over the line in Maryland seeing the children there, puts fire into a locomotive standing over the line, and when the steam is up sends it whizzing over the rails and crushes to death the helpless children. Has he not committed a murder within your jurisdiction, and the moment his footsteps are here cannot you convict him of murder when you get him before a jury? It is not necessary he should be here; it is no matter where the man is, so that he commits the crime, and the moment the crime is committed, and he comes within the jurisdiction where the crime was committed, he is to be held. In an authority which I will presently cite, Lord Campbell's decision not many years ago, this doctrine is fully gone into and fully established.

We all know very well that even in lesser crimes than murder this law has been held, and repeatedly held. I refer your honor to 1st Comstock's Reports; the case of *Adams vs. The People*, page 173. This case, which was first reported in 3d Denio, went up to the highest court, and their decision I now hold in my hand. It was argued with great ability against the principle for which I now contend, and which the court there established, by that eminent lawyer Henry Stanbery, now Attorney General of the United States. I remember the argument well; and he remembers it well. A man named Adams, by the aid of a person in the city of New York, committed great frauds there. He lived in Ohio. He never in his life had placed a foot within the jurisdiction of New York. He never saw its soil nor felt its tread, but was born in Ohio. Some years after that, however, he came to New York; was arrested; was indicted; was convicted; and the case went up to the highest court. The indictment was that he was in New York present committing that fraud. Learned lawyers said as earnestly then as now: "Why, Mr. Adams was never in New York; he was born in Ohio and always lived there, and the proof was perfect that he never was out of it." "But," said the law and the authorities cited, "you were present when you committed the crime, and the only difference is we could not touch you in Ohio because you were out of our jurisdiction." So Lord Campbell says, that by the law of England when a crime is perpetrated out of the jurisdiction, through an agent in England whether conscious or unconscious, they cannot touch him out of England, but the moment he comes within their jurisdiction they hold him for the crime which was perpetrated in England.

Judge FISHER. Was that decision of Lord Campbell, of which you speak, made since the passage of 9th George IV, or before?

Mr. PIERREPONT. I will refer to it presently; its exact date I have not in my mind. In this case of Adams, the court held he was just as liable as if he had been in New York. The court were unanimous in their judgment. Not only Judge Gardner, but Judge Bronson, two of the ablest judges that ever sat upon the bench in New York, and as able as any that ever sat upon any other bench, delivered an opinion. I quote from the opinion of Judge Gardner, 1st Comstock, 175:

"It was therefore admitted that a crime had been committed

within this State, and through the instrumentality of the defendant, and the authority of the numerous cases cited establish the position, the actual presence of the offender at the place where the crime was consummated, was not necessary to make him amenable to the law."

Again on page 176:

"The citizen of Massachusetts who should murder an inhabitant of this State by the discharge of a loaded pistol, or by striking with a deadly weapon, across the invisible line which separates the territory of the two States, would transgress a law universally binding, and recognized as such by the citizens of both States."

Again, on page 178:

"The immunity he enjoyed at home from arrest and punishment was not due to him as a criminal, or as a citizen of Ohio, but because he had injured no one whom that State was bound to protect, and because the inviolability of its territory was an essential to its sovereignty and independence. The prisoner knew that through his agent he was defrauding those who were entitled to the protection of our laws, and he cannot be permitted to say that he did not know that it was unlawful to cheat in New York as well as in Ohio."

Judge Bronson, in his opinion, says:

"I am of opinion that it is not a matter of any importance whether the defendant owed allegiance to this State or not. It does not occur to me that there are more than two cases where the question of allegiance can have any thing to do with a criminal prosecution: first, where the accused is charged with a breach of the duty of allegiance, as in cases of treason; and, second, where the Government proposes to punish offenses committed by its own citizens beyond the territorial limits of the State. When the offense, not being treason, is committed within this State, the question of allegiance has nothing to do with the matter.

"It is not necessary to notice the peculiar relation which a citizen of the United States sustains to the other States; for if a subject of the British Crown, while standing on British soil in Canada, should kill a man in this State, by shooting or other means, I entertain no doubt that he would be subject to punishment here whenever our courts could get jurisdiction over his person.

"This leads me to say that it is not necessary to inquire how the criminal can be arrested, or whether he can be arrested in another State at all. If our courts cannot get jurisdiction over his person, of course they cannot try him. But that is no more than happens when a citizen who has committed an offense within the State, escapes and cannot be found."

Mr. BRADLEY. What was the charge there?

Mr. PIERREPONT. Obtaining goods under false pretenses.

Mr. BRADLEY. Felony or misdemeanor?

Mr. PIERREPONT. Felony. I proceed with my propositions.

Eighth. That a co-conspirator performing his part in a conspiracy to abduct or to kill the President in the capital, though not personally present, may be lawfully convicted and punished for the crime whenever brought within the jurisdiction of this District. To that point I have just read this authority.

Ninth. That a conspiracy is proved by facts and circumstances which convince the mind, precisely as any other crime or agreement is proved in a court of justice.

I do not propose to occupy much time further. I will cite the learned counsel on the other side to the authorities. I refer your honor to 1st Russell on Crimes, pages 32 and 39, marginal pages. I refer likewise, under the same head, to 4th Wendell, page 256, in *The People vs. Mather*:

"There is no settled grade of enormity between them [crimes.] He who conceives the mischief and sets the assassin to work is as wicked and deserves as much severity from the law as he that strikes the fatal blow. It is incontrovertible that he who procures a felony to be committed is a felon, and if the felony be a murder, he is a murderer."

Any thing more to the point on that subject, I think, will not be found, and it was delivered by a very able judge. I cite your honor, also, in relation to their all being principals, to 1st Russell on Crimes, page 27; and also to page 30; and also to page 29. And in relation to where parties are conspirators, to show you that each and all are agents for the others, I refer to 2d Starkie's Evidence, page 237. I read from the Philadelphia edition:

"It seems to make no difference as to the admissibility of the act or declaration of a fellow-conspirator against a defendant, whether the former be indicted or not, or tried or not, with the latter, for the making one a co-defendant does not make his acts or declarations evidence against another, any more than they were before; the

principle upon which they are admissible at all is, that the act or declaration of one is that of both united in one common design, a principle which is wholly unaffected by the consideration of their being jointly indicted.

“Neither does it appear to be material what the nature of the indictment is, provided the offense involve a conspiracy. Thus, upon an indictment for murder, if it appeared that others, together with the prisoner, conspired to perpetrate the crime, the act of one done in pursuance of that intention would be evidence against the rest.

“When part of the correspondence between two defendants indicted for a conspiracy to defraud the prosecutor in the sale of an annuity had been read upon the trial, against the party on trial, whose defense was that he had been deceived by the other party, it was held that the whole of the correspondence previous to the consummation of the purchase was admissible, but not the subsequent part.”

I also refer to the case of *The United States vs. Gooding*, in 12 Wheaton; we read it the other day, page 460, and likewise 2 Peters, 353. Both relate to conspirators and the agency of one and the effects of one's acts, doings, &c., on the others. They were cited by my colleague. I refer also to the case of *Barkhamst. J. vs. Parsons*, 3d Connecticut, page 8—the decision of Chief Justice Hosmer—in which the principle is laid down, and will be found not only there, but in many other books. It is this:

“The principle of common law, *qui facit per alium facit per se*, is of universal application, both in criminal and civil cases; and he who does an act in this State by his agent is considered as if he had done it in his own proper person.”

See also 10 Pickering, 498. And this doctrine, that a person absent would be liable like one present, your honor will find laid down in Bishop's Criminal Law, section 81. The case of the trial of Burr was cited the other day; and in relation to all the parties being named in the indictment, I refer to Archbold, page 77, and Hawkins's Pleas of the Crown.

Now, if your honor please, I have stated all I propose now to say; I have referred to these authorities; your honor can easily examine them. The counsel on the other side had a right to know upon what propositions we rely before they were heard; and we have stated them and cited the authorities. If there is any thing clear and well settled in law, it seems to me to be clear that these books, as well as those cited by my learned friend, the District Attorney, sustain the principles for which we contend, and which are applicable to the case on trial.

Mr. BRADLEY. Is that all the law you propose to cite?

Mr. PIERREPONT. That is all.

The court took a recess until to-morrow morning at ten o'clock.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 96. WASHINGTON, TUESDAY, SEPTEMBER 10, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 95.*

### SPEECH TO THE JURY

OF

**RICHARD T. MERRICK, Esq.**

### ARGUMENT FOR THE DEFENCE.

Forty-Fourth Day.

WEDNESDAY, July 31, 1869.

The court re-assembled at ten o'clock a. m.

Mr. MERRICK. May it please your honor: Gentlemen of the Jury: The feelings with which I approach the argument of this case are beyond my power to express. They are new to me in my experience in professional life, as the case in its character, its nature, and the manner of its prosecution, is new to the judicial history of the country. Its magnitude is beyond that of any case of which I have ever known, and its surroundings are peculiar and painful beyond any experience. Under your oaths you have in charge the prisoner at the bar, and it is your duty to pass upon his guilt or innocence. His life is in your hands, and by the social and political organization of the community it is the duty of the Government to pursue, through the forms of law, any who may violate its obligations. The Government, entering upon this cause, and apparently believing that this young man has violated the law in the particular set forth in the indictment, has caused him to be arraigned before this tribunal, and his future destiny to be committed to you. But there is something in this prosecution beyond the mere arraignment by the Government, and beyond the ordinary courses pursued by the governmental power in bringing a criminal to justice. I find arrayed against my client the best talent at the bar, a numerous combination of counsel in court and out of court, and I find certain high officers of the Government temporarily abandoning the duties committed to them in the particular functions which they are to discharge, and devoting themselves to the manipulation of the witnesses to be sworn before this jury. And this combination of legal gentlemen, aided by official personages outside, with motives such as we may see before the case is ended, I find surrounded by a swarm of spies and detectives, scattered all over the country, supported and remunerated from the treasury of a Government with hundreds of millions at its command. And all this machinery to pursue to the gibbet one penniless young man, who rests upon professional charity for the vindication of his name and the defense of his life.

I regret that it will become my painful duty to speak some truths that I would leave unspoken; I regret that it will become my painful duty to inquire into the

motives that are influencing the conduct of men: and I am inclined to believe, gentlemen, that the inquiry which I will make may lead you to the conviction, that whilst we have been talking a great deal of conspiracies to abduct and conspiracies to murder on the part of rebel sympathizers, with a view to the destruction of the national life, that there have been other conspiracies in higher places to commit a murder through the forms of law, and in utter disregard of every principle that should govern a just and honest man. I say I regret that it will become my duty to speak these painful truths; for I desire to say nothing that will pain anybody; but at the same time, in the discharge of professional duty, I shall say what I believe that duty involves the necessity of saying—not, I trust, without the fear of God in my heart, but always, I hope, without the fear of any living man before my eyes.

Why is it that all these appliances and this vast machinery are in this case? Why all this wonderful array of counsel here and elsewhere? What do they represent? They nominally represent the Government; but the course of this prosecution has convinced me, even without evidence outside upon which to found the opinion further than the evidence which has been before your eyes in the conduct and the manner of men, that, although they so nominally represent the interests of society, there are two sets—one that represents the Government of the United States in its assumed offended majesty, and the other that represents certain officers of the United States seeking for their own purposes the shedding of innocent blood.

In a prosecution such as this, conducted against one of its citizens by a government, what should be the course of that government, and what is due to the jury and the prisoner? Whatever there is that can throw light upon the alleged crime should be let into the jury box; all evidence that could go before the human mind calculated to impress it with conviction or modify its opinions should be allowed to come before you. What has been the case with regard to this trial? Wherever any technical rule of law could by any constraint whatever exclude a piece of testimony calculated to enlighten your judgment, it has been invoked to exclude that testimony, and bent from its uniform application and its generally understood uses to secure, if possible, the conviction of the prisoner, even against the manifest truths of the case. I shall find no fault with his honor on the bench in his rulings, for it would not be becoming in me to express an opinion about the decisions of the court. A member of the bar should be respectful to the tribunal before which he practises to the fullest extent of gentlemanly and professional courtesy, and in the court-room bow with complaisant acquiescence to whatever the judge may say. With that acquiescence I bow; but yet I must say, in justice to myself, that nothing has fallen from his honor, in the adjudication upon these questions of testimony, which has changed my settled convictions that the testimony should have been allowed to go to the jury. One hundred and fifty exceptions taken by the defendant's counsel encumber this record. It is certainly

strange that there should have been so wide a difference between ourselves and the court; I regret it; and without complaining, as I said, of the decisions of the court, the circumstance to which I have adverted can only be accounted for from the fact, that the attorneys representing the Government in this case have strained every principle of law, and invoked in their behalf every discretionary power of the court as against the prisoner at the bar.

What again, in another aspect of the case, should be the course of the United States? The prisoner is here arraigned for a particular crime, and the jury are charged with an investigation of his guilt or innocence as to the crime for which he stands indicted. Prejudice should find no place in your hearts. Feeling should raise no cloud to obscure your judgments. The United States should stand before you, represented by its attorney, the impersonation of stolid logic, and without an emotion or sentiment to sway or direct the mind. Instead of representing the United States in that capacity and in that character, every feeling that could rock the human heart upon its foundations has been invoked to influence you, and every sentiment calculated to excite your prejudice has been urged upon you with a violence, a rigor, and a virulence such as I have never seen equaled in a court of justice. The question for you to decide is, whether or not John H. Surratt is guilty of the murder of Abraham Lincoln? My learned brother, the district attorney, whilst he congratulates you upon the return of peace to our blood-stained land, upon the end of war and the restoration of fraternal love, in the very next breath tears open the wounds of war and pours into your mind a torrent of invective calculated to keep alive forever fraternal hatred, and asks for a renewal of all the animosities engendered in a war that is now at an end, and with which should end every animosity and every sentiment that was its unfortunate but natural offspring. Why has he done this? Why has he told you of the shooting of Union soldiers as they were making their escape? Why has he told you of the hanging of the operator of a telegraph wire during the war in the Confederacy? Why all this? Why has he, against every rule of professional courtesy, and the instinct of an honorable heart, pointed to the prisoner as an already convicted and dying man, and told him that he stood upon the brink of the grave—and violated the decency of forensic debate by exclaiming, "You, dying man, you are a traitor and a coward?" Why has he done this? Why has he sought to delineate to you the sentiments and feelings of the prisoner as in sympathy with the Southern Confederacy. It was to stir your hearts; it was to carry you back from the present day of peace to the past days of animosity and war; and placing you amid the conflict of arms, and the passions of a few years ago, ask you from the remnant of vengeful feelings that have been dead in your heart to revive them long enough to give an iniquitous verdict of guilty. Facts not bearing on the case; facts not related to the case, and having no connection with it, have been thrown before you, to fan into a flame the dying embers of extinguished passion and revive a deceased war in a court of justice!

Shame on the United States! I blush to see my country thus bowed to the degrading office of asking twelve jurors, sworn to try the issue upon the facts in proof, to decide this case according to the prejudice and animosities of a past day. Peace has returned nominally; my learned brother thinks it has returned entirely. Would to God it had; but it has not. We know, however, in our hearts that peace has at least in part returned; that the war is over, although as yet all the consequences of peace have not come. In the southern hemisphere some of the stars that glitter upon our national banner shine with a sickly light through the clouds of party animosities; but the time will yet come when these party animosities will be thrown aside forever as the mist before the rising sun, and the

galaxy of the Union, combined in one united stream of glorious light, will belt the earth in its course. I repeat, peace has come, but all its consequences have not come; and its consequences never will come if the Government of the United States stands before a jury to continually tear open afresh the wounds of war and to visit in time of peace vengeance for deeds done in time of war. Accursed forever be the heart that in this day would create one single sentiment of animosity among this people. Our land has been drenched in blood; passions have been fierce, and desolation, such as the world never saw, has swept over this country. But it is now at an end. Let fraternal love and harmony be restored; let the dead past bury its dead; let the dead past be forgotten and forgiven. No triumph was allowed in Rome to the hero of a civil war. And why? Because it kept alive in the memory of the people the animosities that divided them in the strife. Our civil war is over. Let there be no triumph, no jibes, no animosities, and no invectives. Let the North extend the hand of friendship to the South; and, gentlemen, you who found your associations disunited by the clash of arms and the temporary domination of political sentiment, restore those friendships; take back the estranged brother to your arms, and feel that in doing so you are consummating and accomplishing the great purpose of Christian charity implanted in your hearts as Christian men, and the great purpose of patriotic citizens in reuniting your divided land.

My learned brother is mistaken in speaking to you of God as a God of vengeance and a God of wrath, as widely as he is in talking of our country as a country in regard to which we should cherish the animosities that ought to be dead, and with good men are extinguished. God is a God of love and of kindness. He is a God of mercy, and most mercifully has He dealt by this great land. Although it has been chastised with affliction by His hand, still mercifully the wrath is stayed, and we must, by conforming to His great law, in the spirit of Christian charity, and answering responsive to that great prayer, "Forgive us our trespasses as we forgive those who trespass against us," continue for the future the blessing He temporarily suspended in the past. As I have no feeling, no prejudices, I shall not endeavor to excite any in others. I should be false to my duty if I did. You, gentlemen, are under the solemn obligations of an oath to do justice according to the evidence. If sentiment, if party feeling is around you, and you see it, and hear it—if a legal discussion on the part of the United States is converted into a political harangue—discard it. Come out from prejudice, and stand free, honest, and upright men, with unobscured judgments and true hearts, administering, as the counsel has said, that part of the divine justice which it is committed to man to administer in behalf of the eternal God that sees all things. Judge, gentlemen, as you would be judged.

What is John H. Surratt charged with? In the wide digression and protracted argument of the counsel, I presume you have almost entirely lost sight of the cause. We must recur, and asking your kind indulgence, I can only give you as a promise for the favor of its bestowal that I will be as brief as possible, and trespass on your patience for comparatively but a short time. The first count in this indictment charges that John H. Surratt, with his own hand, willfully, feloniously, with malice aforethought, did kill and murder Abraham Lincoln. That count is abandoned. The second count charges that John H. Surratt and John Wilkes Booth made an assault on Abraham Lincoln, and continues as follows:

"And so the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, willfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and government of the said United States of America."

The charge in this count is, that John H. Surratt and

John Wilkes Booth did then and there kill and murder Abraham Lincoln. The third count charges that John H. Surratt, John Wilkes Booth, David E. Herold, George A. Atzerodt, Lewis Payne, Mary E. Surratt, and other persons to the jurors unknown, with force and arms, at the county of Washington, in and upon one Abraham Lincoln in the peace of God and of the United States, then and there being, feloniously, willfully, and of their malice aforethought, made an assault, and that they did then and there kill him the said Abraham Lincoln.

I want you to bear in mind, gentlemen of the jury, one feature in this indictment. I shall make no remark about the first and second counts; but as you will notice, the third count specifies that Surratt, Booth, Herold, Atzerodt, Mary E. Surratt, and other persons, to the jurors unknown, did, on the 14th day of April, 1865, with force and arms, at the county of Washington, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America, then and there being, feloniously, willfully, and of their malice aforethought, did make an assault, &c. I shall presently come to the discussion of the principles of law, which are founded in common sense, and I now address myself to your common sense as jurors upon the subject of what you have to find. You have to find whether or not what is said in that paper is true. Is he guilty or not guilty as indicted? The third count says that these parties, Herold, Atzerodt, Booth, Surratt, and Mary E. Surratt, with force and arms, on the 14th day of April, at the city of Washington, *then and there* made an assault on Abraham Lincoln; these parties then being here in the city of Washington, made an assault on Abraham Lincoln; and it concludes:

"And so the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, willfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and Government of the said United States of America."

Now, what is the other count? That Herold, Atzerodt, Payne, Booth, Mary E. Surratt, John H. Surratt, and others unknown, did combine, confederate, conspire, and agree together, feloniously to kill and murder one Abraham Lincoln, and that the parties named, and others unknown,

"On the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, at the county of Washington aforesaid, unlawfully and wickedly did combine, confederate, and conspire and agree together feloniously to kill and murder one Abraham Lincoln; and that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, and other persons to the jurors aforesaid unknown, not having the fear of God before their eyes, but being moved and seduced by the instigations of the devil, afterwards, to wit, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county aforesaid, in pursuance of said wicked and unlawful conspiracy, in and upon the said Abraham Lincoln, in the peace of God and of the said United States, then and there being, feloniously, willfully, and of their malice aforethought, did make an assault."

It differs only from the third count in this: the third count charges that all the conspirators made the assault at that place and at that time, and did then and there kill him; while the fourth count charges that the conspirators conspired to do it, and did it in pursuance of the conspiracy. It ends with saying that they *then and there murdered him*. Now, the charge in the third and fourth counts is, that these parties murdered Abraham Lincoln *then and there*. What precedes the final close of the count is simply inducement: "And the jurors, upon their oaths aforesaid, do say that the said John Wilkes Booth, &c., then and there, in manner and form aforesaid, feloniously did kill and murder Abraham Lincoln." This is the charge made by the indictment.

Gentlemen of the jury, what are you trying? Are you not trying John H. Surratt for the murder of Abraham Lincoln? Is there any thing else in the

case? Is there any thing else in the indictment? What is to be your verdict? Guilty or not guilty, as charged in the indictment. How is he charged in the indictment? He is charged with the murder of Abraham Lincoln. The only question for you to decide is, "Did he commit the murder?" I am not surprised that my friends on the other side, having found their original theory of the case fail them, should be driven to the extreme principles they have attempted to assert, but I should be surprised, I should be amazed, if they ever get this jury to adopt any such absurd and unprecedented rules of adjudication. They desire to try this prisoner, apparently, for carrying dispatches; for being a sympathizer with the rebel government; for being in some sort of a conspiracy; any thing and every thing but the charge which we have come here to meet—that of murder. Conspiracy is one crime; murder is another. If we three conspire to do an act, that is a crime, provided the act is illegal. If we do the act, that is another crime. Mr. Todd, Mr. Ball, and myself may conspire to do some unlawful act; before the act is consummated, we may be indicted for the conspiracy. If two do the act, and one retires before it is done, the one may be indicted for having conspired, but the two that did the act can be indicted for the commission of the deed. To conspire is one thing; to act is another.

This being the indictment and the crime, what are the principles of law that apply? You have heard the principles read. I shall have occasion to review them. Why have they adopted these principles? When did they determine to enforce them? When did it first suggest itself to them that this extreme necessity was upon them in the case? You recollect, gentlemen of the jury, when Mr. WILSON made his opening statement to the jury, he averred that it was simply an indictment for murder. When he made his opening address on behalf of the Government, he looked upon this indictment as a simple indictment for murder, and said they would prove the prisoner's complicity in the murder, and his presence here in Washington, helping to do the deed of murder. Was not that all? Did we then hear any of these novel principles of law announced, which no tribunal in the country has yet had the honor of declaring? No; it was a simple, plain narrative, exceedingly impressive, filled with enough facts to have convicted this man before any jury in the world. They went on according to Mr. WILSON'S programme; they followed out his theory; they attempted to prove that Surratt was here, that he had been in the conspiracy; and they proved, as a circumstance to show that he was guilty, that he had agreed to be guilty; the presumption being that what a man agrees to do he is likely to do. They showed, or attempted to show, that he was in front of Ford's Theatre, participating with Booth in the act, and went through their whole case very smoothly, and made it complete. What followed? Why, we needed but an opportunity, as I said the other day, to strike their witnesses, and we laid at their feet a mountain of such corruption as never infected the air of a court of justice in the United States. One by one, they fell as they came. Strand by strand this artfully woven chain, which the gentleman says is to bind this party to the body of the crime, was undone. It is an iron chain, is it? Aye, iron; but under the light of the truth in this case it has melted, and [turning to Judge PIERREPONT] writes your name in characters you can never erase. Their case being destroyed by the defense, some new device must be resorted to. What are we to do, is the question they asked themselves. The Government of the United States, acting up to the measure of its uniform dignity, should have said, "We have been mistaken; we have been imposed upon by these witnesses. They have told us falsehoods, which you have exposed. We discover that they are of infamous character; they have polluted and contaminated the court into which we have brought them, and dishonored the contact into which we came with them. Let the case go according

to the truth." Such should have been and such would have been the language of the United States; but the United States did not stand alone in this case. Others stood beside her—others, who had within their hearts that rankling secret of which the counsel speaks, "that will out, and makes men forget their prudence"—others, that had dreams by night less sweet than Sergeant Dye's, and saw visions by day growing stronger and stronger as they advanced from the scene of their crimes to the tribunal before which an eternal God will hold them ultimately responsible. The case must be gained; innocent blood must again be shed to wash out the damning record of innocent blood already shed. The verdict of a jury must vindicate the fearful deed they had committed. Then, for the first time, start up these new doctrines of law. Then, for the first time, changes the policy of the case; and has it not changed? I submit it to you, gentlemen. Has it not changed? It has changed—not only once, but it has changed twice. I shall show you, and illustrate of the manner of its changes,

"What a tangled web we weave  
When first we practice to deceive!"

I repeat, it has changed not only once, but twice. It has changed in the principles of law, and it has changed in the facts. They put Surratt, as I will show you, on the New York train in Montreal at 3:30 p. m. on the 12th of April, 1865, and would have brought him whistling down to Washington by Albany and New York; but the testimony that he was at Elmira became so strong that they could not meet it in the front, and must therefore resort to a flank movement. They could not deny that he was in Elmira, and they put him in Elmira on the 13th, and attempt to bring him from that city.

They had it all safe, then; he was in Elmira. "Oh, yes! that is all right; now we will agree to that; we admit that he was in Elmira, and we will start him out on the night of the 13th, and have him here on the morning of the 14th in time for Wood, the negro barber, to shave him." That was their policy. They did not know that a freshet had swept the bridges away and that there was no night train from Elmira. This startling intelligence only came to them from our evidence. They stood amazed! Gentlemen, you should have talked to your railroad conductors and masters of transportation. Finding they could not get him out of Elmira by any passenger train on that night so as to have him here on the morning of the 14th, they start him on a special train, which DuBarry says never ran; bring him to Williamsport, and thence carry him on by gravel and construction trains. I must not anticipate, however. I will show you that he never could have got here in time for Wood to shave him, even starting, as they say, at half-past ten on the 13th. I will show you that he could not have got from Montreal to Elmira in time to leave there before ten o'clock at night on the night of the 13th.

In their various twistings and changings they have put this case in such a shape that it is almost an insult to an intelligent jury to argue it, for they have not only themselves shown John Surratt's innocence of this murder by the witnesses they brought here to attempt to prove his guilt, but they have rendered his presence here a physical impossibility. This they felt and knew. What was the consequence? Why, they say to themselves, "We must get along without having him here. How shall we do it? We cannot place in his hands a telescopic rifle long enough to reach from Elmira to Ford's Theatre. We cannot do that; and, as our next best chance, we must go to his honor, and tell him that to murder a President is like murdering a king; that such a crime has no accessories; that wherever Surratt was he is guilty of the murder; and we will further tell his honor that he dare not decide differently; that the voice of the people demands the decision." The voice of the people! Is not that strange language within these sacred walls? What people speak here?

The wise that are dead speak through the books; the traditions of our ancestors speak from the bench the sacred principles of established law, and only those. The popular voice stops at that door. What language is this, to dare a judge—defy the court! My learned brother (Mr. PIERREPONT) says he is not familiar with our rules of practice. I grant him he has shown it. It may be New York law and New York custom, but it is not the custom of this District. Dare a judge by threatening popular indignation against him! The very sentiment is an insult to your honor and to the country that gentleman professes to represent. Spotless and fearless is the ermine. Keep it so. Has your honor's conduct in this case, in being complacent, justified this arrogance? I hope he sees no justification for the language. Does your honor tremble at the threat? Look at the bulwark of American liberty. See it there; look at these twelve men, and remember Thermopylae. One man may tremble; a judge may tremble; but see that jury. When a jury trembles at a menace liberty is gone.

Where can you get twelve such men as these? Dare them! Threaten them! Attempt to intimidate them! They dare do right. You honor dares do right. Not as a lawyer, but as a Christian man, I simply dare you to do wrong; not because the popular voice will approve or condemn, not because there is to be an appeal taken from this tribunal to any meeting in Central Park; but because you have invoked the living God to the justice of your action, and because you stand here free from all men, all prejudice, and all danger, responsible alone to Him whose justice you administer. But, sir, it is fortunate for you, in the aspect in which the learned gentleman has put this question to you, that under our law you do not stand alone responsible for these questions. The jury is specially charged, it is true, with the facts, but they are also charged with the law. You are to instruct them by your learning, your wisdom, and your authority; you are to advise them; but they must *know*, and they must *believe*. My learned brother upon the other side (Mr. CARRINGTON) seemed to feel that it was necessary to press this jury very hard upon their obligation to follow the instructions of the court. I have never heard him utter those sentiments before. Other cases have been tried by him before this, but I have never heard him talk so earnestly to the jury about being obliged to follow the instructions of the court. Why is he so solicitous in this case? Does he think you, sir, will not dare to do right? He told, you, gentlemen of the jury, that you were sworn to try this case according to the law and the fact, and that you must take the law from the court; and if you departed from the law the court gave you, you would be perjured. I tell you it is no such thing. If you find a verdict of guilty, and do not believe the party to be guilty in every particular in your judgments and in your hearts, then you are perjured men. I care not what the court's instruction is. But has my learned friend read the oath aright? Mr. Clerk, will you be kind enough to read it?

The CLERK. "You do solemnly swear, that you will well and truly try, and a true deliverance make, between the United States and John H. Surratt, the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence."

Mr. MERRICK. Where is "the law?" Why did you tell the jury what you did? Did you not know better? The language is, "And a true verdict give according to the evidence." My learned brother has had that oath ringing in his ears for six years. Why did he not tell you what it was? You are, gentlemen, to find a verdict according to the evidence. What sort of a verdict are you to find? Guilty, or not guilty. That is all you can say. You cannot say, "Guilty, under the court's instruction," or, "Not guilty, under the court's instruction." If you say guilty, you say, "Guilty as indicted;" upon your consciences resting the weight of the verdict. If your verdict should be

"guilty," it will be followed by blood; for you see that there is no mercy anywhere in those that represent the Government. If your verdict is guilty, then indeed you look upon a dying man. Upon your consciences will rest the responsibility of that verdict. And let me say to you, gentlemen of the jury, that in that awful day when you shall stand before the last tribunal to be judged, and the all-seeing Eye shall look into your hearts and ask you why you found this verdict of guilty, think you He will hearken if you say, "The judge's instructions made me do it." He will say to you, "Were you not free agents, with minds and intellects, sworn as a jury in a free country? Were you not told by the counsel for the prisoner that it was your duty to find this verdict according to your judgments and your consciences, and why did you disregard what was said? If Judge FISHER's instructions made you find it, bring Judge FISHER to answer; where is the judge?" Think you he will step forward and say, "I will take the burden." No, gentlemen. By the laws of the land and the laws of God, the responsibility is on you. The responsibility is on the judge to instruct you rightly, to guide you correctly, to give you wise and judicious counsel; not as mandatory and binding on your consciences, but as advisory to your judgments, and to enlighten the pathway you are to tread in your investigation. We shall ask from the court no instruction, and desire none. The law of murder is too plain to need any, and you, gentlemen, are too intelligent not to understand it. Indeed, if we did desire some explanation, we would prefer to give it to you in the way of argument, rather than trust it to the distinguished judge who presides. We would trust it to argument, because upon these plain questions all men can comprehend what the law is. We would trust it to the weight of our own characters with the jury, as men and lawyers. But is all this mere speculation with me? Let me see. I read from 3d Johnson's Cases the words of Chancellor Kent, *clarum et venerabile nomen*:

"In every criminal case, upon the plea of not guilty the jury may, and indeed they *must*, unless they choose to find a special verdict, take upon themselves the decision of the law as well as the fact, and bring in a verdict as comprehensive as the issue, because in every such case they are charged with the deliverance of the defendant from the crime of which he is accused."

The jury are "charged with the deliverance of the defendant from the crime of which he is accused," not from part of the crime, but "from the crime," made up of law and fact. After specifying the cases of various crimes, the same authority proceeds:

"In all these cases, from the nature of the issue, the jury are to try not only the *fact*, but the *crime*, and in doing so they must judge of the *intent*, in order to determine whether the charge be true, as set forth in the indictment."

"As the jury, according to Sir Matthew Hale, assists the judge in determining the matter of fact, so the judge assists the jury in determining points of law; and it is the *conscience of the jury*, he observes, that must pronounce the prisoner guilty or not guilty. It is they, and not the judge, that take upon them his guilt or innocence. (Hist. Com. Law, c. 12, H. H. P. C., vol. 2, 313.)"

This is the language of Chancellor Kent, approving the principles laid down by Sir Matthew Hale, and incorporating them in American jurisprudence. I could not refer to two more revered and venerable authorities in the history of English or American law. Their great minds shine upon us from the past with an effulgence time can never dim, and guide all upright jurists in the pathway illumined by their light.

Your consciences must be satisfied. You must go forth from this room, if you would have peace in this life hereafter and hope for the world to come, with consciences that will sing to you the delightful song, "Well done, thou good and faithful servant." To do that, your verdict must respond to the dictates of your consciences as against the world. I have been led into these remarks by the extraordinary address of my learned brother on the other side.

Now, may it please your honor, and gentlemen of the jury, I beg to call your attention to the propositions of law presented by the counsel on the other side,

and submit to your consideration some authorities which, I think, will so clearly elucidate them that there will be no difficulty for either judge or jury. The district attorney, in laying down his propositions, does not venture to go so far as the learned counsel with whom he is associated. He is wiser. He will not trust to the pinions of *Icarus*; and my learned brother will discover, in the course of his voyage over this new sea which he has ventured to explore, that he will experience the same sad fate of that mythological character, and find his wings melted, even when he is in his loftiest flight. But Mr. CARRINGTON, although more modest, does not yet meet the measure of professional wisdom which I think his judgment would have meted out if other feelings had not interposed.

I have nothing to say on the first and second propositions presented by the counsel, (Mr. PIERREPOINT;) and the third I shall pass for the present. I wish to call your attention to his fourth proposition, which I will read:

"If the jury believe from the evidence that President Lincoln was killed as aforesaid, in pursuance of said conspiracy of which the prisoner was a member, he being either actually or constructively present at the time, it is a legal presumption that such presence was with a view to render aid, and it lies on the prisoner to rebut such presumption by showing that he was there for a purpose unconnected with the conspiracy."

I do not understand that. It may be that I am not capable of comprehending the subtlety of the learned gentleman, but I must say that I do not understand that proposition. "It is a legal presumption that such presence was with a view to render aid"—a *presumptio juris et de jure*, I suppose, which cannot be rebutted. That is not the law.

The law is plain, and is this: If it be proved that the prisoner was a member of a conspiracy, the fact that he was a member goes in evidence to the jury as a circumstance to show that he participated in executing the design of the conspiracy; but, outside of that fact, you have to prove that he was actually present; or, if you cannot prove he was actually present, you must prove that he was so near as to render material aid, and that he was there for that purpose.

I may as well state now, before I come to consider Judge PIERREPOINT's propositions, the rule applicable to this case, as I understand it. Even if the gentlemen prove that Surratt was in Washington city on the night of the murder, it is not enough; they must prove that he was actually present at the murder, or near enough to the place of the murder to give material aid and assistance to the doing of the deed, and there for that purpose. This is a plain, long-established, and well-understood principle of law, and the prosecution so regarded it, and attempted to bring their case within it. In the first instance they not only attempted to prove that the prisoner was here, but, by Sergeant Dye, that he was participating. Then they went on to prove that he was in this city; and, their purpose is to argue to the jury that if he was in Washington at the time of the murder, they may presume that he was present aiding and abetting. I grant them that it is an element of evidence for the jury; but to say that it is a presumption of law, with all due respect to my learned brothers, is to say that which is absurd in law. That he was present, aiding and abetting the murder, is for the prosecution to prove. If they prove that he was a member of the conspiracy to do the murder, that is an element of evidence for you, gentlemen, upon which you may reason that he was present at the murder; but you must come to the conclusion that he was there actually present, doing the murder, or near enough to help the assassin in his work, or receive him with the warm blood on his hands, and aid him in flight. That is the rule of law.

Now, I come to some novel specimens of jurisprudence. Says Judge PIERREPOINT, in his first proposition:

"Each confederate in the conspiracy is liable for the acts of every co-conspirator, and the declarations of *each* may be given in evidence against every other; and though the conspiracy may have been

formed years before the prisoner ever heard of it, yet, having subsequently joined in the conspiracy, he is in all respects guilty as an original conspirator."

Now, there is something in that which is true; but the main element that they want to establish is obscurely veiled and untrue. That each confederate in the conspiracy is liable for the act of his co-conspirators is true, where the act of the co-conspirator is in the furtherance of the general project of the conspiracy to this extent, that the act may be given in evidence against him, in order to prove him guilty of some particular act which he did; but he is not liable for the act that somebody else did; and that is the case in 12th Wheaton, as I will show your honor. Whatever one conspirator does after the conspiracy is established may be given in evidence against his co-conspirator; but his co-conspirator cannot be indicted for the particular act of his confederate, unless he directly aided in doing it himself. It goes in evidence as a part of the general plan to develop the movements of the general body; but it is not a substantive matter of criminal allegation, except as against the party who did the act or those aiding and abetting. In case of a conspiracy for a misdemeanor where there are no accessories, a different rule applies from the case of a conspiracy to commit a felony.

What is the next proposition?

"Second, That when several persons are finally confederated in a conspiracy they are like one body, and the act of each hand, the utterance of each tongue, and the conception and purpose of each heart, (touching the common plan,) is the act of each and all, and every one of the several persons forming the confederate body is responsible for the acts, sayings, and doings of each and of all the others."

Well, that is the same as the other proposition, in different words. Why did you not indict Surratt and the parties named with him at once as a corporate body?

The third is:

"That a conspiracy to kidnap, abduct, or murder the President of the United States, in time of rebellion or other great national peril, is a crime of such heinousness as to admit of no accessories, but such as to render all the conspirators, their supporters, aiders, and abettors, principals in the crime. That such is the common law of England, and is the law of this country."

I must confess that I listened to that proposition yesterday with infinite amazement, not to say much amusement and pleasure—amazement, that a lawyer of the reputation of the gentleman should advance such a doctrine, and pleasure, when I felt that he would not have periled his reputation by so monstrous and absurd a proposition, except as the last resort for a failing cause. Your honor, he says, dare not decide against it. My learned brother is a bold man if he dares to confront the profession after announcing such a rule as, in his opinion, the rule of English or American law. He is a brave man, for it takes a brave man to do such a thing as that. What does he say? I read from the Associated Press report of his remarks, which is a mere synopsis, of course. It will be observed, that in this report the expression to the effect that the court "dare not decide against the principle he enunciated" does not appear:

"It is the first time, said Mr. PIERREPONT, that an opportunity was ever afforded to test the fourth point, for the fact seems to be lost sight of that this whole conspiracy was for the purpose of overthrowing the Government; but neither the court nor jury could escape from that view of the case, and if this was considered only as an ordinary murder, the country would hold both court and jury responsible. It was a monstrous doctrine to enunciate, that if an abduction only was contemplated, and a murder ensued, therefore the conspirators to abduct were not guilty of murder."

The learned counsel maintained that proposition by this system of logic: The crime is so heinous, that there can be no accessories; and it is heinous, because the man killed was a President. And he tells your honor that it is your extraordinary privilege to enunciate from the bench, for the first time in America, this doctrine. Well, sir, he may regard it as a privilege; but, as the representative of this young man before your honor and this jury, I will say that we do not desire you to be exercising privileges or decorating your name by the enunciation of new principles. We demand that you discharge the duty of determining the

law as it is, and we deny your right to make new law not heretofore announced in the country. He says it is the law of France and the law of England. As I said the other day, there is a class of gentlemen in the United States who, since the commencement of our late war, seem to have entirely lost sight of all the free and glorious traditions of our country, and abandoned all love for constitutional liberty, and become dazzled with the prospective glory of stars and garters, titles of nobility and rank, crowns and diadems, and it may be that before the days of republican liberty are over we shall have to meet that class of men in order to preserve our Constitution. Ideas of monarchy and rank are growing among the people, and military sash-traps are being dazzled with the glitter of their stars and grow dizzy at their unnatural elevation. May it please your honor, the very dead of the Revolution—of the last war with Britain—and of the late war for freedom and constitutional independence, rise to condemn the gentleman and repudiate his doctrine. Give me the Constitution of my country and her ancient liberty, undimmed by the darkness of a single decoration and unsullied by the restraint of any tyrannical power. The President is a simple American citizen, the representative of the free people of America. The monarch of this country, grand and sacred beyond touch, and beyond reach of assault, is the embodied will of the people in the Constitution of the United States, our only emperor, our only king, is the Constitution of the United States. It is the only sovereign of the Republic, the supreme law of the land, representing the collected will of the people; and when that ceases to be the supreme law of the land, and we attach to individuals in office especial privileges, especial powers, and especial grace, we take away a part of the sanctity that belongs to that Constitution to give it to men. Sir, I will never consent to see my country thus dishonored. If I might venture to use the language of the gentleman, and did not feel that it was transcending the propriety of forensic debate, I would say your honor dare not sanction such a doctrine.

No man feels more keenly than I do the enormity of this great crime, the disasters that it brought, and the disasters that it was likely to bring, committed by a parcel of inconsiderate and half run-mad individuals. But yet the consequences of a crime cannot change the nature of the crime in contemplation of law. If a captain at sea, with one passenger on board of his vessel, scuttles his ship and escapes from it, he is just as guilty as the captain of a steamship, charged with a thousand lives, who scuttles his vessel and sends the whole thousand to eternity. It is murder in the one, and it is murder in the other. And although the consequences of this crime might have been disastrous beyond the killing of an ordinary individual, yet, in contemplation of law, the killing was but the killing of an individual, and the charge is murder, and nothing but murder.

But, says the counsel, there are no accessories. What does he mean? There is but one crime known to the law to which there are no accessories, and that is treason. Are you trying the prisoner for treason? Gentlemen of the jury, are you sworn to try this as a case for treason? What is the law of treason? A party indicted for treason is entitled to a list of the witnesses against him. If my client is indicted for treason, why did you not furnish me with a list of that battalion of infamy that you brought into court? You indict the prisoner for treason, and hold him responsible for all the penalties incident to treason, and yet you deny him the right which he is guaranteed by the statutes of the United States in the case of treason. What more is he entitled to? To have the overt act of treason charged in the indictment proved by two witnesses. You indict for murder, and one witness is enough; in treason you must have two. Treason, your honor, in its practical application to an individual where he is indicted for it, has two features that mark it as distinct

from every other crime. One is, that he is entitled to have a list of the witnesses against him; and the other is, that you must prove the act by two witnesses. Why did you not give me a list of witnesses when I called for them? If you meant to call this treason, which you made murder on your record, and meant to hold my client responsible for treason, when I called for that list, why did you resist it, keeping back the secret purpose to hold him responsible for treason, when you denied him the privileges that the law gave him if he was indicted for treason? It is dishonest; it is attempting to trick a man out of his life. Courts of justice were not made to play tricks upon individuals, and hang them by chicanery. You talk about public sentiment. The American Republic would revolt at such an idea, and the whole heart of the country would condemn such a piece of conduct and crush beneath the weight of its indignation any individual who would participate in so nefarious an outrage.

The sixth proposition sets forth:

"That the personal presence of the prisoner in Washington is not necessary to his guilt in this case. He could perform his part in the conspiracy as well at Elmira as at Washington, and be equally guilty at one place as at the other. That if he left Montreal in obedience to the order of his co-conspirator Booth, to aid in the unlawful conspiracy, it matters not whether he arrived in time to bear his allotted part or not. Being on his way to take part, any accident which may have delayed him does not change his guilt."

"He could perform his part in the conspiracy as well at Elmira as at Washington?" Common sense would suggest that, in regard to that, even if the principle of law were true, the counsel ought to have alleged in the indictment that he was in Elmira for the purpose of performing his part. If he happened to be in Elmira for something else, does the learned gentleman mean to contend that he is still guilty, even according to his own bad law? It was necessary to show that he was there for the purpose of performing his part. Was he there for that purpose? Does the gentleman mean to argue that he was there participating in the conspiracy? Does he mean to contend that that was his-allotted place? Turn back to the reported proceedings of this case, and blush for shame, gentlemen, if that is your purpose! When we offered to prove why he went to Elmira, and what he was doing there, you told the court that there had been no proof on your part as to what he was doing there, and, therefore, we could not offer any; and so the court decided. If you mean to contend that he was in Elmira, performing his part of the conspiracy, then I say you have tricked us again, for the reason that, you remember, gentlemen of the jury, we had General E. G. Lee on that stand, prepared to prove what Surratt went to Elmira for, and what he was doing in Elmira, and to show that his business there had nothing to do with this conspiracy, and the court said, "You cannot prove it, for the reason that there is no charge that he was in Elmira helping the conspiracy, and therefore it is not necessary for you to show for what purpose he was there." If there had been one scintilla of proof, or if there had been an intimation from the counsel that they intended to claim, that he was in Elmira helping the conspiracy there, and doing in that city the allotted part assigned him, then the court would have said, "Gentlemen, that being part of the charge, you may disprove it, and Lee may give his evidence." But they disclaimed it then, and it is too late now—too late for law and too late for honor. Let us deal fairly by this young man, and even if the reputation of Joseph Holt should not have the vindication of innocent blood shed by a judicial murder, let us do justice still.

I will waste no more time in the consideration of their propositions of law. I come now to the authorities on my own. The propositions of law submitted by the counsel on the other side give rise to the consideration of the question as to who are principals and who are accessories; and that question subdivides itself into another question, to wit: who are principals in the first degree and who are principals in the second

degree? Your honor is perfectly familiar with these distinctions in the law, and you are also perfectly familiar with the broad distinctions that have been observed for time out of mind. To be a principal in the first degree involves the commission of one crime; to be a principal in the second degree involves the commission of another crime; to be an accessory before the fact involves the commission of a third crime. A principal in the first degree can never be a principal in the second degree, and a principal in the second degree can never be a principal in the first degree, and an accessory before the fact can never be a principal either in the first or second degree.

Now, I ask the attention of your honor, as also your attention, gentlemen of the jury, while I read a few passages from that great authority in criminal law, Hale's Pleas of the Crown. I read from page 438, vol. 1:

"To make an abettor to a murder or homicide principal in the felony there are regularly two things requisite: First, he must be present; second, he must be aiding and abetting *ad feloniam et murdrum sive homicidium.*"

Even if the counsel are correct in their position that to kill a President is something more than to kill an ordinary individual, I still cannot comprehend why these principles should not apply; for I am not familiar with any decision in which a distinction is drawn between *murder*, as ordinarily and commonly understood, and the *murdrum magnatum* which the prosecution claim this homicide to have been.

"If he were procuring or abetting, and absent, he is accessory in case of murder, and not principal."

Presence constitutes the distinction between accessory and principal. He who strikes the fatal blow is the principal in the first degree. He who stands by and sees it done, aiding and abetting it, and ready to help it, if help should become necessary, is principal in the second degree, and commits the same degree of moral guilt which the principal in the first degree has committed. But if, instead of being present doing the deed, or present aiding and assisting another to do it, and ready to give him material help in doing it, I, for instance, have simply counseled it to be done, employed a man to do it, paid him money to do it, and given him weapons with which to do it, and he does it in my absence, I am accessory, and not principal. There is the distinction between accessory and principal. The principal must be present; the accessory is absent. The accessory may be just as guilty as the principal, but still, not being present, he is not principal, and if accessory, can only be indicted as accessory. I will show you now from the books that I have stated the principle correctly. I have already read to you that there are two requisites to make a principle. "First, he must be present; second, he must be *aiding and abetting.*"

Judge FISHER. Let me see if I understand your position, Mr. MERRICK. I understand you to hold that he who strikes the blow causing the death is principal in the first degree, and he who is present giving aid, countenance, and assistance, though not participating in the blow, is principal in the second degree, and that he who counsels, aids, or assists, but is not present at the time of the giving of the blow, is merely an accessory.

Mr. MERRICK. Yes, sir.

Judge FISHER. I understand you to say further, that he who strikes the blow, being principal in the first degree, is indictable for one crime, and he who is present giving aid at the time of the infliction of the blow is indictable for another.

Mr. MERRICK. No, sir.

Judge FISHER. I misapprehended you.

Mr. MERRICK. I said the moral guilt is the same; but the frame of the indictment may be different.

Judge FISHER. Do you hold that they cannot be joined together?

Mr. MERRICK. I do not mean to make that point—it is not in the case; I shall not state any thing that is not law.

Mr. BRADLEY. They may be joined together, or they may be indicted separately.

Mr. MERRICK. Certainly. Now, I will read from Hale—page 615—quite a clear exposition of this principle:

"By what hath been formerly delivered, principals are in two kinds: principals in the first degree, which actually commit the offense; principals in the second degree, which are present, aiding and abetting of the fact to be done.

"So that regularly no man can be a principal in felony unless he be present, unless it can be in case of willful poisoning, wherein he layeth or infuseth poison *with intent* to poison any person, and the person intended or any other take it in the absence of him that so layeth it; yet he is a principal, and he that counselleth or abetteth him so to do, is accessory before.—*Co. P. C., cap. 64, p. 138.*"

Now, your honor, and you, gentlemen of the jury, will observe that here is one exception, where a party may be a principal and yet not present. That exception is where he lays poison. The counsel yesterday, in his address to the court, asked me to tell him something about what jurisdiction could take cognizance of the crime committed by an individual who started a locomotive out of Maryland and ran it into the District of Columbia, where it run over and killed a number of children, the man remaining in Maryland. Why, sir, the man is a principal in the second degree. He is a principal in the murder. If I am in the house of Mr. McLean, for instance, and whilst partaking of his hospitality prepare poison for him, and put it where I know he will get it, and then go to New York, and he one week afterwards takes the poison and dies, I am principal. And why? Because I am present with the material thing that did the deed. My hand is still there. No other will has come between me and the act. So, if I start a railway car, and it goes by the impulse of the steam, under the guidance of my will, that first put it in motion—it being a thing without volition and without consciousness—I am responsible for what it does; because my will is infused into it, and my consciousness is in it. So my will is in the poison, and my consciousness is in the poison. Being a material thing, without will of its own, it acts by my will; I breathe life into it, and I give it power of mischief, and direct it to mischief; and, if death follow, my life must answer for it. But how is it with an individual? I want to commit a murder upon Mr. Bohrer; I employ a gentleman in town to kill him, giving as compensation for the deed a thousand dollars. I ask him, "When are you going to do it?" He replies, "I will do it next Saturday." "Very, well," say I; "here is your money; I am going to New York." I go to New York, and the man kills Mr. Bohrer. In that case I am an accessory before the fact, but not a principal. And why? Because the agent that I employed to do the deed was a reasonable creature, having a consciousness of his own, and it was optional with him whether he did it or not. He had a will of his own, and, although my agent, he was nothing more than my agent. I being absent, he must be hung as principal in the first degree, and I tried as accessory. But in the other cases there was no principal to try. You could not try the locomotive, and you could not try the poison. In order to have an accessory, there must be a principal that you can try. There must be a principal that is responsible. The locomotive is not responsible; the poison is not responsible; but wherever you employ a rational creature to commit a crime—one who is responsible and can be tried—and the deed is done, that creature becomes principal, and he being the principal, I become accessory. That is the law.

I will read a little further. I read from page 435:

"In case of murder, he that counselled or commanded before the fact, if he be absent at the time of the fact committed, is accessory before the fact; and though he be in justice equally guilty with him that commits it, yet, in law, he is but accessory before the fact, and not principal."

He that *counselled* or *commanded*, if absent, is accessory, and must be charged as accessory, and cannot be charged as principal. I read from page 615 of the same book:

"An accessory before, is he, that being absent at the time of the felony committed, doth yet procure, counsel, command, or abet another to commit felony, and it is an offense greater than the accessory after; and therefore in many cases clergy is taken away from accessories before."

An accessory before the fact is he that is *absent*, but, being *absent*, hath *counselled* and *commanded* the thing to be done. Again, on page 616:

"That which makes an accessory before, is command, counsel, abetment, or procurement by one to another to commit a felony, when the commander or counsellor is absent at the time of the felony committed, for if he be present he is principal."

If he is present, he is principal; but if he has commanded the thing to be done, or procured it to be done, and is absent at the doing, he is accessory. On page 617 I find the illustration that I just now suggested, of using a thing that had no consciousness:

"A lets out a wild beast, or employs a madman to kill others, whereby any is killed; A is principal in this case, though absent, because the instrument cannot be a principal."

You cannot indict the beast, and, since you cannot indict the beast as principal, there can be no accessory, and consequently the man that employed the beast to do the thing, or set the beast loose, is principal himself.

These principles lie at the very foundation of the English law, and I apprehend that your honor scarcely sits on that bench to attempt to uproot that ancient and established inheritance of Englishmen and Americans. The learned counsel would ask you to abolish all distinction between accessories and principals. I humbly submit that it cannot be done. I will now trace the principle as it has been brought down through the courts of England, and then follow it through the courts of the United States. I refer your honor to the case of *Rex vs. Soares*, in Russell and Ryan's Crown Cases, page 25, where there was a conspiracy to utter forged paper, and it was decided that "persons privity to the uttering of a forged note, by previous concert with the utterer, but who were not present at the time of uttering, or so near as to be able to afford any aid or assistance," were "not principals, but accessories before the fact." There had been a conviction at *nisi prius*, but—

"The case was taken into consideration by all the judges on the first day of Easter Term, 1802; and again, in the same term, on the 29th of May, 1802, when they were all of the opinion that the conviction was wrong; that the two prisoners were not principals in the felony, not being present at the time of uttering, or so near as to be able to afford any aid or assistance to the accomplice who actually uttered the note, and they thought it too clear to order an argument on it."

As far back, then, as 1802, all the judges of England took into consideration this principle in a case identical in character with the case at bar. Certain individuals had entered into a conspiracy to utter forged paper. One of them uttered the paper, but the other conspirators were not present when he uttered the paper, nor near enough to give assistance, though they had sent him to the town to utter the paper; and the court said that as the other conspirators were not near enough to give assistance to the uttering of the paper, they were accessories before the fact, and not principals. This decision was concurred in by all the judges of England, there being no dissent; and I defy the learned counsel on the other side to find a single case in the history of English law controverting the principles of that great father of English jurisprudence, Lord Hale, which I have read to your honor. There is a uniform and unbroken current from the earliest dawn of the law to the present time in England. I refer your honor to another case decided in 1806—the case of *The King vs. Davis and Hall*, page 113, of the same book. The case came originally before Baron Graham, but it was carried up before all the judges:

"In Eastern Term, 23rd April, 1806, all the judges except Lord Ellenborough being present, the conviction was held wrong as to Hall, he not being to be considered as aiding and abetting."

It was held "not to be sufficient to make a person a principal in uttering a forged note that he came with the utterer to the town where it was uttered, went out with him from the inn at which they had put up a lit-

tle before he uttered it, joined him again in the street a short time after the uttering and at some little distance from the place of uttering, and ran away when the utterer was apprehended."

Could you have a stronger case, your honor? Two parties conspire to utter a forged note. They go to the town together, they put up at an inn together, and one of them utters the note, but the other, not being present or so immediately near as to give material aid, was held not to be a principal. That was decided in 1806. I next refer your honor to page 249 of the same book; the case of *The King vs. Babcock, et al.*, where it was held by all the judges that,

"If several plan the uttering of a forged order for payment of money, and it is uttered accordingly by one, in the absence of the others, the actual utterer is alone the principal."

At page 363 of the volume, the same principle was again applied in 1818 in the case of *The King vs. Stewart*, and the doctrine announced that "persons not present nor sufficiently near to give assistance are not principals." In this case "Ann was employed to commit a crime, and the parties who employed her were indicted as principals;" but it was held that although the crime was committed by employment, and she was the guilty agent, they furnishing the means of payment, yet they were only accessories before the fact.

On page 421 of the same volume will be found the case of *The King vs. Patrick Kelley*, where, on an indictment for larceny, it was held that,

"Going towards the place where the felony is to be committed, in order to assist in carrying off the property, and assisting accordingly, will not make a man a principal, if he was such a distance at the time of the felonious taking as not to be able to assist in it."

Here the parties had agreed to steal certain property; one went forward to commit the theft, the other went forward to be there in time to help to carry off the stolen property; and the court held, notwithstanding the conspiracy to commit the larceny, and notwithstanding the co-conspirator accompanied his confederate for the purpose of carrying off the stolen property and did carry it off, yet he was not a principal, because he did not get there in time to help at the theft.

What becomes of the learned gentleman's principle, that if Surratt started from Canada, in obedience, as he says, to the summons of Booth, but did not get here, he is responsible? Is what I have read the law of the land, or are we to have some new doctrine, devised for the occasion, to be first promulgated in this trial, in order to secure, by some trick, the judicial murder of this boy? Try us, your honor, by the law of the land. It is the inheritance of American citizens. We brought it from England when we came here, and we kept it pure against her tyranny and her devices. It is the shield of every American citizen against wrong and oppressions. I love it, and I honor it. Educated in it, I will never do it wrong by straining any of its principles—at least never against the charities of a Christian heart. Keep it, your honor, as long as you sit on that bench and desire to bear an honorable name; keep it free from the impurities with which you are now sought to desecrate it. Parliamentary statutes and legislative acts have not impaired its power, but with judicial constructions of its principles have only preserved the harmony of its proportions and decorated its glory; and to this time it has stood, like a rock in mid-ocean, firm and unshaken in the midst of the upheaving sea of political passions, the unfailling refuge of the people, defying the tempests, and dashing back in frothy insignificance the waves that angrily beat against its breast. We want that law in this case, the law of the land as it now is, without modifications to gratify the passions or interests involved in this trial; we have a right to it, and we demand it.

I have now shown your honor that from the earliest days down to the latest in England the principle for which we contend has been recognized, and the learned gentleman can find no case contravening it. What expedient is adopted in this emergency? He tells me that

by the law of England to kill the President of the United States is so heinous a crime that there are no accessories. Can he find a parallel case in England? Was anybody ever tried there for killing a President of the United States? No, sir. He may find a case of compassing the king's death. Has the President of the United States ever had his temples pressed with a crown? Is he the State? The counsel says he can find an authority in France. I grant it. To imagine the death of Louis Napoleon, by the laws of France, is treason. Is it treason here to imagine the death of Andrew Johnson? Is it treason here to wish his death? If it be—then, sir, when your grand jury meets, charge them to indict Thaddeus Stevens and all his entire corps of reasonable incendiaries. No, sir; it is not treason. We can wish and desire what we please in this free land, and our public men are open to the freest and severest criticism. If in the Corps Legislatif an individual passes censure on the emperor, what is the consequence? The president stops him, for the sanctity of the imperial person will not bear the censure of a private mouth. How is it here? Here, thanks be to God, we have freedom of speech, with a restored Constitution, temporarily suspended by usurping power, but once again in the possession of our people as the birth right of Americans. He may find you a case in France, and he may find you a case in England, where imagining or compassing the death of the sovereign is treason; but that is not a parallel case. The pride of our country is, that neither the anointed of man nor the anointed of the Lord claims political power by virtue of the anointing. Political power flows from the people, and is the gift of the people. Will he find me a case in England or in France where, except in revolutionary times, you may impeach the emperor or the king? To make the case parallel you must show that the same disabilities affect the people in the one country that operate in the other. In France, can the Corps Legislatif impeach the emperor? In England the Commons did impeach Charles—aye, sir, and the French Deputies impeached Louis, and the head of each answered to the impeachment; but it was the impeachment of passion, and not the impeachment of law. Does the learned gentleman think he could induce M. Thiers to bring forward a motion in the Corps Legislatif to impeach the emperor? Could he have an investigating committee to sit for almost twelve months out of the year, seeking for causes of accusation against the emperor? No, sir; these are republican luxuries, not imperial. There is no divinity that doth hedge with its sanctity the person of our President. The pride of our free institutions is that the President of the United States is, like a private man, our servant, fenced around by the hearts of the people, and sustained by the public approbation that put him in power. He claims no factitious authority; no factitious sanctity. The line of his duty is marked by the Constitution, the extent of his power is defined by law, and his relation to the people is well ascertained. If the gentleman cannot find in England any authority to controvert the principles I have laid before your honor, can he find any in America? I will show your honor that in the United States we have repeatedly, again and again, ratified and confirmed the principles which I have been reading from the English law.

The leading authority to which I refer your honor is the case of *The Commonwealth vs. Knapp*, 9th Pickering, pages 517 and 518.

In that case, gentlemen of the jury, there was a conspiracy between the Knapps and Crowninshield to murder an old gentleman living in a village in Massachusetts by the name of White. Crowninshield was to perpetrate the murder, and the Knapps were to pay him for it. Crowninshield did perpetrate the murder, and afterwards committed suicide. One of the Knapps was subsequently tried as principal in the second degree for being present, aiding and abetting in the murder. It appeared in proof that the house of Mr. White had

been entered by some one having the confidence of the proprietor, and the window had been left open for the access of Crowninshield. The evidence showed that from the window to the ground a plank had been extended in order to admit the entrance of the murderer; and the evidence further established the fact, that whilst the murderer was in the house doing the deed of murder, the prisoner at the bar, Knapp, was in an alley about fifteen or twenty yards off, where he could see what was going on, where he could hear, and from which place he could be heard. In other words, he was in the alley, where he could render material assistance, and the question was, "What kind of presence was necessary in order to constitute him a principal in the second degree?" He was stationed there by previous direction, by previous agreement; and the evidence further was that he received Crowninshield after the murder, and went with him to deposit under the steps of a church the club with which the deed was committed. In considering the principle, the court said:

"The person charged as a principal in the second degree must be present, and he must be aiding and abetting the murder. But if the abettor at the time of the commission of the crime were assenting to the murder, and in a situation where he might render some aid to the perpetrator, ready to give it, if necessary, according to an appointment or agreement with him for that purpose, he would, in the judgment of the law, be present and aiding in the commission of the crime."

That is constructive presence. Now, analyze this, and what is it? He must be near enough, in some position where he might render aid to the perpetrator. What kind of aid? Aid in doing the deed; aid in resisting opposition to his doing the deed; aid in striking down the strong arm that might come to protect the victim from the assassin's dagger—material aid in making the blow deadly and effective. He must be where he can reach the scene of action at a shout, or reach it in time to consummate and make perfect the murder. He must be there by appointment, too. It is not enough that he should be there incidentally; it is not enough that he should be there accidentally, without the fact of his presence being known to the principal. It must be a part of the plan that he should be in that particular spot, that knowledge may nerve the principal's arm, may strengthen his heart, uphold his failing courage, and assist him in the perpetration of his murderous design. He must be there by appointment, by preconcert, and not by accident or circumstance. "It must, therefore, be proved," says the learned judge, "that the abettor was in a situation in which he might render his assistance in some manner to the commission of the offense;" not assistance generally, not assistance by creating confusion in New York, or confusion in some other State; but he must be in a position where he can render assistance to the commission of the particular offense.

"It must be proved that he was in such a situation by agreement with the perpetrator of the crime, or with his previous knowledge consenting to the crime, and for the purpose of rendering aid and encouragement in the commission of it. It must also be proved that he was actually aiding and abetting the perpetrator at the time of the murder."

It must be proved that he was where he could assist; it must be proved that he was there by preconcert; and it must be proved that whilst there he was actually aiding in the perpetration of the murder.

"We do not, however, assent to the position which has been taken by the counsel for the Government, that if it should be proved that the prisoner conspired with others to procure the murder to be committed, it follows, as a legal presumption, that the prisoner aided in the actual perpetration of the crime, unless he can show the contrary to the jury."

This answers Mr. CARRINGTON's proposition, which is, that if they prove that the prisoner conspired originally, it is a legal presumption that he aided in the perpetration of the crime. This learned judge says that the court in Massachusetts does not agree to that proposition; it is not a legal presumption "that the prisoner aided in the actual perpetration of the crime unless he can show the contrary to the jury."

"The fact of the conspiracy being proved against the prisoner is to be weighed as evidence in the case, having a tendency to prove

that the prisoner aided; but it is not in itself to be taken as a legal presumption of his having aided unless disproved by him. It is a question of evidence for the consideration of the jury.

"If, however, the jury should be of opinion that the prisoner was one of the conspirators, and in a situation in which he might have given some aid to the perpetrator at the time of the murder, then it would follow, as a legal presumption, that he was there to carry into effect the concerted crime; and it would be for the prisoner to rebut the presumption by showing to the jury that he was there for another purpose unconnected with the conspiracy."

If they prove that this man was in the conspiracy, and if they prove that he was near the theatre, where he could have given aid at the time of the murder, then I admit that the burden is upon me to show what he was doing there; because, having proved that he was one of the conspirators, his proximity to the scene of action, according to the course of ordinary reasoning and common sense, would induce you to believe that the probabilities were that he was there for the purpose of carrying out the plan of the conspiracy. They must prove, however, that he was there, where he could give aid at the time; that he was near enough to help, to give aid to him who was to strike the blow—near enough to help, at a call, to strike down the defenders of the victim it was determined to kill.

I now refer your honor to Burr's trial. Chief Justice Marshall, in this great case, about which I shall have something to say to you, gentlemen of the jury, delivered one of his most elaborate opinions, after probably the ablest forensic discussion that ever took place in the United States. In that opinion, on page 333, he says:

"Hale, in his first volume, page 615, says: 'Regularly, no man can be a principal in felony unless he be present.' On the same page he says: 'An accessory before is he that, being absent at the time of the felony committed, doth yet procure, counsel, or command another to commit a felony.' The books are full of passages which state this to be law. Foster, in showing what acts of concurrence will make a man a principal, says: 'He must be present at the perpetration; otherwise he can be no more than an accessory before the fact.'"

Then, on page 334, he observes, and I call especial attention to the beauty and simplicity of this illustration of the principle:

"Suppose a band of robbers confederated for the general purpose of robbing. They set out together, or in parties, to rob a particular individual; and each performs the part assigned to him. Some ride up to the individual and demand his purse; others watch out of sight to intercept those who might be coming to assist the man on whom the robbery is to be committed. If murder or robbery actually take place, all are principals, and all, in construction of law, are present. But suppose they set out at the same time or at different times, by different roads, to attack and rob different individuals or different companies—to commit distinct acts of robbery; it has never been contended that those who committed one act of robbery, or who failed altogether, were constructively present at the act of those who were associated with them in the common object of robbery, who were to share the plunder, but who did not assist at the particular fact. They do, indeed, belong to the general party, but they are not of the particular party which committed this fact."

A band of robbers confederate to rob; there are three roads, and three individuals are coming down the three roads the same night; some of the band go one road, some another, and some the third, each to perpetrate his particular robbery and bring the booty to the common rendezvous for distribution. One succeeds; the other two fail. Nobody, says Chief Justice Marshall, ever contended that those who failed were responsible for the robbery that was successful. In this case, as an element of that prejudice of which I have spoken, as a circumstance to harrow up your feelings, disturb your judgments with irritation, and create an indignant animosity to the prisoner, there has been introduced that most shocking scene at the residence of the Secretary of State. What it had to do with this case I know not. What it had to do with the argument of my learned brother on the other side (Mr. CARRINGTON) you have seen and heard. What it will have to do with the argument which is to follow you can readily imagine. You are to see it in all its graphic coloring, described in all its shapes and phases—see young Seward beaten by Payne over the head, his mother dying with grief and sorrow, and the sister and daughter stricken down, and all the terrible suffering of that afflicted family, in order that your feelings may be

harrowed up and your hearts made to palpitate for vengeance. And what has all this to do with the case? Suppose Booth started out by one road to murder the President, and Payne started out by another road to murder Seward, could Booth be held guilty of the murder of Seward as a principal? Says Chief Justice Marshall, no; he may be an accessory before the fact; he has his own murder or robbery on his own hands, and he has nothing to do with the physical act of the robbery or the murder that was put upon the hands of his confederate in the conspiracy. I will read from page 336 of the Burr Trial, where Chief Justice Marshall says:

"In felony, then, admitting the crime to have been completed on this island, and to have been advised, procured, or commanded by the accused, he would have been incontestibly an accessory, and not a principal."

To what does that apply? Aaron Burr, the spirit and mind of the conspiracy, gathered his forces together and rendezvoused them at Blennerhassett's island. Burr was the master-mind that had formed the plan. His was the genius that had devised the scheme; his the judgment and his the controlling power that directed it. He was indicted in Richmond for treason. The overt act of treason was laid at Blennerhassett's island, and it was alleged that Burr was present at the commission of the treason, just as it is alleged that Surratt was present here at the commission of the murder. It appeared in proof that Burr was not at Blennerhassett's island, nor near there, although in point of fact he had started out the forces that were gathered on that island. There were no accessories in the treason, and Judge Marshall was reasoning upon the case, supposing it to be felony, and he said:

"In felony, then, admitting the crime to have been completed on this island, and to have been advised, procured, or commanded by the accused, he would have been incontestibly an accessory, and not a principal."

If, then, there was a felony committed on Blennerhassett's island by Burr's co-conspirators—a felony which Burr had devised, conceived, procured, and directed—and Burr had sent the parties to the spot, and paid their expenses, and appointed that as the place of rendezvous, and promised to be there to co-operate with them, but had not reached there in time for the act, says Chief Justice Marshall, *he was incontestibly an accessory and not a principal*. Does your honor dare to follow Chief Justice Marshall? Do you think the people of America will censure your honor when you follow in your judicial pathway a light of such undimmed glory as that great judge? I want no new law. Give me the old law; the old guarantees of freedom; the old lights that burned in purer days, and by following the illumination of which we can alone go forth from the deep corruption into which we have descended.

The court took a recess for half an hour, re-assembling at one o'clock p. m.

Mr. MERRICK. At the time your honor took a recess I was discussing the opinion of Judge Marshall, in the trial of Burr, relating to and elucidating the points involved in this case. And now I beg leave to call your honor's attention to a decision at a yet later day, and even nearer home. It is your honor's own decision in this cause. I think the jury will recollect that your honor, with a clear view of this question, has determined it according to the principles I stated this morning. When the counsel for the prosecution proposed to prove, in their rebutting testimony, (by way of meeting our proofs that the prisoner was in Elmira on the 14th.) that he was in New York on the morning of the 16th, and had been transported from Baltimore to New York on the night of the 15th, we objected, on the ground that the testimony was not properly in rebuttal, not properly in reply; that we had proved him to have been in Elmira on the 14th, and that they could not reply to this proof by showing that he was fleeing from Washington on the 15th,

because his presence in Washington, being essential to the commission of the crime with which he was charged, it was part of their case-in-chief, and ought to have been proved by them before they closed their testimony. Your honor, in delivering the opinion and deciding that they could introduce the proof that he was in New York, and could introduce the proof in regard to the transportation from Baltimore, provided they could connect the prisoner with it, which they afterwards, as your honor recollects, failed to do, and your honor struck it out, said:

"In the case which we are now trying it was not necessary to prove that the prisoner at the bar was ever in New York city, or anywhere else than in Washington. It was not necessary to prove that he came here from Elmira on the 13th or 14th. It was sufficient for the original case to prove that he was here, and participated in the deed of murder, and unnecessary to trace his history further in the past or the future. When it is attempted to show that he was at Elmira, or some other place in the State of New York, at such a time as would have made it impossible for him to be present here at the time of the murder, common sense would certainly indicate to men of ordinary intelligence and reflection that to prove him on the cars coming to this direction, at such a time as would place him here on the night of the murder, is directly responsive to the matter set up."

So your honor decided our motion upon the ground that it was unnecessary to prove the prisoner was anywhere else but in Washington on the night of the murder; and that it was sufficient for the original case to prove that he was here participating in the deed of murder, and unnecessary to trace his history further. It is then apparent that your honor has already in this cause determined this question; and that in the determination which your honor has pronounced upon this question the case has been shaped, and evidence has been ruled out and ruled in. It is for this case by your honor *res adjudicata*. And his honor states there, as you see, gentlemen, the very principle for which I have contended: that they must show that he was here, and not only that he was here, but here participating in the murder.

I beg to call your honor's attention to another point. I have shown the jury and the court that the indictment charges that he was here; it charges that he was present, made the assault, and committed the murder. Now, I maintain that if the theory of law of the learned counsel upon the other side is correct, viz: that being in the conspiracy to murder, he could be guilty of the murder, being elsewhere than at the place of its perpetration, the indictment must charge the fact as the fact is. If his theory of the law be correct, that, being in Elmira, the prisoner at the bar could commit a murder in Washington, the indictment must charge the fact that he was in Elmira, and, being in Elmira, by certain means he committed a murder here. And I refer your honor and gentlemen of the jury to the case of Burr again on that point. What was the point in that case, and upon what was it finally determined? As the learned judge says, there are no accessories in treason; all are principals. So says the counsel on the other side, there are no accessories in this crime. He conceives this to be a sort of *murdrum magnatum*, and all are principals. In Burr's case the overt act of treason occurred on Blennerhassett's island. An assemblage of men had been gathered together there by the strong intellect of Aaron Burr. He was the soul and body of that conspiracy. The indictment charged, that, being the body and soul of that conspiracy, he was present on Blennerhassett's island, and there levied war. The proof showed that he had sent troops there, that he was co-operating in another place, and that he was in such a relation to the deed done that if it had been felony, he would have been an accessory; and, therefore, being treason, and there being no accessories, he was in such relation to the deed done that he became a principal. What said Chief Justice Marshall? Said he, on page 350:

"Now, an assemblage on Blennerhassett's island is proved by the requisite number of witnesses, and the court might submit it to the jury whether that assemblage amounted to a levying of war; but the presence of the accused at that assemblage being nowhere alleged except in the indictment, the overt act is not proved by a single witness, and of consequence all other testimony must be irrelevant."

The overt act of treason was charged to have been committed on Blennerhassett's island, and the indictment alleged that Burr was present; but Burr was not present, although he was a principal; and the further proof in the case stopped with the motion, upon the ground that the indictment must conform to the fact. If Burr was in Chillicothe giving aid and shipping men to Blennerhassett's island, the indictment should have alleged that he was in Chillicothe; that having been in the conspiracy and combination, he was in Chillicothe giving aid and comfort and abetting the levying of war on Blennerhassett's island, and therefore guilty of treason, and he might have been convicted; but the indictment did not so allege. The indictment alleged that he was there on Blennerhassett's island, and although he was a principal in the offense, yet the indictment not having charged the fact as the fact was, the court ruled it to be defective, and stopped the introduction of testimony. When my learned brother prepared this indictment for murder, he meant murder; when he wrote it, he meant nothing but murder. His mind, habituated to the ordinary courses of criminal procedure, had not then been enlarged to the new speculative theories which his associate has introduced. Having prepared an indictment for that purpose, it cannot now be twisted to suit the ingenious devices of his senior associate. They must get up another indictment if they are right in their theory of law. They cannot try a new case made yesterday on an indictment prepared for an old case made by the district attorney months ago.

I think, gentlemen of the jury, I have made these points of law sufficiently plain, and I feel a satisfied conviction that I have scarcely uttered one single word in regard to the legal propositions for the guidance of this jury which your honor will not repeat in giving them the assistance you are bound to give in your judicial position, aiding them to reach the truth through the ways of inquiry.

There is one other principle of law to which I beg to make a very brief reference. The district attorney stated yesterday that there was much misunderstanding in regard to the principle that the jury must find a verdict of not guilty unless they were satisfied beyond a doubt. I apprehend there is no misunderstanding about that rule among you, gentlemen of the jury. You know what the principle is. You know what a doubt means; you know what a doubt is. The learned gentleman did not state it with entire accuracy; and yet, the natural instincts of his heart bent him down to the principle, even when he would fly from it. That you should find a verdict of acquittal unless you are satisfied beyond a reasonable doubt of guilt, is a principle founded in the charity of the human heart and in the beautiful precepts of the Christian Church. It is not allowed to man, whose judgment is limited, at best, and whose vision is but obscure, even when most seriously and earnestly strained, to take the life of his fellow-man upon simple probabilities and chances.

It is a difficult task, at best, for us, with such testimony as we may obtain, to enter into all the motives, and circumstances connected with the conduct of our fellow-man. And I suppose there is no truly upright gentleman living in organized society that would not wish and pray to be delivered from the necessity of sitting in judgment upon his fellow-citizen. Why? Because the apprehension of doing wrong to another makes the human heart shrink with fear from the undertaking to do justice. To aid us in this office, to enable us to discharge our duty with satisfaction, and be assured that no wrong shall come, the law says you shall not convict unless guilt be proved beyond a reasonable doubt. You must be satisfied in your own mind to a certainty; not a mathematical certainty—that we cannot reach—that is not attainable—but you must be satisfied to such a degree of certainty that you can say, I have no doubt about it. I will illustrate. Suppose that ten of your number should, after a care-

ful weighing of the testimony and hearing the arguments, say they were satisfied this man was innocent, and two should say, "we are satisfied to the contrary."

The very existence of the opinion of innocence, under the same opportunities to judge, of ten honest men, must inevitably shake the conviction of the two. I have opinions in my mind and heart that are firm, and clear, and decided, and yet when I hear the contrary opinion of a man with equal advantages I begin to doubt, and I want to talk it over, and if responsibility accompanies the doubt, I give the benefit of that doubt, and avoid the consequence of assuming the danger. I do not say that one or two should yield convictions. You are sworn to do your duty, and find according to your judgments. But judgment and conviction are made up from many influences legitimately in the case, and the conviction of others' judgments operates upon your own, and shapes your own more or less. I will read the rule of law on this subject, as it has been determined in this court time and again. I read to the jury and your honor from Roscoe's Criminal Evidence, Sharswood's edition, page 697.

"On a trial for murder, where the case against the prisoner was made up entirely of circumstances, Alderson, B. told the jury that before they could find the prisoner guilty, they must be satisfied 'not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty party.' Hodge's Case, 2 Lew. C. C., 227."

Apply this rule, gentlemen, in your examination and determination of this case. Take the facts of a criminal case, fit them to every hypothesis you can conceive; fit them to every possible condition of circumstance; and if these facts are reconcilable with any hypothesis that involves innocence, you cannot find the prisoner guilty. Take the case at bar; suppose you should believe that John H. Surratt was in a conspiracy to abduct the President; that there was such a conspiracy, and that all the facts are reconcilable with that conspiracy, and that the facts occurring on the 14th of April are reconcilable with the hypothesis that the conspiracy to abduct had failed, and that a new conspiracy to murder had been created; you cannot find this prisoner guilty. I care not what he may have done—whether he carried dispatches, shot down Union soldiers, (which I will show you is not to be credited,) or fought a gun-boat; I care not what he may have done; if you find that these facts are reconcilable with the theory that he was in a conspiracy to abduct, which conspiracy was abandoned and a new one created, of which he was probably not a member, you cannot find him guilty. This principle of law is again repeated by that most excellent judge, now beside his honor presiding in this case, (Judge Wylie,) who has ruled in this court, "That unless the jury find that the whole evidence in the case excludes a reasonable supposition of the prisoner's innocence, and also is perfectly reconcilable with his guilt, they must acquit." So says Baron Alderson, that you must acquit unless the facts be such as "to be irreconcilable with any other rational conclusion" than that of guilt.

You are to take up the facts as proved, test them by the various theories you may form, and see whether they will fit any theory that is consistent with innocence. If they do, you must acquit. I do not suppose my learned brother on the other side differs from me on this point.

Again says Judge Wylie—(I read from the records of this court): "In all cases the jury must from the whole evidence find the material fact charged against the prisoner to be true to a reasonable and moral certainty—not probability, but a reasonable and moral certainty—a certainty that convinces and directs the understanding, and satisfies the reason and the judgment." It could not have been expressed in better language—"convinces the understanding, satisfies the reason and the judgment." There must be no lurking apprehension, no latent doubt, no slumbering fear, no possibility in your minds that hereafter your dreams

will be disturbed or your waking hours haunted by the ghost your verdict is to make. There must be a conviction controlling the understanding, satisfying the judgment, and filling the full measure of the conscience asking to be left at peace.

That being the law of this case, and these the principles which are to apply to it, I come to the consideration of that fact most immediately suggested by the principles I have been discussing; for I propose, gentlemen, as far as I can in the course of this argument, which is not to be protracted much longer, to lead you along from one point to another, as the points themselves shall suggest each other. If the principles of law I have stated and argued be correct principles, what is the first inquiry? Was John H. Surratt in the city of Washington on the night of the 14th of April, 1865? His presence here aiding and assisting the murder is essential to his guilt, and his absence at the time of the murder not only entitles him to a verdict of "not guilty," but is a powerful circumstance alone by itself to show that he was not in the conspiracy, and had no connection with it; for if he was in the conspiracy to murder, it would be a circumstance to show that he was here. I concede it; when you prove him to have been in a conspiracy to murder, not a conspiracy to abduct—for bear in mind you cannot change the purposes of a conspiracy, in the absence of one conspirator, and involve the absent conspirator in the new design—if you are satisfied beyond a reasonable doubt that he was in a conspiracy to murder, then it is a circumstance to be weighed by you to show that he was here, aiding in the consummation of the purposes of that conspiracy.

Now, if I show to you that he was not in the city of Washington when the purpose of the conspiracy was accomplished, it is a conclusive, or at least a very powerful, circumstance to show that he was not in the conspiracy. When the bud had blossomed, and the appointed hour arrived when the deed was to be done, if you are satisfied from the evidence that a party alleged to have been in the conspiracy was not present with his confederates, doing his part in the conspiracy, it is a strong and powerful circumstance to show that he was not in the conspiracy, and had not undertaken to do that which he is charged with having done. Upon this point the burden of proof is with the counsel on the other side to show that he was here. As the court has said, in the opinion I have read, it was necessary for them to show that he was here, and not necessary to show that he was elsewhere; it was a part of the case-in-chief to show that he was here in Washington, and that he was here aiding and abetting the murder. They come into court to prove that. We come into court to meet it. How do they prove it? The first witness introduced for the purpose of establishing his presence here is Sergeant Dye. My learned brother said I had published a libel on Sergeant Dye by asking the court to admit a record under the seal of Pennsylvania to show that he had been indicted for passing counterfeit money. I would make no reference to it here but for the remark of the prosecuting attorney; and I speak now, not to assail Sergeant Dye, but to defend myself. Why did I offer that record? I received under the broad seal of Pennsylvania a certificate that he had been held to bail for passing counterfeit money; that an indictment had been found against him, which had been set for trial at a term of the court sitting in Philadelphia at the time he testified in this case.

Mr. BRADLEY. The case was dismissed there after he was examined here.

Mr. MERRICK. When that record came to me I asked no question where it came from. It came under the seal of political and legal authority, spoke for itself, and proved itself. I asked his honor to admit it; he refused. Was it a libel? If it was, it was a libel published by Pennsylvania, not by me; and let the gentleman hurl his anathemas at the State of Pennsylvania, not at me. As my associate says, that case was

dismissed *after* he testified here, and after I offered the record in evidence—dismissed, *not tried*—and dismissed by the authority of the United States before the time at which it was to have been tried.

What says this redoubtable sergeant? He sat in front of Ford's Theatre on the night of the 14th, on the platform arranged for persons getting out of carriages to enter the theatre. He was there for half an hour. He saw two men talking—one a villainous-looking man, the other a genteel-looking man. He saw a third, a genteelly-dressed man, come up and speak to them; time was called; the genteel man went up street and came down; he heard the time called again; the genteel man went up the street a second time, and came down; and he heard a third call of the time—*ten minutes past ten*—when he went up the street rapidly; Booth entered the theatre, Sergeant Dye goes to take his oysters, and the next thing he hears is that the President is shot. Says Judge PIERREPONT, in a style and manner that delighted me, for I like drama, "Have you ever seen that man before?" "I see him now," says the sergeant; "that is the man—the prisoner at the bar." I will stop with Sergeant Dye at that place, and comment on his testimony for a moment before I take him down H street. When Ford and Gifford were put upon the stand, I handed them a plat, which they proved was a correct representation of the front part of Ford's Theatre. Sergeant Dye stated that he was sitting on the southern end of the carriage-platform, and that when the prisoner came and called the time he saw him distinctly; he saw that pale face; he has seen it in his dreams since then; it has hovered over him by night, and walked beside him by day. Says my learned brother on the other side, "Deep impressions necessarily involve the consequence of dreams, and this was a very deep impression." I will show you, gentlemen, before I get through with him, that he dreams too freely, he dreams too much, and there is too much speculation in his dreams. He saw that pale face. When did he see it? He saw it when the prisoner was looking at the clock. When I got that answer I thought I had nearly exhausted the subject, for I was satisfied in my own mind; but I was reminded that jurors are sometimes shrewder than lawyers, for, when he was about retiring from the stand, some one of you asked him, "How much of the prisoner's face did you see; did you see the whole of it, or one-third, or one-half of it?" He answered, "Sometimes I saw two-thirds; occasionally the whole." The thing was answered. [Exhibiting the diagram of the front of the theatre.] You see, gentlemen, where that platform was. Dye sat on the southern end of it; here it is; here is the spot occupied by the two men who were standing in front of the theatre; here is the ticket-office; here is where Surratt, as he says, entered to look at the clock, [pointing out the various positions indicated,] and when he looked at the clock and turned partly around to speak to Booth and the other men who were standing there, the back of his head was directly in front of Sergeant Dye's eyes. Look at the plat, gentlemen, and you will see it. From the position that he describes, when Surratt walked up to look at the clock and turned in the manner indicated to give the time, the back of his head bore the same relation to Sergeant Dye's that mine now bears to Mr. Bohrer. [The learned gentleman turned his face from the jury.] Then he turns and goes up H street. That was the first circumstance that satisfied me that his testimony was not to be relied upon. But what further? He says he saw these three men aligned. When the second act was over, and the crowd came down, they seemed to expect the President was coming out, and aligned themselves opposite the space he was to pass. Then he had them standing shoulder to shoulder and side by side. They had excited his suspicion, and he was watching them, he says, and examining them critically; and, having them in that position, side by side, he could tell with almost positive certainty what

was the relative height of each. He says he is a better judge of height now than heretofore, because he has been a recruiting sergeant. That may be very well when he is looking at a man standing out by himself alone; but when he looked at two men together, he could tell which was the taller as well in 1865 as now. He saw these three men standing together, and, when summoned before the military commission, he testified to what? That one was Booth; the other he thought was Spangler—in fact, he was positive as to Spangler; but who was the third? Who called the time? He did not know the man, but described him as the smallest of the three; he testified that he was five feet six or five feet seven inches high, and the others were taller—both Spangler and Booth much taller. That was his testimony then. I asked him, "Why did you so state?" "Why," said he, "I only threw in the five feet six or seven inches; I meant the heaviest man." I pitied the creature as he stood before me. He swore before the commission that the man who called the time was five feet six or seven inches, and that he was the smaller of the three men. If he had simply sworn he was five feet six or seven inches, it would have been a reasonable excuse to say that he could not well tell how tall a man was; he cannot tell you the height of a man, seeing him standing alone; but surely he could tell you which was the tallest and which was the smallest, and he swore that the man who called the time was smaller than either Booth or Spangler. We have proved on the stand that John Surratt is taller than either.

Let us see a little further. The solemn sound of that calling of the time seemed to produce a deep impression. It was the warning-note of conspirators bent upon murder, the creeping sound that called the felon to his work. We bring before you the very man that called the time. My friend smiles. Let him get rid of it if he can. I defy him. We show you that Carland and Hess were standing before the theatre; that Carland called the time at Hess's request, and Hess recollects that it was ten minutes past ten, the identical time called by the party to whom Sergeant Dye testifies. The learned counsel calls in Hess, and says, "I want the prisoner to stand up." The prisoner stood up. Hess stood beside him. "Gentlemen, look at them," says the counsel. I thank you, Mr. Attorney, for your kindness in so presenting them to the jury. Who answers to Sergeant Dye's description? That man (the prisoner,) six feet tall, or Hess just five feet seven? Who answers Sergeant Dye's description of the man that called the time? He said the man who called the time was five feet six or seven inches; and the counsel stood the two up beside each other, and has proved our case. Dye swore also that the other two men were five feet eleven inches. You saw Hess and the prisoner standing here side by side. Could he have made such a mistake as that? Could he have made the mistake of taking a man of Surratt's size for a little fellow like Hess of five feet seven. He had discretion enough about the height of men to say that the other two were five feet eleven. He said the man who called the time was five feet seven. He has been dreaming—dreaming too freely. Gentlemen of the jury, that same calling of the time has sent one man already to the Dry Tortugas. Now the learned counsel wants to make it hang another!

Sergeant Dye takes his oysters, hears that Lincoln is killed, and goes up street. He passes 541 H street; a window is raised, a lady asks, "What is going on down town?" "The President is killed." "Who killed him?" "Booth." They pass on to camp—he and Sergeant Cooper. "Who is the lady; have you ever seen her since?" "Yes, I think I saw her at the conspiracy trial; I think it is Mrs. Surratt." "When did you come to that conclusion?" "I only came to that conclusion after I came down here and learned that it was her house." "Had you not heard something about this before?" "Yes; when people commenced to say she

was not guilty I knew she was guilty; I did not believe these things; and when I came down here and found that that was her house I was satisfied it was the place at which I stopped, and that she was the woman I saw, and I recollect her." Two years have passed. It was a dim night, moonlight if you choose; say it was eleven o'clock or half-past ten; the moon just about at an angle of eight or ten degrees above the horizon. Mrs. Surratt's house fronted to the north, and as long as the moon pursued its circuit in the southern hemisphere the front of this house was necessarily in the shade. The sidewalk in front of that house never during the course of the moon at that season of the year sees one ray of moonlight. We have proved what kind of a night it was; how dark it was. But give them the benefit of whatever they choose about the night, that side of the house was in shadow; the moon had scarcely risen above the horizon, and threw its rays of light upon the side of the street opposite to that on which Sergeant Dye was. This lady puts her head out of a window on the dark side of the house and speaks to him. He sees her at the conspiracy trial, but sees in her countenance nothing to suggest that she is the woman he saw on that night. He now knows the woman was Mrs. Surratt. Nothing that he then sees or hears suggests to him that she is the woman until after the lapse of two years, when he comes to testify in the case of her son, and he then swears that from that casual glimpse he recollects that she was the woman he saw at the conspiracy trial. Gentlemen, I say it is simply absurd; I do not care to say it is worse. This man is a dreamer; a speculative dreamer. It may be perjury; I do not need so to denounce it; but if it is not perjury, it is an image created by a mind overwrought by its reflections upon some subject that it has thought too much of. Such things run men mad; such things make men fanatics; such things bring them round a table to communicate with spiritual mediums. He has thought of this; he has dreamed of it until his intellect has become perverted, and every thought that comes upon his mind is colored by the peculiar tint it has taken. You know, gentlemen, it is the character of the human mind, when deeply excited with apprehension upon any subject, to fasten upon whatever occurs as something to create apprehension and alarm. Disturb it by excitement, and the excitement fevers it, and colors and shapes every object it sees. The best illustration is in the knowledge all of you have of the days of childhood, when in the darkness of the night probably you were sent off by yourselves to bed, or else traveling from school you went through the woods and felt timid at the darkness, and you could see through the shadows that surrounded you men and images and spirits, made by the excited mind from stumps and boughs of trees and mounds of earth. In that excited condition of the human intellect we fly from the creations of our own imagination; and as it is true of men so it is of boys, for "the boy is father to the man." Such was the condition of Sergeant Dye's mind; weak by nature, and peculiarly nervous in its organization, it has become alarmed, excited, and overturned by the great and terrible events that have formed the subject of its reflections and the material for its dreams, and in its fevered and distorted workings it bodies forth to his view the images of things that have no substantial existence, and which are shaped, fashioned, and created by itself.

The court took a recess until to-morrow at ten o'clock.

#### Forty-Fifth Day.

THURSDAY, August 1, 1867.

The court re-assembled at ten o'clock a. m.

Mr. MERRICK. With submission to the court: Gentlemen of the Jury, I should perhaps remark, before proceeding, that in reading this morning the report of my remarks in the newspapers I observed several grave errors, and a statement of some positions which I did

not assume in the argument; but that report must necessarily be imperfect, for it does not profess to be a stenographic report. I make this remark simply that counsel on the other side may not misapprehend me.

Gentlemen, at the close of the session yesterday I was considering the testimony of Sergeant Dye. I shall take up the line of argument where I left off, and, with as little delay as possible, I shall hurry to the conclusion, impelled by a sincere regard for your patience, and fully appreciating the earnest solicitude you have manifested throughout this protracted and arduous trial.

I left Sergeant Dye on H street talking, as he professes to have done, with Mrs. Surratt. I had shown you how improbable his statement was. I was about to mention that Sergeant Dye's statement in regard to that conversation was met and controverted by an honest gentleman sitting at his door on Sixth street, fronting on H, not fifty yards from the scene of the alleged conversation. He was sitting there, he represented to the jury, from ten until after eleven o'clock, smoking a cigar. The night was still and calm; and in that section of the town there is nothing to disturb its almost perfect noiselessness. A conversation held by a passer-by on the street with an individual in what might be said to be the second story, for it was so, would necessarily be in a tone sufficiently loud to be heard fifty yards on such a night as that. The counsel upon the other side will endeavor to represent to you that this witness was sitting upon Sixth street, and not on H street. You will remember that he says that the steps of his house pass down by the side of the house that fronts on Sixth street and terminate within half a yard of H street, and that he was sitting at the foot of his steps, and could see up and down H street and hear what passed, and, from his knowledge of the locality and the character of the night, he thinks he should have heard this conversation if it had taken place. This witness, therefore, as far as negative testimony can contradict positive, contradicts Sergeant Dye.

But the sergeant says the lady was middle-aged, and wrapped in a shawl. The dress will aid the proof. But, apart from the inherent evidences of a want of truth—whether that want of truth arises from a failure to recollect, disordered and fevered imagination, or from a willful misrepresentation, is immaterial—we have another fact which entirely overthrows his evidence. In reading the trial, a lady of this city, and of the highest character—whose reputation and position the learned counsel on the other side could not possibly have known at the time she was on the stand, else he would not have gone so far as to wound the tender sensibilities of such a person; and he did, I may say, transcend the proper limits of cross-examination—a lady of the highest character, reading the testimony in this case, observed this statement of Sergeant Dye. She at once remarked, that "Here is a most extraordinary coincidence; that identical conversation took place with me, at my window, on that identical night." I placed her son on the stand, a young gentleman whom you saw, and whose appearance bespeaks his character, now in the employ of the Federal Government in this city, and at the same time a student of law, and he describes the house in which his mother resided. The description answers in every particular to the description of Mrs. Surratt's. It is a block and a half further to the east, on the same side of the street, the same high steps, and the same peculiarly-constructed basement and upper stories. Mrs. Lambert tells you that, upon that night, hearing some noise in the street, she got up, called for her servant, got her shawl, went to the parlor, opened the window, and, with her shawl on, had the identical conversation with one of two soldiers that Sergeant Dye tells you he had with Mrs. Surratt. Is not Sergeant Dye mistaken? Was the conversation he testified to before this jury as having been with Mrs. Surratt the conversation that he had with Mrs. Lambert? If he is not mistaken, he is certainly one of those extraordinary

characters, in life who in their course through the world meet with most singular coincidences; for it is a most extraordinary coincidence that the same conversation should have taken place between two soldiers near about the same hour, in front of two houses built identically alike, on the same side of the street, and with a middle-aged lady dressed in a shawl. All the features—time, circumstance, conversation, and individual—correspond without the slightest variation. And again, a party, a witness to a second singular and most remarkable coincidence, both occurring on the same night and both connected with the same transaction! If he is right that these conspirators were in front of the theatre calling the time, then it is a singular coincidence that there should have been two parties present, both calling the time, one for the purpose of murder, the other for the purposes of his own private employment on the stage, and each calling ten minutes past ten! Gentlemen of the jury, I feel assured that you cannot entertain for a moment this testimony of Sergeant Dye as involving the prisoner at the bar in guilt or probability of guilt. I feel that you will ascribe it to that disordered state of mind in which Sergeant Dye is evidently laboring, and leave him to enjoy that luxury of his dreams which may be luxury to him, without harm to others, and not hang a man because Sergeant Dye saw his pale face at midnight over his sleeping pillow.

I pass from Sergeant Dye to the only other witness who attempts to prove Surratt in or about the theatre—Mr. Rhodes. Who is Mr. Rhodes? If he is known to any of you, gentlemen, he is a stranger to me. He comes upon the scene near its close, apparently a volunteer. We knew nothing of him before he testified; we know nothing since, except his testimony. Now, what is his testimony, gentlemen of the jury? He tells you that at twelve o'clock on Friday, the 14th of April, when he was walking down the street, he passed by this theatre, and, impelled by curiosity, he entered to look at it. A day laborer, working at his trade—supposing him to be honest—he was consuming profitable hours in useless entertainment. He enters the theatre between eleven and twelve o'clock, goes into the box that was being prepared for the President for that night. He there sees a man, and he identifies the prisoner at the bar as that man. He tells you that when he went in, there was a man in the box, and just as he entered the man retreated from him. He then took a view of the theatre from the box, and noticed a new curtain that was down, and observed the pictures on the curtain. He again tells you that some one called from the theatre, and he represents that the man who was in the box with him responded, and that he went back out of the box, and disappeared to the rear towards the stage. The learned counsel on the other side will attempt to meet this contradiction in Rhodes's testimony. The district attorney, in his argument to you, admitted, with inadvertent candor but honest sincerity, that Rhodes was contradicted; when his associate, with some irritation and haste, checked him, and said, no, not so. The learned counsel who checked the district attorney will attempt to meet the difficulty of Rhodes being contradicted by Ford and Raybold and everybody else who knew any thing about the theatre, by saying to you that the man was in the first box when Rhodes came in, and he retreated into the second box, but did not go out of the two, the partition being up. But, gentlemen, when Rhodes was in that box the partition was down, and there was only one box there. Rhodes tells you the chair was brought up while he was there; and Raybold tells you he ordered the chair to be brought up, and that it could not be put in until the partition was down, for the reason that the box, when the partition was up, was too small to admit a chair with rockers of the dimensions that chair had. There was, then, but one box; the partition was down. Where did that man that Rhodes speaks about retreat to? There was neither exit nor entrance to that

box except the door from the front that led into it; all else was closed. There was no passage through which he could retreat. If he came out of the box, he had to come out of the same door that Rhodes went in, and Rhodes says he did not come out of that door, but out of another, and disappeared to the rear of the box. He says all the calm was undisturbed except by the preparations in this box. We have shown you, by Raybold and by Lamb, that there was a rehearsal going on in the theatre at the very same hour Rhodes says he was in the box. The rehearsal commenced at eleven, and reached through until one or two; the stage was crowded with the actors, preparing for the night's performance; and yet Rhodes tells you it was quiet, with the curtain down. Lamb and Raybold both testify, and you yourselves know the custom of these theatres, that there are rehearsals, and rehearsals at that time of day. When we attempted to prove the uniform custom they checked us. "You shall not give the jury the benefit of that light—the light of the uniform, invariable habit, proved by the manager of the theatre. You shall be restricted to the particular fact." We then proved the fact by those who saw the rehearsal and knew that it was going on. We further proved that the curtain was up, and not down. Rhodes swore it was down. We proved by Lamb, who was engaged in painting there all the day long, that the curtain was not down from nine in the morning until six in the evening, when he left his work. And incidentally from him and Raybold came out the circumstance that the curtain of a theatre is never down in the day-time. It is dropped upon the audience when the performance closes at night; and when the characters disappear and the theatre disgorges those who have been in attendance, the curtain is raised, and remains raised until the next evening when the performance is about to begin.

Again, gentlemen, it appeared in evidence that that box in the day-time was so dark that, although you might see a man in it, it was almost impossible to recognize him. When Judge Olin went to examine the door and look about the evidences of preparation for assassination, he carried a light with him; there was no window in the box, no light entering the box except from through the aperture made for parties in the box to see on the stage. It was built not for the light of day, not to enable you to see in it in the day-time; it was built to be used at night by gas-light, and at night alone.

You then have these circumstances contradicting Rhodes: a rehearsal going on at the time, the curtain not down, the box dark, the individuals that brought up the chair seeing no one else there, and being there at the very time Rhodes says he saw this prisoner there. You have, then, the further fact that the doors of this theatre were locked upon the public. Do you suppose that, at that hour of the day, when a rehearsal is going on, the proprietor of a theatre is going to leave his doors open for the free ingress of the public who choose to attend that rehearsal? It is further testified by the man who had charge of the door and kept the key that the doors were locked, and that there was no admission except by special privilege granted by the party who kept the key, and who alone was authorized to turn the key in the lock.

These two witnesses, Sergeant Dye and Rhodes, are the only witnesses who bring Surratt near the theatre at all; and I think that you, as sensible men, bringing to bear on their testimony the same habit of logic you would bring to bear on questions of ordinary life which

you desire to solve, will conclude that the testimony of neither is reliable as the basis of any judgment to be formed in this cause. Who is the next witness, gentlemen, by whom the prosecution attempts to establish Surratt's presence in the city of Washington? A counselor from New York, not a counselor assisting the prosecution, but a counselor assisting the witnesses—Squire Vanderpoel. Stimulated by curiosity, he leaves his professional desk in the mercantile metropolis to come to the political metropolis to witness this trial. To this he testifies. He sees the prisoner at the bar and recollects that he saw him before. He recollects that on the 14th of April, 1865, after having been at the paymaster's department to draw his pay, he being then in military service, coming down Pennsylvania avenue, and hearing music on the other side of the avenue, he goes over to Metropolitan Hall, enters the hall, and sees Booth and four or five others sitting at a round table drinking, and among them the prisoner at the bar. This was the first time he ever saw him, the only time he ever saw him, and he saw him then only for five minutes. Dance, music, and revelry in the room, and he going there for the purpose of the dance, music, and revelry, singles out from a crowd sitting at a round table, in the midst of some sixty people, this individual, plants the image in his memory, and paints it to you. This was between two and three o'clock or one and two o'clock in the day. He told his story straight enough, but I presume there was not a man on that jury who did not see in his face, without one word from me, enough to discredit every word he said. And if he did not see it in the face he saw it in the extraordinary and singular fact that after the lapse of two years, with but a single glance under such circumstances, he should so remember a face as to speak with the positive certainty with which he spoke on that stand. And, at the conclusion of his testimony, he gave vent to an expression which would lead your feelings to coincide with your judgments, when he evidenced the vulgarity of the blackguard, after having given the testimony of the perjurer. We met the testimony of this man Vanderpoel by showing to you that there never was any music or dancing at Metropolitan Hall in the afternoon; that throughout the whole time of its existence under Henze, who owned it at that time, there never was a rehearsal or performance there in the day-time, and there never was a round table in the room. We showed to you by Henze, the proprietor, that he was then in Philadelphia, and left the place in charge of his brother. We proved by his brother that there was no rehearsal and no performance on that afternoon; we proved by the leader of the band that there was no rehearsal and no performance, and by the policeman that there was no rehearsal and no performance that afternoon; no music, no dancing, no revelry, no crowded assembly, no noise to attract the passer, no entertainment to bring in the idler. Are you satisfied? Was he at some other place? Was he at some other hall? Had he forgotten the locality and forgotten the name? Why did you not prove it? We had crushed him on his own statement. Did you leave it to vague speculation with the jury that there might be another place? Ah! gentlemen, you are too wise for such tricks as those. If there was another place, and this man had mistaken the room, had mistaken the hall, the burden was on you to prove it, when we had proved that the hall he named was a place at which the circumstances to which he testified could not have transpired. I dismiss it; the testimony of such a man is beneath the dignity of contempt.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 97. WASHINGTON, WEDNESDAY, SEPT. 11, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 96.*

Cushing and Coleman saw Surratt, as counsel say, talking to Booth on the avenue. This is a mistake. Both are clerks in the Departments. One says he does not recollect the man he saw talking to Booth. The other says he thinks Surratt looks like that man. We asked him, "Did you not tell the counsel in our hearing you could not identify him?" and he said, "I did not say it loud enough for you to hear." But he did say so; he did say, upon seeing him in this room, that he failed to identify him. But, gentlemen, the testimony of these two men is distinctly met by another most singular circumstance; and, indeed, throughout this whole case, it seems as if by some special interposition of Divine Providence the defendant was enabled to meet, by direct testimony, the entire scheme devised by the prosecution; for never since I came to the bar, never in the whole course of my reading, have I known or heard of a case in which the prosecution was met at every point by testimony so satisfactory and so conclusive. There is the circumstance of calling the time—we produced the man by whom it was called; the conversation of Dye with a lady on H street—we produced the lady; the circumstance of the meeting of these two clerks with Booth and Surratt on Pennsylvania avenue—we produced the man with whom Booth conversed at the identical time and on the identical spot, and showed it was not Surratt. Forced, under all these circumstances, to the difficult proof of a negative, we prove the negative by being able to prove a responsive affirmative. We bring before you Mr. Matthews, and put him on the stand. He tells you that at one of the triangles on Pennsylvania avenue, on that afternoon, at the time named by these gentlemen, he met Booth; Booth leaned over his horse's neck talking to him earnestly, as the men describe he was talking to Surratt. It was in that conversation Booth gave him the paper containing articles of agreement, bearing the signatures of the conspirators to the assassination, which is not before the jury. The existence of the paper, and the fact that the paper was given to him, given to him in that conversation, is before you, and the reason of the earnestness of the conversation is in evidence. It was Matthews these men saw talking to Booth, and not Surratt. The testimony of these two witnesses need not be considered further. They are mistaken, and they do not testify with any degree of certainty or positiveness whatever.

Grillo saw him for a moment at Willard's Hotel; thinks it may be the man; is not positive; never saw him before; has never seen him since. I may as well make a suggestion as to testimony of this character, here as elsewhere, which no doubt has already crossed your own minds, and which will serve you as a guide in considering evidence in regard to identity. There is nothing more unreliable than proof of identity. There is no testimony about which you should hesitate so long as in regard to testimony which attempts to identify an

individual casually met and casually passed. Tell me, can you recollect a man's face you never saw before which was seen two years ago in a hotel, and whom you passed going to the office of that hotel? Can you recollect every man you saw two years ago? Can you recollect every man you met upon the street yesterday in coming up from the Seaton House to this court whom you casually passed, and who attracted your notice but for a moment? I defy the human memory to perform such a task. Gentlemen of the jury, the features of individuals make but slight impressions on us at first sight, and I presume that is the experience of each of you. You know two sisters, and at your first acquaintance you were unable to distinguish between them—twin sisters—features alike apparently, manner alike, nothing to distinguish them. Upon the first, second, or third visit you could scarcely tell one from the other. Yet, upon a matured acquaintance, you look back upon the earlier days of that acquaintance and wonder you could ever have seen a resemblance that should have confused you. Features make but slight impressions until they become burned on the human mind. Identity is more certainly established by conversation, tone, manner, deportment, and bearing. I never would give credit to the testimony of a witness who simply saw the face of an individual in passing, and two years afterwards swore he recognized that face again, when he had never seen it before or since. But if a man tells you he had seen that man two years ago, conversed with him, remembered the conversation, the tone of voice, the deportment, the bearing, and peculiar action of the person, I would trust that man and believe him, because these are the things that stamp the recollection of the individual upon the memory. But the simple picture, floating like some vague thing through the air, seen for a moment, is forgotten the next; and when it is pretended to identify the face thereafter, and the party swears to it and swears honestly, I can only account for it upon the ground that, when the mind is wrought up by surrounding circumstances to believe a particular person is a certain man known in some past transaction, the imagination lends wings to memory, and it takes a flight beyond the reach of judgment and beyond the scope of actual recollection.

The next witness upon whom they rely is Ramsell. I must read a part of his testimony, because, I think, when you hear it again, you will be entirely satisfied to dispose of him. His testimony is that he was going out of the city on the Bladensburg road early on the morning of the 15th and he saw a horse tied; he noticed the horse; it had no rider.

"About fifteen minutes after I passed this horse a man rode up to me on this same horse and asked me if there would be any trouble in getting through the pickets; or something of that kind.

"Q. What did you tell him?

"A. I do not recollect what I told him exactly, but I think I told him that I thought there would be; or something of that kind. I asked him if he had heard the news of the assassination of the President.

"Q. What did he say?

"A. He did not make any answer, but gave a sneering laugh.

"Q. What did he do?

"A. He looked back and on both sides.

"Q. In what manner?

"A. He appeared to be very uneasy, fidgetty, and nervous.  
 "Q. Could you discover any thing that arrested his attention?  
 "A. There was a man coming from the city, an orderly, I think, carrying dispatches to Fort Bunker Hill. As soon as he saw him coming he rode away.  
 "Q. What did he say when he saw this man coming?  
 "A. He said he thought he would try it, and rode away.  
 "Q. Try what?  
 "A. Try the pickets?  
 "Q. How did he ride?  
 "A. The horse went at a pretty fast gait.  
 "Q. [The prisoner was here requested to stand up in such a position that the witness might set his back.]  
 "Q. Did you ever see that man [pointing to the prisoner] before?  
 "A. I think I have seen that back before.  
 "Q. Did you see it on that horse?  
 "A. I think I did."

Gentlemen, I could but fancy a private theatrical between my learned friend Judge PIERREPONT and Ramsell.

"Judge PIERREPONT. 'Do you see yonder cloud, that is almost in shape of a camel?'

"The WITNESS. 'By the mass and 't is like a camel, indeed.

"PIERREPONT. 'Methinks it is like a weasel?'

"The WITNESS. 'It is backed like a weasel.

"PIERREPONT. 'Or like a whale.

"The WITNESS. 'Very like a whale.'

Why, gentlemen, it is playing unbecoming pranks before a dignified jury in a solemn case, as the gentleman calls this, to be introducing such evidence.

Another witness, brought forward and relied on to sustain the essential element in this case—Surratt's presence in the city of Washington on the 14th of April, his participation in the murder—is John Lee. What shall I say of John Lee? We have followed him wherever we have known him to have lived, and proved by troops of witnesses from every locality in which he has resided that he has been consistent throughout life in establishing everywhere a character for lying almost beyond parallel. The testimony shows him to be infamous; and from among all his acquaintances the Government, with the aid of its countless detectives and spies, has been able to find only two persons who would believe him on his oath.

But there is another circumstance connected with this man's testimony that should induce you to disregard all that he says, and strongly tends to show that the prosecution knew the character of the witness they were imposing upon you.

After he left the stand we recalled him. He was in the court-room; he came forward and stood with one foot upon the witness-stand. The prosecution objected to any further cross-examination. We desired to lay the foundation for contradicting him, and for showing that he had repeatedly said before this trial commenced and since that he did not know the prisoner and had never seen him. With all the earnestness of fear the counsel for the Government resisted our motion, and the court sustained them. They knew Lee better than we did, and knew his evidence could not stand the test of such investigation. But there are other serious inquiries suggested by this evidence. I intend to show you that this accumulation of infamy upon these witnesses, this mass of corruption they brought here to infect the atmosphere of justice, poisons their whole case and poisons them and disgraces those who are stimulating this prosecution. I do not say this to induce you to disregard Lee's testimony, for I know it is doing an insult to your judgment to attempt by argument to refute that testimony. Your own kind hearts and honest minds have already refuted it. But I refer to him and his evidence as circumstances which I will connect with others to show the infamy of this prosecution.

Wood, the negro barber, is their great reliance. To what does he testify? "At nine o'clock on the morning of the 14th April Booth came into my shop with McLaughlin and two others. I shaved Booth, then I shaved Surratt. I recognize the prisoner at the bar. I never saw him before; I have never seen him since. It was nine o'clock." "Do you fix the time?" "Yes; I had been to breakfast; I had shaved Mr. Seward; and

that is how I know what time it was. It was about nine o'clock. Whilst I was engaged in shaving him McLaughlin takes out of his pocket some curls and a braid, and decorates his hair with the disguise of a woman, and turns around and inquires. 'Would not I make a nice-looking lady?'" The reply is, "You are a little too tall." He identifies McLaughlin more emphatically than he does Surratt. How have we met that testimony? We have proved by Edward A. Murphy and Bernard J. Early where McLaughlin was every minute of the time from Thursday night until Friday morning. They came with him from Baltimore; they were with him at the hotel; they were with him on the streets; they did not leave him for five minutes which is not accounted for, and he never was in that shop. Some gentlemen outside asked me, and indeed you might have asked in your minds, why all this proof about McLaughlin? They did not see what Murphy and Early were proving. They did not seem to see where the arrow was intended to strike. We could not account for Booth. There was no incident here that we could meet except the incident of McLaughlin's presence, and we therefore proved where McLaughlin was, and contradicted this negro emphatically as to him. The gentleman said he did not know whether he was white or black—a good many folks don't know whether they are white or black now-a-days and that may be a trouble with the district attorney; but Wood is a genuine negro. The time at which Wood shaved him is fixed, not on cross-examination, not drawn out by counsel straining their ingenuity to get at a particular point, but it is fixed in his examination-in-chief. I will read to you what he says, for it is somewhat important in another aspect:

"A. Think it was near about nine o'clock. I had had my breakfast.

"Q. Where had you been?

"A. I had been up to Mr. Seward's."

There is another circumstance in connection with this testimony to which I will call your attention. It is something singular that he should have shaved two of this party. Where were the other chairs in this large shop? And again, where are the other men who were in that large shop? These are circumstances to be considered only in connection with other circumstances tending to break the force of his testimony. It was near nine o'clock. At that hour in the morning you, gentlemen of the jury, know that a barber's shop is almost invariably crowded, persons are coming in and going out; and I ask you as plain men of common sense will you attach any weight to the testimony of a man whose business is of such a character as leads him necessarily to be subject to a torrent of a hundred men probably every morning, and out of that torrent pouring in every morning he fixes one man who was there on the 14th of April two years prior to the day on which he testifies, and says, "Though I never saw him before and have never seen him since, that man was in my shop at that hour." According to the multitude of new faces that we see each day is the difficulty of our identifying any one of them. If an entire day should pass and we saw but one face we might recollect it. If we saw ten, the probabilities of our recollecting any one would be less. If we saw twenty, they would be less still. So in proportion to the number we see is the difficulty in identifying and recollecting any one.

Here was a place that was the rendezvous of crowds, of hundreds, going through identically the same operation, the same performance, generally the same conversations, with nothing to mark this one individual; and yet, after the lapse of two years, he identifies him as the man. But the conclusive answer to Wood's testimony is the position in which the learned counsel have placed Surratt. They represent to you that Surratt left Elmira at ten o'clock on Thursday morning; that he was ferried across the river, and reached Baltimore at 7:25 a. m. on Friday. The only train arriving in Baltimore from Harrisburg, in the morn-

ing, according to Mr. DuBarry's testimony, (page 907,) arrived at 7:25. Mr. Koontz testifies that the next train after 7:25 that left Baltimore reached here at 10:25. You have him in the depot at 10:25; give him, if you choose, five minutes to meet his companions, Booth and the others—that is half-past ten; give him a quarter of an hour to talk with them, lounge and go into the barber's shop, and you have it near eleven o'clock. Could this barber, whose business in the shop marked the hours of the day, have made such an egregious blunder? When he testified on the stand the gentlemen for the prosecution expected to have Surratt in Washington city by eight o'clock at the furthest, and by the line they then intended to bring him he would have reached here at that hour; but in the course of their evidence, by their change of plan, they have so placed him on the roads that it was a physical impossibility, according to their own showing, for him to reach here until 10:25. That, gentlemen, I take to be a conclusive answer to Wood's testimony. But another circumstance. He gave him a clean shave all round his face.

"Q. You say he had no beard on his face?

"A. No, sir; he had a slight moustache.

"Q. No imperial, goatee, or any thing on his chin?

"A. No, sir."

He says, "I shaved him clean round the face, with the exception of his moustache. He had a slight moustache at the time." Every witness in the case that testified in regard to him gives him a goatee at the time, not so long as he now wears, but one a barber would certainly notice. This barber says he shaved him all round, and he had no beard, no hair on his face, except the moustache. Now, however slight this circumstance may be in considering a question of identity with an ordinary man, yet as it is in the line of a barber's business it becomes a very material circumstance with a barber. He shaved him all round, and he had no hair on his face. This, gentlemen, is not the man he shaved.

Feeling themselves grow weak in the testimony, they fell back upon whom? Upon Mr. William E. Cleaver. I must confess I was very much surprised when I saw Cleaver come upon the stand and recollected the denunciations I had heard thundered against him by the district attorney, and recollected the fact, which came out in evidence, that only a few weeks since, for a crime without a name, a verdict was brought in against that man and he was sentenced to ten years in the Albany penitentiary. A new trial was granted on technical grounds, and he stands for trial in this court now. I say a crime without a name. It is a crime not without a name in law; but it is a crime that cannot be named in this presence. Murder; not only murder, but "murder most foul and unnatural;" and the spirit of the un-grown girl stands before the eternal throne as the accusing spirit of that accursed man. Why, gentlemen, has the United States Government bowed itself to the low humiliation of using such an instrument as that? An instrument infamous in itself and infamously prepared for the uses of this prosecution. I do not speak of him to induce you to discredit his testimony; for this purpose you need no argument from me. I am satisfied your indignation was deep and profound when you saw the villain on the stand; but I speak of him and his testimony and the circumstances connected with its development as parts of this prosecution, and as circumstances showing its character and the spirit in which it is conducted and the means by which it is to be made to accomplish a bloody result. We have not been allowed to introduce any evidence as to Cleaver and the process by which he was made a witness and prepared for his task, except such as we have drawn from Cleaver himself. Incarcerated in your jail with that most notorious felon Sanford Conover, whose name has passed into history with the record of the Bureau of Military Justice, and upon whose body yesterday grated the iron doors of the Albany

penitentiary, Cleaver found, in this fabricator of perjury for the military commission, a congenial companion, and for their mutual benefit they devise the story he has detailed in this case. I say together they devised and planned it, for no other conclusion can be drawn from Cleaver's statement by any honest man, in view of the characters and positions of these two persons. Conover, having duly disciplined his pupil, calls in Ashley to examine if the education is complete, and Ashley hands over this man, dug up from the jail's infamous depths, to the prosecuting attorneys in this case, and they put him on the witness-stand, and ask you to accept and believe his evidence!

Gentlemen, this man Conover has met his fate; the vile and pliant tool of a master scarcely better, he is now a convicted felon; and Cleaver, the lesser tool, awaits his fate, temporarily suspended by the technical rules of law, and he will receive it whenever his case, now pending, is brought to trial. Shall I ask you to discredit the testimony of such a man, proposed under such circumstances? Counsel, in bringing forward witnesses, may, in the heat of professional and partisan zeal, sometimes forget what is due to themselves; but a jury such as this cannot forget what is due to the cause of justice and the dignity of honest manhood. I do not ask that you reject this testimony; I demand that you *spurn* it—indignantly spurn it and cast it from you. It pollutes the court and dishonors the cause.

David C. Reed, upon whom the prosecution relies, thinks that he saw the prisoner in this city on the day of the murder. He does not swear positively, and so weak and insufficient was his testimony, that we deemed it unnecessary to introduce evidence impeaching him. Living in this community, you know him. You know his business; you know his craft. He tells you in his cross-examination that he had previously stated that John H. Surratt had been in his room, and he believed it; but he now thinks he was mistaken when he said he saw him in his room. He tells you he had seen him at Pumphrey's stable and talked to him time and again. Pumphrey tells you that he kept a stable, and never saw Surratt there more than two or three minutes at a time in his life, and that Reed testified falsely when he spoke of his habit of sitting there at the door. Reed tells you he knew Surratt from the time of his childhood, and that he is now some thirty or thirty-five years of age. Look at him, and you see the boy, broken down by imprisonment and wasted and worn by suffering as he is, with the harrow of suffering making the wrinkles of age on his brow; and you see, even in this condition, that no sensible man would pronounce him thirty years of age. He is proved by his brother to be only twenty-three, and yet this man, who has known him ever since he was a child, says that when he saw him in the street he saw a man of thirty or thirty-five years of age. My learned brother, on one of the days which he devoted to an eloquent address to you, thought proper to speak of one of our witnesses as dealing out iniquity, death, and sin in the shape of fluid. Who is David C. Reed? What does he deal out? Iniquity in the shape of liquor sold at a bar? No; oh, no! The fiery draught that inflames men's blood in order that he may get what they pay for the poison they imbibe? That is not his business. It is to inflame their blood that he may rob them at his faro bank. Of this man's reputation in the community I will say no more.

Who is next relied upon to support this prosecution? Susan Ann Jackson. She made a statement that produced a deep impression on this jury at the time she made it; it sank into the heart of the whole community. She told a simple story from that stand of having seen John H. Surratt on Friday night, the 14th of April, 1865, in his mother's house, and having, at the request of his mother, prepared supper for him. It was a happy circumstance that she went a little further. She not only says she prepared supper for him, but she gives a part of the conversation, and, as if by another

one of those interpositions of Providence in behalf of this prisoner, we are able to prove the identical conversation, and when it took place. She swore that she saw him that evening, prepared supper for him, and that when she came in Mrs. Surratt said to her, "This is my son John; is not he like Anna?" She had never seen him before. She never saw him afterwards. She never saw him but once; she did see him once; and this was when she saw him. Gentlemen, it struck me as somewhat remarkable that Susan Ann Jackson should have testified to this fact before you, and that, having done so, she should then, in answer to a question of mine, say that she had given the same testimony before Captain Olcott soon after the assassination, and that it was taken down in writing. You know, gentlemen, and every man in America who reads knows, that the Government raked the city of Washington and the whole country to find proof that John Surratt was in Washington city at the time of the assassination. You know that if they had been advised of any individual that could have proved John Surratt's presence in Washington city at that time, the individual who could give the proof would have been summoned before the military commission and required to testify. It struck me at once with amazement that she should then have advised the Government that she knew this very material and important fact, and that the Government should not have called her to testify before the military commission. I was not then prepared to believe all about this prosecution that I am now prepared to believe and do believe. You have her evidence before you, that she stated to the officers of the Government in 1865 the facts to which she now testifies. That is what she says. Does she know? Does she recollect? Is it so? I apprehend there was no such testimony written down by Captain Olcott. If there was, as I have said, they would have used it then; if there was they would use it now. Gentlemen, the prosecution knew she was lying on that stand, and they sat here and acquiesced in the lie. They knew, for they had before them her examination before Captain Olcott, that she had sworn on that examination not as she swears here. They had the record of her examination in the Bureau of Military Justice; they have seen it; they knew that she had either failed to recollect or was willfully lying, and they acquiesced in the lie, whether made up maliciously or narrated erroneously. Now, what is the proof? She is asked on page 429 if she knew Rachel or Eliza Ceyphas. No, she did not know any such woman. She was asked whether she knew Rachel or Eliza Hawkins, who once came to see her. "No, I do not know her; no such woman ever came to see me." Her own husband, brought here to vindicate her character by proving that what she had said was true, proves that this very woman, Rachel, came to the house to see her, spent a day there with her, and was carried to the provost marshal's office in her company. That is the testimony of the prosecution, not ours. Why did she deny that she knew Rachel? It is evident that it was a palpable falsehood; she did know Rachel. Why did she deny it? Because she knew that the next question would be as to what she had told Rachel about this business, and she knew she had told Rachel that she had seen John Surratt on the 3d of April, and never saw him afterwards. The very instant she was asked if she knew Rachel she saw the toil in which she was caught, and she met the battle boldly in the front, and commenced lying the very instant she found she had to lie to extricate herself from the difficulty she was in.

What does Rachel say? Rachel says she was here spending her Easter holidays in 1865; that she called on this woman to see her and to see her own child. She knew her, and she went to Mrs. Surratt's to see her. They had a talk about Mrs. Surratt. Susan was apprehensive about her home, and about getting her money. Rachel told her she would get her money; that Mrs. Surratt would pay her if it took the last cent

she had on earth. The conversation then comes up about John. She then declared that she had not seen John for two weeks, he had not been there for two weeks, and spoke of his resemblance to Anna. This was on the Monday or Tuesday after Friday, the 14th. Rachel, as you all saw, manifested a kindly heart. A good old negro, she is an excellent specimen of that class which is passing away, and which hereafter will be remembered in romance and in story. The gentleman upon the other side thought she showed a little too much sympathy. His education in the North has not made him familiar with the institutions of our section of the country, and the habits and traits they develop and cultivate. The honest and earnest sympathy of these old family negroes for those among whom they have lived is beyond expression; but this sympathy and love never exists except with those who are thoroughly upright and honest. The old family negro who has nursed and cared for the children and grandchildren of her master, and borne in the family the endearing name of "mammy," whose heart still warms with the love this relation begets, is always honest and sincere and truthful. These are all congenial sentiments, and the invariable growth of the same soil. They thought Rachel exhibited too much sympathy for the family. She came out boldly with it: "Yes, indeed, I do feel sympathy with them; I love them; I want this man to get off." Mr. BRADLEY asked her, "Do you love him well enough to tell a lie?" "No, bless God, I would not tell a lie for any thing on this earth," speaking in the plain vernacular of the darkey, and manifesting a character with which you, gentlemen, are all familiar, and which at once impressed you with the truth of every word of her testimony.

But, gentlemen, Rachel does not stand alone in this contest with Susan Ann Jackson. She is corroborated by Clarvoe, who was at Mrs. Surratt's to search the house on the night of the murder. Clarvoe came down stairs, and saw two negro women there. He speaks to one of them in the door, and says, "Aunty, where's Mr. Surratt?" "I do not know Mr. Surratt; do you mean Mrs. Surratt's son John?" "Yes." "I hain't seen him for two weeks." Did that conversation occur? There is not one of this jury who will doubt the word of Clarvoe. Is Susan Ann the woman? Clarvoe says that while he was coming to court he met a woman on the steps, and was startled by the thought that she was the woman with whom he had this conversation. He believes she is the woman. McDevitt was present and heard the conversation. He will not say whether she is the woman or not. You will recollect that Susan Ann Jackson, when recalled, stated that when these men were there she covered herself up in bed, and did not see anybody. Clarvoe tells you he searched her room, searched her bed, found the bedclothes turned down, and that nobody was in that bed. Do you believe him? He examined the room; he looked under the bed; he was there to search, to find whoever might be concealed, to unkenel whatever might be hid.

But that is not all. The good angel of this case, whom the district attorney commends so highly, Miss Fitzpatrick, settles the whole question. Honora Fitzpatrick says that when John Surratt came back on the 3d of April, she was in the parlor and received him with his mother; that his mother sent her down to get some supper for him; that she went down and got supper and set out the table. She then goes down with the mother and John Surratt into the supper-room; they take their seats, and presently Susan Ann Jackson comes in with a pot of tea. Says Mrs. Surratt, "Susan, this is my son John; don't he look like Anna?" Then it was she saw him; then it was this conversation took place. That was the only time she ever saw him, for she swears she never saw him but once.

My learned brother says you must accept Miss Fitzpatrick's word as truth. I agree with him. Her simple and guileless manner convinces you of the purity of her heart, and she did not need the commendation

he has bestowed upon her. This commendation, however, was only the prelude of an attack. He says she is mistaken as to the date, and that the conversation and incident to which she testifies took place on the 14th of April, and not, as she testifies, on the 3d. Fortunately alongside this good angel of the case, testifying against this perjured negro, is also the bad angel of the case. The war of light and darkness will, I presume, go on forever; the contest of good and evil will never end; between Ormuzd and Ahriman there can be no peace; there can be no peace between virtue and vice, between the angel and the fiend, and the conflict manifests itself upon every field of human action; the widest and the loftiest as well as the most contracted. But evil and vice, though rigorous, are often blind, and sometimes aid the purposes of a noble justice, even when designing to accomplish the most malicious and iniquitous mischief. Weichmann, the bad angel of this case, the accursed fiend, who seems to combine in himself all the evil qualities of the various spirits the district attorney has conjured up from hell by the magic of Milton's wand, and whose character, as manifested by himself on the stand, is composed of every vice that makes man the abhorred and detested of his fellow-man—Weichmann, whose conscience, according to the evidence, drives him madly before its applying lash, though evidently determined to convict the prisoner if his oath can accomplish that result, without appreciating the importance of his testimony and these apparently insignificant particulars, fully sustains and confirms Miss Fitzpatrick in regard to this most important and conclusive fact. Weichmann testifies that John Surratt was not at supper on the night of the 14th. He tells you that he came back from Surrattsville with Mrs. Surratt about half-past eight or nine o'clock; that when they came back they went down and took supper together; that he went up with the family into the parlor immediately after they were done supper, and remained there with Mrs. Surratt, and talking to the girls; that Mrs. Surratt could not possibly have left the parlor and gone to supper without his knowing it; that she did not leave until ten o'clock, when he went to bed.

He also proves that he did see John Surratt at the house on the evening of the 3d of April. I shall have occasion to recur to this; but I mention it now as confirming the testimony of Miss Fitzpatrick and refuting and exposing the story devised for Susan Ann Jackson. With your own devils will I exorcise your devilish spirit; with your own devils will I destroy your accursed kingdom. Weichmann says she could not have gone down to supper with John Surratt, nor could she have given him supper without his knowing it. Is not this enough to destroy this woman? Is she mistaken or is she lying? So far as her testimony is concerned, it is so completely demolished, that simply as evidence it is not worthy consideration; but I am sorry to say that the course of this prosecution and its attendant and surrounding circumstances convince me that this woman was lying deliberately, willfully, and maliciously, with the full knowledge of the United States Government and of the officers here representing that Government.

One other witness I have not mentioned—St. Marie; impeached, but defended. He says Surratt admitted to him that he was here, and escaped the morning after the murder. I presume there is no member of this jury who would, after the attack on St. Marie, be willing to find a verdict upon that man's word. The learned counsel rests a good deal upon confessions. I shall have something to say of the force of confessions hereafter. I attach small importance to them. He says that St. Marie was a friend of Surratt's in the Papal Guard. Why is he here? Why should he betray his friend? Gentlemen, the jingle of the yellow earth has been the knell of many a man's honesty. Why was he in the Papal Guards? He was pursuing this man. If he was his friend in the Papal

Guards, why is he here, consenting to come? How could you get him here? Why should he give information to the American consul? Is he so very public-spirited—does he so love American justice and American glory that he should voluntarily, and without hope of reward or benefit, come forward and inform on his friend? Gentlemen, for myself, I cannot, without sickening at my heart, hear the testimony of any one of these professed informers. In the course of my professional experience I have learned to look upon them with suspicion, distaste, and hatred. During our civil war the land swarmed with the paid emissaries of private and political malice; and spies from the Bureau of Military Justice, subsidized perjurers, and deputy kidnappers infested the whole country. They were prowling about every kitchen, eavesdropping at every corner, and growing rich on the rewards paid from the public treasury for falsehoods fabricated on honest men. The worst habits and most wicked expedients of corrupt aristocracies and more corrupt monarchies became the daily food of American society, and even to-day and now, since the return of peace, a part of this army of scoundrels is retained to serve the bloody purposes of certain authorities, and paid from the public treasury and fed at the public board. The system is infamous, the tools are infamous, and the men who use them more infamous than either the system or the tools.

Now, gentlemen, I have gone through with their testimony as to the presence of the prisoner in Washington city on the night of the murder. I think I have shown you that it is corrupt from beginning to end, unprecedented by any thing within your recollection. What other evidence is there? Negative evidence, but strong. If John H. Surratt was in Washington city on the 14th of April, is it not a remarkable fact that no one single acquaintance who knew him met him? Of all the witnesses who testified, not one single individual had ever seen him before, except Reed, and he did not speak to him, but nodded in passing. They have not brought here one friend or one acquaintance, except Reed, who saw him on that day. Strangers saw him here, as they say, undisguised, open, wearing no concealment, moving about the streets—walking on Pennsylvania avenue, says Reed; drinking at Metropolitan Hall, says Vanderpoel; riding on H street, says Cleaver. He was everywhere visible to strangers, yet not one single friend or acquaintance saw him or spoke to him. Is it not remarkable?

They say that Mrs. Surratt's house was the rendezvous of the conspirators. Mr. CARRINGTON says it was the rallying point. If it was the rallying point, and John Surratt was here on the 14th of April, preparing for the consummation of the great iniquity and the realization of the hopes of that conspiracy, why did he not go to the rendezvous? Would not that have been the first place to which he would have gone? Booth was there at one o'clock, says Weichmann. There was no concealment about that. If John Surratt was in town, why was not John Surratt there? Was he there? Mr. Holahan, who was in the house, says he was not. Mrs. Holahan says he was not. Miss Jenkins says she knows he was not, because she was there all the time. Miss Fitzpatrick says he was not. Weichmann says he was not. Booth was there; Booth was his friend; Weichmann was his friend. Where should he have been but in the company of these two friends at the place of their common meeting?

But there is another who testifies in his behalf, as not being there; a voice from the grave—a nameless grave, without a stone or flower. Mrs. Surratt says he was not there, and that he had not been there for two weeks. Weichmann says, also, not only that he was not there, but that he had not been there for two weeks; and if Weichmann ever told the truth, it was on that night, before his heart had commenced to feel the fear with which he was terrified in prison, and before his judgment commenced to devise the story that was to protect his

life by sacrificing another's. If he ever told the truth, it was then; but this voice from the grave speaks in behalf of the child. Says Clarvoe to Mrs. Surratt, "I want to know where John is." "I got a letter from him to-day; I have not seen John for two weeks." Is it true? The living that are truthful bear testimony that he was not here; the dead speak from the grave that he was not here. Her declarations in this conversation are in evidence; we cannot produce her to protect her child; but this one single voice, rising from the tomb, and, as if ascending to Heaven, is re-echoed back to protect that boy. You [addressing counsel for the prosecution] have broken the ceremonies of that grave; you have brought her before this jury; now close those ceremonies if you can. She sits beside him, and covers him with a protecting wing. You thought it was adroitly done; that you would lay the blame on us; but when you brought her before this jury we had not said one word; and in bringing her before them you disclosed your plan. Her trailing garments from the tomb sweep through this room. We feel the damp air of death as it chills upon us. You may bid the spirit down, but it will not. It is here, as it has been elsewhere. It speaks to this jury—a mother pleading for her son, and testifying in his behalf. Beware, gentlemen, lest the speculation and the scheme you devised to shield iniquity by the perpetration of a greater crime, may not serve to deepen the infamy you are seeking to defend. Beware, lest in the scheme you have devised you have given a lingering life on earth to that spirit which speaks to living men, and hisses in the ear of those who did its damning murder. Enough for the present that she says her son was not here on that fatal night. I shall refer to other matters connected with her in the course of my argument hereafter. I feel that I am drawn to it—drawn to it, even to the overleaping of the matter that regularly follows in the sequence of my argument. I feel that a spirit I cannot resist impels me to say something it is painful to say, but I will say it in its proper place.

You then have, gentlemen of the jury, their witnesses proving Surratt's presence here stricken down. You have the living among his friends testifying that he was not here. You have his dead mother casting this last protection around her child, saying he was not here. But if he was here, how did you get him here? They prove that he was in Montreal on the 12th of April, 1865. How do they get him to Washington? He left Montreal, according to the testimony of their witnesses, at 3:30 on the afternoon of the 12th. They put him on the New York train. You see [illustrating by a large map spread out before the jury] the train runs to Albany, New York, and Washington, forming almost a straight line, with a slight curve at New York. They admit that on the 13th he was in Elmira. They start him from Elmira at ten o'clock on the morning of the 13th in order to reach Washington city. Now, they must bring him from Montreal to Washington city, and have him in Washington by nine o'clock on the 14th, in time for Wood to shave him. How will they manage it? Remember, they bring him by way of Elmira. Now, what is the time? Leaving Montreal at three; Rouse's Point at 5:45; St. Albans, 7:25; Essex Junction 8:30; Burlington, 9:05; Troy, 5:20; Albany, 5:45—sixteen hours from Montreal. Then, at 5:45 on the morning of the 13th he was in Albany. Now, if he had come straight to New York he would have reached there by three o'clock that day in time to take the night train from New York, reaching here the next morning at six or seven. That was the line by which they intended originally to bring him—there is no doubt about that; but our testimony that he was in Elmira was too strong, and instead of meeting it boldly in front they had to flank it; and, therefore, they concluded to put him in Elmira on Thursday, the 13th. Very well, we now have him at Albany at 5:45 on the morning of the 13th, the earliest possible time at which he could arrive there. How will they take him to Elmira? He leaves

Albany at seven o'clock, reaches Syracuse at 1:20 p. m.; Canandaigua at 4:52; from there to Elmira in three hours—say eight o'clock. I want you to see these courses and distances. The earliest possible moment at which he could then have reached Canandaigua was between four and five o'clock in the afternoon of Thursday, the 13th. Then he reached Elmira that night. There is no night train running from Elmira; the bridge over the river is broken up; the road is temporarily destroyed; the trains go out at eight o'clock in the morning. He must therefore stay in Elmira all night. The counsel for the prosecution were not aware of that when they determined to say he was in Elmira, and they were obliged to resort to a burden train or special train leaving at ten o'clock in the morning. But how could he get to Elmira, is the first question, by ten in the morning? We have shown you the time from Albany; it is eleven hours to Canandaigua, and he cannot get to Elmira without going to Canandaigua. Is there any other route by which he can do it? There is no other route, and it is proved by their own testimony in this way: They put him on the New York train in Montreal; the New York train from Montreal runs down by Burlington and Albany. They start him on the New York train, and they can only get him off at Albany, in order to take him to Elmira, and they can only take him to Elmira by Canandaigua, and they cannot get him to Canandaigua until five o'clock Thursday evening. It is a physical impossibility; and yet they want to tell you he was in Elmira at ten o'clock that morning. Now, if that is not a mathematical demonstration, I cannot understand it. In order to make the thing doubly sure I asked Clarvoe, who traveled over the route, how many hours it was from Montreal to Albany. He said nineteen. I asked Chamberlain, who lived in Canandaigua, how far it was from Albany to Canandaigua. He said ten hours; making twenty-nine hours from Montreal to Canandaigua. Will the gentlemen bring him by any other route? You put him on the New York route; we followed him by that route to the only point where he could diverge to go to Canandaigua. We take him where you give him to us. If there was any other route, and you meant to bring him by another route, it was your duty to prove it.

Gentlemen of the jury, I invoke your serious consideration, for although there may be doubt and difficulty about a question of identity, there can be no doubt about these physical facts. I have shown you that it was physically impossible that the prisoner could reach Elmira in time to leave there so as to be here on the morning of the 14th, or at any time on that day. They did not know the railroad connection had been broken up at Elmira when they placed the prisoner there on the 13th. They had not found out that there was no night train. When they did find it out they ought to have given up their case. I may not know myself; prejudice may blind my eyes; but I do believe and I state it to you, gentlemen, with all the earnestness of solemn truth, that if I were prosecuting this case, whatever prejudice I might have, when these physical facts were developed to me, I would have abandoned the case. They are insurmountable. Go to work, gentlemen, and figure them up. Overcome them if you can. Appoint a committee of three to escort him from Montreal to Elmira. When you go to your room ballot and appoint this committee, and let them report to you in committee of the whole. See how you can do it. Before you make up your minds, figure close and figure well. Take the starting-point by the three-o'clock New York train from the city of Montreal on the 12th of April. Run him with all the speed a locomotive can carry, and determine when you can get him to Canandaigua, and when you can get him to Elmira. I say it is a physical impossibility to get him there in time to leave that city so as to reach Washington at any time on the 14th. But suppose you get him to Elmira; what follows? Whilst my learned brothers on the other side were fighting so hard on this side of the

road between Elmira and Washington, they seemed to have overlooked the other side of the road. They were trying to get him out of Elmira, but they had not thought how to get him in there. They had him there, and they seemed to take it for granted that he reached there on the morning of the 13th; but in fact he reached there on the afternoon of the 13th, or the evening of that day. These physical facts, these figures, are things that do not lie, and cannot lie. They are mathematical certainties. But I will take their standpoint; put him in Elmira. Very well, now, you have him in Elmira, having come from Montreal in the unprecedented short time of some thirteen hours. Put him there at ten o'clock in the morning; (the gentlemen do not pretend to say he was there before ten o'clock;) how do you get him out? From Elmira to Williamsport is five and a half hours; Williamsport to Sunbury two hours; from Sunbury to Harrisburg two and a half; from Harrisburg to Baltimore four and a half. But at that date, the 13th of April, 1865, the time was twenty-three hours. They put him in Elmira now after eight and before ten o'clock of the 13th. There were two passenger trains and two burden trains out from Elmira that day, and they left at 8 o'clock and 8:5. Was there any train after that? The counsel has put a witness upon the stand who testifies that he thinks he brought Mr. DuBarry down on that day, and that he left at 10:30. Fitch says that there was no train from Elmira going south on the 13th, as I understand him, after the regular train at 8:05, special or otherwise, for if there had been it would have been upon his records, and it is not there. DuBarry confirms Fitch; and when recalled, at page 904, states most emphatically that there was no train, special or otherwise; that such a train would be on his records, and that he has searched the records, and cannot find it; that he has no memory of any, and if there had been any—passenger, freight, or otherwise—there would have been a memorandum of it; that he has no recollection of coming down in any special train on that day. Again, the passengers coming from Elmira would lie over at Williamsport until ten at night. That could not be avoided. Leaving Williamsport at ten, they reached Harrisburg at two, and the witnesses in their first testimony say they would reach Baltimore about seven; but the time is afterwards definitely fixed on page 904 at 7:25. Now, suppose they put him on a special train from Elmira at ten and a half, and run him down to Williamsport. At Williamsport there is a ferry, and they have him ferried over, and prove it by Montgomery.

Mr. BRADLEY. No; not Montgomery—Drohan.

Mr. MERRICK. Yes; Montgomery. Montgomery created him a witness, and Montgomery paid him, and, as he says, Montgomery brought him here. I mean Montgomery. Drohan is the man that testified; Montgomery is the master under whom he testifies—Montgomery, Sanford Conover's pet—Montgomery, Richard Montgomery, who has been shown to the country as having co-operated with Conover in the scheme of perjury devised against absent men before the military commission—Montgomery, the gentleman's (Mr. PIERRE-PONT'S) right-hand man and friend. Conover made Montgomery; Montgomery made Drohan. What does Drohan say? He was a ferryman, ferrying passengers across at Williamsport. He ferries a man over on the 13th; he fixes the date and hour; he comes here; he is asked who is the man; he says "that is the man," and when he says it he is not looking at the prisoner, but was looking three yards away from the prisoner, and pointing at a person three yards from the prisoner's seat. He was too stupid even to have learned his lesson well. How does he identify him? He identifies his coat. This ferryman, living in the backwoods of Pennsylvania, identifies a peculiar coat he had on. Gentlemen, perjury will out. Too great particularity shows device instead of recollection. Why, that coat had not figured among other witnesses yet. He was coming here in that coat; he left Montreal in that

coat; he was in Elmira in that coat. If this man Drohan, Montgomery's legal son, saw him in that coat, why did he not have that coat on when Reed saw him? Why did he not have that coat on when he was shaved just fresh from the car, without an opportunity to change his apparel, traveling in burden trains, gravel trains, construction trains, without a change of raiment? Why did he not have that coat on when he was shaved? Reed, who has been a tailor, I believe, notices his clothes particularly, and thought it was a nicely-got-up suit, but nothing so fantastic as a Garibaldi jacket. Drohan is the only man who saw him in that peculiar coat. Montgomery has overleaped himself. He had better quit business until his partner gets out of the penitentiary, the senior member of the firm and the genius of the establishment. He does not do his work well, gentlemen; [addressing the prosecuting attorney;] you ought not to have such a bungler in your service.

Drohan ferries him over; and they get him to Sunbury. The freight train left Sunbury at 4:30; the passenger train at 12:13 midnight. Could he have reached there in time for the freight train? He might have done so. The freight train, however, runs to Marysville, reaching Marysville at 9:20 p. m. From that time until 3:30 a. m. no freight or passenger train left Harrisburg south. They had some difficulty in getting him out of Elmira. They had difficulty first in getting him into Elmira, and when they got him there they found it difficult to get him out; and when they get him out of Elmira and to Harrisburg, how are they to get him away from Harrisburg? No trains, freight or passenger, left Harrisburg for the south until 3:30 a. m. The 3:30 train arrived in Baltimore at 7:25, and the passengers by that train left Baltimore at 8:50 and arrived in Washington at 10:25; so that, giving them the advantage of every connection—gravel trains, construction trains, freight trains, special trains, horse cars, Drohan ferries, and Montgomery's aid—they cannot get him here in time for the negro barber Wood to shave him at the hour, or near the hour, at which he testifies he performed that operation.

But go back a little: Although they cannot get him here in time for the barber to shave him, can they get him here at all on the 14th? DuBarry tells you and Fitch tells you that no train left Elmira after 8:05 on the morning of the 13th, special or freight. But even suppose you get him by special train or freight train down to Williamsport—give them the benefit of all they ask—will you, gentlemen of the jury, with your experience in railroads, tell me that, running on gravel trains and construction trains, you make the time once in a thousand; and if you are to determine this verdict upon the close connection of gravel and construction trains between Williamsport and Sunbury, is there not a rational doubt? Is there not a positive certainty? Is it not ridiculous to ask the jury to do any such absurd thing?

But, gentlemen of the jury, there is one other point. These are figures, and material physical facts. Now, here is a moral fact, which comes in appropriately to aid these physical, material facts. What say the learned gentlemen on the other side? Booth wrote to Surratt that it was necessary to change their plans, and to come immediately to Washington—wrote to him from New York, say they. McMillan says Surratt telegraphed to Booth from Elmira to New York, and found he had left. When did Booth leave New York? Have you thought of it? He left New York on the 7th of April. Bunker tells you that he was at the National Hotel from the 8th to the 14th, and that after the 8th he never left the National Hotel. So he writes to Surratt on the 7th from New York, and Surratt keeps the letter in his pocket without acting until the 12th. Such negligence is not the conduct of a well-disciplined soldier or deeply-interested conspirator. Booth is at the National, in his room, on the 8th, and never leaves the National until the assassination. They say he wrote from New York; and, having writ-

ten from New York, he wrote before the 7th. The mail from New York to Montreal is twenty-four hours. Surratt must then, in due course of mail, have received the letter on the 8th; he did not budge until the 12th; and when he did budge, which way did he go? He is ordered to Washington; he understands Booth is in New York. Even when he gets to Elmira he thinks Booth is in New York. If he thought his commander-in-chief was in New York, and he was ordered to Washington, his first object would naturally be to see his commander; and why did he not go to New York, where the commander-in-chief was? For what did he go to Elmira? Look at the map. Look at the relative positions of Montreal, New York, and Washington—almost in a direct line. If Washington was the point at which he was aiming and seeking to reach with all the expedition naturally desired by a conspirator in such a plot, why should he diverge from the direct line of his journey by going to Elmira, twelve hours out of his way? His general is in New York, he has written from New York; instead of coming to New York, he leaves the road to that city when within six hours' travel, and goes round to Elmira. Why was this, if his destination was either New York or Washington? He goes to Elmira and telegraphs to New York. He then, on the 13th, supposing that to be the day he telegraphed, did not actually know where Booth was. This conspirator—this Beelzebub, as the district attorney poetically calls him, on the 13th, on the day before the assassination, did not know where Booth was—where Satan was. Is not this a most extraordinary circumstance? Conspirators, moving on time to do their bloody work, counting minutes as honest men count hours, sworn by a brother's oath to stand by each other, dye their hands in the blood of innocence, and share a common fate! And yet twenty-four hours before the fatal event the second in the conspiracy does not know where his principal conspirator is! They say he telegraphed him from Elmira to New York. If he did, it is a circumstance in his favor; but where is the telegram? Why did not the gentlemen bring it in? But why should he have gone to Elmira? My learned brothers upon the other side say he may have been doing the work of mischief in Elmira. His honor has settled that, so far as his judgment goes to settle it, and it goes a great way. His honor says you shall not prove what he was doing in Elmira, because they have not proved that his being in Elmira had any connection whatever with this conspiracy. He has pronounced that judgment from the bench, and it has regulated and controlled the evidence. It shut out the testimony of E. G. Lee; it closed down the defense. We could have proved what he was there for—that he was there on innocent business, having no connection with this conspiracy—upon business which showed that his connection with Booth and these people, if it ever existed, had been dissolved. But, said his honor, "you cannot tangle up this case with testimony that is not intended to knock down any thing; when they set up that fact you may knock it down; but they have not set it up; there is no proof in the case that his visit to Elmira had any thing to do with the conspiracy." Then, in the name of God and justice and common sense, why did he go to Elmira if he was coming to Washington, and not go by New York, where he could have met his commander-in-chief?

The court took a recess for half an hour, re-assembling at one o'clock.

Mr. MERRICK. With submission to the court: Gentlemen of the jury, I think I have shown to you that the testimony by which the prosecution has attempted to establish the fact of John Surratt's presence in Washington on the night of the assassination is not to be relied on, and that its infamous character and the circumstances under which it was prepared and introduced discredits, soils, and dishonors the entire case of the Government.

I think I have further shown to you, from evidence

the prosecution itself was compelled to adduce, and to the correctness of which we agree that it was a physical impossibility for John Surratt to have left Montreal at the time at which it is agreed he did leave that city, and, coming by way of Elmira, have reached this city on that fatal night. And, although you may think it an unnecessary repetition and useless caution, I beg again to urge upon you that, in your deliberations, you will, with pencil and paper and the time-tables before you, take him up in Montreal on the 12th of April, 1865, put him on the train for New York at three o'clock of that day, as it is agreed he was, and follow him from station to station, and ascertain to your satisfaction what was the earliest hour he could have reached Elmira, and then bring him by the speediest possible route to this city, and determine at what hour he could have arrived.

I have further shown to you that none of the prisoner's friends and acquaintances saw him in this city on the 14th of April, in so far as they have been brought as witnesses before you by either side, and that all, with one exception, who testify to your presence, are persons who never saw him before or since that day, and never saw him on any other occasion. I think we could safely have rested our defense on the testimony establishing these conclusions. But, in addition to this, we have proved his presence in Elmira on the 14th of April, 1865, by some of the most respectable witnesses that have been adduced in the case, and as respectable as any that could be brought upon the witness-stand. You saw them, you felt their character, for it was manifest in their deportment.

In reference to the credibility of a witness and the belief of a juror, there is a difficulty in reducing it to any philosophical proposition. You see a man, you hear him testify; and you believe him or you do not believe him, according to the instinct of nature, which is a power in the human breast exercised unconsciously, but which often leads us better than judgments. You saw Stewart, and you heard his evidence as to having seen Surratt in Elmira on the 13th or 14th—he did not know which; but he fixed the time at which he saw him as one of the two days during which his partner was absent in New York, and he fixed the period of his partner's absence by the books of the firm. You heard Carroll's testimony, and listened to the severe cross-examination, in which the counsel professed to lay the foundation for a contradiction he did not afterwards attempt to build upon. He laid his foundation, endeavoring to induce you to believe that he had something behind that he would afterwards introduce to the discredit of the witness; and having laid his foundation, he failed to put one single plank in his superstructure. A witness was called on the stand with the hope and expectation, no doubt, of contradicting Carroll; but the witness, instead of contradicting him, confirmed him, and, therefore, the testimony of Carroll stands before you unquestioned and undisputed. He says he saw Surratt in his shop on the evening of the 13th, as he believes, and again on the 14th of April, 1865. Mr. Atkinson swears to the fact that he saw him in that shop on the 13th or 14th of April, 1865; and Mr. Cass testifies in a manner of unmistakable truth, and gives to his evidence the impress of the solid character of a substantial and a truthful man. He says that on the morning of the 15th, when the news of the President's death was coming in, he was at his store. He saw a gentleman coming across the street, whom he took to be a Canadian friend of his; but as he approached he saw it was not his Canadian friend. The gentleman came into his store and wanted to purchase some clothing of a character that he did not have. They entered into conversation. The conversation became partly political, when some sentiments were expressed of which Mr. Cass did not approve, and which were, when he manifested his disapproval, withdrawn, and the conversation was then pleasantly renewed. He said, without hesitation, when

asked the question, "This is the man." That was on the morning of the 15th of April, when he was about shutting up his store in honor of the memory of the deceased President, after the news had come that he was dead. You recollect, gentlemen, how I afterwards examined him to test the identity of the person he had seen. "Do you recollect the man's face and his features; or is it from his manner and his action that you identify him?" "I thought I recognized his face, but when I came to talk with him, to observe his action, hear his voice, and notice his manner, I knew it was the man." He identified the man by his voice, action, deportment, and manner, and not by his face alone. Not one of their witnesses who testifies to having seen the prisoner in this city ever talked with him before or since. These witnesses from Elmira have talked to the prisoner, observed his action, and they swear, not to the dim impressions made on their recollections of features, which are liable to be effaced by new features succeeding with succeeding days, but they swear to manner and action and conversation, the *tout ensemble* of the man, and they recognize and identify him from all these things, and not simply from the features of his face.

Then, gentlemen, there is Dr. Bissell, upon whom there was a vigorous and violent attack made, whose testimony came to us without our ever having known or heard of him, further than this: that we knew that Surratt had talked to some man in Elmira on crutches. His character has been tainted, though not successfully assailed; but throw his testimony out of the case if you doubt it. I want no tainted witness, and he is the only one. Throw his testimony out if you choose. I care not for his evidence. Our case rests upon the evidence of men of unimpeached and unimpeachable characters and physical circumstances, that speak not by man's recollection, but by the unalterable laws of God.

One other circumstance connected with these witnesses from Elmira is worthy of your consideration. They all testify to the peculiar kind of coat, known as a Garibaldi jacket. You saw a pattern of it exhibited in court, buttoned round the throat, belted around the waist, and plaited in the back and in the breast; a coat like unto which there is none in this room, and probably none in use in the city of Washington. They testify to seeing that identical coat on this man. We then show by Mr. Reeves that he made this identical coat for this man in Canada, prior to the 9th of April, 1865. We bring here from Canada the tailor who made that coat; and he swears that he made it for Surratt, and we find Surratt in that coat in Elmira. He then returns to Canada, and they prove by the agent of the hotel, the clerk who kept the register, that when he came there, on the 20th of April, 1865, he had on that identical coat.

Now, gentlemen of the jury, they start him out from Canada on the 12th of April, 1865. We put him in a certain coat on the 9th of April, 1865, and find him in that same coat in Elmira, observed by these witnesses, on the 13th and 14th and 15th, and when he gets back to Canada he has on the identical coat in which he left Canada, and which he wore in Elmira, unseen by any of their witnesses, except Montgomery's precious son.

But, say the learned gentlemen, he was coming here, as I have stated to you before, in obedience to the mandates of Booth, and they insinuate that he was performing his part in this conspiracy at Elmira. I have already noticed that position. I have already shown you that Booth went to the National Hotel on the 8th and did not leave until the 14th; and by McMillan's testimony that Surratt did not know where Booth was. Having shown you, gentlemen, that he was not here, that he had had no connection with Booth from the 7th to the present time, it is a circumstance to show that he was not in this conspiracy, for the reason that, if he was in the conspiracy, it is to be presumed that he would have been in Washington city, performing his part in it. He was not in the conspiracy to kill the President, and

had nothing to do with it, nor any knowledge of its existence, and did not leave Montreal in obedience to Booth's mandate. Booth wrote him, says McMillan, from New York; but he did not start immediately. Booth left New York on the 7th. Now, what was the statement that Surratt made to McMillan with regard to this subject—for it is upon McMillan's testimony that they rely to show that Surratt was in this conspiracy. McMillan says Surratt stated that he received a letter from John Wilkes Booth, dated New York, ordering him immediately to Washington, as it had been necessary to change their plans, and to act promptly. Change their plans! Change their plans to what? Can the counsel on the other side account for the change, and specify what it was? He is notified that the plan is to be changed. Changed from what to what? Did he tell McMillan what the plan had been, and what the change was? McMillan does not disclose it. But there was a change of plan. What was it? Cameron discloses the fact of what occurred between Surratt and McMillan, for we must take McMillan's testimony, gentlemen, with many grains of allowance. McMillan has himself told you that he sees the reward glittering in the future, and that he is entitled to the reward if anybody is. And whilst he has made a declaration which the learned district attorney has been pleased to quote as a sentiment worthy of repetition and creditable to the human heart, to wit, "that he gave him up because he regarded him as an enemy to society and civilization," the district attorney forgot to tell you of the additional stimulus of prospective profit—for McMillan himself says that when he did give him up he expected a reward. In his cross-examination, to which your attention will be called, you will find that whilst he swore that he had collected from Father Boucher, through a bailiff, the money that was due, he forgot his own receipt; and he falsified the truth in his testimony concerning that receipt after it was handed to him. It refreshed his recollection, but not until he found that he had told that which was not consistent with truth. It was a receipt dated in June, for five dollars in full of all demands, and yet just before it was shown to him he had sworn that in the August following Boucher was indebted to him for services rendered one year before! If his memory is so unreliable as to his own matters, how can you trust it as to the affairs of others; or if he cannot be credited with small things, how will you reconcile it with your duty to credit him in greater things?

But what does Cameron say? I read from his evidence:

"Q. Did he (McMillan) ever state to you that Surratt told him that he was in Elmira; that he went from there to some town, the name which he could not recollect, but which had an Indian derivation?"

"A. He so stated. I tried to recollect the town by repeating all the names of towns in New York having an Indian derivation I could think of; but he could not recollect, nor could I."

You will call to mind the fact, gentlemen, that some of the towns in New York have an Indian derivation. There are a great many that have, and among them is *Canandaigua*. It is unnecessary I should pursue this point. It is a matter about which I care to speak as little as possible.

"Q. Did he further state that Surratt first learned of the assassination of President Lincoln at the city of Elmira, and that he immediately turned his face towards Canada?"

"A. Yes. He assigned that as the reason."

"Q. Did he ever state to you in any conversation on board that boat, or elsewhere, that he was on intimate relations with Surratt on shipboard; that Surratt could not have been guilty of participation in the assassination; that he really regarded him as a victim?"

"A. He did, in answer to my question, whether he was in favor of compromising himself as an officer of the line of steamers, by furnishing shelter and affording facilities to such a man for leaving the country."

"Q. Did he ever state to you that Surratt told him that the plan for the abduction of Mr. Lincoln was the individual enterprise of Booth, and that he furnished \$1,000 or \$8,000 for that purpose?"

"A. He so stated; and mentioned those sums specifically."

"Q. Did he state that the whole plan was laid by Booth?"

"A. Yes, by "that reckless man Booth," I think was the expression; and that he always regarded it as the individual enterprise of that man."

"Q. At what time was it that you had these conversations with him—do you recollect the date?"

"A. Not without reference to my diary. [Diary consulted by witness.] It was on Monday, the 30th of October. I left on the 25th.

"Q. Did he ever say to you at that time, or after the 26th of September, 1865, that he had never communicated his conversation with Surratt to any one else?

"A. He stated so emphatically. I made a very earnest appeal to him not to state what he had mentioned in that conversation in regard to Father LaPierre. He stated that he was his early schoolmate, and that he had not repeated it to any one else; he told me so positively and solemnly; and he cannot deny it.

"Q. Did he tell you that Surratt did not know of his mother's position until about the day of her execution?

"A. He did; he defended John Surratt when I assailed him on that point."

This is the conversation Cameron had with this man McMillan about twenty days after he had seen Surratt. McMillan's statements in this conversation are entirely inconsistent with the testimony he has given in the case, and you must determine between his statements and his evidence. According to these statements, Surratt said he was in Elmira, and when he heard of the assassination he returned to Canada; that the plan of abduction which had been laid was Booth's own plan, and had failed entirely. Now, there are some circumstances in the case that may justify the jury in believing there was a plan of abduction. If there was a plan of abduction, and there are some circumstances in the case going to show it, and the plan that was carried out was not an abduction, but a killing, then the change of the plan was probably from the abduction to the killing; for, bear in mind, gentlemen of the jury, that the killing did not occur in the attempt to carry out the plan of abduction. It was not an effort to abduct; it was a new plan, a new scheme, which was to kill. If there had been an abduction, and in abducting it had become necessary to kill in order to carry out the abduction, then the abductors might be held responsible for the killing. If there was a plan of abduction, and that plan was given up and abandoned, and a new plan was formed to kill, and the parties went to the theatre with the intent of killing, and not abducting, it was no part of the conspiracy to abduct, but a new conspiracy, with which the original parties to the conspiracy to abduct had nothing to do, except in so far as they personally agreed to the new plan.

But, say my learned brothers on the other side, "This man Cameron is not to be believed; we will bring in witnesses to impeach him." They did, and they swore to his character. A few of them thought he was an erratic, uncertain man. From Elkton these gentlemen came; came with their feelings, came with their prejudices! When we examined McCullough, we found that his opinion of Cameron was founded upon the fact that early in the late war Cameron ordered an article to be published in a Baltimore paper with reference to the doings of some Union soldiers, which contained statements not entirely true. A portion of it was the coinage of his imagination. Why, gentlemen of the jury, if every man who published things that were not entirely true during the late war is to be held as unworthy of belief in a court of justice, I apprehend that a large portion of our people in high positions would be discredited.

But, says the prosecution, he is not to be believed because he has rebel sympathies; and the court has allowed them to go into this question of rebel sympathies to test credibility. Gentlemen of the jury, as I have stated in an argument to the court in the progress of this case, I was no secessionist. I desired the preservation of this Union; I desired its complete and entire preservation, with all the States unimpaired in their rights as States, and the preservation of the Constitution of the United States, untorn by the carpings of demagogues, North or South. I desired peace—a safe and perpetual peace; and union—an harmonious and equal union under the Constitution of the Union; and, whilst I feared the rebellion, I feared the suppression of the rebellion as much and more than I feared the rebellion itself. I believed I saw, moving abroad through the country, a spirit that was seeking vengeance, blood, and money, under pretenses of patri-

otism, and conducting the war as it would run some great manufacturing machine; I believed this spirit would outlive the war and perpetuate hostility in the tyrannical domination of party after the war was ended, and that it would then tear down our Government, subvert our Constitution, and destroy our liberties. My anticipations have been realized. That spirit is abroad and at work to-day, and is shaking the very pillars of the Republic. It assails the Executive of the United States because he defends the Constitution and is seeking to preserve it, and it inculcates hatred to the vanquished South, and vengeance and animosity against her people and all who defend their rights under the Constitution. It introduces even in this case all the passions and resentment of war. The prosecution calls on you to discredit all who may have had sympathies with the South in her conflict. Gentlemen, there were honorable men in the South as there were in the North. There were men of rebel sympathies who were as honest and as true as those who were opposed to the rebellion—men whose hearts were as bold, whose characters were as unstained, whose consciences were as pure, and whose convictions were as sincere. I defend not the act of treason; I defend not the iniquity, North or South, that stained this land with blood; but now that the war is over, I arraign and condemn that bad feeling of bad hearts that would keep alive and embitter the prejudices and the hatreds of the war. And if the veracity of men is to be tested by their sympathies on one side and the other of the fatal line, it would not be entirely satisfactory or creditable to our friends of the North to try them by the records the two sides have respectively made since the close of the war. Who has best kept the faith of the surrender at Appomattox Court House, where Lee gave up his sword to Grant? Is it the acquiescent and submissive southerner, adhering to the obligation he then assumed, of obedience to the supreme law of the land; or is it the dominant power of incendiary fanaticism in the North, thirsting still for further vengeance, and blotting out nine States from the national galaxy, and establishing military despotisms upon the ruins of constitutional government? Who has best kept the faith, again I ask? Gentlemen, I sorrowed for my country in her bloody trial, when her sons stood arrayed in battle against each other; and now, that peace has come, and I see treason, not in arms, but treason in noiseless security, sapping the foundations of the Republic—treason crushing the liberties of one-half the people, and disregarding the sacred obligations pledged by the Congress of the United States, that the war was a war for the Constitution and the Union and for no other purpose, I feel more deeply grieved than in the darkest hour of the rebellion, for I feel that my country and her Constitution is in greater and more imminent peril. But I have still an abiding faith. The same almighty Power that has watched this nation in its course, watches it still; and when for its iniquities the chastisement has been sufficient, perfect peace and constitutional liberty will be restored; and though you and I, gentlemen, in our day and generation, may suffer and grieve and be pained, our children will inherit a country proud as that which we inherited, and which we may rejoice to know they will live in and honor and redeem. Bad men cannot have permanent triumph; but, in order that their defeat may be hastened, let us abandon this habit of crimination and recrimination; let us condemn this vengeful spirit of hostility, which would have us believe that southern men cannot tell the truth; that a man with southern sympathies must be presumed to lie and cannot be trusted. Such opinions are unpatriotic, unchristian, unbecoming, and unfounded.

If Surratt was in any conspiracy, it was abandoned on the 16th of March. That is the proof. Now, gentlemen, let us recur and see what their proof is. They tell us there was a conspiracy to murder; and, says Mr. CARRINGTON, scene first is laid on Pennsylvania avenue,

in 1864. Mrs. McClermont sees at that time two or three gentlemen talking there. She hears them speak the name of "the President;" "telescopic rifle;"—ominous words!—"but his family will be along;" "they can be gotten rid of." Says the gentleman, that is the first scene in this conspiracy to murder. One of these men was Booth. Why, gentlemen, it seems to me, that whatever the counsel on the other side looks at takes the color of his disordered imagination. Small circumstances that amount to nothing grow in his eyes as large as mountains. Then what Mrs. Hudspeth saw. These circumstances gathered together show a conspiracy to murder at this very time. The letter which Mrs. Hudspeth picked up speaks of poison: and ah! at that very time, he exclaims, Herold was an apothecary's clerk. Wonderful. He was an apothecary's clerk, and, according to the testimony of his employer, he had never put up but one prescription, which was a dose of castor oil.

Mr. BRADLEY. Not at that time.

Mr. MERRICK. No; it was not at that time, for Herold left the apothecary store in July, 1863. All this time, too, you will bear in mind, Surratt did not know Booth. He is one of the conspirators, and yet he is not acquainted with Booth. He first became acquainted with him in December, 1864. Miss Fitzpatrick was a boarder at the house from the first of November, 1864. This house is represented as the rendezvous of the traitors during one or two years of the conspiracy, and yet the head-traitor and conspirator was not at the house. Weichmann says that Dr. Mudd introduced him and Surratt to Booth in December, 1864, or January, 1865. That is Surratt's first acquaintance with Booth. There is no proof in the case, not one particle, that Surratt had ever seen Booth before that day. Weichmann testifies that on the 16th of March, 1865, Booth, Payne, and Surratt came in very much excited, and strutted about the room; that Surratt said: "My prospects are ruined, cannot you get me a clerkship?" The whole thing, whatever it was, was evidently broken up then and there; and they were never seen together after that day. The next we hear of Surratt is that he is off with some lady towards Richmond, and then in Canada. For what purpose he was in Canada the court would not let us prove, or we could have shown why he went to Canada.

They say Surratt furnished the arms, put them at T. B., and then concealed them at Surrattsville; that they were there for the purpose of this conspiracy; and that he owned certain horses also designed for this purpose.

Well, now, what is the plain common sense course of reasoning with regard to all this business. Here were a parcel of young men, with their minds inflamed upon political topics, sympathizing earnestly with the South, as a great many of our Maryland young men did, desirous of rendering it such assistance as they could, probably helping persons to cross the river, carrying dispatches between the United States and the Confederate States, and having arms for the purpose of their common protection; and further than that, it is not improbable that there may have been some idea of abducting the President as a measure of war; a thing which was unjustifiable, and for which they might have been taken and executed. It is not improbable, I say, for the reason that there were at that time, as you will recollect, a great many confederate prisoners in the North and a large number of federal prisoners in the South; and it has passed into history that the Federal Government refused to make those exchanges which were demanded by the rules of war and the laws of humanity. It has passed into history that the Confederate States at that time offered to surrender up to the Federal Government from ten to twenty thousand prisoners if the United States would send transportation to Savannah to take them.

Mr. BRADLEY. And without any exchange.

Mr. MERRICK. Yes, and without any exchange. They said, "We are exhausted; our resources are gone;

our food is gone; we starve; your prisoners starve; come and take them, for we are unable to do that justice by them which the law of war requires." Said the United States, "You shall keep them." For the starvation of these prisoners I hold the United States responsible, and not the South. Her own men starved; her own people had no food; her supplies were exhausted. Children fell from the mother's breast, and mothers withered and died for food. Soldiers fell by the wayside, emaciated and worn out, for the want of physical sustenance. Their own people suffered with the prisoners, and they asked the United States to take them, that they might live, for they could not feed them; and they refused to do it. That has gone into history, gentlemen. It is a matter now uncontroverted, undisputed. At the time of which I have been speaking it is not at all impossible that there may have been some scheme to take Mr. Lincoln to the South, in order to accomplish an exchange of prisoners, but not to kill him, for that would have defeated the object. Mr. Lincoln was not to blame for this condition of things; I do not blame him; I can pass upon him as high a eulogium as my learned friend did, although not in as eloquent a manner, for I cannot attain the height of his eloquence. I hold Mr. Lincoln blameless for many of the errors of his administration, for he was dominated over by those men who still dominate in high places, from which they should be driven. There may have been among these young men some such wild scheme, but that it was broken up is conclusively established by Weichmann's testimony.

But, says my learned brother upon the other side, one of these horses belonged to Surratt, and he bought the horses, and he bought the guns. What became of those horses? I know that Judge PIERREPONT, who is to close this case, will make those horses to caper and prance before you; but what is the fact about the horses? Cleaver says that Booth brought the horses to his stable; Stabler says that Surratt boarded his horse at his stable and paid their livery; that after Surratt had paid for their livery for a certain time, Booth paid for their livery. Surratt told Stabler that they were Booth's horses, and he would pay for them. Booth says to Weichmann, on the 10th of April, "The horses are not John Surratt's, they are mine." Booth then says that these horses, although they may have been Surratt's, had become his. What is the conclusion? That, if Surratt had ever owned these horses and had been in this conspiracy to abduct, he had got weary, tired of the thing and thrown it up; he had passed away from it and gone to other matters to which he was devoting his attention; but Booth, more ardent and resolved and determined, still clung to it; had bought and kept the property; and, if he wrote Surratt any letter at all, it was in the hope of inducing him to come again under the control of his fascinating and superior mind. It was not to change a conspiracy in which Surratt already was, but it was to form a new conspiracy, namely: a conspiracy to kill.

But, gentlemen, this whole matter is definitively concluded by the diary of John Wilkes Booth. If there was this conspiracy, the question now is, When was it formed? You see from McMillan's testimony that Booth wrote that the plan was to be changed. When was the conspiracy to kill formed? Admitting all their suspicious circumstances, with all their weight, to show some conspiracy, when was the conspiracy organized? We say it was organized on the day upon which its guilty object was accomplished. You will remember, gentlemen, that Richmond fell about the 1st or the 3d of April; that Lee surrendered on the 9th of April; the Confederacy was passing away; the forces of the Union were advancing upon them, and no one who saw from a distance, and was not influenced by feelings, believed the Confederacy could long survive. When Booth saw what had occurred; that Lee had surrendered; that all hope for the Southern Confederacy was gone; that there was no longer expectation that it could live, his heart,

inflamed and maddened by the reflection that that which he had loved and supported was destroyed; his mind, impressed with the conviction, from unfortunate teachings, that Brutus was great because he had slain the mighty Cæsar in his capitol, and believing and trusting that he could do something great like unto Brutus that would immortalize his name, on the 14th of April organized this conspiracy for the purpose of doing the bloody deed. What does he say in his diary:

"APRIL 13, 14—Friday, the Ides.

"Until to-day, nothing was ever thought of sacrificing to our country's wrongs. For six months we had worked to capture."

Mark the expression. Not "We have worked," but "We had worked." Between the expiration of that six months and the present time there has been an interval. "For six months we had worked to capture."

"But, our cause being almost lost, something decisive and great must be done. But its failure was owing to others, who did not strike for their country with a heart. I struck boldly, and not as the papers say."

When was that conspiracy formed? "Until to-day nothing was ever thought of sacrificing to our country's wrongs. For six months we had worked to capture." They have introduced this diary. It is their evidence. It is the only evidence in the case as to the time of the conspiracy; and I challenge any man, with this diary in his hand, to tell me that the conspiracy was formed one hour before the 14th day of April, 1865. It comes in sanctioned by the Government, for they introduce it; and surely they did not introduce it to discredit it. No; they introduced it to make it substantial evidence. They introduced it that you might believe it. They give it the credit of their word, and they cannot escape the consequences. I know that the gentleman who is to close will attempt to deny this position, and attempt to get rid of the obligation in which he stands to respect as true the statements of the diary, but he cannot get rid of it. He has offered the diary to you for no other purpose. It is evidence for nothing else, for it bears upon no other point, and you must take what is written as the evidence of the only man that knew—John Wilkes Booth.

"This forced Union is not what I have loved. I care not what becomes of me. I have no desire to outlive my country. This night, before the deed, I wrote an article and left it for one of the editors of the *National Intelligencer*, in which I fully set forth our reasons for our proceeding."

Where is that article? That would disclose the date and confirm the diary. That would tell the whole story. The court excluded it; and why? Because we could not give in evidence Booth's declarations. I differed from the court upon the question, but with great modesty, for although I saw many reasons to believe that this should be an exceptional case, still I appreciated the rule of law. But the counsel on the other side could have let it in without objection. That would have cleared up all obscurity in the diary. What motive could Booth have in telling a lie on this subject? What motive could he have in writing a falsehood that was to live after him? He is fleeing; he has done the deed; the thing is accomplished. History's muse must take up the circumstances and keep the memorial. Why should he, under these circumstances, seek to leave behind a falsehood that could in no manner benefit him or others? "Until to-day nothing was ever thought of sacrificing to our country's wrongs." The surrounding circumstances all show that until that day he probably had no such thought; but then was the fatal hour that tried the souls of men who desired the success of the Southern Confederacy; for it was at that time they first saw the fatal promise of its ultimate and entire destruction.

Gentlemen, there is no evidence in the case other than this diary as to the time when that conspiracy was formed. You must take the diary. If you believe the diary to be true, this case is at an end, even though you should get Surratt from Montreal to Washington city before he could get to New York. This diary makes the case too plain to resist. But they still claim a verdict! Who claims a verdict? As I have stated to you, gentlemen, in the large array of counsel in this

case—I may be wrong—I think I notice two distinct representatives. One is the Government of the United States, represented by the district attorney. Whatever else outside of the district attorney there is in the executive department of judicial duty appertaining to the enforcement of the laws against criminals belongs to the office of the Attorney General. He represents the judicial authority of the Federal Government in the executive department. I ask, is the assistant attorney here by appointment of the Attorney General of the United States?

Mr. PIERREPONT. If you want the answer, I will give it.

Mr. MERRICK. Certainly, sir.

Mr. PIERREPONT. I am.

Mr. MERRICK. I had not supposed such was the case.

Mr. PIERREPONT. It is.

Mr. MERRICK. I had believed it was not the case, and I had good reason for my belief; but the attorney says I am mistaken, and I will not controvert his statement. But why has the Attorney General deemed it expedient? Did he feel the necessity that public justice demanded that he should employ assistant counsel in this case, or is there somebody else behind, gentlemen of the jury? Are there any other officers of the Federal Government that have purposes to accomplish in this cause? Let us see. Says the learned attorney upon the other side, (Mr. PIERREPONT,) in a speech delivered, I think, before you were empaneled:

"It has likewise been circulated through all the public journals that after the former convictions, when an effort was made to go to the President for pardon, men active here in the interest of the Government prevented any effort being made, or the President even being reached, for the purpose of seeing whether he would not exercise clemency; whereas the truth is—and the truth of record, which will be presented in this court—that all that was brought before the President and full Cabinet and fully discussed, and that condemnation and execution received the sanction of the President and every member of his Cabinet. These and a thousand other false stories will be set forever at rest in the progress of this trial; and the gentlemen may be assured that not only are we ready, but we are desirous to proceed, and now."

If this declaration of my learned brother upon the other side is correct, this trial was not a trial to try Surratt alone; it was not urged on because public justice demanded his arraignment before you, gentlemen; but it was urged on that a thousand false stories about men high in office might be settled at his expense. Although my learned brother is here under appointment by the Attorney General of the United States, it is an appointment which probably had its origin in the stimulus of some private feeling lying behind. He comes here, not to try this case alone, but he comes here to set at rest certain false stories. Has he done it? He said it had been charged that—

"Men active here in the interest of the Government prevented any effort being made, or the President even being reached, for the purpose of seeing whether he would not exercise clemency; whereas the truth is—the truth of record, which will be presented to this court—that all that was brought before the President and full Cabinet and fully discussed, and that condemnation and execution received the sanction of the President and every member of his Cabinet."

Where is your "record?" Why did you not bring it in? Did you find at the end of the record a recommendation to mercy in the case of Mrs. Surratt that the President never saw? You had the record here incourt.

Mr. BRADLEY. And offered it once and withdrew it.

Mr. MERRICK. Yes, sir, offered it and then withdrew it. Did you find any thing at the close of it that you did not like? Why did you not put that record in evidence, and let us have it here? We were not going to quarrel with it; we would like to know all we can about the dark secrets of those chambers whose doors are closed, but through which light enough creeps to make us curious to see more. We only know enough to make us curious; but that is enough to make us feel. You promised to show, too, that nobody prevented access to the President on the part of those who were seeking executive clemency. Why did you not do it? Gentlemen of the jury, I should have been glad to have heard that proof. They have brought these charges into the case, and I must meet

them as part of the case. I should have been glad to have heard that proof. Who of you is there who was in the city of Washington that will ever forget that fatal day when the tolling of the bells reminded you of the sad fact that the hour had come when those people were to be hung? Your honor, [referring to Justice Wylie, who was at the time sitting by the side of Judge FISHER on the bench,] and in your praise be it said, raised your judicial hand to prevent that murder, but it was too weak. The storm beat against your arm, and it fell powerless in the tempest. You remember that day, gentlemen. Twenty-four hours for preparation! The echoes of the announcement of impending death scarcely dying away before the tramp of the approaching guard was heard leading to the gallows! Priest and friend, philanthropist and clergymen, went to the Executive Mansion to get access to the President, to implore for that poor woman three days' respite, to prepare her soul to meet her God; and yet no access. A heart-broken child, a poor daughter, went there crazed; stretched upon the steps that lead to the executive chamber, she raised her hands in agony and prayed to every one that came, "Oh, God! let me have access, that I may ask for but one day for my poor mother—just one day!" Did she get there? No. And yet, says the counsel, there was no one to prevent access being had. Why did you not prove it? Oh, God! If it could be proved, I would rejoice in the fact; for, when reflecting upon that sad, unfortunate, wretched hour in the history of my country—an hour when I feel she was so much degraded—I could weep; yes, I could weep tears of blood, of sorrow, and of shame. Who stood between her and the seat of mercy? Does conscience lash the chief of the Bureau of Military Justice? Does memory haunt the Secretary of War? Or is it true that one who stood between her and executive clemency went to his last sleep in the dark waters of the Hudson, whilst another "died the death" by his own violent hand in Kansas?

The learned gentleman is right; he came here to put these things at rest, or to endeavor to put them at rest; but he could not do it. What else is there in this case to show a feeling behind, besides public justice, impelling to conviction. Gentlemen of the jury, as the counsel has stated in this speech, public rumors had gone abroad, and certain grave charges had been made. You know that political accusations had been brought against Judge Holt, Mr. Bingham, and the Secretary of War, in the House of Representatives, and that it had become somewhat a political matter. These were parts of those accusations that the learned counsel was going to put at rest. Where is the proof? The proof is in this; follow me for a moment; I said I would show conspiracy on conspiracy. What has the chief of the Bureau of Military Justice to do with this case? Does not your honor hold an independent court? Are not the judicial tribunals of the land separate from and independent of the executive? Is it not a fundamental principle of American constitutional law that the executive and judicial departments shall be distinct and separate. The Bureau of Military Justice is a part of the executive department. What has its chief to do with this case? "Nothing," says the counsel. "Is he counsel," we ask. "No," say they. Why then is he manipulating their witnesses in the case? Smoot, one of their witnesses, tells you that he is called up before Judge Holt, with ten others, examined; and his examination taken down in writing. The day after giving his testimony, he comes back and says that it was not Judge Holt that examined him, but it was somebody else. I pressed him; pressed him hard as to place and time. He then recollected it was in the Winder Building, opposite the War Department; and, when I pressed him still further, he had to say that the office in which he was examined had written over the door "Judge Advocate General's Office." Again, I ask, What had the Judge Advocate General to do with this case? Not

only was Smoot there, but Norton was there, and God only knows how many more. It is apparent, then, that he has taken a deep interest in this case. Why is he taking such an interest? It certainly is indiscreet. He has lost his prudence and he has lost his discretion; he has lost his judgment thus to expose himself and his office. My learned brother the district attorney read from the speech of Daniel Webster in the case of Knapp a paragraph to affect your minds in reference to what he alleged are the confessions of John H. Surratt. I will again present it before you:

"The secret which the murderer possesses soon comes to possess him; and like the evil spirit of which we read, it overcomes him and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence."

Mr. District Attorney, "gird up your loins," and answer me. Whose discretion is broken down? Whose prudence is betrayed? Is there anybody's heart at which a vulture gnaws? Is there any high official who is forgetting the dignity of his office and the duties of manhood so far as to descend to the preparation of witnesses in a case with which he has nothing to do, in order to satiate his appetite with the blood of an innocent being? All these facts that I have mentioned to you—Conover's character, Susan Ann Jackson's testimony, and the story of the handkerchief—were known to the Judge Advocate General.

Mr. BRADLEY. And known to the prosecution.

Mr. MERRICK. Yes, and known to the prosecution; but I am now speaking of the Chief of the Bureau of Military Justice. He has furnished the evidence in this case. A word, and a word only, with regard to the handkerchief story. You will recollect that we brought the man here who lost the handkerchief. But, oh! say they, another handkerchief was lost two days before. Extraordinary coincidence! How many strange coincidences have happened in this case? Gentlemen, when they unfurled that banner in this court of justice, they knew it was not the banner of truth, but of falsehood, for they knew all the circumstances of the loss. They knew that one of Baker's detectives had got hold of it, and that it had been reported to the Government. "*Prudence has been betrayed;*" "*discretion has been broken down;*" "*courage has been conquered.*" Following on Judge PIERREPONT'S declaration, which I have read to you, and these circumstances, comes Mr. CARRINGTON, as I said this morning, breaking the ceremonies of the tomb, and demanding your verdict against Mrs. Surratt. In God's name, is it not enough to try the living? Will you play the ghoul, and bring her from the cold, cold earth, and hang her corpse? You have brought her in and she is here. We have felt our blood run cold as the rustling of the garments from the grave swept by us. Her spirit is around and about us in this court-room, and walks beside those who did her wrong. The Judge Advocate General will hereafter learn that it is the eternal law of God, that "where guilt is sorrow shall answer it;" and that to shed innocent blood, through the forms of law, though it may *apparently* vindicate the guilty for innocent blood with which the hand is already dyed, cannot ease the burdened conscience. The spirit will still walk beside him, and *will not be at rest*. He may shudder before her—for she is with him by day and by night; and he may say to her

"Avaunt! and quit my sight! Let the earth hide thee;  
Thy bones are marrowless; thy blood is cold."

But the marrowless bones and bloodless form are still beside him, and her whisperings are ever sounding in his ear, telling of that great Judgment Day to come, when all men shall stand equal before the eternal throne, and Mrs. Surratt be called to testify against Joseph Holt for

"the deep damnation of her taking off."

Gentlemen of the jury, if my learned brothers propose to try her on this case, why not give us the bene-

fit of her dying declarations? Mr. CARRINGTON, your honor, has gone outside of this record, and I must follow him to some extent, at least. He has gone outside of it in speaking of the military commission, defending the major generals and others. I am glad I recurred to it, for it reminds me of a statement of his that I desire to correct. He says we accused those honorable men of murder. No; I refrain from any expression of opinion on that subject. It is true that the most exalted judicial tribunal in the world, vindicating the liberty of American citizens and their constitutional rights against military authority and the supremacy of tyranny, have pronounced that and all other commissions similarly constituted to be illegal and unauthorized. What I denounce here is not the men who in judgment sat there, but the men conducting the trial, and who, with this diary of Booth in their hands, which would have proved Mrs. Surratt's innocence by showing this conspiracy to have been organized on the 14th day of April, proved the toothpicks and the pen-knife found on Booth, and yet never disclosed the fact that such a diary existed; suppressed it, never made it known to those men or to the country. But to recur. If you propose to try Mrs. Surratt, will you not give her the benefit of her dying declarations? I put a witness on that stand, and asked him, "Did you administer the consolations of religion to Mrs. Surratt?" "I did. I gave her communion on Thursday and prepared her for death." I asked him, "Did she tell you, as she was marching to the scaffold, that she was an innocent woman?" He nodded his head, but he did not answer the question, because the other side objected, and your honor sustained the objection. If you propose to try that woman, who is dead and not here to defend herself, can you not at least have charity enough to let her last words come in in her defense? Will you try one who is not only absent from the court, but who is dead—deny to her on her trial the poor privilege of having the last word she uttered on earth spoken in her vindication? Were you afraid of it? Did you feel that the words would sink deep into the heart of every man in this room, and in the United States, and cause to well up from that heart a fountain of mercy, rich and pure and crystal as the waters that sprang from the rock at the bidding of the sacred rod? Shame on you! Prepared for the world to come, and marching to the scaffold tottering between two soldiers, with her God before and the world behind her, her load of sin laid at the feet of her Saviour, and no hope but in that eternal mercy upon which we must all rely, I ask whether she cannot at such an hour speak for herself. "No," you answer. Why not? Is it likely she would lie? No, gentlemen, they will not say that. Then why is it? They did not want to hear her voice. They feared to hear it. They will not hear it, for they are hardened of heart, reckless of guilt, and indifferent to justice. But, although they will not let it be heard here, it still speaks and is heard; it descends upon the head of that boy, and breathes upon each of your hearts. Yes, gentlemen, that woman in the nameless grave, the ceremonies of which have been broken by the Government, comes here to vindicate her child. "A nameless grave," did I say? Yes, alas! too true. It would seem as if the ordinary feelings of humanity and common respect for the dead, to say nothing of regard for the honor of our country and sympathy for the sufferings of a distracted and loving daughter, would suggest to those pressing this prosecution to allow this girl the poor privilege of paying a simple tribute to a mother by having her remains removed from a felon's grave. Yes! that mother lies in a nameless grave, on which no flower is allowed to be strewn by that heart-broken daughter, who for the past two years has been earnestly pleading that she might have the privilege of placing those to her sacred remains where filial love might weep the prayerful tear, and a filial hand plant a flower on the tomb. I cannot pursue this subject further. My feelings choke my utterance.

Says the district attorney, Surratt has confessed his guilt by flight—flight from a mother over whose head was impending such a sad fate. Gentlemen of the jury, he knew not of her condition until she was executed or about that time; and when he received the information he was restrained by force from coming. This we were ready to prove. Fly! What else could he do? Suspicion of guilt in that day was certainty of conviction. Military commissions were organized, not to try, but to convict. Who of you would not have fled if a reward had been offered for your head. He saw his name in the papers while in Canada, and he fled. Of course he fled. He fled from a blazing country. He fled not from justice, but from lawlessness. He fled not from trial, but from conviction and oppression. Suppose he had been here, could he have had a trial? Guilty or innocent, he would have been hung. Law was dead in the country. The iron hand of power had suppressed judicial authority. Forts in New York and Massachusetts, perpetuating by their own the names of the great advocates and soldiers of freedom, had been crowded with the victims of a despotism that disgraced the sacred liberty of America which a Warren and LaFayette had battled to achieve. Tyranny ran wild in the land. No man was safe. To tell me that under such circumstances the flight of a man with a price set on his head was confession is to tell me that which is too absurd to merit the dignity of reply.

Gentlemen, something was said in the earlier part of this case with regard to the Catholic Church and her connection with the prisoner at the bar and the Southern Confederacy. She needs no vindication from me. There she stands, and there is her history—whether, as her children believe, the Church of God, or, as other men believe, the device of man, she there stands, one of the grandest institutions that the world has ever beheld. She guided men from darkness to light and from barbarism to civilization, and through the whole period of despotic authority in Europe she has been upon the side of the people as against the monarch. From the first beginning of her power she has upheld the rights of the people wherever oppression has attempted to violate them; and wherever the people have been turbulent in their resistance to legitimate authority she has restrained them by the mandate of her spiritual power to respect the law and obey the constituted authorities of their country. And in our late rebellion she said to all the people, North and South, "Obey the law, and respect the Constitution of your country. I speak not politics," says she, "in my Church. The banner which is floating from this Church is the banner of the Cross—I know no other standard; and as the follower of the Cross, I teach all people to obey the law." Such stands forth to her eternal credit as her history from the beginning; and throughout that history, even to those who question the divinity of her origin, there is much too great for the machination of man, and they stand almost confessing what their judgments and feelings question.

But I would not have you suppose, gentlemen, from the reverential honor I pay to her, that I depreciate the sanctity or would detract from the honor due to other Christian churches. I thank God there is no sentiment of intolerant prejudice in my heart. The true and conscientious Christian in one church serves his God, if his conviction be clear and firm and the result of full and candid examination, as faithfully in one church as he does in another. To illustrate my view: You see before you different branches of a stream, and find the same water in all the branches. He that drinks from one branch, though perhaps in color something different from another, yet drinks substantially the same water that quenches his thirst; and so with these various churches. They are but the different branches of one great stream, whose source is in Calvary, at the foot of the cross. To the honor of the Catholic Church be it said, that when this young man was accused of crime in the Papal dominions, and there was no extra-

dition treaty between this country and that, and no power to compel the Pope to surrender him, the Pope and Cardinal Antonelli voluntarily and without hesitation gave him up. They said, "Take him back to America and try him; if guilty, execute him." The Catholic Church is on the side of justice and of mercy. She protects the fleeing criminal when she believes him to be innocent, but when the hand of right and justice says, "he is guilty, give him to me," she gives him up without a word.

Gentlemen of the jury, the district attorney has invoked your loyalty, and asks a verdict of guilty in order to show that the people of this District are loyal! I cannot follow him through his long tirade about the glory of the District volunteers, for I neither envy his achievements in that regard, nor am disposed to waste time in pursuing such an argument. But I, too, invoke your loyalty. Loyalty is a word that does not properly belong to the lexicon of republics, but if it does belong to the lexicon of republics, it means the faith of the citizen to the supreme power of the republic. What is the supreme power of the Republic? The Constitution of the United States, and the laws made in pursuance of that Constitution. The loyalty of the Austrian is due to the successors of the Cæsars; the loyalty of the Englishman is due to the Queen; the loyalty of the Frenchman is due to Napoleon; but the loyalty of the American citizen is due to no mortal man, but due to the spirit of human liberty, incarnate in the Constitution of the United States. Be loyal to that; be loyal to the law; above all things be loyal to yourselves, and do your duty. A feeling of duty performed will follow you through the world with the pleasant commendation of a satisfied conscience; but a feeling of duty unperformed will pursue you with the lash of chastisement wherever you may go. All evils that are physical can be avoided; but evil that comes from the conscience, when it arraigns us day by day, cannot be

fled from. "You may take up the wings of the morning, and flee to the uttermost parts of the earth," but there is neither nook nor corner in which you can hide yourselves from it. Go forth, then, gentlemen, from your jury-box with a conscience free and unembarrassed; a conscience that will say to you in all time to come, "You have done your duty."

Gentlemen of the jury, I invoke for the prisoner not your mercy, but your most deliberate judgment. There has been blood enough in expiation of this fearful crime. No man can measure with larger dimensions than myself the enormity of the crime which was consummated in the murder of Abraham Lincoln. Already four have been hung, and others suffer punishment—some for a term of years and some for life. There has been blood enough. Think, gentlemen, of what disasters have fallen upon this young man. Three years ago, within the limits of this city, there was a quiet and happy home. Around the hearth was gathered a happy family. A mother blessed it with a mother's love: a gentle daughter, budding into womanhood, gave to the scene the sweet hues of her devoted smile. Beside her sat a brother, just bursting into the promise of the man. Think, gentlemen, what has transpired since that time. The bright fire is quenched and gone, the hearth is desolate, the mother sleeps in a nameless felon's grave, the daughter drags out a weary life under the burden of a broken heart, the son is before you pleading for his life. But, gentlemen, as I have said, duty performed must be with you ever. If he is guilty, convict him; if he is innocent, acquit him; and may the eternal God so guide your judgments and enlighten your consciences that the remembrance of the day of your verdict may hereafter and forever be a sweet and pleasant recollection.

The court took a recess until to-morrow at ten o'clock a. m.

The first part of the history is a general account of the state of the country at the beginning of the reign of King James the First. It describes the condition of the kingdom, the state of the church, and the manners of the people. It also mentions the various wars and revolutions which had taken place in the country before the reign of King James the First.

The second part of the history is a particular account of the reign of King James the First. It describes the various events which happened during his reign, and the manner in which he governed the country. It also mentions the various wars and revolutions which took place during his reign.

The third part of the history is a general account of the state of the country at the beginning of the reign of King Charles the First. It describes the condition of the kingdom, the state of the church, and the manners of the people. It also mentions the various wars and revolutions which had taken place in the country before the reign of King Charles the First.

The fourth part of the history is a particular account of the reign of King Charles the First. It describes the various events which happened during his reign, and the manner in which he governed the country. It also mentions the various wars and revolutions which took place during his reign.

The fifth part of the history is a general account of the state of the country at the beginning of the reign of King Charles the Second. It describes the condition of the kingdom, the state of the church, and the manners of the people. It also mentions the various wars and revolutions which had taken place in the country before the reign of King Charles the Second.

The sixth part of the history is a particular account of the reign of King Charles the Second. It describes the various events which happened during his reign, and the manner in which he governed the country. It also mentions the various wars and revolutions which took place during his reign.

The seventh part of the history is a general account of the state of the country at the beginning of the reign of King James the Second. It describes the condition of the kingdom, the state of the church, and the manners of the people. It also mentions the various wars and revolutions which had taken place in the country before the reign of King James the Second.

The eighth part of the history is a particular account of the reign of King James the Second. It describes the various events which happened during his reign, and the manner in which he governed the country. It also mentions the various wars and revolutions which took place during his reign.

The ninth part of the history is a general account of the state of the country at the beginning of the reign of King George the First. It describes the condition of the kingdom, the state of the church, and the manners of the people. It also mentions the various wars and revolutions which had taken place in the country before the reign of King George the First.

The tenth part of the history is a particular account of the reign of King George the First. It describes the various events which happened during his reign, and the manner in which he governed the country. It also mentions the various wars and revolutions which took place during his reign.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 98.

WASHINGTON, THURSDAY, SEPT. 12, 1867.

PRICE 10 CTS.

## TRIAL OF JOHN H. SURRATT.

*Continued from No. 97.*

### SPEECH TO THE JURY

OF

## JOSEPH H. BRADLEY, Sr., Esq.

### ARGUMENT FOR THE DEFENCE.

Forty-Sixth Day.

FRIDAY, August 2, 1867.

The court re-assembled at ten o'clock a. m.

Mr. BRADLEY. I had hoped, gentlemen of the jury, that I should have been saved the labor, and you the fatigue, of any address on this occasion. The whole case has been so completely exhausted by the gentleman who has preceded me, that I should do great discredit to your judgment if I thought it necessary to enlarge upon the points made by him or upon the proportions of this defense. The case itself is an exceedingly simple one, plain in its facts, not enlarged in its proportions; but a factitious importance has been given to it, for reasons which undoubtedly may be strong and prevailing with those who have given it this importance, but which have no weight in my mind. You are sworn to try a simple case of the murder of an individual. There is nothing beyond it. You are to look to the indictment for the subject-matter of your inquiry, and in that indictment you find nothing but a charge of felonious killing of an individual. Great surprise at this view has been expressed by the counsel on the other side, who have conducted this prosecution with an energy, skill, and I will add vindictiveness, which I have never seen equalled, and have never read of in any book since the days of Jeffries and Scroggs, unless it be in some prosecutions in Ireland. They have endeavored to enlarge the proportions of the case made in the indictment to something which shall not only stir up your prejudices and mislead your judgment and control your consciences; but something which shall attract the attention of the whole country—nay, of the civilized world. For what purposes, with what ends, this great mass of irrelevant matter has been introduced, it is for them to say and for you to judge.

I do not rise to discuss this case at length; it needs no discussion. It was closed, so far as the defense was concerned, when the prosecution proved by Sangster that the defendant left Montreal at half-past three o'clock on the 12th of April, and when they proved by McMillan that he was in Elmira on the 13th. The defense was then complete out of the mouths of their own witnesses. But when they added to it that most wonderful, clear, explicit statement of the principal actor in that drama, Wilkes Booth, that the conception of the assassination originated on the 13th and 14th of April, and was consummated on the same day, they

took away from themselves the right to assail the accused as they have done; they took away all excuse for this shameless and monstrous abuse of their position by calling him names—a man manacled at the bar.

This may be, and probably will be, the last time I shall ever address a Washington jury. For more than forty years I have gone in and out before you. I know you all—every man. You know me. And I say, that in the history of that period of time no man at this bar has ever dared to assail a prisoner as this prisoner has been. He would have been frowned down by the indignation of all honest men if he had done so; he would have been put out of the pale of respectable lawyers. Gentlemen, history sometimes teaches us, and teaches us powerfully, what we should do in order that men should respect us. Perhaps the greatest lawyer that England ever produced—the man who, more than any other, moulded and shaped and laid the foundations of the common law under which we live; whose writings are still the horn-book of the profession and the guide of the learned in it—Sir Edward Coke, when he was attorney general of England, with all his learning, with his great erudition, with his desire to form and shape the common law, subjected himself to the censure, which, in the minds of all right-feeling men, will be cast upon the course of this prosecution. Let me read to you a lesson of history. You will find the life of that great man in the first volume of the "Lives of the Chief Justices of England," by Lord Campbell. At page 252 you will find this passage, and I commend it to the careful consideration of the counsel engaged in prosecuting this defendant:

"But he (Lord Coke) incurred never-dying disgrace by the manner in which he insulted his victims when they were placed at the bar of a criminal court."

He, the light of the profession, whose intellect was almost immeasurable, the grasp of whose knowledge has never yet been reached; he, the very light of the profession, "incurred never-dying disgrace by the manner in which he insulted his victims when they were placed at the bar of a criminal court." Has mortal man ever heard such a torrent of abuse as has been poured forth in this court upon this poor young man?

"The first revolting instance of this propensity was on the trial of Robert Earl of Essex, before the Lord High Steward and Court of Peers, for the insurrection in the city, with the view to get possession of the Queen's person, and to rid her of evil counselors. The offense no doubt amounted, in point of law, to treason."

That is what is said here. Although our Constitution defines what treason is, we have a new article grafted upon the Constitution to suit the purposes of this case.

"The offense amounted, no doubt, in point of law, to treason; but the young and chivalrous culprit really felt loyalty and affection for his aged mistress; and without the most distant notion of pretending to the crown, only wished to bring about a change of administration in the fashion still followed in continental States. Yet, after Yelverton, the Queen's ancient sergeant, had opened the case at full length and with becoming moderation, Coke, the attorney general, immediately followed him, giving a most inflamed and exaggerated statement of the facts, and thus concluding: 'But now, in God's most just judgment, he of his earldom shall be Robert the Last, that of the kingdom thought to be Robert the First.'"

"This," says this author, on page 253, "was a humiliating day for our order." It was a humiliating day

for that glorious profession of which this man was an ornament, and of which I am an humble member. And this exhibition on this trial has been a most humiliating day, degrading to the profession, and disgraceful to the authors of it.

Again, on page 257 :

"His first appearance as public prosecutor in the new reign was on the trial, before a special commission at Winchester, of Sir Walter Raleigh, charged with high treason by entering into a plot to put the Lady Arabella Stuart on the throne."

And here, I am sorry to say, that by his brutal conduct to the accused, he brought permanent disgrace upon himself and upon the English bar. Now, let us see what that was. Look upon the picture here before you; upon that which is thus denounced by one of the ablest men who has ever held the highest position at the bar of England. "He must have been aware," and I will demonstrate to you that these gentlemen were aware—

"He must have been aware that, notwithstanding the mysterious and suspicious circumstances which surround this affair, he had no sufficient case against the prisoner, even by written depositions and according to the loose notions of evidence then subsisting. Yet he addressed the jury in his opening as if he were scandalously ill-used by any defense being attempted; while he was detailing a charge which he knew could not be established of an intention to destroy the king and his children. At last the object of his calumny interposed, and the following dialogue passed between them"—

Compare this with what you have heard at this bar within the last four days—

"RALEIGH. You tell me news I never heard of.

"ATTORNEY GENERAL. Oh, sir; do I? I will prove you the most notorious traitor that ever held up his hand at the bar of any court.

"RALEIGH. Your words cannot condemn me; my innocence is my defense. Prove one of those things wherewith you have charged me, and I will confess the whole indictment, and that I am the horriest traitor that ever lived, and worthy to be crucified with a thousand thousand tortments.

"ATTORNEY GENERAL. Nay, I will prove them all; thou art a monster"—

Here, "thou art a coward."

"thou hast an English face, but a Spanish heart."

Here, "thou art a traitor and an assassin."

"RALEIGH. Let me answer for myself.

"ATTORNEY GENERAL. Thou shalt not.

"RALEIGH. It concerneth my life.

"ATTORNEY GENERAL. Oh, do I touch you?"

The proofless narrative having proceeded, Raleigh again broke out with the exclamation, "You tell me news, Mr. Attorney," and thus the altercation was renewed :

"ATTORNEY GENERAL. I am the more large because I know with whom I deal to-day—with a man of wit. I will teach you before I have done.

"RALEIGH. I will wash my hands of the indictment, and die a true man to the king.

"ATTORNEY GENERAL. You are the absolutest traitor that ever was.

"RALEIGH. Your phrases will not prove it.

"ATTORNEY GENERAL. (In a tone of assumed calmness and tenderness)"—

Admirably imitated by the learned district attorney in this case.—

"You, my masters of the jury, respect not the wickedness and hatred of the man; respect his cause. If he be guilty, I know you will have care of it, for the preservation of the King, the continuance of the Gospel authorized, and the good of us all.

"RALEIGH. I do not hear yet that you have offered one word of proof against me. If my Lord Cobham be a traitor, what is that to me?"

And so Surratt might say: "I do not hear yet that you have offered one word of proof against me. If Wilkes Booth was a traitor, what is that to me?"

"ATTORNEY GENERAL. All that he did was by thy instigation, thou viper; for I thou thee, thou traitor.

"The depositions being read, which did not by any means make out the prisoner's complicity in the plot"—

The testimony having been taken, which does not by any means make out the complicity of the prisoner in the conspiracy—

"he observed:

"You try me by the Spanish Inquisition if you proceed only by circumstances without two witnesses.

"ATTORNEY GENERAL. This is a treasonable speech.

"RALEIGH. I appeal to God and the King in this point, whether Cobham's accusation is sufficient to condemn me.

"ATTORNEY GENERAL. The King's safety and your clearing cannot agree."

The safety of some men who lie behind this prosecution and your clearing cannot agree. You heard yesterday who they were. You heard some of the motives impelling you to find guilty the prisoner, because they had convicted the mother.

"The King's safety and your clearing cannot agree.

"RALEIGH. I protest before God I never knew—

"ATTORNEY GENERAL. Go to; I will lay thee upon thy back for the confidentest traitor that ever came at a bar.

"At last all present were so much shocked that the Earl of Salisbury, himself one of the commissioners, rebuked the attorney general, saying, 'Be not so impatient, good Mr. Attorney; give him leave to speak.

"ATTORNEY GENERAL. If I may not be patiently heard, you will encourage traitors and discourage us. I am the King's sworn servant, and must speak."

If you dare, says the counsel from New York to your honor, rule the law differently from that which I have laid down, "I will call the majesty of the country to impeach you." I may advert, gentlemen, if my strength holds out, again to this. Monstrous, revolting, shocking was the assault made by the attorney for the prosecution upon that defenseless, pinioned man. I would like to see him talk to him upon the open street so; but it is nothing as compared with what followed after. If my strength holds out, I shall have occasion to advert to another part of the speech of the learned prosecutor which as far transcends what Lord Coke said, as to this poor accused, as that did any thing you ever heard from the mouth of a prosecuting attorney before. Against this, gentlemen, I desire to enter my protest. I trust that this case will be a lesson and a warning to every man who shall hold that office hereafter, that he may turn back to the record of this case and see the seal of condemnation of every man of integrity at the bar placed upon such an abuse of authority. But I go a step further. To my utter amazement—I did not believe my ears until I turned to my associate to see if it was so—I heard another thing broached, that the jury in a capital case, where they are to bear the burden of responsibility, and to answer for the discharge of their duty, are not to find a general verdict, but to find a verdict under the instructions of the court; that the court is a part of the Government; the Government is supreme; they, the prosecutors, are ministering servants helping along the machinery of Government; and as the Government appoints the courts, and the courts interpret the laws, the jury are perjured if they do not follow the dictates of the court. Surely, it is not possible in this country, at this day, with the light of information spread around us, with all the intelligence under which we live, with all the learning that has come down to us from past ages, that such a doctrine can be seriously entertained!

Gentlemen, let me call your attention to the history of a Jeffries and a Scroggs and a Wright. They were chief justices of England; they were the right arm of the supreme government, and they hurried men to the scaffold by scores. Their names are accursed to this day, and will be as long as the English language lasts. When at last a jury was found independent enough to stand up against the misrulings and the mandates of the judge, and to find a verdict of not guilty, all England rang with shouts of joy. It was a noted triumph for the people against this arm of power. Let me give you a reference to the life of Mr. Chief Justice Wright, who presided at the trial of the bishops, in the second volume of Campbell's Lives of the Chief Justices. I refer to the conclusion of the case of the seven bishops, page 109:

"He had already told the jury that, 'any thing that shall disturb the government, or make mischief and a stir among the people, is certainly within the case *de libellis famosis*. And I must, in short, give you my opinion. I do take it to be a libel.'"

I now read from page 111, after the jury had been instructed by the court:

"The chief justice, without expressing any dissent, merely said 'Gentlemen, have you a mind to drink before you go?' So wine was sent for and they had a glass a-piece; after which they were marched off in company of a bullif, who was sworn not to let them have meat or drink, fire or candle, until they were agreed upon their verdict.

"All that night they were shut up. Mr. Arnold, the king's brewer, standing out for a conviction till six next morning, when, being dreadfully exhausted, he was thus addressed by a brother-jurymen: 'Look at me; I am the largest and strongest of the twelve, and before I find such a petition as this a libel, here will I stay till I am no bigger than a tobacco pipestem.'

"The court sat again at ten, when the verdict of *not guilty* was pronounced, and a shout of joy was raised which was soon reverberated from the remotest parts of the kingdom. One gentleman, a barrister of Gray's Inn, was immediately taken into custody in court by order of the lord chief justice, who, with an extraordinary command of temper and countenance, said to him in a calm voice: 'I am as glad as you can be that my lords the bishops are acquitted; but your manner of rejoicing here in court is indecent. You might rejoice in your chamber and elsewhere, and not here. Have you any thing more to say to my lords the bishops, Mr. Attorney?'

"ATTORNEY GENERAL. 'No, my lord.'

"WRIGHT, Chief Justice. 'Then they may withdraw.' And they walked off, surrounded with countless thousands, who eagerly knelt down to receive their blessing."

Now, gentlemen, let me give you the latter end of that man. Soon after this he was turned out of office, and after that:

"He was almost constantly fighting against privation and misery; and, during the short time that he seemed in the enjoyment of splendor, he was despised by all good men, and must have been odious to himself. When he died, his body was thrown into a pit with common malefactors; his sufferings, when related, excited no compassion, and his name was execrated as long as it was recollected."

But let me come down to our own country. You have already had a reference to the language of Chief Justice Kent, than whom there is no greater name among the intelligent legal men of this country. My brother MERRICK read it to you from page 366 of 3 Johnson's Cases. I may perhaps read a little further from the language of this great man, vindicating the right of the jury in capital cases to render a general verdict. I detract nothing from the authority of the court. God forbid. The jurors unassisted may run wild, and they are bound to receive instruction from the court; but they are to apply that instruction to the evidence; by the evidence as applied to the law their consciences are to be governed. There is, as the district attorney has said, a higher law, and the mandate of no judge or any other authority can take an honest man from the path of rectitude and make him do wrong. I do not read that chapter of Romans quoted by the learned district attorney as he does. I believe in the right of private judgment, obedience to the law, but resistance to oppression, come from whatever quarter it may. "Render unto Caesar the things that are Caesar's, and unto God the things that are God's." But there is another command, not given in words: "Render unto yourselves and to your consciences that which you believe to be in obedience to what is right." Mr. Chancellor Kent has said, (page 366 of 3 Johnson's Cases.)

"In every criminal case, upon the plea of not guilty, the jury may, and indeed they *must*, unless they choose to find a special verdict, take upon themselves the decision of the law as well as the fact, and bring in a verdict as comprehensive as the issue, because in every such case they are charged with the deliverance of the defendant from the crime of which he is accused. The indictment not only sets forth the particular fact committed, but it specifies the nature of the crime. Treasons are laid to be done traitorously; felonies, feloniously; and public libels to be published seditiously. The jury are called to try in the case of a traitor not only whether he committed the act charged, but whether he did it *traitorously*; and in the case of a felon, not only whether he killed such a one, or took such a person's property, but whether he killed with *malice prepense* or took the property *feloniously*. So in the case of a public libeller, the jury are to try not only whether he published such a writing, but whether he published it *seditiously*. In all these cases, from the nature of the issue, the jury are to try not only the *fact*, but the *crime*, and in doing so they must judge of the *intent*, in order to determine whether the charge be true, as set forth in the indictment. (Dagge on Criminal Law, b. 1, c. 11, s. 2.) The law and fact are so involved that the jury are under an indispensable necessity to decide both, unless they separate them by a special verdict.

"This right in the jury to determine the law as well as the fact has received the sanction of some of the highest authorities in the law."

He then goes on for several pages to review these authorities, until he comes to this case of the seven bishops, which will be found on page 370, and says further:

"Upon the trial of Algernon Sidney, the question did not distinctly arise; but Lord Chief Justice Jeffries, in his charge to the jury, told them it was the duty of the court to declare the law to the jury, and the jury were bound to receive their declaration of the law."

That is the doctrine promulgated here. That is the doctrine which brings you under the pains and penalties of perjury if you conscientiously render a verdict different from what the court has directed you. He says:

"They did in that case, unfortunately, receive the law from the court, and convicted the prisoner; but his *attainder* was afterwards reversed by Parliament, and the law, as laid down on that trial, was denied and reprobated, and the violence of the judge and the severity of the jury held up to the reproach and detestation of posterity. The case of the seven bishops is a precedent of a more consoling kind. It was an auspicious and memorable instance of the exercise of the right of the jury to determine both the law and the fact. I shall have occasion to notice this case hereafter, and shall only observe, for the present, that the counsel on the trial went at large into the consideration of the law, the intent, and the fact; and, although the judges differed in opinion as to what constituted libel, they all gave their opinions in the style of advice, not of direction, and expressly referred the law and the fact to the jury. Mr. J. Holloway, in particular, observed that whether libel or not depended upon the *ill-intent*, and concluded by telling the jury *it was left to them to determine.*"

They advised the jury. They did not tell the jury, "If you do not find a verdict according to our instructions, we will fine and imprison you; we will send you to the grand jury to be indicted for perjury." They said, "We advise the jury." He proceeds, on page 371:

"The weight of the decisions thus far was clearly in favor of the right of the jury to decide generally upon the law and the fact. But since the time of Lord Holt the question before us has been an unsettled and litigious one in Westminster Hall. Lord Mansfield was of opinion that the formal direction of every judge since the Revolution had been agreeable to that given in the case of the Dean of St. Asaph; but the earliest case he mentions is that of Franklin, before Lord Raymond, in 1731; and that has been considered as the formal introduction of the doctrine now under review. The charge of Sir John Holt in Tuchin's case appears to me to be decidedly to the contrary; and, in another case before Holt, the attorney general admitted that the jury were the judges *quo animo* the libel was made. The new doctrine, as laid down in the present case, may therefore be referred to the case of Franklin; but in Wray's case, who was tried a few years before for murder, Lord Raymond and the court of King's Bench, advanced a general doctrine which may, perhaps, be supposed to curtail the powers of the jury as much as the decision of the case before us. He said that all the judges agreed in the proposition that the court were the judges of the malice, and not the jury."

That is a doctrine utterly repudiated in England and in this country, that the court were to judge of malice, and not the jury; and that is the foundation of the new doctrine here sought to be applied to an American jury—

"That upon the trial the judge directs the jury as to the law arising upon the facts, and the jury may"—

Even in that case—

"and the jury may, if they think proper, give a general verdict; or if they find a special verdict, the court is to form their judgment from the facts formed whether there was malice or not; because, in special verdicts, the jury never find, in express terms, the malice, but it is left to be drawn by the court."

He then reviews a series of cases down to page 374:

"The constant struggle of counsel and of the jury against the rule so emphatically laid down by Lord Raymond, the disagreement among the judges, and the dangerous tendency of the doctrine, as it affected two very conspicuous and proud monuments of English liberty—trial by jury and the freedom of the press—at length attracted and roused the attention of the nation. The question was brought before the Parliament, and debated in two successive sessions. There was combined in the discussions of this dry law question an assemblage of talent, of constitutional knowledge, of practical wisdom, and of professional erudition rarely, if ever, before surpassed. It underwent a patient investigation and severe scrutiny upon principle and precedent, and a bill *declaratory* of the right of the jury to give a general verdict upon the whole matter put in issue, without being required or directed to find the defendant guilty merely on the proof of publication and the truth of the *invenoes*, was at length agreed to and passed with uncommon unanimity. It is entitled 'An act to remove doubts respecting the functions of jurors in cases of libel;' and although I admit that a declaratory statute is not to be received as conclusive evidence of the common law, yet it must be considered as a very respectable authority in the case; and especially as the circumstances attending the passage of this bill reflect the highest honor on the moderation, the good sense, and the free and independent spirit of the British Parliament.

"It was, no doubt, under similar impressions of the subject that the act of Congress for punishing certain libels against the United States, enacted and *declared* that the jury who should try the cause should have a right to determine the law and fact, under the direction of the court, as in other cases."

What does that mean? The Congress of the United States has declared that the jury, in the case of libel against the United States, shall have the right to determine the question of law and of fact as in other cases.

"And before the passing of that statute the same doctrine was laid down in full latitude, and in explicit terms, by the Supreme Court of the United States.—3 *Dall.*, 4.

"The result from this view is, to my mind, a firm conviction that this court is not bound by the decisions of Lord Raymond and his successors. By withdrawing from the jury the consideration of the essence of the charge, they render their function nugatory and contemptible."

Shall we hear any thing more from the other side of the right of the court not to instruct, not to charge, not to advise, but to control? Shall we hear again that by the law a juror is perjured who renders a general verdict contrary to the instructions of the court? Shall we hear a threat held out to an American jury by the prosecuting attorney, who has the right to send to the grand jury whom he pleases, that if you fail to follow the mandate of the court you will be subject to a charge of perjury? It is the duty of the district attorney, if he knows the fact that a perjury is committed, it is his bounden duty, to send the witnesses to the grand jury; and if you commit perjury by disobeying the orders of the court he must send your case to the grand jury, if the argument of the learned gentleman on the other side be right. Against this monstrous doctrine I desire, if it is the last speech I shall ever make to a jury, to enter my most solemn protest. I desire to set upon it the seal of condemnation. I do not say this, gentlemen, on your account, for, as I have said, I know every man upon that jury personally, and every man there knows me. I say nothing to flatter you, because you would despise it if I did. But I say it for the sake of the law; for the sake of the law of my country. I condemn, I repudiate, I trample under foot any such doctrine as this, that a juror commits perjury because, according to his conscience, he renders a general verdict of acquittal or guilty.

I said to you, gentlemen, at the outset that this case was in a small compass. I am most happy to agree in this at least with the learned counsel from the city of New York. It is within a small compass. And yet, will you tell me what all that means, [holding up the book of evidence]—two-thirds of it made up of evidence for the prosecution. With what is it burdened? There is the testimony as to the assault upon Mr. Secretary Seward. The learned judge says it is evidence in the case; that you are to look at it as one of the *indicia* enabling you to ascertain whether this accused party killed the President himself, or was in a conspiracy to kill; the result of the conspiracy being that he was killed by one of the conspirators. Was that the object of the introduction of this proof? How did the district attorney apply it in that long harangue upon the assault upon Mr. Seward? In all that he said, painting it with prepared and studied thought, reading from his manuscript, endeavoring to excite the horror of every individual on that jury, endeavoring to enlist prejudice and passion, not one word did he say connecting it with this great fact of the murder of Mr. Lincoln. I agree that it was a very fine piece of word painting; being admissible in evidence, it must of course have some effect; but I am at a loss to conceive how the fact of an assault with intent to kill made upon Mr. Bohrer by one man is evidence of a conspiracy to kill Mr. Berry, who is killed by another man. It is beyond my comprehension.

I am not now talking of this new scheme, this admirable invention of the enemy. I am talking of the indictment, and the case made in the indictment. For what purpose have we that terrible picture drawn of the slaughtering of poor, wasted Union soldiers along the railroad, and that terrible fight with a gun-boat by the little cock-boat crossing the river! How do they bear upon this question of the killing of an individual? I shall have occasion presently to talk to you of the other branch of the case, though I am afraid my strength will not enable me to do so. I speak now of the indictment against John H. Surratt for killing an individual. The learned prosecutor has not seen fit to do so; but I ask the gentleman who is to follow to make it plain. I am not talking about the President

of the United States, or the Secretary of State, or a state of war; I am talking about a different thing; and I want to know upon what principle they can apply this evidence to show that John H. Surratt was combined with Booth in a conspiracy to kill an individual. It is done to excite passion and prejudice. I wish I had here, as I had yesterday, the life of Julius Caesar, written by Napoleon. I would like to read from that heathen orator a passage as to what men should do who have to pass upon the lives of individuals; the opinion, not of a Christian man, but of a heathen; not one looking beyond the grave, but one who, in the very same speech says, "we perish in the grave." He tells you that when weighty matters are to be considered, affecting a man's life, there should be neither passion, nor prejudice, nor feeling. This is done to invoke passion, prejudice, and feeling in the mind of the jury, and to extort from their distorted judgment a verdict which their cooler judgment would reject.

Now, gentlemen, I will ask your attention, for a brief time at least, to some more material questions, affecting more directly the matter in issue. The indictment in this case has been read to you; I believe the substance of it, at least. The first count charges that John H. Surratt murdered Abraham Lincoln on the 14th April, 1865. The second count charges that Wilkes Booth and John H. Surratt murdered Abraham Lincoln on the 14th April, 1865. The third count charges that Wilkes Booth, John H. Surratt, Atzerodt, Herold, Payne, and Mrs. Surratt murdered Abraham Lincoln on the 14th April, 1865. These are all pure cases of murder, and he is indicted as a principal in that murder. I shall not now discuss the question which my learned brother from New York seems to have raised in the last proposition presented by him, as to whether or not, in a charge of murder, a man not within the jurisdiction, not near enough to contribute aid, not within reach to render some sort of assistance, can be made a principal or not. The law is too clear. There is not a tyro at this bar, who has been at the bar for one year, who does not know, that in order to be a principal in a murder the party charged must either be acting, or in a position or condition where he may assist, and that by pre-arrangement. If not, he is an accessory before the fact, not a principal; and if he be indicted as a principal, he must be acquitted.

Now, we come to the fourth count, the *tabula ne-phragata*, the only thing that is saved out of this shipwreck. The fourth count charges that Booth, Surratt, Herold, Atzerodt, Payne, Mrs. Surratt, and others unknown, "on the said 14th day of April, in the year of our Lord 1865, at the county of Washington aforesaid, unlawfully and wickedly did combine, confederate, and conspire and agree together feloniously to kill and murder one Abraham Lincoln," and that the parties named and others unknown, on the day and at the county aforesaid, "in pursuance of said wicked and unlawful conspiracy, in and upon the said Abraham Lincoln, in the peace of God then and there being, feloniously, willfully, and of their malice aforethought, did make an assault," &c.

There is one truth in that whole indictment. On the 14th of April the parties who effected the murder did conspire, and did conspire in the city of Washington—Atzerodt, Booth, Herold, and Payne. As to them, it is true the conspiracy was then and there formed—then and there executed. Then it goes on in the usual form to say, that they inflicted a mortal wound on Abraham Lincoln, from which mortal wound Abraham Lincoln died on the 15th of April, "and that the aforesaid John H. Surratt, and the aforesaid David E. Herold, and the aforesaid George A. Atzerodt, and the aforesaid Lewis Payne, and the aforesaid Mary E. Surratt, then and there, in pursuance of said wicked and unlawful conspiracy, feloniously, willfully, and of their malice aforethought, were present aiding, helping, and abetting, comforting, assisting, and maintaining the said John Wilkes Booth, the felony and murder afore-

said, in manner and form aforesaid, to do and commit."

There is no principle of criminal law better settled than this: that every indictment must contain a statement of every ingredient material to constitute the offense, and it must be stated with certainty, to a certain intent in general. That is, so clearly that the defendant may know with what he stands charged, how he is to defend himself, and so that he may plead either the conviction or acquittal if he should be pursued for the same thing a second time. I ask now what is that? The indictment states that these parties, on the 14th of April—the time is not material, place is material—sometime on the 14th of April, before the act was committed, (I find no fault with that,) these parties did, in the county aforesaid, conspire—the place is essential—to kill, and, in pursuance of that conspiracy in the county aforesaid these parties did kill. I do not like to read law books to the jury, and very seldom do. It is, however, my duty, as far as I can, in the brief and cursory view I am obliged to take of this matter, to assist his honor the judge in his investigation as to the law of conspiracy, under which, as I had supposed, this case was to be laid. But I understand now it is a higher law; is a law which no court in this country has ever had an opportunity to lay down, and which for the first time your honor is to have the credit of announcing to the world. Your honor is to have the diadem and crown of glory of finding out what no man ever found before, what no man living under written law or well-known common law ever knew—a law made for the case after the offense is committed. It is a tempting bait to any judge to be told that the whole country is looking to his decision; that the whole country waits in anxious expectation the announcement of this new higher law; that the country is ready to burst into enthusiasm in support of the judge who will for the first time announce a doctrine not known to any other lawyer in the United States; that the whole country is ready to break into indignation and surge against the judge who will dare to deny such a law. I shall have occasion to turn to that presently; I confine myself to the indictment now, because, if that doctrine has any foundation, there is no indictment for it. The district attorney never heard of it before, and I do not wonder that he did not frame the indictment to meet it. If it be true that there are no accessories in such a case as this, and that to murder a President in order to assist a failing rebellion, and to strike at the Government, is a distinct and substantive crime, to be treated by different laws and governed by different rules of evidence, then I demand that they shall put it into their indictment. In the old edition of Archbold's Criminal Pleading, page 11, it is written:

"As to what are material facts, it is necessary to observe that every offense consists of the commission or omission of certain acts under certain circumstances; and each of these being a necessary ingredient in the offense, is material and must be stated in the indictment."

Again, on the same page:

"But in indictments for offenses of commission every act which is a necessary ingredient in the offense must be laid, with time and place, as above mentioned."

Again:

"And this distinction seems to have been established, that in felonies *in favorem vite*, the greater strictness above mentioned (namely that time and place be laid to every material fact) is required."

Now, if you are going to have constructive presence; if you are going to hang a man upon constructive presence, he being out of the jurisdiction, I think it is a material circumstance to state where he was, and that he was out of the jurisdiction. I read further from page 12:

"What we have now said relates to acts which are necessary ingredients in the offense; for mere circumstances accompanying these acts need not be laid with time or place—March Pl., 127; 2 Co. Rep., 226—unless rendered essential by the particular nature of the offense."

We shall see by and by whether or not this is not rendered so by the particular nature of this new offense. Again, on page 13, same edition:

"At common law (by which indictments are still regulated in this respect) the jury in strictness should have come from the town, hamlet, or parish, or from the manor, castle, forest, or other known place out of a town, where the offense was committed; and therefore every material act mentioned in the indictment must be stated to have been committed in such a place."

And so they have stated in this indictment. Again, at page 15, after stating the case of an indictment for keeping a common gaming-house, and other cases of that kind, Archbold says:

"In all other cases every fact or circumstance which is a necessary ingredient in the offense must be set forth in the indictment."

"And if any fact or circumstance which is a necessary ingredient in the offense be omitted in the indictment, such omission vitiates the indictment, and the defendant may avail himself of it by demurrer, motion in arrest of judgment, or writ of error. Thus an indictment for assaulting an officer in the execution of process, without showing that he was an officer of the court out of which the process issued—5 East, 304; for contemptuous or disrespectful words to a magistrate, without showing that the magistrate was in the execution of his duty at the time—Andr., 226; against a public officer for non-performance of a duty, without showing that he was such an officer as was bound by law to perform that particular duty. *Quod exoneravit termentum davis plagam*, without saying *percussit*—5 Co., 122 b.—that he feloniously did lead away a horse, &c., without saying 'take'—2 Hale, 184; in all these and the like cases the indictment is bad, and the defect may be taken advantage of in the manner above mentioned."

Again, at page 16:

"And not only must all the facts and circumstances which constitute the offense be stated, but they must be stated with such certainty and precision that the defendant may be enabled to judge whether they constitute an indictable offense or not, in order that he may demur or plead to the indictment accordingly; that he may be enabled to determine the species of offense they constitute, in order that he may prepare his defense accordingly; that he may be enabled to plead a conviction or acquittal upon this indictment in bar of another prosecution for the same offense; and that there may be no doubt as to the judgment which should be given if the defendant be convicted."

Again, as to certainty, page 17:

"Certainty, to a certain intent in general, being a medium between the two degrees of certainty above mentioned, may be inferred from what has just now been said respecting them; and it should seem, therefore, that in cases where it is required, everything which the pleader should have stated, and which is not either expressly alleged or by necessary implication included in what is alleged, *must be presumed against him*."

Again, on page 25:

"If all the ingredients in the offense (whether it be an offense at common law or one created by statute) be not set forth in the indictment, or if any of them be not stated with sufficient certainty, the defendant may demur, move in arrest of judgment, or bring a writ of error."

At page 388 will be found the form of an indictment in a case of conspiracy that is to charge a man with crime, to be modified to meet the circumstances of the case; and it will be found that all the circumstances necessary to constitute the offense are set out with great particularity. From page 391, I read:

"It is usual to set out the overt acts—that is to say, those acts which may have been done by any one or more of the conspirators, in order to effect the common purpose of the conspiracy. But this is not essentially necessary; the conspiracy itself is the offense, and whether any thing have been done in pursuance of it or not is immaterial."

Again:

"But before you give in evidence the acts of one conspirator against another, you must prove the existence of the conspiracy, that the parties were members of the same conspiracy, and that the act in question was done in furtherance of the common design."

And now we turn back, for the reference is to treason, and the form in which the pleadings shall be made out and the overt acts be stated. You will find the indictment for treason beginning at page 264. Now, at page 267:

"The evidence must be applied to the proof of the overt acts, and not to the proof of the principal treason, for the overt act is the charge to which the prisoner must apply his defense. And whether the overt act proved be a sufficient overt act of the principal treason laid in the indictment, is matter of law to be determined by the court."

"Where a conspiracy is laid as an overt act, the act of any of the conspirators in furtherance of the common design may be given in evidence against all. (*R. v. Harday*, 1 East. P. C., 99; *R. v. Stone*, 6 J. R., 529; and see *Kel.*, 19, 20 and ante p. 68.) In such case, the first thing to be proved is the conspiracy; secondly, evidence must be given to connect the defendant with it; and lastly, if intended to give in evidence against the defendant the acts of any other person, you must show that such person was also a member of the same conspiracy, and that the act done was in furtherance of the common design." (See *R. v. Sidney*, 3 St. Tr., 798, &c.; *R. v. Lord Lovat*, 9 St. Tr., 670, &c.)

Again :

"But if any one overt act be proved against the defendant in the proper county, acts of treason tending to prove such overt act laid, though done in a foreign country, may be given in evidence; and this was done in nearly all the trials of the rebels in the year 1746. (Post. 9, 22.)"

Now, if the court please, what are the *allegetta* here? It is not compassing or effecting the death of the President of the United States. No, gentlemen; neither his honor the judge, nor you, the jury, can take any official or judicial notice, because it is not laid in the indictment, that the party killed in this case was the President of the United States, or that it was done in time of great civil war, or that it was done to destroy the effective force of the nation, or that it was a blow at the life of the nation. We are to be tried according to the allegation in the indictment, and not according to fancy springing up afterwards. The allegation in the indictment is a simple case, as I said at the outset—as I understood my learned brother from New York to say at one time—a simple case, which everybody can understand. It is the case of the murder of a private individual. Is not the punishment the same? Can you do any thing more than hang a man? Is not the mode of trial the same? Are not the rules of law the same? But, if another rule is to prevail, then I ask your attention to the tenth page of this book—Archbold's Criminal Pleading :

"Where the person injured has a name of dignity, as a peer, a baronet, or a knight, he should be described by it, and if he be described as a knight, when in fact he is a baronet, or the contrary, the variance will be fatal."

Now, tell me, sir, (addressing Mr. PIERREPONT,) where your law is? If this be not the case of an individual, or half a dozen individuals, killing another, I ask why did you not tell us and put us on the defense? If it be a higher offense in law—that is the point; we are not talking now about political relations—if it be a higher offense in the law to kill a President, or to assault, with intent to kill, a Secretary of State, than it is to kill, or to assault with intent to kill, any private individual, and if we are to be tried by different rules of evidence, why did you not tell us so? If this be any thing more than an ordinary indictment for murder by conspiracy; if it is to be decided by different rules; if it is not to be measured (I mean in a court of law) in the scales of justice, not by political feeling, not by the injury inflicted upon society, but in the scales of justice, I ask you why did you not put in the charge those facts which accumulate guilt upon the party, and make it a different offense from that for which you put us upon trial? Different! aye, gentlemen, as widely different as a brawl in the street is from treason; different in that oath which you have taken to decide this case according to that indictment. If the party injured has a title, if the party injured is entitled to special protection, or is entitled to the benefit of trial by different laws; if a different punishment is to be inflicted; if different rules of evidence are to be admitted, then I say the law, justice, and humanity demand it should be put into the indictment; that you, gentlemen, shall not be smuggled out of a verdict because they invent some offense different from that which you have sworn to try.

Now, gentlemen, we differ as widely upon other principles of law; not expediency, but legal principles. I shall not go over the cases cited by Mr. MERRICK, nor shall I take time to examine those cited by the prosecution to show what proof is necessary to make a conspirator guilty as a principal, but I will refer you to Bishop's Criminal Law, 1st volume, section 264 :

"In law, therefore, as in morals, when several persons unite to accomplish a particular object, whether they collectively put each his individual hand to the work, or one doing it, the others lend the aid of their wills—not in the way of mere passive desire, but of active support—the persons thus uniting are all and severally responsible for what is done."

Again :

"And if several conspire to seize with force a vessel, and run away with her, and death comes to one opposing the design, all present

aiding and abetting are guilty of the murder of such one. The principle that all whose wills contribute to a criminal result are in law guilty furnishes the leading test sufficiently ordinarily of itself to determine whether or not a person who did not himself perform a particular thing is to be held for it criminally."

This is a most admirable exposition of the rule as far as it goes.

"Obviously, if two or more persons are lawfully together, and one of them commits a crime without the concurrence of the others, the rest are not thereby involved in guilt. So if they are unlawfully together, or if several persons are in the actual perpetration by a concurrent understanding of some crime, and one of them, of his sole volition, not in pursuance of the main purpose, does another thing criminal, but in no way connected with this, he only is liable."

For that he cites a long list of cases, beginning with 1 Leach and running down to 9 Carrington & Payne, several cases in England and several in the United States. The sentence is pregnant with meaning in this case :

"If they are unlawfully together, or if several persons are in the actual perpetration by a concurrent understanding of some crime, and one of them, of his sole volition, not in pursuance of the main purpose, does another thing criminal, but in no way connected with this, he only is liable."

The district attorney nods his head in approval. I am very glad to see it; but I did not understand his argument the other day, if that was what he meant. If there is not a concurrence of the will; if the parties do not design to do that thing, but design to do something else, and one or more of them go off from the conspiracy and (to use a very coarse but forcible expression) on their own hook kill somebody, the others are not responsible for it. They are responsible each for the other in this entity, this artificial being, the conspiracy, just so far as their common design is concerned, and no further. Just as a corporation is bound by the limits of its charter, and its officers and members can do nothing beyond the limits of its charter, so are conspirators agents for each other within the limits of their conspiracy, and not beyond. Let me proceed :

"So if two persons have committed a larceny together, and one of the two suddenly wounds an officer attempting to arrest both, the other cannot be convicted of this wounding unless the two had conspired not only to steal, but to resist also with extreme violence any who might attempt to apprehend them."

It is then within the scope of their agreement. I read again from section 266 :

"In like manner, if several are out committing a felony, and upon an alarm run different ways, and one of them, to avoid being taken, maims a pursuer, the others are not guilty parties in the mayhem."

For that he cites a case in Russell & Ryan, page 99. Again, in section 267; and now we come to what we understand to be the true principle of the law of conspiracy :

"Yet if two or more continue to do an unlawful thing, and the act of one, proceeding according to the common plan, terminates in a criminal result, though not the particular result intended, all are liable. This doctrine is merely a deduction from the principles already laid down: First, that the party not acting participated in the intent with which the act was committed, and thus became criminally responsible for the act; secondly, all who are responsible for what is done unlawfully are so for its entire consequences, whether contemplated or accidental."

Thus far we have trod on secure ground; now we come to debatable ground :

"But in the facts of cases a doubt often arises of the extent to which the wills of those who did not directly commit the act concurred in what the rest did. This matter, however, is one of evidence, to be considered in our work on Criminal Procedure. Yet, connected with this question of evidence is another analogous to it—namely, suppose the one committing the wrong was really carrying out the common purpose in a general way, yet not after any agreed method; how far are the rest held criminally for what of evil accidentally comes from the volition of this one other than the evil specifically contemplated. \* \* \*

"Hawkins has something on the point as follows: 'If a man command another to commit a felony on a particular person or thing and he do it on another—as, to kill A, and he kill B; or to burn the house of A, and he burn the house of B; or to steal an ox, and he steal a horse; or to steal such a horse, and he steal another; or to commit a felony of one kind, and he commit another of a quite different nature, as to rob J. S. of his plate as he is going to market, and he break open his house in the night and there steal the plate—it is said that the commander is not an accessory, because the act done varies in substance from that which was commanded.'"

Now, then, I ask the attention of the court, and of every intelligent lawyer, to section 268 :

"The true view is doubtless as follows: 'Every man is responsible criminally for what of wrong flows directly from his corrupt intentions; but no man intending wrong is responsible for any independent act of wrong committed by another. If one person sets in motion the physical power of another person, the former is criminally guilty for its results. If he contemplated the result, he is answerable, though it is produced in a manner he did not contemplate. If he did not contemplate the result in kind, yet if it was the ordinary effect of the cause, he is responsible. If he awoke into action an indiscriminate power, he is responsible. If he gave directions vaguely and incautiously, and the person receiving them acted according to what might be presumed to have been his understanding of them, he is responsible.'

And that is an answer to the argument addressed to the court by the learned counsel from New York, in his illustration as to putting a steam-engine in motion on a railroad, &c. It is a complete answer.

"But if the wrong done was a fresh and independent wrong, springing wholly from the mind of the doer, the other is not criminal therein, merely because when it was done he was intending to be a partaker with the doer in a different wrong."

From these authorities, together with those already cited by my brother MERRICK, and commented on so fully by him, I deduce the following proposition :

The act must be in execution of the design of the conspirators. It must be to effect the object of the conspiracy. I have shown you that the object of the conspiracy must be distinctly set out in the indictment, and the overt act as distinctly stated. If it is a conspiracy to rob, and one of the conspirators commit a murder, not in execution of the common design to rob, the others are not responsible. If to kidnap or abduct, and one of the number, leaving his connection with the others, murders, and that murder has no connection with the original plan to abduct, the others are not liable.

The conspiracy charged in this indictment is a conspiracy to kill, not to abduct. It is a conspiracy to kill an individual, not the President of the United States. It is a conspiracy to kill, not to help the rebellion. It is a conspiracy to kill an individual, not to take away the life of the Government. The burden of proof is upon the Government to show that conspiracy, not some other; the burden of proof is upon the Government to show the existence of that conspiracy, and John H. Surratt as a co-conspirator. The burden of proof is upon them to show the overt act in this county, a conspiracy to kill, and Surratt connected with that conspiracy, and Surratt moving in that conspiracy to kill.

Now, let us see, as I sum up very briefly, what the proof is, as I understand the case made out by the Government. I do it briefly, gentlemen, because I know you are intelligent men, and you have listened with extreme patience and great inconvenience and suffering even to this great mass of evidence, that wasted nearly six weeks. I wanted to close the case long ago. Not that I feared the truth; not that I relied upon error; not that I thought there was any danger of the jury being misled by the evidence or the law; not because I feared discussion; but I did fear exactly what we have had, a harangue of three days, filled two-thirds of it with abuse of the prisoner, and it made my gorges rise to think of it.

I have already said that the court cannot, nor can the jury, take any notice of the fact that the victim of this assassination was the President of the United States. It is not in the bond; it is not pleaded. We are not upon our defense for that. We have had no notice of it until it was suddenly sprung upon us by the active brain of the counsel from New York. The indictment is not that the killing was in time of civil war, or that the object of the conspirators was to advance the interests of the rebellion. The indictment is that this party killed Abraham Lincoln, and nobody else. There is no allegation of any fact from which it can be found that Abraham Lincoln was President of the United States; or that this country was not in a state of the most profound peace. This is the error

into which the learned counsel have fallen, and I say with the utmost deference and respect, I fear into which they have in part led the learned judge, without having presented fairly the indictment to him. They seek now to retrieve themselves by this new proposition, that to kill the President of the United States, under such circumstances, is an offense in which there are no accessories; an offense to be tried by different rules; an offense never dreamed of by the law-makers of this country; an offense not known to the laws of England, because there is no such authority in the law of England; an offense impossible here in this Republic, where we know no lords or commons; where we have no king; where there is no such offense as compassing the death of the sovereign; where there is no living, acting sovereign, but where the sovereignty is in me, in you, in all of us, and certain powers are delegated to Government. Utterly routed from every possible ground of assault against the accused for killing an individual, they seek to throw up an outward defense, and renew the assault from this masked battery.

The learned counselor (and he must be learned, for he has learned that which no lawyer within the sound of my voice ever knew before) tells us that this doctrine—anti-republican, hostile to liberty, that a man shall be put upon his trial according to all the forms of law upon a perfect indictment, and when he comes to be tried, that he shall be tried for a new and different offense, to be created for the first time out of the head of the judge—he will find authorities for. He did not condescend to enlighten us with even as much as the district attorney gave us—not even a school-book. Did my learned brother recollect a speech of his own on the arrest of General Dix? Did he recollect when he told Judge Russell, in the city of New York, that the President was not a dictator; and if he were a dictator, "arrest him, depose him, assassinate him." No, sir; not even if he is a dictator, do not assassinate him. With your own strong arms and manly hearts rally together and take away the baton of the dictator by the ballot-box; and if you cannot, take it away by the cartridge-box and bayonet; but do not assassinate him.

They seek, I say, to retrieve themselves by this new doctrine now, after the evidence is closed, and after they have ruled out step by step, upon technical rules, on the ground of the case made in that indictment, evidence for the defense going perfectly to acquit that young man of all participation in this murder—evidence offered in writing; a witness on the stand, with two other witnesses here, men of the highest character and respectability; with our written offer to prove his whereabouts from the 24th day of March until the 18th day of April—ruled out and rejected, because they had not in their evidence made a case to be answered by such proof. When we offered by General Lee to prove that this young man arrived in Canada on the 6th of April, that he was there until the 12th, that he went then to Elmira on business under his (General Lee's) employment, that he transacted the business at Elmira, that he returned and reported, showing that he must have been there during that time engaged in that business; when we offered in writing to produce that evidence, they objected. They said, "No; we have made no case to which this is in reply." And now, after availing themselves of this ruling of the court, they have the supreme audacity to say to you, "Gentlemen, this man participated in that assassination in order to further the ends of rebellion, and yet we shut out from your proof of what he was doing at the time."

"Oh, judgment, thou art fled to brutish beasts,  
And men have lost their reason!"

I say, gentlemen, there is no such doctrine; and I say further, if there be such a doctrine, there is no man in that jury-box who would not rather sit there until he shrank "to the size of a tobacco pipe," rather than render a verdict against a party under such a doctrine. If you did, you would have no right to go home to your wives and children; you would have no right

to the hospitalities of life; you would have no right to the cheering consolations of those with whom you have been accustomed to associate; for you would have done a deed which stamps you and your posterity with eternal disgrace, by convicting a man without law and without reason.

Gentlemen, I wish I were a younger man; I wish I could knock off thirty years of my age, and fight this battle here. But I am too old; younger men must take it up. I would fight it to the death. I would fight as long as I had breath. I would bring up my children with the nurture and admonition, "You shall not find a man guilty of an offense unless it be charged in the indictment; and you shall not go outside of the indictment to find weapons to kill unlawfully, never recognized before."

But I am breaking the rule I laid down for myself. I have no strength to bear excitement nor to endure the fatigue of discussing this case as it ought to be discussed.

Gentlemen, the charge in this indictment, as I have endeavored to show you, is the killing of Abraham Lincoln, and a conspiracy to kill him as an individual, not as President. The charge is of killing him as if the country was in a state of profound peace, and not in time of war. The charge is of killing him from malice aforethought, and not for the purpose of helping the rebellion. The case is to be tried, then, by the ordinary rules; the same rules of evidence are to be applied, the same judgment of the jury is to be applied, the same verdict is to be rendered of guilty or not guilty. I have not much doubt how it is going to be. I am speaking now not of this case specially; I am speaking of the laws that govern you, me, and everybody else. I am speaking of a principle, not of an individual case. I have no more fear about this case than I have of my own; I have not had for weeks; but I am speaking to protest with all my heart and soul against this monstrous doctrine. The case is to be tried by the ordinary rules. No authority has been cited, not a horn-book, not an elementary writer, not a county-court decision, in favor of the suggestion which is made as the law of this free country, that a man may be indicted for the ordinary offense, the well known common-law offense of killing, and shall be tried and convicted upon another law not written and not found in the books.

Now, gentlemen, a word or two as to the proof in this case, for I shall have to hurry through what I desire to say, in order to give you rest, and to close, so far as I can, my connection with this case. I came into it most reluctantly. I was burdened with other business. It was in the midst of our civil court. At my time of life I did not seek honor or renown. I knew that these parties had no means to recompense me for my labor. I believed I should have to furnish out of my own pocket funds for the ordinary expenses of the trial during its progress, instead of receiving compensation. I wished to avoid the excitement, wear, and tear, of such a case. But if you had seen her who came to me, you would know I could not have done otherwise. She did not weep; not a tear fell from her eyes. The fountain of tears had been dried up. Two years of long, continuous suffering had wasted that fountain. The eye once bright and animated was dim, the countenance depressed. The annals of memory were traced there. To-be-sure, it was lighted up with the hope that hereafter she might one day again see her blessed mother. Yet I refused. I refused until my two younger brothers undertook to take the laboring part of this case; and well and faithfully have they discharged it. For two months, in season and out of season, by day and by night, at home and abroad, with expense, toil, and labor, have they diligently discharged their part of this work. You heard yesterday how admirably, how gloriously one of them triumphed in the results. I doubted this case very much. I had read that conspiracy trial. I thought I saw something

of the implements which might be used and manipulated by the Government of the United States with its vast Treasury and exhaustless resources, and I feared; but when I went into that young man's cell and heard his story, and as I traced out the history and found every word he told us verified to the utmost—for he kept nothing back, and concealed nothing—my heart glowed within me, and at my old age, that I could stand up and defend him against wrong and oppression. I say I have not for weeks feared the result; I have never feared it since the Government proved his innocence a month ago. What is the proof? That the President, Abraham Lincoln, was killed by John Wilkes Booth alone, when John H. Surratt was four hundred miles away, when he was ignorant of what was being done. Is not that so? What is their proof? They bring that accomplished gentleman Dr. McMillan, with the most extraordinarily retentive memory that I ever saw, when it suits his convenience, but who, happily for us, forgot that he had given a written receipt, and when that written receipt was presented to him it changed the whole tenor of his testimony. I ask you to look at that witness on the stand. What is the use of open oral examination of witnesses? It is that the jury may look upon them, and see them eye to eye, see the nervous flutter of the cheek, see the quailing of the eye-lid; that they can see whether or not a witness intending to condemn a prisoner can look upon him and swear against him. It is that they may see whether the pulse beats strong and fair, whether the nerves are strung or not. They can tell whether it is a face of brass or a face of innocence and integrity. So it was here. Never with more confident strut did one of these little bantam cocks mount upon a fence and crow than did that man, as he first flapped his wings and flashed my brother MERRICK what he thought was a gross insult. When he sat here and heard the testimony of Father Boucher, your eyes were on him; mine were. I tell you he could no more look that man in the face than Mr. CARRINGTON can look in John Surratt's face when he is acquitted. I tell you, when he came upon the stand, recalled by them, and undertook to tell of his controversy with the priest, he had had it all rehearsed. He had told the learned cross-examiner what to ask the witness; he had studied it all out, and he thought he had his card written, and he testified exactly as if he believed it. But when I handed to him that written receipt, and asked, "Is that your handwriting?" the more than two years' service for which the bill had been placed by him in the hands of a bailiff against Father Boucher dwindled down into the last spring, and the spring spread out to the 21st of June, and the service came up to the 21st of June, the date of the receipt, and therefore within a few weeks before his alleged quarrel with Father Boucher; and he saw that he had lied straight through. You saw the quivering of the man's nerves; you saw the light go out from that flashing eye which had cast a lurid flame upon my brother MERRICK. I thought he was going to jump out of the box there and whip him. You saw how he quailed, not before the cross-examination, but before the eyes of these twelve jurors looking at him. You saw the craven—craven because detected. Still he is their witness, and what does he prove? If he proves any thing on the face of the earth, and I do not know that he does prove any thing, he proves that Surratt told him he had received a letter at Montreal calling him to Washington, and telling him what? That they had fixed a nice scheme for the abduction of the President, had the horses all in training; "come booted and spurred, and with every thing necessary for an equipment; we will make it a handsome turn-out; it is going to be a pretty affair; it will give us glory and renown to capture the President?" No; he said, "We have had to change the plan." McMillan said to you that Surratt told him the plan had been to abduct the President, and he received a letter from Booth telling

him to hurry to Washington; it had become necessary to change their plan. Is that all? Where is brother WILSON? He kept a note of it. McMillan says Surratt told him that when he got to Elmira he telegraphed to Booth. Where? At Washington? Oh no! but that he telegraphed to Booth at New York. Then, when he was in Elmira, on the 13th or 14th of April, and telegraphed Booth in New York, did he not believe that Booth was in New York? Have you not proved it? Have you not proved the very change of plan, and that he came as far as Elmira and telegraphed to Booth in New York? And no mortal man has ventured to swear yet, (I do not know what may come,) to this jury at least, that whatever that change of plan was, it was ever communicated to this young man. And yet they have the boldness and effrontery to stand up here and rake him by the hour, call him all sorts of bad names—villain, assassin, coward; appeal even to the chivalry of the State of Virginia, and ask, in tones of irony, whether he is a representative of the chivalry of the South! The representative of the United States does this, prosecuting a man for his life! After having produced this proof, that he had nothing on earth to do with the assassination, they have the extreme audacity to ask you for a verdict!

I say, then, gentlemen, first, that Surratt was four hundred miles away, ignorant of what was being done; and, second, that, according to their proof, the plan of the conspirators, whoever they were, and whatever that plan was, had been changed, and the new plan had not been communicated to Surratt. That is their proof. But they are not satisfied with it. This case assumed a new phase last winter, and that new phase has brought to light an instrument of proof which reflects the deepest disgrace upon the conductors of the prosecution before the military tribunal, who suppressed testimony which would have acquitted a woman—a woman, not a man; not a hard, vigorous nature; not a wild, reckless man; not a foe to society; but a pious mother, a loving woman, kind and gentle, who had so touched her servants, as you heard from the mouth of that colored woman Rachel Hawkins; who had gathered around her a circle of friends who loved and respected her; who had two orphan sons, one of whom would now be her protector if he were at liberty; the other, the elder brother, Isaac, in Texas. They suppressed that diary written by Booth just about or at the time of the assassination; that diary, which exculpates her as perfectly as though she had never seen him; that diary, which speaks from the grave; that diary, written in the awful presence of his Maker, before whom he was shortly to appear; that diary, which shows who and what the man was—a fanatic, an enthusiast, a madman. He inherited it. His grandfather, old Richard Booth, was the most thorough red republican that ever settled in Maryland. He used, in the spirit of his fanaticism, to run away slaves into Pennsylvania, and his son, Junius Booth, had to pay for them. He christened his first son Junius Brutus Booth, and he made him christen his eldest son Junius Brutus Booth, and this son, John Wilkes Booth, inherited the traits of the father. He was an accomplished man. He was not only an actor, but he had the manners of a gentleman, and a most wonderful control over man and woman. He was admitted into the best society in this city, and at the time of his death was intimate in families which I shall not name, but families against whom no human being can utter a reproach. Accomplished young ladies not only permitted him to wait upon them, but to take them to the theatre and elsewhere. But he had running through him this vein of insanity, and above it all rose that pure, fervent, and indescribable affection, the love of a son for a mother. I have been told by a gentleman who knew them that when he thirsted to go South and join the rebellion, his mother restrained him. Putting both hands upon her, he said: "You are no Roman mother or you would tell me to go; you know my heart is

there." I said he had a wonderful power and control over men, and wonderful was the power he exercised upon the stage, making his \$20,000 a year. He has gone, as he deserved, to a dishonored, felon's grave.

I say, gentlemen, they have shown that this change of plan was not communicated to John H. Surratt. They show by these two witnesses. The prisoner at the bar himself is one whose testimony is invoked through that malign spirit McMillan. He is invoked to testify to the fact. And wonderfully has that man woven what he calls the "revelations" with the facts of this case. Surratt did leave Montreal at the time he stated; Surratt did reach Elmira at the time; Surratt did not come any farther than Elmira at that time, and upon these facts he has built the further "revelations" which are contradicted by all the proofs in the cause. I say they have proved, not only by McMillan, but by this diary, that Surratt, if he was in the former conspiracy, was in a conspiracy to abduct; that the plan was changed; that if he started to come to assist in the new plan, it was a plan of which he knew nothing, and they have shown that he knew nothing. Is not that the end of this case? I am taking their own doctrine. I am taking them upon the monstrous doctrine they have put forth, that to kill the President is a new, unheard-of crime, for which new laws are to be made by the court. They must show that he intended to kill, and contributed to the act; and they have taken all the trouble to prove that he did not. I throw out of view, discharge from consideration, those mighty men, Lee, Dye, Rhodes, and Cleaver, and on top of them put Susan Ann Jackson, and alongside of her I put my brother Vanderpoel—Susan by far the most respectable of the two. I wish I could tell you, gentlemen, what we tried to get Vanderpoel back for cross-examination for. We tried to get several of the witnesses back for cross-examination. I wish I could tell you what Vanderpoel said before he left the court-house, as to how he came to make the statement he did make here. I throw out of view all these witnesses; I set them down all as mistaken—I will not say manipulated; I will not say corrupt; but mistaken, for they certainly were mistaken when they were taken here. I take the proofs confirmed by irrefragable testimony. Now, what are they? I take the proof of the handwriting of Booth, which cannot lie; it may be changed. I take the proof of the handwriting of John Harrison on the register at Montreal. Who says Booth did not tell the truth when he tells you that for six months they had labored to abduct, and that they found it necessary to change their plans? That is the proof, and who says it is not true? Do they not themselves offer evidence to show that in October the plan of abduction was in contemplation? Do they not show by that accomplished young man Mr. Weichmann (a *weak man* indeed!) that an effort was made on the 16th of March to do something which failed? And from that time forth John Surratt is not brought in connection with any of the parties concerned in that conspiracy, with the single exception of that young gentleman—I suppose he is to be called a gentleman; it will not do to call him, as my brother the district attorney calls the defendant, a rascal, a villain, a liar, a perjurer; but I think I shall show, before I am done with him, what sort of a gentleman he is, fit to associate with Conover, Cleaver, and Montgomery. They prove by him that on the 16th of March this effort failed; John Surratt rushed into the room in the greatest state of excitement and exclaimed, "I am ruined; all my prospects are blighted; Weichmann, can't you get me a clerkship." From the sublime to the ridiculous! The only time when they are brought not together, but in juxtaposition, after that, is stated by this same accomplished young gentleman, who has the right to open all the drawers in the room in the Philadelphia custom-house, where he was, whether he had the keys or not. This same young man says that he swore on the trial at the Arsenal that he saw him two weeks after that; but that would not do, because he

found that John Surratt was in Canada; so he comes down to the 20th, four days afterwards, and says that on the 20th he went to Mrs. Murray's to see if there was a room engaged there for Payne. Mind you, Payne had not come; John Surratt went there to engage a room for him; but he does not bring John Surratt in connection with Payne, who did not arrive until the 27th, according to his story; and he never saw Booth, Atzerodt, Payne, or Herold in company with John Surratt after the 16th of March. If so, I cannot find that it has been stated in this testimony, and I looked carefully for it this morning. I cannot find that he brings John Surratt in company with any one of these parties after the 16th of March, the day of the final defeat of their project, whatever it was. On the 24th of March he starts him on his voyage to Richmond. He brings him back from Richmond on the 3d of April; he brings him to his mother's house between six and seven o'clock that evening, has him to Holahan, goes out with him, according to his account, to get oysters, and leaves him at the Metropolitan Hotel to sleep there. Holahan tells you that he was at Mrs. Surratt's between nine and ten o'clock, after he had gone to bed, that night.

I say then, gentlemen, Weichmann has proved that from the 16th of March, when the effort was made, whatever it was, there was no further communication between Surratt and any of these parties; and John Wilkes Booth tells you from the grave that the project to abduct failed after an experiment of six months, and they found it necessary to change their plan; and McMillan tells you that while Surratt was in Montreal he received a letter from Wilkes Booth telling him the plan had been changed, and he got as far as Elmira only and telegraphed to Booth in New York, and there he remained. Whether he did really telegraph is another matter. The prosecution ought to have shown the telegram if it was so. I rather think, if they could, they would have shown it; for they have not only gone up to the moon and sky-larked there, and into the clouds and mists of heaven, and amused themselves with side-real observations, but they have gone into the depths of the earth to hunt up and root up dead bones as well as living things, in order to excite your prejudices in this case, and extort a verdict from prejudice, not from judgment, nor from the heart.

I said that the assassination was committed when Surratt was four hundred miles away, when the plan had been changed without his knowledge; that according to this showing the conspiracy had been abandoned and a new plan formed when it was physically impossible that Surratt could have assisted in the execution of it. Now, I will show that it was physically impossible.

The learned district attorney, with a tremendous figure, says that John Wilkes Booth killed the President, and has gone to—I will not name the place—but he has left Beelzebub here to work for him. I think he must have had some familiar spirit with him, or else I should like to know where he got the rakings of that place that he produced on the stand as witnesses here—men so utterly corrupt and debased by such shocking crimes as humanity stands back aghast to see them put upon the stand by respectable counsel as credible witnesses. But has he not a "familiar?" We have had a gentleman in black here—I was looking around for him a little while ago; I think he is *foster-father* to this case. Where has he been? Raking the valley of the Susquehanna with that detective, Roberts, trying to extort something from our witnesses, respectable men, by which they could be entrapped into a contradiction. He sat by the counsel from New York as he put the questions he did on cross-examination to men of the highest character—such a man as Cass. I am only sorry he is a Black Republican; that is the only thing I know against him; but he is a thoroughly honest and upright man. I think men who are red republicans are crazy, and I am sorry for them. These questions were put to Cass: "Did you not talk with Colonel Foster?" "I don't know him." "This man

along with me; did you not in his presence talk with Mr. Roberts?" "Don't know him." "Did you not talk with Mr. Wilson?" "I don't recollect." "Did you not talk with me when Mr. Wilson was standing by, and did you not say so and so?"—insinuating to this jury a corrupt charge against that honest man. If he had had any reason to make any such assault, not a word would have fallen from my lips; but there is a man as honest and as well valued in his city as my learned brother is in New York, who, by impeachment, insinuation, is to have his testimony shaken by calling his attention to what may have passed between him and the counsel or between these two or three persons round about them; and he dared not put one of them upon the stand to say that Cass did not tell the naked and pure truth. If I had done that, I should have deserved the rebuke of the court.

But that is not all. I shall have occasion, probably, if my strength holds out, to point to two or three more such cases, where the counsel says to a respectable physician, "Have you not been indicted for mal-practice in your profession? Have you not been arrested for it? Did you have a consultation with Dr. Bissell? Did the man live after that consultation?" I say it was as gross an insult as I ever heard offered to a witness on the stand, and the greater, because the counsel does not venture to undertake to prove any one of these insinuated allegations.

I did not ask a witness on the stand—and so help me Heaven, if I ever practice longer I never will ask one—a question to insinuate a prejudice against him; and I will ask him nothing about which I have not the proof. When I ask a witness on the stand any question tending to impeach his integrity or his moral character, I may show heat and excitement, perhaps, but I have the proof by me to sustain it. I never have assailed, I never will assail, the honest integrity of a witness without the clearest proof of his falsehood and perjury. I have ever, and I trust if I live to try another case before a jury I will still charge home to a witness whom I believe to be corrupt, that which I have proof of to show that he is corrupt; but, so help me Heaven, if I ever say to an honest man, an upright man, one word to insinuate guilt without the proof of it, may I be turned out of the society of honest men and made to seek my support with criminals.

Again, one word more, for I speak now as a friend. Look at the case of Mr. Nagle, of Montreal. Gentlemen, you saw that witness upon the stand. You saw him about here. He was with us daily while he was here; a gentleman, a man of character; a man employed by my son to assist us in preparing the case on the other side of the line; a man who worked industriously for us; a man who came here with the witnesses; a man who was paid for his expenses, and the costs of those witnesses. A witness is put upon the stand, not to assail him, but to support the character of McMillan, and the counsel asks that witness as to the character of Mr. Nagle! Will he dare to say to you that he could bring a witness here to impeach it? I should like to see such a witness! I know something of his character and standing there. I know that Mr. Nagle is a high-toned gentleman. He may have political enemies; and after what has taken place here I would not like to say that no man could be found to discredit him. I rather think you could go into the city of Washington to-day and get fifty men to say they would not believe me on oath. I judge so, at least, from articles that have appeared in a dirty sheet in this city from day to day, charging me with corruption; with trying to bribe Hobart as a witness; charging me with getting up a scheme to play a trick upon the prosecution by sending a parcel of Jews to swear falsely, and that a detective traced them to my room. Gentlemen, the history of that transaction has been written in the public newspapers, and when you get out of that jury-box you will see it, and you will see where the corruption was.

Again, let us see where this assault goes. There has been a singular character exhibited in the course of this trial—perhaps rather a rare one; he would make a figure in a novel—I mean Stephen F. Cameron. He is eccentric; he is a man of genius; he is impulsive; he is imaginative; and people who hear him talk, stolid blocks, who cannot understand a little coloring and exaggeration, set him down as romancing; and fellows who have an idea a little above an oyster come here to tell you that he is imaginative and erratic; but no one, with a single exception, has had the hardihood to tell you he is corrupt. And who is that one? Never mind, let him pass. There were two who spoke against him; and the other is a little fellow by the name of Torbert. He tells you that he believes Cameron was a religious man, and yet, when he is asked by Mr. Alexander if he would believe him on his oath, he says he would not. That is the sort of witnesses they bring here to assail Cameron—a man who says Cameron was a religious man, and yet he would not believe him on oath. Either the fellow is *Americanus socius societatis*, (the A. S. S. being the letters of his title,) or else he does not know what religion means; and if in this country, and in this enlightened age, a man does not know what religion means, he is a pretty judge of character!

I say, then, gentlemen, (for I have been led off by these digressions,) that the prosecution have shown that it was impossible that Surratt could have assisted in the execution of the plan of murder; and I am going to show it. I understand that the gentleman in black has been correcting the map which has been exhibited to you. Now, gentlemen, if you have not taken notes of the time, I insist that you shall do it at once, for I take it for granted the gentleman who is to follow me, as I have no reply, is going to demonstrate an impossibility. His "familiar," the gentleman in black, has had hold of it. Surratt left Montreal at 3:30 on the 12th of April.

Judge FISHER. Three o'clock is the hour in the testimony as printed.

Mr. BRADLEY. That is a mistake; 3:30 is the time; but it does not make any difference; I will give the benefit of the half hour. He left the hotel at three o'clock to take the 3:30 train; that is the testimony. He reached Rouse's Point at 5:45. I want you to get these places and times down correctly, and then I should like to see the conjuration on the other side, with the aid of the gentleman in black, to change these figures. He reached St. Albans at 7:25—I pass over Essex Junction; he got to Burlington at 9:05; and to Troy at 5:20 a. m.; and Albany at 5:45 a. m. on the 13th. There cannot be any mistake about that. If there is any dispute about the evidence, I desire to have it put right now. No correction being offered, I assume that, whatever time he started from Montreal, he reached Albany at 5:45 on the morning of the 13th. Our time-tables, brought from Albany here, and now in the possession of the clerk, show that the first train west from Albany left at seven o'clock in the morning and reached Canandaigua at 4:52 in the afternoon. Mr. Guppy, the railroad superintendent brought by the prosecution, proves that that was the route, and the only practicable route, to Elmira. There is another intermediate route, about which they have taken care not to give any evidence; but the route by Elmira is the only route about which we have any testimony, and it is the route on their map.

Then we have him leaving Montreal at three o'clock or 3:30 on the afternoon of the 12th; and by no possibility could he get to Canandaigua before 4:52 on the afternoon of the 13th—twenty-five and a half hours from Montreal. He is at Canandaigua, then, on the afternoon of the 13th. It is not only proved, but it is conceded, and conceded of record, that he was in Elmira on the 13th. Now, he must go to Canandaigua before he could get to Elmira, and it takes two hours and a half to run down to Elmira; so that, if the cars

had connected and he had got on a car for Elmira immediately on his arrival at Canandaigua, he could not have reached Elmira before eight o'clock on the evening of the 13th. *Quod erat demonstrandum*, as we used to say when I was a boy at school. That is mathematics. He could not get to Elmira before, unless he was a bird, as Sir Boyle Roche would say; he was not a bird, and could not be in two places at the same time. Unless he was a bird, to fly across from Albany, and to go on the line that a carrier-pigeon would have traveled, he could not have got to Elmira until eight o'clock p. m. on the 13th. That is the Government proof. That was their proof a month ago. I was willing to stop the case. I thought that the representatives of such a Government as this, when they had proved a man's innocence, would enter a *nolle prosequi*. You may smile, but I tell you there is no greater condemnation on any man than to prosecute a case involving life when the proof is clear against him and in favor of the accused. And I say now, that for the prosecution to shut their eyes against a case thus made out by themselves is worse than judicial blindness; it is willful blindness; and to prosecute a man for his life after they have proved his innocence—I will not trust myself to say what it is.

I say, if the court please, that unless this new doctrine is to prevail—and it is for you, gentlemen of the jury, to say, by rendering a general verdict, whether it shall prevail; unless a man is to be tried for that for which he is not put on trial, and of which he has had no notice; unless you are to adopt the terrible scheme of the other side that you may invent new laws to cover past offenses—this man was acquitted more than a month ago, and the Government knew it. They could not shut their eyes. It would be an insult to their intelligence to suppose they could shut their eyes to it. The leading counsel on the other side has certainly shown great skill and intelligence in conducting this case after he had proved the innocence of the party, piling testimony upon testimony—to do what? To let the district attorney prove Mrs. Surratt's guilt. That is what they have been trying; that seems to have been the question at issue here—not the guilt or innocence of John Surratt; he is cleared; he is cleared by the voice of the witnesses on the part of the prosecution; he is proven not guilty, and the Government is to prove that his mother was guilty! They proved this prisoner's innocence beyond the hope of the most ingenious and elaborate dissection; and we have fortified the case by the proof on the part of the defense, so that I defy the gentleman in black himself to disturb it.

When we had that excitable, nervous cutter, Carroll, on the stand, I really thought the poor fellow had got into some trap. He said that Surratt was there on the 13th, or 14th; that he knows he was there, from the fact that Mr. Ufford left for New York on the 12th, and came back on the 15th. Well, did you ever see a humming-bird jumping at a flower, flying all around it, picking into it a little, with more intense satisfaction than the learned counselor from New York buzzed around Carroll. He actually grew waspish after a while, and every now and then he flew at him and stung him; and Carroll flared up at last. At first it was honey-sweet, but after a while Carroll began to see that there was a sting in that humming-bird's tail, and he got up his temper a little, and I really thought they were going to trap him. What did he tell you? That on the 12th Mr. Ufford left for New York; on the 15th he returned; and between those two dates this strangely-dressed man came into that store; that he never saw such a costume before; that he examined it carefully; that he talked with him twenty or thirty minutes; that the man came the next day or the same afternoon, and he saw him again; that he saw him here in jail, conversed with him, saw his manner, saw him sitting in court, swears that it is the same man, except that his goatee is a little longer now and not quite so broad as it was then.

And they tortured that man; they threw their little squibbs at him that stuck for an instant and irritated him; but when he came to peel off, and they put a man on the stand to contradict him, he confirmed every word that Carroll had said. Why did they not call the gentleman in black and Mr. Covell and Mr. Knapp, as to whom they interrogated Carroll. Roberts, the witness whom they did call, stood outside while Knapp went in and talked to Carroll, and was so posted as to hear what they said! A man was sent in to the store to talk with him as a neighbor and friend, to try to get something out of him, with a spy outside to listen, not to take part in the conversation, but to twist it. Fortunately Roberts was an honest man. Unless it was to twist it, no counsel at this bar would have had the audacity to ask the witness if he did not say so and so, unless the gentleman in black at his elbow had told him he had said so. But Carroll not only comes out unscathed, but fortified. If Carroll tells the truth, he saw the prisoner in Elmira on the 13th and 14th, or the 14th and 15th. If it was the 13th, he could not have seen him till after 8 o'clock in the evening; if it was the 14th, he saw him at lunch time.

You saw Mr. Atkinson on the stand; no attack was made on him; well-dressed, "with good fat capon lined," an alderman of the borough of Elmira, an educated man. He sits there quietly, and tells you that after lunch, on the 13th or 14th, he came into the store and saw a strangely-dressed person talking with Mr. Carroll, who was there ten or fifteen minutes. He went and sat down where he could hear them talk, so that he could hear his voice and familiarize himself with its tones, and notice his mode of expression—where he could look at him and see his action. He came here, went into the jail, had a conversation with him, and had not a shadow of doubt that he certainly was the man he saw in Elmira on the 13th or 14th. Now, they have put the prisoner where he could not get to Elmira by lunch-time on the 13th. Have they not? They put him in Montreal; they took him by Albany around to Canandaigua, and from Canandaigua to Elmira, where he could not get before eight o'clock on the evening of the 13th. I am giving the earliest time. It was not quite so early when he got there. So this gentleman must have seen him after lunch on the 14th. Two and two make four, according to the arithmetic I learned when I was a little boy.

Again, I take Mr. Stewart. You saw him, and you have no doubt of the perfect straightforwardness and truth of his testimony; you have no more doubt that these two gentlemen knew what they do say than you would have of your own brother. Mr. Stewart tells you there are two stores separate, yet communicating, with a large arch between; that he was in one store—the hat, cap, boot and shoe store, &c.—and that Carroll was in the other, when he saw a strangely-dressed man, in a costume he never saw before, walk into the gentleman's furnishing department and enter into conversation with Mr. Carroll; that he was attracted by the man's appearance; went round the counter and came and stood near by, where he could hear the tone of voice of the stranger and note his manner. He went back into the other store, returned again, walked round him, and then went round the counter back again. He was there twenty or twenty-three minutes. He tells you that it was after his dinner-time, and his dinner he testifies was about twelve o'clock. It was after he had returned from dinner, and was between twelve and one o'clock. Now, what day was that? It was the 14th, for there was no doubt that the prisoner was the man he saw there. He told you he was struck not only by his dress, but by his voice and manner; he heard him talk; he saw not his back when he was riding rapidly away; he did not see him riding up the street when he himself was in a buggy; he did not meet him in the street, as Lee did; he did not hear him calling the time, as Dye did, "ten minutes past ten"—most awful tone! but he heard him talk, familiarized

himself with his voice and his manner, and he then comes here, sees him, talks with him, and identifies him as the same person. Is there any doubt about it?

I next come to Mr. Cass. What does he tell you? In vain they attempted an assault upon him. No man in armor ever withstood an assault better than he did, clad in the panoply of truth. He tells you that on the morning of the 15th, between nine and ten o'clock, or about that time, as the news of the death of Lincoln was being received, he had dismissed his clerks, and was closing his store himself, when he saw a stranger on the opposite side of the street, who he took to be a friend of his from Canada, dressed in a costume he had never seen any one else wear. He watched him crossing the street, supposing he was coming to see him. Before he reached him he found it was a different person. He turned around to close his store, and had gone not probably ten feet when he saw that the stranger had followed him into the store. The man asked him for shirts of a particular make, which he had not, and he showed him others. The conversation then turned upon the cause of closing the stores, and the stranger made a remark which was somewhat offensive to Mr. Cass. Mr. Cass took exception to it; they enter into conversation; it is explained; and they part friends; at least the slight difference has passed away. He notes the man's manner, his voice, his appearance; he comes here and visits the prisoner in the jail, and says, "I talked with him; I saw his manner; I heard his voice; I know that he is the man."

Now, gentlemen, need I weary your patience with a further vindication of this young man? I think not. I say they have proved a change in the plan, which change was not communicated to this party, and at a time when it was physically impossible that Surratt could have assisted in the execution of it even if he had known it. Finally, upon this point, they have proved clearly that after the abandonment of the original plan Surratt left the United States, had no communication with the co-conspirators, and was on his way to learn what the new plan was, according to their proof. Now, you are to find that his intent combined with the intent of the conspirators who did the assassination, or he is no co-conspirator.

I say further, that it is to my mind perfectly clear that the Government knew all this before this indictment was found. I have done with the defense of Surratt. I ask your indulgence for a short time upon one or two points of the case. I say that, from the evidence in this cause, it is clear to my mind that the Government knew these substantial facts before this indictment was found. And if this evidence now before you, then in their possession, had been laid before the grand jury, instead of that miserable reptile, Weichmann, with his written statement, you would never have been troubled with the trial of this case. It is not within the range of my privilege to state to you what has been communicated to me by William P. Wood, chief detective of the Treasury Department, upon this subject. But after this case is over you may have an opportunity of knowing what this statement is. Independent of any revelations of William P. Wood, made to me on the public streets and in the presence of three or four others, the proof is clear that the Government knew the scheme to abduct had existed, and had been abandoned. They knew it had existed prior to the 16th of March, because the trial of the conspirators had possessed them of that knowledge. They knew there was no overt act, no meeting of the conspirators, no step taken by the conspirators after the 16th of March to renew that original plan. They knew, for the evidence was there, that on the 24th or 25th of March, whichever it was, Surratt left here for Richmond; for they traced him to Richmond. They traced him back to this city on the night of the 3d of April; they knew that on the night of the 3d of April he saw nobody out of his mother's house, unless it was that arch-traitor Weichmann. They knew that he went from here that night or early

next morning so as to reach Canada on the 6th of April. That was all in proof. They knew that he left Canada for Elmira on the 12th of April, and was there on the 13th and 14th of April. And I would like to know what has become of the register of that Brainard House in Elmira, where he stopped. It has been searched for over and over again by different people, as Field states, and we have raked the earth, and cannot find it. They knew, if they knew any thing, that from Elmira he telegraphed to Booth at New York. They knew it as well as they know it now. They knew that Booth had written from New York to Canada as well as they know it now, and that it was responsive to Booth's letter that he came to Elmira, as well as they know it now; it is all untrue. But, true or not, they rely on it, and they knew it as well before this indictment was found as they do now. They knew that he returned to Canada on the 18th of April, and remained there until the 17th September following, when he went to Europe, and never was here again until he was brought here in chains. But with this knowledge, with this complete vindication, with what the public never saw, what the grand jury never saw, what that military commission never saw—Booth's diary—buried in the vaults of the Government, secreted from all eyes, kept away from Congress and every one else, they recalled, in the fall of 1865, the reward they had offered for his apprehension. They knew his innocence and they recalled the reward which they had offered for his apprehension, and they have taken the trouble to prove it. Well, he is caught. He is caught in Egypt, and he is brought here. Public justice demanded an investigation. I agree; and he ought to have been put upon his trial. I agree. Every facility should have been afforded for his defense. A great and magnanimous country should have helped to ascertain the truth; and when the truth was developed, when it stood in capital letters so large that he who runs may read—aye, in letters of light, so that it may be read in the darkest night, "Not guilty upon the evidence of the prosecution"—they should have abandoned it. God save the country, when, with the clearest proof of the innocence of a man, he should be prosecuted for his life to gratify, not public justice, but something else—no matter what.

There is a leaf in our public history which deserves to be read, and read carefully. In October or November, 1865, the reward offered for this young man's head by the Government of the United States was withdrawn. In the political campaigns of that year public attention was called to the trial, conviction, and execution of his mother. A strong voice—a voice for the people—a voice that made itself heard throughout the confines of this country, in the Halls of Congress, pronounced it a judicial murder. He charged distinctly that it was brought about by the suppression of proofs. The political effect of that proceeding was beginning to be felt. A miserable wretch, who had received hospitality at the hands of Surratt and his mother in other days, sought after him and betrayed him. He had less than the honesty of the Arab. He had eaten salt at his mother's table. Betrayed, seized, imprisoned, he is brought to this country. The Government know they cannot convict him; but those men who have been assailed in Congress believe they may receive a vindication of their conduct at the hands of a jury.

For four weeks—for more than four weeks—have we been trying Mrs. Surratt. More than four weeks ago the innocence of this young man was complete; but it did not answer the purposes of this prosecution. The Supreme Court has decided, as was most eloquently said by my excellent associate yesterday, that the tribunal by which Mrs. Surratt was condemned and executed was an illegal, unconstitutional tribunal, without authority. Politicians and lawyers have denounced her execution as a murder, and based on insufficient proof. It was necessary for the protection of the actors in that portion of this drama to make some new move

to satisfy the public mind; and it was equally necessary that the sacrifice should not escape from the horns of the altar. They bound him with chains, the counsel says. I say they were forged chains. They bound him with chains of iron. I say they were false links which united them together. They say it was no magic chain, but one which cannot be broken, connecting him with the crime and the past. I say it was a chain fabricated—colored as iron, fabricated of earth, covered over with the gloss of eloquence, polished by ingenuity; but frail, which breaks at the touch. The gentleman says that their evidence is complete, connecting him with the past. The district attorney says that you are to weigh that evidence. Why, if it were not beneath the dignity of this occasion—and yet I do not know that it is, for it has almost become farcical—I would go to the historian of the city of our brother counsel from New York, and would refer him to the celebrated case in Knickerbocker's history of Wouter Von Twiller, the judge who, when two men had a controversy about their accounts, and one produced his book, a small book in which the accounts were legibly written, and the other produced as an offset a much larger book, took the two books in his hands and said, "I am to decide by de weight of de evidence! dis book is much pigger and heavier dan dat book." The counsel for the prosecution here tells you he has thirteen witnesses, and that the weight of evidence is to control. Gentlemen, suppose you were to have four pounds of pure gold in one scale and thirteen of false, base metal in the other scale; it would be a much better comparison. We have given you the pure metal; it has a clear ring. We give you Cass, Stewart, Carroll. They ring like a morning carol; they gladden the heart of this young man. They ring cheerfully, joyfully, triumphantly; they ring victory—not guilty. What are these poor, leaden things that weigh so much more? Can you get a sound out of them? It is a dead sound. Gentlemen, you are to take the witnesses on the two sides, and weigh them according to their value in the scales of truth. It was very boastfully said in the opening of this case that they would vindicate the conduct of the law officers of the Government engaged in the conspiracy trials; that they would produce Booth's diary; they would show that the judgment of the court was submitted to the Cabinet and fully approved; that no recommendation for mercy for Mrs. Surratt, that no petition for pardon to the Government had been rejected. As the trial progressed it became painfully clear that it was not John Surratt alone who was upon his trial. Despairing of success in regard to the son, they began to bestow their time upon the mother. To that I shall briefly ask your attention. It is connected with the case of the son.

Now, gentlemen, let us see who was Mrs. Mary E. Surratt. I believe no tongue has spoken of her except in her praise, unless it be Louis J. Weichmann and John M. Lloyd. Not only happy in her temper and disposition, and in the pursuit of those religious duties which were preparing her for the training of her children and for the future life here and hereafter, but evidently happy in her associations. Look at the witnesses who appeared before you upon that stand—Mrs. Holahan, that child of nature little Miss Fitzpatrick, and Miss Lee Jenkins. No breath of suspicion ever passed across her brow or her path; no taint of failure in any of the relations of life touched her, so far as we know; and, except from the mouths of these two men, she walked peerless and without reproach. That she was loveable is shown by the testimony in this case; that she was loving is most true. She receives under her roof, shortly after her arrival in the city, a young man who is introduced by her son as an old college-mate. She receives him as the friend of her son; she treats him as a son. In sickness she nurses him, in health she waits upon him. She pours out to him the tenderness of a mother; she admits him to all

the freedom of the family as though he were a son. Two brief months pass, and a stranger is introduced into that family, gifted in a most eminent degree, fascinating in his manner, attractive in his appearance; and this leads me to say a word about his hand, by the way, which Mrs. Hudspeth identified because of its beauty? It was his deformity, the only deformity about his person. This man is introduced either by the son or by this friend whom she is treating as a son, and his intimacy grows as his influence increases over not only the son, but the mother and the young girls in the house. It was natural; it should be so—most natural. Two short months more pass, and this gentleman is a frequent visitor at her house, and a man comes there, introduced by Weichmann. He has told three stories about it. The man is brought by him into Mrs. Surratt's parlor, and is introduced to her as Mr. Wood. He tells you that man came to the door and asked for Mr. Surratt; he was not at home. He then asked for Mrs. Surratt. Could he see her? "Yes, what is your name? I will introduce you." He walks in and introduces him. That man stays one night, and, according to Weichmann's story, is fed by him, supper provided by him. He leaves the next day, and again, in about two weeks, returns. Up to this time Herold has never been in the house; Atzerodt frequently there, and is treated as a simple body, called by a nickname, and is made a sort of butt in the house. Booth is there, according to his story, almost every day; yet he swears to you he never saw Booth in the house with Atzerodt. He distinctly and positively swears to it. He tells you that the introduction of Booth was sometime in the latter part of 1864 or beginning of 1865; that he and Surratt were both introduced to Booth by Dr. Mudd at the same time, on Seventh street. He swore before the military commission, within six weeks after the death of the President, that that was about the 15th of January, 1865. He admits he swore so. He says he fixed that date by the date of a letter which he received about that time. Now he fixes it by another incident, which incident is equally untrue; for he says now it was just after Surratt left Adams Express; and in another part of his testimony he says it was just after he went to Adams Express; and in still another part of his testimony he says it was fixed by proof on the other trial that Dr. Mudd came to Washington on the 22d of December and left just after Christmas, and it was while he was here.

Booth visits there frequently. This man, treated as a son, trusted with the range of the house, confided in by all, sleeping in the same bed with John Surratt, drinking the same whisky with Howell, wearing the same clothes with Atzerodt in the day, out at night with him, knows just as well all that is going on in the house among these men as any other human being. They could not, if they would, have concealed it from him. He is too prying—too inquisitive; he is too thirsty after knowledge. He associates with all these people; and he, a clerk in a branch of the War Department, converses with Howell, a blockade-runner, well-knowing him to be a blockade-runner, and talks with him about the number of prisoners, the knowledge of which he obtained in the Department to which he belongs; and yet he never communicated, never admits communicating, any information! But he takes from Howell a cipher, which he swears he never used! Did he know what was going on? Was he a party or not? Can you separate them? Can you put him to sleep while the others are rioting up-stairs? Did he not go up into the room where, according to his story, Surratt and Payne were playing with bowie-knives, &c.; and did they stop? As soon as they saw who it was they went on with their game; though when they heard him coming they were going to stop! Did he not know what was going on? Oh no! they threw dust in his eyes!

I tell you, gentlemen, that man, with that cipher in his possession; with that knowledge of the condition

of the prisoners; with that intimacy with Howell, the blockade runner; with that intimacy with all the parties engaged in this conspiracy, knew every thing as well as they did. He need not deny it. It is written in broad letters upon his face. There is the advantage again of an oral examination of a witness. You saw him upon the stand. I do not want to describe him; you all looked at him; you all felt as your eyes fell upon him he quivered, he tried to cover himself, as it were, with a garment to prevent your penetrating into his inmost heart and seeing what was lying there.

Well, a brief month passes, and there is a change in this scene. In the meantime there are extraordinary incidents. A new actor is introduced, Mr. John M. Lloyd. Mr. John M. Lloyd tells us—you—that early in March, (and I call your attention to it on Surratt's account,) Surratt, Herold, and Atzerodt left at his house some arms—carbines; Surratt told him where to conceal them. Did not Lloyd know more than that? We shall see by-and-by.

Time passes on again, and Mrs. Surratt is called to Surrattsville on business, and on her way there on the 11th of April she meets Lloyd near the Eastern-Branch bridge. He gets out of his buggy to talk with her. Lloyd tells you that in the presence and hearing of this man Weichmann—for he could have heard if he had listened; and Weichmann looked right at him as they began to talk—Mrs. Surratt told him to have those arms ready, that they would be wanted in a few days. Weichman tells you that what was said was said in a low tone, which he did not hear. On the trial of the conspirators he swore that it was in a whisper, and admits that when in conversation about it afterwards Lloyd reproached him for having said it was in a whisper; and Lloyd said it was in a tone loud enough to be heard. Is it true? One of these two men—and here begins the conflict between them—lies; that is it; there is no other word for it. I tell you that Mrs. Surratt knew no more about those arms being in that house than you did; and I will show you by-and-by, I think, that Lloyd was as deep in that scheme of abduction, or whatever it was, as Weichman and Booth and Herold and Atzerodt.

Time passes on again. A few days more, and on the 14th of April this lady is summoned again to Surrattsville on a matter of business, as is proved by the letter of Mr. Calvert, not offered in evidence, but spoken of by the witnesses, and by what passed after she reached Surrattsville. Now, what says Weichmann. Up to this time not a word disloyal—that is the term now-a-days—has been uttered by Mrs. Surratt within Weichmann's hearing; he has seen nothing wrong about her. He drives her to Surrattsville and he does not see John M. Lloyd there. He does not see him arrive; he does not see him until he goes into the house. In the meantime Weichmann drives up and down the road, and remains there until Mrs. Surratt is ready to come away before he sees Lloyd. Lloyd tells you Mrs. Surratt was about to go away as he got there; he drove into the yard, and she gave him a parcel, which she carried out in the buggy, and then asked him to mend the buggy. Weichmann tells you he came out with a piece of rope, and that he got in behind the horses to tie up the broken spring.

Now, let us look back a step or two. Between two and three o'clock Weichmann and Mrs. Surratt started to go out to Surrattsville. He had been after the buggy and got it; he saw Booth, and shook hands with him when he got the buggy. When he came back she was about to get in when she said, "Stop, let me go back and get those things of Mr. Booth's." She brought down and put into the buggy something wrapped up in paper, about five or six inches in diameter, which she said was brittle, glass; that he carried it safely to Surrattsville. This is what Weichmann says. Lloyd tells you that the paper parcel she gave him was a field-glass, which has been exhibited to you here as having come by that means into Booth's possession.

Weichmann admits that on the trial before the military commission he did not say that she said, "Wait till I can get Mr. Booth's things;" he said that she did not mention Booth's name before they started in the buggy; that the parcel she put in the buggy he handled, and thought it was a half dozen saucers. He now comes and tells you a directly opposite tale; that she told him to wait until she could get Booth's things, and that she brought down a field-glass—not a half dozen saucers. He could not have been mistaken about that. Now, when it suits his convenience to fit a case to meet John Lloyd's field-glass he converts half a dozen saucers for John Lloyd into a field-glass belonging to Wilkes Booth.

But that is not all. This poor creature Lloyd, himself thoroughly entangled in this conspiracy, tells you that when he got home from Marlboro that day he was drunk—quite drunk; that he went into the house after receiving this field-glass from Mrs. Surratt, laid down, and was taken sick before she came to him to get him to mend the buggy. Neither of them tells the truth. We put upon the stand another witness, wholly indifferent as between them—Bennett Gwynn—who tells you what part of the buggy was broken, how he directed it to be repaired, and that he sent in for Nothey to come out and tie it; whether he did or not, he did not know; but he did not see John M. Lloyd there at all. John Lloyd tells you he was very drunk that night; but the next morning, when he was met by detectives in pursuit of Booth, they tell you he was quite sober. Clarvoe knew him well. He told Clarvoe that he had been up all night, and he took upon his soul an obligation as strong before God as the oath administered upon this stand that he had not seen Booth or Herold. It is not the legal obligation of an oath that binds a man. It subjects him to punishment for perjury; that is a mere temporary view of it. It is the obligation that binds him to his God, and makes him responsible there, not here; and he who takes that name with a solemn pledge of his truth is just as much a perjured liar and villain, if it be not true, as if he had sworn it upon the stand, under the sanctions of the law. When these detectives meet him, he takes the most solemn form of obligation which he can impose upon his soul that Booth and Herold had not been there that night, and he knew nothing about it. He comes to you, and tells you, with no higher obligation upon him, that these men had been to his house that night, and that he had given them this field-glass, whisky, and carbine; and you are to believe him now, and connect Mrs. Surratt with that transaction, upon the oath of this miserable, drunken, perjured wretch. Without it she sleeps in an innocent grave; she sleeps the sleep of the just; she sleeps in the arms of her Saviour, passed beyond the influence of mortal control. If that man lied then before that commission, he lies now. Strike out his testimony, and she walks disenthrall'd, if she were embodied, free, without stain or blemish in this connection. Did John Lloyd tell the truth? I shall have something more to say about Mr. Weichmann; I dismiss Mr. John M. Lloyd now and forever. I think you will find by the reflex testimony of Weichmann himself that this view of the testimony of Lloyd is fully corroborated.

I now come back to Mr. Weichmann. There is not in the whole range of his testimony one single material, and scarcely an immaterial, fact which passed in the presence or observation of another, and to which contradiction was allowable by the rules of law, where we have not flatly contradicted him. There must be some truth in his statement. He must have the stem of truth on which to weave the falsehood. The warp is truth, but the false woof he has interpolated in this case, to the destruction of her to whom he owes everything but a son's gratitude. First, let me show you how false he has been to human nature—false to the woman who nursed him in sickness; who attended him in health; who made his life comfortable and enjoya-

ble; who trusted him as a son, and who, he says, treated him as such. Was he false, is the question. Now, let us look back and see whether he was false or not, and by his own admission trace him step by step in his course. Let us begin further back. He comes to you to tell you that he accepted a situation at St. Matthew's institute, in this city. That is to make a favorable impression; but when he is cross-examined he tells you that he besought and begged the situation, and was glad to get it. To accept a situation implies that it was tendered to him. To beg for it, is not to accept it. He accepted a situation at St. Matthew's, and he says in his cross-examination, "I sought it, and was glad to get it; I do not deny that." He says further, "Mrs. Surratt treated me kindly; she nursed me and attended me when sick." This gentleman has the most remarkable memory of dates and events that ever was seen, and he gives some of the most remarkable reasons for recollecting. He says on the night of the 13th of March he was at Mrs. Surratt's when Payne came in. "I fix the time Payne came because it was two evenings before the 15th March, when 'Jane Shore' was played." Now, on the trial before the commission he fixed the play of "Jane Shore" on a totally different night. On the 18th March he says, "I was out; we went to see the 'Apostate' played by Booth and John McCullough." On the trial of the conspirators, he swore it was on the 26th March. "On the trial of the conspirators I said it was on the 26th; I now say it was on the 18th." How does he make that correction? He says, "I said then that I was introduced to John McCullough on the 2d of April, but it was not true." This is on page 412. He says, "I saw John McCullough's affidavit, stating he was not here at that date; but I changed the date before I saw it in my own mind." Now, when was he introduced to Dr. Mudd, and by Dr. Mudd to Booth? "I was introduced to Dr. Mudd in the winter of 1864-5, when Booth had room 84. I did state before the commission that I could fix it by the Pennsylvania-House register. I did say it was about the 15th of January, to the best of my recollection. I now say it was in the winter of 1864-5, and I could fix it positively by the time Booth occupied room 84. I fix it now by the fact that John Surratt was employed at Adams Express Company a short time after this introduction. This has occurred to me within the last two years. I have been to see when he was employed at Adams Express, and learned that it was on the 31st December. I must have been introduced before that time; and yet I did swear on the conspiracy trial that it was on the 15th of January." On page 415.

The question is pressed upon him at what time he was introduced to Dr. Mudd. He evades it; but at last he says he knows that proof was given on the trial of the conspirators that Dr. Mudd was not here at the time fixed by him, but was here on the 22d of December, and he knows also by the fact that Surratt did not go to Port Tobacco until after that introduction. He says, on page 416, "I have thought over this matter for two years." He says, on page 416, "I do not recollect when on my way to prison whether John M. Lloyd asked me, or I asked him, in what tone of voice Mrs. Surratt spoke when we met. I told him I testified she spoke in a whisper. He expressed astonishment."

Here, then, are these strange, irreconcilable contradictions from a witness who comes here to take away the life of the son, after he has succeeded in taking away the life of the mother. Again, as to his times, dates, and memory, I refer to page 417: "Surratt went to New York and saw Booth early in February, 1865. I remember it was while Howell was in the house, but I cannot fix it within ten days. A lady came back with him; he did not tell me he went to bring her. He told some days after he got back that he saw Booth. He was absent about two days and one night." He says: "I did not keep the days, hours, and minutes of

everything." He says that John Surratt told him he went after that lady. He says that while he was a clerk in the Commissary General of Prisoners' office he made several approximate estimates of the number of prisoners, but never furnished the information even to Father Roccofort, but talked on the subject with Howell, who, as he knew, was a blockade-runner. He says: "After I left the stand before the recess I did go to counsel to ask me other questions. I did not suggest the questions, but they asked me about what I had called their attention to." On page 426 he says: "I met Payne on two occasions at Mrs. Surratt's. I cannot fix the dates. I think it was in the latter part of February, 1865. I said before the military commission that I told him I would introduce him to the family if he desired it." Finally, after evading my question as long as possible, he answers: "Yes, I did introduce him." He says, on page 431: "To the best of my knowledge, I never loaned my cloak to Atzerodt. Atzerodt once put on my hat, and we had a laugh about it. It came down over his eyes; but that was all."

I need not recall to your attention the contradiction of all this testimony as to Payne and as to Atzerodt by Mrs. Holahan, Miss Fitzpatrick, and Miss Jenkins. They tell you that Payne or Wood never was known to any one of that family by any other name but Wood; they never heard the name Payne until after their arrest; yet this man swears that he introduced him on the second occasion as Mr. Payne, and they referred to his former visit as Wood, and recollected him as the same man, and spoke to him as Wood, though he was introduced now as Payne. Again, each one of them testifies to the fact of his exchanging clothes with Atzerodt, not once, not twice, but over and over again; seeing him at different times with different articles of dress belonging to Atzerodt. He swears he never lent him his cloak, and he put on his hat once, but on no other occasion, and adds, "I am willing to state everything." Again, he swears that Payne left on the 16th, after that extraordinary exhibition in his room with John Surratt; that five or six days after that, while passing by the post office with Surratt, Surratt went into the post office and received a letter addressed to "Sturdy," opened it, and it turned out to be a letter from Wood; that Surratt told him it was a letter from Wood. Now observe, he says that was five or six days after this. He said on the conspiracy trial that that letter was received fourteen days after Payne came to Mrs. Surratt's. He knows Payne came on the 13th, because "Jane Shore" was played on the 15th, and Payne went on the 16th; and yet he swears that Payne was there but two days. On the conspiracy trial he swore that that letter was taken out of the post office fourteen days afterwards; here he swears it was five or six days afterwards; Payne returned on the 27th of March, as he understood by an interview Surratt had with Mrs. Murray; and he recollects that the date of the receipt of the letter was before the 27th of March. Let me read from his testimony, page 432:

"Q. On the trial of the conspirators did you or not state that that letter was received some two weeks after the incident of the fencing with the bowie-knives?"

"A. Yes; and I fixed the 20th of March.

"Q. Did you not say, 'Some two weeks after Surratt, when passing the post office, went to the post office, and inquired for a letter that was sent to him under the name of James Sturdy, and I asked him why a letter was sent to him under a false name, and he said he had particular reasons for it?' What day was that?"

"A. It must have been about two weeks after that affair.

"Q. The latter end of March?"

"A. Yes, sir; it must have been before the 20th of March. The letter was signed Wood.

"Q. Now, if that fencing took place on the 15th of March, how could you make out that it was two weeks afterwards?"

"A. I was mistaken in the time at first, but I fixed the time, and I fixed the time of the horseback ride in front of Mrs. Surratt's house the 20th of March. I think you will find I fixed it at that date.

"Q. In regard to that horseback ride, did you state on the other trial, 'I will state that, as near as I can recollect, it was after the 4th of March; it was the second time that Payne visited the house; I returned from my office one day at half-past four o'clock,' &c."

"A. Yes, sir.

"Q. Then you gave an account of these parties coming to your

room, and state, 'Some two weeks after Surratt went to the post office and got a letter addressed to James Sturdy;' did you state that?"

"A. Yes; I afterwards fixed the date of that horseback ride, in answer to the question of Mr. Cox, on the 20th of March. You will find it in the second volume.

"Q. Then you have examined carefully the testimony that you gave down there?"

"A. I have studied over it for the last two years. You do not suppose that such an incident as that is an every-day incident in my life, and that I have not been thinking of it.

"Q. Is there any thing else you have been doing? Have you been writing it down?"

"A. I have written it down. I have written about it frequently.

"Q. Have you not within the last few months?"

"A. Yes; I have within the last few months.

"Q. Have you not written out a very full statement within the last few months?"

"A. Yes, sir; I thought it was my duty.

"Q. Have you not read over and studied that statement very carefully?"

"A. Yes, sir; I have read it over.

"Q. Have you not read it over more than once?"

"A. I have read it over several times."

I will not take up your time by reading what he said about his testimony before the grand jury. He swore that there was no statement of his before the grand jury. He says he first met Atzerodt in the latter part of January, 1865, about three or four weeks after his introduction to Booth, and several days after Surratt got back from Port Tobacco; that he was very frequently at the house, and that Surratt introduced him, as he did every one of the party. He says "on the 2d of April, I met him there." Surratt was not there on the 2d of April; Surratt was on his way from Richmond here, as you all know. He says: "I never saw him there when Booth was present. He was there, it may have been ten or fifteen times. Booth was there every day he was in the city." Now, gentlemen, most of you, perhaps all, recollect Mr. Barry, who was examined as a witness on the stand. He tells you that he brought back the horses which Surratt took to Port Tobacco; that he found Booth and Atzerodt at Mrs. Surratt's house, and spent a portion of the evening with them there, and that Weichmann was one of the party. Weichmann swears to you that Dr. Wyvil brought back those horses, and he gives you a circumstantial account of it. Dr. Wyvil swears that he never was at Mrs. Surratt's house. Mr. Barry swears that he himself brought them back.

The gentlemen on the other side will tell you that these are immaterial circumstances. Aye, but when you pile up grain after grain, day after day, incident after incident, you make the mountain. It is the last grain that breaks the camel's back. We all know that. So it is with these little, apparently trifling particulars. Let a man set out minutely to tell times and dates in order to involve people in inextricable difficulties, and you trace him back and find him contradicted step by step in what appear to be rather immaterial points, depend upon it he has been weaving a web and not recollecting what has passed.

Again—it is not very important, to be sure—he swears that at the conspiracy trial he did not say that Mrs. Slater wore a mask; yet he did swear it, and the passage was read to him. He says at page 376 that Payne came to Mrs. Surratt's the first time in the latter part of February, 1865, while in his cross-examination (page 411) he says Payne came on the 13th of March. He says here that he never was under arrest. I read to him his response on the other trial, that he was put in charge of an officer by McDevitt and was never out of his custody. He swears that he was appointed a special officer by the War Department to go to Canada. You know that that order was procured by McDevitt in order to enable him to obtain transportation, and that McDevitt had him all the time in custody. He says on page 444: "I remember better now than I did two years ago, for I had been in prison then, and was suffering from excitement and nervousness." He says, "My memory is more distinct now than it was then." He was asked whether he had read the report of that trial, and he admits that he had studied it and read it a day or two before he gave his testimony here. He says

on page 449—and now we are coming to the keys that unlock the mystery of this new version of his intimacy with these parties—"I may have said, that during that trial my character was at stake, and in this trial I intended to do all I could to aid the prosecution." His character was at stake, and he intends in this trial to do all he can to aid the prosecution!

He tells an extraordinary story of a remark made by Mrs. Surratt on the night of the 14th of April, as she approached the city after the visit to Surrattsville. He says that, as they reached the elevation overlooking the city, she said that she was afraid all this joy would be turned into sorrow. He is asked if he said that before the military commission, and replies that he did not; but he recollects now better than he did two years ago. He says he testified before the commission in May, 1865; but he did not state then and now recollects what would have been then most important proof for the Government. He says he did not then state the remark made by Anna Surratt on the night the officers came there, referring to Booth having been there only an hour before, because the facts were not as clear then in his mind as now. Now he intends to do all he can for the prosecution:

"Q. You say Mrs. Surratt asked you to pray for her intentions on the 14th of April? Have you stated this matter before to anybody?"

"A. [No response.]

"Q. Have you written it down?"

"A. No, sir; I did not write it.

"Q. Have you ever written it down?"

"A. I have written it all down here within the last five or six months. I prepared a statement for the prosecuting attorney.

"Q. Do you recollect whether, when you first wrote it down, you did not write that this exclamation of hers, or application to pray for her intentions, was after she had made that remark in reply to her daughter?"

"A. No, sir; I am positive I never wrote that down as happening after the assassination. She asked me to pray for her intentions before the assassination.

"Q. Did n't you tell us, on your examination here the other day, that she was walking up and down the room, with beads in her hands, and very nervous and excited, when she asked you to pray for her intentions, after the detectives had gone away?"

"A. No, sir.

"Q. Have you not, in a verbal or a written statement, or both, said that after the detectives had gone away, and after the remark of Miss Anna Surratt and the reply of her mother, she, Mrs. Surratt, while walking up and down the room with beads in her hands, and in a state of agitation, asked you to pray for her intentions, to which you replied, 'I do not know what your intentions are, and I cannot pray for them;' when she answered, 'Pray for them anyhow?'"

"A. I am positive all that occurred before the assassination."

Now, let us look at that scene one moment without calling the witnesses. Let us see where we are. Mrs. Surratt had been to Surrattsville, and was very pleasant and cheerful all the way there and all the way back. According to the theory of the prosecution, she then knew that that night her son—we may say her only son, for Isaac was in Texas—was to embark in this desperate, terrible, damnable crime, with other parties, the massacre of the President and his Cabinet. She was cheerful and pleasant all the way to Surrattsville and back. When she came back they had their supper. She was still cheerful and pleasant, although she saw looming in the distance a halter for herself and her son, if they were parties to this conspiracy. They are going to make her more than human; they are going to make her diabolical; aye, and the district attorney has denounced her as diabolical. Yet she was cheerful and pleasant; not a ripple disturbed the placidity of that evening; they were at supper cheerful, animated. After supper, her friend and boarder, Mrs. Holahan—and every man who saw that lady on the stand knew that if she was not a guardian angel she brought with her the virtues of truth, purity, and consistency—reminded her that she had engaged to go to church with her, and they started to go to church. It must then have been sometime after nine o'clock. They walked about a square, when Mrs. Holahan proposed to return, because of the condition of the night and the movements of the torch-light procession and the crowds in the streets to see it. They returned, and Mrs. Surratt went cheerfully into her parlor. And yet

she was then, according to this theory, not only herself brooding over this horrible massacre, but the fate of that dear son was locked up in it. This wicked man Weichmann knew that it would never do to represent that woman thus self-possessed, thus enjoying the evening, thus animated, thus cheerful, thus on the brink of the very threshold of that church which leads her above or consigns her to everlasting, not temporary, death. She goes back; and he, the serpent, the man who had wormed himself into her confidence, the man whom she had trusted as a son, the man with whom her beloved son slept, the man who was like a son to her, that man invents a false and delusive story of her nervous agitation and excitement. It is not true. You know it is not true, or Honora Fitzpatrick speaks false; Lee Jenkins speaks false; Mrs. Holahan tells not the truth, and yet she is the impersonation of truth. If she was not thus crushed, nervous, and excited, walking up and down the room, counting her beads, she never would have called upon that man to pray for her intentions, and it is a willful, deliberate, fabricated lie. No such thing occurred; no such thing could have occurred. It is against all womanly nature. If she had no regard for herself, yet standing and looking at the leap that her son was about to take, according to the theory of the prosecution—leaping into eternity through a dastard's, coward's, and villain's grave—she could not have been cheerful; she could not have enjoyed the evening; she dared not approach the portals of her church: she dared not ask any one to pray for her intentions. Do you believe it? It is against womanly nature; it is against a mother's instinct. It is against all the feeling of nature from the birth of Eve until this day, which makes the mother hover over her son, cherish him, provide for him, sacrifice herself for him—not lead him to destruction. It is utterly impossible for her to be calm as he is about to take the fatal leap.

Again, what do we hear the next morning? And here let me say a word to the district attorney. I bore with some degree of patience the assault made by him upon this defenseless prisoner; but this wretch—that is the proper name for him; I have a right to speak of him; he is not a prisoner; he has free arms, and I am a man—this man Weichmann tells this jury that next morning, at the breakfast-table, he told the company there assembled that he intended to go to a justice, or wherever it was necessary, and make an exposure of all that he knew of this transaction, this conspiracy, without mentioning the name of John Surratt; and—deep, damning, shameless falsehood, which ought to have blistered his tongue, and which should carry his name as long as language can carry it down to infamy—that that poor stricken girl—not here upon trial, not here to defend herself, not a party to this conspiracy—that she disgraced and debased herself by saying that the death of Lincoln was no more than that of a nigger in the Yankee army. And the district attorney relies upon that infamous wretch's story! Do you believe she said it? And if she said it, in the excitement of that moment, what manly heart would repeat it to her prejudice? What man having the instincts of nature about him, a father or a brother, would, in order to increase the prejudice against this young man, to bring him to the scaffold, utter such a story against a pure and good girl? I say—I will not say it of the present district attorney—but I say that if I could do such a thing, I should ask every pure and virtuous woman as she passed me to turn her skirts aside lest she should be contaminated by the touch. What! not satisfied with calling a defenseless man a coward, an assassin, a traitor, but still further to inflame the passions of the jury against him, to put upon the stand that heart-stricken girl—wasted, worn, broken down—now trembling in ecstasy of doubt as to the fate of that brother, to have printed in the newspapers, to go into her hands, and the hands of every body else, such an allegation as this—I say as long a

I stand at this bar, or any bar—I was going to say, I believe, at the bar of my God—I would make a protest against it.

But, again; you all recollect that man's testimony about distinctly hearing the footsteps of a man ascending the steps, and Mrs. Surratt going to the door and opening it, and leading the man to the parlor, and he himself waiting down stairs until the man went out and she came back; and he told you of a remark made by Anna Surratt that evening in reference to that man when they were talking of Booth. We stamped the lie at once when we put upon the stand Honora Fitzpatrick and Lee Jenkins, both at the table with him, both with equally clear perceptions, both swearing that it was a Mr. Scott who came up those steps to leave a parcel of papers for Lee Jenkins, and that Anna Surratt went to the door and received them. And yet I have seen men and women in this court-house shaking hands and passing compliments with such a man as that!

"Shame, where is thy blush?  
Virtue, where is thy shield?  
Household innocency, where is thy protection?"

When men and women admit a wretch so base, a son turning against a mother, a brother turning against brother, a brother turning against sister, in order to wreak his vengeance upon the devoted head of this young man, for whose prosecution he is to lend against him all his aid, because—that is his shameless confession—because for two years he has been persecuted for their sake. Manhood! He is not a man; he is a dog. No man could do it.

One word more, and I have done. I have exhausted your patience and my strength. If I had laid it and could follow the field open to me here, I should have wearied you still more; but I have not strength to do so, nor you patience, and besides the case is exhausted. I have a few words to say and to read one other item of testimony, to show you that Mrs. Mary E. Surratt was not guilty; that the proof against her then was not sufficient to have hung a dog; that the proof against her now is rotten to the core. No honest man should cherish it. This man Weichmann tells you that he knows Louis Carland. Who is he? He was costumer at Ford's Theatre. It is not attempted to impeach him. I would like to know anybody who says he can impeach Louis Carland, or who says that Louis Carland has any interest in this case except his sense of justice. Does anybody say that he has any pecuniary interest, any of blood? Is there a man to be found who will say he would not tell the truth? I dare say there is; the Government can find them, I have no doubt; they found them to say so about Cameron. But who impeaches Carland? Nobody. Nobody has sought to do it. I challenge an impeachment of him. This poor creature Weichmann is asked whether or not he had a conference with Carland after he gave his testimony before the military commission, and what he said on that subject. He denies it all. Mr. Carland, on page 814, says:

"He wished me to go with him to St. Aloysius's church, as he said he wished to make a confession; that his mind was so burdened with what he had done that he had no peace."

Does my learned brother mean that that is the sort of confession he requires from the prisoner at the bar? I have been taught, confession not to man—confession unto God. A new doctrine in the Presbyterian Church has been preached here in this case. Confession is confession to God, who looks into the heart and can see whether that confession is pure or adulterated with the hope of gain. Confession to man out of the Roman Catholic Church can receive no sanction from the minister of religion except for advice and help. I continue Carland's testimony:

"Q. Did he say to you that he was going to confession to relieve his conscience?"

"A. Yes, sir; he did."

"Q. Did you say to him, 'That is not the right way, Mr. Weich-

mann; you had better go to a magistrate and make a statement under oath?"

"A. I did."

Weichmann swears he did not.

"Q. Do you remember his replying to you, 'I would take that course if I were not afraid of being indicted for perjury?'"

"A. He did make that remark to me; and I then asked him the particulars. He said if he had been let alone, and had been allowed to give his statement as he had wanted to, it would have been quite a different affair with Mrs. Surratt than it was. In the first place, he said that when he came home and had a half holiday, Mrs. Surratt said it was a pleasant day—"

"Mr. PIERREPONT. Never mind all that."

"WITNESS. He said it would have been very different with Mrs. Surratt if he had been let alone."

"Q. Did he say who troubled him?"

"A. Yes, sir; he said the parties who had charge of the military commission."

"Q. Did he say to you that he had been obliged to swear to the statement that had been prepared for him, and that he was threatened with prosecution for perjury—threatened with being charged with one of the conspirators unless he did?"

"A. Yes, sir, he did; that it was written out for him, and that he was threatened with prosecution as one of the conspirators if he did not swear to it."

"Q. Did he say to you any thing about his having been told by a man that he had made the confessions or statements in his sleep?"

"A. Yes, sir; he said that a detective had been put into Carroll prison with him, and that this man had written out a statement which he said he had made in his sleep; and that he had to swear to that statement. I asked him why he swore to it when he knew it was not true. He said part of it was true, but not all the points that he could have given, if he had been let alone, were contained in it."

"Q. It was on account of that statement that he wanted to go to confession—to relieve his conscience?"

"A. Yes, sir."

"Q. Did he tell you that on the 14th of April, 1865, the day of the assassination, Mrs. Surratt had told him that she wanted to go see Mr. Nothey on business, having received a letter from Calvert requiring her immediate attention; and that they had gone to Surrattsville, and when they found Mr. Nothey was not there, and that he and Mrs. Surratt had started to come home, when they met Mr. Jenkins; in turning around to see whom the spring of the buggy was broken?"

"A. He did n't tell me the particular man, but he told me that if it had not been for some gentlemen calling them back after they had started to Washington, Mrs. Surratt would not have seen Lloyd that day. He said further, that in turning round to go back the spring of the buggy was broken, and that then it was they met Lloyd."

Weichmann swears it is not so; but, if it be true, how does this convict, Weichmann, stand before you? If it be true, he stands convicted of having told one story to the military commission and of having told you another story now, infinitely more aggravated than the story he told then, because he says he recollects it better now than he did then, and because he has determined to give all his influence to the prosecution, and because he seeks to be revenged on these people, who have persecuted him for two years; and this man you are asked to credit.

I should have been very glad to have gone over several contradictions of this man's testimony by Mr. Holahan, Mrs. Holahan, and Miss Jenkins, but I cannot do it; I beg you to retain them in your memory. I wish you could have a printed copy of one of these reports, but I fear it is too long and would exhaust your patience. I should be glad you would take it anyhow, for I trust this case to the evidence. There is no lie about which you can have any difficulty where the evidence is so plain that he who runs may read innocence. And when the learned judge from New York shall have concluded his argument, and when the learned judge on the bench shall have summed up the case to you, I beg of you, if you have thought over this matter this long time, and while this discussion has been and shall be going on, not to leave that jury-box, but to render at once a verdict of "Not guilty," that this young man may go forth to the world without a cloud of doubt resting upon him by long deliberation; and if you can, as I trust you can in your consciences, as you have a right to do, I beg you to prepare a paper stating that having heard this case thoroughly you were convinced of the innocency of the mother of the prisoner. I have done.

The court adjourned until to-morrow morning at ten o'clock.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 99.

WASHINGTON, FRIDAY, SEPT. 13, 1867.

PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 98.*

SPEECH TO THE JURY  
OF THE

## Hon. EDWARDES PIERREPONT.

ARGUMENT FOR THE PROSECUTION.

Forty-Seventh Day.

SATURDAY, August 3, 1867.

The court re-assembled at ten o'clock a. m.

Mr. PIERREPONT. May it please your honor: Gentlemen of the jury, I have not in the progress of this long and tedious cause had the opportunity as yet of addressing to you one word. My time has now arrived.

"Yea, all that a man hath will he give for his life."

When the Book of Job was written this was true, and it is just as true to-day. A man will give his property; he will give his liberty; he will sacrifice his good name; he will desert his father, his brother, his mother, his sister; he will lift his hand before Almighty God and swear that he is innocent of the crime; he will bring perjury upon his soul, giving all that he hath in this world, being ready to take the chances and jump the life to come. And so far as counsel place themselves in the situation of their client, and just to the degree that they absorb his feeling, and his terror, and his purpose, just so far will counsel do the same.

I am well aware, gentlemen, of the difficulties under which I labor in addressing you. The other counsel have all told you that they know you and that you know them. They know you in social life. They know you in political affairs. They know your families, your sympathies, your habits, your modes of thought, your prejudices even. They know how to address you, and how to awaken your sympathies; while I come before you a total stranger. There is not a face in these seats that I ever beheld till this trial commenced; and yet I have a kind of feeling that we are not strangers. I feel as though we had a common origin, a common country, a common religion, and that, on many grounds, we must have a common sympathy. I feel as though hereafter, should I meet you in my native city or in a foreign land, I should meet you not as strangers, but as friends.

It was no pleasant thing for me to come into this case. It came to me at a time ill-suited in every respect. I had just taken my seat in the convention called for the purpose of forming a new government for my State, and I was a member of the judiciary committee. That convention is now sitting, and I am absent where I ought to be present. I felt, however, that I had no right to shirk this duty.

The counsel asked whether I represented the Attorney General in this case. They had, perhaps, the right

to ask; and I give you the answer. There surely is no mystery about the matter. The district attorney, feeling the magnitude of this cause, felt that he ought to apply to the Attorney General for assistance in the prosecution of this great case, and he accordingly made the application. I have known the Attorney General for more than twenty years. We have been on terms of most friendly relations, both socially and professionally. The Attorney General conferred with the Secretary of State, who is, as you know, from my own State, and they determined to ask me to come into the cause; and on a letter from the Secretary of State I came to Washington, and there met him and the Attorney General. That is the way I came into the cause, and I am assured that there was no member of the Cabinet but those two who ever heard or knew of my retainer until after my arrival here.

I have simply tried to perform my duty as best I could. I have no doubt greatly failed. A trial protracted as this has been is indeed a trial. It is a trial to the court; it is a trial to you; it is a trial to counsel; it is a trial of health, thus long protracted in these hot days; it is a trial of patience; and it is a terrible trial to the temper. When the President of the United States was assassinated, I was one of a committee sent on by the citizens of New York to attend his funeral. When standing, as I did stand, in the east room, by the side of that bier, if some citizen sympathizing with the enemies of my country had, because my tears were falling in sorrow over the murder of the President, there insulted me, and I had repelled the insult with insult, I think my fellow-citizens would have said to me that they pronounced upon my act a condemnation; that I had no right in that solemn hour to let my petty passions or my personal resentments disturb the sanctity of the scene. To my mind the sanctity of this trial is far above the funeral, and I should forever deem myself disgraced if I should allow any passion of mine or personal resentment of any kind to bring me here into a petty quarrel over the murder of the President of the United States. I have tried to refrain from any thing like that, and, God helping me, I shall so continue to the end.

To me, gentlemen, this prisoner at the bar is a pure abstraction. I have no feeling towards him whatever. I never saw him until I saw him in this room, and then it was under circumstances calculated only to awaken my sympathy. I never knew one of his kindred, and never expect to know one of them. To me he is a stranger. Towards him I have no hostility. Towards him I shall not utter any word of vituperation. I have come to try one of the assassins of the President of the United States, as indicted before you. I leave personal considerations aside, and I hope I shall succeed in keeping them from this cause, so far as I am concerned. I believe, gentlemen, that what you wish to know in this case is the truth. I believe it is your honest desire to find out whether the accused was engaged in this plot to overthrow this Government and assassinate the President of the United States. My duty is to try to aid you in coming to a just conclusion.

When this evidence is reviewed, and when it is honestly and fairly presented, when passions are laid aside, and when other people who have nothing to do with the trial are kept out of the case, you will discover that in the whole history of jurisprudence no murder was ever proved with the demonstration with which this is proven before you—the facts, the proofs, the circumstances all tending to one point, and all proving the case, not only beyond a reasonable, but beyond any doubt. I pledge you, gentlemen, that I will keep this promise to you. This has been, as I have already stated, a very long case. The evidence is scattered. It has come in link by link, and as we could not have the witnesses here in their order, when you might have seen it in its logical bearings, we were obliged to take it as it came; and now it becomes my duty to put it together and to show you what it is. I shall not attempt to convince you by bold assertions of my own. I fancy I could make them as loudly and as confidently as the counsel upon the other side; but I am not here for that purpose. The counsel are not witnesses in the cause. We have come here for the purpose of seeing whether under the law this man arraigned before you is proved to be guilty on this evidence. I do not think it proper that I should tell you what I think about every thing that may arise in the case, or that I should tell you that I know that this thing is so and so, and that the other is another way. My business is to prove to you from this evidence that the prisoner is guilty. If I do that, I shall ask your verdict. If I do not do that, I shall neither expect nor hope for it.

I listened, gentlemen, to the two counsel who have addressed you for several days without one word of interruption. I listened to them respectfully and attentively. I know their earnestness, and I know the poetry that was brought into the case, and the passion that was attempted to be excited, and the ghosts that my learned brother MERRICK brought before you trailing their calico dresses and making them rustle over these chairs. I have none of those powers, nor shall I attempt to invoke them. I have come to you for the purpose of proving that this party here accused was engaged in this conspiracy to overthrow this Government, which conspiracy resulted in the death of Abraham Lincoln, by a shot from a pistol in the hands of John Wilkes Booth. That is all there is to be proved in this case. I have not come here to prove that Mrs. Surratt was guilty or that she was innocent; and I do not understand why that subject was lugged into this case in the mode it was; nor do I understand why the counsel denounced that tribunal which tried her, and thus indirectly censured, with the severest condemnation, the President of the United States. The counsel certainly knew when they were talking about that tribunal, and when they were thus denouncing it, that President Johnson ordered with his own hand that commission; that President Johnson, President of the United States, signed the warrant that directed the execution; that President Johnson, President of the United States, when that record was brought before him, brought it before his cabinet, and that every single member voted upon it, and that they voted to confirm the sentence, and that the President, with his own hand, wrote his confirmation of it, and with his own hand signed the warrant. I hold in my hand the original record, the original paper, and no other man's name ordered it. No other one touched it. And when it was suggested by some of the members of the commission that in consequence of the age and sex of Mrs. Surratt it might be right to change her sentence to imprisonment for life, he signed the warrant for her death with the paper right before his eyes—and there it is. [Throwing the paper on the table at which Mr. MERRICK sat, who, however, did not touch it.] My friend

can read it. My friends on the other side have undertaken to try to array the Government of the United States against the prisoner, and have talked very loudly and elo-

quently about this great Government of twenty-five or thirty millions of people being engaged in trying to bring to conviction one poor young man, and have treated it as though it were some hostile act, as though two parties were litigants before you, the one trying to beat the other. Is it possible that it has come to this, that, in the city of Washington, when the President has been murdered, and when by the forms of law, before a court and a jury of twelve men, an investigation is made to ascertain whether the prisoner is guilty of this great crime, the Government are to be charged with seeking his blood, and its officers as "lapping their tongues in the blood of the innocent?" I quote the language exactly. It is a shocking thing to hear. What is the purpose of a government? What is the business of a government? According to the gentlemen's notion, when a murder is committed it should not do any thing about it; and if the Government undertakes to investigate the matter, and to find out whether a man charged with the crime is guilty or not guilty, the Government and all connected with it are to be assailed as "bloodhounds of the law," and seeking "to lap their tongues in the blood of the innocent." Is that the business of Government, and is it the business of counsel under any circumstances thus to charge the Government? What is government for? It is instituted for your protection, for my protection, for the protection of us all. What could we do without it? Tell me, my learned and eloquent counselor on the other side, what would you do without a government? What would you do in this city? Suppose, for instance, a set of young men who choose to lead an idle life say to themselves that it is not right that some rich man living here should be enjoying his hoarded wealth, and they break into his house at night and steal therefrom. My friend says, when you come to prosecute them for that robbery, "What! this great and generous Government of twenty-five or thirty millions of people pursue these poor young men, who merely tried to break into the house of one of you and steal his money! Should not this Government be generous and let them off? Oh, yes! they are let off." Well, a few days after they break into the house of my friend MERRICK and they steal his money, and he, a brave man, undertaking to resist them, they strike him down in death. "Oh, generous Government! with from twenty-five to thirty millions of people, let the young men off. Why should a great and generous Government with all its powers be pursuing the young men who thus murdered Mr. MERRICK in their attempt at robbery? Why should the officers of the Government be lapping their tongues in the blood of the innocent?" Suppose this view as to the duty of a government were universally entertained, what would be the result? How long would your Government last? How long would you hold a dollar of property? How long would the safety of your daughters be secure? How long would the life of your sons who stand in resistance to lust and rapine be safe? I have never heard such shocking sentiments uttered in relation to the duty of government from any human lips, or from any writer on the face of the earth.

We have been told here that our Government has nothing of divinity that hedges it about; that it is only the government of kings which claims such divinity. The Bible tells us that all government is of God; that the powers that be are ordained of God; and I can tell you, gentlemen, if such are the sentiments of this country that there is no divinity and no power of God that hedges about this Government, its days are numbered, its condemnation is already written, and it will be in the dust before many years have rolled away. No government that is not of God will last; it will soon come to nought. No other government ever did long exist; no other government can exist. Every government which is a government of the people is of God, and "the powers that be are ordained of God." When you come together at the polls, and you elect as the ruler of this

great nation a President, and thus by the sanction of your votes he is made so, the voice of the people is indeed the voice of God, and the government which is thus instituted is ordained of God, and it is as much hedged about as that of any king that ever reigned on England's throne. Is it possible that our countrymen will say that the Government which we thus have made, which our fathers established, and which we are thus cherishing, has nothing of divinity to hedge it about? Does it rest alone and merely upon human whim, without any thing sacred in it, and without any protection of the Almighty over it? If so, let me repeat, its days are numbered; it will soon pass away. Once there was an empire of Rome. It was an empire which was in its day the greatest that the human mind had ever reared; but it did not believe, or rather ceased to believe, that there was a God who ruled: and that government was of God; and they ceased to punish great crimes, to punish treason, to punish rapine, and to punish murders; and it happened in a very short time after they ceased to inflict punishment for such crimes and ceased to exercise the powers which belonged to government, that the Roman empire tumbled to its ruin. It was trampled down by the barbarian, and not a son of a Cæsar lives on the face of the earth, and not a descendant of a Roman matron exists anywhere in this wide universe. The empire perished, and crumbled into dust, and nothing but its ashes remain. It will ever be so whenever a people cease to obey God, and whenever they cease to think that government is of God. Let us see what the Bible says on this subject; what views were entertained in the Old Testament, and what in the New:

"1. Samuel also said unto Saul, The Lord sent me to anoint thee to be king over his people, over Israel: now therefore hearken thou unto the voice of the words of the Lord.

"2. Thus saith the Lord of hosts, I remember that which Amalek did to Israel, how he laid wait for him in the way, when he came up from Egypt.

"3. Now go and smite Amalek, and utterly destroy all that they have, and spare them not: but slay both man and woman, infant and suckling, ox and sheep, camel and ass.

"4. And Saul gathered the people together, and numbered them in Telaim, two hundred thousand footmen and ten thousand men of Judah.

"5. And Saul came to a city of Amalek, and laid wait in the valley.

"6. And Saul said unto the Kenites, Go, depart, get you down from among the Amalekites, lest I destroy you with them: for ye shewed kindness to all the children of Israel when they came up out of Egypt. So the Kenites departed from among the Amalekites.

"7. And Saul smote the Amalekites from Havilah, until thou comest to Shur, that is over against Egypt.

"8. And he took Agag, the king of the Amalekites, alive, and utterly destroyed all the people with the edge of the sword.

"9. But Saul and the people spared Agag, and the best of the sheep, and of the oxen, and of the fattings, and the lambs, and all that was good, and would not utterly destroy them: but every thing that was vile and refuse, that they destroyed utterly.

"10. Then came the word of the Lord unto Samuel, saying,

"11. It repenteth me that I have set up Saul to be king; for he is turned back from following me, and hath not performed my commandments. And it grieved Samuel, and he cried unto the Lord all night.

"12. And when Samuel rose early to meet Saul in the morning, it was told Samuel, saying, Saul came to Carmel, and behold, he set him up a place, and is gone about, and passed on, and gone down to Gilgal.

"13. And Samuel came to Saul, and Saul said unto him, Blessed be thou of the Lord: I have performed the commandment of the Lord.

"14. And Samuel said, What meaneth then this bleating of the sheep in mine ears, and the lowing of the oxen which I hear?

"15. And Saul said, They have brought them from the Amalekites; for the people spared the best of the sheep and of the oxen to sacrifice unto the Lord thy God; and the rest we have utterly destroyed.

"16. Then Samuel said unto Saul, Stay, and I will tell thee what the Lord hath said to me this night. And he said unto him, Say on.

"17. And Samuel said, When thou wast little in thine own sight, wast thou not made the head of the tribes of Israel, and the Lord anointed thee king over Israel?

"18. And the Lord sent thee on a journey, and said, Go, and utterly destroy the sinners, the Amalekites, and fight against them until they be consumed.

"19. Wherefore then didst thou not obey the voice of the Lord, but didst fly upon the spoil, and didst evil in the sight of the Lord?

"20. And Saul said unto Samuel, Yea, I have obeyed the voice of the Lord, and have gone the way which the Lord sent me, and have brought Agag the king of Amalek, and have utterly destroyed the Amalekites.

"21. But the people took of the spoil, sheep and oxen, the chief of the things, which should have been utterly destroyed, to sacrifice unto the Lord thy God in Gilgal.

"22. And Samuel said, Hath the Lord as great delight in burnt offerings and sacrifices, as in obeying the voice of the Lord? Behold, to obey is better than sacrifice, and to hearken than the fat of rams.

"23. For rebellion is as the sin of witchcraft, and stubbornness is as iniquity and idolatry. Because thou hast rejected the word of the Lord, he hath also rejected thee from being king.

"24. And Saul said unto Samuel, I have sinned; for I have transgressed the commandment of the Lord, and thy words; because I feared the people, and obeyed their voice.

"25. Now, therefore, I pray thee, pardon my sin, and turn again with me, that I may worship the Lord.

"26. And Samuel said unto Saul, I will not return with thee, for thou hast rejected the word of the Lord, and the Lord hath rejected thee from being king over Israel.

"27. And as Samuel turned about to go away, he laid hold upon the skirt of his mantle, and it rent.

"28. And Samuel said unto him, The Lord hath rent the kingdom of Israel from thee this day, and hath given it to a neighbor of thine that is better than thou.

"29. And also the Strength of Israel will not lie nor repent; for he is not a man, that he should repent.

"30. Then he said, I have sinned; yet honor me now, I pray thee, before the elders of my people, and before Israel, and turn again with me, that I may worship the Lord thy God.

"31. So Samuel turned again after Saul; and Saul worshipped the Lord.

"32. Then said Samuel, Bring ye hither to me Agag, the king of the Amalekites. And Agag came unto him delicately. And Agag said, Surely the bitterness of death is past.

"33. And Samuel said, As thy sword hath made women childless, so shall thy mother be childless among women. And Samuel hewed Agag in pieces before the Lord in Gilgal.—1 Samuel, ch. xv.

Such was the order in the times of this Book. And:

"Wo unto the world because of offenses, for it must needs be that offenses come; but wo to that man by whom the offense cometh.—Matthew, ch. 18, v. 7.

" \* \* \* "It were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea."—Ibid. ch. 18, v. 6.

All government is of God. The powers that be are ordained of God. Now, from whom came these words? Not from the Old Testament, but they came from the meek and lowly Jesus, the Saviour of the world, who died for you, for me, for all. It is true, as the counsel have said, that God is a God of mercy; but He says, "Though I am a God of mercy, I will by no means clear the guilty."

The counsel who first addressed you, you will remember, said in his speech, with great earnestness and with screaming tone even, "We have had blood enough; let us have peace." The question before you, gentlemen, is not about blood; the question before you is not about peace; the question before you is whether you have not had murder enough, and assassination enough, and crime enough to have at least once before a civil tribunal in this land a trial and a verdict. Not a single one of all those engaged in this conspiracy have been tried before any civil tribunal; and the question now is, have you not had enough of this murder, and enough of this assassination, to have at least one jury of the country say, "We have had enough, and we will stop it?" You and I have nothing to do with the consequences. All we have to do is to do our duty, and ascertain whether the man is guilty. You do not punish the man; I do not punish the man. I have no feeling towards him of punishment, and you have no such feeling. The duty does not lie with you, nor with me. We have nothing to do with that. The question for us is to see whether this man has violated the law of the land; whether he is guilty of this violation; and then if, for any cause, the Executive sees fit to show leniency, he will show it; if he does not, he will not do it. It is not for you or for me to say what the leniency shall be. It is not for you or for me to have any thing to do with that question. Our business is to see whether he is guilty of this violation of the law, and if he is guilty, so to say, and then afterwards to say whatever may be thought fit to be said; but our duty is, and the duty of the court is, to find out that one fact, and to have you pronounce your verdict, under your oath, according to the fact as you find it.

There are one or two other things that I must notice before I come to the main question. One of these is in regard to the attacks which were made by counsel, yesterday particularly, upon my learned friend the district attorney. Have you seen any thing in his

conduct in this case which was improper? Have you seen any thing but an earnest desire to discharge his duty? If I understood the counsel aright yesterday, he said that if he were standing in that place, and he should have done as the district attorney has done, he would expect the women when they passed him by to gather their skirts and pull them aside, lest they be contaminated by the touch. I did not at that time know why there was so much bitterness of feeling thus expressed; but I have been shown since last night this record, called the "Rebellion Record," and I find in it that on the 5th day of January, 1861, Edward C. Carrington, now district attorney, issued to the public a remarkable letter in those early times, calling out the militia of this District for the purpose of protecting the Government of the United States; calling upon them to rally; and they did rally at his call. The fact of this gentleman, a native born Virginian, one of your own number and living in your midst, having thus early taken the patriotic side in favor of his Government, when even his own State had deserted him, of course would be likely to call down the utmost bitterness and hate against this loyal and noble citizen. I can now understand it better than I could before.

We have been told, gentlemen, by the counsel upon the other side, that the Judge Advocate General has done a great many wrong things in his life; and we have been told that the military commission which Mr. Johnson established, and he alone, did wrong things in their prosecutions, and we have been told, likewise, that the Supreme Court of the United States had decided that this commission was illegal. You would hardly expect an eminent lawyer to make such a statement unless he believed it. The counsel must have believed it, or he would not have made the statement. But he is wholly mistaken. No court in the United States has declared that this commission was illegal. There is no such decision on record. Four of those very persons who were tried and sentenced by the commission are now living and in prison; and if the Supreme Court of the United States had declared the commission that tried them illegal, would they still now, in time of profound peace, be kept in prison? Would there not be, by my learned friend, an immediate application to the Supreme Court for a *habeas corpus* to relieve them? There is not a word of that. No such decision has ever been pronounced. No court has, and in my judgment no court will, pronounce that this commission thus formed by the President of the United States was illegal.

Gentlemen, my belief in this case being that you honestly desire to get at the truth, and that you have no other desire, I propose to dismiss all these outside considerations and pass to the subject which is fairly before you. I have said but little compared with what has been said, and I propose hereafter to say even much less. I wish to lay aside all this rubbish and to pass to the solemn business of investigating into the truth of the charge contained in the indictment. You will see whether I do it fairly or not. I shall not deceive you. I could not if I would. I do not know you as the other counsel know you. They tell you they know you. My learned friend the district attorney, in his speech, told one of the counsel that he knew him, and that he was an actor, and that his acting in the course of this trial would have done great credit, if indeed it would not have surpassed that of Edwin Forrest. I do not know any thing about that, but I thought some of you looked as though you knew whether there was any truth in that remark or not. I do not know, because I have not the acquaintance of that gentleman; but I think you will be able to determine between what is mere acting and what is stern reality; between a drama played upon the stage and a truthful drama played in real life. I think you knew when witnesses came upon that stand, and you looked upon them, who told the truth and who lied; and you knew the degree. You are men of business,

and you are accustomed to see your fellow-men, to look into their faces, to deal with them, and to know their manner. There is a kind of instinct that goes out from the living witness who stands before you, and as between him and you who listen, you feel, you know whether he is telling the truth or not. You are not as accustomed to this as a lawyer, perhaps; but still you are accustomed to it in your dealings with men, and you can tell whether a man is telling the truth or is not. I quite agree with the learned counsel when he speaks of the great advantages of having witnesses before you. I think you knew whether Bissell told the truth or not. I think you knew whether Cameron told the truth. I think you knew whether every other witness that you listened to here told the truth; for you did listen most carefully, and you have conducted yourselves here like men who felt that they had a solemn obligation resting upon them; who felt that they had some responsibility as connected with this Government; who felt that they had the peace and good order of society committed to their hands, and that this was a grave and serious business which they were called upon to engage in. I have wondered at the patience with which you have listened, and at the endurance which you have shown in this long and exhausting trial; and to me it does seem to foretell that when this case is through, the truth will prevail and justice will be done.

Now, gentlemen, I come to some facts in this case about which there is no dispute. I propose to begin with the facts which both sides concede. I will, therefore, tread upon no debatable ground here, and at this point allow me to make one general observation. In the arrangements of Divine Providence in this world things are so ordered that every truth is in perfect harmony with every other truth. It is always so. From that there is no variation. God is a God of truth, and all the sin and woe on earth come from a divergency from that line of truth that proceeds from His heavenly throne. If everything was truth, there would be no crime. If all was truth, there would be no wrong. All wrong comes from a violation of that great principle. The moment you violate the truth, everything is out of joint. Every truth being in harmony with every other truth, every falsehood that is interposed dislocates it, and breeds mischief and injury to the community. It is so in the physical life. It is so in nature in every form. It is so in the moral world. Men are slow to believe this, but a little observation will show you how true it is. Even the clergy do not teach it as much as they should, in my opinion. You cannot violate a law of God without a punishment even on this earth. No man ever did do it; no man ever went to his grave, having violated a law of God, without having been punished for it, and no man ever will, even in this world. You all see that in the ordinary affairs of life. Mr. Alexander gives his note to Mr. Bohrer, and when it falls due he does not pay it. Mr. Bohrer knows he can pay it, but will not; Mr. Bohrer will never lend him any more money; he may be sure of that. Mr. Bohrer tells it about town; and it is not long before Mr. Alexander discovers that he has no credit. That is the punishment Mr. Alexander gets for not paying his note after having promised to do so. He turned from a truth to a lie, and he is having his punishment meted out in the loss of his credit and position. This is a plain and simple illustration that we can all understand and appreciate. Again: You place your hand in the fire, and of course it is burned. You thus suffer the punishment of violating a law of nature. Then, again, you may take poison. It may be a slow one, and therefore you may not at first perceive any effect from it, but the effect will come eventually. The froth from the mouth of a mad dog may touch a broken spot upon your skin, and it may be twenty years ere you die from the effects of that touch. It does not necessarily follow that the effect will always be immediate, but the effect in the way of

punishment always follows violated law. That is the reason punishment comes. If a law of nature had not been violated, it would not have come. The effect in some instances, as I said, comes slowly; in others it follows swiftly. In the case of a man's failing to keep his word, he loses his credit. In the case of his cheating his neighbor, he loses his credit. But there are more secret things than that. You may cheat your neighbor according to law, and you may be successful in it; you may cover it up so that the charge cannot be distinctly made; but you may mark this as a certain truth, that if you are a bad man, and a cheat, and you are doing wrong to your neighbor, you know it, and some how or other you communicate that knowledge to a great many of your fellow-citizens who do not know it. They feel, somehow or other, that they have no confidence in you, and in that way you are often punished for your secret crime, by the loss of the confidence of your fellow-men in you. When you come to them and look them squarely in the face, your guilty eye doth tell it. I need not pursue this topic further. At some future time, when you think this over, I will warrant that the more you think of it the more you will believe it, and you will find it is true, from the greatest to the minutest thing in this entire universe.

Now, let us come to a truth which we have got here fixed, one fixed truth in this case, and I say every other truth in the universe is in harmony with this truth. Here it is: John Harrison entered his name in his own handwriting, on the 18th day of April, 1865, in the register at St. Lawrence Hall, Montreal. There it is. The man is the prisoner at the bar. We all agree upon this fact. There is no dispute about it. Now, let us start from this point, and with the principle that every other truth is in harmony with this truth, let me ask what happened after that? Remember, I am speaking now of that which is not disputed. After that he passed through the hotel; he took no meal in the house, he contracted no bill, but fled somewhere. Where did he flee? He fled to the house of a man named Porterfield, and there for a few days remained in concealment. Then two carriages came up and dresses were prepared so as to have each man dressed exactly alike; and in the night time, when all was darkness, one man got into one carriage and drove one way, whilst the other got into the other carriage and drove in a different direction. What did all that mean? What was it for? He was either fleeing because he had aided in the death of Mr. Lincoln in this conspiracy, or because he had not. Which was it? Was he fleeing because he had not? You will hardly say that. Then it was because he had, or because he had been engaged in something which made him wish to flee and secrete himself. Where does he next go? He goes in that carriage in the darkness of the night to a little place called Liboire, to the house of Boucher, whom you saw upon the stand—a priest—a priest who has not done any honor to his honored Church. When this Government was in pursuit of this prisoner, Cardinal Antonelli and the Pope, even before the Government ever made a request, hastened to deliver him up in consequence of the enormity of this great crime. This priest will hear from that Pope and from his bishop before he is a year older. As I said, the prisoner went to this priest's house, and he there concealed him, as he tells you, until the following July. Let us see what went on while he was being concealed in the house of this priest, where his friends visited him and where he was enjoying himself in hunting; where many, from time to time and day to day, came as his visitors. What was going on in this city at that time? A reward had been offered for his apprehension—a large reward—both by the city and by the Government; and there he stays in concealment. And what else was going on? His own mother had been apprehended and was on trial for her life. Where was her son? Concealed, visited by this people. And why concealed? Has the counsel explained to you why he was con-

cealed? Not a bit of it. Why was he concealed? It was either because he was innocent or because he was guilty. Which was it? You will have to determine that. Now, let us turn a moment and see what was going on here during that time. The mother and the other conspirators were on trial. The proceedings were reported every day in the newspapers, and the entire civilized world were notified of it and were reading it. Did he not know about it? He was within thirty-six hours of this city and kept there concealed; changed the color of his hair, changed his garments, wore spectacles for disguise, was visited by his friends who were traitors to his Government. Did he not know what was going on? Let us see whether he did or did not.

I hold in my hand a very curious little paper, and let me say that I never knew a trial of great magnitude, and where there was fraud or crime, that these things did not appear. They always do. I knew they would before this trial commenced, though at that time I had never heard of this paper. What is it? Here is a paper with a mark and a cross, and then "S," "P," and then a "C," with a blank line between, and then the words "all right," "Toney," "No hurry," addressed to "A. G. Atzerodt, Washington, D. C." Let us see what further there is about it. It is put into the post office in New York on the 15th day of May, 1865, soon after the trial of his mother and of Atzerodt had commenced, and that trial continued, and the death warrant, the original of which I have here, was signed on the 5th day of July following. Yet he wrote that letter to one of his co-conspirators and put it into the post office in the city of New York on the 15th day of May. They wanted to make some little question, I believe, about the handwriting. Gentlemen, here is the handwriting. I will show it to you. Here is the card that nobody denies. They are as much alike as any two things can possibly be. It is his own natural hand, and here is the letter which he admits to be his own. Here is this card and here is this writing. They are exactly alike. The writing is not even disguised in the least.

Now, what did all that mean? You heard Boucher's account here. I shall come to him in the progress of the examination of the evidence. He says the prisoner stayed with him until the latter part of July. Then he stayed till after the execution of these criminals. Then what did he do? He took him secretly to the house of another priest, named LaPierre, who had more discretion than to come here and tell the world of his shame. He did not come; he is a wiser man. I tell you again this Boucher will hear from his Pope and his bishop before he is a year older. The Catholic Church never did sanction such a crime as this, and His Holiness the Pope hurried with unusual zeal to deliver up the fugitive in his dominions, although we had no treaty of extradition, the moment he heard that he was the one suspected of participation in this horrible crime. Well, he takes him up to LaPierre's, and there he is concealed, and concealed until when? He is concealed until the following September, receiving his friends, and amusing himself the best way he could with safety to his life. In September, just five months after this murder, LaPierre takes him upon the steamer *Montreal*, locks him up in a state-room, and takes him down for the purpose of putting him on board the *Peruvian*, having first gone to Dr. McMillan, the surgeon of the ship, and told him he had a friend who was in some difficulty that wanted to escape without his name being known. There he goes, and he is introduced to McMillan as McCarty, wearing spectacles, and with dyed false hair. The steamer starts for the Old World, and now what happens? He had not been on that steamer thirty minutes after she started before he appeared startled, and, looking round, said to McMillan, "That man is an American detective; he is after me." The wicked flee when none pursue; the righteous are as bold as a lion. He was not very bold, was he? He put his hand in his pocket and drew

out his revolver, remarking, "but this will fix him." McMillan inquires, "Why do you think this gentleman to whom you refer is an American detective; and, if so, why would you care?" "Ah," says he, "I have done such things that, if you should know them, it would make you stare." What were the things he had done? He had run away from his mother, to be sure; but boys have done that before. What were the horrid things he had done, which, if McMillan knew, would make him stare? Why did he startle at seeing an American detective, as he supposed, but who turned out to be a lumber merchant from Toronto? Why see a ghost behind every cord of the ship? Why frightened at everything that there appeared, and start whenever any one was near? He was innocent, they say! Well, we will follow him on.

Somehow or other there was such terrible stuff weighing upon his heart that he could not keep it to himself, and he had every once in a while, for the purpose of unburdening his guilty soul, to go behind the wheel-house and talk to McMillan, (the only one he knew,) and from time to time detail to him the scenes through which he had passed—those which left such a horrid impression on his mind. It was a relief. Criminals tell us that it is always so. Most criminals, sooner or later, if they are not brought to justice, will return to the place of their crime, and in very madness and torment at their guilty secret tell it out. They cannot keep it. When the prisoner got on to the lone ocean, where only one whose name he knew was there, he could not help but tell his secret, and he told it. You know very well what it was. I shall come to what it was before I am done. When he came to Ireland he hesitated whether he should land on the Irish coast, or whether he should wait until he got to Liverpool; and he consulted Dr. McMillan as to which he had better do. Says Dr. McMillan: "I cannot tell you which you had better do; you can do just as you please." He replies: "I will go to Liverpool." Finally, as they neared the coast of Ireland and were coming into the bay, McMillan found him unexpectedly upon the deck, with his clothes on and a little satchel in his hand, ready to depart. The prisoner says: "I have changed my mind. It is now night and dark, and I have concluded I will land here in Ireland." What then did he do? He wanted him to go into the bar-room and drink. It being late at night, the bar was closed, but they found the bar-keeper and had it opened. What did he then do? He takes tumbler after tumbler of raw brandy, until he is mad drunk, and McMillan calls an officer to watch him as he passed over the gang-plank. Why was that? We have now got him in Ireland. He landed there. He had not been in Ireland long before something seemed to whisper in his ear that this galling land had no place for treason and for murder, and he vanished from Ireland. Where next do we see him? Next he wanders about muffled in the darkness of the night in Liverpool. He had not been there long before something there seemed to say that England's air could not long be breathed by treason and by murder, and he fled. Where next do we find him? He went to Rome, away from his language, his country, his kinsmen, his all. He changed his name there to Watson. He enlisted in the Papal Zouaves and went away from Rome. Was he not safe then? Oh, yes, to be sure, he is safe; he is in the disguise of a Roman Zouave, and he is ordered away to Velletri, far from Rome; none but Italians are there; none but people of a foreign language are there; all are strangers there; and now he is safe! Safe! God does not allow such things as that to be safe. It must have been an awful hour when he saw peering through the cap of the Zouave the old familiar face of St. Marie, who knew him at school. Those things are not permitted—God is wiser than we. What then happens? He walks down the road soon after, and says to St. Marie: "Let by-gones be by-gones. I want to save my life. I escaped from Washington in the disguise of an Englishman on the night of the as-

sassination, and I got away and I am here." And this disguise of an Englishman, and the courier's bag of an Englishman which he carried, and the handkerchief, are subjects to which I shall call your attention when I come to the specific evidence. I am now speaking generally of what occurred. Then he heard coming from the Vatican, in no whispered tones, that the States of His Holiness the Pope had no nook or corner in which treason and murder could rest; and then, in desperation, he made that fearful leap at the peril of immediate death and escaped to Malta, and when he reached that island in the Mediterranean sea, there something still did haunt him and tell him that there was no hiding-place there for treason and for murder, and thence he vanished.

He flies into Egypt. Was not he safe then? He had got into that "ancient land of mystery and of old," where the Pharaohs dwelt; where Joseph was a slave; where Moses lived; where by the power of devils and by the power of God such miracles were wrought. Up to the wondrous Nile he goes, on whose banks are the grandest ruins of forgotten empires; where are the pyramids; and there, even, the colossal Sphynx, looking at him with stony eyes, seemed to say, "What scourge for treason and for murder can this dark monarchy afford this traitor;" and he fled no more. His knees smote together, and his arms fell nerveless at his side. He resisted not at all. He gave himself up without a struggle, was placed upon a ship of war of the United States, and came over the long sea, and up the broad river to the city of his crime. Two years between the crime and the arraignment—two awful years. God grant that neither you nor your children may ever pass two such years as those. He is brought before the grand jury of your city, and is indicted for the crime.

Now, this was the strange flight of an *innocent* man, as my learned friend says, or rather argues, it was. What do you think about it? Do you think that innocent men do those things? Do you think he fled because he did not engage in the murder, or because he did, which?

Gentlemen, let us see if we can unravel this mystery. It is certainly a mystery as it now stands, that an innocent man thus fled. I think that we can get at it. What was it? Let us come back in the history of time a little. You will remember that on the anniversary of that day on which the Saviour was crucified the President of the United States was murdered and Secretary Seward was assassinated. It is a day that will ever be remembered in the history of this country. It will not be forgotten. The enormity of the crime sent a shudder through the civilized world. For no cruelty, for no oppression, for no wrong, but simply for his holy devotion to liberty and the serving of his country, was he thus foully murdered. As you well know, the pathway of his youth was not smoothed with dalliance and with luxury, but it was rough and stony and thorny with affliction and with toil. He had always been a man of sorrows, and his acquaintance with grief had left a deeper melancholy in his face than could be seen in any other. A few weeks before he died, you will remember, he uttered these ever-memorable words:

"Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the cause of the conflict might cease with, or even before, the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible, and pray to the same God; and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in warring their bread from the sweat of other men's faces; but let us judge not, that we be not judged. The prayers of both could not be answered; that of neither has been answered fully. The Almighty has His own purposes. 'Wo unto the world because of offenses, for it must needs be that offenses come; but wo to that man by whom the offense cometh.' If we shall suppose American slavery is one of the offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the wo due to those by whom the offense came, shall we discern therein any departure from those divine attri-

butes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said: "The judgments of the Lord are true and righteous altogether."

"With malice toward none, with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow and his orphan; to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations?"—*Lincoln's Second Inaugural Address, March 4, 1865.*

And a short time earlier, before this bloody sacrifice, he wrote to a poor woman, who had sent all her sons to battle and to death, this short letter:

"EXECUTIVE MANSION,  
"WASHINGTON, November 21, 1864.

"DEAR MADAM: I have been shown, in the files of the War Department, a statement of the adjutant general of Massachusetts, that you are the mother of five sons who have died gloriously on the field of battle. I feel how weak and fruitless must be any words of mine which should attempt to beguile you from the grief of a loss so overwhelming. But I cannot refrain from tendering to you the consolation that may be found in the thanks of the Republic they died to save. I pray that our heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

"Yours, very sincerely and respectfully,  
"A. LINCOLN."

This, gentlemen, as I have already said, is a trial of one of those conspirators; and it has this marked feature in it: It is the first judicial trial that has ever been instituted to try any of those conspirators. Our freedom-loving race and the sturdy blood from which we sprang have always clung with exceeding fondness to liberty, to the right of trial by jury in the courts of law, and they have always been jealous of military power. When the other conspirators were tried, it was claimed that as the President of the United States had been murdered in his camp, it was eminently fit that the trial of those conspirators should be held by military men. Many said that in the city of Washington there was so much feeling of sympathy with the rebel cause, there were so many enemies of our country here, that the chances were that a jury would not be found within which there would not be some one or two in sympathy with the traitor and the assassin, and thus prevent a verdict. That argument was used in favor of a military tribunal, instead of a trial in the courts of law. I am one of those who at all times, and on all occasions, have insisted that the civil courts, with a jury of twelve men, were competent to the trial of these crimes. I have always believed it. I believe it now. It is for the very reason that I believe it that I stand here. I have always proclaimed it. I do not stand here, called because I belong to the side of the Republicans, for as all know I never did. The office which I held was given me by Democrats. The office which I now hold in the convention was from the democratic city of New York. I am called here because I believed, and because I ever insisted, that a jury of twelve honest men, when they find a man guilty, will say so; and that the court is competent to administer the law, and that you are competent and willing to administer justice. If you set at naught all my confidence, and if you prove to the world that I am wrong, and that a jury of twelve men in the city of Washington will not find a man guilty of this great crime when he is proved to be guilty, then I will acknowledge that I have been mistaken, and bid farewell to the cherished dreams of my youth and of my manhood, which whispered that my country might continue to be free; for I know that no country can long be free that will not administer justice and punish great crimes. Society will have protection; property will have protection; life will have protection; and if it cannot come through the civil tribunal, then every good man will hail the military, and all will join in saying, "if our rights are thus to be swept away, let the useless ermine fall from the judge, let the sword write the record, and let the military commander execute the law."

I do not know what purposes the great Ruler of the world may have in this trial; but of one thing we may all be assured, that this is no unmeaning trial. It is, as I have said, the only trial before a court and jury of any of these conspirators. The whole civilized world is looking on. There is not a hamlet in this great country that has not already read the evidence. There is not a country in the whole of Christian Europe that will not soon have read it. The whole world is listening to it, and our enemies are hoping that it will here be proved that liberty cannot exist in this happy land. Our enemies, who wish arbitrary power, would be delighted beyond expression if they could find that a jury in the city of Washington would not convict a criminal of this great crime when the evidence proved him guilty. Every lover of freedom, every lover of constitutional liberty, every lover of our free and blessed Government, will fall on his knees and pray that no such calamity may befall our country as to have a jury of twelve men, or one out of the twelve, refuse to find a man guilty when the law and the evidence say that he is guilty.

In a great country like this, of course there are varied interests. There are many men who feel hostile, one toward one political party and the other toward the other, in this country. We have been through with a civil war, which tends to inflame the passions. Congress, as you know, has recently been in session here, and has just left. Of course, these grand political subjects are topics of constant conversation. A great many men from interested motives, some from political motives, and some possibly from patriotic motives, are very anxious to try to remove away this capital from its present place. They say it does not belong here; that it is not in sympathy and harmony with this Government; that it is full of people who hate the Government, and therefore they would like to see it removed. They would like any excuse to get it removed. A great many others desire to have it retained here. Many who live on the other side of the mountains would like to seize on any ground to take up this capital and move it over there, where it is more central; and what every such man of all things wants to be able, at the top of his voice, to say in Congress, when they meet in November, is, "You see it is just as I told you. You cannot get justice in the city of Washington; a jury of the city of Washington refuse even to find guilty the assassin of the President, who is overwhelmingly proved to be guilty. We will remove the capital far hence. We will take it to a place where a public officer shall be safe, and where those who are in power may be relieved from the dangers of assassination, which they cannot be if a jury of the country say it is right."

As I said, great issues hang on this trial, it being the first and only trial of the conspirators before a civil court and a jury of twelve men. Its responsibility and its magnitude cannot be over-stated. He is guilty, or he is not guilty. Which is it? If he is not guilty, he has been very badly treated. If he is not guilty, he has been flying about the world in disguise to very little purpose. If he is not guilty, your grand jury have done him a great wrong. If he is not guilty, the Pope did him a great wrong when he thus surrendered him when he was not obliged to do so. If he is not guilty, the whole world almost have done him a terrible wrong. How are you going to repair it? It ought to be repaired. He ought to be paid high for all this great wrong if he is not guilty. He is guilty or he is not. What I propose is, from this evidence, under the law, to prove he is. Now, if evidence proves any thing, or ever did prove any thing, it will prove it here, and what I propose is, when I come to the discussion of this evidence, not to give you my confident assertion about what is evidence, but to read it to you, that those who shall ever take the trouble to read the report of the speech I make shall find in it the evidence on which I rely, given from the book, word for word; and it will be read, and this whole civilized world will give

its verdict upon that evidence. It is upon that evidence that I shall ask your verdict.

Gentlemen, we have lately, as you know, acquired possessions from Russia. Suppose you and I go out there after this trial is over to make an exploration, and, as we are going through the forest, we find a baby wrapped in a blanket. What would be the inference at once? It would be that the baby came there by some human hand. It would be that it had a father and a mother. It would be that it was wrapped in the blanket from tender care of a human being. You would have no doubt about it, would you? Would you want me, when I came back and was stating to an audience that Mr. Todd and I had seen that there, to prove that the baby had a father and a mother, or that the blanket was wrapped around it by some human being from tender care? It is one of those things, you would say, we know, and not a thing to be proved. It is true that the Rev. Stephen F. Cameron might swear, in his imaginative way, that he had seen babies growing out in that country like toad-stools under a tree, but you would not believe it. [Laughter.] And although Bissell should come and swear that he had seen spiders weave the blanket in which the child was wrapped, you would not believe it. You would believe your experience and your knowledge of the laws of nature and of God. God hath given us reason and intuition by which we arrive at conclusions, by which we know a thousand things that are not proven, and are not to be proved. On these we act in forming our judgments when we come to weigh evidence and determine in our minds as to whether we believe or do not believe the thing presented as a fact. For instance; you may take this tumbler which I accidentally broke; you see its bright edges where it was broken; you did not see it broken, but I did. I know that piece came from this piece; but when I put that to this, [putting two pieces together,] and you see that every blister in the glass, and that every part of it exactly fits; you know that that came from this just as well as I know it; you do not need any other proof; it is a demonstration. No human hand, no skill of Chinese art, can cut the glass and mark the little blisters and little veins you here see so that the one shall exactly fit the other. It is not in human power to do it. Nothing short of Almighty power can perform that feat. It is proved. There you see, in the bottom, something looking white. That tumbler we will suppose to have been found off in a rubbish-heap behind a house. Well, what of that? The owner of that house died about three months ago, and he was suspected of having been poisoned. There was not any proof of it at all; no proof could be had. His loving wife had gone in deepest weeds to his grave, and wept most profuse tears over it. She had not poisoned and murdered her husband, of course. Somebody had, they found on investigation. Well, they find in a rubbish heap this glass with a little powder at the bottom of it. The physicians and the chemists examine it, and they tell you it is arsenic. Well, what of that? That does not prove that the man's wife murdered him, surely. Let us go a little further: There is the broken glass; there is the arsenic at the bottom. But that does not connect it with anybody. It happens, however, that a negro servant, in the chamber where the sick man lay, is moving back a bureau, and she finds that piece of glass [holding up a piece of tumbler to view] behind it. Well, what of that? That does not prove any thing; it is a perfectly clean piece of pure glass. There is no poison about that—none. She shows it to my friend Mr. CARRINGTON, the district attorney. She does not know why; she merely finds it and hands it to him as he is investigating about the premises, and she remembers that on a certain day, when she was moving back that bureau, a tumbler fell over, and a piece was broken out of it. What did she do with the tumbler? She says, "Well, I gathered it up and I put it away; but I do not know where; I

threw it away." We take this piece of glass that was found behind the bureau, and we bring it to the side of this tumbler that I hold in my hand, and we find that one was broken from the other. There is no proof about it, except the edge and the fitting. Would you doubt it was broken from it? Would you have much doubt that that was the tumbler that stood on the bureau, and from which this piece was broken when the servant turned it over, and which had in it the arsenic? And when you find the arsenic in the man's stomach and inquire into the motive that led to his death, would you not think that you had traced a murderer through a demonstration of those two little things? You cannot get rid of it; you have got the proof of it; you cannot help it; and your mind cannot doubt if it tries.

Those views relate to physical science merely. Let us now come to the moral. You will find that is just as certain and just as capable of demonstration to the human mind as the other. Take what we know from our intuition and from our reason. We know that men having no motive to speak otherwise speak the truth. You know that when you are going up the street, and you ask a man, "Have you seen the President passing in his carriage?" he will tell you yes, or tell you according to the truth, unless he has some motive to tell a falsehood. That we know, from our experience, that all men tell the truth, unless they have some motive to falsify. Sometimes it is a love of telling a great story; sometimes it is from malice; sometimes to clear one's self of crime; but as a rule we know men tell the truth. We know when witnesses are called upon the stand, having no other motive than to tell what they know, they will tell the truth. That is our experience. That is the way we live. It is the only way you could try any cause. It is the only way you can recover a debt. It is the only way you can decide any thing in human affairs. It rests on the great fact that men as a rule tell the truth; and on that great fact we build up every thing in our action, and we get information one from the other day by day and act upon it. Further, we all know that a woman will never desert her child unless she has some great motive for it. We know that a son will never tear asunder all the ties he owes to his mother, to his sister, to his brother, to his country, to his native land, to the government which protected him, without some great motive. That we know. We do not need to have it proved. I do not need to say any thing on those subjects, but simply to state them to you. We know that the father will protect his child. We know that he will give his fortune to save him from infamy. We know that he will do any thing to protect his daughter. He will give his money, his liberty—yea, often will he give his life, and willingly give it. When you find a father cruel to his son, or a son deserting his mother and his sister in time of great peril, and in time of their direst need, you know he does not do it unless some great and terrible motive impels him to do it. That we all know; and then we look for the motive and undertake to ascertain what that motive was which led to such an unnatural act. That is an honest, fair way of reasoning, as you will certainly say, and of judging of human action.

We know, gentlemen, several other things that need not be, and never are, proved in a court of justice. We know that it is not possible for a man to be in two places at the same time. That is a self-evident truth. You know that a man cannot be in Elmira and in the city of Washington on the same day, or at any rate the same hour of the same day. You know he cannot be in Burlington and be in Montreal at the same moment; that does not need to be proved. You know that when a man has great motives, such as the desire to save his life, he will take any means to save it, and you know that he will swear to any falsehood, that he will make up any evidence, and you know that one of the most common things, if you have ever read much of pro-

ceedings in courts, is to attempt to prove an *alibi*. As has been justly said by all the writers upon the subject, it is one of those things most easily forged of any defense that is ever attempted. It grows out of the fact that it often happens that honest witnesses prove an *alibi*. They are honest about it, and the facts they state are facts. The only thing that differs is in the time. You will remember the great case of Webster, to which attention has been called. When Dr. Webster was tried in Massachusetts for the murder of Dr. Parkman, a number of the most respectable citizens of Boston swore to an *alibi*; and they swore to it circumstantially. They swore to seeing him in a particular store where they had gone for a particular purpose. They looked at the books and found the charges made at the time that was stated, and all the circumstances seemed to conspire to prove that he was not the murderer of Dr. Parkman, but that he was in a different place from that alleged. It is quite possible that many of you can recall your own reading of that great case. I well remember it, and well remember that I believed at the time that he was innocent, and that it was Littlefield, the janitor, who had committed the murder, when I found so many respectable persons, men and women, of Boston swearing positively to the fact of his being in another place. The jury, however, who saw and heard the witnesses, and who heard the whole case, found, without hesitation, that he was guilty, and he subsequently admitted his guilt and told all the circumstances connected with the murder.

In a book which I read to the court the other day the author says:

"An unsuccessful attempt to establish an *alibi* is always a circumstance of great weight against a prisoner, because the resort to that kind of defense implies an admission of the truth and relevancy of the facts alleged and the correctness of the inference drawn from them; and where the defense of *alibi* fails it is generally on the ground that the witnesses are disbelieved and the story considered to be a fabrication.

"It is not an uncommon artifice to endeavor to give coherence and effect to a fabricated defense of *alibi* by assigning the events of the other day to that on which the offense was committed, so that, the events being true in themselves, are necessarily consistent with each other, and false only as they are applied to the day in question. A learned writer reports a case where a gentleman was robbed, and swore positively to the prisoner; but, nevertheless, the completest *alibi* was proved; the witnesses, examined separately, all spoke to the same minute circumstances transpiring whilst the prisoner was in their company on the day and hour of the robbery; and, in particular, that a church-bell for funerals was tolling, which in fact tolled almost every day at that particular hour when the robbery was committed. The prisoner was acquitted. A year afterwards the gentleman, seeing the prisoner in a little shop, went to him and gave him word that as now all danger was over, if he would tell him the truth no injury should happen to him, but the contrary. The man said, 'I did rob you; the *alibi* was concerted; I knew it was false; and when the jury turned around to consider the verdict, I felt a shuddering within me unlike any thing I had ever before felt or believed I could feel.'" *Wills on Circumstantial Evidence*, p. 115; *Law Library*, vol. 41, p. 51.

It is the easiest thing in the world for a man who is anxious—and especially where the question is one of life and death—to bring himself to believe that he saw the man on a day other than that on which he really did see him. He did see him, we will suppose, and he saw him on a particular day, but it is necessary for the defense to show that he saw him on the following day. In regard to that he is not sure. He says, "I am not positive; I know I saw him about that time, at least a man that looked like him; I did not know him." "Yes, but don't you think it was the day after?" Well, I don't know; it was within two or three days of that time." "But this is a question in which a man's life is involved; don't you think it was the 15th you saw him." "I don't know; it was the 12th, 13th, or 15th; I cannot tell which." Don't you think it was the 15th?" "I am not sure about that." So he twists it over and thinks it over until he may finally bring himself to believe he saw him on the day named. He says to himself, "Any way, it is not swearing against a man's life, and if I am mistaken, it is only in favor of a human life; and I think it was—I think I may say it was that day." It is not very difficult to do it.

Worse things than that have been done in the trial of men for great crimes.

Our learned friends on the other side have told us, in the progress of their argument, that they could not subscribe in the least degree to the doctrine that it was a higher crime to conspire against the Government of the United States, and through that conspiracy commit a murder upon the person of the Chief Magistrate, than it was to murder the humblest vagabond in the street, or words to that effect. That is not the doctrine of a statesman; it is not the doctrine of the Bible; it is not the doctrine of the law. It is a far more heinous crime to conspire against the Government of the United States and to murder its President for the purpose of bringing anarchy and confusion on the land than to murder a single individual. It is because its consequences are so much more terrible. It is because it is involving the lives of hundreds and of thousands. It is because it is involving considerations affecting the stability, the protection, the life, the liberty, it may be, of a nation. The law of England, which I cited, but which, it would seem, my friends had not read, lays it down, and without a statute, as the common law, that it is a crime of such heinousness as to admit of no accessories. They, however, undertake to say that the crime of the murder of the President of the United States in time of war or great civil commotion is not as heinous a crime as it would be in England to murder the chief of their country; and that there is no divinity about our Government. What is its origin? All government is either of God or the devil, and they will have to take their choice. I say the government is of God, and that no other government will stand. What said the civilized world upon this subject? I wrote a note to the Secretary of State two days ago, asking him to send me the letters that were sent from the different Governments of the civilized world upon the subject of this murder, and what do you think he sent me? He sent me the note I hold in my hand, and with it this large printed volume. It takes every line and word of this book, a book of seven hundred and seventeen pages, closely printed, to contain the letters of condolence that were written to this Government from the foreign governments of the world. Entire Christendom wrote, entire Christendom looked upon it as one of the most horrible of crimes—one that required every nation, even to the Turk, to write for the purpose of expressing their abhorrence of the crime. And, gentlemen, I hold in my hand the original paper, sent by some thirteen thousand rebel prisoners, prisoners in our hands, at Point Lookout. Here is the paper, in which these rebel prisoners, met together, passed their resolutions of condemnation and their curse upon this crime. I would try this case before any twelve of those rebel prisoners, and feel certain of a verdict; and yet the gentlemen tell us this murder is like that of the commonest vagabond that ever walked the street, and the crime no higher. Not so thought the rebels; not so thought any honorable man in arms against us; not so thought you; not so thinks any right-minded man on the face of the earth.

The court took a recess for half an hour, re-assembling at 12:50.

Mr. PIERREPONT. I pass, gentlemen, from all these general considerations now to the evidence in this case. As I have already said, I do not know you as the other counsel know you; but I do believe that you wish earnestly and honestly to know the truth of this case. I do not believe you will be influenced by any mean or selfish motive in your decision. I believe you are far above all possible considerations, except those great considerations which should weigh upon you in this great case. I pass from what I have said to an investigation of the evidence.

You know, gentlemen, there is a class of men who are called experts; we have had them upon the stand

here in the investigation of this case. We have had them for the purpose of determining the handwriting of different parties. An expert who is skilled is able not only to determine handwriting when it is disguised, but the handwriting of another by comparing it with that which is known. It is a very curious fact in our history—a discovery which science, and especially the investigations in the law have made—that no man can disguise his hand. He may in a few letters or a few words, but he cannot write any considerable number of words and disguise his hand. And it is on that principle, without our thinking much about it, that we are able to do business at all. Checks are constantly coming to the banks to be paid; receipts are given for debts due; letters are written; book accounts are kept; contracts are made, all depending upon this grand principle that each man has a handwriting peculiar to himself. It is as peculiar as his face; it is as certain as his expression; he can no more disguise it than he can disguise his walk from those who are acquainted with it, and who will watch it. He may disguise his walk for a short distance, but he cannot disguise it long; and he cannot disguise his handwriting if he will write a page. And another thing no mortal man can do; no mortal man can twice write his name alike. There is no man on the face of the earth that ever did it or that ever can do it. You may write your name, and then write it ten thousand times immediately after that, and you will find that there are no two of those signatures which you can place one over the other and exactly fit. That is as well ascertained as any fact on earth, and so true is it, that when we find one signature that will exactly lie over another in width, in length, and in every possible respect, we know it to be a forgery; it has been laid upon the genuine signature and traced. You cannot disguise your hand from one who is familiar with it and expert in it; and you cannot disguise your walk; and you cannot for any considerable length of time disguise your voice. It was attempted by this prisoner with Hobart. The walk is often attempted to be disguised, and the handwriting to be disguised, as in the case of Booth; but to one familiar with it, experienced in it, an expert, it cannot be done.

That is true in other things. In your various callings and business, connected with cloth, or with fur, or with iron, or with gold, or with silver, or whatever may be your callings, none of which I know anything about, you are experts in your goods and wares, or whatever you are doing, and you can tell in a moment things that I can tell nothing about. I do not know where the goods were made. I do not know whether the sable that is offered to be sold to my wife at an expensive price is colored by a dye or the real and natural one; but the furrier knows and can tell in a moment. The watchmaker can tell whether the watch presented is a false or a true one. I can tell nothing about it. In the city of New York is the assistant treasurer's office—I believe they have a similar one here in Washington; there is an expert in coin. You may take a basket-full and pour it out on the counter, and he will pass over the whole just as fast as the hand can go and pick in every instance the base coin, and never make a mistake. He has been there twenty years. He is well known in our city. We have plenty of men there who will run over bank-notes with any amount of speed, and select the false and throw them out in a moment. So in China, where silver is used not in the shape of coin, they have those who can tell the fineness of it by the eye and by the touch—men devoting themselves solely and only to that business, and they do not make mistakes. You have in all your varied trades and callings men who, from experience and natural fitness, are expert in a particular thing, and they can tell what others cannot, and therefore they are called in to give their opinions.

Now, it never seems very much to have occurred to people that there are experts in relation to moral ques-

tions and in relation to evidence, just as much as in relation to the physical sciences and matters of sight. But it is just as true, and it is just as easy; and I undertake to say that any lawyer who has practiced law for twenty years, and is not an expert in detecting the false evidence from the true when he sees a witness's eye and hears his voice, and sees his hesitation and his manner and mode, his consistency or inconsistency, if he cannot select the true from the false, had better take some other calling. He is not fit for that business. No lawyer who has had an experience of twenty years, and has had any moderate success, can fail to know, for he can detect it from that intuitive feeling and sensation by which he knows when a man comes upon the stand whether he is telling the truth or whether he is telling a falsehood. He will not have uttered five sentences before it will be betrayed in his eye, it will be betrayed in his manner, it will be betrayed in the inconsistency of his words, it will be betrayed in a thousand ways which you cannot tell, but which you feel and know.

I propose now to apply some of these principles that I have been talking about to the evidence in this case, and I first come to the positive evidence. I had occasion to remark, I think, to the court, in arguing a legal proposition, that it was always in a case of murder proper to look at the position of the parties who are charged, and to consider the motive in the case, for the purpose of coming to a reasonable conclusion as to whether the thing was done or was not done. As I have already said, men do not commit a crime without an object; and we are to look to see a motive where we find a thing done contrary to the course of human events.

In March, 1863, Mrs. Surratt was keeping a tavern at a place called Surrattsville. I believe the ville consisted of the tavern. Her husband had died in 1862, and there were left the son Isaac, the daughter Anna, and the prisoner at the bar. As the counsel tell you, and as all the facts show, they were poor; they had but little means. In the autumn of 1864 the mother moved to the city of Washington, to 541 H street, and opened a boarding-house. Her eldest son was in the rebel army in Texas. Her other son was a man full grown, and came to this city with her. He was in no employment in November, 1864, when she opened the boarding-house. Now let us see at this time what were the sentiments of the family in relation to this subject, which afterward became the object of hostility, of vengeance, and of murder. I read from the testimony of Mr. Tibbett, at page 59.

Mr. MERRICK. Is that the last edition?

Mr. PIERREPONT. No; I am compelled to read from the first. That is the one handed to me and the only one I have.

Mr. RIDDLE. Page 179 is the corresponding page of the latest edition.

Mr. PIERREPONT. I read from page 59 of my book Mr. Tibbett's testimony:

"I heard her (Mrs. Surratt) say she would give any one a thousand dollars if they would kill Lincoln."

He states that her son was present. He states further these words:

"Whenever there was a victory I have heard Surratt say the d—d northern army and the leader thereof ought to be sent to hell."

That was in 1863. In March, 1863, Herold, who was one of these conspirators, and is admitted to be, was with John Surratt, at Surrattville, and was one of his acquaintances. In 1864 John Surratt was at Piscataway church, with this same Herold, and in December, 1864, John Surratt was at the National Hotel with Dr. Mudd and Booth, at room No. 84. Mudd was an old acquaintance and Booth was a new acquaintance. And this was Surratt's first introduction to Booth. To this I want to call your attention. I propose to show you from this evidence—and I have given it some attention—the time when Surratt first became acquainted with Booth and the time when he

was first drawn into this conspiracy, and to trace it, date by date, by evidence which cannot lie, to its final consummation. I read from page 251:

"A. In the winter of 1864-65 I was invited one evening by Surratt to take a walk with him down the street. We left the house and walked toward Seventh street, and went down Seventh street. Just as we were opposite Odd-Fellows' Hall, somebody called, "Surratt, Surratt." I said, "John, there is some one calling you." He turned, and as he turned recognized Dr. Samuel Mudd, an acquaintance of his, from Charles county, Maryland. He shook hands with the doctor, and then introduced him to me."

This is Weichmann's testimony.

"Dr. Mudd then introduced his companion, as Booth, to both of us. After the etiquette consequent on such occasions, Booth invited both of us to his room at the National Hotel. Arriving at the room, Booth requested us to be seated, rang the bell, and had the servant bring drinks and cigars to the room for the four gentlemen assembled. I made some remark about the appearance of the room; Booth said yes; it was a room that had been occupied by a member of Congress.

"Q. Do you know the number?

"A. The number of the room at that interview was 84. Booth took down some congressional documents from the secretary, and remarked what a nice read he would have to himself when left alone.

"Q. Was Dr. Mudd still there?

"A. Yes, sir. After a little conversation, Dr. Mudd rose, went out into the entry that led by the room, and called out Booth. They did not take their hats with them; they did not go down stairs, because, if they had done so, I should have heard the noise of their footsteps. After five or six minutes they returned to the room, and John Surratt was called out. The three then remained in the entry for several minutes, and came back again. Dr. Mudd then came over to me where I was sitting, and remarked, "Weichmann," said he, "I hope you will excuse the privacy of the conversation; the fact is, Mr. Booth has some business with me; he wishes to purchase my farm in the country, but he does not want to give me enough." Booth also came to me and made an apology to the same effect, saying he did intend to purchase lands in the lower part of Maryland, and that he wanted to buy Dr. Mudd's farm. I was then seated on a sofa near the window. Booth, Dr. Mudd, and Surratt then seated themselves round a centre-table in the middle of the room, about eight feet from me. They then began a private conversation audible merely as to sound. Booth took out from his pocket an envelope, and made marks on the back of it, and Surratt and Mudd were looking intently at him. From the motion of the pencil I concluded that the marks were more like roads or straight lines than any thing else. After about twenty minutes' conversation around the table, they rose, and Dr. Mudd then invited us around to the Pennsylvania Hotel, where he was stopping. Arriving at the Pennsylvania Hotel, I sat down on a settee and talked with Dr. Mudd. Booth and Surratt seated themselves around the hearth, and talked very lively there, Booth showing him letters, and Surratt evincing a great deal of glee. About half-past ten Booth got up and bade us good night. We left a short time after, Dr. Mudd stating that he was going to leave town next morning. On going home, John Surratt remarked that that brilliant, accomplished young gentleman, to whom I had been introduced, was no less than J. Wilkes Booth, the actor. When I first met Booth on Seventh street, I did not know that he was an actor at all. I had seen him several times on the stage, but I did not know that he was J. Wilkes Booth, the actor. I knew when he told me so. He said that Booth wanted to purchase Dr. Mudd's farm, and that he, Surratt, was to be the agent for the purchase of that farm. Some weeks afterward, when I asked Mrs. Surratt what John had to do with Dr. Mudd's farm, and whether he had made himself an agent of Booth, she said, "O, Dr. Mudd and the people of Charles are getting tired of Booth, and they are pushing him off on John."

That is the first time Surratt met Booth, and this drawing of the farm probably suggests to you what it would suggest to anybody. There was not any purchase of a farm; no such thing was ever intended, and there is not a particle of evidence that there was any such purchase. If it had been about the purchase of a farm, they would not have taken so much pains to make Mr. Weichmann know it. When men are engaged in something they wish to conceal, they are always careful, and very often betray themselves by their extreme care to disguise what they wish to conceal. It would have been no matter to Weichmann whether or not they were buying or selling a farm. It needed no excuse, it needed no concealment, it needed no explanation, if it had been true. It is not likely it had any truth in it; but the lines they were drawing were for another purpose.

This, you will note, was in December, 1864. Now, let us look at another matter which soon followed, and which is a very important matter. I read from the testimony of Mr. Dunn, of Adams Express office. This is it:

"Q. Will you state what occurred on or about the 13th of January following?"

That was January, 1865, a few days after the inter-

view with Dr. Mudd, the account of which I have just read.

"A. I did not fix the date; I only said that he was in our service in that office close in the neighborhood of two weeks. It won't vary more than a day or two of that one way or the other."

We had already proved by the cashier, you remember that Surratt went to the Express office on the 30th of December, 1864.

"Q. Tell the jury what occurred at the end of two weeks?

"A. He came into my office, and applied to me for a leave of absence.

"Q. What did he say?

"A. I expressed my astonishment that he should apply so soon after taking his position, and he gave as a reason that his mother was going down to Prince George's, and he wanted to accompany her as her protector."

That was not any more true than the story about the purchase of Dr. Mudd's farm, and it was told for the sake of concealment.

"Q. What did you say as to his going with his mother to Prince George's as her protector?

"A. I told him that I could not consent to give him the leave of absence he wanted; that he had been there but a short time.

"Q. What then occurred?

"A. He left the office, and went back to his work. The next morning a lady called in the office. She introduced herself as Mrs. Surratt, the mother of the young man of that name in my employ.

"Q. What did she say?

"A. She asked that he might have a leave of absence to accompany her to Prince George's county, where she had urgent business.

"Q. What did you say to that?

"A. That I had no reason to change my mind; I had answered her son's application the day before, and I could not give my consent. She still urged her application, and I told her it was impossible for me to yield; that her son could go without my consent, if she and he so determined; but if he did, he could not return to that office.

"Q. What then occurred?

"A. She bade me good morning, and left the office.

"Q. What did he do?

"A. He left the office the same day.

"Q. Did he ever come back?

"A. No, sir.

"Q. Did he ever come back for his money?

"A. No, sir."

Now, let me show you a little thing in this connection; and my friend Mr. MERRICK will understand what I mean by chains of evidence. There is a little piece of paper here found in Booth's pocket, you remember, which is in evidence before you. "J. Harrison Surratt"—his card, in his handwriting—"J. Harrison Surratt. I tried to get leave but could not succeed." So he took it and he wrote immediately to Booth. That is not a "magic chain," my friend.

Now, I call your attention, gentlemen, to what further occurred in this same connection, from page 94, and this is from the testimony of Mr. Martin, of New York. He was very anxious to have it appear in his testimony that he went to Richmond, at the time he went, on business, and that he went with the knowledge of the President of the United States. He had a right to give that statement, because the mere fact seemed to compromise him, and he gave it on the stand, as you remember. He was down at Port Tobacco on his way to Richmond. It was in connection with getting out cotton. You remember there was a time in the progress of the war in which it was thought wise by some of the members of the Government to get out all the cotton and tobacco that could be obtained from the South. I believe the President entertained that view. This gentleman says, that although the President did not give him any written permission, he gave him to understand that he did not object if they could get out these things from the Confederacy without sending in supplies, but by giving money. I believe that the military men generally, and General Grant very particularly, were especially hostile to any of this trade existing between the two parts of the country, thinking it tended to retard the progress of our arms. Mr. Martin was down there, and let us see what he says:

"A. While in Port Tobacco, I remained for ten days, in order to get an opportunity to cross the river. I employed a man by the name of Andrew Atzerodt, and paid him to make some arrangements for me to cross the river.

"Q. Was that his full name?

"A. I do not know; he went by that name.

"Q. Was his name George A?

"A. I presume so; he went by the name of Andrew.  
 "Q. There was no doubt about the other name being Atzerodt?  
 "A. I think not. I heard his name, and recollect asking him once if it was a Russian name. He tried to make arrangements for me to cross, and went down the river several times. I paid him for his trouble, and finally abandoned the idea and left there. I did not cross there at all.  
 "Q. What time was that?  
 "A. About the 10th of January, 1865—from the 7th to 15th.  
 "Q. Who else did you see there connected with this conspiracy?  
 "A. I saw Surratt there on one occasion.  
 "Q. Tell what you know about it; what was said or done?  
 "A. I had no particular conversation with him. I was introduced to him. He did not refer to his business, and I do not think I did to mine. On one evening after dark a man told me that a party was just about to cross over. I said I would like to be introduced to him. He said he would do so. In probably fifteen or twenty minutes he came in and said he was mistaken; that they were not going to cross. During the evening I was introduced to Surratt. No particular conversation passed between us. I may have told him I was going to cross the river. I think I did. I remained that night. The next day when he came in to supper he had on his leggins. I asked him if he was going. He said he was going back to Washington; that he was employed in Adams Express office; that he had three days' leave of absence; that his time was nearly expired, and that it was necessary for him to start back that night."

In all of which there was not a word of truth, as you know. He never had had any leave of absence of any kind; and he told that story for the purpose of concealment, as people will when they are engaged in a wrong; and the pains they take is often one of the means of their detection.

"Q. State whether you saw him and Atzerodt speak together?  
 "A. I am not positive whether I saw them speak at all with each other.  
 "Q. Did you see them after that day?  
 "A. I did not see him after this conversation at the supper table, and have not seen him since till I saw him here.  
 "Q. Did you see Atzerodt afterwards?  
 "A. Yes, sir. I remained two or three days and tried to get across. I saw him there all the time I was there.  
 "Q. Did you see him on the other side?  
 "A. Never.  
 "Q. Did you see either of them on the other side?  
 "A. I never saw or heard of either of them on the other side.  
 "Q. Did you see either of them at any other place, at any other time, that you remember of?  
 "A. I did not."

Then a little further :

"Q. You had other conversation with Atzerodt, did you?  
 "A. I did the night Surratt left there. I was losing confidence in Atzerodt. I thought, although I had been paying him tolerably liberally, that he had been throwing off on me. I stayed up pretty late that night. He came to the hotel about eleven o'clock. I accused him of intending to cross over that night with other parties; told him I had been paying him all that he asked, and that I must cross by the first boat. He denied that anybody was going to cross that night. I reiterated the charge I had made of duplicity upon his part. He then made this explanation: He said no one was going to cross that night, but on Wednesday night a large party would cross of ten or twelve persons; that he had been engaged that day in buying boats; that they were going to have relays of horses on the road between Port Tobacco and Washington. Said I, 'What does this mean?' He said he could not tell. After a moment I said I supposed that Confederate officers were to escape from prison, and that he had made arrangements to cross them over into Virginia. He said 'Yes, and I am going to get well paid for it.'"

There was no truth in that. What do you suppose was the purpose of those relays of horses? What do you suppose Surratt came back to the city of Washington for in the night? To Adams Express? He never had had any leave of absence from there, and he never went back there. He told Booth he could not get leave, and he did not get it.

What is next in the order of dates? There is a power of logic in dates you cannot resist. People would like to resist it if they could, but they cannot. When the sun rises in the east to-day, and goes over and sets in the west to-night, as it has rolled over it has stamped a record which no crime can ever wipe out. Many men would like to erase it, or change some figures in it, but when it goes down in the night, it stamps it eternally; there is no changing it. Now let us see, in the order of dates, what next occurs. I hold here the register of the Maltby House, in Baltimore. On the 21st day of that same month, you will see here entered "Louis J. Weichmann," and "J. Harrison Surratt, Washington, D. C.," room 127; both in the same room. There it is, [pointing to the entry,] both names in their own handwriting, written on that day in Baltimore,

—"Weichmann" "Surratt"—within three or four days after Surratt left Port Tobacco. Now, what does all this mean? There is nothing very strange in the fact that Weichmann and Surratt went to Baltimore and registered their names and stayed in the same room; but it is one of those little links in a chain which binds truth to truth; one of those things which prove what I have already said, that every truth in the universe is consistent and in harmony with every other truth. Now let us see what is the next truth. I read from page, 253, Weichmann's testimony :

"Q. Look at the book now shown you [book exhibited,] and tell the jury what book it is.

"A. This is the register of the Maltby House, Baltimore, Maryland.

"Q. Please look under the date of that register of January 21, 1865, and state what you find there."

And there he found the names which I have just read.

"A. I find my own name and the name of J. Harrison Surratt registered there on the 21st of January, 1865, as occupying a room, No. 127.

"Q. The same room?

"A. Yes, sir.

"Q. Whose name is first entered?

"A. My name.

"Q. In whose handwriting is it?

"A. In my handwriting.

"Q. Whose name is next entered?

"A. Surratt's.

"Q. Is it in his handwriting?

"A. It is.

"Q. Will you state whether or not those names were actually entered on that day by you and Surratt?

"A. They were.

"Q. Did you occupy room No. 127?

"A. We did.

"Q. What time in the day did you reach Baltimore?

"A. On the evening of the 21st of January. It was a Saturday evening.

"Q. At this time did you know Payne?

"A. No, sir; I had never met him.

"Q. Nor Wood, as he was afterwards called?

"A. No, sir.

"Q. Will you state what occurred while you were there? Give it in its order of time. First I will ask you if you know, of your own knowledge, whether Payne was boarding in Baltimore then.

"A. No, sir; I do not know, of my own knowledge.

"Q. Now proceed to state what occurred while you were there.

"A. On the morning of the 22d Surratt took a carriage and said that he had \$300 in his possession, and that he was going to see some gentlemen on private business, and that he did not want me along."

He had not got his three hundred dollars from Adams Express. He has not any of it yet. He had three hundred dollars with him, and he took a private carriage and went to see somebody that he did not want Weichmann to know. Now, let us see who that somebody was. We asked Weichmann if he knew that Payne was there then. No; he had never seen him. He was asked whether he knew that he was boarding there then. No; he did not know that. Somebody else did, though. I read you now from the testimony of Mrs. Mary Branson, a widow woman who came upon that stand from Baltimore, page 403:

"Q. In 1865 where did you live?

"A. I lived at No. 16 Eutaw street, Baltimore.

"Q. Did you see, while the trials of the conspirators were going on in Washington, a man called Lewis Payne?

"A. I did.

"Q. Will you state whether in January, 1865, and for some time after that, this same man Payne boarded at your house?

"A. He boarded at my house in January.

"Q. How long did he continue after January?

"A. He stayed with me about six weeks.

"Q. Did you know where he went then?

"A. I did not."

There is another link in this chain, and it is not a "magic chain." He was boarding there; and then he came after that to Mrs. Surratt's house, and this meeting with him in Baltimore was for something. I do not know what it was for; I do not undertake to say; I am going to leave it to you to say what you think it was about. This is the Payne, who was one of the conspirators; the Payne, who attempted to assassinate Secretary Seward; the Payne who was taken in Mrs. Surratt's house afterward. I next read in this same line of dates, from page 254, Weichmann's testimony :

"Q. Did Surratt name to you then, or at any subsequent time, the name of the person who kept the house where he went?"

"A. No, sir.

"Q. When he came back, which you say was three o'clock, what occurred?"

"A. I returned home that evening; whether he returned with me or not I do not know, but it is my impression that he did not. I think I left him in Baltimore.

"Q. You returned that evening?"

"A. Yes, sir.

"Q. At Mrs. Surratt's house, at this time, where was your room in the house in relation to Surratt's room?"

"A. Well, Surratt and I were so friendly and so intimate with one another that we occupied the same room.

"Q. How about the bed?"

"A. We occupied the same bed.

"Q. Did you ever see Atzerodt?"

"A. Yes, sir; I met Atzerodt about four weeks after Surratt's first introduction to Booth, and about a week or ten days after Surratt returned from the country, in the early part of January, 1865.

"Q. From Port Tobacco?"

"A. Yes, sir."

That was the time when Mr. Martin speaks of seeing him at Port Tobacco.

"Q. How long after he returned from Port Tobacco?"

"A. About a week or ten days; in the latter part of January.

"Q. Where did you meet Atzerodt?"

"A. In Mrs. Surratt's parlor; he was introduced to me by John Surratt."

Surratt had met him in Port Tobacco when Mr. Martin saw him with him about the 10th or 12th of January. In a few days after that he came up to Washington, came to Mrs. Surratt's house, and Weichmann was introduced to him by Surratt himself in the parlor. I now read from the testimony of the same witness, page 255:

"Q. When did you next see Atzerodt at the house?"

"A. Oh, I saw him very frequently there between the time of his first coming there and up to the time of the assassination; perhaps he visited there altogether twenty times.

"Q. He was there, then, very often?"

"A. O, yes, sir; very often, indeed.

"Q. That is, you saw him there very often?"

"A. Yes, sir.

"Q. Will you state during what hours of the day your occupation kept you from the house?"

"A. From nine until half-past four.

"Q. At what hours in the day or at night were you in the habit of seeing Atzerodt there so frequently?"

"A. I generally met him in the parlor on my return from work, between four and five or five and six o'clock.

"Q. What was he doing there?"

"A. Nothing in particular that I know of, except talking with Surratt.

"Q. Did Booth also come there?"

"A. Booth came there very frequently.

"Q. Do you remember of Surratt going any where in February of that year?"

"A. Yes, sir; he went to New York in the early part of February.

"Q. Did he tell you what he went for? And if so, what?"

This is now coming to the next month. We have traced him through January, and we now come to February:

"A. He did not state what he went for, but he did state whom he saw there.

"Q. Who was that?"

"A. John Wilkes Booth.

"Q. What more did he tell you about that visit to York when he saw John Wilkes Booth?"

"A. Nothing, except saying that Booth had a very fine parlor, and that he had been introduced to Edwin Booth.

"Q. In New York?"

"A. Yes, sir.

"Q. When did you first see Payne?"

"A. I met Payne at Mrs. Surratt's house in the latter part of February, 1865, for the first time."

He left Baltimore, where he was boarding; came down then to Washington; and it was not necessary for Surratt to go to Baltimore any more to see him, and it does not appear that he ever did go to Baltimore again.

"I met Payne in Mrs. Surratt's house in the latter part of February, 1865, for the first time. I was seated in Mrs. Surratt's parlor, one evening, when I heard the door-bell ring. I went to the door. On opening it I saw standing there a man, tall, with very black hair, very black eyes, and ruddy countenance. He asked me if Mr. Surratt was at home. I said she was. He then expressed a desire to see Mrs. Surratt. I inquired his name, and he said Mr. Wood. I went into the parlor and told Mrs. Surratt that a gentleman by the name of Mr. Wood was at the door who wished to see her. She requested me to introduce him. I did introduce him to Mrs. Surratt and the rest in the parlor as Mr. Wood. I had never met him before this, and I did not introduce him to Mrs. Surratt of my own accord. I never saw the man before.

"Q. What did Mrs. Surratt do?"

"A. Payne approached Mrs. Surratt and talked to her. I do not know what he said. She came to me in a few moments and said 'that this gentleman would like to have some supper, and as the dining-room below was disarranged, she would be very much obliged to me if I would take supper up to him in my own room.' I said 'yes,' and I did take supper on a waiter to him in my own room."

You notice, gentlemen, that the first time Payne ever comes to this house, he is put up in a private room and supper taken to him on the order of Mrs. Surratt; and this is in February, 1865, after he had left Mrs. Branson's, in Baltimore. I am taking these events in their order of time, because I think that is the natural way. I think it will help you to get to a just estimate of the truth of this evidence far better than it would if I skipped about and took it in any other way than in the order of time:

"Q. What occurred after the supper was carried up to your room?"

"A. I sat down there while he was eating supper and made some inquiries of him, asking him where he was from, &c. He said he was from Baltimore.

"Q. In what story was this room of yours where he had this supper?"

"A. It was in the third story.

"Q. Front or rear?"

"A. Third story—back room.

"Q. What furniture was there in the room?"

"A. There was a bed there.

"Q. The bed on which you and Surratt slept?"

"A. Yes, sir; a table, a looking-glass, and three trunks.

"Q. It was a bed-room?"

"A. Yes, sir."

At page 257 this witness testifies:

"Q. Tell what occurred while Payne was eating his supper there.

"A. I asked him where he was from. He said Baltimore. 'Any business there?' said I. He said, 'I am a clerk in the china store of Mr. Parr.'

"Q. What more?"

"A. That was about all. He ate his supper and then said he would like to retire; he did retire.

"Q. To what room?"

"A. He slept in the attic. He did not then, nor did he ever, sleep in my room.

"Q. Did you see him the next morning.

"A. No, sir; when I arose, he was gone.

"Q. When did you next see Payne at the house?"

"A. I saw Payne the next time on the evening of the 13th of March, 1865. As luck would have it, I was again sitting in the parlor when the bell rang. I again went to the door. I met the same man whom I had met three weeks before. His former visit, however, had produced so little impression on me that I had forgotten him. I asked him his name. He said, 'My name is Mr. Payne.' He again asked for Mr. Surratt, but Mr. Surratt was not at home that evening. I took him into the parlor, where were Mrs. Surratt and the ladies, and said, 'This is Mr. Payne.' They all recognized him and sat down and commenced conversation. In the course of the conversation one of the young ladies called him Mr. Wood, and then I recollected that on the previous occasion he had given the name of Wood. On this occasion he was no longer a clerk in a china store, but he represented himself as a Baptist preacher. He wore a suit of gray clothes and a black neck-tie. His baggage consisted of two linen shirts and a linen coat. The following day—I believe it was the afternoon—Surratt had returned. He was lying on the bed at the time.

"Mr. BRADLEY. Who was?"

"A. Surratt. I was sitting at my table writing. Payne walks in, looks at Surratt, and says, 'Is this Mr. Surratt?'"

"Q. You were in your room up stairs.

"A. Yes, sir; I said, 'It is.' He then looked at me, and immediately observed, 'I would like to talk privately to Mr. Surratt.' I then got up and went out of the room, as any gentleman would have done. The following day, 15th March, on returning to my room from my work, I found a false moustache on my table. Not thinking much about it, I threw it into a toilet-box that was there. From the appearance of things around my room I knew John Surratt was at home."

Surratt was his room-mate, you know.

"I then went into the back attic, and just as I opened the door I saw Surratt and Payne seated on the bed, surrounded by spurs, bowie-knives, and revolvers. They instantly threw out their hands as if they would like to conceal them. When they saw it was me they regained their equanimity.

"Q. Where did those things lie?"

"A. They were on the bed.

"Q. State what those things were?"

"A. Eight spurs—bran new spurs—and two revolvers.

"Q. How were they as to being new?"

"A. I do not now remember whether the revolvers were new or not. There were two revolvers, however, and two bowie-knives. When I went down to dinner I walked into the parlor and told Mrs. Surratt that I had seen John and Payne fencing with those things here, and added, 'Mrs. Surratt, I do not like this.'

"Q. Did you tell her what you did not like?"

"A. Yes, sir; about Surratt being seen with the bowie-knives.

"Q. Did you tell her what you had seen?"

"A. Yes, sir. I told her I had seen them on the bed playing with those toys. She told me that I should not think any thing of it; that I knew John was in the habit of riding into the country, and

that he had to have these things as a means of protection. We went down to dinner. The same evening Surratt showed me a ten-dollar ticket for a private box at the theatre. I wrested the ticket from him, and told him I was going to the theatre. 'No,' said he, 'you are not. I don't want you to go to the theatre this evening for private reasons.' He then struck me in the pit of the stomach, and took the ticket away from me again. He was very anxious that evening to take the smallest ladies in the house."

Then he goes on to tell whom Surratt took.

"Q. To what theatre did they go.

"A. To Ford's Theatre. That night, about eleven o'clock, as I was lying in my bed—I had retired—Surratt and Payne came into the room. Surratt took a pack of playing-cards which were on the mantel of my room, when they both left, and remained out all night. A few days afterward, in conversation with a young man named Brophy—

"Mr. BRADLEY. Was Surratt present?

"A. Yes, sir. In this conversation with this young man, Surratt stated that he had spent the other night, meaning the 15th of March, with a party of sociables at Gantier's saloon, and that he would like to introduce us, but it was a private club, or something to that effect."

I now turn to page 259.

"Q. I had passed to the 15th and 16th of March in my last inquiry. I now pass back to the 3d of March. Can you tell what occurred on the 3d of March, 1865; whether you saw Surratt and Booth?

"A. Yes, sir.

"Q. Where?

"A. I went down the street with Surratt in the evening of that day. At that time there was a good deal of serenading around town on account of the proposed inauguration of the President on the following day. After a while Surratt left me, and I went to hear the music.

"Q. Whom did you first go out with?

"A. John Surratt.

"Q. Was there anybody else with you when you first went out?

"A. No, sir.

"Q. Did anybody join you?

"A. No, sir.

"Q. You came back together?

"A. No, sir; we did not come back together; Surratt left me.

"Q. Where did he leave you?

"A. On Pennsylvania avenue, near Eighth street.

"Q. Then what occurred?

"A. When I returned to the house of Mrs. Surratt I saw John Wilkes Booth and John H. Surratt in the parlor, talking together.

"Q. About what time did you return?

"A. After seven.

"Q. Then what occurred?

"A. Then I proposed that we should walk up to the Capitol. Congress was at that time in session. Three of us did go—Surratt, Booth, and myself. When we were returning from the Capitol, Surratt and I left Booth at the corner of Sixth street and Pennsylvania Avenue.

"Q. What did Surratt then do?

"A. We went home.

"Q. Did you see Booth again that night?

"A. No, sir.

"Q. After you and Surratt got home, what?

"A. Nothing.

"Q. Did you see Booth the next morning, the 4th of March?

"A. I saw him on the evening of the 4th, at Mrs. Surratt's. He was in the parlor then. I did not see him during the day.

"Q. Was John Surratt at home that evening?

"A. Yes, sir; he had been riding round town all day with the procession; he was on horseback.

"Q. Did you see Herold that evening?

"A. No, sir.

"Q. Who else beside Surratt and Booth were at the house that evening?

"A. No one that I know of except those in the house.

"Q. Up to this date had you seen Herold at the town house?

"A. I met Herold at Mrs. Surratt's once.

"Q. When was that?

"A. In March, 1865.

"Q. What time in the day?

"A. After four o'clock. I generally saw these people there, and these events that I narrate, after four o'clock.

"Q. Where was Herold then?

"A. He was in my room, talking with Atzerodt and John Surratt.

"Q. He came there on horseback. Do you know how he went away?

"A. He went away on horseback. He left the horse in Mrs. Surratt's yard.

"Q. When did you next see Herold at the house? Did you see him there between that time and the 16th of March, 1865?

"A. I saw him only once at Mrs. Surratt's house.

"Q. Do you know what the play was on this night that you speak of Payne and Surratt going to the theatre with these young girls?

"A. 'Jane Shore.'

"Q. Do you know whether Booth played that night?

"A. He did not.

"Q. Do you know when he did play at Ford's Theatre next after that?

"A. He played on the evening of the 13th of March.

"Q. What did Booth play in at Ford's Theatre on the 13th?

"A. He took the part of Pescara, in the play of 'The Apostate.'

"Q. Who were there?

"A. Surratt invited me to go to the theatre that evening with him. I at first refused, but finally consented. He showed me a pass for

two, signed by J. Wilkes Booth. As we went down Seventh street, near the corner of Seventh street and Pennsylvania avenue, we met Atzerodt. He was also going to the theatre. At the theatre we met David E. Herold and Mr. John T. Holahan, a fellow-boarder at Mrs. Surratt's.

"Q. Then at the theatre that night were Surratt, Herold, Atzerodt, and yourself, and Booth playing?

"A. Yes, sir. Mr. Holahan was also there."

This, as you see, when he was playing "The Apostate" at this theatre, was less than a month before in a greater drama he played apostate, traitor, assassin, murderer. I next call your attention to the testimony of a young lady, Miss Fitzpatrick, whom we put upon the stand, who was a boarder at that house—a young girl who did not seem to remember a great deal, but she did remember some things of very grave importance. I read from page 112. She says she was living at Mrs. Surratt's house; that she knew George A. Atzerodt, but did not know him by that name.

"Q. By what name did you know him?

"A. I knew him by the name of 'Port Tobacco.'

"Q. Where did you see him?

"A. I met him at Mrs. Surratt's.

"Q. About what time was it?

"A. I do not remember; he called there one afternoon.

"Q. Do you recollect what year it was and what month?

"A. No, sir; I do not remember.

"Q. How long before the assassination was it that you saw this man?

"A. I do not remember.

"Q. Was it not the day or night previous?

"A. No, sir; that was not the night.

"Q. How often did you see this man at Mrs. Surratt's?

"A. I do not remember how often I met him there.

"Q. Did you see him there more than once?

"A. Yes, sir; I think I have seen him there more than once.

"Q. Do you remember his ever spending a night there.

"A. I remember he stayed there one night.

"Q. Do you remember what night that was—how long before the assassination?

"A. I do not remember, sir.

"Q. Could you give any approximate idea of the time?

"A. No, sir; I have no idea at all.

"Q. Do you know how long you commenced boarding there before Atzerodt came?

"A. No, sir.

"Q. Did you know a man by the name of Lewis Payne, whom you saw before the military commission?

"A. I did not know him by that name; I knew him by the name of Mr. Wood.

"Q. When and where did you first see him?

"A. I met him at Mrs. Surratt's also.

"Q. How often did you see him at Mrs. Surratt's?

"A. I do not remember seeing him there but twice.

"Q. With whom did he come, and in what company did he come?

"A. He called there one evening by himself.

"Q. How long was that before the assassination?

"A. I think it was sometime in March.

"Q. Was that the first time you saw him?

"A. Yes, sir.

"Q. In what room did you first see him?

"A. I met him in the parlor.

"Q. With whom was he talking at the time?

"A. He was not conversing with any one in particular.

"Q. Who were in the room at that time?

"A. Mrs. Surratt, her daughter Anna, Miss Holahan, and Mr. Weichmann."

She says she recognized him at the military trial as the man she had seen at the house. On page 114:

"A. The last time I saw Mr. Surratt was two weeks before the assassination.

"Q. During these visits by Atzerodt and Payne to Booth, did you see John at the house; and, if so, did you ever see or hear them conversing?

"A. I have seen them, but never heard them conversing together.

"Q. Do you recollect in the month of March of going to Ford's Theatre; and, if so, state in whose company you went?

"A. I went with Mr. Surratt, Mr. Wood, and Miss Dean.

"Q. State in what part of the theatre you were seated—whether you occupied a box or seat in the orchestra.

"A. We occupied a box, sir.

"Q. When you say Mr. Surratt, you mean John H. Surratt, the prisoner?

"A. Yes, sir.

"Q. And when you say Mr. Wood, you mean Lewis Payne?

"A. Yes, sir.

"Q. While your party was in the box did you see J. Wilkes Booth; if so, state what he did.

"A. Mr. Booth came there and spoke to Mr. Surratt. They both stepped outside the box, and stood there at the door.

"C. You mean spoke to the prisoner?

"A. Yes, sir.

"Q. State if any one else joined them while they were standing there?

"A. Mr. Wood.

"Q. Lewis Payne, you mean?

"A. Yes, sir.

"Q. How long were these three talking together?

"A. They remained there a few minutes.

"Q. Could you hear what they said?

"A. No, sir; I was not paying attention; they were conversing together.

"Q. State, if you please, where the box was—in what part of the theatre.

"A. I think it was an upper box. I do not remember what side of the theatre it was on."

On page 115, referring to the Herndon House, the witness says:

"A. I remember passing with Mrs. Surratt; I do not know what month it was.

"Q. Who were in company with you and Mrs. Surratt at that time?

"A. Mrs. Surratt, Mr. Weichmann, and Miss Jenkins."

You will observe, gentlemen, that this young girl, in both these particulars, both about the theatre and about the Herndon House, quite unconsciously and unsuspectingly confirms Mr. Weichmann expressly in these respects.

"Q. When you got to the Herndon House, state what Mrs. Surratt did, and what the rest of the party did?

"A. Mrs. Surratt went in; the others of us walked up the street a little ways.

"Q. Did you wait for her up there?

"A. Yes, sir.

"Q. How long did you wait for her?

"A. Only a few minutes there."

This is the Herndon House, where I shall show you presently, by the positive evidence of Mrs. Murray and other witnesses, Mrs. Surratt went to get the private boarding-house for Payne to stay, where she did get it, and where he did stay. I now turn your attention to another piece of evidence in connection with this. Payne was secreted at the Herndon House, where Mrs. Surratt went to provide a room for him; and this is another of those striking pieces of evidence which will always crop out in trials of this kind. It is a curious thing. In this same month, at this same time, Booth is in the city of New York, when arrangements are being made by Mrs. Surratt to secrete Payne at the Herndon House—the man who was in delicate health, and who would take his meals in his room. Now, let us see what occurred. Here is a telegram, the original, in the handwriting of J. Wilkes Booth himself, sent from New York on the 3d of March, 1865, and it reads as follows:

"To ——— WICKMAN, Esq.,

"541 H street, Washington, D. C.:

"Tell John to telegraph number and street at once.

"J. BOOTH."

"Tell John to telegraph number and street at once."

Why did not J. Booth telegraph to John? It is merely one of those modes of trying to conceal, feeling that he was in a criminal plot and wanting to take roundabout ways to accomplish the end. Why did he not telegraph to John? Why did he want it to go through Weichmann? He mentioned John's name, knowing that Weichmann, his room-mate, will show the telegram to John, and therefore he says to Weichmann, "Tell John to telegraph number and street at once." What does Weichmann do? He does tell John; and now let us see what occurs. He takes this telegram to John, finding it was something he did not understand. I read from page 261:

"Q. What did he say?

"A. I told him I thought it was intended for him. I asked him what number and street were meant. [The telegram reads, 'Telegraph number and street at once.'] He says, 'Don't be so damned inquisitive.'"

Was it any thing very strange that he should ask the question? But John says, "Don't be so damned inquisitive." The number and street was the Herndon House, where Mrs. Surratt had arranged for the room with Mrs. Murray. Booth is in New York, and wants to communicate with Payne. Therefore he wants John to telegraph the number and street at once, and when Weichmann gives it to John and asks him what it means, the reply is, "Don't be so damned inquisitive."

"That same evening he asked me to walk down the street with him. We went as far as Tenth and F, when he met a Miss Anna Ward; he then walked back from Tenth and F streets to Ninth and F streets with me, and went into the Herndon House and called for Mrs. Murray."

That was after he got the telegram to "telegraph number and street at once."

"Q. You went in with him?

"A. Yes, sir.

"Q. When she came he desired to speak to her privately?

"A. Mrs. Murray did not understand him; then Surratt said, 'Perhaps Miss Anna Ward has spoken to you about this room; did she not speak to you about engaging a room for a delicate gentleman who was to have his meals sent up to his room, and that he wanted the room for the following Monday, which was the 27th of March, 1865?' Mrs. Murray recollected, and said that a room had been engaged. The name of the party for whom the room was engaged was not mentioned by myself, by Mrs. Murray, or by John Surratt."

Now, you understand that mystery. You understood it as the testimony went along. I only now bring it together in the order of its date. Mrs. Surratt had been and engaged the room, and this innocent girl, Honora, was along at the time, and Weichmann was along, as she swears; and then John goes there to talk to Mrs. Murray about the room; and then Payne is put there; and that is to the room to be telegraphed about "number and street at once," about which John told Weichmann not to be "so damned inquisitive."

Mr. BRADLEY, Jr. With the permission of the gentleman, I will interrupt him, simply to ask a question of the court. I believe, according to the practice of your honor, it is not considered regular to interrupt a counsel in the course of his argument. What I desire to know is, whether, if there are any mis-statements of fact made by him in the course of his argument, you will allow us the privilege of correcting them after he has finished.

Judge FISHER. Yes, you have a right to call attention to any mis-statement of the record after he has concluded.

Mr. BRADLEY, Jr. Very well.

Mr. PIERREPONT. I intend that there shall be no chance for that, gentlemen, and it is for that very reason I read the testimony from the record. It is so easy for counsel, in the heat of argument, to state evidence differently and to give it a different turn and sound from what it has in fact, that I have taken this laborious way of reading the evidence upon which I rely, word for word, and giving the page from which I read. I now read upon the same subject from page 263:

"Q. This was on the 23d of March, I think. Now, on the 24th of March did any thing occur or not?

"A. No, sir.

"Q. Then, I will come to the 25th of March, 1865. Did you see John Surratt on that day?

"A. Yes, sir; as I went to breakfast, and looked out of the dining-room window, I saw John Surratt, his mother, and Mrs. Slater, who had been at the house previously, in a carriage containing four seats, to which were attached a pair of white horses.

"Q. Do you know where the horses came from?

"A. Yes, sir; Mrs. Surratt the same evening told me that the horses had been hired from Brooke Stabler.

"Q. Did the three go away together?

"A. Yes, sir.

"Q. About what time in the day did the three leave?

"A. About eight o'clock in the morning.

"Q. When did you next see Mrs. Surratt?

"A. I saw her the same evening.

"Q. Where?

"A. In her house."

This, you will note, is the 25th of March, 1865.

"Q. How did she come back?

"A. She returned alone.

"Q. Did she return in the carriage, or in some other way?

"A. In the Port Tobacco stage—the stage that runs from Bryantown or Port Tobacco to Washington, and delivers passengers at the Pennsylvania House.

"Q. Did Mrs. Slater and John Surratt return with her?

"A. No, sir.

"Q. Did they come there that night at all?

"A. No, sir.

"Q. Did Mrs. Surratt tell you any thing that occurred with them?

"A. I asked her where John had gone. She said he had gone to Richmond, with Mrs. Slater, to get a clerkship."

All manner of excuses, you will notice throughout, are given—quite unnecessary excuses, such as are always given to cover up something; excuses about the farm; excuses such as I have read; an excuse now why he had gone to Richmond. You will see them all through constantly given. They would not be given except for concealment. Presently you will see that John writes

a letter to this poor old Brooke Stabler—this broken-down keeper of livery—telling him that he does not know how long he will be gone, for he has woman on the brain. If he had had "woman on the brain," do you think he would have been very likely to make that old man a *confidante* of his loves? He did it to conceal even from him what he was about. Then you will remember that those horses came back. I pass now to page 265:

"Q. Did you go with Mrs. Surratt to church at any time, and returning, stop anywhere? I do not remember the dates. You will give them?"

"A. Yes, sir. After the 27th—I do not remember the particular evening—Anna Surratt, Miss Jenkins, Miss Fitzpatrick, Mrs. Surratt, and I, had been to St. Patrick's church, on the corner of Tenth and F streets.

"Q. What occurred in returning?"

"A. On returning she stopped at the Herndon House, at the corner of Ninth and F streets. She went into the Herndon House, and said that she was going in there to see Payne.

"Q. Mrs. Surratt said that?"

"A. Yes, sir.

"Q. Tell what occurred?"

"A. She did go, and she came out.

"Q. How long was she in there?"

"A. Perhaps twenty minutes.

"Q. Did you see her when she came out?"

"A. Yes, sir.

"Q. Where were you waiting?"

"A. We walked down Ninth street to E—the party did—and down E to Tenth; and then returned to the corner of Ninth and F, and met Mrs. Surratt just as she was coming out of the Herndon House.

"Q. Did she join you?"

"A. Yes, sir; and went home with us.

"Q. To her house?"

"A. Yes, sir.

"Q. Did she say anything to you?"

"A. No, sir.

"Q. Did you have any conversation with her that day on that subject in any way?"

"A. During that week I was going down Seventh street, and again near Seventh street and Pennsylvania avenue I met Atzerodt. I asked Atzerodt where he was going. He replied, to see Payne. Then I inquired, 'Is it Payne who is stopping at the Herndon House?' His answer was, 'Yes.' I had always been curious to know who that man was who was stopping there.

"Q. Did Mrs. Surratt tell you who it was?"

"A. When I mentioned to her, after reaching home, that the man Payne who had been boarding at her house was at the Herndon House, she wanted to know how I knew it. I just told her as I have stated here.

"Q. What did you tell her?"

"A. That Atzerodt told me. She appeared angry that Atzerodt should have said so to me.

"Q. State in what way she indicated her anger?"

"A. Merely by her countenance—her expression.

Mr. PIERREPONT. I come down now to the month of April, in which the assassination happened.

"Q. Do you know where Mrs. Surratt was on the first of April?"

"A. In the morning, when I left the house, she was sitting at the breakfast-table, and when I returned in the evening she was not at home.

"Q. When did you next see her?"

"A. She came home a short time afterwards, in a buggy, driven by her brother, Mr. Jenkins. She said she had been to Surrattville.

"Q. Did she say anything more?"

"A. No, sir.

"Q. On that first of April, or the evening of that day, did you see either of these parties at the house?"

"A. No, sir.

"Q. On the 4th and 5th, did you?"

"A. I saw Atzerodt at Mrs. Surratt's house on the 2d of April. She had again sent me, on the morning of the 2d of April, to the National Hotel to see Booth, and if he was not there to go and see Atzerodt, and tell either of them that she wanted to see him that morning.

"Q. Did you go?"

"A. I went to the National Hotel, but Booth was not there.

"Q. Did you find Atzerodt?"

"A. I then went to the Pennsylvania House, and right in front of the Pennsylvania House I saw Atzerodt standing and holding by the bridle two horses; one was a very small one, and the other a very large horse, blind of one eye. Said I to him, 'Whose horses are those?' He replied, 'One is mine and the other is Booth's.' I then communicated my message to him, and he requested me to get on one of the horses and ride back with him. I refused, stating that I wished to go to church. He then said he would go to church with me. Then I mounted the horse, and Atzerodt and I rode to Mrs. Surratt's house. Atzerodt got off and went in to Mrs. Surratt's, and I remained outside part of the time, taking care of the horses. That same afternoon Mrs. Surratt said to me that Mr. Jenkins, her brother, would like to return to the country, and that she would be much obliged to me if I would go to the Pennsylvania House and see Atzerodt, and say to him that he would oblige her very much by letting Mr. Jenkins have one of John's horses—meaning her son's horses. I went down to the Pennsylvania House that afternoon with Mr. Jenkins, and I did ask Atzerodt for one of these horses for Mr. Jenkins, stating to him my message as I had received it. His reply was, that before he could loan Mr. Jenkins one of the

horses he would have to see Mr. Payne about it. I then said to him: 'What has Payne to do with the horses? You have said that one is yours, that another is Booth's, and Mrs. Surratt says that the horses are John's.' John Surratt himself had told me that they were his, and had shown me at one time a receipt for the livery of the same two horses, the bill amounting to \$30.

"Q. What did he reply?"

"A. His answer was that Payne had a heap to do with them. Mr. Jenkins, Atzerodt, and myself then walked up to the corner of Ninth and F streets, and Atzerodt requested us to remain outside and he would go in and see about the horses."

Now, gentlemen, you will note this fact. They put Mr. Jenkins upon the stand, and did Mr. Jenkins deny this?

"Q. What house was that?"

"A. The Herndon House. He told us to remain outside on the pavement. Mr. Jenkins and I remained on the pavement for about twenty minutes. Atzerodt came out, and he told us that Mr. Payne would not consent to the loan of those horses."

We see where Payne is, pretty openly, by this time—this sick man, who was to have his meals in a private room!

"I returned to Mrs. Surratt's house, and told her what Atzerodt had said. She said she thought it was very unkind of Mr. Atzerodt; that she had been his friend, and had loaned him the last five dollars out of her pocket.

"Q. What more occurred?"

"A. Nothing more on that day.

"Q. You didn't get the horse?"

"A. No, sir; Mr. Jenkins walked home the next morning, I believe.

"Q. This was the 2d?"

"A. Yes, sir.

"Q. Now, on the 3d what occurred?"

"A. On the 3d of April, after the excitement and noise of the day, I was seated in Mrs. Surratt's parlor in the evening, on the sofa, when, about half-past six o'clock, John Surratt walked into the room. He was very neatly dressed. He had on a new pair of pants. I asked him where he had been; his answer was, to Richmond. I then said, 'Richmond is evacuated; did you not hear the news?' 'No, it is not,' he said; 'I saw Benjamin and Davis in Richmond, and they told me it would not be evacuated.'

"Q. Was Mrs. Surratt in the room at this time?"

"A. Yes, sir.

"Q. What did she say?"

"A. She merely bade him good evening.

"Q. How long did he stay there?"

"A. He went up into my room and put on some clean clothes.

"Q. Did he go with you?"

"A. No, sir; he went up before me; I went up a few minutes afterwards; I think he called me up stairs.

"Q. When you got to the room with him, what did he say?"

"A. He did not say very much; he said that he wanted to exchange forty dollars in gold. He did exchange this forty dollars in gold for forty dollars in greenbacks. He showed me in the room nine or eleven twenty-dollar gold pieces, and fifty dollars in greenbacks.

"Mr. BRADLEY. Before he made the exchange?"

"A. He made the exchange after he showed me the gold. He showed me the gold and the greenbacks at the same time.

"Q. Did he say anything as to where he had got the money?"

"A. I did not ask him where he got it; I expressed a sort of surprise. He said that he had an account in the Bank of Washington, but he did not say that he had gotten this money from the Bank of Washington.

"Q. Did he say anything when you expressed your surprise?"

"A. No, sir.

"Q. Did you see any other money that he had?"

"A. No, sir; not that evening.

"Q. Any other evening?"

"A. No, sir.

"Q. That was all the money you saw him have at that time?"

"A. I had seen him before. He always appeared to have plenty of money in his pockets—five dollars and ten dollars. He seemed to be always well supplied."

And yet you see he was a young man without any occupation and without any means; his mother a poor woman, keeping a boarding-house in the city of Washington. I now turn your attention to page 96, to the testimony of this old man Brooke Stabler, coming in with these various dates:

"Q. What was your occupation from the first day of January until the first day of June, 1865?"

"A. I was in a livery-stable; taking charge of a livery-stable.

"Q. Whose stable was it?"

"A. John C. Howard's, on G street, between Sixth and Seventh.

"Q. Do you remember the number?"

"A. I do not.

"Q. Did you know John Wilkes Booth?"

"A. I did.

"Q. Did you know John H. Surratt?"

"A. I did.

"Q. Did you know George A. Atzerodt?"

"A. I did.

"Q. Did you see them at your stable?"

"A. Frequently.

"Q. Did you see them all together there?"

"A. I have seen them together and separately.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 100.

WASHINGTON, TUESDAY, SEPT. 17, 1867.

PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 99.*

- "Q. What did you see them doing?  
"A. They were talking sometimes.  
"Q. Talking together?  
"A. Yes, sir.  
"Q. State when you first saw John Wilkes Booth at your stable, as near as you can remember?  
"A. I cannot remember exactly the time; it was about the time Surratt entered his horses at that stable in my care.  
"Q. When did Surratt put his horses at that stable in your care?  
"A. That, I think, is stated in my testimony on the other trial; I do not recollect it now.  
"Q. Can you state whether it was about February, 1865?  
"A. It was along about that period.  
"Q. In what manner did Surratt put his horses in your charge?  
"A. He left them there to be taken care of, to be fed and watered.  
"Q. How many were there?  
"A. Two.  
"Q. Will you describe these two horses?  
"A. They were bay horses. One was an ordinary horse; the other was a rather fine horse; saddle horses.  
"Q. Were both horses, or one a mare?  
"A. Both horses.  
"Q. What was the direction he gave you about them?  
"A. His direction was that he wanted them taken care of in the best manner I could.  
"Q. In reference to their use, what did he direct?  
"A. That they were not to be used, except by his order.  
"Q. Did he give you an order about their use?  
"A. He gave me an order on one occasion for Booth to use them.  
"Q. What did he say in giving that order?  
"A. His directions were that Booth, and no one else, was to have his horses, but that Booth could get them at any time.  
"Q. Booth could get either horse at any time; he did not mention any one?  
"A. I do not recollect that he did; Booth usually got one horse.  
"Q. Which one?  
"A. The better one.  
"Q. When these men came, did they come together or separately?  
"A. Sometimes two of them would come, and I believe all three of them have come together.  
"Q. How was it generally—did they all come together or separately?  
"A. There were generally two of them.  
"Q. How often in the course of a day were they there sometimes?  
"A. Two or three times a day sometimes.  
"Q. Did you see Atzerodt ride out with Surratt on any occasion?  
"A. I did on one occasion.  
"Q. Did you have any written order from Surratt?  
"A. I had one.  
"Q. Have you it with you?  
"A. I think I have. [Paper produced.]

I now come to the letter which Surratt wrote back to Stabler after he left with his horses on the 25th of March and went off with this woman, Mrs. Slater or Mrs. Brown; sometimes I believe she went by one name and sometimes by the other. This is the letter that he wrote back, having taken the horses, as you remember, on the 25th of March:

"MARCH 26, 1865.

"Mr. Brooks: As business will detain me for a few days in the country I thought I would send your team back. Mr. Bearer will deliver in safety and pay the hire on it. If Mr. Booth, my friend, should want my horses, let him have them, but no one else. If you should want any money on them he will let you have it. I should have liked to have kept the team for several days, but it is too expensive, especially as I have woman on the brain and may be away for a week or so.

"Yours, respectfully,

"J. HARRISON SURRETT."

He had "woman on the brain," had he? Was that what he went down there for? And was this poor old Stabler the man to whom he wished to communi-

cate his amour? Do you believe that is so, or was this letter for a mere blind? "I should like to have kept the team," but he could not; it was expensive, "especially as I have woman on the brain and may be away for a week or two." He had something else on the brain, that was put on his brain at the time, or at a little before the time, he wrote this card: "I tried to get leave, but could not succeed." But he took his leave and he never got a cent of the money that was due to him; he had not a cent of resources in the world, and his mother was a poor woman, as the counsel tells you, in very straitened circumstances, as she undoubtedly was. Where did he get his money? Where did he buy his horses? Do you suppose the "woman on the brain" gave him any money? He says that is "expensive." It is apt to be. From what sources did he get his money, and how did he buy his horses? How could he have them kept at this expense? "If Mr. Booth, my friend, should want my horses, let him have them, but no one else." He says he often saw Surratt ride out.

"Q. Who did you see Surratt ride out with from your stable with any of the horses?

"A. I have seen him ride out with Booth, and I have seen him ride out with Atzerodt.

"Q. Did you receive any other note from John H. Surratt?

"A. Not that I recollect of now."

His recollection, however, was refreshed and he afterwards produced the note, and it is in the case; I will presently read it. I turn now to read from the testimony of this same witness on page 100:

"A. I have seen Booth, Atzerodt and Herold.

"Q. With whom?

"A. With Surratt.

"Q. Did you omit any name yesterday?

"A. Yes, sir; Herold's name was omitted yesterday.

"Q. Did you have any conversation with either of those men in relation to Surratt's trip anywhere; and, if so, what was it?

"A. I had with Atzerodt.

"Q. State what it was.

"A. He showed me the conclusion of a letter which he had received from Surratt, stating—

"Mr. BRADLEY. Never mind that.

"Mr. PIERREPONT. You can state what Atzerodt said. What did he say?

"A. He told me that he had a letter in his hand from Surratt, but that he would not let me see it at all. He opened it, and the concluding paragraph I read.

"Q. What further did he say? \* \* \*

"A. He told me that he would not show me the letter—the body of it—but that he would show me the latter part of it. He stated that the letter was dated in Richmond, and that he had understood that the detectives were after him, and he was making his way North as fast as he could. That is about the amount of what Atzerodt told me. \* \* \*

"Q. He did not name whose particular squad, that you remember?

"A. No, sir; I do not recollect that he did.

"Q. You say Government detectives—detectives of what Government?

"A. Government of the United States."

I read now from page 103, this other order of which I spoke:

"Mr. Howard will please let the bearer, Mr. Atzerodt, have my horse whenever he wishes to ride; also my leggings and gloves; and oblige yours, &c., J. H. SURRETT,  
"541 H street, between Sixth and Seventh streets.

"FEBRUARY 22, 1867."

This is the note written by Surratt to Brooke Stabler, not only to let Booth have his horses in the other note, but also to let Atzerodt likewise have his horse,

and likewise his leggings and his gloves. Then about these men, on the same page:

"Q. What did they do when they got down to the back part of the stable?"

"A. That I do not know. They would be conversing together. Frequently I noticed that.

"Q. Will you state what the manner of the conversation was, so that these gentlemen can understand it? I mean as to whether it was in a loud or in a confidential, whispering tone?"

"A. They would generally be about one hundred and fifty feet from me; from one hundred to one hundred and fifty feet. Sometimes I would see them when they would be down there; at other times I would not; I would be busy in the office.

"Q. Could you hear any thing they said?"

"A. No, sir.

"Q. What was their manner of conversation?"

"A. It was not so that I could hear any voice at all."

I turn now to the testimony of James W. Pumphrey, page 105:

"Q. State when, where, and under what circumstances you first formed his acquaintance?"

"A. John Wilkes Booth came to my stable one day for a saddle horse; he asked for the proprietor; I stopped up and told him I was the man; he said he wanted a saddle-horse to ride for a few hours; I cannot tell the exact day that he came there; I did not know at the time it was Booth, but found out that it was after talking with him for a short while; he said he wanted a saddle-horse to take a few hours' ride in the country; I told him I could let him have one; he said he did not wish any but a good one; I told him I had a very good saddle-horse, I thought; he then said, 'I wish you would have him saddled;' I ordered him saddled, and then said to him, 'You are a stranger to me, and it is always customary with me when I hire a horse to a stranger to have him give me some security or some satisfactory reference.' At that time Mr. Surratt—I do not know whether he stood across the street or came over—

"Q. The prisoner?"

"A. Yes, sir; Surratt said he knew him; that it was Mr. Booth, and he would take good care of the horse; I cannot now tell whether the prisoner came over and said this to me, or stood on the opposite side of the street and hallooed across.

"Q. How long have you known the prisoner?"

"A. A great many years.

"Q. State as near as you can all that Surratt said at that time?"

"A. I think he said he would see me paid for it; that he was going to take a ride with Mr. Booth.

"Q. Go on.

"A. That is about all; I went in and ordered the horse to be saddled and brought out; there were some gentlemen sitting in front of my stable at the time; who they were I do not know.

"Q. What kind of a horse was it?"

"A. A light sorrel; when I came out with the horse saddled, he was gone; I asked some of them out at the door where he went? They said they thought he went to the Pennsylvania House; the boy stood at the door with the horse, and I stood out there watching for him; I saw him come out of the Pennsylvania House; he came out alone, and came over and started off on the horse alone.

"Q. I will ask you if you saw him on the 14th of April, 1865?"

"A. Yes, sir. He called at my stable that morning.

"Q. State what time it was you saw him.

"A. Somewhere between eleven and one o'clock, as well as I can remember. I did not pay much attention to the time. He called for a saddle-horse, stating that he wanted to ride that afternoon. He expressed a desire to have the same horse that he had been in the habit of riding. I told him he was engaged, and therefore he could not have him. He wanted to know if I could not put the person off to whom I had engaged him, and let the man have the horse that I was to give him. I told him I could not do that. He then wanted me to give him a good one. I told him that the horse I was going to give him was a very good saddle-horse. I told him I thought so, and he would think so after he had ridden him. He says, 'Well, don't give me any but a good one.' I told him I wouldn't; that I would give him a little mare; that she was small, but a very good one."

At page 107 Mr. Fletcher is called. He says he was at Naylor's stable on the 14th of April, 1865; that he saw Atzerodt and Herold at the stable, but not together, and that he saw Atzerodt first. On page 109 this witness states, referring to occurrences on the night of the 14th of April:

"Atzerodt came after his horse about ten o'clock. I sent one of the boys down to the stable to get the horse ready for him. He afterwards wanted to know if I would not go and take a drink with him. I told him that I had no objection. He and I then went down to the Union Hotel and had a glass of ale. He asked me if I would have any more. I thanked him, but told him I would not take any more."

This was the night of the 14th, you will remember.

"Returning back to the stable, he said to me, 'If this thing happens to-night you will hear of a present.'"

That was what Atzerodt told the keeper of the stable from whom he obtained the horse. He could not keep it in. He is so full of it and so sure of it, that he says, when he is getting this horse and drinking with him and wanting to treat him over again, "If this thing happens to-night you will hear of a present."

"When he had mounted his horse I remarked to him, 'I would not like to ride that horse this time of night; he looks too scarish.' Said he, 'He is good on a retreat.' \* \* \*

"Q. Did you see Herold again?"

"A. Yes, sir.

"Q. Where?"

"A. On the corner of Fourteenth street and the avenue.

"Q. State what he was doing.

"A. He was coming down the avenue from Fifteenth street. He was not riding very fast. It seems he knew me. I went up to him and demanded the horse."

Herold had got one of his horses this same night.

"Q. About what time was that?"

"A. I think it must have been twelve minutes past ten o'clock.

"Q. How long after you had seen Atzerodt turning up Tenth street?"

"A. I cannot say how long. I walked just as fast as I could from Twelfth street to Fourteenth street. When I demanded the horse from Herold he paid no attention to me, but put spurs into the horse and went up Fourteenth street as fast as the horse could go. I kept sight of him until he turned east of F street. I then returned to the stable, saddled and bridled a horse, and started after him."

He afterward saw the horse, as he says on page 110, at Major General Augur's headquarters, the horse having been caught in the night, after the murder.

Mr. Toffey, on page 111, says:

"On the night of the 14th, or the morning of the 15th of April last—it might have been a little after one—as I was going to the Lincoln Hospital, where I am on duty, I saw a dark-bay horse, with saddle and bridle on, standing at Lincoln Branch Barracks, about three-quarters of a mile east of the Capitol. The sweat was pouring off him, and had made a regular puddle on the ground. A sentinel at the hospital had stopped the horse. I put a guard round it, and kept it there until the cavalry picket was thrown out, when I reported the fact at the office of the picket, and was requested to take the horse down to the headquarters of the picket, at the Old Capitol prison."

And this was the horse about which we have been speaking.

I now bring your attention to another kind of evidence. On page 83 is the testimony of Mr. Samuel A. Rainey. He says he lives in Washington; has lived here for twenty years. His business is keeper of a livery stable. In answer to the question who took the livery stable with him in 1865, he says:

"A. Dr. Cleaver; his name is Wm. E. Cleaver.

"Q. Was he a veterinary surgeon?"

"A. Yes, sir.

"Q. How long did you and Cleaver continue together in that business?"

"A. To the best of my recollection some eight or nine months; not quite a year.

"Q. He and you, from the 1st of January to the 1st of June, were partners?"

"A. Yes, sir.

"Q. Were you equal partners?"

"A. Yes, sir.

"Q. Did you keep the books of the firm?"

"A. They were kept by Dr. Cleaver. My health was bad during that year; I was very little at the stable; and it is bad still; I was there off and on, but not regularly.

"Q. Did you know John Wilkes Booth?"

"A. Only by name; I was not acquainted with him.

"Q. Did he come to your stable, and did you see him there two or three times?"

"A. I remember seeing him there once or twice—once that I remember.

"Q. I suppose you know what Surratt came there for; if so, state.

"A. Yes, sir. It is customary for men coming there to have business, generally.

"Q. What was his business?"

"A. Surratt came there on one occasion to get a horse.

"Q. At what time was that?"

"A. I do not remember; my partner hired the horse.

"Q. You saw him there?"

"A. I saw him there."

His partner, he says, was Cleaver. I now turn to page 85—the testimony of Dr. Cleaver:

"Q. How long have you been a veterinary surgeon?"

"A. Seventeen years in this city.

"Q. How long have you lived here?"

"A. About seventeen years.

"Q. Were you educated as a veterinary surgeon?"

"A. Yes, sir.

"Q. In 1865, or prior to 1865, did you keep any other stable in any other place?"

"A. Yes, I kept a stable on B street.

"Q. Did you know J. Wilkes Booth?"

"A. Yes, sir.

"Q. Did you know John H. Surratt?"

"A. Yes, sir.

"Q. How long have you known John H. Surratt?"

"A. About twelve years, I think—ten or twelve years.

"Q. Have you had a speaking acquaintance with him?"

"A. Yes, sir.

"Q. What was the mode in which you addressed him and he addressed you?"

"A. He came down to hire a horse of me at the time Booth kept his horse with me.

"Q. What did you call him and he call you?

"A. I usually called him 'John,' and he called me 'Doc.'

"Q. When did Booth first bring his horse to you to keep?

"A. The 1st of January, 1865."

You will see importance in this date:

—"the day we got the stable.

"Q. And was that stable on Sixth street?

"A. Yes, sir.

"Q. What was the health of your partner at this time?

"A. He is sickly all the time.

"Q. State what horse Booth brought.

"A. He brought a one-eyed bay horse first.

"Q. What next?

"A. About ten days afterwards he brought a light-bay horse, very light bay.

"Q. Did he bring any others?

"A. No, sir.

"Q. At what time was this?

"A. In January, 1865; I think you will find it in the book there.

"Q. State whether you saw him and Surratt there together.

"A. Yes, sir.

"Q. What were they there together about; what did they say and do? \* \* \*

"A. The first time I saw Surratt there with Booth, Booth came, I think, and paid one or two weeks' livery; then, three or four days after, he came down and I hired him a horse to go into the country.

"Mr. BRADLEY. Hired to whom?

"A. To Surratt. He came and hired a horse two or three times. The next time Booth and Sam. Arnold came there together."

I now pass to near the bottom of this page:

"Q. What time was it that he got there?

"A. About seven o'clock that evening; it was raining very hard; he came about three and ordered them.

"Q. When he came at seven, what occurred?

"A. He came there; I was standing in the gangway; it was raining very hard."

Here is a fact that I pause to comment upon for a moment. They say because Cleaver has shown himself a man of violent passion in a certain way that he cannot tell the truth. I appeal to you as men of sense, to your experience, and ask you whether it is your experience that that fact ever changed a man's truthfulness so far as you know. My experience is that not even a man's getting drunk changes his truthfulness. A man may have a passion for liquor; a passion for other things. I have known some of the most honorable and truthful men, and you have, who were drunk three times a week, and whose word you would take for truth where any thing or everything was at stake. But in this case, in the testimony of this man, as you will see going through, he gives days and dates and particulars of the days, telling you how hard it was raining at this particular time, when this particular thing happened at this particular date. A record is kept here—here in the Smithsonian Institute and one other place in Washington—every hour in the day, from one year's end to another, of the state of the clouds, of the amount of rain that has fallen; whether it rains or is not raining; whether it is raining hard or not hard; and if he were not telling the truth, it would have been the easiest thing in the world to contradict him, and prove that his testimony was false. He lays himself open in every way; and yet on not one single fact have they brought a witness to dispute him.

"I asked him if he was going to the country such a night as that. He said yes; he was going down to T B, to a dance party."

This was not "woman on the brain;" this was "a dance party." Always some reason given for whatever he was doing or wherever he was going.

"I told him it would have to be a fine dance party that would take me down there such a night as that. I asked him if he would go over to the Clarendon and get a drink. He said he thought he had had enough then. I thought so too.

"Q. Did Booth come?

"A. He had not come yet; I asked Surratt into the office to sit down.

"Q. Did he come in?

"A. Yes, sir; he came in and sat there some few minutes. He told me he was going down in the country to T B, to meet a party and help them across the river."

He had forgotten the "dance" then! At first he was going down to T B to a dance, but when he got into the office he was going down for another kind of dance—

"that he and Booth had some bloody work to do; that they were going to kill Abe Lincoln, the d—d old scoundrel; that he had

ruined Maryland and the country. He said that if nobody did it he would do it himself, and pulled out a pistol and laid it on the desk." \* \* \* "He said he represented two counties in Maryland."

Well, he was pretty tolerable drunk, I suppose, at this time, and he felt as if he could represent a dozen counties. He was going to do a great many tremendous big things, and he pulled out his pistol just as he pulled it out on the ship when he thought he saw an American detective, and said that would settle him; and as he pulled it out afterwards, when he got near the coast of England and the thought was suggested to him that he might be arrested in England: he then said he would shoot down the first officer that arrested him. He pulled it out here when in the same state of mind and under the same feeling and threatened the great things he was going to do.

"Q. State whether the rain continued?

"A. Yes, sir; very hard."

It was easy to show whether it did or not and that Cleaver was lying about this. If he had been, I guess it would have been known. Cleaver did not know that the record showed the fact about the rain when he testified here, I warrant you; he had no dream of it.

"Q. Did Booth come?

"A. He came about eight o'clock.

"Q. State whether there was any conversation afterwards between Booth and Surratt?

"A. Mr. Surratt chastised him for being so late—for keeping him waiting so long.

"Q. Will you explain what you mean by the word 'chastise'?"

"A. I think he was going to hit him in the face with a glove or something of that kind—in joke, of course. He either hit at him or hit him, I do not know which.

"Q. Jokingly.

"A. Yes, sir.

"Q. I simply wanted to know whether you used the word 'chastise' in the ordinary meaning of it, or whether you meant to chide—find fault?

"A. Yes, sir; to find fault."

I shall have occasion on another subject, and in another part of this case, to recur to Cleaver's testimony on another matter, to show you from this printed book how that testimony was brought out. Whatever abuse the other side may choose to heap upon Mr. Ashley or upon anybody else who got it out, certainly Cleaver did not deserve any abuse for the mode in which it came out, for from him it came out most reluctantly. He tried to keep it in. He was an Englishman. He was our enemy. He did not want to say a word about it. He told it in confidence to a fellow-prisoner and it was there found out, and a member of Congress indirectly getting hold of it let it be known to the district attorney. It was forced out of him by power—not willingly. He did not mean to say a word.

I now come to another piece of testimony, which is very remarkable, perhaps the most so of any in this case, when you take it in all its aspects and in all its fearful bearings, and when you consider how it comes out, how unwillingly and how reluctantly. I mean the testimony of John M. Lloyd. Mr. BRADLEY, the counsel, charged him with being likely in the conspiracy himself, as I understood him. He also charged him with being a drunkard. I believe he drinks; I have no doubt about that. He was not drunk when he gave his testimony; he was not drunk when the officers of justice went there after Booth and Herold had passed his house and got the arms which this prisoner himself had there secreted, and when he told them he had not seen Booth or Herold or anybody. He was not drunk; he lied to them; he says he lied to them. He says he knew Surratt and Mrs. Surratt; he was Mrs. Surratt's tenant. He knew it would involve her in difficulty, and he wanted to shield her. He did want to shield her, and when we got him upon the stand we had to handle him with a delicacy not common and a care that kept the mind alive, I can assure you, for he would have concealed from us every important fact in this case if he could. I believe no man rejoiced more at this murder than he; I believe that no man would have helped the murder quicker than he; and I agree with Mr. BRADLEY that he was a party knowing of this crime, and believing that something

wicked and terrible was to be done, and he meant to conceal it. But his testimony is not the less strong upon that account. You saw how he tried to conceal it when he gave his testimony, and you will see now when I read it. It is at page 156:

"Q. Will you state where you lived in the year 1865?

"A. I moved to Surrattsville about the last of December, 1864. I resided at Surrattsville up to October, 1865."

I now come to page 157. He is asked whether he knew Mrs. Surratt, and he says yes:

"Q. Did you rent this house of her?

"A. Yes, sir.

"Q. Did you know David E. Herold?

"A. I knew David E. Herold; he was at my house on several occasions; I first saw him, I think, at Mr. Birch's sale.

"Q. You saw him several times afterwards?

"A. Yes, sir.

"Q. Did you see him at the conspiracy trial?

"A. I did.

"Q. Did you know one George A. Atzerodt?

"A. I never knew him by that name until two weeks before the assassination; I used to call him by the name of Israel.

"Q. By what name did the prisoner call him?

"A. Well, he came in there one morning with him, and laughingly stated something about somebody calling him 'Port Tobacco'; this is the only time I ever heard the name made use of.

"Q. Did you see him at the conspiracy trial?

"A. Yes, sir.

"Q. I will ask you if you ever saw David E. Herold, George A. Atzerodt, and the prisoner at the bar in company together?

"A. One morning, probably about five or six weeks before the assassination, Surratt and Atzerodt came to my house; Herold had been there the night before, and said that he was obliged to go to 'T B' that night; he stopped in there, and was playing cards; he played several games; the next morning Surratt and Atzerodt drove up."

You will note here that he said Herold had been here that night, and said he was obliged to go to T B. I shall bring in witnesses presently to show you what he did at T B, and what arms he had with him. I think you will remember something of it even before I come to it.

"Q. You saw the three men at your house at that time?

"A. Not until after that.

"Q. When?

"A. About half an hour after that; Surratt and Atzerodt left and went down the road, and I supposed in the direction of 'T B'; they all three returned together—Atzerodt, Herold, and Surratt.

"Q. Now we have them all three at your house; state what they did.

"A. There were several other persons besides them there at the time. I therefore paid no particular attention to them. They came in and took a drink, probably, and were playing cards, as well as I remember. After awhile Surratt called me into the front parlor, and said he wanted to speak to me. There I saw lying on the sofa what I supposed to be guns. They had covers on them. Besides these there were two or three other articles.

"Q. State what the other articles were?

"A. One was a rope—a bundle of rope as big around, I suppose, as my hat, (a black felt hat of ordinary size.) It was coiled rope. I should think from the size of the bundle that there was not more than eighteen or twenty feet in it. I took it to be an inch and a quarter rope.

"Q. What other articles do you think of?

"A. There was a monkey-wrench.

"Q. If you saw those things again would you be able to identify them?

"A. I cannot say that I could.

"Q. State what the prisoner said to you about those things after he had shown them to you.

"A. He wished me to receive those things and to conceal the guns."

This is the prisoner a little while before this murder, and these [pointing to carbines placed in evidence] are the guns, the very guns.

"I objected to it, and told him I did not wish to have such things in the house at all. He assured me positively that there should be no danger from them. I still persisted in refusing to receive them, but finally, by assuring me most positively that there would be no danger in taking them, he induced me to receive them. He did not say what sort of guns they were, as well as I can remember.

"Q. State what you did after you consented to receive and conceal them.

"A. I told him there was no place about the premises to conceal such things at all, and that I did not wish to have them there. He told me then of a place where he knew it could be done. He then carried me up into a back room from the store-room.

"Q. Had you ever been in that room before?

"A. Never; I supposed the place was finally closed up. I did not know that there was any thing kept there at all. I tried on several occasions to get in there, to have it occupied as a servants' room; for persons passing backwards and forwards very frequently stopped there in the winter with servants and I had no place to put them, but had to let them lie down stairs on my lounge."

He says he had never seen this place before, but Sur-

ratt knew it, and Surratt took him to this secret place with the guns, the cartridge-box, and the ammunition, which I shall presently show you.

"Q. After you and the prisoner went into this room with these articles state what you did?

"A. I put them in an opening between the joists of the second story of the main building.

"Q. Do you recollect of any other articles that you have omitted that he brought to you at that time?

"A. Nothing more was brought at that time.

"Q. State whether or not there was any ammunition brought there.

"A. There was a cartridge-box brought there. Whether it was full of ammunition or not I am not able to say.

"Q. Did you examine it to see whether or not there was any in it?

"A. No, sir; I did not examine any thing at all.

"Q. Did you conceal that with the guns?

"A. Yes, sir; that was put with the guns.

"Q. What did you do with the rope and the monkey-wrench?

"A. I left the monkey-wrench and rope at Surrattsville when I moved away. What has become of them I cannot say.

"Q. What part of that building did you deposit these articles in?

"A. I deposited them in the store-room.

"Q. Explain that.

"A. The store-room is a place where we kept barrels of liquor and such like.

"Q. It was not the same place where the guns were put?

"A. No, sir.

"Q. State how long Surratt wanted you to keep these articles?

"A. He told me that he only wanted me to keep them two or three days, and that he would take them away at the end of that time. On that condition I consented, and that alone."

I will take Lloyd's own testimony here, and I will ask you to say if he did not know there was mischief brewing, for which these arms were concealed; have you any doubt about that? I take what Mr. BRADLEY says on that, and I admit what he says, that Lloyd knew all about it, or enough about it to have put him on his guard, and enough about it to have made him guilty.

"Q. Did any thing else pass between you and the prisoner at that time?

"A. Nothing more, as far as I remember.

"Q. What afterward happened between these parties?

"A. I do not know of any thing particular happening after that, except that they engaged in playing cards.

"Q. How long did they stay at your house playing cards after those things had been concealed?

"A. I do not remember distinctly, but probably half an hour.

"Q. What did they then do?

"A. They left.

"Q. Did they leave in company with each other?

"A. That I cannot say; I did not see them when they left. They all went out on the porch together, as well as I remember.

"Q. When was the next time you saw the prisoner?

"A. I think I met him two or three days after that, going down to Surrattsville, and I supposed at the time that he was going to take those things away, and I said nothing to him about them.

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

"A. Nothing more than that he asked me if he could get his breakfast down there. I told him I thought so—some ham and eggs. I was on my way to Washington when I met him. He got his breakfast there, I think.

"Q. Did you see him any more after that?

"A. I saw Surratt again after that, as well as I remember, on the 25th of March.

"Q. Did you see him again before the assassination?

"A. I met him about a week after that, on the stage, about four or five miles this side of Surrattsville, returning to Washington, while I was returning home. He was on the stage, and I was in my buggy.

"Q. Did you ever see him any more?

"A. No, sir; not until now.

"Q. Did you see Atzerodt after this interview that you have described?

"A. I saw Atzerodt, I think, once after that.

"Q. Where was that?

"A. I met him about at the Selbyville post office; that is, I met him twice that day; I met him once on the Navy Yard, and in the evening while he was coming on.

"Q. Did you ever see them all in company together after that?

"A. No, sir; I think that was the only time I ever saw them all in company, that I remember of.

"Q. You have stated that you knew Mrs. Surratt, and rented this house from her. I will ask if you saw her shortly before the assassination of the President; and, if so, when and where you saw her?

"A. I met her on two occasions.

"Q. State where it was the first time?

"A. The first time I saw her was in Uniontown. I think it was the Tuesday—

"Q. Previous to the assassination?

"A. Yes, sir.

"Q. State in whose company she was?

"A. She was in company with a young man whose name I did not know. Since that time, however, I have discovered his name to be Weichmann.

"Q. Where was she standing or sitting?

"A. She was sitting in the buggy alongside of Mr. Weichmann, in one of these high, narrow buggies.

"Q. State if you had any conversation with her; and, if so, state what was said by you both at that time?"

"The COURT. What day of the month?"

"The DISTRICT ATTORNEY. The Tuesday before the assassination is the way the witness fixes it in his mind.

"WITNESS. She made use of a remark to me—called my attention to something that I couldn't understand.

"Mr. MERRICK. Who did?"

"WITNESS. Mrs. Surratt.

"Mr. MERRICK. Just state what was said, or the substance of it, not your understanding of what was said, or your failure to understand what was said.

"WITNESS. I do not wish to state one solitary word more than I am compelled to."

We called upon the court, and the court told the witness that he was compelled to answer, and he finally reluctantly answered. This question was put by the court:

"State what was said, as far as you recollect, whether you understood it or not.

"WITNESS. She tried to draw my attention to something.

"Mr. MERRICK. No matter what she tried to do. State what she did say and did do.

"WITNESS. She finally came out and asked me about some shooting-irons that were there."

This makes one feel very much as that prisoner did who got up the false *alibi* that I read to you about, who said that when the jury went out he felt such a chill come over him as he never had felt before. She finally came out and asked him about some shooting-irons that were there.

"Q. Where?"

"A. At Surrattsville, as I supposed.

"Q. She did not say that?"

"A. No, sir; as well as I recollect, in speaking of the shooting-irons, she told me to have them ready."

This was three days before the day of the murder—that fatal day. How did she know that her son had concealed those shooting-irons, now lying before you, in that secret room, that even Lloyd had not known.

"As well as I recollect, in speaking of the shooting-irons, she told me to have them ready; that they would be called for or wanted soon, I forget now which. Either expression sounded to me as if it amounted to the same thing, for I was satisfied."

What was he satisfied about? He was satisfied that Mrs. Surratt, from whom he hired the tavern, knew about that secret room behind the joists, where her son had concealed those arms. Am I drawing a wrong inference from this evidence? Is it not a fair statement of it? What do you say about it? What will you say when you go before your God about it? What do you think about it now?

"Q. Now state what you said to her?"

"A. When she made this remark, I told her that I was very uneasy about those things being there; that I had understood the house was going to be searched, and I did not want to have those things there; that I had a great notion to have them taken out and buried, or done something with."

Buried! as you bury a murdered corpse. Why buried, if they are innocent things?

"Q. What did she say then?"

"A. The conversation then dropped on that, and turned on John Surratt. I told her I had understood that the soldiers were after John to arrest him for going to Richmond; I had understood that he had gone there. She laughed very heartily at the idea of anybody going to Richmond and back again in six days, and remarked that he must be a very smart man indeed to do it.

"Q. Any thing more?"

"A. That was about the substance of the conversation that passed between Mrs. Surratt and myself at that interview; it did not last longer than between five and ten minutes.

"Q. Did you see her any more from that time until the 14th of April, the day of the assassination?"

"A. She was there on the evening of the Friday of the assassination, I think."

Now we are down to the day of the murder. She comes there again, and what occurs? The evidence of the Tuesday's proceedings we have gone through with; let us see what she did then. He says he had been to Marlboro and returned.

"Q. What persons did you find at home when you got there?"

"A. I found a good many gentlemen there—I suppose some ten or twelve. I saw there, among others, Mrs. Surratt and this man Weichmann.

"Q. State if you then had any conversation with Mrs. Surratt; and, if so, on what part of your premises, and what that conversation was.

"A. When I drove up in my buggy to the back yard, Mrs. Surratt came out to meet me; she handed me a package."

And we traced the package; here it is. [Exhibiting the field-glass.] It was done up in paper.

"She handed me a package and told me, as well as I remember, to get the guns, or those things—I really forget now which, though my impression is that 'guns' was the expression she made use of—and a couple of bottles of whisky, and give them to whoever should call for them that night."

What are you going to do about that evidence, gentlemen? Can you brush it away? If so, when you come out I hope you will tell our fellow-citizens why; that you will explain it, and let it be known to the world. She tells him to have ready a couple of bottles of whisky and to "give them to whoever should call for them that night." What was expected "that night?" Why the guns; why the cartridge-box; why that field-glass taken by her from the city that day; why the bottles of whisky, to be called for that night? Who was to call for them that night? I go further now, and show what became of the package she took from the buggy:

"Q. You speak of a package which she showed you at that time. What was it?"

"A. I did not notice the package until probably an hour later or more.

"Q. When did you notice it?"

"A. I thought of it and carried it up stairs, and it feeling rather light, my curiosity led me to open it to see what it contained. I read in printed letters on the front piece of it, 'field-glass.' These letters were on a small part of it."

His curiosity led him to see what it was, and he found what it was.

"Q. You discovered that about an hour afterwards. What disposition did you make of it at that time?"

"A. I put it with the other things.

"Q. You mean with the gun and cartridge-box?"

"A. Yes, sir."

The guns and the cartridge-box were up in that private, secret room, behind the joists, and between them and the plastering. He put the glass there that night:

"Do you recollect of any of these parties to whom I have called your attention—Surratt, Atzerodt, or Herold—coming to your house that night, after this interview?"

"A. Herold was there about twelve o'clock that night."

A little after ten that night, as you remember, the murder was committed. Herold was there about twelve.

"Q. The same person who was at your house on Tuesday?"

"A. Yes, sir.

"Q. Who was in company with him at that time?"

"A. I do not know."

He did not know who this was. We could not get him to tell, and only by some dexterity were we able to get it out of him. He was determined he would not tell that that was Booth. And when he saw that the counsel were trying to make it appear that he was so far off that he could not hear the conversation, and therefore could not give any evidence of what was said, he was ready to put him as far off as he could. We will go on with what he says here:

"Q. State what Herold said about that time.

"A. Herold said when he came into the house—when I opened the door—'Mr. Lloyd, for God's sake make haste and get those things.' He did not name what things they were."

Herold did not name the "things," but it seems Lloyd knew exactly what things they were, for Mrs. Surratt had been there a little while before, and told him to get those things and two bottles of whisky ready.

"Q. When he said that what did you do?"

"A. I went up stairs and got them.

"Q. What things?"

"A. I got one of the guns, the field-glass, and the cartridge-box, which was all I could bring down at that time, and I did not go back any more.

"Q. To whom did you give these things?"

"A. To Herold.

"Q. Did you offer any thing to the other person?"

"A. I do not think I did; I do not know whether the other person took any thing or not; if he took any thing at all, it was nothing more than a field-glass."

Then we had a great contest here about what could be told. Finally we asked him, "When did you first hear of the assassination?" He did not want to tell:

"WITNESS. I will state that at the time this man was speaking to me as to what had been done Herold was across the road. That is, as far as my memory serves me, I think he was.

"The DISTRICT ATTORNEY. At the time he was speaking of himself—complaining of having something the matter with him—was

Herold present, or in such a position that he could hear what he said?

"WITNESS. I believe Herold was present when he told me his leg was broken.

"Mr. BRADLEY. Has that anything to do with Herold?

"Mr. PIERREPONT. Yes, sir, it has.

"The COURT. The whole conversation, I presume, is evidence.

"Mr. PIERREPONT. In the presence of Herold he said his leg was broken. What further did he say after saying that?

"The COURT. In Herold's presence and hearing.

"Mr. BRADLEY. The court will rule whether he can go on and state what passed."

All this strife being to separate Herold from Booth! Now, let us see what he further says:

"WITNESS. He asked me if there were any doctors in that neighborhood. I told him only one that I knew of, Dr. Hoxton, about a half mile from there, but that he did not practice. He told me so himself. He said he must try and find one somewhere.

"Q. Did he say anything about taking any gun.

"A. He was opposed to taking any gun, and opposed to Herold taking one.

"Q. Why?

"A. Because his leg was broken.

"Q. Did he or Herold mention his name at that time?

"A. No, sir; there was no name given at all.

"Q. Did you have a good look at the man?

"A. I was close to him, but did not pay particular attention to him. He appeared to me as if he was drunk. \* \* \*

"Q. When Herold was there talking with you, what did this man who said his leg was broken say, further than what you have already stated?"

You see the great struggle—you will remember it—that we had to finally bring out from this reluctant witness that this was Booth; but we did get it.

"A. I do not remember that he said anything else. He may have done so, but if he did it has escaped my memory, except that portion that I was going to tell awhile ago, but was stopped.

"Q. You were going to tell something else?

"A. Yes, sir. I suppose it will come out hereafter.

"Q. You were going to tell something else that the man with the broken leg said, were you?

"A. Yes, sir.

"Q. What was the condition of the moon at that time?

"A. The moon was up, but it appeared to me as if it had not been up very long.

"When did you first hear of the assassination?

Then objection was made by counsel in the most zealous way to my asking the question, "When did you first hear of the assassination;" and we had a long debate; the court ruled and my question was repeated.

"WITNESS. I cannot answer that question until this other is settled."

That is, the counsel and I had been debating, they struggling to keep him from answering the question, and the court told him it was to be answered; he said he could not answer it until the other was settled!

"Q. You cannot say whether you heard of it a week afterwards, the day before, or that night.

"A. It might be the second time.

"Mr. PIERREPONT. My question is not as to the second time. I ask you on your oath to state when you first heard of this assassination.

"WITNESS. If I answer that question it will come exactly in contact, in my opinion, with what has already been prohibited by the court."

This witness was very much afraid he should do something illegal in giving his testimony, so he gave his legal opinion on the subject, and he would not answer me, and I had to call upon the court, and the court directed him to answer.

"Q. I now ask you when you first heard it?

"WITNESS. On that ground then I cannot answer."

I had a rough time, as you see.

"Q. I do not ask you who stated it; I ask you when you first heard it?

"WITNESS. That is the question I am to answer; I cannot answer it.

"The COURT. You must answer that question, when you first heard the news of the assassination."

After the witness had given his legal opinion, and after having these various efforts made by counsel, finally, after a severe reprimand by the court, the witness draws it out, "I first heard it that night."

"Q. Were they then both before your house?

"A. One was there. I do not know that both were. Herold, I think, was across at the stable.

"Q. That is the time you heard it?

"A. Yes, sir.

"Q. You think the man with a broken leg was too far from Herold to have Herold hear him?

"A. I do.

"Q. Could he see him?

"A. Yes, sir; there was nothing intervening between.

"Q. You were close to the man with a broken leg?

"A. Yes, sir.

"Q. Now tell us what he said about the assassination.

"A. He did not tell me directly what he did himself. The expression he made use of, as well as I remember, was that 'he' or 'they' had killed the President. I did not understand which it was, 'he' or 'they'?

"Q. Did he say anything about any other man?

"A. Not a word.

"Q. I mean as regards any other person being assassinated?

"A. I am not certain; but I think it is possible that he might have made use of Secretary Seward's name.

"Q. What is your best recollection?

"A. I think it was him who spoke of it, but I will not be altogether certain about it.

"Q. By what familiar or nick-name did you hear Atzerodt called?

"A. I never heard him called very familiarly by any name, except on one occasion, when Surratt told me that some ladies had dubbed him 'Port Tobacco.'

"Q. It was Surratt you heard call him that?

"A. Yes, sir.

"Q. Was Herold present then?

"A. No, sir."

The court took a recess until Monday morning at ten o'clock.

#### Forty-Eighth Day.

MONDAY, August 5, 1867.

The court re-assembled at ten o'clock, a. m.

Mr. PIERREPONT. I proceed with the testimony of Lloyd, which was nearly closed when we adjourned on Saturday. I read from page 159:

"Q. You have stated that you knew Mrs. Surratt, and rented this house from her. I will ask if you saw her shortly before the assassination of the President; and, if so, when and where you saw her?

"WITNESS. I do not wish to go into the examination of Mrs. Surratt, as she is not here to answer before this tribunal."

I next read from page 168:

"Q. You state you took the paper off the package; what did you first see?

"A. My curiosity prompted me to open the cover of it.

[The glass was here handed to the jury for inspection.]

"Q. What did you find when you removed the paper covering?

"A. I found an instrument a good deal like this.

"Q. As to the case?

"A. I found the case, I suppose, something similar to this. It was a leather case.

"Q. You found that first?

"A. Yes, sir.

"Q. Then you opened it?

"A. Yes, sir.

"Q. Whatever Mrs. Surratt left there of this kind you gave to somebody that night?

"A. Yes, sir.

"Q. Did you give it to the one with the broken leg or Herold?

"A. I think Herold took it off. As well as I remember, I did not go outside of the gate until Herold took the things. I think Herold took them out."

At page 172 he says:

"Q. Who was with Mrs. Surratt when you saw her?

"A. Mrs. Surratt was alone when I first saw her; she met me alone.

"Q. Whereabouts in the back yard did you meet Mrs. Surratt?

"A. Near the wood pile."

At page 174 he says:

"Q. Did not you testify before the military commission that you were asked by one of them if you did not want to hear the news?"

This is on the cross-examination of Lloyd. He answers:

"A. Yes.

"Q. And that you replied you were not particular, or did not want to hear it?

"A. I told him he might use his own pleasure about that; that I did not care anything about hearing it."

That was a strange thing; on that night, after the murder of the President, and when Booth and Herold were there, he says, "I did not care anything about hearing the news." Why not? For the same reason that the counsel stated the other day, he knew all about it; he expected such news.

"Q. And then they told you that the President had been killed, or that 'we have killed the President'?"

"A. 'We' or 'they'; I do not remember which.

Then, near the bottom of the same page:

"Q. Didn't you tell him (the officer) then that neither of these men had been there?

"A. I may have done so.

"Q. Don't you recollect that you did do it?

"A. I have not the least doubt I did do it. I did not want to be drawn in as a witness in this affair at all."

Now, let us see what reason is given by this man, who is a tenant of Mrs. Surratt, who is in the house, to whom the guns had been given, who knew where they were secreted by this prisoner at the bar, who went with him and saw them secreted, who received this field-glass on that same day from Mrs. Surratt, and put it with them, and from whom he received on that day the injunction to have two bottles of whisky, and those shooting-irons and things ready, as they would soon be wanted. What is the reason that this man gives under oath here?

"A. I have not the least doubt I did do it. I did not want to be drawn in as a witness in the affair at all. I knew that Mrs. Surratt's name would be drawn in if any thing was said, and I did not want to say any thing about it."

That is the reason he gives you. He did know Mrs. Surratt's name would be drawn in; he knew that Mrs. Surratt's son and Herold had brought the arms there; he knew that Mrs. Surratt's son had secreted them in that secret room; he knew that Mrs. Surratt had come there on the day of this murder, and told him to have those shooting-irons and those things ready, that they would soon be wanted, and likewise to have two bottles of whisky ready. Well might he say, then, that "I knew Mrs. Surratt's name would be drawn in if any thing was said, and I did not want to say any thing about it."

At page 176 he says:

"Q. What time in the night was that?"

"A. About midnight."

"Q. Who roused you up?"

"A. I think it was probably Herold himself."

"Q. Halloing about?"

"A. Very likely."

At page 178 he says, in reply to a question from the court:

"A. I will explain: In case of going before a court to give testimony, or any thing of that kind, I cannot in justice to myself taste any liquor without possibly making me say something or use some expression that I would not wish to, or oftentimes making me forget things I do not wish to forget."

You will remember, gentlemen, the question I put to him. I asked him whether he had any liquor on board then, but counsel on the other side objected to it. They said you could tell as well as the witness could whether he had any liquor in him then. Yes, you could tell. You remember very well when he stood there on that stand, and you know whether he had any liquor in him or not; whether he was testifying like a sober man and a most reluctant witness as he was. You well remember it. At page 180 he says further:

"Q. In your examination-in-chief I understand you to say that Herold went down below your house; that he started alone, and the next morning came back with these carbines?"

"A. The night before Herold started alone; the next morning I saw his horse at my front gate."

I am reading this, gentlemen, to show you the connection of Herold and John Surratt with these very guns and these weapons of death which were there concealed by this prisoner at the bar, brought there by Herold. I am going to show it to you.

"Q. You did not see Herold bring them?"

"A. I did not. I knew nothing about the carbines or any thing of the kind until my attention was called to them in the front room."

"Q. Herold, if I understand you, went down the night before, and the next morning came back, and when you came in you found the carbines in the room; who brought them you do not know?"

"A. I was invited into the room by John Surratt."

"Q. You do not know who brought them in?"

"A. I do not."

"Q. Do you know where Herold went that night?"

"A. He told us in the bar-room that he was obliged to go to T B that night. It was getting very late when he left. I told him that I had one spare bed, which he might occupy if he wished."

Now I am going to take him to T B, and bring up these arms here to this place, which this prisoner, in connection with Herold, concealed. Before doing that, however, I want to pass for one moment to the subject of this glass, to show how it got there—a fact in evidence about which there is no dispute. I read from page 270, Mr. Weichmann's testimony:

"Q. Now I come to Friday morning, the day of the assassination; what occurred on that morning?"

"A. On Friday morning I went to my office as usual; arrived there at nine o'clock. This was Friday, the 14th of April. Was at the office until about half-past ten, when an order came from the Secretary of War to the effect that those clerks under his charge who desired to attend divine service that day might do so."

"Q. This was Good Friday?"

"A. Yes, sir. I left the office and went directly to St. Matthew's church, at the corner of 15th and H streets. After service was over, about a quarter of one or one o'clock, perhaps, I went home to Mrs. Surratt's house."

"Q. At what time?"

"A. I got home at one o'clock or a little after one. I took some lunch, and then went up to my room and sat down and wrote a letter. About half-past two or twenty-five minutes after two, I heard a knock at my room door. In opening the door I saw Mrs. Surratt. She stated to me that she had received a letter from Mr. Charles Calvert about her property, and that it would be necessary for her to go into the country again and see Mr. Nothey, who owed her \$479, with interest on the same for thirteen years."

You will remember she had been there only the Tuesday before:

"Q. The same Mr. Nothey with whom you had seen her on the 11th?"

"A. Yes, sir. She gave me a ten-dollar note with which to go and get a horse and buggy. As I went out the parlor door, John Wilkes Booth came in. He shook hands with me and then went into the parlor. I then went to Mr. Howard's stable and there saw Atzerodt, who was endeavoring to hire a horse. His request was not complied with. He could not get one. I asked what he wanted with a horse. 'Oh,' he says, 'I want to send off Payne.' I then went to the post office and dropped the letter I had written and returned to Mrs. Surratt's house."

"Mr. BRADLEY. Did you get the buggy?"

"A. Yes, sir."

"Q. And you went back with the buggy?"

"A. Yes, sir; I went up into my room for a minute or two, and as I passed the parlor door I saw Mrs. Surratt and Booth in conversation."

This was the day of the murder, gentlemen:

"Q. What time in the day was this?"

"A. I cannot state the precise hour. It was between twenty-five minutes past two and twenty to twenty-five minutes to three. Booth was standing with his back against the mantel-piece, with his arm resting on it, and Mrs. Surratt had her back towards him."

"Q. What further?"

"A. I went down to the buggy, and Mrs. Surratt came down in a few moments, and was just about getting into the buggy when she said, 'Wait, Mr. Weichmann; I must get those things of Booth's.' She went up stairs into the house, and came down with a package in her hand. It was a package wrapped up in brown paper, tied round with a string, I believe, and, to the best of my knowledge, about five or six inches in diameter. I did not see the contents of the package."

"Q. Did you see what was done with it?"

"A. It was put in the bottom of the buggy. Mrs. Surratt stated that it was brittle. She said even that it was glass, and was afraid of its being wet. I then helped her into the buggy, and we drove off."

"Q. On the way down did any thing occur of any note?"

"A. Yes, sir; the buggy was halted once near a blacksmith's shop about three miles from Washington, on the road to Surrattsville. There were some pickets there, on the left-hand side of the road, near the blacksmith's shop. The soldiers were lolling on the grass, and the horses were grazing about. Mrs. Surratt had the buggy halted, and wanted to know how long those pickets would remain there. She was informed that they were withdrawn about eight o'clock. She said, 'I am glad to know it,' and drove off."

As you will remember, I read to you the other day the testimony of Mr. Lloyd, wherein he stated that this glass was brought there in the package, was put with the guns, and was taken away by Herold.

I now come back again to the subject of the guns and their being secreted there, being brought from T B by Herold, who met Surratt at this house, his own mother's house, and secreted the very guns which are here before your eyes, and which were the guns with which Booth and Herold fled the night after the murder was committed. I read from page 397, from the testimony of Mr. Kaldenbach:

"Q. Do you know John M. Lloyd?"

"A. Yes, sir."

"Q. Do you recollect being there sometime in the spring of 1865?"

"A. Yes, sir."

"Q. State if at that time you recovered any fire-arm there; and, if so, state the circumstances under which you recovered it?"

"A. Yes, sir; I found a fire-arm there; I lived there then; it was about the 25th of April, 1865, or somewhere thereabouts; I found it in the partition between the plastering."

"Q. What did you find?"

"A. I found a carbine; it had a covering over it."

"Q. Describe in what part of the house it was."

"A. It was between the dining-room, in the main house, and the kitchen, which was attached to the main building."

"Q. Was it concealed?"

"A. It was right between the plastering in the partition wall."

"Q. Describe fully to the jury the examination you made, and what you discovered at that time?"

"A. There were detectives there. I am not certain what date it

was; somewhere about the 25th of April. This detective was there on that night; he told me there was a fire-arm there, and said I must find it; this detective and myself went in search of it, and after searching for it for sometime I found it.

"Q. Tell the jury how you found it, where it was concealed, and every thing about it?"

"A. I took a hatchet, knocked the plastering loose, and found it between the partitions; after I found it, I went for this detective before I removed it at all; he took it in his possession and carried it off.

"Q. Who was this detective?"

"A. His name was George Cottingham, a Government detective at that time stationed down there.

"Q. State how it was you happened to go to that particular place and find it?"

"A. It was by the direction of Mr. Lloyd.

I now read from the testimony of Mr. Thompson, at page 395; he tells you further about these arms:

"Q. Where did you live in the spring of 1865?"

"A. At T B.

"Q. What were you doing there?"

"A. I was keeping a hotel there.

"Q. What was the name of it?"

"A. The 'T B Hotel.'

"Q. Do you remember anything that happened there at that time connected with Herold?"

"A. Yes, sir.

"Q. Tell us what it was.

"A. Herold came there sometime in March. I do not know what time in March, 1865.

"Q. What did he bring with him?"

"A. A sword, a couple of carbines, and a couple of double-barrelled guns.

"Q. Any thing else?"

"A. I remember nothing else except a revolver.

"Q. Nothing else?"

"A. Nothing else that I know of.

"Q. Who came with him?"

"A. Nobody at all.

"Q. What did he come in?"

"A. He came in a buggy?"

"Q. What did he do with those arms?"

"A. He put them in the bar-room until the next morning.

"Q. What did he tell you?"

"A. He told me he was going down the Patuxent river shooting ducks."

You will observe that all through, wherever a letter is written, wherever an act is done, an excuse is given for it always; some reason is given for it, as is always the case, as I have before stated, when an effort is being made to conceal crime. There was no truth in this statement, as you will see presently from the testimony.

"Q. Did he tell you he expected anybody there that night?"

"A. Yes, sir; he said he expected John Surratt there.

"Q. What did he do in the night?"

"A. Nothing at all. He came there about eight o'clock—our supper was over—and ordered supper. They had supper prepared for him, and he afterward went to bed.

"Q. Did Surratt come there that night?"

"A. No, sir.

"Q. What happened the next morning?"

"A. The next morning he got up, took his guns, and came back towards Washington.

"Q. Do you know which road he took; the roads fork this side of your place, do they not?"

"A. I do not know which way he took.

"Q. Does one road go to Surrattsville?"

"A. One road goes to Surrattsville and the other to Piscataway.

"Q. You do not know which road he took?"

"A. I do not."

I now read from the testimony of Mr. William Norton, at pages 390 and 391, on the same subject of these guns.

"Q. Will you state where you lived in the month of April, 1865?"

"A. At T B, Prince George county, Maryland.

"Q. When did you see any arms?"

"A. I saw some arms in the month of March, 1865.

"Q. Where did you see them?"

"A. I saw them at T B.

"Q. Who brought them there?"

"A. David Herold brought them there.

"Q. What did he bring?"

"A. He brought some guns.

"Q. How many?"

"A. Two.

"Q. Did he bring any thing else?"

"A. He brought two carbines.

"Q. Any thing else?"

"A. He brought a pistol.

"Q. What else?"

"A. He had a knife with him.

"Q. Any ammunition?"

"A. Yes, sir.

"Q. What else?"

"A. He had a rope with him.

"Q. Any other thing?"

"A. He had a wrench.

"Q. Any thing more?"

"A. He had a horse and buggy.

"Q. What time in the day did he come?"

"A. He came in the night.

"Q. What time in the night?"

"A. About eight o'clock.

"Q. What did he do with the things he brought?"

"A. He took them out of his buggy.

"Q. What then?"

"A. I carried them into the bar-room.

"Q. Then what did you do with them?"

"A. I did not do any thing more with them that night.

"Q. Did you or he do any thing more with them?"

"A. Yes, sir.

"Q. Did he the next morning?"

"A. He fired his pistol off.

"Q. Did he do any thing more?"

"A. He went away after breakfast.

"Q. Did he take the arms and ammunition all with him?"

"A. Yes, sir.

"Q. Do you know which way he went?"

Mr. Lloyd has told you which way he went and where he went. On page 392 Norton says:

"Q. What did Herold say to you about Surratt?"

"A. He asked me if Mr. Surratt had been there. I told him he had not. He said he expected he would be there.

"Q. Did he tell you at what time he expected Surratt there?"

"A. He said he expected him there that night.

"Q. What time in the night was it that he said that?"

"A. That was shortly after he came there.

"Q. Did Surratt come that night?"

"A. He did not.

"Q. Did you see him that night?"

"A. No, sir.

"Q. When did you see Surratt after that?"

"A. I saw him on the 3d of April, 1865.

"Q. Where did you see him?"

"A. At T B."

Now we see how these carbines got to Lloyd's. He has told us that Herold came there that morning with them from T B, and met Surratt at his house with them; that Surratt took him into the parlor where the guns lay, and told him where to conceal them. He took them there, reluctantly as he says, and did conceal them. Herold brought the guns; Surratt concealed the guns. And after the murder was committed Herold came there that very night, in company with Booth, and took one of the guns away, and it was subsequently taken from the barn in Virginia, where Booth was killed, and brought here, and is now before you. I understand my friends on the other side to have asked us in the progress of this cause to connect one thing with another; and they have frequently asked the court to strike out certain evidence because it was not connected. I think it will strike you that this is tolerably well connected. Herold is at a tavern at T B, a little below Surrattsville, with these guns. He expected to meet Surratt at T B that night, but he did not come. The next morning Herold takes the guns and goes up to Surrattsville and leaves them there in the parlor. Surratt calls in Lloyd, takes the guns, and hides them. Then, when the murder is committed, Herold goes there and gets the guns, and Mrs. Surratt, on the very night of the murder, takes this glass there, has it put with the guns, and tells Lloyd to have two bottles of whisky ready; that those shooting-irons will soon be wanted. Will you tell me, gentlemen of the jury, how Mrs. Surratt knew about those shooting-irons? She was not there when Herold brought them there, nor was she present when her son concealed them behind the plastering. Who told her about those guns? Will you answer that, gentlemen? How did Mrs. Surratt find out, on the day of the murder, when she took that field-glass there, that those concealed shooting-irons would be wanted soon? She was not there when Herold came and when her son John went into that secret room and hid them behind the plastering when Lloyd was so unwilling to have them hid. How did she find out, on the night of the murder, that her son had hid those "shooting-irons" there, and that they would be wanted that night? Does it need any answer? If it does, I will read to you the answer given by one of their own witnesses from Prince George's county whom they themselves called, old Mr. Watson, a witness upon whom they rely. I read from page 506, and you will there see the reason that he gives. It is the true reason. There cannot be any doubt about that. It is a

reason that will commend itself to everybody. He says:

"Q. In this conversation you speak of, you took sides with Mr. Bingham; you said you thought Mrs. Surratt was guilty, did you?"

"A. Yes, sir; and I think so yet."

And at page 507 he says:

"Q. In this conversation you had with Mr. Tibbett, you told him you believed Mrs. Surratt was guilty?"

"A. I did; I told him I believed she was guilty; and I think that every man"

Mr. MERRICK stopped him there, and thus prevented him from completing his answer. "I think that every man"—every man what? That every man who has heard this evidence knows and feels that Mrs. Surratt was guilty. How did she know of those arms concealed but from her son? Her son and Herold concealed them there together. Both met there on the same day. Herold expected to meet him at T B, but did not meet him there, and then he goes up to Surratsville the next morning and meets him; and Lloyd is called by Surratt, and he and Herold take those arms and hide them, and Mrs. Surratt knows all about it. Is not old Mr. Watson, who came down from that county, right, when he says on the stand, "I did say she was guilty, and I say so yet, and I told him I believed she was, and I think that every man"—. There Mr. MERRICK stopped him. "Every man"—what? Every man who has heard this evidence knows it.

If Mrs. Surratt knew where these arms were concealed, she of course got that information from somebody. From whom did she get it but from her own son, a full-grown man, who had concealed them with his own hand? Herold brings them from T B; Surratt meets him there, and calls Lloyd into the parlor; Surratt points him to the secret place where they can be concealed, and his own mother goes on the day of the murder and tells him "the shooting-irons will be needed, and this field-glass will be needed; have two bottles of whisky ready; they will be called for soon;" and they were called for before twelve o'clock that night. Gentlemen, how will you dispose of this matter? What do your honest minds say to it? It strikes me that there can be but one opinion regarding it. Every honest man, it appears to me, must entertain the same opinion as that expressed by their witness, old Mr. Watson, on the stand. There is no escaping from it. Herold, Mrs. Surratt, and the son John were all combined together in this matter, and the knowledge of one was the knowledge of all, and the knowledge came from the mother to the son. Is there any escape from it, I ask you, gentlemen? I ask you, as you will say it before your God—you will say it on your oath—I ask you, as you would say it in your dying hour, what is the truth about it? As you are impressed with the oaths of these witnesses, is there any doubt about it?

I now come down to a little piece of evidence in the same connection, at page 146. It is the testimony of Justice Pyles, from the same county, who likewise was about as unwilling a witness as any of them. He says John Surratt came before him to get some papers executed, he does not know exactly what they were:

"A. I think about three months, as near as I can recollect, before the assassination of Mr. Lincoln. About that time I had left home; I was working at my father's, or lower place, some mile or so from there. Mr. Surratt came down there for the purpose of getting me to sign some papers. I really cannot tell any thing regarding the import of those papers."

"Q. To get you to sign some papers?"

"A. Yes, sir; as a justice of the peace, in order to make them legal."

"Q. State what he said to you in regard to the object of his visit."

"A. Well, he seemed to be urgent to have me sign the papers, and having no pen, ink, or any thing of the kind at the place, we proposed to go over to my brother's, about a quarter or half a mile off, and get pen and ink there. We started, and going along I asked him about his business, and so on. The draft was on hand at that time, and I asked him about it. He said either that he wanted to get some money, or fix some papers to leave for his mother, or something of that kind. He told me he wanted to go away. I asked him where, or something of that sort, for I did not want him to go away, he had been in the neighborhood so long; and he said he wanted to go away to avoid the draft."

What these papers are we do not know. This is one of those little things that fall out in the progress of a case of this kind, which show something. Those papers were for some purpose, and they were executed before a magistrate. Now what were they. This testimony was brought out early in the case; they had the fullest opportunity to explain it, if they could explain it. It means something, or they would have explained its meaning.

We now come to the testimony of another witness of theirs, Mr. David Barry. It is a matter brief, but of much import. It will be found on page 633:

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

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

"Q. Sunday?"

"A. Yes, sir; Sunday."

"Q. They were gray horses?"

"A. Yes, sir; both gray horses."

These, you will note, were the horses that Mrs. Surratt, Mrs. Slater, or Mrs. Brown, and John Surratt took from Brooke Stabler's when they went down into the country.

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

"A. Yes, sir."

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

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

He says he saw Weichmann there, but did not speak in Weichmann's presence of having brought back the horses.

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

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

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

"A. Yes, sir."

How many names Mrs. Slater went by I do not know; but it seems she was then called Mrs. Brown.

"Q. Where did you see her last?"

"A. In Port Tobacco."

"Q. Who was with her?"

"A. John Surratt."

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

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

This is the testimony that their own witness, Mr. David Barry, gives of the conversation he had with Surratt on the day after he had taken these gray horses and had gone down there to Port Tobacco. The "woman on the brain," that he wrote about in the letter to old Brooke Stabler, was to get this woman, Mrs. Slater or Mrs. Brown, to Richmond. He sent word to his mother that if he could get her across the river he would return in the next stage; if he could not, he would go to Richmond with her. That is what he was going to Richmond for, and this, you will remember, comes from their witness, and not from ours:

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

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

"Q. Describe this woman he called Mrs. Brown."

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

"Q. She was delicate in size?"

"A. I think so; that is my recollection."

"Q. What was her age about?"

"A. I should say she was under thirty."

At page 632 he says:

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

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

"Q. How long did you remain at Port Tobacco?"

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

he intended to see a lady he had in charge across the Potomac river, and if necessary to Richmond.

"Q. You stayed all night at Port Tobacco?"

"A. I did.

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

"A. Yes, sir; I think he did."

And then he presents the letter to Stabler which I have read. This gentleman, who had two sons in the rebel army, comes here on the stand—brought by the other side—and tells you these facts; and he told the truth, and so will every honorable rebel when he is testifying under oath on the stand. A brave man will always tell the truth. As I said to you the other day so I say now, that I would select from the thirteen thousand rebel prisoners who passed those resolutions at Point Lookout willingly any twelve men to try this case, and I would have no doubt that they would bring in a verdict according to the evidence. All men of honor, all men who are brave, however much they may be misled, will tell the truth. It is only the coward and the bad man that tells a lie. It is the coward that is afraid to do his duty. It is the innocent that is "bold as a lion." It is the wicked that "flee when no man pursueth."

I next come to the testimony of Mr. Smoot, which will be found at page 70. Mr. Smoot was not, as you saw, a very willing witness. Whether he was a frightened witness or not I do not know, but he lives down in that county where I do not know what he may have thought about the sympathy that might surround him; nor do I know how much he might have been terrified by what Mr. MERRICK said to him before he came upon the stand. He told us under oath, on the stand, he having been called by the Government, Mr. MERRICK had had him in his office. That I may make no mistake, as I do not intend to tell you any evidence except what I read, so that when this case is ended no man shall say that what I have given is the construction of counsel, but it shall be the identical words of the witness that I bring before you, I will read his words:

"Q. Have not you been talking with Mr. MERRICK on the street about this case?"

"A. Yes, sir; he asked me some questions about it. He said he was after me with a sharp stick, or something of that kind."

Now, whether he was terrified any by Mr. MERRICK's "sharp stick" or not I do not know. We found it very difficult to get him on the stand. You heard his name called more than a score of times, "Mr. Smoot," "Mr. Smoot," "Mr. Smoot," all over this court-house and all over the streets, for more than two days before we could get Mr. Smoot on the stand, so reluctant was he or so terrified by the fear of Mr. MERRICK's "sharp stick." Now, let us see what he said when we did get him on:

"Q. Do you recollect of his paying you a visit when you were living in Prince George county, near Surrattsville, sometime, I think, in the month of January or February, previous to the assassination?"

"A. Yes, sir; I recollect he (Surratt) was at my house on one occasion.

"Q. Which month was that?"

"A. I disremember now. I know it was in cold weather—soon after I moved there.

"Q. How long did he remain with you on that occasion?"

"A. He went to my house at night, and went away the next morning; he stayed the night there, that is all.

"Q. Will you state if you had any conversation with him that time?"

"A. Yes, sir; I was talking with him.

"Q. State what the conversation was.

"A. I do not recollect the exact conversation. We were talking about different things all the while."

That was the answer he gave to the district attorney's question. He knew what the question related to, for he had had conversations with Mr. CARRINGTON on the subject, and yet this was his reluctant, unwilling, evasive answer.

"Q. Go on and state, if you please, how he employed himself at that time.

"A. I saw him very often; I was joking him about his going to Richmond; he never acknowledged to me that he had been to Richmond, but laughed and said, 'If the Yankees knew what he had done, or what he was doing, they would stretch his neck.'

What was he doing in the month of January or February, just before this murder, which led him to believe that if the Yankees knew it they would stretch his neck? Why did he think they would stretch his neck if they knew what he was doing and what he was going to do? He did not think they would stretch his neck because he was living here in Washington, faithful to the Government that protected him, and violating no law. Did he think they would stretch his neck for that, or did he think they would stretch his neck for a crime in which he knew he was engaged as a conspirator against the Government and a plotter to murder its chief? I will read a little further:

"Q. Describe his manner when he made use of that remark.

"A. He smiled, and raised his head up in this way, [witness throwing his head back in illustration of the manner,] and said, 'They would stretch this old neck of mine.'

Won't you ask the counsel why they did not tell you the reason he thought they would stretch that old neck of his. It never occurred to one of you or one of your sons, did it, that the Government would stretch your or his neck if they knew what you or he was doing or was going to do. He knew what he had done; he knew what he was plotting to do; and he knew that if the Government were made aware of it, they ought to stretch his neck, and he said so to this friend of his in whose house he was staying all night. "Out of the abundance of the heart the mouth speaketh." It always thus speaks. A man cannot conceal the secrets of his crime. Even before the crime is committed, the crime of the plot, the crime of the purpose, will come out from "the abundance of the heart," from the man who is staying in the house. Did you ever notice this fact? If not, note it now. If a man's heart is full of anything—I do not care what it is—and that is the burden of his heart, and you stay with him over night and talk with him at the supper-table in the evening; by the fireside, after your tea and before you go to bed; and then again the next morning when you get up and take your breakfast, if you will not say much yourself, you will find that he, unconsciously to himself, will drop out something or other which will lead you, putting it with some other thing you know or afterwards learn, to reveal the secrets of that man's heart. He cannot help it if it is a heavy burden, and out of "the abundance" of his heart it comes; it is utterly irresistible to him, and he will reveal it, even though it relates to political affairs or some great matter of business which interests him. That is well understood and well known in diplomacy; and men practice on it for the purpose of learning the secrets of a prime minister in the Government. They dine together, walk together, talk together. They appear wholly indifferent to the conversation of the one from whom they wish to draw the knowledge. And yet a skillful diplomat can, at a few breakfasts and a few dinners, and especially if he can sleep over night in the same house, learn from the closest agent who ever lived something that is in heart, if it is abundantly there; and it will affect his action and affect his advice to his own government. It is so in smaller affairs; it is always so in great ones.

I turn your honor and the jury now to page 268. You have observed that one of these witnesses has just stated that the next time he saw Surratt at T B was on the 3d of April, and I am tracing him along to that date. I read now from Weichmann's testimony as to his being here that evening:

"Q. What time in the evening of the 3d of April did he leave the room?"

"A. He left there about 7 o'clock.

"Q. What did he say?"

"A. Between half-past six and half-past seven he asked me to go down the street with him and take some oysters. He was dressed in gray clothes, with a shawl thrown over his shoulders. He told me that same evening that he was going to Montreal. We got the oysters near Four-and-a-half street and Pennsylvania avenue.

"Q. Did he tell you the day he left Richmond?"

"A. No, sir.

"Q. After eating the oysters, what occurred?"

"A. We walked back as far as the Metropolitan Hotel, and there

he bade me good night. He said he would correspond with me when he got to Montreal. I have not met him since except to-day.

"Q. On the 5th of April what occurred? Did you observe Booth or Herold?"

"A. Booth was at the house between the 3d and 10th of April, on one or two occasions. I remember on one of those occasions a letter was received.

"What time in the evening was this the case?"

"A. About seven or eight o'clock.

"Q. In the parlor?"

"A. Yes, sir. I walked into the parlor. Booth was sitting on the sofa. Mrs. Surratt was in the room, and a young lady, and Miss Anna Surratt was directly opposite Booth. I sat down at the other end of the same sofa on which Booth was sitting. After conversing for a while around the room, Booth got up and said: "Miss Ward, will you please let me see the address of that lady?"

Miss Ward has not been produced here.

"Miss Ward advanced to meet him in the centre of the room, and handed him a letter. After Booth and Miss Ward had gone out, Anna Surratt got up and said, 'Mr. Weichmann, here is a letter from brother John,' and read the letter. No lady's name was mentioned in it."

Booth was there in the room; and here was a letter from John Surratt, and Booth wanted to conceal from Weichmann, who was there, from whom the letter was, and said he wanted to see the "address of that lady," but it turned out that there was not any lady about it. I next read from page 269:

"A. On the evening of the 10th Mrs. Surratt asked me if I would not be kind enough to drive her into the country on the morning of the 11th of April. I consented.

"Q. What day of the week was that?"

"A. That was Tuesday.

"Q. Did you go with her?"

"A. Yes, sir; the following morning.

"Q. What time did you leave?"

"A. She said to me, 'Mr. Weichmann, won't you go round to the National Hotel and tell Mr. Booth that I sent you for his horse and buggy, and desire to know whether I can have it.' I did go to the National Hotel, and found Booth in his room. I communicated my message just as Mrs. Surratt had told me. He said 'I have sold the horse and buggy, but here is ten dollars; go you and hire one.'"

Booth furnishes the money for Mrs. Surratt to go into the country on this fatal errand to aid in this fatal expedition.

"In speaking about the horses I said to him, 'I thought they were John Surratt's horses.' 'No,' says he 'they are my horses.' I left the hotel, and went to Howard's stable and hired a horse and buggy. I then went to Mrs. Surratt's house. We left the house about half-past nine o'clock. As we were on our way down to Surrattsville we met Mr. John M. Lloyd."

At page 270 the witness continues:

"Q. After this conversation what did you do?"

"A. I drove to the tavern.

"Q. What occurred there?"

"A. She wanted to meet a Mr. Nothey there, but when we arrived at Surrattsville, at half-past twelve p. m., Nothey was not there, and she had a messenger despatched for him, with word that he should meet her there at two o'clock. We then drove further on to Mr. Bennett Gwynn's, where we took dinner. After dinner Mr. Gwynn, Mrs. Surratt, and myself returned back to Surrattsville."

I now bring your attention back to the 3d of April. On the morning of the 3d of April we found Surratt at T. B. In the afternoon of that day he came to Washington, reaching here about half-past six o'clock. At seven o'clock he went out with Weichmann to an oyster-saloon and took some oysters, and said that he was going to Montreal. Weichmann and he parted then, and Surratt did not return to the house again that night, nor sleep there that night, nor is there any pretence that he did, nor one particle of proof that he did. He shook hands with Weichmann as at parting and promised to write to him from Montreal. This was about seven o'clock, and he did not return to that house. I call your attention to this for the purpose of showing you that the attempt which has been made here to show that it was on that night that Susan Ann Jackson saw him there is entirely an impossibility, entirely a mistake. She neither saw him there at that time nor was that the time when the clothes were left there to be washed, but I will show you presently when they were left there to be washed, and whose clothes were left there for that purpose. It came out from their own witnesses, little thinking what a terrible fact they were thus relating, when they told you about Holahan going there the next week after this murder and finding Surratt's handkerchief lying on the bed, clean, not having been put away, but just brought from the wash, with

Surratt's name upon it. I have no doubt that is true; I have not any doubt that Holahan found the handkerchief there at the time he swears he did; but they had little idea of what a terrible truth they were telling when they brought out that fact. Susan Ann Jackson told you that on that Friday night some clothes were left out there, and that Mrs. Surratt told her they were her son's, and that that was her son John. This she said was somewhere about nine o'clock in the evening. After they had all had supper, she brought in an extra pot of tea, having cleaned up the table, for her son John. And on that Friday night she took out those clothes, and they were John's clothes; and the next week Holahan goes there and finds them clean, lying on his own bed, in his own room, with John Surratt's name upon them. It is the way that God Almighty in His inscrutable designs brings out the truth even from those who are trying to conceal it. I now call your attention to page 272; I am still reading from Weichmann's testimony; and this is about the night of the murder, the return from Surrattsville, where she had left the field-glass with Lloyd and told him to have "those things ready:"

"A. We left Surrattsville on our return home about half-past six in the evening.

"Q. What occurred on the way home with Mrs. Surratt; was she very cheerful on the way returning?"

"A. On our way home she said she was very anxious to be home at nine o'clock; that she was to meet some gentleman there."

And we shall presently see that she did get home about nine o'clock. There is no dispute about the time she left Surrattsville, and she could not have got home before nine o'clock, and she did not. You will remember that on the 3d of April, when her son was there, he had left the house at seven o'clock, and did not return to it. This was the 14th.

"I asked her who it was—if it was Booth? She made no reply.

"Q. What further occurred in returning?"

"A. I further stated something about Booth's being in the city here and not acting; I asked her why he was not acting. Her reply was, 'Booth is done acting, and is going to New York soon, never to return.' She turned round to me and asked if I did not know that, or if I did not know that Booth was crazy on one subject. I told her I did not. What that one subject was she never stated to me. On our return we met the pickets I had seen stationed on the left side of the road as we went down. The soldiers at this time were on their horses, returning to the city. Our buggy passed right between them. I should suppose there were four or six soldiers on horseback, and I remember distinctly that the buggy passed right between them.

"Q. When you got on the hill in front of the city did anything occur?"

"A. Yes, sir; just about two miles from Washington there is a very high hill, which commands a fine view of the city. That evening of the 14th there was a brilliant illumination in Washington, on account of the restoration of the flag over Fort Sumter. I made some remarks to Mrs. Surratt, saying that it was better for the country that peace should return. She said, 'I am afraid that all this rejoicing will be turned into mourning, and all this gladness into sorrow.'"

No doubt she thought so. She had just left Lloyd's, where she had told him to have those shooting-irons and two bottles of whisky ready, that they would be wanted soon, and she could not help saying, as she came in that night and saw the rejoicing and the city illuminated, "All this rejoicing will be turned into mourning, and all this gladness into sorrow." Why did she say that? Why did she feel that? Because she knew the arms had been concealed at Lloyd's house by Herold and her son; she knew what orders she had given about them, and she knew what plot was on that very night to be carried into execution, and she could not help bursting out on that night when she returned, "All this rejoicing will be turned into mourning, and all this gladness into sorrow." There was nothing very unnatural in this, with the heart so full and the bosom oppressed with such "perilous stuff" as it then contained.

I want you to note the time of day, for it has a bearing upon the question as to the time when Susan Ann Jackson saw this young man at the house and took the clothes to wash:

"Just as we came into Pennsylvania avenue, near the Capitol, we saw a torch-light procession coming either up or going down the avenue. The horse shied at the brilliant lights, and we were compelled to turn up Second street."

This was not in the day-time, but just about nine o'clock at night, and you know she wanted to get home at nine o'clock.

"Q. After turning from the torch-light procession, where did you then go?"

"A. We arrived at home at nine o'clock, or a few minutes before nine. I helped Mrs. Surratt to get out, and then returned the buggy. We left Surrattsville at half-past six, and it takes two hours or two hours and a half to come to Washington."

Nobody has disputed this; all agree upon the time they left and all agree upon the time they arrived here; nine o'clock in the evening on which Susan Jackson saw that son when he left his clothes to be washed, which Holahan the next week took and put in his pocket.

"I returned the buggy to Howard's stable, which was right back of Mrs. Surratt's house on G street; I then immediately returned home; I then went down and partook of some supper; Mrs. Surratt the same evening showed me a letter which she had received from her son. While I was sitting there eating supper with Miss Fitzpatrick, Miss Jenkins, Miss Surratt, and Mrs. Surratt in the room, I heard some one very rapidly ascending the stairs.

"Q. What occurred with Mrs. Surratt after the footsteps descended the stairs; did she come down or remain up?"

"A. She remained in the parlor. After supper I went into the parlor, and the young ladies who had been at supper with me also came into the parlor. We sat and talked there. Mrs. Surratt once asked me where the torch-light procession was going that we had seen on the avenue. I told her that I thought it was a procession of arsenal employees going to serenade the President. She replied that she would like to know very much, as she was interested in it. As I recollect now, her manner appeared to me to be very nervous and very restless. I once asked her what was the matter. She said she did not feel well. She had a pair of beads in her hands."

Mr. MERRICK. "She had some prayer-beads," it is in my book.

Mr. PIERREPONT. "A pair of beads," it is here.

Mr. MERRICK. The second edition is different from the first.

Mr. PIERREPONT. This is the first edition, and is correct; and it reads, "she had a pair of beads in her hands." I know it to be correct for this reason: I did not understand the expression; I supposed that beads would be used rather in a string or something of that sort, and I made the inquiry of the witness to know what "a pair of beads" meant, and he told me that that was the way in which they express beads. This is what he said, but the difference is wholly immaterial. I do not understand the beads myself, but I understand they are called "a pair of beads." If there is anybody here who understands it, he will know whether it is so or not. Probably some of you, gentlemen, know whether speaking of them as "a pair of beads" is correct or not. It is immaterial whether it is "pair of beads" or "prayer beads."

"She was walking up and down the room. She once asked me to pray for her intentions. I asked her what her intentions were. I said I never prayed for any one's intentions unless I knew what they were."

You remember Miss Honora Fitzpatrick told you the same thing, that Mrs. Surratt was walking up and down the room, but she said that she did not hear Mrs. Surratt say what Weichmann stated, but she said Mrs. Surratt was walking up and down the room. I do not understand the full meaning of this praying for intentions; perhaps some of you do. I believe it has a meaning in the Catholic Church, which is a potent meaning; but not being familiar with it, I am not going to undertake to explain it. If any one of you is familiar with it, he knows what it means much better than I do, and I will leave it to you. I now turn to page 280:

"Q. How often was Booth at Mrs. Surratt's house two or three months prior to the murder?"

"A. He came very frequently. It was a very common thing for me to see him in the parlor with Surratt, when Booth was in town, after four o'clock. They appeared like brothers.

"Q. Was there any term by which Booth was called?"

"A. Mrs. Surratt appeared to like him very much.

"Q. What term did she use in speaking of him?"

"A. I heard her once when Booth had stayed two or three hours in the parlor call him 'Pet,' saying, 'Pet stayed two or three hours in the parlor last evening.' I am positive she used the word 'Pet.' She named the hours from ten at night until one in the morning."

At page 281 will be found these remarkable telegrams that Booth sent; they are here, all original, in

his own handwriting. It seems that those that he had and expected to have in his employ received their communications and their orders from him from time to time. You will recollect that I showed you the other day this card, [exhibiting the card,] on which "J. Harrison Surratt" writes: "I tried to get leave, but could not succeed." As you will recollect, we proved that he tried to get leave from Adams Express Company, but failed to do so. Booth did not like to have any of the men engaged in this conspiracy let their business affect them, and he therefore telegraphed in these words:

"NEW YORK, March 13, 1865.

"To M. O'LAUGHLIN, Esq., No. 57 North Exeter street, Baltimore, Md.:  
"Don't you fear to neglect your business. You had better come at once."  
J. BOOTH."

And

"NEW YORK, March 27, 1865.

"To M. O'LAUGHLIN, North Exeter street, Baltimore, Md.:  
"Get word to Sam. to come on. With or without him, Wednesday morning we sell—that day, sure. Don't fail."  
"J. WILKES BOOTH."

We suppose the "Sam." mentioned to be Sam. Arnold, who was one of the conspirators, but that we do not know. I do not undertake to tell you that I know things which the evidence does not prove. I have a right to infer, however, when Sam. Arnold is proved to be one of the conspirators and has taken his fate for it, that he is the one alluded to.

"With or without him, Wednesday morning we sell—that day, sure. Don't fail."

You will remember that the thing they were selling was "ile," as they called it. They were deep in oil stocks; they were going "to strike ile," as they called it; and when the thing was to be done, then they were to sell the "ile" stock and make a great deal of money out of the oil.

I now turn to page 285, and show you the letter which, on the 12th of November, 1864, Surratt wrote to Weichmann. Here is the letter, and here is the card, and here is the letter he wrote to Atzerodt. [Exhibiting them to the jury.] You see whether it needed any expert to find out that these were written by the same hand. Here is a card which nobody disputes, and here is the letter to Atzerodt, which nobody will dispute who reads the card and the letter to Weichmann. It does not require any decipherer to find that out. They are exactly the same turn, the same slant, the same bearing. There is a curious fact connected with one of these letters. This letter to Weichmann, Surratt commenced to write in the same hand in which he wrote the card and the letter to Atzerodt, but before he gets to the bottom he completely changes it. You can hardly find two handwritings more unlike than that at the commencement of this letter and that at the close; and yet we know that it was all written by him. He seems to have a good deal of skill in that kind of thing—in making these changes. Some men, I know, have that faculty; I have not. I could not write two hands like these; some of you perhaps could and some could not. I know plenty of men who could. Now, let us see what this letter is:

"SURRETTSVILLE, November 12, 1864.

"DEAR AL.: Sorry I could not get up. Will be up on Sunday. Hope you are getting along well. How are times—all the pretty girls? My most pious regards to the latter; as for the former, I care not a continental d—n. Have you been to the fair? If so, what have we now? I'm interested in the bedstead."

Who do you suppose "the bedstead" means? I do not know. It did not mean a bedstead, I guess.

"How's Kennedy? Tight, as usual, I suppose. Opened his office, I hear. Fifty to one 'tis a failure. Am happy I do not belong to the 'firm.' Been busy all the week taking care of and securing the crops. Next 'nesday, and the jig's up. Good-bye, Surrattsville. Good-bye, God-forsaken country. Old Abe, the good old soul, may the devil take pity on him. JOHN H. SURRETT.  
"To LOUIS J. WEICHMANN, Esq., Washington city, D. C."

I now turn to page 286, where we learn a little more about the oil business:

"Q. Did you hear any thing said by Mrs. Surratt or John about a cotton or 'ile' speculation?"

"A. Yes, sir. Shortly after Surratt's introduction to Booth, Sur-

ratt told me that he was going to Europe; that he was engaged in cotton speculations. He stated this in the presence of his sister."

No sister has been brought to deny this. No inmate of the house has been brought to deny this statement, or any part of it.

"He said that \$3,000 had been advanced to him by some elderly gentleman residing in the neighborhood."

That was rather odd, that this elderly gentleman should be advancing to him \$3,000 for him to engage in cotton speculations and go to Europe with. They did not tell us who he was, and we have not seen him. The statement goes on:

"And that he was going to Liverpool, from Liverpool to Nassau, and thence to Matamoros, in Mexico, to find his brother Isaac. He was in the habit of stating that very frequently."

Why do you suppose he stated it so very frequently? It was because there was not a word of truth in it, and no intention of that kind, and no such purpose. It was said simply to divert the mind from the real purpose, which was this conspiracy.

"At another time he said he was engaged in the oil business; he had six shares of oil stock. Once he even approached me and asked me if I would not write an article for the newspaper, to the effect that John Wilkes Booth, the accomplished actor, in consequence of having erysipelas in his leg, had retired from the stage and was engaged in the oil business. He stated that Booth had made quite a fortune, and had presented his sister with the money he had made out of the oil."

We have not had any evidence about the oil speculations that Booth was said to have gone into. We had this testimony early in the case. We do not find that Booth ever entered into any oil speculation in reality, but you will find, when you read his letter, where he said "strike, and strike deep," that the oil he wanted was the blood of the murdered Lincoln, and the oil he attempted to get was from the heart of that great, good man.

Now, gentlemen, we pass to another subject, and one you will all remember. It is general, and yet it is particular. It relates to this subject very directly, although at first view it would seem to be indirect. Let me take you back to the time of the Charleston convention, in the month of May, 1860. The great Democratic party of this country there met for the purpose of nominating a candidate for the Presidency of the United States. They had the power absolutely in their hands. Mr. Lincoln had already been nominated by our adversaries. All of us knew that if we made a wise nomination we could elect the man we nominated, if we went into it heart and soul, and shoulder to shoulder, as we had done in former years. What happened? When the convention met, and those who loved their country and loved its Government were willing to make every sacrifice for harmony, those who were determined to put an end to their Government succeeded in breaking up that convention, and putting an end to a cordial and harmonious nomination of some member of the Democratic party who could have been elected and saved the country from this bloody war. What followed? That followed which they intended should follow. The leading men in the conspiracy against the Government intended that Abraham Lincoln should be elected. That is what they wanted. They wanted an excuse to turn traitor to this Government; to break it up and establish a new one, in order that, as one of them told me with his own lips, they might have a Government of gentlemen, in which gentlemen should rule, and in which the negro and the low white should take no part, except as the laborers for those who governed. That was their purpose. They succeeded to a certain extent. Mr. Lincoln was elected. Then came various plots and plans against this Government. One was to force Buchanan to resign, in order that Breckinridge, the Vice President, might take possession of the Government and by force prevent the inauguration of Lincoln, on the ground that he was not constitutionally elected. That failed, and then a plot was entered into for the purpose of preventing his inauguration by force in another way. Mr. Lincoln was, however, finally inaugurated, and then, when the confederacy found that

there was going to be earnest war, and that this Government was not to be put down, that freedom was raising her voice, and that our freedom-loving people, who loved this Government, would peril their lives, their fortunes, and their honor to support it; that they would do it in the South; that they would do it in Virginia, as my noble friend the district attorney did most gloriously, and that from North to South the feeling in favor of the old flag was such that they would have a bloody business before they could destroy this blessed Government, then what did they attempt to do? Various plots were formed for the purpose of seeing how they could overturn this Government and throw us into confusion. At first the thought was to kidnap the President and take him off. That they soon discovered, however, required a machinery too complicated, too great, too difficult; in short, it was impossible. It was a great deal easier to have him shot dead, or stabbed, or poisoned, and the parties flee, than it was to undertake to carry him off. They found very soon that that was impossible. This whole subject has been investigated. It was stated here that this conspiracy commenced in 1863. It did commence at that time. We did at one time think of going into its early inception; but we found that that was not necessary, and would only lumber and complicate this case. That scheme of abduction was early abandoned. They found that it was impossible to carry it out, and then they attempted to lay the plan for the murder of the President, the Secretary of State, and the Vice President, and thus throw the Government into confusion, when, in view of the hostility which existed between different parties at the North, they hoped the Government would be overthrown, and they could march into the city of Washington, and the great slaveholders who had ruled this country could continue to rule it with a rod of iron, and that the poor white and the humbler citizen even who was not poor, should bow in subjection to their love of power and be ruled by an oligarchy instead of by the free ballots of you all. You would not have it so. The loyal people of Virginia would not have it so, nor of Maryland, nor of this District, nor of the northern States; and they rose in their might and forbade it.

Now, what occurred? Mr. Lincoln had gone on in power, and the Government was succeeding, with difficulty, to be sure, for there were great dissensions among us, as there always are in a great commotion, as there always are in a great revolution like this. Brother was arrayed against brother, and father against son. Even here, even in my own city, hostile were we to the exercise of arbitrary power through the military; hostile were we to many acts of this Government, and many of us felt that it was not carried on in the manner in which we desired to have it carried on. It was believed that when these passions were thus aroused, and these parties thus arrayed, the one against the other, if Mr. Lincoln could be got out of the way, such confusion might be created in the North that the South might carry out their plan of their separate and independent Government, which would have resulted in an absolute loss of liberty to every one of you. You cannot have two great powers situated side by side, of a common origin, of a common language, and a common religion, where there is no natural boundary, and where only an imaginary line cuts off the great rivers which empty into the sea, without having eternal war; and from eternal war liberty always shrinks away, and the military commander becomes supreme and absolute. Liberty always perishes under such circumstances.

In 1864, as early as the month of April, by one of those providential occurrences which often happen in this world, Mrs. McClellan, standing down on the avenue, waiting for a car to pass, saw three men talking together, and heard them talk about the Soldiers' Home, where Mr. Lincoln was then staying, and to which place, in the afternoon, he used to ride out with his wife and little boy; heard them speak about a telescopic rifle, and heard one of them remark that his wife

and little boy were generally along; heard another one say "we must put them out of the way, if necessary." Mrs. McClermont, one of your own citizens, born here, and who has lived here all her life, comes and tells you this. She tells you who the men were. She knew them. She knew Booth, she knew Herold, she knew Atzerodt; and those were the men. So early as that she overheard this conversation. You do not suppose she was lying about it. She had no motive to lie. You must believe her, and I am sure you do believe her.

Now let us see who this Herold was that she met there at this time. You have heard some account given of him when he was arrested at the time Booth was killed. Booth called him a boy—an innocent boy—and said that he wanted to surrender. You will notice that Booth had a kind of romantic gallantry about him, which led him to always take the blame upon himself. Booth wanted to come out, and urged Colonel Conger to let him come and fight his whole command. He told him he was a brave man, and asked the privilege of coming out with his carbine, which he had in his hand, and he lame, and fighting them all. He meant to sell his life at the costliest price he could. He meant to lay at his feet some one or two or three or more before he surrendered. He wished to shield Herold, who was with him, and who he said was an innocent boy; for he prayed, and how could he pray if he was guilty. He wished to shield all. He wished to take all the responsibility upon himself. He imagined himself a greater than Brutus; and yet, strange to say, he thought all were against him, and even doubted whether God could forgive him. Indeed, I think he says he knew He could not. A strange, wild notion he had after the strange drama in which he had been such a bloody actor. It is not strange that his mind had become unhinged; not strange that he had run to these wild extremes in his thoughts about dying for his country, as he called it. But who was this Herold? He was a little clerk, humble and poor; he was employed in the drug-store of Mr. Thompson. He went there in March, 1863, and stayed there until he was discharged, as Mr. Thompson tells you, the following fourth of July. How happened this weak young man, with neither pluck, nor courage, nor physical strength, nor genius, nor power, to have been brought into this great conspiracy? You can see why Payne was, why Atzerodt was, why Surratt was; but why this weak Herold was brought into it it is not so easy at first sight to discover; but when a certain fact is mentioned it can very easily be accounted for. Mr. Lincoln got his medicines at the drug-store of Mr. Thompson, where Herold was, and if Herold could be made a party to the plot, there might be a chance to poison Lincoln, and thus the thing be done without the great violence and risk which would attend the shooting of him. We shall show you more of this in the evidence as we proceed, and from Booth's own hand; it is very remarkable, too. That is why Herold was brought into this conspiracy; and, being in it, he had to be kept in it. After he was discharged from this store on the fourth of July, 1863, he never went into any other employment, but kept with Booth until the day that Booth was shot, after the murder. There is no evidence to show that he was in any other employment from the hour he was discharged from this drug store, where Mr. Lincoln got his medicines, until he was taken and put in irons and finally disposed of by the military tribunal.

The court took a recess for half an hour, re-assembling at 12:30.

Mr. PIERREPONT. Gentlemen, I now come to an act in this dark drama, which, though strange, is not new. So wonderful is it, that it seems to us to come from beyond the veil which separates us from death. As I have already said, "all government is of God." The powers that be are ordained of God, and for some wise purpose which we do not understand the great

Ruler of all, by presentiments, by portents, by bodings, and by dreams, sends some shadowy warning of the coming doom when some great disaster is to befall a nation. So was it in the days of Saul; so was it when the great Julius Cæsar fell; so was it when Brutus died at Philippi; so was it when Christ was crucified, and the wife of Pontius Pilate said to her husband, "Have thou nothing to do with this man, for I have suffered many things this day in a dream because of him;" so was it when the great Henry IV of France was assassinated; so was it when Harold fell at the battle of Hastings; so was it on the bloody day of Bosworth field; so was it when the Russian Czar was assassinated; so was it and so has it ever been when men in high governmental places have been stricken down by the assassin's hand; so was it before the death of Abraham Lincoln, the President of the United States. In the books which I hold in my hand—in this *Life of Cæsar*, by De Quincy; in this *Life of Pompey*, by Plutarch; and in this presentation which is given in *Julius Cæsar* by the great dramatist, Shakespeare, are related the portents which came to warn Pompey of his doom when he left his ship and landed on the coast of Egypt; and the warning given to Julius Cæsar, not only in the dream of Calphurnia, his wife, but in his own dream on that bloody day when he was assassinated in the Senate. The same was true, as I have told you, when the Prince of Orange was assassinated; the same was true when Henry IV of France was assassinated; and this other strange historic fact is equally true, that never in the whole history with which we have been familiar has there been a single instance of the assassination of the head of a government in which the assassins have not all been brought to justice. It is a terrible thing to fight against God. Government being of God, any attempt to throw a people into confusion and anarchy is fighting against God, and in no instance has he ever suffered a man guilty of such a crime to go unpunished. Though he may have taken unto himself the wings of the morning, and fled to the uttermost parts of the earth, yet the eye of God has watched him and the hand of justice has brought him back to give a rendition of his bloody account.

On the 14th of April, 1865, Abraham Lincoln called together his Cabinet. He was in good spirits, for, as you well remember, we had at that time been receiving the most gratifying and cheering news; but still upon his soul there lay a heavy gloom, and he remarked, "I am very anxious to hear from Sherman." The reply was, "You will hear good news from Sherman. There cannot be any doubt about that." General Grant was there, and he knew Sherman. He took occasion to assure the President that the news from Sherman would be all right. "I do not know," replied Mr. Lincoln, "I am very anxious to hear from Sherman. I feel that some great disaster is coming upon us. Last night I was visited by a strange dream, the same strange dream that in the darkness of the night, when deep sleep falleth upon men, hath three times before visited me. Before the battle of Bull Run, before the battle of Stone River, before the battle of Chancellorsville, it came to me in the same identical distinct form; and the following day came the news of the disaster. And now, last night, this same dream came to me in my sleep, and I feel that some great calamity is to befall this nation, of which I am a part." The members of the Cabinet who heard that will never forget it. In a few hours afterwards he did not hear from Sherman, but there came a realization of the dream, and his spirit was led up to the eternal Godhead.

In this connection a thing appears in no respect less strange. I hold in my hand two letters—those found by Mrs. Benson in the railroad car. One is written in a delicate female hand. You have seen them before, but I want you to see them again. You will not easily forget them; and after you have heard all the history there is connected with them you will tell it to your children. You have not any doubt that that was writ-

ten by a woman, have you? [Exhibiting to the jury the letter signed Leenea.] When you heard it read, you had not any doubt that it was composed by a woman. It has all of a woman in it—a woman with a love for her husband and a devotion to her only child. It came with this letter. [Exhibiting the letter signed Charles Selby.] I want you to notice the endorsement on the envelope; it will become historic. These papers will never pass out of the possession of this Government, except by theft. The endorsement is "Assassination—General Dix," written in the hand of President Lincoln. There is a remarkable history connected with this letter. Let us trace it. Mrs. Benson, it seems, was in the city of New York, riding in a railroad car with her little girl, in 1864—just after the re-election of Mr. Lincoln, as you will remember, and this wonderful thing occurred. There is a further history about this more startling than what I have given. Let us see what this woman says. She is brought here from Canada, put upon that stand, and tells you her simple tale. Let me read it to you:

"Q. What time in November was it—the first or last part?"  
"A. It was about the 14th, I think."

And when we turn to the record of the National Hotel we find Booth was in New York on that day, and did not return here until the 15th. As I have said to you, gentlemen, every truth in the universe is in perfect harmony with every other truth. I pledge you my word, my honor, and my eternal hope of salvation that there is not a word of this evidence upon which the Government have relied that is not in perfect harmony with every other word, as you will see as we proceed; for I repeat, every truth is in perfect harmony with every other truth. So God has ordered it. If falsehood is brought in, it dislocates it. What does Mrs. Benson say in her testimony? I will continue the reading:

"Q. What is it that enables you to recollect the month?"  
"A. The circumstance of picking up letters in regard to the assassination."

"Q. Do you recollect of General Scott and General Butler being in the city at that time?"

"A. General Butler had been in the city, but he had left on the morning of the day I found the letters."

"Q. Was General Scott there on that day?"

"A. Yes, sir; he was at the Hoffman House; he resided there."

"Q. Do you remember, madam, during that visit in November, riding on the Third-avenue cars?"

"A. I do."

"Q. Who was in company with you at that time?"

"A. My little girl, my daughter, was with me."

"Q. How old was she?"

"A. She was nine years of age at that time."

"Q. Was any one else in company with you and your daughter at that time?"

"A. There was not."

"Q. I will ask you if you saw any thing on the cars at that time, or heard any thing, that attracted your attention; and, if so, state what it was?"

"A. There were two gentlemen in the car, sitting next to me. One of these was an educated man, and the other was not. I overheard their conversation at different times when the car would stop."

"Q. State, if you please, the appearance of these parties."

"A. One of them was a very fine, gentlemanly-looking man."

"Q. Did you observe his hand?"

"A. Yes, sir."

"Q. Did that attract your attention?"

"A. Yes, sir; he had the hand of a man who was never obliged to do any work; had a smooth, white hand. It was quite a small hand."

"Q. Did you observe any thing about his face that attracted your attention?"

"A. My seeing that he was disguised was what first attracted my attention. In the jarring of the car his head was struck, which had the effect to push forward his hat. He seemed to have a wig and false whiskers on, and these were pushed forward at the same time, showing the skin underneath the whiskers to be fairer than the front part of his face, which seemed to be stained with something. The front part of his face was darker than that under the whiskers."

"Q. State if there was any thing peculiar about either of them on the face."

"A. There was a scar on the right cheek of the gentlemanly-looking man, just underneath where the whiskers were. When the whiskers were pushed forward I could see the scar; that was on the side next to me."

"Q. Can you give us a description of the other one?"

"A. The other person was a large man, a common-looking man. He was a shorter and a stouter man than this one. The one who had the scar on the face called him by the name of Johnson."

I trust you will remember that.

"Q. Will you state if both, or either of them, were armed in any way; and, if so, what arms they had?"

"A. The well-dressed gentleman, the one who sat next to me, put

his hand back to get letters out of his pocket, and I saw that he had a pistol in his belt.

"Q. Did you get a close observation of the pistol?"

"A. No, sir; I did not. I only saw it was a pistol."

"Q. Will you state if you heard them say any thing at that time to each other; and, if so, what?"

"A. I heard the gentleman with the scar say he would leave for Washington day after to-morrow."

And he did:

"The other one said he was going to Newburg, or Newbern, that night."

"Q. Was any thing else said that night?"

"A. The man named Johnson was very angry because it had not fallen upon him to do something that he had been sent as a messenger to direct this other man to do."

"Q. Why did he say he was angry?"

"A. He seemed to be angry. He said he wished it had fallen upon him, instead of on this other man to whom he had brought the message, to go to Washington."

"Q. Who left the cars first, you or this party?"

"A. They both left before I did."

"Q. Immediately upon their leaving the car, did any thing happen, or was your attention directed to any thing?"

"A. I saw them exchanging letters in the cars. I had letters of my own to post, and was then on my way to the post office. As I was leaving the car my little girl picked up a letter at the edge of my dress and gave it to me, with the remark that I had lost one of my letters."

"Q. You saw her pick it up?"

"A. Yes, sir, it was just under the edge of my dress."

"Q. What did you do when this letter was handed you?"

"A. I took it without noticing that it was not one of my own, and put it in the pocket of my coat with my other letters, and kept it there until I got to the broker's, where I was going with some gold, near Nassau street. In putting my hand into my pocket to get some money, I took out the letters that I had in there. I instantly saw these letters in a blank envelope, and knew they were not mine. Being in an unsealed envelope, I opened them to see what they were, and found that they related to this plot."

"Q. What did you then do with them?"

"A. I saw General Butler's name was mentioned in the letter, and knowing very few persons in New York, having been there but a short time, the first thought that I had was to give them to him. As his name was mentioned in the letter, I thought that he would pay more attention to them than any one else. I had seen by the newspapers that he was in the city at the time. I went up to the Hoffman House, where he had been stopping, and inquired for him."

"Q. Did you find him there?"

"A. No, sir; he had left that morning. I then asked for General Scott. He was not well, but said he would see me. I said I wanted to see him with regard to something of importance. When I entered the room I told him of what I had found, and the circumstances connected with the finding. He asked me to read the letters to him. I did so, and he thought they were of great importance. It was nearly dark at the time."

Now let us see what these letters are. I have shown you this little letter, written in some little woman's hand, to Lewis, her husband. When General Scott and General Dix saw this letter from this loving woman they knew there was no sham about it. None of you can read that letter without having your heart touched, although it was written by the young wife to Payne, the assassin; no man can who has a heart.

Mr. MERRICK. How is that letter directed?

Mr. PIERREPONT. "Dear Louis." I will read the whole of it in a moment.

Mr. MERRICK. I want to call your attention to the fact that it is addressed to "L-o-u-i-s," not "L-e-w-i-s."

Mr. PIERREPONT. I am going to read these letters. As you will remember, gentlemen of the jury, we proved this Selby letter, by the expert whom you saw before you, to be the handwriting of Booth, and when compared with his other writing, they do not differ near as much as the writing in Surratt's own two notes differ. Then Mrs. Benson identified Booth as recognizing his features by the photograph, and he was in New York at the time, as the hotel register shows. Every circumstance goes to prove that this letter [the Leenea letter] was sent on to Booth, that it might get to Lewis Payne from his poor wife, and the other was sent to Payne, who was then to perform the deed and kill Mr. Lincoln. And now you will begin to see what is meant by "change of plan." They changed their plan several times. At one time the plan was for Lewis Payne to kill Lincoln; at another time it was that Lincoln should be poisoned by Herold; at another time it was an Englishman that was to do the deed, as you will see when I come to read; at another time it was that Booth was to perform the deed. I will now read Booth's letter in a disguised hand, and his name disguised as Charles Selby:

"DEAR LOUIS: The time has at last come that we have all wished for, and upon you every thing depends. As it was decided before you left, we were to cast lots."

As was done by the Jews when they murdered Christ.

"Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback. *Abe must die, and now.*"

He had just been re-elected, you remember, a few days before. Their hope had been that Lincoln would be defeated, and that, in the confusion and difficulty thereby occurring, the South might gain a recognition of their independence, and then they would gain what they aimed at when they attempted to dissolve the Union—a separate government, made up of an oligarchy of rich men, where the poor should be the servants of the rich.

"You can choose your weapons—the cup, the *knife*, the *bullet*. The cup failed us once, and might again."

They changed their plan.

"Johnson"—

You will remember that Mrs. Benson heard him speaking with Johnson—

"Johnson, who will give you this, has been like an enraged demon since the meeting, because it has not fallen upon him to rid the world of the monster. He says the blood of his gray-haired father and his noble brother call upon him for revenge, and revenge he will have; if he cannot wreak it upon the fountain head, he will upon some of the blood-thirsty generals. Butler would suit him. As our plans were all concocted and well arranged, we separated; and as I am writing—on my way to Detroit—I will only say that all rests upon you. You know where to find your friends. Your disguises are so perfect and complete that, without *one* knew your face, no police telegraphic dispatch would catch you. The English gentleman *Harcourt* must not act hastily. Remember, he has ten days."

Who is "the English gentleman Harcourt?" A character in a play, and it is given here.

"Strike for your home; strike for your country; bide your time, but strike sure. Get introduced, congratulate him, listen to his stories; not many more will the brute tell to earthly friends."

Then again they changed their plan. The plan was that he should get introduced, listen to Mr. Lincoln's stories, which he was fond of telling, as you know, and, when listening to his stories, to "strike sure." They changed their plan then, as they did a dozen times before the deed was done.

"Do any thing but fail, and meet us at the appointed place within the fortnight. Enclose this note, together with one of poor Leenea."

And there is the note of poor Leenea; [exhibiting the other letter;] we will read it presently.

"I will give the reason for this when we meet. Return by Johnson. I wish I could go to you, but duty calls me to the West. You will probably hear from me in Washington. Sanders is doing us no good in Canada."

You remember the drunken Sanders was not supposed to be doing much benefit to the rebel cause in Canada, and Booth was right when he said so.

"Believe me, your brother in love,  
"CHARLES SELBY."

Now, let us read the letter of "poor Leenea," and see whether you think it is a forgery—it does not look like one on the face of it—or a genuine letter:

"St. Louis, October 21, 1864.

"DEAREST HUSBAND: Why do you not come home? You left me for ten days only, and you now have been from home more than two weeks. In that long time only sent me one short note—a few cold words, and a check for money, which I did not require."

How like a woman, that!

"What has come over you?"

The poor woman did not know that he was in a plot to commit a murder.

"Have you forgotten your wife and child? Baby calls for papa till my heart aches. *We are so lonely* without you."

Do you think a woman wrote that—a real woman?

"I have written to you again and again, and, as a last resource, yesterday wrote to Charlie, begging him to see you and tell you to come home. I am so ill—not able to leave my room; if I was, I would go to you wherever you were, if in *this world*."

I think a woman wrote that.

"Mamma says I must not write any more, as I am too weak. Louis, darling, do not stay away any longer from your heart-broken wife.  
LEENEA."

There is truth there, gentlemen, and when this letter came first to General Scott, and then to General Dix, they saw it was true, and I have here somewhere among my papers the letter of General Dix sending on these letters to the Government. They were sent to President Lincoln, and there is a history about them which will never perish. I have shown you his indorsement on the back. Mr. Lincoln had received a great many threatening letters, as most of the officers of the Government had. He paid no heed to them; he did not preserve any of them, considering them of no importance, but as mere threats. When this letter came, he went over to the office of the Secretary of War, went into a private room, and—

Mr. BRADLEY. I do not know whether we have a right to interrupt you; but I beg you to confine yourself to the evidence as far as possible.

Mr. CARRINGTON. In an argument I suppose he has a right to refer to these things.

Mr. PIERREPONT. This is not in evidence, but I think as a part of the history of this letter it cannot be improper. It does not affect the issue, I admit; but as part of the history of the indorsement on this letter it seems to me not improper.

Mr. BRADLEY. The indorsement has not been given in evidence.

Mr. PIERREPONT. It seems to me not improper.

Mr. CARRINGTON. In tracing the history of a transaction, are we confined in a matter of public notoriety strictly to the evidence?

Mr. BRADLEY. A matter of public notoriety is a different thing from the action of an individual.

Judge FISHER. What is the point?

Mr. PIERREPONT. Merely the mode in which the letter came to be found after the death of Mr. Lincoln with the indorsement upon it. That is all.

Mr. BRADLEY. Go on.

Mr. PIERREPONT. After the door had been locked this letter was shown to the Secretary of War, and it made a deep and lasting impression upon that officer. It was taken back by Mr. Lincoln. After the President had been shot, and while the Secretary, to whom this had been communicated, stood by his dying bed, the remembrance of this letter flashed across his mind, and it immediately occurred to him that perhaps it had some connection with the murder. He went forthwith to the Presidential Mansion to see if he could get the letter. He found it in a private drawer of Mr. Lincoln, in this envelope, and with this indorsement in his own handwriting: "Assassination."

Mr. BRADLEY. That is the very thing to which I objected, that you should give the impressions of the Secretary of War, or any body else.

Mr. MERRICK. There is no proof about that at all.

Mr. PIERREPONT. I admit the impressions are not proof. I am not giving them as proof. I am only giving them as a part of the history of this strange transaction, and a history that should not be allowed to perish. It is a history that belongs to the country, belongs to you, and belongs to that strange letter and that indorsement by this murdered man. It is a part of the wonderful history of this wonderful transaction which ought not to perish.

I have told you, gentlemen, Booth's whereabouts at the time, and I turn you now, to prove it, to page 210 of the record. That which I claim is evidence, and has been testified to you, I read to you. My own inferences from the evidence I do not claim to read. I read from the testimony of Mr. Bunker, on page 210:

"Q. I wish to refer to the memorandum merely to refresh your memory, and state when Booth was at your hotel during the latter part of 1864, up to the time of his death.

"A. November 9, 1864, J. Wilkes Booth arrived at the National Hotel, and occupied room 20. He left by the early train on the morning of November 11.

"Q. You know, in some way, that fact?

"A. Yes, sir; by a book we kept at the hotel, called the departure book. He returned again November 15, and left on the 16th."

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 101. WASHINGTON, THURSDAY, SEPT. 19, 1867. PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 100.*

He was then in New York, at the very time these letters were found by Mrs. Benson, which dropped from his pocket. The disguises which he had put upon his head and face for the purpose of preventing his ever being known were the very things which attracted her attention, and the very means by which he was identified; and it is nothing uncommon. When men undertake to conceal themselves for purposes of crime, the very arts they use are the means by which they are detected.

Now you see, gentlemen, what is meant by a change of plan. In the spring of 1864 the plan was to murder Mr. Lincoln. They had various plans to accomplish it. They thought to do it, as he went to the Soldiers' Home, by a telescopic rifle, and they did not intend to let his wife and child stand in their way. They then thought to do it by having Payne call upon Mr. Lincoln, get into conversation with him, listen to his stories, seem to be interested in them, and then to strike the knife home deep into his heart. They at another time thought to poison him, and for that purpose tried the cup; but it seemed that that failed them once, and, as Booth said, might fail them again. They finally concluded they would try to kill him in the theatre, instead of on his way to the Soldiers' Home, and Booth was to do that; Payne was to kill Secretary Seward at his house. That plan they carried out.

But, gentlemen, notwithstanding this change of plan, never was there for more than a year any other purpose than to murder. The other plan required too much machinery, too many men, and subjected them to too much danger. They determined that they would kill him, and the changes in the plan were simply as to the mode of killing, and the men who should strike the fatal blow.

I turn now to the testimony of Charles Dawson, at page 218. There was found, after the death of Booth, in the hotel where he boarded, this letter, addressed to him. Here it is: "J. W. B., National Hotel, Washington, D. C." Let us see whether this letter throws any light on this terrible tragedy. You will notice it is dated April 6—the murder was committed April 14:

*SOUTH BRANCH BRIDGE, April 6, 1865.*

"FRIEND WILKES: I received yours of March 12, and reply as soon as practicable. I saw French and Brady and others about the oil speculation."

Here comes in the oil speculation again, just before the murder.

"The subscription to the stock amounts to eight thousand dollars, and I add one thousand myself, which is about all I can stand; now, when you sink your well go deep enough; don't fail; everything depends upon you and your helpers."

Who were Booth's helpers in sinking his well? We have one of those helpers on trial here:

"If you can't get through on your trip, after you strike ile, strike through Thornton Gap and across by Capon, Romney's, and down the branch, and I can keep you safe from all hardships for a year."

Did he want to run after he had struck oil? I should

suppose he would want to keep still and gather the oil, put it into casks, and use it. But no, he was to run the moment he struck oil; he was to flee.

"I am clear of all surveillance now that infernal Purdy is beat."

How was he "beat?" He tells us:

"I hired that girl to charge him with an outrage, and reported him to old Kelly, which sent him in the shade."

That is the way he was beat. A woman was hired to perjure her soul and swear he had committed an outrage upon her to put the man out of the way; a fit action for the helper in this treason and murder.

"But he suspects too damn much now; had he better be silenced for good?"

Into what a scene of assassins are we brought? And yet your sympathies are tried to be aroused, and you are asked, have we not had blood enough, and shall not this great and generous Government of thirty millions of people let a man go who has been engaged in this fearful crime?

"I send this up by Tom, and if he don't get drunk you will get it the ninth. At all events, it can't be understood if lost."

I think we are understanding something about it, gentlemen. This wretch did not suppose this vile letter of murder would be understood if lost; but is there a man here that does not understand it? Is there a doubt about what this letter says and what it means?

"I can't half write; have been drunk for two days. Don't write so much highfalutin next time."

Well, Booth writes in a tragic strain, as you have seen. He said, "You can choose your weapons—the cup, the knife, the bullet. We tried the cup, and it failed. Now, strike deep; strike for your country; remember that brother's oath, and strike home." That this fellow calls "highfalutin." It is rather so, but there is nothing of that kind in what he says.

"No more; only Jake will be at Green's with the funds. Burn this.

Truly, yours,

"LON.

"Sue Guthrie sends much love."

"Jake will be at Green's with the funds." Well, "Jake" was up in Canada with a great many funds before and afterward. "Jake" had the funds, and Surratt took seventy thousand dollars and thirty thousand dollars of the funds to "Jake." "Jake" had funds, and these men, who were poor and idle, doing nothing, and who entered into this horrid crime, expected the funds. If they had succeeded perhaps "Jake" would have divided the funds with them. I do not know how that would have been, but "Jake" had the funds.

"Burn this." Why did he want to have it burned? He had already said that it could not be understood if lost. But it was neither burnt nor lost. It went to its destination, and here comes up as a telling witness against this terrible crime. It lives, and cannot be blotted out. You cannot ignore it, and do not want to do so.

Mr. MERRICK. What is the post-mark of that letter?

Mr. PIERREPONT. I will show it to you.

Mr. MERRICK. Let the jury see the envelope. It is the 8th of May.

Mr. PIERREPONT. Yes, and he says, "I send this up by Tom, and if he don't get drunk you will get it by the 9th." He did get drunk, I suppose.

I come next to the evidence of Mr. Chester, at page 204. Mr. Chester says (speaking of Booth) that the last time he saw him was on Friday, a week previous to the assassination. I will read:

"Q. When and where did you last see him?"

"A. The last time I saw him was on Friday, one week previous to the assassination. I was with him nearly the entire afternoon. We separated at the corner of Fourteenth and Broadway, in New York city."

I wanted to show you that Booth was in New York city at that time—the Friday exactly a week before the assassination. This witness proves that fact. I now come down to what occurred at Mrs. Surratt's house after the murder, on the night of the 14th. I read from the testimony of Weichmann, on page 274:

"Q. Did any thing occur in regard to your health that night requiring you to get up?"

"A. The next morning about two o'clock I had been to the yard, had gotten to my room again, gone to bed, and was just about falling to sleep, when I heard the door bell ring very violently. It rang several times in very quick succession. There were only two gentlemen in the house at that time, to my knowledge, Mr. Holahan and myself. I drew on my pants, and with my night-shirt open in front, barefoot, I went down to the front door. Trapped on the inside of the front door and inquired who was there. 'Government officers,' was the reply, 'come to search the house for J. Wilkes Booth and John Surratt.'

"Q. What did you say?"

"A. I told them that neither of them were at home."

"Q. What occurred further?"

"A. 'Let us in anyhow,' said they, 'we want to search the house.'"

"By the COURT: Q. Was this on the morning of Saturday?"

"A. Yes, sir; about two or half-past two on the morning of April 15. I then told them it would first be necessary for me to ask Mrs. Surratt's permission. In order to do so I went to her bed-room door, which was immediately in the rear of the parlor, and rapped, saying, 'Mrs. Surratt, here are Government officers who wish to search the house.' 'For God's sake let them come in,' said she; 'I expected the house would be searched.'

Why did she? Why, a few hours before she had been with Lloyd, and told Lloyd that the whisky-bottles and the shooting irons must be got in readiness; that they would be called for soon. And you will remember that but a short time before her own son had taken tea for the last time with her alone, and left, as I shall show, on his awful mission. "I expected the house would be searched." She blurted that out. On the trial of Dr. Webster, if you remember that case, it appeared that he had cut off the head and the greater portion of the body of Dr. Parkman, and had destroyed them. When a portion of the body was found, and they went to Dr. Webster and told him of its discovery, what was his first inquiry? "Has it *all* been found?" Why did he say *all*? Would anybody else have said *all*? No; but he had cut it up, and he knew that the larger part had been destroyed, and unconsciously he thus gave expression to his first thought. "Has it *all* been found?" How similar the case of Mrs. Surratt in this expression: "I expected the house would be searched." They always do that, gentlemen—always, always, always.

The witness continues:

"A. I returned to my room; the detectives also came to my room."

"Q. Did you dress yourself that morning?"

"A. Not just then; the detectives commenced to search my room; they looked in the closet, looked under the bed, and looked all around. I asked them for God's sake tell me what is the matter; what this means; what means searching the house so early in the morning. One of them looked at me and said: 'Do you pretend to tell me you do not know what happened last night?' I said I did; I did not know what had happened."

"Q. State what was the manner of these officers in making this inquiry?"

"A. They appeared to be astonished that I had not known what had transpired. Then Mr. Clarvoe said, 'I will tell you,' and he pulled out a piece of a cravat; there was blood on it. Said he, 'Do you see that blood? That is Abraham Lincoln's blood; John Wilkes Booth has murdered Abraham Lincoln and John Surratt has assassinated the Secretary of State.'"

They supposed then that John Surratt was the one who had attempted to assassinate the Secretary of State.

Nobody then doubted that John Surratt was in the city that night. The counsel for the prisoner has said, "If John Surratt was here, why did not his friends come and tell of it? Why did not you put them on

the stand?" We did not suppose that his sympathizing friends who wanted to shield him would come and tell of his presence here. If they had, they would have received the same amount of abuse that Dr. McMillan and St. Marie have received for telling what the prisoner confessed to them. We did not expect his friends to tell of it. There were plenty of them, however, who knew that he was here, for everybody understood the fact at that time.

"I then went down stairs with Mr. Clarvoe and Mr. McDevitt. Mrs. Surratt just then came out of her bed-room. I said, 'What do you think, Mrs. Surratt, Abraham Lincoln has been murdered?' I did not say Abraham Lincoln; I said, 'President Lincoln has been murdered by John Wilkes Booth, and the Secretary of State has been assassinated.' I did not bring her own son's name out, from respect to her feelings; she raised her hands and exclaimed, 'My God, Mr. Weichmann, you don't tell me so.' She seemed astonished at the news. At this time Miss Surratt and Miss Jenkins were not down stairs."

"Q. What did Mrs. Surratt then say?"

"A. The talk was about the murder; every one in the room had been told that Booth had done it; Anna Surratt commenced to weep, and said, 'Oh! ma, all this will bring suspicion on our house; just think of that man (we were speaking about Booth at the time) having been here an hour before the murder.' 'Anna, come what will,' she replied, 'I think John Wilkes Booth was only an instrument in the hands of the Almighty to punish this proud and licentious people.'"

If you remember Booth's diary, he says the same thing. He says he thinks he was an instrument in the hands of the Almighty. That seemed to be the theory, that they were instruments in the hands of God. They had wrought themselves up to such a pitch of madness and frenzy that they finally made themselves believe that they were somehow instruments in the hands of the Almighty in this great murder.

I turn you now to the testimony of Colonel Smith, who searched this house. You will see it is very important. Let us see what occurred when he went to the house. His testimony will be found on page 212:

"A. Before ringing the bell I leaned over and looked through the blinds into the parlor, and discovered four females sitting close together, evidently in close conversation. From what occurred I should judge they were anxiously expecting some one. They were turning and listening from time to time as if waiting for somebody to come. I then rang the bell; somebody came to the window and whispered, 'Is that you, Kirby?'"

"Q. Tell how."

"A. They whispered, in a low voice, 'Is that you, Kirby?' I said, 'No, it is not Kirby, but it is all right; let me in.' She said, 'All right,' and opened the door. I stepped in, and said, 'Is this Mrs. Surratt's house?' She said, 'Yes.' I said, 'Are you Mrs. Surratt?' She said, 'I am the widow of John H. Surratt.' I said, 'And the mother of John H. Surratt, Jr.?' She said, 'Yes.' I then said, 'Madam, I have come to arrest you and all in your house and take you down to General Augur's headquarters for examination. Be kind enough to step in.' She stepped into the parlor. There were three parties there; one was lying on the sofa. Said I, 'Who are these ladies?' She said, 'This is Anna Surratt, that is Olivia Jenkins, and that Honora Fitzpatrick.' I said, 'Ladies, you will have to get ready as soon as possible and go with me down to General Augur's for examination; whereupon Miss Surratt commenced wringing her hands, and said, 'Oh, mother, think of being taken down there for such a crime!' Mrs. Surratt stepped to her, put her arms around her neck, and whispered something in her ear, and she became quiet. I said to her that I had sent for a carriage, and to please to get ready as soon as possible, that I would send somebody with them down to headquarters."

"By the COURT:

"Q. What time was that?"

"A. As nearly as I can state, a quarter after ten. Mrs. Surratt said, 'I will go up stairs and get the ladies' things.' I said, 'I advise you to get warm wrappings, as it is a damp, drizzly night.' She said, 'I will go right up stairs.' I said, 'Excuse me, madam, this house is suspected; I will accompany you up stairs.' I told Clarvoe to remain in the room and see that no papers were destroyed, and that no communication passed between the ladies. I went up stairs with Mrs. Surratt. She obtained clothing for the ladies to go to headquarters. In the meantime two other detectives had reported, one by the name of Morgan and another by the name of Samson. I sent Samson down stairs to take charge of the servants, and waited for the carriage. Mrs. Surratt said to me, 'By your leave, sir, I would like to kneel down and say my prayers, to ask the blessing of God upon me, as I do upon all my actions.' I told her certainly; I never interfered with any such purpose. She knelt down in the parlor and prayed. In the meantime I heard steps coming up the front steps. Wermerskirch and Morgan were in the upper part of the house with me. I told them to go behind the door, and that when they rung or knocked, to open the door and let them step in, whoever it was, and I would meet them in the hall, thinking at the time it was Kirby that I was going to trap. I stepped into the parlor, and the door-bell rung. The door opened. I stepped out into the hall and found myself face to face with Payne. Payne was standing on the threshold of the door, with a pickaxe over his shoulder. I stepped out and met him. He said, 'I guess I have mistaken the house.' I said, 'You have not.' He said, 'Is this Mrs. Surratt's house?'"

I said, "Yes." He seemed to hesitate. I drew my revolver and cocked it, and said, "Step in." He stepped in immediately. I said, "Lay down that pickaxe." He laid it down, or put it in the corner. I took him to the back part of the hall and set two men to stand guard over him. We then commenced questioning him and examining him. I asked him where he had been. He said he had been working on the railroad and canal; that he had been working in different parts of the city. I asked him how long he had been here. He said a week or ten days. I asked him if he had any papers with him. He said he had a pass, which he took out and handed to one of the officers, who passed it to me. I looked at it and found it to be an oath of amnesty, or an oath in which he bound himself not to go south of the Potomac, I think.

"Mr. BRADLEY. Where is that paper?"

"WITNESS. I do not know."

"Mr. BRADLEY. You need not say any thing more about the paper."

"WITNESS. I then told him he was so suspicious a personage, that I felt bound to arrest him and send him down to General Angur's headquarters. I sent for a carriage immediately. I left him in charge of two men, and went down stairs to search the premises. I saw the servants there, and from them I learned—

"Mr. BRADLEY. You need not state what you learned from the servants."

"Mr. PIERREPONT. What was said by the servants or any body else in presence of Payne or Mrs. Surratt is evidence."

"WITNESS. There was nothing said by the servants in presence of any one, except the detective and myself. I asked Payne what he had been doing. He said he was a laboring man. I asked him where he lived. He said he could not tell. I asked him whether it was east, west, north, or south. He said he could not tell me where he lived. I asked him what he came to Mrs. Surratt's for at that hour of the night. It was then verging toward eleven o'clock. He said he came to get instructions about digging a ditch in the back yard. I asked him what he came at that hour for to get instructions about digging a ditch. He said he did not know; he was passing along. I asked him when he met Mrs. Surratt. He said he met her this morning, and agreed to dig a ditch for her, and that he wanted instructions to go to work the next morning. I then stepped to the parlor door and said, "Mrs. Surratt, will you be kind enough to step here a minute?" Said I, "Do you know this man? Did you hire him to dig a ditch for you?" She raised both her hands and said, "Before God, I do not know this man; I have never seen him; I did not hire him to dig a ditch." Shortly after that a carriage reported, and Mrs. Surratt and the three ladies were sent to General Angur's headquarters. A little while after Payne was also sent there in another carriage. Both carriages went in charge of detectives."

"Yea, all that a man hath will he give for his life."

"Q. Who did you find in the house?"

"A. We found Mrs. Surratt, Miss Surratt, Miss Fitzpatrick, Miss Jenkins, a little colored girl asleep on the floor in the back room. We found Susan Ann Jackson, or a colored woman who said her name was Susan, a man down stairs, who she said was her husband."

"Q. Would you know this Susan if you were to see her?"

"A. I think I would."

"Q. Was she a full-grown person?"

"A. Yes, sir."

"Q. Did you talk with this man?"

"A. I did a few minutes."

"Q. Did you ask Susan any questions?"

"A. Yes, sir; I asked her a number of questions."

"Q. Did you ask her any thing about John Surratt?"

Now, gentlemen, I have to stop here a moment for the purpose of comment. The learned counsel, in the most vehement tones, the other day said: "If Susan Ann Jackson had told any of these officers, why did not the prosecution bring it out?" Did not the counsel know that we did try to bring it out, and they stopped it? If they do not, I will show it to them here in the record. They saw and you saw, gentlemen, how desirous I was to get this fact out, that she had made this statement to Colonel Smith, and that he had in writing reported it to the War Department, and that he had it placed on file that very night. Now, let us see what they did:

"Q. Did you ask her any thing about John Surratt?"

"Question objected to by Mr. BRADLEY."

That is the reason we did not get it out.

Mr. BRADLEY. Go on, and you will see about that.

Mr. PIERREPONT. I will read on:

"Mr. PIERREPONT said he had the right to ask whether the witness had held any conversation; he had not asked what that conversation was."

"The court decided the question could be put in that shape."

Only whether she had a conversation with him, but not what the conversation was. The counsel on the other side objected to it. I wanted to bring it out, and as you will see hereafter I tried again to get it out. The counsel had forgotten this, of course. They must have forgotten it, or they would not have said that we ought to have shown it. There is some advantage in

having a printed book of evidence in a long case like the present, for it tends to refresh our memories. In a case running through two months, like this, it is always to be excused if counsel should forget any of the testimony. For fear I might forget some of it, I early made the determination that I would state no evidence to you, nor comment on any, except such as I had read from the book, giving it word for word as it fell from the lips of the witness.

Mr. MERRICK. I did not forget. My remark was addressed to the written examination before Colonel Olcott, which you never did offer in evidence.

Mr. PIERREPONT. And for the simple reason that there never was any taken.

Mr. MERRICK. She said there was.

Mr. PIERREPONT. We will come to that presently. I tried very earnestly a second time to bring this evidence out, as you will see, but I did not succeed. The law did not permit it. The court ruled against me. If they objected, I could not help myself, and the court ruled right. My learned friend says that he did not forget, but that he was alluding to another matter. I shall take up that other matter when I come to Susan Ann Jackson's testimony.

Let me read a little further from Colonel Smith's testimony. I hope, if my friend has forgotten this, he will listen to it now:

"Q. Did you question her?"

"A. I did."

"Q. Did you question all the others?"

"A. I questioned them all."

"Q. Did you make a written report of your examination at that house at the time?"

"Question objected to by Mr. BRADLEY as immaterial."

"Objection sustained."

Mr. MERRICK did not make the objection, but Mr. BRADLEY did, and I was equally bound by it and by the court's ruling, whether Mr. MERRICK or Mr. BRADLEY made it. I had proved that he did examine them, and then I tried to prove that at that very time he made a written report and put it on file, and which I had then in my hand, and they would not let me. They should not reproach us then for not bringing it out.

"Q. Have you a distinct memory of what occurred at the time?"

"A. I have."

"[Question objected to by Mr. BRADLEY as improper on examination-in-chief.]

"The court said it was proper to ask a man whether his memory is distinct about what he says."

"WITNESS. My memory is distinct, even to the very words."

Now let us see whether this statement of Colonel Smith's is confirmed or not. I turn to the testimony of Captain Wermerskirch, page 366.

"Q. State what he [Payne] said when he came to the house?"

"A. When he came to the house he was asked to come in, because he refused to come in after he saw strangers present. After he came in he was asked what he wanted; he said he wanted to see Mrs. Surratt; he first inquired if that was Mrs. Surratt's house; he was then confronted with Mrs. Surratt, and she was asked whether she knew the man; she held up her hands and said she did not know the man, and called God to witness: 'Before God, I do not know this man.'"

I have said that the Bible states, "Yea, all that a man hath will he give for his life." She had been at prayer, and had just risen from her knees when she was called out into the hall. She then, in the presence of these men, lifted up her hands before her God and exclaimed, "I do not know this man." Human nature is indeed weak in such troubles, and I pass it by without further comment. Let us throw the veil of charity over it as far as we can.

I now turn to page 367:

"WITNESS. Major Smith told Mrs. Surratt and the other ladies—there were three of them—that he arrested them; that they were his prisoners; that they had to come up with him to the Provost Marshal General's office. Thereupon Mrs. Surratt requested him to allow her to go up and get their cloaks and bonnets to put on. Major Smith told her she might go up there, and accompanied her himself. Miss Anna Surratt had been weeping a great deal and was quieted by Mrs. Surratt; what she said to her daughter I do not know, because she said it in a very low tone—whispered it to her."

And against that poor daughter I shall never say one word. On the contrary, things have occurred in this

trial, on that stand, which lead me to feel toward her the kindest feelings. I would help her in any way with my counsel or my purse, and I would never hurt a hair of her head.

"She then asked Major Smith's permission to kneel down and pray, and she thereupon knelt down. Shortly thereafter they left. We had sent for a carriage in the meantime, and the carriage had got there, and they were sent up to headquarters.

"Q. After praying in the manner you have described, where did Mrs. Surratt go?

"A. After prayer, she came out in the hall; she went through the hall and entered a carriage.

"Q. Did she then see Payne?

"A. It was at that time she saw Payne.

"Q. Then the remark to which you have already testified of Mrs. Surratt—her denial that she knew Payne—was made after this?

"A. After this; yes, sir."

Now I come to the testimony of Colonel Morgan, at page 220, who was likewise there:

"Q. Will you please state what occurred in the presence of Payne?

"A. I directed that Mrs. Surratt and all the others in the house should be sent up to the provost marshal's office. They hesitated about going. I told them they should not delay, but go right away. I told Mrs. Surratt to go up-stairs and get the bonnets and shawls of the rest of the party. She did so, I sending an officer along with her. She got all the things, and brought them down in the parlor, where they prepared themselves to leave. When they were about ready to go, she said something about it being a cold, damp night. I said I would send for a carriage, and immediately directed one of my men to go and get one. About three minutes before he returned there was a knock and a ring at the door. I was at the time standing by the parlor door. I instantly stepped forward and opened the door, thinking it was the man returning with the carriage. Instead, however, of it being him, a man entered dressed as a laboring man, with a pickaxe over his shoulder. As soon as he saw me he stepped back and said, "Oh, I am mistaken." Said I, "Who do you wish to see?" He said, "Mrs. Surratt." I replied, "It is all right; come in." I passed him in, and put him behind the door, standing myself with my hand on the door, open. I said to Mrs. Surratt, "Are you ready?" and then remarked either to Major Smith or one of the clerks standing there, (I cannot now say which,) "Pass them out." As they were about starting, I looked around, and saw Mrs. Surratt just getting up from her knees and crossing herself. I said, "Hurry up and get along; the carriage is waiting." I sent a man off with them to the provost marshal's office. After I passed them out I commenced to question Payne.

"Q. Passed who out?

"A. Mrs. Surratt and the other three ladies.

"Q. Before you passed Mrs. Surratt out what was said to her about Payne, if any thing?

"A. After she got up from her knees, Major Smith made some inquiry as to whether she recognized him. I did not hear exactly what he did say, nor the reply she made."

That has been told you by Colonel Smith and Captain Wermerskirch; but let us see what she said to Colonel Morgan, as she passed out:

"Q. What did she say to you?

"A. She leaned her head over toward me, and said, 'I am so glad you officers came here to-night, for this man came here with a pickaxe to kill us.'"

Then he says further, at page 230:

"Q. Where was Payne in reference to you when Mrs. Surratt went out?

"A. Payne was close up to me.

"Q. Did Payne make any reply when Mrs. Surratt leaned a little back in the manner you have described, and said to you, 'I am glad you officers came here to-night, as that man with a pickaxe came to kill us?'"

"A. No, sir."

Now, gentlemen, a great many things have been going on in this brief time over which I have passed. Where was John Surratt all this time? I do not need to tell you that no man can be in two places at the same time. That you will all admit is not within the range of possibility. It does not need any proof; it is a demonstration; it needs only to be asserted. He was somewhere; where was he? That is the question. Two points in this case are fixed, and about them there is no dispute—that he left Montreal on the 12th, and returned to Montreal on the 18th. Between those two dates all these things of which we have spoken relating to this murder were done. Where was John Surratt all this while? Was he in Canada? They could very easily tell you where he was every hour from the 18th till he left on the steamer to go to Europe, could they not? There was no difficulty about that. He was at Porterfield's, at Boucher's, and at LaPierre's. They could tell us where John Surratt was every day and every hour between the 18th of April and the middle of the next September, when he fled in disguise to

Europe. Cannot they tell us where he was between the 12th and 18th—only six little days? Where then, I again ask, was their client, the prisoner? They can tell us all the rest. Cannot they tell us that? Why not tell us that? He slept somewhere, did he not? He ate somewhere, he saw somebody, he stayed at some house. He was in some wood, some field, some village, some city, somewhere. They can give us his place every day and hour for five months afterwards; but on those little days on which hangs the verdict for his life, they cannot tell us where he was. Why not? Why cannot they tell us where he was on the 16th, the 17th, or the 13th? Why cannot they bring us the man in whose house he slept, the servant who made his bed, who brought him his water, the barber who shaved him, the person of whom he bought an apple, a meal of victuals, or a ticket, or something? Why do they throw a thick veil of night over those six awful days? What is the reason, gentlemen? He knows where he was, does he not? He knows every step he took. He knows every hotel in which he slept. He knows every place where he got food or drink, and yet he does not tell you one of them, as I shall presently prove to you. Dr. Bissell tells us one. I shall take him up in due time. They did not handle Dr. Bissell much. He being a citizen of my State and a neighbor, I shall feel more or less responsible for what I say in regard to him. I shall talk about my neighbor somewhat, and shall present his evidence to you in the course of what I have to say.

But laying that aside, where was John Surratt? The books of law which I have read to you say that when an *alibi* is attempted after the Government have shown the party present where the crime was committed, the prisoner must prove beyond any possibility of doubt that he was somewhere else. That is the law. My friends on the other side have admitted that, and said they found no fault with it. It is, then, for them to show where he was, if they know; and if they do not know, it is because they have not tried to get the information, for their client knows. Have they shown you where he was? Have they shown you what road he took, to what point he came from Montreal, where he stayed, in whose house he slept? Have they brought one human being that ever saw him before, in whose house he ate, in whose house he slept, who traveled with him by water or by fire, by horse or by carriage? Not one.

Now let us see if we can find out where he was, as they will not tell us. I am sure I know where he was, and I am just as sure you will know where he was, if you do not know now, when I get through reading this evidence. I want to call your attention to this remarkable circumstance that occurred in the taking of this evidence. I do not know whether it arrested your attention at the time or not, but you will remember it when I recall it to your minds. For some reason, which I did not then understand, but which was fully revealed in the progress of the case, Mr. DuBarry was put by the defense upon the stand, and brought his records of the railroads between Elmira and Baltimore. I afterward put him on the stand, as you will recollect. Why was this railroad superintendent, who did not profess to testify from his knowledge, but from the records which he there had, called by the defense? To show that between Elmira and Washington, in consequence of the freshets that had been sweeping away all the bridges, railroad connections, &c., there was no railroad communication by which means Surratt could have come from Elmira on the 13th and reached the city of Washington on the 14th. After Mr. DuBarry had testified, you remember, the senior counsel, in the argument which he made to the court, said not only once, but repeatedly, "We have shown it was a physical impossibility that he could have come from Elmira on the 13th and reach here in the forenoon of the 14th." He said it with confidence, perhaps with effect. It would be effective if it were true. We know it was

not true; we thought we could prove it was not true; and we undertook to prove that it was not true, and found ourselves in great trouble. Although we got the original books from the very conductor who drove the trains, yet when the man who was brought here to prove them was cross-examined, it turned out that he did not himself make the original entries, and the court ruled the evidence out. The court did right. Then we tried to get the men themselves. They would not come, and in your presence and before the court we made the proof of that fact and sent out a process of attachment to arrest those men and bring them here. I made a remark on that occasion which was printed in this case, that every impediment had been thrown by that road in the way of our getting at the facts connected with the movement of those trains. That remark got into the newspapers and produced the effect which I will presently show you, and a pretty strange effect it was. I will now read DuBarry's first examination when he was put upon the stand by the defense and before I made these remarks which are printed here in this case. I read from page 654:

"Q. Turn to the 13th, if you please, and see if any train left Elmira, coming south, after twelve o'clock on the afternoon of the 13th?"

"A. There is no record of such a train."

Well, I did not understand that. I knew, if human testimony was to be relied on, that Surratt did come on a train here from Elmira, and that from the depot he went to a barber-shop and got shaved, for we had any number of witnesses who saw him. But the witness stated that there was no record of a train leaving Elmira coming south after twelve o'clock m. on the 13th. There was not. No such train did come. What does it all mean? It looks well enough, does it not? There was not any perjury in that. No train did leave there after twelve o'clock; but a train did leave Elmira at half-past ten o'clock, and that was the train Surratt was on, as we have proved.

"Q. No train leaving Elmira after twelve o'clock on the 13th? Now, what time of day on the 13th and 14th did the trains coming south leave Elmira?"

"A. The schedule called for a train leaving there at eight o'clock in the morning."

Very likely the schedule did. There was not any perjury in that either; but it is not very fair when a special train left at 10:30 o'clock to say nothing about that, but to state that the schedule time is eight o'clock, and that no train left after twelve o'clock. The law says that the suppression of a truth is as great a lie as the statement of a falsehood.

Now, I take up the cross-examination:

"Q. Do you say that there was no train running through from Elmira with soldiers on that day?"

"The COURT. Which way?"

"Mr. PIERREPONT. This way, coming south, on the 13th."

"A. I cannot say that there was no train with soldiers."

At that time I did not know, and my friend the learned district attorney did not know, exactly what time this train left; but we found it out afterwards, as we shall show. The schedule time was eight o'clock, and no train did leave after twelve o'clock, but a special train left at 10:30 o'clock, and he came on that special train. Now let us read further:

"Q. On the 13th, 14th and 15th?"

"A. The road was partially repaired, and one train was running through daily."

"Q. They ferried?"

"A. That was not on my route."

"Q. Don't you know they ferried?"

"A. I do."

"Q. Did n't you go over the ferry yourself?"

"A. I did on the 14th."

Will you note this, gentlemen? You will see something in it before I am through.

"Q. But you were not at Elmira on the 13th?"

"A. No, sir."

"Q. Were there any trains that did not run on schedule time?"

"A. I have no record of them."

"Q. Were there any?"

"A. Not that I am aware of."

How did that leave the case? It left it without any evidence of this 10:30 train, and it left it in positive

words that this Mr. DuBarry was not at Elmira on the 13th. Was he? We will see what occurred after this remark of mine—of which I have spoken—got into the newspapers.

Mr. BRADLEY. Read what Fitch says about that.

Mr. MERRICK. We can correct it afterwards. There was no record of any special train on that day. DuBarry says so expressly. I only say it in justice to him.

Mr. PIERREPONT. I am going to read all he says. I will read a little further from the testimony of Mr. DuBarry, on page 655. He says:

"I have no record of them."

Well, we did not say he had.

"Q. Were there any?"

"A. Not that I am aware of."

"Q. When interruptions of schedule time occurred on one part of the road it would affect it on the other, would n't it?"

"A. Yes, sir."

"Q. Suppose this to happen—that a train running from Elmira should leave Elmira at 7:20, and another train, a slower train, should leave at 12:20, and this slower train, by reason of some detention of the express train, should overtake the express train at a distance of fifty-eight miles from there, and the passengers should get on to the express train; it would make a difference, would n't it? They would arrive at their destination sooner?"

"A. Yes, sir."

I will turn you presently to the examination of this same witness, DuBarry, when we called him back.

We finally succeeded, after much trouble, in getting Mr. Rogers, the very engineer who ran the special train the other way, and who met him at Troy on the 13th. In that way we got at the correct time, showing that he left Elmira at 10:30 on the morning of the 13th, the time Rogers going up met him at Troy, and the fact that DuBarry *was* in Elmira. We will see presently what Mr. DuBarry says about that. He says he was mistaken. Well, he was.

Mr. BRADLEY. Did he say so?

Mr. PIERREPONT. Yes; he says he had promised to be there, and believes he was there. Then he was mistaken.

We brought Surratt across the ferry. Two men saw him. The witness Drohan took him across alone, going up to him, when in the middle of the stream, and collecting his fare. He talked with him, and looked him directly in the face, and the moment he entered this room and saw the prisoner he said he recognized him as the same man. He was not cross-examined by the learned counsel for the defense; but immediately upon the conclusion of the examination-in-chief Mr. BRADLEY said, "Get away; I don't want any more of you." My friend Mr. CARRINGTON pronounced that to be acting surpassing any thing that Forrest ever performed. I do not know any thing about that, for I do not understand that kind of thing. I merely have a way of talking on the evidence, and trying to present it to you in a way that may aid you all I can, with my responsibilities before you, before my fellow-men, and before God, to help you to arrive at the truth. I thought it strange that counsel did not cross-examine him, but I concluded that the prisoner, when he saw the face of that old Irishman, and recalled the fact of crossing the ferry with him alone, and having a conversation with him about the price in the middle of the river, knew he would only clinch the nail the tighter by cross-examination, and therefore the counsel very wisely refrained. They thereby prevented me from bringing out a good many striking things which I should have done if a cross-examination had been had. Whether it was acting or not I do not know, but I can say this, it was very shrewd and skillful in them, and the counsel deserve credit for it as a professional exhibition.

After we had examined these other witnesses, and after the remark to which I have alluded appeared in the newspapers, we called Mr. DuBarry, and he told us all about it. We were a great deal bothered at first about this "physical impossibility" of getting the prisoner from Elmira to Washington, in regard to which the counsel have said so much. We knew that he did

get here, but we were not able to show how he got here. We were trying, but we did not get along very well. Finally, one morning, you may have noticed that, when we were about to commence with the proceedings of the day, I suddenly got up and went out of this room, and in about ten minutes as suddenly returned with Dr. DuBarry, their witness, whom they had put upon the stand, and who had said that he was not in Elmira on the 13th at all, and who had further stated that there was no record of any train after 12 o'clock on that day. Mr. DuBarry took the stand, and told us the whole story, and here it is.

I read from page 902:

"Q. You were called and sworn by the defense before, were you not?"

"A. Yes, sir.

"Q. Have you the same records with you now that you had then?"

"A. Yes, sir.

"Q. Won't you tell the jury what railroad connection there was between Sunbury and the city of Washington on the 13th and 14th of April, 1865? What were the modes of getting to Washington?"

Then he went on and told the various modes and told them fairly. I have no fault to find with Mr. DuBarry. When his mind was refreshed he remembered all the truth, and he came here and told it to you and to me, and there it is, and it is all right, just as the truth was:

"Q. Do you know any thing about the special train?"

"A. No, sir.

"I would at this point like to correct some evidence that I gave when I was on the stand before. The question was asked me as to whether I was in Elmira on the 13th. I answered, 'No, sir.' Since that time I have sent for the telegraphic dispatches of that date, and I find that I promised to be in Elmira at that time; and I believe I was in Elmira on the 12th and 13th.

Gentlemen, was my statement to you incorrect? Was not it as I have now read it? Let us see:

"Q. But you do not remember?"

"A. I cannot fix it by any circumstance.

"Q. Will you come down to Sunbury? Will you tell us when the freight train left Sunbury on the afternoon of the 13th of April, 1865?"

"A. At 4:30 p. m., by the record."

We could not get that before. Let us go a little further:

"Q. Will you tell us when the passenger train left on the same day?"

"A. A passenger train left Sunbury, by the record, at 12:13 on the night of the 13th and the morning of the 14th.

"Q. When did that reach Baltimore?"

"A. From the record, at 7:25.

"Q. On the morning of the 14th?"

"A. Yes, sir."

My learned friend's physical impossibility instantly vanished into thin air with that testimony. After it was given you heard no more about the physical impossibility of the prisoner's getting from Elmira to Washington at that time. DuBarry put that matter all right.

Now, we will see what the railroad man who brought it from Baltimore here says. "Physical impossibilities" always get out of the way somehow or other where there is truth. I never knew a case where they did not. I have had a great deal of trouble often before in getting at them. All I want to know about a case is whether it is true. If it is true, as I have said, every other truth is in harmony with that truth, and by diligence and toil and earnestness and ceaseless vigilance I shall find out the truth, and I have found it out here. I read from the testimony of Mr. Koontz, who had charge of the railroad from Baltimore here on that day, on page 908.

"Q. Tell me the time of the arrival of the trains in Baltimore on the 14th of April, 1865?"

"A. I do not know.

"Q. Tell me at what time the first train left on the 14th?"

"A. At 4:20 a. m., and reached Washington at 5:45 a. m.

"Q. When did the next leave?"

"A. 5:30 a. m.

"Q. When did that arrive?"

"A. 7:20.

"Q. When did the next leave?"

"A. Seven a. m.

"Q. When did that arrive in Washington?"

"A. 8:43 a. m.

"Q. When did the next train leave?"

"A. 8:50 a. m.

"Q. When did that arrive?"

"A. At 10:25 a. m."

Mr. BRADLEY. Now get him to the barber-shop and have him shaved at nine o'clock.

Mr. PIERREPONT. Most beautifully will I get him there, and so smoothly, that you will see him shaved without a quiver. We have got him in Washington, and now my friend is a great deal troubled about the barber-shop. I am going to take him to that barber-shop, and if I do not get him shaved there so clean that he will not want shaving like that again for some time, I shall be sadly mistaken. But let us see whether he was on the train or not, because he did not get to the barber-shop unless he was on the train. I call your attention to the testimony of Mr. Strayer, on page 796:

"Q. State whether, on the 13th of April, 1865, you were in Elmira.

"A. Yes, sir; I was there in the morning.

"Q. What time did you leave there?"

"A. I could not tell you exactly the time. I was twenty-five miles south of there about half-past eleven. I suppose I left there about ten or half-past.

"Q. You left Elmira? Was that a special train?"

"A. Yes, sir; the second section of the mail.

"Q. Where did you run to?"

"A. To Williamsport.

"Q. Williamsport lies directly south of Elmira, does it not? [Exhibiting a large map of that section of the country.]

"A. Yes, sir."

Now, in order that it may be fresh in your memories, I want to call your attention to these places. [Pointing to the places named on a large map on the wall in front of the jury.] There is Elmira, and there is Williamsport, directly south of it. Midway between—twenty-five miles from Elmira—where this witness says he was at half-past eleven, is a place called Troy. It is not put down on that map. This is merely to show the relative positions of these places. There is Elmira; there is Williamsport, directly south; here is the Susquehanna river, across which is the ferry; there is Harrisburg; and there is Baltimore—as straight a line almost as you would shoot a gun from Elmira to Harrisburg and Baltimore. Now we will go on with Strayer's testimony:

"Q. What is the distance between Elmira and Williamsport?"

"A. Seventy-eight miles.

"Q. Did you meet any other conductor on the way?"

"A. I met the mail north.

"Q. Who was the conductor?"

"A. Mr. Rogers.

"Q. Is he here now?"

"A. He is in the city, in some place.

"Q. Where did you meet—at what point?"

"A. At Troy.

"Q. Is Troy between Elmira and Williamsport?"

"A. Yes, sir; twenty-five miles south of Elmira."

As I have said, all I want to know is that a thing is true. If it is true, something will turn up to prove it. Here was Strayer, who left on that day in this special train to come south, and it so happened that Rogers was going the other way, and met him at this point—Troy—and a conversation occurred between them in relation to the speed and in connection with DuBarry, who had gone up there the day before, and tells you he believes he was there on the 13th. These things always happen; they are not strange, because they are the ordinary things of life occurring where truth is, never where falsehood is. No two falsehoods are consistent with any thing; each truth is consistent with every thing.

"Q. Can you tell exactly the hour when the two trains got there?"

"A. It was between the hours of one and two o'clock that I got to Williamsport.

"Q. Did you go no farther than Williamsport?"

"A. No.

"Q. You took passengers?"

"A. I was the second section mail. The first train took the mail and the passengers.

"Q. Do you know a ferryman at Williamsport who was ferrying there at that time?"

"A. Yes.

"Q. What was his name?"

"A. There are two; one's name is Bligh, and the other has a funny name; I cannot remember it.

"Q. Was it Drohan?"

"A. Yes, sir; some such name.

"Q. Are you still in the employ of the railroad company as engineer?"

"A. Yes, sir."

Now we have got him started on the way, and we turn to page 800:

"Q. Did you take passengers from Elmira that day or not?  
 "A. I do not remember. I was not in the caboose that was attached to the train. There was no one on the engine. They were not allowed to ride there.  
 "Q. When you stopped to take in water, did you not know whether there were passengers?  
 "A. I do not know. I did not take notice.  
 "Q. Who was the conductor?  
 "A. I do not remember. We have run these trains without a conductor.  
 "Q. Who has charge then?  
 "A. I took charge when there was no conductor.  
 "Q. Who went through to collect tickets?  
 "A. There were no tickets sold for that train; at least I do not think there were.  
 "Q. According to the best of your recollection, there were no passengers on that train?  
 "A. I don't know. I was on the engine. There were none there.  
 "Q. If there had been no conductor would you have collected the tickets?  
 "A. No, sir.  
 "Q. Who would?  
 "A. Whoever was back in the caboose.

Now here is the cross-examination:

"Q. You say you had a caboose on the train; tell us what that is?  
 "A. It is like a freight car. It was a soldier's car, and we used it as a caboose on those trains.  
 "Q. What was that train run for?  
 "A. It was to take Mr. DuBarry, the superintendent of the road.  
 "Q. To take him where?  
 "A. To Elmira."

He went there on the 12th and returned on the 13th, and his telegraphic dispatches afterwards reminded him of it, and he says, "I believe I was there, for I promised to be there, although I cannot remember it." We have nothing to say about Mr. DuBarry. He has told the truth, and all of it.

"Q. Don't you know it was against the rules to carry passengers on the freight trains?  
 "A. No, sir; that was not the rule on that road."

Now we will come to Mr. Rogers, on page 802, and see whether he confirms this:

"Q. Do you know Mr. Strayer?  
 "A. Yes, sir.  
 "Q. Did you meet him going south?  
 "A. I did.  
 "Q. At what point?  
 "A. Troy."

Which, as you see, is twenty-five miles south of Elmira, on the way to Williamsport.

"Q. At what time did you meet him?  
 "A. At 11:35."

He met him twenty-five miles from Elmira, on his way to Williamsport, at 11:35.

Now we will go a step further, gentlemen. I read the testimony of Mr. Glines, at page 802:

"Q. In April, 1865, had you any thing to do with the ferry across the Susquehanna at Williamsport?  
 "A. I had.  
 "Q. Please tell the jury what it was you had to do with it?  
 "A. I was put on there to collect fare from all passengers who were transferred.

"Q. Who run the boat?  
 "A. Mr. Drohan.  
 "Q. What is his first name?  
 "A. I cannot say. He went by the name of Gunboat.  
 "Q. Is his first name Maurice?  
 "A. I do not know.  
 "Q. What kind of a ferry was this?  
 "A. A rope ferry.  
 "Q. The rope was stretched across the ferry?  
 "A. Yes, sir; and run by the force of the current.  
 "Q. How quick was it crossed at that time—the middle of April, 1865?  
 "A. We always run it in from three to five minutes.  
 "Q. Do you know whether a train was there on the 13th of April, 1865?  
 "A. The train was there every day I was there.  
 "Q. When was that?  
 "A. I was there every day during that month with the exception of two days the first of the month.  
 "Q. With that exception you were there every day?  
 "A. Every day.  
 "Q. Do you know of any construction trains at that time running down from Williamsport to Sunbury?  
 "A. I know that there were two construction trains on the road between Williamsport and Sunbury.  
 "Q. Why were two running at that time?  
 "A. We always have one between Williamsport and Sunbury. The road was very badly washed at that time.  
 "Q. That was the reason for having two?  
 "A. Yes, sir; we were hauling bridge timber, repairing bridges, &c."

I turn you now to the testimony of Mr. Hepburn, who was the train-master, on page 806. He says:

"Q. How many construction trains were running?  
 "A. Two between Williamsport and Sunbury.  
 "Q. They did not run, as I understand it, at regular hours?  
 "A. No, sir; they had the right of the road to work from morning till evening, keeping out of the way of the regular trains.  
 "Q. Do you know whether they had orders to take passengers?  
 "A. They had orders to carry passengers through to any point they run to.  
 "Q. They obeyed the orders, of course?  
 "A. Yes, sir.  
 "Q. Can you tell the jury, if the construction train left Williamsport ferry at half-past twelve o'clock at what time it would reach Sunbury if it went directly through?  
 "[Question objected to by Mr. BRADLEY. It had not yet been in evidence that any train run that day. The court said the time might be proved first.]  
 "A. The running time for a passenger train was an hour and forty minutes. The gravel train, with an ordinary load, would run it in a little over two hours.  
 "Mr. BRADLEY. From Williamsport to Sunbury?  
 "A. Yes; that is, to the other side of the bridge.  
 "Q. Do you mean the regular time was an hour and forty minutes?  
 "A. Yes; an hour and forty or fifty minutes.  
 "Q. That was the time on the 13th of April, 1865?  
 "A. Yes, on the 13th. Before the 10th it was longer.  
 "Q. Who gave the orders in respect to carrying passengers on the construction trains?  
 "A. I gave the orders, or they were given by me to the clerks, and they ordered it.  
 "Q. Would passengers frequently come through in that way?  
 "A. The conductors remitted money every day or return tickets.  
 "Q. Did they or not start out in the morning to supply the work of the road, going from point to point, as they were required?  
 "A. Yes, sir; the bridge of Williamsport was being repaired, and the gravel train was run to and from the bridge."

I next read from page 807:

"Q. The train went from Watstown to the bridge, as I understand it, and back again, as occasion required it?  
 "A. Yes, sir.  
 "Q. There was no time for starting, arrival, or any thing else; they were merely required to keep out of the way of the passenger trains?  
 "A. Yes, sir; the train east at that time was hauling wood from Watstown to Sunbury.  
 "Q. Was that on the 13th of April?  
 "A. Yes."

I now read the testimony of Mr. Westfall, on pages 815 and 816:

"Q. At Williamsport, how far from the ferry is the depot where the trains coming from Elmira stop?  
 "A. About three-quarters of a mile.  
 "Q. Were you at the depot that morning?  
 "A. I was there when the trains arrived from Elmira that day.  
 "Q. Tell the jury what trains did arrive from Elmira?  
 "A. There were two trains that arrived between twelve and two.  
 "Q. Were you there when the eight-o'clock train leaving Elmira arrived?  
 "A. Yes, sir.  
 "Q. What time did it arrive?  
 "A. Between the hours I have named. I could not tell the exact minute.  
 "Q. One of them was the eight-o'clock train from Elmira?  
 "A. Yes, sir.  
 "Q. Were you there when the special train arrived at 12:30?  
 "A. Yes, sir."

This was that special train that we had such special difficulty in getting before you, but we did get it.

"Q. Will you state what occurred after the arrival of that train?  
 "A. A man came to me who was very anxious to get through. He asked some questions with regard to the train. He inquired what would be the probable chances of getting over the line. I took him to be either a rebel spy or a Government detective. I cut him off very short—did not give him much satisfaction; because I thought it was none of his business as to how we run our trains at that time.

"Q. Do you know which way he went?  
 "A. I could not say as to which way he went.  
 "Q. Did you know the ferryman?  
 "A. Yes, sir.  
 "Q. Did you see the ferryman afterwards?  
 "A. Yes, sir; I saw him that evening.  
 "Q. Did you have any conversation with the ferryman that evening?  
 "[Objected to by Mr. BRADLEY. Withdrawn.]  
 "Q. When did you next see the ferryman after you had the conversation with the man that you saw after the arrival of the special train?  
 "[Objected to by Mr. BRADLEY. Objection overruled. Exception reserved.]  
 "A. That evening, about half-past six o'clock.  
 "Q. About what time was it that this man had the conversation with you in relation to making these inquiries about your trains?  
 "A. I should judge between twelve and two. I could not fix the time precisely.  
 "Q. Have you seen anybody since that looks like him?  
 "A. I cannot say that I have seen any person that I could swear to positively."

"Mr. PIERREPONT. I did not ask you as to whether you had seen any person whom you could swear to positively as being the one. I ask you if you have since seen anybody that looks like him?"

"The COURT. Ask him if he has seen anybody since that he believes to be the man."

"Q. Have you seen anybody since that you believe to be the man?"

"A. Yes, sir; I have."

"Q. Do you see him now?"

"A. Yes, sir."

"Q. Do you know the prisoner?"

"A. The prisoner is the man; that is my impression."

"Q. Will you tell us when you left Williamsport that day?"

"WITNESS. Going in which direction?"

"Mr. PIERREPONT. In any direction."

"Q. After this conversation, did you stay in Williamsport?"

"A. Yes, sir; I remained in Williamsport, after transferring the passengers north, until about nine o'clock."

There is a great difference in men in the way they will state a thing positively or not. The question asked this witness by the court is, "Have you seen anybody since that you believe to be the man?" "Yes, sir, I have." "Do you see him now?" "Yes, sir." "Do you know the prisoner?" "The prisoner is the man; that is my impression." That is the way I should swear about anybody. Some people who would be more positive would say so more positive. Some men, when they desire to express their firm conviction of a fact, will do so by saying they "*think*" such is the fact. Others will say, "It is the fact." For instance, my confident belief is, that there has been no day in these many weeks in which every man of you has not been in his seat. I believe it is so, and yet if I were called to-day and put upon that stand and asked to swear whether every man had been here the whole of the time, or whether one day after recess one man was not absent, I would not swear positively that you had each one been here every hour. I believe you have been; I think it is so, and in that way I should swear. But some men, with the same knowledge, would be more positive than I, and say yes, they *knew* it was so. There is a difference in men in their modes of expression. It is my confident belief that you have all been here. I have not watched you every hour. I have been busy with witnesses; and yet if I came on the stand and said under oath that no man had been absent an hour during this trial I should hope to be believed, not because I said I knew positively, but because that was the best of my belief. In my judgment, that is the strongest kind of evidence we ever have.

"Q. Do you know whether they were ordered to take passengers?"

"A. Yes, sir; they were at that time, because the road had been obstructed. We gave the men orders to carry persons going from one point to another."

These construction trains, as you see, all had orders to carry passengers, because the roads were out of order.

"Q. Will you tell about the speed at which these construction trains were running?"

"A. They were running at a very rapid speed at that time."

"Q. Tell the jury why that was?"

"A. Because, as a general thing, when we wanted anything, we would go in a good bit of a hurry for it, and in getting things for the bridge it was very necessary to lose as little time as possible."

"Q. How were they running then compared with the passenger train in speed?"

"A. I should judge they would make about the same time."

Now, gentlemen, I have read to you what this man Mr. Westfall, the train-master, said of the conversation he had about the trains with the prisoner, and I have proved by all these witnesses that Drohan was then the ferryman. Now I come to Drohan. Let us see what he says. His testimony is on page 805:

"Q. On the 13th, 14th and 15th of April, 1865, had you any thing to do with the ferry across the Susquehanna at Williamsport?"

"A. Yes, sir; I ran it."

"Q. Do you remember a special train coming in from Elmira on the 13th, or anybody coming up to be ferried over?"

"A. I do not remember any thing about a special train. I remember a man coming to be ferried over."

[His examination objected to by Mr. BRADLEY. Objection overruled.]

"Q. State what occurred and what you were doing when this man came?"

"A. I was on the other side of the ferry—on the Williamsport side."

"Q. Was that the same side as Elmira?"

"A. Yes; it is the same side on which the Elmira train comes in."

"Q. Now, tell us what you were doing?"

"A. I was coiling up my rope, when the man came to me and

asked me to ferry him across to this side. I asked him if he would pay if I would ferry him over, and he said yes."

"Q. Was there any thing that called your attention to him?"

"A. Yes."

"Q. How was he dressed?"

"A. He had a peculiar coat on."

Their witnesses have all told you that. They have taken great pains to call your attention to it, too.

"Q. Did the man say any thing about ferrying?"

"A. He said he wanted to go to the other side."

"Q. Did he say when he wanted to go to the other side?"

"A. Not to my knowledge."

"Q. What did he say in relation to his desire for quickness?"

"A. He said he wanted to go to the other side—"

"Mr. BRADLEY insisted that the witness should give a narrative, and not be interrupted with questions at every sentence."

"Q. I asked you to state what the man said."

"A. I have said he asked me to ferry him across to the other side. I told him the charge would be fifty cents. In the middle of the river I generally made it a rule to stop the ferry to get my pay, when the party had not a ticket of the company. He gave me a dollar bill, and I had no change, and I kept the dollar bill; he said that I might have it."

"Q. Have you seen that man since?"

"A. I have."

"Q. Is that the man? [Pointing to the prisoner, who stood up.]

"A. To the best of my belief, that is the man."

You remember that man's face that they call the Gunboat. It did not look as though it would tell a lie. They did not bring any body to say that the mouth that belonged to that face ever did utter a lie. When he came into this room and put his eye upon that young man, whom he took alone over that ferry on that day, a thing so marked, taking his pay in the river, and taking double fare, he would be very likely to remember him, as the other man who had seen him before remembered him; and he did remember him; and I imagine that the prisoner remembered him. I judge so, and have a right to judge so from the manner in which the counsel handled that witness. Let us see what he said:

"Cross-examined by Mr. BRADLEY:

"Q. Who brought you here?"

"A. The authority of the Government."

"Q. Who came after you?"

"A. I don't know the gentleman."

"Q. A young man or old man?"

"A. A middle-aged man."

"Q. Do you see him in court?"

"A. Yes; that is the gentleman. [Pointing to Colonel Montgomery.]

Mr. BRADLEY. (To witness.) You may go; get down from that stand; I don't want any thing more of you."

The district attorney says, "That is acting better than any that Edwin Forrest ever performed." I do not know whether it was acting or not. The district attorney said it was, and turned to the counsel and said, "I know you." Well, I do not know him. My acquaintance is only so far as this trial goes. I did not know it was acting, but those who do know say it is.

We have now got him started along on a train which could bring him from that point into Washington without any difficulty whatever about ten o'clock on the morning of the 14th. That has been proved through much tribulation. There has not been any witness to doubt Mr. Westfall, who told you that the prisoner was the man he saw who was making inquiries of him, nor any man to dispute Drohan, who told you he was the man he took over the ferry. Nobody has thrown any doubt over their testimony nor over their characters. They were in the employ of the road, and could have no possible object in coming here to give this testimony if it was not the truth. We sent for them, and they came and gave their testimony—testimony that will stand the test of truth when you and I and all appear before the great judgment seat.

We have now got the prisoner here at 10:25, and are on the road to the barber's. I now propose to turn to the barber's testimony. He was an early witness in this case, and there has been plenty of time for them to learn who he was, and how long he had lived here, and what was his character for truth and veracity; whether he was a bad or a good man, and whether he was a Protestant or a Catholic. No doubt they did inquire about all these matters, and they did not attempt

to bring a witness against Mr. Wood. Now let us see what Wood tells us happened on that morning. It is one of those things about which there could be no mistake. He has either perjured himself, or else he has told the truth. He could not have been mistaken. I begin at page 374:

“Q. What is your business?  
 “A. I am a barber by trade.  
 “Q. Have you been a barber in the city of Washington for some time?  
 “A. Yes, sir; ever since I have been in the city.  
 “Q. How many years?  
 “A. Since December, 1862.  
 “Q. Where was your barber-shop in April, 1865?  
 “A. I came here on a Saturday, about the 1st of September, 1862, and I engaged to go to work at Messrs. Booker & Stewart’s barber-shop, on B street, near Grover’s Theatre, next to the old Union building.  
 “Q. In this city?  
 “A. Yes, sir.  
 “Q. Are you working at the same shop now?  
 “A. No, sir; I now have a barber-shop under the Ebbitt House, near Fourteenth street. I am now in business for myself.  
 “Q. Did you know Booth by sight before the assassination?  
 “A. Very well, sir.  
 “Q. Did you ever cut his hair?  
 “A. I have, frequently.  
 “Q. Did you ever shave him?  
 “A. I have.  
 “Q. You knew him well?  
 “A. Very well, sir.  
 “[The prisoner at the bar was here requested to stand up, which he did.]  
 “Q. Have you ever seen that man [pointing to the prisoner at the bar] before?  
 “A. I have.”

There is not any qualification about that.

“Q. On the morning of the assassination did you see him?  
 “A. Yes, sir.  
 “Q. Where did you see him?  
 “A. I saw him at Mr. Booker’s barber-shop.  
 “Q. What did you do to him?  
 “A. I shaved him and dressed his hair.  
 “Q. Will you tell us who came into the shop with him, if anybody?  
 “A. Mr. Booth came in; there were four persons who came together.  
 “Q. Who were the four persons beside Booth and Surratt?  
 “A. A gentleman I take to be Mr. McLaughlin; they called him ‘Mac’; and from his appearance (I having since seen the picture of Mr. McLaughlin) I should think it was him.  
 “Q. Did he tell you where he had come from that morning—McLaughlin?  
 “A. They were speaking of Baltimore; the conversation between them was in reference to some Baltimore—  
 “Q. Between whom?  
 “A. Between Mr. Booth, Mr. McLaughlin, and Mr. Surratt; the other gentleman that was with them had nothing to say; he sat down nearly in the rear.  
 “Q. Did you ever see the other man afterward?  
 “A. I never saw either of the parties afterwards except this gentleman. [The prisoner.]  
 “Q. Who was the other man, do you know?  
 “A. I did not know him.  
 “Q. You may describe the man?  
 “A. He was a short, thick-set man, with a full, round head; he had on dark clothes, which we generally term rebel clothes, and black slouched hat.  
 “Q. Did you cut Booth’s hair that morning?  
 “A. I did; I trimmed his hair round and dressed it.  
 “Q. Won’t you tell the jury what occurred between Booth and Surratt whilst you were trimming Booth’s hair?  
 “A. There was nothing particular that occurred.  
 “Q. What was said?  
 “A. Whilst I was waiting on Mr. Booth, Mr. Surratt was sitting just in the rear of me; the thick-set man was sitting to the left of the looking-glass, just in the rear of my chair. The glass was next to the wall, and Mr. Surratt was on the right side of the glass, the other one on the left hand. There were not any words particularly that I remember said or interchanged; but when I had got through waiting on Mr. Booth, he (Mr. Booth) got out of the chair and advanced toward the back part of the shop; Mr. McLaughlin was in that direction doing something about the glass. Mr. Surratt took my chair immediately on Mr. Booth’s getting out. During the time that I was spreading my hair-gown over him and making other preparations for shaving him, this other young man, rather tall, with dark hair—I think not black, but dark-brown hair, rather good looking, with a moustache—was figuring before the glass; he had on a black frock coat, and putting his hand in his pocket he took out two black braids; one of the braids with curls he put on the back of his head, allowing the curls to hang down, he then took the other braid and put it on the front; it had curls also, and they hung on the side. When he had done this, he said, ‘John, how does that look?’  
 “Q. Whom did he address as John?  
 “A. I do not know whether it was Mr. Surratt or Booth, but in making the remark he said ‘John.’ I turned round and said, ‘He would make a pretty good-looking woman, but he is rather tall.’ Says he, ‘Yes,’ in rather a jocular manner, laughing at the time. He seemed to look taller to me when he put on these curls than he did

before, though I had not taken particular notice of him before that. This time Mr. Surratt said to me, ‘Give me a nice shave and clean me up nicely; I am going away in a day or two.’

“Q. Will you state, when he said ‘Clean me up nicely,’ what his condition was as to being clean or not?  
 “A. He seemed to be a little dusty, as though he had been traveling some little distance, and wanted a little cleaning and dressing up, as I am frequently called upon by gentlemen coming in after a short travel.”

He had just come in from Baltimore. He had come from Elmira, the train brought him right here, and he went to the barber-shop to be cleaned up.

“Q. Did he say any thing to you about Booth?  
 “A. Yes, sir.  
 “Q. What was it?  
 “A. He asked me if I noticed that scar on Booth’s neck. Says I, ‘Yes.’ Says he, ‘They say that is a boil, but it is not a boil; it was a pistol shot.’ I observed, ‘He must have gone a little too far to the front that time.’ This gentleman (Mr. Surratt) observed, ‘He like to have lost his head that time.’ I then went on and completed the shaving operation. I shaved him clean all round the face, with the exception of where his moustache was. He had a slight moustache at the time.

“Q. What did you do with the hair?  
 “A. After I was done shaving I washed him off in the usual way, dressed his hair, and put on the usual tonics and pomade.”

I shall have occasion to allude to that when I come to the testimony of another witness in this case, who spoke of his hair looking as though it had been dressed at the time he saw him.

“Q. Tell the jury about what time in the morning it was?  
 “A. I think it was near about nine o’clock. I had had my breakfast.

“Q. Where had you been that morning?  
 “A. I had been up to Mr. Seward’s and had come down again.

“Q. Where did you find Mr. Seward?  
 “A. In his room, third story.  
 “Q. Was he up or in bed?  
 “A. He was up.

“Q. Did you see any other gentlemen at Mr. Seward’s that morning?  
 “A. Yes, sir; I think I did.

“Q. Whom did you see?  
 “A. Mr. Stanton called. Mr. Seward was either on the bed or on the chair by the bed when I shaved him. I do not remember now exactly which.”

You saw that man, and you heard his testimony; you heard all these little circumstances that he narrated, and you believed him, every man of you. He could not have been mistaken, and he did not perjure himself. Now, I repeat, the “physical impossibilities” of which the gentleman has spoken are out of the way. We will come presently to the moral impossibilities, and see where they lie.

I shall close in a short time, but I think I shall not be able to do so to-day. I have read so much that I am a little hoarse in my throat.

Mr. MERRICK. Let us take a recess.

Judge FISHER. We will take a recess until to-morrow. How much longer time will you occupy, Mr. PIERREPONT?

Mr. PIERREPONT. Not over an hour, I think.

Judge FISHER. If I thought you would not occupy over an hour, I would prefer to take a recess until eleven o’clock.

Mr. PIERREPONT. I think I shall not.

Judge FISHER. I guess we had better try ten o’clock, the usual hour.

The court accordingly took a recess until to-morrow morning at ten o’clock.

#### Forty-Ninth Day.

TUESDAY, August 6, 1867.

The Court re-assembled at ten o’clock, a. m.

Mr. PIERREPONT. Gentlemen, you will remember that the other day, in response to an inquiry by Mr. MERRICK, one of the counsel for the prisoner, asking why we did not produce the record of the conspiracy trial, I brought the original record here and handed it to the counsel. I then stated that, as part of that record was a suggestion made by some of the members of the court that tried the conspirators, if the President thought it consistent with his public duty they would suggest, in consideration of the sex and age of one of those condemned, that a change might be made in her sentence to imprisonment for

life. I stated that I had been informed that when that record was before the President, and when he signed the warrant of execution, that recommendation was then before him. I want no misunderstanding about that, and do not intend that there shall be any. That is a part of the original record, which I here produced in court. It is in the handwriting of one of the members of that court, to wit, General Ekin. The original of that is now in his possession, and in the handwriting of Hon. John A. Bingham. When the counsel called for that record, I sent the afternoon of that day to the Judge Advocate General, in whose office the records are. He brought it to me with his own hand, and told me with his own voice, in the presence of three other gentlemen, that that identical paper, then a part of the record, was before the President when he signed the warrant of execution, and that he had a conversation with the President at that time on the subject. That is my authority. Subsequently to its being presented here the Judge Advocate General called to receive it back, and reiterated in the presence of other gentlemen the same thing. That is all my knowledge, gentlemen. This is a matter which has nothing whatever to do with this case; but the counsel called for the record, and it was for that reason produced.

I come now, gentlemen, to where we left off yesterday, which was with the testimony of Wood, the barber, who shaved this prisoner after his arrival from Baltimore on the morning of the 14th. I had already said to you that a man could not go through with what he went through—shaving the man, cutting his hair, having all this conversation he had with him in relation to Booth's wound, and in relation to the other things that occurred in the shop—and be by any possibility mistaken. He shaved him, he cut his hair, he dressed his hair, had these conversations that I speak of with him, noticed that he came in very dusty, as if from travel, and he could not be mistaken.

Now, the gentlemen say that he was not there at the exact hour the barber said he was. That is the only criticism they have ventured to make upon this subject. Gentlemen, I will undertake to show from this evidence—under any fair construction of it—that he was there at the very hour he stated. Now let us see exactly what he did state, on page 376:

"Q. Tell the jury about what time in the morning it was.

"A. I think it was near about nine o'clock. I had had my breakfast."

That is all he says on the subject of time. Now let us see further:

"Q. Where had you been that morning?

"A. I had been up to Mr. Seward's, and had come down again.

"Q. Where did you find Mr. Seward?

"A. In his room, third story.

"Q. Was he up or in bed?

"A. He was up.

"Q. Did you see any other gentlemen at Mr. Seward's that morning?

"A. Yes, sir; I think I did.

"Q. Whom did you see?

"A. Mr. Stanton called. Mr. Seward was either on the bed, or on the chair by the bed, when I shaved him. I do not remember now exactly which."

Now, let me call you back, gentlemen. This, you will remember, was on the 14th of April. We were then in the shorter days of the year. The witness does not undertake to fix the exact time. Nothing occurred by which he could fix the exact time; he only gives us his general impression as to about when it was. He tells you he had had his breakfast; that he had been clear up to the house of Mr. Seward, who was then, as you know, enfeebled from the accident he had met with. He shaved him in his bed, or on the side of the bed. He had gone through all that operation, met the Secretary of War there, and had returned to his shop before this occurred. Now, what would be the natural time, in the natural progress of events, in that season of the year, when he would get back to his shop? I ask you, as men of good sense and men of fairness, to tell me. It is not of the slightest consequence whether he thought it was somewhere about nine o'clock, or somewhere about ten o'clock. It was undoubtedly a little after

ten o'clock, which would be the natural hour for such a thing to happen. I ask you, as fair men, what you think about that? Does it strike you that I am presenting this in any unfair, or unreasonable, or improbable way? I am sure you do not think so. The witness did not attempt to fix the time, but the facts were the things, and those are fixed.

Now the only defect in the defense on this subject was, that they did not undertake to call little Hess, the little fellow you saw on the stand with blue-black hair, very heavy black mustache, and very dark swarthy face, to personate Surratt, as he did pretend to personate him in front of the theatre. They ought to have had Hess here to state that he was the one Wood had shaved. They had Hess for another purpose, to which I am presently coming. You saw Hess. You saw whether he, with his black eyes, black hair, swarthy face, and heavy mustache, looked much like the prisoner at the bar.

I now come to the testimony of Rhodes. You just saw what kind of a man Rhodes was. I think men of your sense in seeing a witness in that way can tell a great deal about him. He was what we call in my country "a prying, curious Yankee, moving about, a mender of clocks, having a curiosity to go around into different places, and see what he could see; and in his going about he came to Ford's Theatre and had a curiosity to go in and see it. The other side undertook to show by Mr. Ford (who, when I came to cross-examine him, admitted that he was in Richmond at the time) that he could not have gone into the theatre, because it was locked. It finally turned out that the theatre had four doors besides the side doors, and I engage that that Yankee could have got in somewhere if he had tried, and that he did get in. Had he any object to come here and tell a falsehood? He was not paid for it, nor did he get a job of mending any body's clock by it. It was the most natural thing in the world for a man like him to do exactly that. Moving about, he came to that theatre, and seeing a chance to go in, his curiosity led him in. He talked about the picture of the scene. He did not know the difference between the curtain and the scenes that shove together, as it finally turned out; for it was the stage scenery he saw when they were carrying on this rehearsal and described as a curtain. He is not a man of much money, I fancy, nor much in the habit of visiting theatres; but he had a curiosity to see how this theatre looked, and he went in there, and he came and told you just what occurred. Now let us see whether he told you the truth or not.

I read from page 481. He says:

"Q. State as near as you can what time in the day.

"A. As near as I can impress it upon my mind, it was within half an hour of twelve o'clock when I entered the building."

You will notice that this rehearsal, which they admit commenced at ten o'clock, was that of the American Cousin, which lasts about an hour and a half.

"Q. After entering the theatre, state if your attention was directed by any thing you saw going on in one of the private boxes?

"A. I went in merely to look at the theatre. I went up the steps to the second floor; went down in front where the circle was, to look upon the stage; whilst there I saw one of the box doors open a little and shut. I was anxious to see from that point of view, and supposing some one was in there, having heard some one stepping about, I went down to the box and looked out from that point. As I approached the box whoever was in there walked away out of the box, and I entered and looked from that point on the stage. I had been looking there about a minute or two when the same person, I suppose, who went out of the box returned and spoke to me. He said he was connected with the theatre. We then had a few words together, when my attention was again drawn to the scenery on the stage. They had a curtain down that had recently been painted, I believe, and I stood there looking at that. Then I heard this man behind me doing something. In turning around to see what it was he was doing—I supposed he was looking down as I was—I noticed that he had a piece of wood; whether he had it put under his coat or was taking it out I cannot say. The piece of wood was about three feet long and about as wide as my two fingers—may be a little more in the centre—slanting a little towards each end from the centre. As I turned round he said, 'The President is going to be here to-night.' That was the first intimation I had of the expected presence of the President that night. I said, 'He is?' He then said, 'We are going to fix up the box for his reception. I suppose there is going to be a big crowd here, and we are going to endeavor to arrange it so that he won't be disturbed.'"

Some excuse had to be made for these arrangements, and this was the excuse he gave :

"He then fixed this piece of wood into a small hole in the wall there as large as my thumb. I should think the hole to be an inch or an inch and a half long, and about three-quarters of an inch wide. He placed one end of this stick in the hole, and it being a little too large, took a knife and whittled it down a little. He also gouged out the hole a little for the purpose of making it fit. Then he placed it against the panel of the door across to the wall, forming an angle. He says, 'The crowd may be so immense as to push the door open, and we want to fasten it so that this cannot be the case.' He asked me if I thought that would hold it sufficiently tight. I told him I should judge that it would hold against a great pressure; that a hole would be punched through the panel of the door before it would give way. The wood was either oak or of North Carolina pine. I am not acquainted with that kind of wood, but I am rather of the impression it was North Carolina pine, which is a very tough wood, I believe. After he had fitted that to suit him we had a few words more together. I then heard some one come across the stage, back of the curtain.

"The DISTRICT ATTORNEY. You have spoken of this interview with a person. I will ask the prisoner to stand up here. [The prisoner did so.]

"Q. State if that is that man, [pointing to the prisoner,] and whether you saw him there.

"A. I should judge that was the man.

"Q. Have you any doubt about it?

"A. No, sir.

"Q. State all that occurred.

"A. I thought it was singular that the proprietor of the theatre could not afford a lock for a box of that kind. That was what passed in my mind.

"Q. What became of the prisoner? Was he there during the whole time?

"A. No, sir; he went out before they came into the box."

Now, when this stick that I have sent for is brought in, you will see the piece which had been sawed off, and was tied to it, and that it had been made smaller at the end, as this man swears it was, which went into the hole. Now I want to call your attention in this connection to the testimony of Judge Olin, a member of this court. On page 399 Judge Olin states what he saw :

"A. I perhaps might not improperly say that I saw a report that the President had been shot through a door, and I commenced taking preliminary examinations in reference to this matter. I went there personally, in company with Senator Harris and Miss Harris. Rathbone, who was with them at the time of the murder, was disabled by his wound from going there. I went there to examine the premises personally, to be able to understand as much testimony as was applicable to the particular transaction. When I got into the theatre I examined this hole in the door. If you can see this panel [illustrating by a panel of the desk] I can represent it about as well as any other way by saying that it would correspond with a hole placed right here, right on the corner of the panel. You would scarcely notice it unless your attention was drawn to it. Placing your eye to the hole, it was about the height a person would occupy sitting in a chair inside. I saw that it was bored with a gimlet, and that a penknife had been used to take off the rough surface. The shavings and chips from that hole were still on the carpet, which had not been cleaned, and could be seen as you entered the box. I saw, too, that the entrance into this box from the body of the house was closed by a bar when shut at an angle, and some person had taken occasion to cut into the plastering of the wall a place into which the end fitted; and with the bar placed in it, and the other end against the door, any person pressing against it from the outside the stronger he would press the tighter the fastening would become. The plastering cut from that hole was also lying at that time on the carpet, as you went into the box of the theatre. I delivered over the preliminary examinations I had made to the War Department, and that ended my connection with the matter.

"Q. What did you find in reference to the condition of the staple on the door that held the door lock?

"A. The staple of the lock to the door went into a hasp, with screws at each end. The screw at one end had been loosened in such a way that if you shut the door and locked it—I tried the experiment once or twice—you could push it open; you could take one of your fingers and push the door open although locked. One of the screws, the upper one, I think, had been screwed out in such a way that the door would open without any resistance, and without creating any disturbance, if locked.

"Q. You tried the experiment?

"A. Yes, sir.

"Q. Would any person, when the door was thus locked, have noticed that such was the condition of it unless his attention was drawn to it?

"A. Oh, no; you saw nothing of that on the outside, and you would not see it on the inside without a careful inspection. It was just a little loosened, to that extent that the door could open when gently pressed against.

"Q. Then the shavings from the wall and from the hole cut out of the door were all on the carpet?

"A. Yes, sir."

Mr. BRADLEY. Be good enough to read his correction of that testimony.

Mr. PIERREPONT. He did not correct that statement. On the contrary, he stated on his second examination that his impression was the same then as be-

fore, and that if he were a painter he could picture it as it lay there.

Mr. BRADLEY. We will correct it after you get through.

Mr. PIERREPONT. Now, gentlemen, that little fact, examined into just after the assassination occurred, showed that this bar was fitted there just before the deed was done. Judge Olin found that the carpet had not been swept, and that the shavings were lying there. When he made the examination he saw them there, and, as he expressed it, could paint it as a picture. As he recalled it, it all lay clear before his mind. This is one of these little circumstances going to confirm just precisely what Rhodes saw going on on the day of the murder, showing that it had just been done, and it must have been done very shortly before, because preparations had been made to receive the President, to make the box clean, to have it swept and garnished, ready to receive the head of the Government.

I come now to the testimony of Dr. Cleaver, page 87 :

"Q. Were you in Washington on the day of assassination?

"A. Yes, sir.

"Q. Have you any distinct memory of what you did on that day?

"A. Yes, sir.

"Q. Will you state whether you were riding or walking?

"A. I was doing both that day; I was pretty busy; I was driving a black horse that day to exercise him."

He was a horse-doctor, you remember, and perhaps many of you know him.

"Q. At what time in the day?

"A. I started out about two o'clock in the afternoon.

"Q. Which way did you go?

"A. I went down to the Navy Yard first, and then down to the Congressional Burying Ground.

"Q. When you came back, what street did you come?

"A. I went around by the Bladensburg toll-gate, and came in H street.

"Q. Did you come in late or early?

"A. I got to the stable, I reckon, at four o'clock, or a little after four.

"Q. Before you got to the stable, when you came down H street, did you meet anybody that attracted your attention?

"A. I met a great many.

"Q. Did you meet any one in particular that attracted your attention?

"A. I met John H. Surratt."

Now, he did or did not meet him. Let us see how this came out further presently :

"Q. The prisoner at the bar?

"A. Yes, sir.

"Q. Did you know him very well?

"A. I have known him a good long while—I think I ought to know him.

"Q. Was anybody riding with you at the time?

"A. Yes, sir.

"Q. Is that person living?

"A. Yes, sir.

"Q. How was Surratt moving when you met him—on horseback or on foot?

"A. He was on horseback.

"Q. What kind of a horse was it?

"A. I did not notice the horse much; I think it was a chesnut-sorrel; a rather darkish horse.

"Q. Is chesnut-sorrel a dark color?

"A. Yes, sir."

These horsemen know the colors quicker and better than I do, and perhaps better than you do.

"Q. State whether you spoke to him?

"A. I spoke to him and said, 'How are you, John?' He nodded to me; I do not know whether he spoke or not; I was jogging along at a pretty good gait.

"Q. He bowed to you, and you said, 'How are you, John?'

"A. Yes, sir."

Now, gentlemen, this witness knew the prisoner and had known him for years. As I read to you the other day, the prisoner kept his horses at Cleaver's stable, and so did Booth. He did not make any mistake about it. He either committed gross, willful, wanton perjury, without hope of reward, or he told the truth. He was not mistaken; that excuse cannot be given for him. Let us see how it happened that the Government got hold of this evidence. It was not from any favor of Cleaver. He did not want the Government to get hold of it. I read from his cross-examination, on page 89 :

"Q. Did you tell them you saw John H. Surratt in this city on the afternoon of the 14th, the day of the murder?

"A. No, sir; I did not.

"Q. Did you not know it was of importance to find out whether John H. Surratt was concerned in the murder or not?"

"A. Yes, sir.

"Q. Then why did you not tell them what you knew?"

"A. I was well acquainted with Surratt, and inclined to shield him."

This is on cross-examination, and he tells you, "I was well acquainted with Surratt, and inclined to shield him." And that was the truth about it. Cleaver, as I said before, was an Englishman; he was in sympathy with the rebel government; he was our enemy, and he was inclined to shield Surratt; and that is the reason. I now turn to page 92:

"Q. I want to know the first person to whom you told that you saw John H. Surratt on the 14th of April?"

"A. I may have told a great many—I cannot recollect.

"Q. Do you know whether you told it to anybody before you told it to Sanford Conover?"

"Q. No, sir.

"Q. Were you at large in the city when Surratt was arrested?"

"A. No, sir; I was in the city."

As you know, he was under arrest and in prison for a crime with which he was charged connected with the other sex. You know all about it, I suppose, and I do not need to go into it.

"Q. I do not speak of the time you met him. During the conspiracy trials you know it was an important fact to ascertain whether he was in the city on that day or not?"

"A. Yes, sir; and I should not have told it now if it had not been for Conover."

Who was in prison with him, as you remember.

"He soon told somebody, and the first thing I knew somebody came to the jail to see me. I got very mad at Conover. I did not want to answer the question.

"Q. Did you say it was in the jail?"

"A. Yes, sir.

"Q. Who came to see you?"

"A. I think it was Mr. Ashley—a stoutish gentleman."

Mr. Ashley was a member of Congress and of the Judiciary Committee, who was investigating these things, as you all know. It is a part of the public history of the country.

"I asked him, and he told me how he came to know of it. I would not answer the question until he told me who had told him of it. I knew I had not said it to anybody but Conover. When I went back I never spoke to him for six or seven days.

"Q. Then you had a talk with Mr. Ashley?"

"A. Yes, sir.

"Q. Did you tell him about all these things?"

"A. No, sir.

"Q. What else did you fail to tell him?"

"A. I did not tell him a great many things; I never told him of the sale of Booth's horse to Arnold.

"Q. Did Mr. Ashley write down what you said?"

"A. No, sir.

"By Mr. PIERREPONT:

"Q. You have been asked about the sale of a horse to Arnold. What was that?"

"Mr. MERRICK. We have not asked that.

"Mr. PIERREPONT. It came out some way in cross-examination.

"The court ruled that the question might be asked.

"A. Booth came down to the stable on the 27th or 28th of January and paid his livery, I think, to the 26th. Then he came about the 27th or 28th and paid his livery up to February 1st, and Sam. Arnold in company with him. He then told me, in Arnold's presence, that he had sold the horse to Arnold, and that Arnold was to pay the livery from that time on.

"By Mr. BRADLEY:

"Q. Who was the Mr. Ashley who called on you at the jail?"

"A. I don't know him only by that name. I believe he is a member of Congress. I never saw him before in my life.

"Q. What sort of a looking man is he?"

"A. A stoutish man.

"Q. Did you understand he was a member of Congress?"

"A. Yes, sir; he told me who he was.

"Q. Have you received any offer of favor or reward for the testimony you have given in this case?"

"A. I have not from anybody."

This is the cross-examination of Mr. BRADLEY:

"Q. You are quite sure of that?"

"A. Yes, sir; I have not, from anybody.

"By the District Attorney:

"Q. And we understand you to say you had no idea of revealing this?"

"A. I did not; I told it to Conover confidentially."

Now, gentlemen, every man who has ever had experience in human testimony knows that testimony coming out in the mode in which that testimony came out is some of the very strongest testimony that can exist. It came from a man having no sympathy with this Government; it came from a man who was a friend of this prisoner; it came from a man who admits him-

self he wanted to shield him. He told his fellow-prisoner in jail, where they were lying day after day together, and where men will talk, that he had seen, met, and spoke with Surratt on H street on the very day of the murder. He told him in the strictest confidence. Conover told a member of the Judiciary Committee of it, and he went to see Cleaver in jail, and in that way it was forced out of him; and it is true.

I now come to the testimony of Reed, on page 38, and I have here to remark that this same Mr. Reed was a tailor in this city, and testified before the military commission, and his testimony is printed here in this book. The other side called his attention to his former testimony—I think I am not wrong; if I am they will correct me—and his former testimony confirms his testimony now in every particular; and he says, "I knew him, and am as sure that I saw him as that I stand here."

Mr. MERRICK. Do you find that in his testimony?"

Mr. PIERREPONT. Yes.

Mr. MERRICK. Will you refer us to it?"

Mr. PIERREPONT. I say in his former testimony.

Mr. MERRICK. Not in this testimony.

Mr. PIERREPONT. I think you asked him about his former testimony.

Mr. CARRINGTON. I think his attention was called to it on the cross-examination, and it is evidence before the jury.

Mr. PIERREPONT. I will look for it. I think I am not mistaken about it, but I may be. I know they called the attention of some of the witnesses to their testimony before the commission. They did so with Dye, and I think they did so with Reed; but it is very easy to ascertain. Now let us see what Reed says:

"Q. In what city do you live?"

"A. In Washington city.

"Q. How many years have you lived here?"

"A. About thirty years.

"Q. Do you know the prisoner at the bar by sight? [Prisoner made to stand up.]

"A. I do.

"Q. How long have you known him by sight?"

"A. Since quite a boy.

"Q. Since you or he was quite a boy?"

"A. Since he was quite a boy.

"Q. Were you in the city of Washington on the day of the murder of the President?"

"A. I was.

"Q. Did you see the prisoner at the bar on that day in Washington?"

"A. I think I did.

"Q. Where did you see him?"

"A. I saw him on Pennsylvania avenue, just below the National Hotel. I was standing, as he passed, just in front of where Mr. Steer keeps the sewing-machine store.

"Q. Which way was he going?"

"A. From toward the Capitol.

"Q. About what time of the day of the 14th was it?"

"A. It was about half-past two, as near as I can recollect—between two and half-past two.

"Q. Had you had a nodding acquaintance with him at all?"

"A. I had; I knew him, and I suppose he knew me. There was no intimate acquaintance at all. I recognized him when I met him.

"Q. As he passed did you recognize him, or he you?"

"[Question objected to by Mr. BRADLEY as leading.]

"Q. As he passed, state what occurred.

"A. There was a recognition; whether it was by him or me first, I am unable to say.

"Q. State whether it was by both.

"A. I could not state positively whether I nodded first or he did; we both nodded."

You notice that the witnesses whose testimony I am now reading, are witnesses living in the city of Washington, all of whom knew the prisoner personally, and had known him for years. They could not be mistaken in his identity in broad daylight.

"Q. Will you state whether there was any thing about his dress or equipments on that occasion which attracted your attention?"

"A. There was.

"Q. Will you tell the jury what it was?"

"A. What attracted me more particularly was his dress rather than his face. I remarked his clothing very particularly.

"Q. What was there about him that attracted your attention?"

"A. The appearance of the suit he wore—very genteel; something like country manufactured goods, but got up in a very elegant style, the coat, vest, and pantaloons.

"Q. Was there any reason why you noticed his clothes? If so, state it to the jury.

"A. I cannot say there was any thing particular, except his

appearance so remarkably genteel. I was rather struck with his appearance.

Q. State whether he was on foot or on horseback.

A. He was on foot.

Q. What was there on his feet?

[Question objected to by Mr. BRADLEY as leading. Objection overruled.]

A. I suppose he had boots or shoes. As he passed from me I turned and looked at his feet. He had on a new pair of brass spurs.

Q. Now describe these spurs.

A. They were plain, common brass spurs; nothing very particular about them except the rowel.

Q. What was there about the rowel?

A. The rowel was very large and very blue; they evidently were bran new."

You have heard testimony heretofore about the eight pair of "bran new spurs" that were up on the bed in John Surratt's room.

Mr. BRADLEY. In the middle of March?

Mr. PIERREPONT. Yes, in March.

Mr. BRADLEY. I thought you meant the 14th of April.

Mr. PIERREPONT. I should not suppose that from March to April brass spurs with large blue rowels would be destroyed. I am not a hardware man, but I venture the prediction they would not be. On page 40, on his cross-examination, he is asked:

Q. How long had you been in the habit of seeing him come in from the country?

A. Fifteen years, as near as I can recollect.

Q. What was he doing; what was he engaged in?

A. I have seen him here market-days, I suppose passing and repassing."

He was no stranger.

I next come to the testimony of Vanderpoel, page 121, a lawyer from the city of New York, who was in the army; who came on here, first informing the district attorney of what he knew. The district attorney telegraphed him to come on, and he came voluntarily, as he says, without any summons, to testify in this case. What object could he have, what reason could he have, except the motive that impelled him to do justice? Now, let us see what he says, and what his opportunities of knowledge were:

Q. Before you went to the war did you know J. Wilkes Booth?

A. Yes, sir.

Q. How happened you to know him?

A. He used to visit a club that I belonged to in the city of New York, next to Laura Keane's Theatre.

Q. What was the club?

A. The Lone Star Club."

You have heard something about that "Lone Star Club," I presume, of which Booth was a member, and of which this witness was a member. It was there that he became acquainted with Booth, and there he knew him.

Q. Do you remember the day of the assassination?

A. Very well, sir.

Q. Where were you?

A. I was in the city of Washington.

Q. How many days before the assassination were you here?

A. Three days before.

Q. How many days after?

A. About two or three days after.

Q. Did you see John Wilkes Booth on the 14th of April?

A. I did.

Q. Did you speak with him?

A. Yes, sir."

He knew Booth well, belonged to the same club with him, saw him, and spoke with him.

Q. Did he know you well, and you him?

A. Yes, sir—that is, he called me Major; that is the title he generally addressed me by.

Q. Did you see him more than once on that day?

A. I saw him at least three times.

Q. Where did you first see him?

A. It was just above Willard's, on the sidewalk.

Q. Where did you next see him?

A. The next place I saw him was between Eleventh and Twelfth, or between Tenth and Eleventh, on the left-hand side of Pennsylvania avenue, going from here to the White House.

Q. State whether you saw this prisoner on that day.

[The prisoner made to stand up.]

A. I did see him at this place I speak of on the avenue.

Q. Who did you see him with?

A. With Wilkes Booth, and two or three others in the party.

Q. Tell the jury what they were doing.

A. They were sitting around a round table, with glasses on it. This is all I recollect now.

Q. Tell the jury the circumstances of your seeing him that day, and what they were doing.

A. I had been up to the Paymaster's department on some business relating to my accounts."

I call your attention to these marked facts which this witness states: of his settling his accounts at the paymaster's office on that day—

Mr. BRADLEY. Did he say "settling his accounts?"

Mr. PIERREPONT. "Relating" to his accounts.

He states that he was at the paymaster's office on that day, engaged in this business connected with the office which he held in the army, where he must have seen many persons. If his testimony were not true, it would have been the easiest thing in the world to prove that these things were false. He testified to a score of things on which he could have been contradicted if they were not true. He has not been contradicted in one single point, as I will prove to you.

"In coming out, I came down the avenue on the opposite side from the place I have described, and hearing music, I went across to see what was going on at this place. As I went up stairs I think there was a woman dancing a sort of ballet dance. There was a stage or something of the kind in the back part of the room."

Now, gentlemen, will you note that this witness never pretended to state that there was any exhibition there, or any concert? It was but one single woman who came out on the stage and danced.

Q. How was the room as to there being people in it?

A. I should say there were fifty or sixty people there.

Q. Describe the table where Booth and Surratt sat.

A. It was a round table, as near as I can remember, probably four or five feet across.

Q. What were they doing?

A. Apparently talking.

Q. At what time in the day was it?

A. It was in the afternoon.

Q. Was the room light?

A. Yes, sir.

Q. Did you see them plainly?

A. O, very plainly.

Q. Were you near them?

A. I was about as far from them as I am from you at the present time. [Twelve or fifteen feet.]

Q. Did you see them clearly?

A. Yes, sir.

Q. Could there be any mistake?

A. There is no mistake that I can see."

How will you get along with this testimony? Was there any motive to induce this man to lie? Could he be mistaken, knowing Booth well, as he did, and seeing him there on this occasion, with this man? A bright, intelligent, active man, as he is, could not be mistaken, and he is positive, entirely so.

I have something to say about the attempt that has been made to discredit Vanderpoel. The attempt was made by doing what? By proving that he was not at the places where he said he was? By proving that the things at the Paymaster General's office which he named did not occur? By showing that he was somewhere else than in this city? Not a bit of it. But witnesses were called to show that in the Metropolitan Hall, on D street, there was no dancing going on, and no exhibition that afternoon. He never testified that there was any exhibition anywhere, except the exhibition of a single woman coming on the stage and dancing. He did not testify to any thing on D street either, or pretend to say that it was on D street; but he said it was somewhere along from Tenth to Twelfth street, on the left-hand side of the avenue. They next called witnesses about a place on the north side of Pennsylvania avenue to show that there were no such exhibitions going on there. I suppose there were not; very likely there were not. Quite a number of witnesses were called on the stand in regard to those two places, neither of which did Vanderpoel say or pretend was the place. He did not undertake to state what the name of the place was; he did not know the name. They asked him if it was Metropolitan Hall or Washington Hall. He said it was something of the sort; he did not know the name. Now, let us see a little further what he says about that. It was not for us to prove that there was such a place. He had stated where he went, and they undertook to show there was not such a place as that, and went into D street to show that it was not on D street. We did not suppose it was. They went on the

north side of the avenue to show that it was not there. We had never said it was. But they were mighty careful to keep as clear as possible of Teutonia Hall, which was on the side of the street where he thought it was. They never called a witness from first to last to prove any thing about Teutonia Hall; but you will notice that on the cross-examination of one of their witnesses in relation to another hall on the north side I brought out these striking facts, which you will find on page 664.

On this point, as you will find on page 124 of the testimony, Vanderpoel testified as follows:

"Q. You think it was between Tenth and Eleventh, or Eleventh and Twelfth streets?"

"A. Yes, sir; it was along there. I have not been there since to see.

"Q. You do not know what the place was?"

"A. I do not recollect. It was Metropolitan Hall, Washington Hall, or something of that sort. I could not swear positively to the name."

That was the original testimony of this witness. It was "along there." He knew it was that side of the avenue; the name he could not tell. I have read it *verbatim*.

"The court ruled that the witness might be inquired of as to any place in the immediate neighborhood of Tenth and Twelfth streets, on the south side, as the witness was not definite in his testimony as to the place.

"Q. Won't you tell us where Teutonia Hall is?"

This is the cross-examination of one of their witnesses. They knew where Teutonia Hall was.

"A. It is on the south side of Pennsylvania avenue, between Ninth and Tenth streets."

That is where this occurred, and where Vanderpoel went.

"Q. Were you in Teutonia Hall at any time along about the middle of April?"

"A. I was sometimes.

"Q. Tell us what kind of tables they had.

"A. I could not tell that. They had some round and some corner tables."

The counsel made a great parade of the fact that in the Metropolitan Hall, on D street, the tables were square. But when we get his witness to Teutonia Hall the tables are round enough.

"Q. Do you know whether they had dancing there?"

"A. They had a rehearsal there.

"Q. Won't you tell us what time of day they had the rehearsal?"

"MR. BRADLEY. On the 14th of April?"

"WITNESS. I do not know when they had a rehearsal. Their rehearsal was before the exhibition; generally in the morning."

This all came out from their own witness, and with it out they have never called a witness from Teutonia Hall, never called a witness to show that this dancing, Booth and Surratt being there, did not occur just as this witness told you, and at the very place where he said it occurred. They have been mighty shy about putting any witness on the stand in reference to Teutonia Hall; they bring them about some other halls we never spoke of, but they keep very clear of this hall.

I turn now to the testimony of Lee, page 75:

"Q. Did you know John H. Surratt, the prisoner?"

"A. I knew John H. Surratt by seeing him.

"Q. Look at the prisoner and state if you recognize him.

"A. Yes, sir; I recognize that young man; but he did not have that 'goatee' on when I saw him."

You will notice that not one of the witnesses who saw him on that day saw him with a goatee; every one had it off; all with a moustache who speak on that subject at all. The barber was the first man who saw him; and the barber says he gave him a "clean shave," with the exception of the moustache. You will not find, gentlemen, in this evidence, any two things that do not come in harmony. The reason is that they are true, and all truth is in harmony.

"Q. State if you saw him on the 14th of April, 1865; and, if so, where you saw him, and about what time in the day?"

"A. On the 14th of April—I was at that time with Major O'Beirne, the provost marshal of the District of Columbia—I went to the Washington depot with reference to men who were deserting. I was not looking for deserters myself, but was chief of the men employed for that purpose under Colonel O'Beirne.

"Q. What force was that?"

"A. The detective force of the provost marshal's department. I went down to the depot, and on my way back, at the corner of Sixth

street, I stopped a minute to answer a question; the man who asked it I do not know, but he inquired about some young fellow who was in my regiment. When I left him I continued on up the avenue, the right-hand side going up towards Thirteenth street. When near Mr. Stinemetz's hat store, I passed a man whom I took to be John H. Surratt. He was coming this way, and I was going in an opposite direction. It was between Franklin's spectacle store and Stinemetz's hat store.

"Q. Are you satisfied the prisoner was that man?"

"A. To the best of my knowledge that is the man. [Pointing to the prisoner.]

"Q. Had you seen him frequently before?"

"A. Not as frequently as I have seen some people about Washington.

"Q. How often had you seen him? Did you know him well by sight?"

"A. I should suppose I had seen him a dozen times before that.

"Q. Was he walking rapidly or slowly at that time?"

"A. He was going in an ordinary gait. I was going fast myself, walking quickly."

I now turn you to the testimony of Grillo, beginning on page 56:

"Q. Did you know David Herold, one of those tried for conspiracy?"

"A. Yes, sir.

"Q. Did you know George Atzerodt?"

"A. By sight.

"Q. Where did you see Herold last, before the assassination?"

And then he goes on to tell about seeing him at the Kirkwood House. At the bottom of page 56 he gives this statement of what occurred:

"A. As I was coming down Tenth street I met Herold, and he asked me if I had seen John Wilkes Booth. I told him I had; that I had seen him in the morning about eleven o'clock; that he had some letters which he had received. His letters used to come addressed to the theatre.

"Q. Proceed and state what further occurred.

"A. I told him that I saw him a little after four, on horseback; that he stopped in my place and got a drink.

"Q. What kind of horse was it that he rode?"

"A. A small horse—gray, I believe, as far as my recollection serves me. Herold after this said to me, 'Do you know that General Lee is in town?' I told him no, I did not; that I had not heard of it. He says, 'Yes; he is stopping at Willard's.'"

I suppose they expected he would be stopping there if they could succeed in throwing this Government into confusion.

"Q. This, I understand you, was the day of the assassination?"

"A. Yes, sir; in the afternoon. Says he, 'Yes, he is stopping at Willard's; let's take a walk up there and find out something about it.' We started up, and as we got to the Kirkwood House we met Atzerodt sitting on the steps. He stopped to talk to him, and I walked ahead as far as the corner to wait for him. He stopped with him two or three minutes, and then came back and walked with me up to Willard's. After we got inside of Willard's Herold met two young men. They talked together awhile; I do not know what they said. As they were in the act of parting Herold says, 'You are going to-night, ain't you?' One of the young men answered and said, 'Yes.'

"Q. In what tone of voice was the talk before that?"

"A. In a low tone. They were apart to themselves.

"Q. Was there any thing more said that you could hear other than what you have repeated?"

"A. No, sir.

"Q. What did this man who said he was going to-night do after saying 'yes'?"

"A. Nothing. We left him and went out toward Grover's Theatre. I noticed Herold walking a little lame, and says to him, 'What's the matter; you are walking lame.' He replied, 'Nothing; my boot hurts me.' When we got behind the park there he pulled up his pants to fix his boot. I then noticed that he had run down in his boot leg a big dagger, the handle of which was four or five inches above the leg of the boot. I said to him, 'What do you want to carry that for?' He answered, 'I am going into the country to-night on horseback, and it will be handy there.' I laughed at him, and said, 'You ain't going to kill anybody with that?' I left him at the door of Geary's billiard saloon. I went up stairs, and he walked ahead.

"Q. Look about in this room, and see if you see any body that looks like the man who said 'Yes' when Herold asked him if he was going to-night?"

"A. Well, the gentleman, I believe, is that man, [pointing to the prisoner,] but I don't know. As far as my knowledge goes, he looks very much like him. He had no beard, however.

"Q. Had he a moustache?"

"A. A little moustache, as far as my knowledge goes."

You will find that they all tell you that same thing; he had not any beard anywhere except on the upper lip, after Wood had taken care of him in the morning.

On page 58, he goes on to say where he was that night:

"Q. You were in your restaurant?"

"A. Yes, sir.

"Q. Do you recollect Booth coming in there?"

"A. Yes, sir; I was behind the bar at the time.

"Q. Was anybody with him?"

"A. No, sir; he came alone."

In which he confirms Sergeant Dye, as you will see when we come to his testimony, who tells you Booth went into this drinking place alone, just as this witness says he did:

"Q. How long was that before you heard of the assassination?  
"A. It must have been between eight or ten minutes or fifteen minutes; I cannot remember exactly.

"Q. Will you describe, if you recollect, what light there was in front of the theatre, and where it was placed that night?  
"A. We had two lights out in the street; then there were two lamps in front of the theatre. The light is very brilliant there."

I now come to Coleman, page 401:

"Q. Will you describe where you saw him, [Booth,] what he was doing, and what you saw?  
"A. We were on Pennsylvania avenue, between Tenth and Eleventh streets, going toward Willard's. We looked around, and at first we noticed a very nice little horse, and a person was standing a few feet from him in the gutter. We stopped at first to look at the horse; then we noticed the rider, and I said to Mr. Cushing, 'There is Booth, is he not?' I looked then again and saw that it was. We remarked the pallor of his countenance. There was a little conversation. He was sitting on his horse, with his face toward us, and was leaning over, talking very earnestly with a man who stood on the curbstone. This was about six o'clock in the evening. I recollect taking out my watch to look at it.

"Q. What was the style of his conversation, as to earnestness or otherwise?  
"A. He was bending very low; he was sitting with their two heads very nearly together. He appeared to be talking very earnestly.

"Q. Did you notice any thing in the expression of his face?  
"A. Yes, sir; his face was very pale—as pale as if he had got up from a sick bed.

"Q. Were any remarks made upon that subject at that time?  
[Question objected to by Mr. BRADLEY.]

"Q. You need not state what the remarks were. Simply state whether the fact excited conversation on the subject?  
"A. His paleness was such as led us to remark upon it.

"Q. Describe the man he was talking with?  
"A. He was a man of ordinary size.

"Q. Young or old?  
"A. He appeared to be a young man.

"Q. How dressed?  
"A. He was dressed in a suit of gray clothes, with a low-crowned hat—a black felt hat—on.

"Q. Have you ever seen that man since, before to-day, that you know of?  
"A. No, sir.

"Q. Have you seen anybody to-day that bears any resemblance to him?  
"A. I would like the prisoner to stand up and turn sideways.

[Prisoner stood up and turned round.]  
"A. He certainly looks like that man."

The next testimony to which I shall direct your attention is that of Peter Taltaval, on page 37:

"Q. Were you in the restaurant at the time the murder was committed?  
"A. I was.

"Q. Did you know John Wilkes Booth?  
"A. Yes, sir.

"Q. Had you frequently seen him there, or otherwise?  
"A. He used to come in there very often.

"Q. You knew him well by sight?  
"A. Yes, sir.

"Q. Did he come in that evening?  
"A. He came in that night.

"Q. What did he do?  
"A. He walked up to the bar and called for some whisky.

"Q. What did you do?  
"A. I gave it to him.

"Q. State whether he was alone?  
"A. He was.

"Q. Did he drink it?  
"A. Yes, sir.

"Q. Then what did he do?  
"A. He called for some water."

Again, on page 38:

"A. I saw him two or three days before with Herold.  
"Q. Where was that?  
"A. In the same place; he came in there.

"Q. State what occurred.  
"A. I could not exactly say. I think they just came in—came to the bar and got a drink; probably had a little conversation together, and went out again. I could not particularly describe what passed there at all, not taking any particular notice.

"Q. On the night of the murder did you see this same Herold come in?  
"A. No, sir; I did not.

"Q. On that night, or the night previous, did any one come in and inquire for Booth?  
"A. No, sir; that was in the afternoon. In the afternoon of the same day Herold came in there, and asked if I had seen John. I asked him what John. He said John Wilkes Booth. I told him I had not seen him.

"Q. What then did he say; did he ask you any thing; and, if so, what?  
"A. No; he simply came to the bar, and inquired if John had been there. I asked him what John, and he said John Wilkes Booth.

"Q. Did he ask you whether he had been there that day or evening?  
"A. No, sir; he just shut the door, and went right out.

"Q. And between the time Herold came in and the time Booth came in, just before the assassination, you had not seen either?  
"A. No, sir.

"Q. At what time in the afternoon of the 14th was it that Herold came in?  
"A. I should judge it must have been about four o'clock, as near as I can possibly think of it.

"Q. At the time Booth came in and took a drink, just before the assassination, was there any thing in his dress or appearance to awaken suspicion in your mind?  
"A. No, sir; I did not take notice of any thing unusual at all. He just came in there and asked for a drink."

Confirming what I am presently going to show you in another connection. I next come to the testimony of Susan Ann Jackson, page 42. Any one experienced in human testimony, and who has ever had much experience in courts of law, knows well that the witnesses most to be relied upon, and most truthful and most natural in their story, are frequently those of simple intellect, young children, girls, women, or simple men, who, when they try to tell the truth and only the truth, never have any difficulty at all, because it is always easy to tell. I will defy the most skillful counsel that ever opened his lips in a court to disturb the simplest child, the simplest woman, or the humblest man by any cross-examination if that person is simply telling only the truth. You cannot disturb it; there is no power of doing it. It is only where falsehood comes in that trouble comes; not where truth is, for it is simple and easy—always consistent. Any one can tell it; simple people do tell it; and when they tell it they always adhere to it, and no skill of counsel can disturb it. That is the experience of every judge and every lawyer.

"Q. Do you remember the Good Friday in April following the March when you went to Mrs. Surratt's?  
"A. No, sir; I don't remember the very day I went there.

"Q. Do you remember the Good Friday following that day, or any circumstance about that Good Friday in April?  
"A. Yes, sir.

"Q. Do you know whether Mrs. Surratt went away that day?  
"A. Yes. She went down in the country on Good Friday, between eleven and twelve o'clock.

"Q. In what did she go?  
"A. She went in a buggy.

"Q. Did you see the man that went with her?  
"A. Mr. Weichmann.

"Q. Did you see him?  
"A. Yes, sir. He boarded there at the same time.

"Q. You would know him now if you were to see him?  
"A. Yes, sir.

"Q. Did you see Mr. Weichmann when he came back with Mrs. Surratt?  
"A. Yes, sir; I saw him when he came back with Mrs. Surratt.

"Q. About what time in the evening did Mrs. Surratt return?  
"A. As near as I can recollect, it was between eight and nine o'clock.

You will remember she was anxious to get home at nine o'clock, as Weichmann tells us she did, as he thinks, a few minutes before that.

"Q. After that, on that evening, will you tell us whether you saw the prisoner here?  
"WITNESS. That one sitting over there? [Pointing to the prisoner.]

"Mr. PIERREPONT. Yes.  
"A. Yes, sir; I have seen him in the dining-room.

"Q. Who was with him?  
"A. His mother was with him.

"Q. What did his mother say to you?  
"A. I do not know.

"Q. Have you ever seen him before?  
"A. No, sir; I had never seen him before.

"Q. How long had you lived in the house?  
"A. I had been there three weeks.

"Q. What did his mother say?  
"A. She told me that was her son.

"Q. What else did she say to him or about him?  
"A. She did not say any thing else. When I was gathering up some clothes to put in the wash I asked if they were for Mr. Weichmann, and she said no, they were for her son."

This is one of those little truths that fall out in this natural way. You do not think she made this up, do you? You do not think the counsel told her to tell this, do you? That was not a thing that would ever have entered the head of a counsel or any body. How happened she to tell you about these clothes? How happened it to drop out in this conversation? It dropped just as truth always drops, naturally and easily. It is connected with another fact that I called your attention to yesterday of great moment. You re-

member that Holahan tells you that the next week he himself went back to the house, and that on his bed were some clothes that had been washed and were then clean; that among them were some of Surratt's clothes; that he took some of them, put them in his pocket, and went away with them. No doubt that was so. They were the very clothes this colored woman took up on that Friday night, and which Mrs. Surratt said were her son's clothes, and they were.

"Q. Did she say any thing about who he looked like?

"A. She asked me did he not look like his sister Anna.

"Q. What did you say to that?

"A. I said I did not know; I did not take good notice of him to see who he favored."

Do you think that colored woman made up this story?

"Q. Who was it that asked you if he did not look like his sister Anna?

"A. Mrs. Surratt.

"Q. Did you bring any thing into the room you have spoken of where she was sitting with her son?

"A. I had just brought a pot of tea into the room.

"Q. Who was in the room when you brought in the pot of tea?

"A. Not any one, except her son.

"Q. Do you see any one now who she told you then was her son?

"A. Yes, sir; I am looking at him now.

"Q. State whether that is the one.

"[The prisoner made to stand up.]

"A. That is the man, sir.

"Q. After you took in the pot of tea, what did you do?

"A. Just went out again.

"Q. Did you return again?

"A. No, sir; I did not return in the room any more.

"Q. Will you tell us, as near as you can, about what time in the evening you took in the pot of tea?

"A. As near as I can come at it, she came home between eight and nine o'clock. Well, when she came home and came to the dining-room I carried in supper for Mr. Weichmann, the man who boarded there. After he went out she called me and asked me for a second plate, cup, and saucer. I carried them to her.

"Q. And then you found this man there?

"A. Yes, sir.

"Q. Did you know his sister Anna?

"A. Yes, sir; she lived there.

"Q. She was in the house?

"A. Yes, sir."

You saw that colored woman, you looked at her face, you heard her simple story. Through the ingenuity of counsel an attempt was made to show that this related back to some other time—to the 3d of April. I read you the evidence yesterday in order that you might see how utterly impossible it was that that could be. That was on Monday, it was not on Friday. The sun had rolled its course, and, as I once told you, stamped that day as it went down in the ink of night, Monday, not Friday. That is not all. The proof is clear that he only came in there on the night of the 3d of April, and went out before seven o'clock, that he went down to the Metropolitan Hotel, took his supper there with his friend, and never returned until this night. There is no possibility of confounding and confusing these two things. The proofs all stamp that as a got-up story. I now read from the cross-examination of this witness:

"Q. Were you ever examined as a witness about this matter before?

"A. Yes, sir; Mr. Orrut examined me—or Captain Orfut. I am not sure about the name."

She did not know the name. I believe there is no such name as that. There was a name having some resemblance in sound, and at the time I supposed it quite likely he might have been the person who had made this examination. But when we got Colonel Smith upon the stand, he told you it was he who made the examination. I tried, with all the ingenuity I could bring, to get out, if I could in some way, the fact of whether he did make an examination which was reduced to writing, and that I got out; but I was not permitted to prove, for Mr. BRADLEY, the associate counsel of Mr. MERRICK, objected to my giving in evidence what she said that night to this Colonel Smith. I could not get it in, and it is not in. But she said something, and something that they did not want in and I did, and yet my learned friend made quite a speech the other day because this testimony which they

succeeded in getting ruled out was not brought into evidence.

Mr. BRADLEY. You stated to us that Captain Olcott did take down the testimony.

Mr. PIERREPONT. We supposed it was him, but we found it was Colonel Smith.

Mr. MERRICK. Smith never examined her at the office; he only asked her some questions at the house.

Mr. PIERREPONT. He examined her there and made a written report, which I wanted to put before this jury, and which the counsel succeeded in preventing me from doing, because they wanted to get rid of the effect of it. They knew it; they knew the power of such evidence. They objected to it.

Mr. BRADLEY. We certainly did not know what it was.

Mr. PIERREPONT. No. I wanted to advise you what it was, and you would not let me.

Mr. BRADLEY. Then, how can we know the power of the evidence?

Mr. PIERREPONT. You did not know, and you were not willing you should know, or the jury should know. Now, let me read to you the cross-examination of this witness, and we will see how what I have said about the impossibility of disturbing a truthful witness, however simple, is carried out in this case. This is the cross-examination of the skilled counsel on the other side:

"Q. Where were you examined?

"A. He carried me down to his office—I forget where it was—in the night.

"Q. When was that?

"A. Monday night, after the assassination happened.

"Q. They took you down to a guard-house, or some place?

"A. They took me to the office.

"Q. Do you recollect where it was?

"A. No, sir; I had never been there before; I do not recollect where it was; I think it was somewhere near the Treasury.

"Q. Who took you there—do you remember?

"A. No, sir; I went in a hack.

"Q. You were examined there?

"A. Yes, sir.

"Q. Did they write down your examination?

"A. Yes, sir.

"Q. You were not examined afterward?

"A. No, sir; not then, I was not.

"Q. Were you at any time after this?

"A. Yes, sir; since then I have been down to what they call the War Department; in the course of last week, I think it was.

"Q. How long after the assassination?

"A. It was just last week I was carried down to the War Department. Mr. Kelly carried me.

"Q. And you were examined there?

"A. Yes, sir.

"Q. Do you remember who examined you there?

"A. No, sir; I do not know the gentleman's name.

"Q. Was what you stated then written down?

"A. Yes, sir; it was written down.

"Q. When you were examined before General Augur, if that was the place, did you then make the same statement you do now?

"A. Yes, sir.

"Q. You stated that Mrs. Surratt's son was there that night?

"A. Yes, sir.

"Q. What became of him?

"A. I do not know, indeed; I did not see any more of him.

"Q. You saw him about nine or half-past nine?

"A. It was between eight and nine when she came—after Mr. Weichmann and she took tea she called me to bring a pot of tea to this gentleman.

"Q. Where was this gentleman then?

"A. I do not know.

"Q. You had seen him before that?

"A. No, sir; I had never seen him until that night.

"Q. And when you went into the parlor you found him sitting in the dining-room, and Mrs. Surratt told you it was her son?

"A. Yes, sir.

"Q. And this is the very same gentleman?

"A. Yes, sir; this is the very same gentleman who was in there with Mrs. Surratt.

"Q. And that you told to these gentlemen and they wrote it down the Monday afterward?

"A. Yes, sir."

They brought that out themselves.

"Q. And you never saw him before then or since?

"A. No, sir; never before or since, until one day last week, when he was brought up here.

"Q. And you are sure he is the very same man?

"A. He is the very same man she told me was her son.

"Q. And the very same man you saw at her house?

"A. The very same man I saw the night after she came in from the country.

"Q. The night of the assassination?

"A. Yes, sir; the same night.

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 102.

WASHINGTON, SATURDAY, SEPT. 21, 1867.

PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

*Continued from No. 101.*

"Q. You say you had been living there three weeks; was it just three weeks?"

"A. Yes, sir; three weeks on Monday.

"Q. Now, if we go back a little, are you quite sure the gentleman you saw there, who she told you was her son, was not there on Monday, ten days before the assassination of the President?"

"A. I never saw the gentleman she called her son until Friday night.

"Q. You are sure it was Friday night?"

"A. Yes, sir; it was the Friday night she came from the country."

These simple, striking facts fix themselves on such simple minds, and she could not be disturbed in her statement of them:

"Q. And that was the night the President was assassinated?"

"A. Yes, sir; it was the very night she came from the country; it was the Friday night before Easter Saturday.

"Q. Do you not recollect the night the President was assassinated?"

"A. It was Friday night.

"Q. Was that the same night you saw this gentleman there?"

"A. It was the very night I saw this gentleman there.

"Q. You must have been there on the night of the 3d April, the Monday night of the week before the President was assassinated?"

"A. I was there a week in March.

"Q. Did you not see him there on that Monday night the week before the President was assassinated?"

"A. No, sir; not as I know of, I did not see him there the week before; I saw him on Friday night."

I repeat, gentlemen, no counsel could disturb that witness. Now, there are persons living in this city who know whether this is true or not—who were in the house that night, and who have not been put upon the stand.

Mr. BRADLEY. Who are those persons? I should like to know.

Mr. PIERREPONT. I shall have occasion to recur to that same subject again.

I next come to the statement of Mr. Heaton, on page 380. Mr. Heaton was a clerk in the General Land Office. He was in front of the theatre before the assassination on that night:

"Q. Do you remember when the President's carriage came to the theatre that night?"

"A. Yes, sir.

"Q. Did you recognize the carriage?"

"A. Yes, sir; I saw the President and his wife and the party get out of it?"

"Q. I will ask you if, during that time, your attention was attracted to the crowd, either going in or coming out of the theatre, or coming from the restaurant in that vicinity, and if you saw any face that attracted your particular attention?"

"A. I saw one face at the time that attracted my attention particularly.

"Q. Go on and state what you did see?"

"A. At the time the President's carriage drove up, I saw half a dozen or a dozen persons come round it from the restaurants in the vicinity. These were merely persons who came from curiosity to see the President. On last Tuesday-week I came into court and saw the prisoner for the first time. On looking at him, I saw a very distinct resemblance between the face I saw that night and his own.

"Q. S. ate, if you please, where you saw the prisoner?"

"A. In front of Ford's Theatre, on the night of the 14th of April, 1865.

"Q. About what time was that?"

"A. Between a quarter of eight and a quarter past eight.

"Q. Did you know any person in whose company he was at that time?"

"A. No, sir.

"No cross-examination."

You saw Mr. Heaton; you remember his face, I think; you remember how he told you he happened to come into this room, and looking upon the prisoner brought back the face he saw that night in front of the theatre. He was an honest man; he had an honest face; he is a clerk in the General Land Office. His name is Frank M. Heaton, and it is very easy to learn all about him. It would have been very easy to impeach him if he was not telling the truth. He lived right opposite the theatre. Has anybody breathed a word against him?

I next come to the testimony of Sergeant Dye, on page 12. Sergeant Dye was one of the early witnesses put upon the stand. We were told in the opening speech for the defense that Sergeant Dye was going to be impeached. He had told them where he lived, where he was born, and what his business was. Did you ever hear anybody come here to impeach Sergeant Dye? He testified here at least seven weeks ago. Has anybody been found to say a word against that soldier? Has any record been brought against him of any kind? You heard in a motion made and in a statement made here that they were going to do something to Sergeant Dye; that they were going to make out that he had passed counterfeit money. Did they do any such thing as that? Did we try to prevent them from doing it? Was not that the inference they tried to leave upon you, that he had passed counterfeit money, knowing it to be counterfeit, and that he had committed some crime? I do not believe that they failed to make an investigation on that subject; I do not know. But diligent as they have been, strenuous as have been their exertions to find every thing they possibly could against our witnesses, they would have brought some man to have spoken against his character if they could, and they would have brought some testimony or some record to show that he had passed counterfeit money, knowing it to be counterfeit, if they could find any such thing. I do not know what the counsel know. I have not the capacity to see into their hearts; but when I learned from them that there was such a charge, I determined to find out what it meant, and if the learned counsel will tell me that he does not know of that record, [placing a written document before Mr. MERRICK,] then I have nothing to say. If he does know it, he did the most cruel thing a man ever did. I have the record here, and the affidavit of the very man who made the charge, showing that every exertion had been made beforehand in relation to the bill, and it turned out to have been, so far as this man was concerned, a mistake, and the very man making the prosecution signed the affidavit there attached, and the district attorney dismissed it at once, and with his own hand sent me this record under seal. If these gentlemen did not know that, they did not know it. Surely they did not know it, or they would not have done what they did.

Mr. BRADLEY, Jr. This is the first we ever heard of it.

Mr. MERRICK. The dismissal took place since we offered to prove the charge.

Mr. PIERREPONT. Of course they did not know it, but they will see it was done a good while ago.

Mr. MERRICK. It was done since we offered to impeach him for it.

Mr. PIERREPONT. It strikes me they would have impeached him if they could. Could not they have brought some witness against him, or some record against him? This young man, in humble life, went into the army as a volunteer and as a private. He fought his way like a brave man, and did his duty, and rose from his humble position in Washington county, Pennsylvania, until he became a sergeant in the regular army of the United States, where he holds that honorable position now, having perilled his life in the defense of his country as a private soldier; having faced the cannon's mouth, with not a blot upon his name, and not a human lip to utter aught against him. Now, let us see what he says. He states that he was in front of Ford's Theatre that night, sitting upon a plank. His regiment lay out at Camp Barry:

"Q. As you sat there upon this plank, what was Sergeant Cooper doing?"

"A. Sergeant Cooper was moving up and down the pavement.

"Q. Did you have any conversation with him while you remained there?"

"A. Yes, sir.

"Q. While you were sitting there, state whether there was any change in the inside of the theatre as to persons coming out at the end of any act?"

"A. They did.

"Q. State what that was and when.

"A. Parties came down—I presume it was about ten or fifteen minutes after we got there—and went into the saloon below and the saloon adjoining the theatre to drink.

"Q. Were there quite a number of them?"

"A. Yes, sir."

I now read from page 14:

"A. The first who appeared on the scene was John Wilkes Booth himself. What first attracted my attention was his conversing with a low, villainous-looking person at the end of the passage.

"Q. You mean by low, short in stature?"

"A. Yes, sir. It was but a moment before another person joined them. This person was neat in appearance—neatly dressed—and entered in conversation. This rush came down from the theatre, and as they were coming Booth said to this other person that he would come out now, as I supposed, referring to the President. They were then standing facing the place where the President would have to pass in order to reach his carriage and watching eagerly for his appearance. He did not come. They then hurriedly had a conversation together; then one of them went out and examined the carriage, and Booth stepped into a restaurant. At this time all the party who had come down from the theatre had gone up. Booth remained there long enough to take a drink. I could not say whether he did or not. He came around and stood in the end of the passage from the street to the stage, where the actors passed in. He appeared in a moment again. This third party, neatly dressed, immediately stepped up in front of the theatre and called the time.

"Q. To have no misunderstanding, state what you mean by calling the time?"

"A. He stepped up and looked at the clock, and called the time to the other two.

"Q. That is, he stated what it was?"

"A. Yes, sir.

"Q. Where was the clock?"

"A. The clock was in the vestibule of the theatre.

"Q. State how the light was at the time relating to the face of the neatly-dressed man who called the time.

"A. I did not observe it particularly at that time. As soon as he called the time to the other two, he went up the street toward H street. He did not remain there long, but came down again, stopped in front of the theatre, looked at the clock, and called the time again, looking directly at these two, and seemed excited.

"Q. That is, Booth and the other man?"

"A. Yes, sir. He then immediately turned his heel and went toward H street. It was then I thought something was wrong by the manner in which these three had been conducting themselves, and as a soldier I had a revolver in my pocket, with my handkerchief wrapped around it.

"Q. What part of it?"

"A. Around the revolver. We wore artillery jackets, and the revolver was in my breast pocket. My suspicions were so aroused that I unwound my handkerchief from around my revolver. It was not long before he appeared again, going on a fast walk from the direction of H street.

"Q. How did he look then?"

"A. He placed himself in front of the theatre, where the light shone clear on his face."

I have read to you before how brilliant the light from the lamps there was.

"There was a picture on that countenance of great excitement, exceedingly nervous and very pale. He told them for the third time that it was ten minutes past ten o'clock. That is the last time he called it. It was ten minutes past ten o'clock."

"There was a picture on that countenance of great

excitement, exceedingly nervous and very pale." Well, it was not very strange, for they had just reached the hour when they were to perform this horrid deed.

"Q. Did you see that man distinctly?"

"A. I did.

"Q. Very distinctly?"

"A. I did, very distinctly.

"Q. Do you see him now?"

"A. I do.

"Q. Can you tell us where he is?"

"A. I can.

"Q. Tell us where he is.

"A. He sits there. [Pointing to the prisoner.]

"Q. Is that the man?"

"A. It is. I have seen his face often since while I have been sleeping—it was so exceedingly pale. He hurried up toward H street again, and that is the last I have seen of him until lately.

"Q. You say he was the prisoner at the bar?"

"A. Yes, sir; and I say that I have seen him since, while I have been sleeping.

"Q. Did it make a very strong impression from what occurred at the time?"

"A. It did, sir.

"Q. What did Booth do then?"

"A. He walked directly into the theatre.

"Q. Did you call anybody's attention to this at the time?"

"A. I did.

"Q. Who?"

"A. Sergeant Robert H. Cooper.

"Q. Did you point out at the time who Booth was?"

"A. [Question objected to by Mr. BRADLEY and withdrawn.]

"Q. Where did Booth then go?"

"A. He entered the front of the theatre.

"Q. Where did you go, and who went with you?"

"A. Sergeant Cooper and myself went to an oyster-saloon. Sergeant Cooper was particularly with me.

"Q. How soon after you got into the oyster-saloon did you hear of the murder?"

"A. We had not time to eat our oysters.

"Q. What did you do when you heard of it?"

"A. We did not go to the theatre. We hurried right up H street to the camp. I thought a detail would have to be made, and as I was first sergeant I would have to be there.

"Q. Did Sergeant Cooper belong to the same camp?"

"A. He did.

"Q. Did you both go up H street?"

"A. Yes, sir; we both went up to H street, and out H street.

"Q. When you got out to H street, what did you do?"

"A. We passed out to Camp Barry.

"Q. What occurred on the way?"

"A. A lady hoisted the window of her parlor, and asked us what was wrong down town."

How happened this lady at that time, before there had been the least alarm, and when they were the first men who passed by, as you will see hereafter, to ask what was going wrong down town? When Webster murdered Dr. Parkman and they told him they had found the body, said he, "Did they find it all?" "What was going wrong down town?"

Mr. MERRICK. It is not very material, but the expression was, "What is going on down town?"

Mr. PIERREPONT. It is not so in my edition of the evidence.

Mr. MERRICK. It is printed here wrong. It is one of the numerous errors to be found in this book.

Mr. PIERREPONT. If you say it was the other, very well; it is not very material. But let us go on with Sergeant Dye's testimony:

"Q. What did you say, and what did she reply?"

"A. I told her that President Lincoln was shot. She asked me who did it. I told her Booth. She asked me how I knew it. I told her a man saw him who knew him.

"Q. Will you tell us what was the condition of the moon at that time?"

"A. I cannot say exactly; I disremember.

"Q. Do you know whether it was full or different at the time?"

"A. It was light enough for us to see some distance on the street.

"Q. Do you know whether the moon was up?"

"A. Yes, sir; I believe it was.

"Q. Do you know whether the moon was then at or about the full?"

"A. I cannot say."

\* \* \* \* \*

"Q. Please describe this woman who opened the window and with whom you had this conversation.

"A. She appeared to be an elderly lady.

"Q. How was she as to being stout or otherwise?"

"A. I could not say particularly. She resembled the lady on the trial of the conspirators—Mrs. Surratt.

"Q. Have you seen the house since?"

"A. I have.

"Q. Do you remember the number?"

"A. I do—541.

"Q. Tell the jury which side of the street it is on as you go up.

"A. As you go toward the camp—an easterly direction—it is on the right hand side.

"Q. Is there any thing peculiar about the house?"

"A. Yes, sir; I recollect the steps distinctly as they appeared that night.

"Q. Tell the jury how the steps are.

"A. In order to answer her question I had to go up in the direction of the steps, which are very tall.

"Q. Will you state what was the manner of this woman when she thus addressed you?

"A. She just asked the question.

"Q. State whether her manner was excited or not.

"A. I do not recollect.

"Q. What then did you do?

"A. Passed on toward the camp.

"Q. Did you pass swiftly or slowly?

"A. Passed along on a fast walk.

"Q. At the time she opened the window state whether anybody was ahead of you in the street?

"A. There was not. We met two policemen a short distance beyond that, who had not even heard of the assassination. What I mean by this is, that no pedestrians had passed that way."

They were the first, as appears afterward in the testimony of Cooper, to give the information to these policemen.

I now come to the testimony of Sergeant Cooper, who was with Dye at this time. I read from page 64. You will remember that Sergeant Dye was sitting upon that plank, and Sergeant Cooper was walking up and down the pavement. Sergeant Cooper says:

"I was walking up and down the street. I walked up to the corner of F street once, crossed over to the other side of Tenth street, and walked down the other side.

"Q. Did you cross back again on the same side the theatre was?

"A. Yes, sir; I went across right in front of the theatre.

"Q. State whether you spoke to anybody; and, if so, to whom?

"A. I do not remember correctly. Sergeant Dye was sitting there, and he and I may have had some conversation. We had conversations at different times.

"Q. While you were walking about?

"A. Yes, sir; we did. When I came to where he was sitting I sometimes spoke to him.

"Q. Did you speak to any other person that you remember?

"A. I do not remember that I did.

"Q. You spoke of the President's carriage standing by the platform?

"A. Yes, sir; we observed that when we went there.

"Q. Did you see anybody about the carriage; and, if so, who did you see?

"A. The driver sat on the carriage, and while we remained there a gentleman approached the carriage to the rear, and looked in at the rear of the carriage."

The same as Dye had already told you before.

"Q. Tell what kind of a man he was; I speak of age, height, dress, and appearance?

"A. He was a young man, very genteelly dressed; that was all I noticed about him. I did not observe him particularly.

"Q. As to height, what would you say?

"A. I presume he was about five feet eight or ten inches.

"Q. Compared with yourself, what was his height, without going into feet and inches?

"A. I think probably he was about the same height I am, as nearly as I can recollect.

"Q. Did you see any other man standing there near the wall?

"A. I observed a rough-looking man standing near the wall of the theatre.

"Q. Tell about his height.

"A. I would say, to the best of my recollection, that he was not as tall as the other gentleman who looked into the rear of the carriage.

"Q. Did you see anybody go into the drinking-room by the side of the theatre?

"A. Yes; I saw a gentleman go into the drinking-saloon below the theatre.

"Q. Who was he—did you know him?

"A. I did not know the gentleman; he was pointed out.

"Mr. BRADLEY. That is not evidence.

"Mr. PIERREPONT proposed to show that this man was pointed out to witness as John Wilkes Booth.

"Objection sustained.

"Q. I will ask you if the same person who was pointed out to you went into the drinking-saloon?

"A. Yes, sir; I observed him go into the drinking-saloon.

"Q. Was he pointed out to you and his name given?

"A. Yes, sir.

"Q. Did you see him come out?

"A. Yes, sir.

"Q. After this man came out from the saloon, what did he do?

"A. I did not observe him after he came out from the saloon.

"Q. Before that, did you hear any one call the time? and, if so, what did you hear the last time you heard it?

"A. The last time I heard it called was ten minutes past ten. It was after this gentleman came out of the saloon.

"Q. Did you hear the time called before that?

"A. I cannot recollect distinctly whether I did or not. I have a faint recollection that I did, but I am not certain.

"Q. Were you so situated at the time you heard the time called, ten minutes past ten, that you could see the face of the man who called it?

"A. No, sir; I was not.

"Q. What did you and Sergeant Dye then do? State what occurred?

"A. We started round a corner and went to a saloon to get some oysters."

"Q. Did any thing occur exciting your suspicion at this time?

"A. I do not know that I could say that there was any thing particular that excited my suspicion.

"Q. As you were going down H street to camp, on which side of the street did you go?

"A. We went down the right-hand side to somewhere about the printing office.

"Q. What occurred, if any thing, on your way down?

"A. As we were going down H street there was a lady raised a window, put her head out, and asked us what was going on down town, or something to that effect."

This witness was walking up and down, and did not see all that Dye saw, but he confirms Dye in relation to his sitting there, the examination of the carriage, the calling of the time, and what occurred in the passing of this house on H street.

Now, I have one word to remark in this connection: wherever you find witnesses, who are not situated exactly alike, in reference to seeing or hearing the thing that transpires, coming upon the stand, and each telling precisely the same story the other tells—that he saw precisely the same things and heard the same words, and there is any thing complicate about it—you may be entirely sure that that story is made up. No two men see alike, no two men hear alike; no two men hear and remember the same words alike. They may see one specific thing or hear one simple sentence, but when you place two men, one sitting and the other walking about, where their vision is directed in a different way and where their attention is differently directed, and you find the two telling a complicated story exactly alike, the story is made up. The truth of it is apparent from the fact that one tells what he heard and saw, and the other tells what he heard and saw. They do not both see precisely the same thing or hear precisely the same words. It is just like when you find a signature that will exactly fit your own, cover it in distance, size, and space, it is a forgery, not real. There are always little differences as there are here, not a substantial one.

Now, gentlemen, we have reached this point. Before the theatre by three men is Booth seen; before the theatre by three men is Surratt seen, two of them recognizing him positively, the other giving a description of him. Heaton is not so positive. Dye, who was situated where he could not be mistaken, is entirely positive. Cooper saw him and described him as he went up to the carriage; and then he and Dye go up H street, and at the same house the same thing occurred. Booth goes into the drinking-place and takes his drink, and, when the last time is called, stealthily goes into the theatre, passes into the box of the President, lifts his infamous hand, and kills that man, who is there trying to relieve himself from the burdens and toils which were pressing him by some little diversion with his wife and child. It was the time, as you remember, that Lee's army had surrendered; it was the very day that he had been with General Grant; and if General Grant is in the room he will remember it, for he told me of it himself; it was on the very day when he was with his Cabinet and with General Grant, devising what means of leniency, what easy modes could be brought about to restore peace to this bleeding country. All remarked how gentle, how kind, how lenient was his policy on that fatal day. It is well remembered by the general-in-chief, and well remembered by all his assembled Cabinet who were there with him. He indulged in no pleasures, he had no amusements; but occasionally, relieving himself from these toils, went to the theatre, that he might be diverted. His other sole diversions, as is well known, were to go to the hospitals, to the sick soldiers, to cheer them, to soothe them in their sorrow, and be by the side of their dying beds, as he frequently was. And here this occasion was selected, that by the side of his wife and by the side of his friends he should by the assassin's hand be stricken down in death. The counsel here ask, Have we not had blood enough? is it not all right. They call upon a jury of twelve men in the city of Washington to say it is all right; there is no guilt about it, neither as to those who

were engaged in the plot nor those who perpetrated it. It is right, if they are not guilty. But when they call upon you to say a man is not guilty, who was one of the plotters, they call upon you to say it is all right. They would not be willing to put it in that form, but that is the real form, and the form in which no one can escape its being put. The form is, gentlemen, do you say the plotters in that great crime are innocent? If they are innocent, then they are right. What do you say about it? Will you tell this community—your wives, your neighbors, your clergymen, your own souls—that it is right? It is right if there is no guilt.

The whistle of the signal sounds when Booth goes in, and then the time is called, the man hastens up H street, Payne mounts his horse at this given signal, and goes to the house of Secretary Seward, and goes through that murderous, that awful scene which ensues. In the presence of his daughter, by the side of his wife, the sick and almost dying man is mangled and cut to pieces in this brutal way; those trying to protect him are stricken down; his own son's life almost destroyed, almost by a miracle saved; his daughter from the shock goes to her grave, and his wife in a few weeks from that hour dies.

"Have not we had blood enough?" Have not we had murder and assassination enough? Is it not time that a jury of twelve men shall say there has been enough and we will stop it? No jury has said a word upon this subject yet. No twelve men have had the chance to pass upon it. The civilized world have passed their verdict upon it, and it is a verdict of condemnation. Thirteen thousand rebel prisoners at Point Lookout passed their verdict, and they wrote the severest curse and condemnation upon it that words can express. The entire governments of the civilized world expressed their condemnation of it; they said there had been blood enough. The Turk, the Infidel, the Chinese, the Japanese, the Greek, the Arab, the Protestant, the Catholic—from sea to sea, from pole to pole—over this whole wide world did they send their letters of condolence and their resolutions of condemnation of this terrible crime. Yet the counsel tells you this is not different from the commonest murder of the lowest vagabond in the streets. That is not the verdict of Christendom—that is not the verdict of the brave men who were rebels; it is not the verdict of those thirteen thousand rebel prisoners; it is not the verdict of humanity; it is not the verdict of a man.

Now, what happened? This deed is done; Herold and Booth flee. Flee where? Flee forthwith to the house of the mother of this prisoner to get the arms, to get the field-glass, to get the ammunition to get the whisky which on that day she had ordered to be prepared; the arms which her own son a few weeks before had secreted, which he in connection with Herold had brought from T B there, had hid them, had told his mother; and Booth and Herold called upon Lloyd, "for God's sake to get up and give them those things." With them they escaped, with them they were taken, and the things are brought here as living witnesses to testify with their dumb mouths against this awful crime.

Now, gentlemen, who did the deed? You notice, from the testimony here given, that the first idea of all was that John Surratt was the one who had assassinated Mr. Seward. It turned out it was another man who had assassinated Mr. Seward, the very man that it had been arranged before should kill Lincoln. It was this bloody Payne. It was he who did the deed, and what became of him? He wandered about in these streets, and knew not where to go or how to flee. His horse was found, but he was not found. Distracted almost, as it were, and like a wandering, demented spirit, he returned to the very house where the plot had been formed, and there enters on that Monday night, and says he has come there at Mrs. Surratt's call to do her bidding in a menial labor. He had done her bidding in other things, or he had done that which he had plotted in other things, and he returned to that same

house, and there he was arrested; and there, when she rose from her knees and came out of the parlor, she lifted her hands and said before God she never knew that man. And when she passed out by Colonel Morgan, she leaned over, and, in a confidential whisper, said to him, "I am so glad you officers of the Government have come here to protect us, for that man with the pickaxe came here to kill us."

Well, we have had blood enough. No jury yet has ever passed on one of these crimes; you are going to do it now. The world looks on, your own friends look on, your God looks on. It is for you to try; it is not for me.

I come now to the flight. I turn to page 378; to the testimony of Charles Ramsdell, from Boston, Massachusetts, belonging to company D, third Massachusetts artillery. He was on his way, with Staples, another soldier, to Fort Bunker Hill. While on the Bladensburg road, a short distance from this city, in the early dawn, on the morning of the 15th, after this murder, he met a man on horseback. Let me read you what he says:

"Q. Tell the jury how you went, whether on foot or horseback?"

"A. On foot.

"Q. What was Staples? Was he in your company?"

"A. He was a private in my company.

"Q. About what time did you leave Washington?"

"A. I could not tell exactly what time—between four and five.

"Q. Will you tell the jury, after you got out on the Bladensburg road, what you saw that attracted your attention?"

"A. I saw a horse hitched to an opening in the fence, about two miles from here."

You remember the description of the horse which Asterodt rode. Asterodt was afterwards found here on foot, and was not taken with his horse. You will find this horse answers the description of the horse which Asterodt rode, and which he probably took and tied at this place to aid in the escape.

"Q. Describe that horse.

"A. It was a dark-bay horse.

"Q. Describe his forehead?"

"A. I think he had a star on the forehead, if I recollect right.

"Q. What of his feet?"

"A. I do not recollect exactly, but I think he had one white foot.

"Q. What had he on him?"

"A. Trappings; a citizen's saddle, and a piece of woolen blanket under it.

"Q. What kind of blanket was it?"

"A. A soldier's blanket, I think it was.

"Q. Was he saddled and bridled?"

"A. I think he was.

"Q. How near the house was it where he was tied?"

"A. It may be a hundred yards from it.

"Q. Did he excite any remark?"

"A. No, sir; not at the time.

"Q. You observed him?"

"A. I did.

"Q. Soon after you passed this horse, tell the jury what occurred?"

"A. About fifteen minutes after I passed this horse a man rode up to me on this same horse, and asked me if there would be any trouble in getting through the pickets, or something of that kind.

"Q. What did you tell him?"

"A. I do not recollect what I told him exactly, but I think I told him I thought there would be, or something of that effect. I asked him if he had heard the news of the assassination of the President.

"Q. What did he say?"

"A. He did not make any answer, but gave a sneering laugh.

"Q. What did he do?"

"A. He looked back and on both sides.

"Q. In what manner?"

"A. He appeared to be very uneasy, fidgety, and nervous.

He looked just that way when he got on the steamer, and even when in mid-ocean, on his way to England, he looked that same way. He thought everybody he saw was a detective coming to take him. He would be startled and nervous whenever any one came near him on the ship. It began after the bloody deed. It always begins after that, and the nerves never get steady again—never, never, never!

"Q. Could you discover any thing that arrested his attention?"

"A. There was a man coming from the city, an orderly, I think, carrying dispatches to Fort Bunker Hill. As soon as he saw him coming he rode away.

"Q. What did he say when he saw this man coming?"

"A. He said he thought he would try it, and rode away.

"Q. Try what?"

"A. Try the pickets.

"Q. How did he ride?"

"A. The horse went at a pretty fast gait.

"[The prisoner was here requested to stand up in such a position that the witness might see his back.]

"Q. Did you ever see that man [pointing to the prisoner] before?"

"A. I think I have seen that back before.

"Q. Did you see it on that horse?

"A. I think I did.

"No cross-examination."

You remember the appearance of the witness. He was not cross-examined. I suppose for the same reason that the ferryman was not. They thought the more he was cross-examined the more likely it would be to be made stronger than it was.

Now let us see what next happened in the order of time. You had it in evidence before you that the railroads after this were stopped; that they did not go as usual. Where did this man go after this man saw him? This horse has never been found—the only one of all these horses that has not been found and identified.

Mr. BRADLEY. You do not mean to say that there is any evidence of that in the case?

Mr. PIERREPONT. You will find it all through the case.

Mr. BRADLEY. Where are those on which Booth and Herold rode away?

Mr. PIERREPONT. I would show it if it were necessary. You remember that one was found with a puddle of water upon it; the other was identified at General Augur's headquarters.

Mr. BRADLEY. Not in this case.

Mr. PIERREPONT. You have forgotten the evidence then. You, gentlemen of the jury, will remember the finding of the horses, and their being identified. You will remember, I am sure, the condition they were in, one of them with puddles of sweat around him. This horse has never been found. Where he is I do not know, and I do not know that anybody knows. But the man who rode him has been found. And where did he go to? The next place we find him is on the boat going from Whitehall to Burlington, Vermont, on the night of Monday following the assassination—the first trip the boat made that season. He gets to the depot at Burlington; a short man is with him, who does not talk. This man talks "Canuck," as you will find from the evidence I shall read. They are too late for the train. They ask permission to sleep in the depot. They lie down on the settee, and at four o'clock they are called, take the train, hurry off. Just after they left, Blinn, who kept the depot, picked up from where the tall man lay a handkerchief, and on that handkerchief was written the fatal name, "John H. Surratt." He picked it up that morning. There is no doubt about that fact, much as they tried to make it appear differently. What next? You next hear of him on the railway. Mr. Hobart finds two men standing on the platform, who profess to have no money. The tall one does the talking; the other one says nothing. They pretended they had been laborers in New York, and had not any money. You can easily see why he wanted to appear as a laborer. The witness tells you that he undertook to talk what he calls the "Canuck," but when he grew earnest in urging him to allow him to remain he forgot the "Canuck," and passed into good Yankee English. Let us see what he says about it. I read from the testimony of Blinn, on page 54:

"Q. Do you remember when the first passenger-boat of that season landed its passengers at Burlington that season?

"A. The first trip made by the boat that season was the 17th of April.

"Q. What day of the week?

"A. Monday.

"Q. Can you tell whether it arrived in time for the passengers to take the train?

"A. It was four hours late.

"Q. At what time did it arrive?

"A. About twelve o'clock in the night.

"Q. Were you on the watch that night in the depot?

"A. Yes, sir.

"Q. D. you see two men in that depot; if so, tell us about them?

"A. There were two men who came in from the boat; one was a tall man, and the other shorter. They requested permission to sleep in the depot until the train left for Montreal.

"Q. At what time did the train leave?

"A. The train left at 4:20 the next morning.

"Q. Where did that boat come from?

"A. It came from White Hall and connects with the cars from New York city. It runs from White Hall to Rouse's Point, on the lake.

"Q. State what arrangement, if any, was made between you and them about sleeping there.

"A. They requested permission to sleep on the benches in the depot.

"Q. Which one made the request?

"A. The taller gentleman; he did all the talking.

"Q. What did he say?

"A. He wished to know if he could sleep there. People very often come along in that way, when the cars from the Rutland road were late.

"Q. I am merely asking what he said?

"A. He wished to know if he could sleep there. I asked him if he did not wish to go to a hotel. He said he thought not; he was going to Montreal on the early train, and would like to sleep there in the depot.

"Q. Did you call him?

"A. Yes, sir; in time for the train.

"Q. At what time did you call him?

"A. I should think four o'clock.

"Q. In the morning?

"A. Yes, sir.

"Q. That was on Tuesday?

"A. Yes, sir; that was on Tuesday morning, the 18th.

"Q. After he went out did you see any thing where he had been lying?

"A. I did not.

"Q. Any article?

"A. I did not, until daylight.

"Q. Did you at daylight?

"A. Yes, sir.

"Q. Have you it here?

"A. I have, or something that resembles it very much.

"Q. Just look at it and state if you recognize it as the same.

"A. [After examining it.] I do recognize it as the same handkerchief.

"Q. Where, in relation to where the tall man slept, was that?

"A. That was near the seat, on the floor, where his head lay.

"[The handkerchief was here shown to the jury.]

"Q. Is there any name on it?

"A. Yes, sir; 'J. H. Surratt, 2.'"

Now here were two men, one tall and the other short, and Blinn tells you that under the head of the tall one, where he lay, he found this handkerchief, marked "John H. Surratt." Let me trace them, and see where the two men, the tall one and the shorter, were next found. But first I ask you to remember what day this was, and to notice it was while Holahan was still in Washington, and before that dirty handkerchief, which John Surratt had left and which had been washed by Susan Jackson after Friday, when he was there, had passed into the hands of Holahan at all. He had not left Washington as yet. I am coming presently to when he left and when he got that handkerchief.

I come now to the testimony of Hobart, on page 49:

"Q. Between the 10th day of April, 1865, and the 20th day of April, 1865, state whether you were the conductor on this same road?

"A. I was, and have continued to be ever since.

"Q. Do you remember about what time in April, 1865, the first boat came up the lake that left passengers at Burlington?

"A. I got the passengers from the first trip up the lake by the boat on Tuesday morning, in April."

No chance for any mistake here.

"Q. Have you any memorandum of what kind of a night it was prior to this morning that you took these passengers; I mean as to whether it was stormy or otherwise?

"A. I think it was a clear night, but I am not sure.

"Q. At what time in the morning or night was it that your train started?

"A. I started from White River Junction at 11:55 at night; I cannot say whether we were then on time or not, but that was the time of starting.

"Q. Where did you go?

"A. Directly to St. Albans.

"[The prisoner was here requested to stand up, that the witness might see him. He did so.]

"Q. Will you tell the jury what occurred on the train that night that was peculiar?

"A. I arrived at Essex Junction at five o'clock in the morning—Tuesday morning. I left Essex Junction with the passengers from Burlington and the boat on Lake Champlain. As I went through the train I found between the passenger car and the sleeping car two men standing on the platform; they were on the platform of the passenger car, one on each side of the door. I spoke to these men, and asked them for their tickets. They said they had none, and that they had no money; that they had been unfortunate."

You can easily see why they wanted to conceal themselves, of course, they being criminals in flight. If they could conceal themselves as laborers, just as Payne, when he came to Mrs. Surratt's, undertook to conceal himself as a laborer, they could get along without being stopped until they got out of our jurisdiction.

"Q. Please describe these men.

"A. One of them was tall; he was about my height as he stood up in the car; he was rather slim; had on a skull-cap—one of those close-fitting caps—and short coat. His vest was opened down low, and his scarf came over under his collar and stuck in his vest;"

I will call your attention to this presently, when I read to you the statement of St. Marie of what the prisoner told him in Rome, when walking with him on that afternoon, as to how he made his escape from Washington, and what disguise he had.

"—the other man was a short, thick-set man, of sandy complexion, with whiskers around his face, and had a slouched hat on.

"Q. Of what color were his whiskers?

"A. Sandy, I think.

"Q. Was he a rough or genteel-looking man?

"A. He was a rough-looking man.

"Q. How was he dressed?

"A. I cannot state about his dress.

"Q. With whom was the conversation?

"A. With the tall man.

"Q. State what the conversation was.

"A. I told him to come into the car, and put my hand on his shoulder; he came in; he said that three of them had been to New York; they were Canadians, but had been at work in New York; that they had received some money two nights before—I won't be positive about the time—and that a third party who had been with them got up in the night, took all the money they had, and left; that he had left them without any thing—in a destitute condition.

"Q. What were they trying to do—did he say?

"A. He said they must go to Canada; that they wanted to get home; that their friends lived in Canada, and that when they got home they would get plenty of money, and would remit the amount of fare to me.

"Q. What further?

"A. I told them that I could not carry them. I spoke to them of the necessity of having money if they were going to travel, and that I could not carry them through free. They expressed themselves as very anxious to get through. I told them that I should leave them at the next station—Milton, between Essex Junction and St. Albans. I was busy when I got there with the train, and so forgot them. I went through the train again after leaving Milton, and found them in the rear end of the car. I tried them again to see if they had not some money. They said they had none, but that they must go to St. Albans; that when they got there they could foot it. They inquired of me how far it was to Franklin; that they were going through the country. I asked them how they were going to get there? They said they were going afoot.

"Q. State where Franklin is.

"A. Franklin lies northwest of St. Albans fourteen miles; I think the distance is about four miles from the line—the Canada line."

You see by the map that Franklin is near the Canada line, and, as we shall show, from the time of their arrival at the hotel in Montreal, they probably went by Franklin. They did not go by train after it was discovered that he had lost his handkerchief and it had been found, and they did not get there until some time later than the train arrived.

"Q. When you asked them how they were going to get to Franklin, what did they say?

"A. They said that they would have to go afoot; they had no money to pay their fare on the stage; that if I would carry them to St. Albans, they would try and get home, or where their friends were.

"Q. Who did this talking?

"A. The tall man.

"Q. In the progress of this talk, or in the beginning of it, state what there was, if any thing, peculiar about their dialect.

"A. This tall man tried to use broken English, as if he were a Canuck, but occasionally he would get a little in earnest for fear he would be put off, and then he would drop the Canuck and speak good square English.

I think you can understand that. When men undertake this imitation and find themselves growing earnest, or when they undertake to disguise their handwriting and begin to forget, or their walk and begin to forget, or their tone of voice, they will always turn from the Canuck and speak "good square English."

"Q. What did you discover as to his square English finally?

"A. That was what aroused my suspicions that things were not all right, that they were traveling *incog.*, and I urged the matter more than I would if they had been really poor people and I had had strong proof of that fact.

"Q. Did anything happen in relation to the position of the tall man's hands at all? If so, what?

"A. His hands were not like those of a laboring man; were not like those of a Canadian who had been used to hard labor. They were white and delicate.

"Q. You took them to St. Albans?

"A. I did.

"Q. When they got to St. Albans what did they do?

"A. They went out into the yard on to Lake street. I went into the general ticket office to attend to my business.

"Q. Did you see them any more that day?

"A. I will not be positive. I cannot say whether I did or not.

"Q. If you did, it was soon after, I suppose?

"A. Yes, sir; after I had done my work—about ten minutes, perhaps.

"Q. Can you tell us the time the train went on from St. Albans to Montreal after you got there, or what time it would be due in Montreal?

"A. Due there at 9:45 a. m."

Now I shall show you that they did not get there until several hours after that; that a thing which I am now coming to occurred at St. Albans which prevented them from taking the risk of going on the train, and they struck across the country, and did not get there until later, as the proof shows. Mr. Hobart was further asked:

"Q. Have you seen any body in court to-day that looks like the tall man that you saw?

"A. The man that stood up before me resembles the man that I saw very much. I should not recognize his face. He had at that time a moustache, with no whiskers on his chin."

They all give that account, as you will see. Nobody ever saw any whiskers on that chin for a long time after that barber Wood had hold of it.

"He had a cap on.

"Q. How did he wear his skull-cap?

"A. It was drawn over his forehead in the usual way."

I now come to the testimony of Chapin, on page 116. This will show that all that has been said about the loss of this handkerchief and the time it was found is true, for Chapin himself (having first stated that he saw Blinn at the depot) testifies as follows:

"Q. Now tell us what occurred?

"A. He showed me an article; I looked at it, and I told him I would like to have it.

"Q. What was the article?

"A. A pocket-handkerchief.

"Q. How was it marked?

"A. It was marked 'John H. Surratt,' I think, 'No. 2.'

"Q. Have you it before you now?

"A. I should not recognize it from the way it looked then, because then it was very dirty. I think it is the same handkerchief. It looks like it.

On page 117, during the cross-examination, he is asked:

"Q. When did you first see it?

"A. On the Wednesday evening previous.

"Q. What enables you to fix that date?

"A. On Tuesday morning, when I returned from New Haven, I went directly home. I live two miles out of Burlington. Then about the middle of the day Tuesday I drove over with my team and reported to the office, and returned immediately back. My wife was very sick. I stayed there until Wednesday. On Wednesday I went down to Essex Junction and left my team, and went down in the Wednesday-evening train.

"Q. And you think it was on that Wednesday you first saw the handkerchief?

"A. Yes, sir."

Thus it will be seen that Chapin had seen that handkerchief before Holahan had any chance to lose his.

I shall not be able to finish before the recess, and perhaps the court had better take a recess now.

Judge FISHER. Very well, sir.

The court accordingly took a recess for half an hour, re-assembling at 1:15.

Mr. PIERREPONT. I have shown you, gentlemen of the jury, on the subject of the flight of the prisoner, by the testimony of Mr. Hobart, that the hour of arrival at Montreal of the train in which this man was going with him was 9:45, and that he inquired the way to Franklin, which was close to the Canada line, and told him that he was going across the country. He probably took the course that he said he would from this fact: I have here the register of the St. Lawrence Hall Hotel, of Montreal, containing the entry of his name, from which it appears that he arrived there at 12:30 instead of 9:45. Instead of going by the regular train, after he got to St. Albans, he escaped and went across the country, and reached there at 12:30 noon, three hours later than he would have arrived if he had gone by the train. You will presently see when I come to that portion of the evidence why when he got to St. Albans he did not go on in the train to Montreal, but went in some other direction, and did not reach Montreal until some three hours after the regular time, in consequence of his going an irregular way.

You will likewise see from this same register that he

reached this hotel in Montreal at 10:30 on the 6th day of April, 1865. This is one of those pieces of evidence which come in, as evidence will come in, as I have often said, where it is true, to set at naught and scatter to the winds all these wild theories of my learned adversaries about "physical impossibilities." You will remember that John Surratt was here in the city of Washington on the night of the 3d of April, 1865. That is conceded; and yet, leaving here the next morning, he arrived in Montreal at 10:30 on the morning of the 6th, by the concessions of everybody. Cannot he come just as quick from Montreal to Washington as he can go from Washington to Montreal? My friend's "physical impossibility" has again, in this instance, disappeared.

First find out whether a thing is true or not; and, if it be true, you can always find out some way to get at it. If it is true that a man was here in Washington at a given time, and it is true that he was in Montreal at another time, you may be entirely sure that somehow or other he got from one place to the other place. Whether he went by a special train, express train on schedule time, or on a freight train, is not a matter of any consequence. The question is, what is the truth about it? Was the man here? Yes, that is conceded. Was he in Montreal? Yes, that is conceded. Well, then he got there somehow or other. It is not worth while for us to puzzle our brains very much to know how he did it, nor to be disturbed by anybody getting up and talking about physical impossibilities.

I presume you all remember very well that it was a "physical impossibility," a few years ago, for a steamer to leave Liverpool and reach New York. There was not any doubt on that subject. It is filed now in the English admiralty. The demonstration was made there. The demonstration had hardly got dry before the *Syrius* crossed the Atlantic, and threw out her cable in New York. It is not worth while to be troubled much about physical impossibilities when you find the fact is so. The "physical impossibilities" in this case are all out of the way. There was a "physical impossibility" here about ten days ago to come from Elmira to the city of Washington and go to that barber-shop at a certain time. After we got Mr. DuBarry back again that "physical impossibility" vanished. We find no trouble about the physical impossibility of Surratt being here on the night of the 3d and getting to Montreal on the 6th. He could come back just as swift as he could go. That physical impossibility is out of the way.

You will remember that a Mr. Conger and two gentlemen by the name of Sowles supposed they saw this man in St. Albans on the morning he got there. You will remember his inquiries of Hobart about Franklin. You will remember that if he had continued on the train he would have reached Montreal at 9:45, and you will also remember that he did not reach there until 12:30, because he probably went by way of Franklin, having got alarmed in St. Albans, as you remember, when he heard it said there that the handkerchief of John H. Surratt had been found at Burlington, and found, on putting his hand on his courier's-bag, where the handkerchief was, that he had lost it, and he thought it was time for him to make himself scarce. That he told himself.

You will bear in mind that he told St. Marie in Rome that he had escaped from Washington on the morning after the murder in the disguise of an Englishman. That same disguise was on him when Hobart saw him on the train, when he pretended to be a Canadian—a Canuck. The same disguise was on him when his cap was on his face. The same disguise was on him when he was in St. Albans and had on the English courier's-bag, which perhaps you have seen. I have seen many of them in England and many of them on the continent; and I have noticed every once in a while, when some fellow returns from his travels in Europe, he begins to travel about between here and New York with one of these English courier-bags on his side. He gets rid of that

courier-bag before he has been at home two months, if he has any sense. Our people do not like those kind of things. But this man wanted to disguise himself as an Englishman. He put on the toggery and snobbery of an Englishman and started off from here with it; and when he heard that his pocket-handkerchief had been found, he says he put his hand on his courier's-bag, where he carried his handkerchief, and found it was gone, and he thought it was time to make himself scarce, and he left St. Albans. The next we see of him he turns up in Montreal, registering his name at St. Lawrence Hall, at 12:30, three hours later than the train arrived. Let us see what he did after he got there. I read from the testimony of John Sangston, book-keeper of the St. Lawrence Hotel, page 47:

"Q. Now turn to the 18th, when he arrived again, and tell us how many hours or minutes he stayed on the 18th?"

"A. He did not stay any time in the hotel; I do not know how long; he just came into the house."

"Q. Do you know where he went?"

"A. I do not know the exact place; he went somewhere and was secreted in the city, I believe."

"Q. He left the hotel instantly, did he?"

"A. He left it instantly."

This was on the 18th. Why did he leave the hotel instantly? He had been in St. Albans; he learned there that his handkerchief had been found at Burlington; he thought it was time for him to make himself scarce; he went across the country, instead of going by the regular train, and got to Montreal, entered his name on the register of the hotel, and left there instantly, and was secreted somewhere in the city. He told afterwards where he was secreted. He was secreted at Porterfield's house until he went to St. Liboire, to Boucher's house. Why was he secreted? He had not done any thing wrong. He had committed no crime. He had been in Elmira all this time. I am coming to that presently. He had not been in Washington. These thirteen witnesses, several of whom had known him from his boyhood, who swear to having seen him here at different hours during the day, and narrate minute circumstances, such as shaving him, holding conversations with him, &c., are all mistaken. He was not here, but was in Elmira. The ferryman who brought him across the river, the other man who talked with him when he came to inquire the way across and the mode of connection, and who thought he was a southern spy, are likewise mistaken. That makes fifteen witnesses, all of whom are mistaken. He was in Elmira. Well, will not the gentlemen tell us where he went to when he went to Elmira? Will not they tell us how he got on that boat? Will not they tell us why he went in disguise? Will not they tell us why he hastened through that hotel and left it so suddenly? Why he went across the country from St. Albans, instead of going on the regular train? Why he was secreted in the city of Montreal? He had done nothing wrong. He is an innocent man. Why is he flying? What is the matter? Men used to do that before when similarly situated. They began it early. Here is a little bit of its history:

"And the Lord said unto Cain, Where is Abel, thy brother? And he said I know not. Am I my brother's keeper?"

"And he said, What hast thou done? The voice of thy brother's blood crieth unto me from the ground."

"And now art thou cursed from the earth, which hath opened her mouth to receive thy brother's blood from thy hand!"

"When thou tillest the ground it shall not henceforth yield unto thee her strength; a fugitive and a vagabond shalt thou be in the earth."

That was the primal curse pronounced by the Almighty upon murder, that the man should be a fugitive on the earth. The prisoner followed it out. He fled to the uttermost parts of the earth, even into Egypt, and he was brought from thence back to the city of his great crime.

That there may be no mistake on this subject, I read from St. Marie's evidence, page 372:

"Q. What road did you go?"

"A. Outside the city of Velletri, on what is called the road to Naples."

"Q. Did you talk to the prisoner?"

"A. Yes, sir; I was occasionally speaking with him in English, and occasionally to the two others in French.

"Q. Did the prisoner tell you at this time any thing about his disguise? If so, what?

"A. Yes, sir; I asked the prisoner how he got out of Washington; if he had a hard time in escaping. He told me he had a very hard time.

"Q. How did he say he got out from Washington?

"A. He told me he left that night.

"Q. What night?

"A. The night of the assassination, or the next morning, I am not positive.

"Q. What was the disguise, if any, he told you he had?

"A. He told me he was so disguised that nobody could take him for an American; that he looked like an Englishman; that he had a scarf over his shoulders. He did not mention any other disguise that I remember."

You have heard the witnesses tell you about that scarf, and about his face, and about his cap, and you will hear presently what was told you about the courier's-bag, which the Englishman always carries when he is traveling. Thus did he escape, and thus did he attempt to impose his broken English and his Canuck dialect upon Hobart when he was trying to pass himself off as a laborer, just as Payne claimed to be a laborer when he came to that house where he had plotted this murder.

You will notice this curious thing, gentlemen, in this case: that an attempt has been made by the defense to undertake to show that, to be sure, there was a foundation for the things the Government prove, but really it was something else, and, as one of the counsel said, they were remarkable coincidences. They were very marvelous coincidences. They were so marvelous and so strange, that I think they were stranger than any truth; and we have always learned that truth is a great deal stranger than fiction. One of these things was this: They first brought Gifford, as you remember, upon the stand, to prove that Dye was lying when he said he was there on that platform. Gifford told you that there was not anybody out there. He said if there had been he should have seen them and put them off the platform, as it was his duty to do. Carland told you likewise that if there had been anybody on that platform Gifford would have put him off, and they were very positive about that, as you will remember. Having got the proof in that Dye was not there, they then brought in little Hess to prove that he was there, to prove that he (Hess) called the time "ten minutes past ten o'clock," in order to show that Dye, who was not there, and Cooper, who was not there, had heard exactly what they professed to hear when they were not there. That is one of those inconsistencies which always come of things that are not true. They did not see where it was landing them. With great care did they bring Carland and Gifford to show that Dye could not have been on that platform at all, for if he had been, they would have seen him and put him off; and yet, forgetting that, they bring on Hess to say that he called the time "ten minutes past ten," and Carland to say that he told him the time.

Now, let us look at what Hess and Carland say? It is curious, it is a little interesting, to take up these attempts at making up something that is not real. You cannot do it. You cannot make fiction like truth by any contrivance. The one has the real stamp of the pure gold; the other is a forgery, and it does not take a very great expert to tell them. I am not such an expert in these things as are the men who can tell bank notes and false coin by the touch; but I am expert enough, and have had experience enough, to tell the difference between a man who is telling the truth and a man who is making up a story; and the one telling the lie will have good luck if he gets rid of it. It is not difficult. You can tell it. I can tell it. All men can tell it who watch it. Now, I will show from their own statements that this is a made-up story, and that there is not a word of truth in it. I read from little Hess's account, page 445. He is the one, you know, who was Surratt, and looks so like him you cannot tell them apart! He says:

"A. I was not in the American Cousin, but was in a song that was to be sung after the performance of the American Cousin.

"Q. Were they there before you or not?

"A. Mr. Carland and Mr. Gifford were there before I was."

That is, on the front steps.

"Q. From what direction did you come toward them?

"A. As I came out of the theatre I met them at the door.

"Q. Did you leave them?

"A. I did.

"Q. Which direction did you take then?

"A. I went right back into the theatre again."

Carland then came on and told his story. He had been out in the witness-room, and he had not heard little Hess's story, and so he came on and found himself in a fix. He did not know what a cross-examination was. I do not believe he had ever had one before; and he did not know what sort of questions were going to be asked him, and he contradicted Hess dead flat. They had not fixed it up together, or if they had, they had not fixed up this part. They never do. They cannot do it. They do not know what is going to be asked. If they tell the truth, they do not want to fix up any thing. If they tell one lie, one generates another, and another, and another, until ten thousand lies are made from one, and no two are consistent with any truth. They cannot carry them out—never, never. I am never afraid of a liar on the stand. This was a lie. Let us see if it was not:

"Q. Did you see them afterwards?

"A. I did not.

"Q. When you came out and spoke to them was any thing said about the time?

"A. Yes, sir; I asked them what time it was. Mr. Carland walked as far as the first door in front of the theatre, leading into the audience department, looked at the clock, and came back and told me it was ten minutes past ten. Says I, 'Ten minutes past ten; I will be wanted in a few minutes.'"

When I came to cross-examine him further, you found that he was not wanted until after the play was over; and this was long before the play was over, or near over, and yet he said, "I will be wanted in a few minutes," and then left immediately and went back into the theatre again. You will note this, if you please:

"I do not think I had been there more than two minutes when I heard the discharge of a pistol."

This is Hess's story, as he told it to you. Carland did not hear it fortunately. If he had, I do not believe he has intellect enough to put it together and remember it. He could not have kept it straight if he had heard it, but he did not hear it, as you will see when I come to read his testimony. Hess says further:

"What afterwards happened I do not know, because there was an uproar all over the house at that time."

Now we come to his cross-examination:

"Q. Won't you give the jury a specimen of how it was done?

"A. Says I, 'Mr. Carland, what time is it?' He walks up in the direction of the clock, and then says, 'Ten minutes past ten.' Says I, 'Ten minutes past ten; I am wanted in a few minutes.'"

Is there any truth in that? The play was not in a position to have him wanted in a few minutes. There was not a word of truth in it, as you will presently see. It was fiction:

"Q. Did you think there was any thing extraordinary in its being ten minutes past ten?

"A. No, sir; I did not until they spoke about it.

"Q. Then you had to hurry, did you?"

Will you note this?—

"A. Yes, sir; I had nothing else to do, and I thought that I had better linger inside than outside."

"Q. The play was not then near over when the President was killed?

"A. No, sir; I think the second scene was on."

That is little Hess's own statement. He did not know about that cross-examination, that it was going to trip him up there when he was telling that other lie. He did not think of it. The second scene was only on, and yet he threw up his hands and said, "Ten minutes past ten! I shall be wanted in a few minutes." He admits that it is all a lie, or all untrue—not a fact. This is from his own showing. I am coming to what Carland shows presently. Let us go on with Hess:

"Q. There was no occasion, then, for you to be in a great hurry?

"A. No, sir; there was no great hurry."

That little fellow is not smart enough to lie. He ought always to tell the truth. He cannot stand a lie.

He is not equal to it. It requires a great deal more intellect than he has.

"Q. And you did not hurry?"

"A. No, sir; I walked on leisurely."

He was tremendously startled on his direct examination—so much so that he threw up his hands. Now let us see what Carland says about this same story. I turn first to page 451, where he is asked in order to show that Dye and Cooper were not there on the platform:

"Q. At the time you went out to that platform was any one sitting on it?"

"A. I do not think there was. There might have been, but I have no recollection of it. If there had been, Mr. Gifford would certainly have spoken of it and made them get off."

Mr. Gifford told you the same thing. Therefore, they were making it pretty clear that Dye and Cooper were not there to hear this calling of the time which they found it so important to make out that Hess called instead of Surratt. That was a blunder. It was not very wise. On the cross-examination he was asked:

"Q. After you told him what the time was, did he say anything?"

"A. He said it was very near time for him to go and get ready."

I want to call back your memories to that cross-examination, because I have just read to you, and you had then fresh in your minds, the antics through which little Hess went when he threw up his hands and told you about "ten minutes past ten! It is time for me to dress in a few minutes;" and then afterwards said it was only in the second scene and nowhere near time to dress. He told it twice, and yet when I came to examine Carland he answered thus:

"Q. Was that all he said?"

"A. Yes, sir; I do not remember any thing else."

"Q. He did not say any thing else about the time, did he, except to ask the time?"

"A. I think he made the remark that it was pretty near time for him to get ready for the song?"

"Q. Is that all he said?"

"A. That is all I remember."

"Q. That is every word that you remember of his saying?"

"A. That is every word that I can call to memory just now."

It is very strange that he could not recall that sudden exclamation and throwing up of hands by Hess, and which was to be turned off on to Dye and Cooper as having been said by Hess instead of Surratt. Let us go a little further. I have just read you what Hess said, that he went right in the theatre and did not come out; he thought that was his best place. Now let us see further what Carland says:

"Q. Which way did he go after he said it was time for him to dress—that being all he said?"

"A. He went up the street, I believe"—

Hess told you right the other way, that he went right in the theatre; but, as I told you, Carland did not hear Hess's testimony:

"—then turned, and, as far as I can recollect, went into the theatre."

"Q. What is your recollection about it? Did he go up the street, or go directly into the theatre?"

"A. I cannot call to mind which."

He began to see that he might be in some danger; he showed it in his face:

"Q. What is your best recollection?"

"A. The fact is, I have no recollection at all about it, any more than his being there."

What, in Heaven's name, did he come on the stand for and be sworn if he had no recollection about it! He had not any. He saw he was going to get himself into a scrape; he knew very well from the tenor of these questions that he was running into a difficulty, and he did not know where it was going to lead him, and so he turned it off in that way.

"Q. Do you think he went up the street?"

"A. He may not have gone very far."

"Q. Do you think he went up the street?"

"A. I cannot say whether he went up the street or not."

Men of that kind always throw themselves off in that way. They know nothing when they see they are in trouble.

"Q. What do you wish the jury to understand—that he went up the street, or that he did not?"

"A. He walked backwards and forwards for a minute or so."

"Q. Did he go up part of the street?"

"Q. He went up above where we were standing."

"Q. What did he then do?"

"A. I do not know what he did. He came back again."

"Q. How far did he go up?"

"A. Ten or fifteen feet."

"Q. Which?"

"A. I do not know which."

"Q. Did he then go directly into the theatre?"

"A. I have no recollection whether he went into the theatre. He was one of the attachés of the theatre."

"Q. State whether he went into the theatre?"

"A. I do not know whether he did or not. I was not interested in where he went."

That is the way he got along with his testimony after all this pantomime of little Hess, who threw up his arms when he heard it was ten minutes past ten, and repeated it over, as he states, and Carland was the one who told it to him, and he never heard a word of it. Hess also says that he went right back into the theatre; and yet this man cannot tell whether he went back into the theatre, up the street, or where he went.

They used to have a way of judging of this same sort of thing many years ago. I will read you a little bit of it:

"For many bare false witness against him, but their witness agreed not together. And there arose certain and bare false witness against him, saying, We heard him say, I will destroy this temple that is made with hands, and within three days I will build another made without hands. But neither so did their witness agree together."

Those witnesses never do. They cannot get along with them.

There was another curious attempt of the same kind, which worked in the same way, as these things always will. You remember the testimony in relation to Sergeant Dye and Cooper passing Mrs. Surratt's house, and her lifting the window, and inquiring what was going on down town. They were the first men who passed on the street after the assassination. The street was silent. They met two policemen and told them the news. As they passed along H street this woman threw up the window at No. 541, and made this very significant inquiry. The other side felt the force of that testimony, and so they wanted to get rid of it. Let us see how they attempted to get rid of that. They brought a Dutchman named Kiesecker, who lived in a house on another street—Sixth street, I believe—and his lot and house ran back towards Mrs. Surratt's. You will remember that there is an alley between the lot and Mrs. Surratt. They bring this Dutchman upon the stand to state that he sat there smoking on those steps until eleven o'clock that night, when his wife called him to bed. He is asked, "Did you see anybody pass?" "No; nobody." "Did you hear anybody talking at Mrs. Surratt's window?" "No." It is not very likely he did at that distance. It would be very strange if he did. "The street was all still?" "Oh, yes, the street was still." "You heard nobody talking?" "No." "Saw nobody pass?" "No." "When did you leave?" He thought he was there until near eleven o'clock. He could not tell what kind of weather it was; he could not tell whether there was a moon or not; but he says he was there, and did not hear any thing until his wife called him to go to bed. He was brought here for the purpose of showing that no such conversation occurred, and that nothing could have happened there or he would have heard it. While he sat there smoking his pipe, not a soldier passed, nobody passed, and he heard and knew of nothing, he says, until the next morning when he first heard about this murder. They did not call his wife Katrine. If they had put Katrine on the stand, she probably would have told you that she did put her husband to bed that night; that in order to make his pipe taste good, he had taken a little lager, and that he did not know the difference between nine and eleven o'clock when she tucked him into the bed.

That, somehow, did not work to their satisfaction, and what next was done? Some weeks rolled on, and they then brought on this stand a Mrs. Lambert—first, however, bringing on her son to describe the house in which his mother and himself lived, which was a block and a half or more further up the street. Gentlemen

I hope you have passed Mrs. Lambert's house and Mrs. Surratt's house. I have. If you have, did you see any resemblance in their modes of entrance? At Mrs. Lambert's you go down to get into the basement. Mrs. Surratt's house has on the right side an alley, the basement entering in from the pavement, the front stoop going clear up to the second story. Mrs. Lambert's house is not of that kind at all. I hope you have passed them. If you have not, I hope you will, and see whether you think they look very much alike. Mrs. Lambert on that night goes to the door and stands on the stoop. While she is standing there her colored servant comes and tells her it is too damp and gets her to come inside. She then goes and stands at the parlor window. A great many soldiers, she says, pass along, and then two soldiers, to whom she spoke and with whom she had a conversation. She could not give much of a description about it, but there were a great many passing and tramping by there at the time. The city, as you will remember, immediately after the assassination of the President, was all in commotion.

"Ah! then and there was hurrying to and fro,  
And gathering tears, and tremblings of distress,  
And cheeks all pale, which but an hour ago  
Blushed at the praise of their own loveliness."

But the Dutchman sat there until eleven o'clock and never heard a word of it; nobody passed before his vision. But Mrs. Lambert put them in this plight, and they saw it. Mrs. Lambert had put it all out of joint. Mrs. Lambert said she was sure it was between eleven and twelve o'clock at night. The murder, you know, was at some two minutes after ten minutes past ten. The counsel saw the fix that that would put them in; and so, after the close of the cross-examination, they asked her this question: "State whether you are satisfied this conversation was after eleven o'clock," evidently hoping that she would change it; but she did not understand that part of it, or she meant to be truthful—I care not which way it is—and she answered, "Yes, sir, between eleven and twelve." She nailed it as she had done before. That did not answer the purpose very well, for long before that time Sergeants Dye and Cooper had been out at their camp, and the city was all in confusion. I have said to you, gentlemen, I am never afraid, in a law-suit, of lies. Truth is the only danger.

Driven from every point on that subject, we next hear from the counsel, toward the end of this cause, of another physical impossibility. The first impossibility was getting the prisoner from Elmira to Washington. They had him at Elmira on the 13th by their witnesses. We had him in Elmira on the 13th. We both agreed about that. But finally, when that physical impossibility had vanished, a few days ago another physical impossibility sprang up in the mind of the counsel on the other side, to wit, the physical impossibility of his getting from Canada to Elmira. That was a new thought. He brought certain railroad statistics, called Mr. Ball's attention to them, and asked him to note them down, and brought the train along down to Elmira at eight o'clock p. m. on the 13th; it was a physical impossibility to get there before. You will remember that day. You took it down, Mr. Ball; I saw you. Eight o'clock on the 13th was the earliest moment it was possible for him to get into Elmira. That was a new idea. How did he get at it? How came that about? Up to that time they had had him in Elmira, talking that day with Carroll, seen that day by Stewart, seen by his partner.

Mr. MERRICK. No, sir.

Mr. PIERREPONT. We will see. I am going to read the evidence. I do not rely on what I say, but on the evidence. But here comes up this difficulty: there was no earthly way of getting him there. Somehow or other he had been there. Their witnesses had seen him and ours had seen him, and had brought him across the ferry and talked with him about the connection, and they thought him a confederate spy. But

now springs up in the mind of the counsel a physical impossibility. So he takes the railroad guides or the railroad schedule time and comes down from Montreal to Albany, goes from Albany to Canandaigua, from Canandaigua to Elmira, and brings it out that eight o'clock at night was the earliest moment there was any possible way of his getting there. That was a little curious. Did he take any of those special trains? We had a physical impossibility in getting him out of Elmira, you remember, before. That physical impossibility was overcome very easily when we got at the truth. We have never taken any pains to overcome these physical impossibilities, because they were to us of no moment. We did not take any pains, when he was in Elmira, to show how he got there on that day. Our business was to bring him to Washington. But, gentlemen, [pointing to the map,] do you see that road that goes to Ogdensburg? My friend was mighty careful not to say a word about that, and not to say any thing about the arrival of trains on that road. If you want to come from Montreal as quick as you can to Elmira, that is the road you take. You do not come down to Albany, and then go clear across there to get to Elmira. That is not the quickest way of getting to Elmira, and never was since the railroads were built. Mighty careful was the counsel to shun that road, or any other than one particular train and one particular connection, in order that he might bring it there at that particular time. There is no difficulty about that physical impossibility.

Mr. BRADLEY. Will your honor allow us to interrupt the counsel now or at the conclusion of his remarks?

Mr. PIERREPONT. You may interrupt now.

Mr. BRADLEY. In regard to that matter, all I can say is, we have the schedule time from Rouse's Point *via* Ogdensburg to Rome, but he cannot get to Elmira except by connecting with the same road that comes from Albany to Canandaigua, and he must take the same track exactly as the other. It was competent for the counsel on the other side, after we had demonstrated the impossibility of his getting there by the route indicated, to have shown a different route, and as they failed to show it, it was not necessary for us to show it; but we have the tables showing that the time is the same from Rouse's Point to Ogdensburg, thence down to Rome, which they must reach, thence to Syracuse, and from there to Canandaigua, for they cannot connect with the Central road otherwise.

Mr. MERRICK. There is one other fact in that same connection, if the counsel will allow me.

Mr. PIERREPONT. Certainly.

Mr. MERRICK. If you will take that map as it stands, by the scale on that map you will find that the route the counsel has marked out is just as long in point of distance within a very few hours, and you could not get into Elmira by any possibility, if every connection was made, until five o'clock in the afternoon. There is also a road on that map which was made since 1865, and not in operation then.

Mr. PIERREPONT. You mean the Binghamton road.

Mr. MERRICK. Further, if you have any difficulty about that, here is Appleton's Railroad Guide for March, 1865, and one for 1867, which I am perfectly willing should go to the jury.

Mr. PIERREPONT. I suppose so. Would you find in Appleton's Guide the trains from Elmira to Baltimore on that day? Those do not go into Appleton's Guide. The Grand Trunk railroad, over which he might have come, which is the shortest way to come, is not in that.

Mr. MERRICK. You put him on a New York road.

Mr. PIERREPONT. No; nor did we take any pains to do so. We found him in Elmira, and our business was to bring him to Washington, and we brought him here notwithstanding the physical impossibility.

Mr. BRADLEY. Surely we misapprehend each

other. You put him on the New York train to go south at 3:30 on the 12th of April. That must come to Rouse's Point. At Rouse's Point the two roads diverge, one to Ogdensburg, the other to Albany. The road by Ogdensburg goes down by Rome, and you cannot reach the great Central to get to Elmira until you make the same connection with the seven-o'clock train from Albany.

Mr. PIERREPONT. Gentlemen, we put him upon no train whatever, as you will see when I read the evidence. The clerk of the hotel stated that he started at that hour to go to the New York train. He did not put him on the New York train, nor did he know that he ever went on the New York train, nor at what point he stopped, nor by what special train he went, any more than he knew by what special train he came from Elmira to the city of Washington. I have shown you that the time from which he left here and went to Montreal was no longer than the time from which he left Montreal to come here; and the shortest way that he can come to Baltimore is to go in this straight line [indicating on the map] up here to Elmira. He may go by the Grand Trunk road on that side of the river and cross here, and he may come down there to Utica or to Rome, then form that connection, and it is almost a straight line, only diverging there on that road to come here. But it was not our business to trace him. We cared nothing about what road he got upon to get to Elmira. There he was. The point was whether he came here.

Mr. MERRICK. Do I understand you to say that that is the shortest road?

Mr. PIERREPONT. I am not speaking of the shortest road. I am speaking of the time and the directness; and we cannot tell when there are special trains or when there are not, without getting the people who run them, exactly as it was at Elmira. The question is, what is the fact? Was he there? If so, he got there, and there was plenty of time for him to get there. Further than that, the gentlemen have been arguing with very great zeal about the matter, as though he left Montreal at three o'clock in the afternoon. There is not one particle of evidence of that sort, and I challenge them to show it.

Mr. BRADLEY. All I can say is, you have proved that he came by the 3:30 train.

Mr. PIERREPONT. No, we have not. This clerk said he left the hotel at that hour, but he did not state that it was in the afternoon at all, as you will see; I am going to read it. There is no evidence whatever in this case indicating any thing of the kind, nor that he could not have come by these different roads, and that he could not have got to Elmira at the time indicated. I read from page 47:

"Q. At what time did the train leave?

"A. The train left at three o'clock; leaving the house at 2:45.

"Q. That was what day?

"A. The 12th; he left the house at 2:45.

There is no information whether it was in the day or at night. The fact was that he got to Elmira, and could easily have got there by special train or by other trains as they might have been running, for you will remember that at that time there were breaks in the road, and the trains were running irregularly, and the schedule time is no evidence at all of the way the trains were running. The fact was that he got there, and the physical impossibility is out of the way, and he came from there to Washington; and we got that physical impossibility out of the way, and so we would have got the other if it had been of the smallest importance; but we cared nothing for it and never gave the least attention to it.

Mr. BRADLEY. I understand your honor to say that we may correct this afterwards. I do not want to interrupt the counsel in the course of his argument. That is a material part of the defense.

Judge FISHER. You may have the privilege, wherever you think the counsel has made a mis-statement of the evidence—

Mr. BRADLEY. A clear mis-statement.

Judge FISHER. You can so state to the court, and we will correct it by the notes.

Mr. PIERREPONT. Having followed the prisoner in his flight to his arrival in Montreal on the 18th, where he arrived at 12:30 and left the hotel instantly and was secreted somewhere in the city, I now come to the testimony of Boucher. Let us see what he tells us about that. I read from page 782:

"Q. Where did you first see the prisoner?

"A. In St. Liboire.

"Q. At what time? Give us the day of the week, if you can?

"A. I think it was on Wednesday evening.

"Q. And that was the first time you ever saw him?

"A. Yes, sir.

"Q. Who came there with you?

"A. Joseph F. DuTilly.

"Q. Did he come afoot, horseback, or in a carriage?

"A. It was in the evening, and I was in bed; therefore I could not say. I heard them say, however, that they came in a cart.

"Q. What time in the evening did they reach your house?

"A. At nine or ten o'clock.

"Q. Did they tell you who he was when he came?

"A. No, sir.

"Q. Did n't they give some name?

"A. Yes, sir.

"Q. What name?

"A. Charles Armstrong.

Why did he go to Boucher's house and secrete himself there? Why did he give the name of Charles Armstrong? He was entered in the register of the hotel only a few days before as John Harrison. Why was he so fond of these changes of name? He was an innocent man, you know. His counsel tell you so. He had just fled; he had just got there; he had not done any thing wrong; he was not engaged in this conspiracy, and yet he goes there changing his name. He seems to have had that same stamp which the Almighty put upon Cain, that he should be a fugitive for that blood, and he was fleeing and concealing himself. Why? There was some reason for it, was there not?

"Q. When did you first suspect that he was John H. Surratt?

"A. About ten or twelve days after his arrival at my place.

"Q. Did you in early May?

"A. By that time, or the last of April.

"Q. By the first of May or the last of April you believed he was John H. Surratt, did you?

"A. A little after the first of May."

Now, so early as that, when a reward was offered by this city and by the Government, published in the newspapers and noticed all over the world, this man secretes him there under the name of Charles Armstrong. And yet, many months after that, perhaps a year, he was off in Rome, and the Head of the Church, which this Boucher so wretchedly vilifies, instantly gave him up to justice, hastened to do it because of the enormity of his crime, even before the authorities of this Government asked for it. I have said that that priest will hear from his Pope and his bishop; and he will. The Pope would not tolerate the crime; the bishop will not tolerate it. None of the noble people of that noble Church tolerate a crime like this. Nobody who was not in sympathy with such a crime would tolerate it, wherever he was; and the shame that Boucher has brought upon his Church by the secreting of this criminal will be wiped out by that noble Church itself.

"Q. After you found out that he was gazetted in the papers as one of the murderers and conspirators, you let it be known to the authorities, I take it, didn't you? Did n't you communicate it to the authorities of the United States as soon as you found out he was the one?

"A. No, sir.

"Q. Did n't you tell it?

"A. No, sir.

"Q. Did you try to conceal it?

"A. I did not speak of it.

"Q. Did you try to conceal it?

"Mr. BRADLEY. From whom?

"Mr. PIERREPONT. From everybody.

"Mr. BRADLEY. Conceal what?

"Mr. PIERREPONT. Conceal the fact that this man was staying in his house.

"WITNESS. I never spoke of it.

"Mr. PIERREPONT. I say, did you try to conceal it?

"A. I do not remember.

"Q. Don't you know whether you tried to conceal it or not?

"A. If you don't speak of a thing is it concealing it?

"Q. My question is, whether you tried to conceal it?

"A. He was in my house.

"Q. Did you try to conceal him there?  
 "A. He remained in my house without any outside communication except such as I have related.  
 "Q. I ask you if you tried to conceal him in that house?  
 "WITNESSES. I do not understand your question.  
 "Mr. PIERREPONT. Don't you understand what concealment means? Did you take the means of concealing him in your house?  
 "A. My house was visited by my parishioners every day.  
 "Q. Did they see him?  
 "A. No, sir; some of them did when he went out hunting.  
 "Q. Did they frequently see him?  
 "A. No, sir.  
 "Q. Did you let your parishioners know that you were keeping in your house a person published as one of the President's assassins?  
 "A. Not to my knowledge.  
 "Q. How came you to come here to testify?  
 "A. I came of my own accord.  
 "Q. Can you tell any of those who hunted with him?  
 "A. Joseph F. DuTilly.

DuTilly was the witness who came on the stand to speak against Dr. McMillan. Boucher had been talking about the prisoner being sick; and so, on page 778, I asked him:

"Q. What physician attended him during all this time that he lived with you?  
 "A. No physician at all.  
 "Q. Won't you give us the day of the week that he left your place to go away from you?  
 "A. I cannot.  
 "Q. Will you give us the day of the month?  
 "A. I cannot.  
 "Q. Will you give us the month?  
 "A. Yes, sir.  
 "Q. What month?  
 "A. In July; the latter part of July.  
 "Q. Where did he go?  
 "A. To Montreal.  
 "Q. How often did you see him after he went to Montreal?  
 "A. I used to see him about twice a-week.

He lay there in concealment until the last of July, and then went into concealment at the house of LaPierre in Montreal. What was that for? All those who had been arrested on the charge of being engaged in this conspiracy had been tried, and had had their sentence put in execution. He had been where he could know what was going on, and had been visited by his friends. He had written this letter to Atzerodt in the month of May, while the trial was progressing. He knew where his mother was, where all were; and he, an innocent man, lies there concealed in these disguises. But the counsel said to you the other day, "Why, gentlemen, if you were advertised for would you not have concealed yourselves?" I put the question to you: "If any one of you should happen to be in Canada, and you should see in the newspapers a reward offered for your apprehension as a murderer, or a plotter to murder some man, would you, if you were innocent, be concealed? The counsel asks, would you not be? My answer is, would you be? Would not the earliest train that would hasten you to this city bring you here? Would not every honest man, without one moment's delay, go before the authorities and say, "Here I am. You charge me with a crime. I am innocent of it; I am not the accursed fugitive on whom the Almighty has passed sentence for blood and fleeing away. I am innocent of the crime charged."

Mr. MERRICK. I do not want you to misunderstand my remark. I agree with you entirely that that would be the course of a man under ordinary circumstances, when the country is in a peaceful condition, the law being duly administered; but I say that at that time, in the then condition of the country, any man would have acted as he did.

Mr. PIERREPONT. Now, gentlemen, I will put it to you at that time. I will take the gentleman's question with his addition.

Mr. MERRICK. It is no addition. That is what I said.

Mr. PIERREPONT. I care not which way it is. I will take you back, gentlemen, to between the 18th of April and the 16th of September, 1865, when the prisoner lay there concealed. Tell me, is there a man of you who, if you had seen your name gazetted in the papers, and a reward offered for your apprehension as an assassin of the President, would have remained

there concealed one moment? Would you not have hastened to the city with all the speed you could and said, "Here I am, the innocent and the bold. I am innocent, and I call upon you to show that I am guilty." The first thing you would do would be to bring yourself back here and show to the world that your flight had not proved that you were a criminal. Suppose that your son were there concealed, and you believed him innocent, would you not take the earliest train, if the telegraph did not bring him, and go there and say, "My son, are you innocent?" And if your son answered, "I am innocent," how long would you wait there before you took your son and came back to the city and said to the authorities, "Here is my son; show that he is guilty?" Believing and knowing that he was innocent, would you not do that? I take the gentleman's own suggestion, and I put it to you as men of truth, honor, and integrity, and your answers will all be one, and the entire world will echo, "Yes; we would come back with all speed, if innocent, and surrender ourselves up to the investigation."

Instead of that, in this case there is concealment. Instead of that, in the month of May, when the conspiracy trials were progressing, this letter to Atzerodt is written, saying he is not in a hurry to come back to Washington. Time passes on until September. Surely then the excitement is all over. There is no further trouble here. Peace has been restored. The passions of the hour have been made quiet. Why does he not come back? Why does he go aboard the *Peruvian* under disguises? Why land in Ireland as he did? Why wander about in the darkness and secreted ways of Liverpool? Why flee to Rome? Why go to a strange country, where he could not understand their language, and join the Papal Zouaves, where he was necessarily a pauper and a slave, where he had no sympathy—away from his home, his friends, his country, his all? Why, when surrendered, run the risk of life, flee to Malta, and from Malta to Egypt? Why all this, if he was an innocent man? Answer me that? You know he was not innocent, that he was guilty; and God said he should be a fugitive for the blood he had aided in spilling, and a fugitive he was.

Now, we will go on a little further with Boucher's testimony. Boucher ought to have been wiser, and, like LaPierre, have kept away. I hear, however, since I have been speaking, that LaPierre has received punishment from the Church for the part he took in the concealment of this man.

"Q. Had he any disguises of any kind when he was on the boat?  
 "A. I did not see any except his hair, which was dyed.

"Q. Was his moustache dyed?

"A. I do not recollect whether he had a moustache or not.

"Q. Did he wear spectacles?

"A. Yes, sir."

Boucher goes on and tells us a little about himself. It was somewhat interesting to know what kind of a man this was that was concealing a person under these false names, whom he knew to be charged as one of the assassins of the President, when every honorable rebel, when every pagan and every heathen that heard of it, and every religion, were sending expressions of condemnation and letters of condolence to the Government. What does he say?

"Q. Were you in Portland last summer?

"A. I passed through Portland.

"Q. Did you stop there?

"A. No, sir.

"Q. Were you at a watering-place close by there?

"A. Yes, sir.

"Q. A place called Cape Elizabeth?

"A. No, sir.

"Q. Were you at any place near Portland last summer which was a sea watering-place?

"A. Yes, sir.

"Q. What was the name of it?

"A. Old Orchard Beach.

"Q. How long did you stay there?

"A. About a week.

"Q. What was the name of the house at which you stayed?

"A. I do not remember.

"Q. Was it the Ocean House?

"A. I do not remember the name at all.

"Q. Who was there with you that you knew?  
 "A. Two of the priests.  
 "Q. Who were they?  
 "A. Father Beaugregard and Father Hevey.  
 "Q. Did you state there that you were his son?  
 "Mr. MERRICK. Father Beaugregard's son?  
 "Mr. PIERREPONT. Yes, sir.  
 "WITNESS. That is rather a hard question."

Why was it a hard question? What was there hard about it? The simple question was, "Did you state when you were there at that time that you were Father Beaugregard's son? He is a holy priest, in the holy vestments of the Church, and the learned counsel called him Father Boucher. "That is rather a hard question," he says. Well, it was very hard for him to say that he did, because that was the fact. The next question is, "Did you state at this house that you were his son?" "I do not remember," he answers. I should never confess to that priest, and I do not believe many people ever will. There is something wrong about that priest. You may rest assured that he will not long be a reproach to the Church. All churches have bad men in them, but they finally get rid of them, and the Church will get rid of this man.

Let us read a little further:

"Q. Did you register your real name?  
 "A. No, sir.  
 "Q. What name did you register yourself as?  
 "A. Jary."

"Why did he do that?"

"Q. Did you go there dressed as a priest?  
 "A. I went dressed as I am now.  
 "Q. I ask you if you went there in a Canadian priest's dress?  
 "A. My answer is, not with the ordinary ecclesiastical suit we wear in Canada—not with the cassock. There is a little difference between the dress in the two countries, and Portland is in the United States.  
 "Q. Did you wear the priest's dress of Canada last summer at this watering-place?  
 "A. I was dressed as I am now; you can judge for yourself.  
 "Mr. PIERREPONT. I have never been in Canada. My question was simply as to whether at this watering-place you did wear the Canadian priest's dress.  
 "A. No, sir."

"Could he not have told me that before without all that trouble?"

"Q. You say you entered a false name on the register?  
 "A. Yes, sir.  
 "Q. Did any difficulty occur there in which you were involved?  
 "A. Not any to my knowledge.  
 "Q. Did you carry yourself or give yourself out there as a priest?  
 "A. No, sir.  
 "Q. What did you call yourself there?  
 "A. Jary.  
 "Mr. PIERREPONT. I mean in what character? You say it was not that of a priest?  
 "A. I did not say what I was.  
 "Q. I asked you what you called yourself there in occupation last summer?  
 "A. If you want me to say what I thought they took me for I can tell you.  
 "Q. What?  
 "A. They took me for a lawyer.  
 "Q. Did you disabuse their minds of that?  
 "A. I did not say any thing about it.  
 "Q. You did not disabuse their minds of that impression?  
 "A. No, sir; I thought that was honorable enough"

Suppose, when I get through with this trial, I should go to Canada, and when I got there should dress myself in a priest's dress and pass myself off as Father so-and-so—let it be understood that I was a priest—and then when I got back here that fact should be disclosed, and when questioned about it, I should say, in explanation, "I thought the character of a priest was honorable enough." If I threw off my character as a lawyer, disguised my name, disguised myself, played false to what I am, and pretended to be a priest, what would you think about it? You would naturally suspect that there was some great hidden motive to do such a disgraceful thing. If I understand the rule of the Catholic Church, it is that the priest shall not put off his dress, shall not take an assumed name, but shall always appear as the holy father which he professes to be, prepared at all times to hear the confessions of the sinner, to bind up the broken heart, to administer the consolations of religion, and claim that he is a holy father, and

not that he is a worldly lawyer. I say again the Church will take care of this man. That you can be sure of.

I now come to near the close of what I have to read, to the statement of Dr. McMillan, at page 342. People who are not familiar with the history of trials are apt to suppose that there is something singular in the confessions which criminals make. Criminals always make them. It is the history of all crime that the crime is confessed. It is sometimes confessed by flight, sometimes by suicide, sometimes by words, often by flight and words, but it will always in some shape be confessed, generally by words.

"Q. How did he happen to come to you—what occurred that brought him?  
 "A. About a week or ten days previous, I had met in one of the streets of city of Montreal—  
 "Q. I understand you that a week or ten days previous somebody came to you. Who was that somebody?  
 "A. His name is LaPierre.  
 "Q. Who or what is he?  
 "A. He is a priest.  
 "Q. Where does he live?  
 "A. I do not know where he lives now; he lived in Montreal then. I understand he has left the city.  
 "Q. Did he say any thing about Surratt?  
 "A. Yes, sir; he said—  
 "Mr. BRADLEY. You need not state what he said.  
 "Mr. PIERREPONT. Well, he said something in relation to somebody.  
 "A. Yes; that somebody was going. I was going on the 15th of September to join my ship. On the steamer *Montreal* I met this Mr. LaPierre again by agreement. He said to me that he would give me an introduction to his friend.  
 "Q. Did he introduce him?  
 "A. He brought me up to a state-room, of which he had the key.  
 "Q. Who had the key?  
 "A. LaPierre.  
 "Q. State whether it was locked?  
 "A. It was. He unlocked the door, and in the room I found the prisoner at the bar.  
 "Q. Was that the first time you had seen him, when the door was unlocked?  
 "A. The first time."

I want you to note that this was the 16th day of September, 1865, a little more than five months after this murder.

"Q. What did he say in the presence of the prisoner?  
 "A. He introduced the prisoner to me under the name of McCarty, the friend to whom he had referred before. I never suspected who the gentleman was, and consequently I passed the evening and most of the night with him and a third party besides the priest.  
 "Q. Will you tell the jury, when you went into that room and found the prisoner, what was the condition of his hair?  
 "A. His hair was then short.  
 "Q. What was its color?  
 "A. A dark brown, I should say.  
 "Q. Was it dyed or natural?  
 "A. I did not perceive that night that it was dyed. I afterwards found it out.  
 "Q. What was the conversation about that evening?  
 "A. I do not remember; it was a general conversation.  
 "Q. Did LaPierre go on with you down to Quebec?  
 "A. He came all the way down to Quebec.  
 "Q. When did you reach Quebec?  
 "A. I should say between five and six o'clock Saturday morning.  
 "Q. Do you know whether LaPierre slept in this same room?  
 "A. I could not say.  
 "Q. Do you know whether the prisoner went out of the room that night?  
 "A. I believe we went down once to the bar-room.  
 "Q. At what time in the night?  
 "A. I do not know; I suppose ten or eleven o'clock. I could not tell you the time.  
 "Q. When you got to Quebec, what happened?  
 "A. I believe we had breakfast on board the steamer in the morning, probably at seven or eight o'clock. Between nine and ten the company sent a tug to take the passengers and their luggage on board the steamer *Peruvian*. We all went on board.  
 "Q. What occurred about the room; how was it arranged on the steamer for the prisoner?  
 "A. After we arrived on board LaPierre says to me—  
 "The COURT. Was it in the presence of Surratt?  
 "WITNESS. I believe so, sir. He said he wished me to let the prisoner remain in my room until the steamer had left. I did so; I got the key of my room, let him in, and went with him.  
 "Q. Did he occupy it until the steamer had left?  
 "A. He did.  
 "Q. When did the steamer leave?  
 "A. Within a very few minutes; perhaps twenty minutes or half an hour.  
 "Q. Where did LaPierre go then?  
 "A. He went back on shore.  
 "Q. Did you see any more of the prisoner that night?  
 "A. Yes, I saw him again.  
 "Q. Where did you see him, in your room?  
 "A. I may have seen him in my room, but I do not recollect. I remember that while there, after lunch or after dinner, (lunch was

at twelve and dinner at four,) the prisoner came to me, and, pointing to one of the passengers, asked me if I knew who the gentleman was. I told him I did not; that I supposed he was a passenger, as he was himself; that that was all I knew about the man. He then said he thought the man was an American detective, and that he thought he was after himself. I said I did not believe any thing of the kind, and that I did not see why he should be afraid of an American detective. I said to him, "What have you done that you should be afraid of an American detective?" He said that he had done more than I was aware of, and that very likely, if I knew, it would make me stare, or something to that effect.

"Q. In this connection, what act did he do, if any?"

"A. I said that he need not be afraid of an American detective; that he was on board a British ship, in British waters; and that, if an American detective had been after him, he would have tried to arrest him before he left port. He said that he did not care whether he was or not; that if he tried to arrest him this would settle him—and in saying that, he put his hand into his waistcoat pocket, and drew a small four-barrelled revolver.

"Q. Did any other parties go down on that boat before you took the steamer?"

"A. There were a great many; I could not tell you how many.

"Q. Were there any whose names were given to you?"

"A. Yes.

"MR. BRADLEY. That was on the steamer *Montreal*.

"WITNESS. That was on the tug from the steamer *Montreal* to the steamer *Peruvian*.

"Q. Now, sir, did the prisoner tell you who any of the other men were?"

"A. No. I believe he knew nobody else on board.

"Q. Did you know any other man?"

"MR. MERRICK. Of your own knowledge?"

"A. Yes.

"WITNESS. There was among the passengers William Cornell Jewett.

"MR. MERRICK. Otherwise known as Colorado?"

"WITNESS. Yes, sir; the very man.

"Q. Who else?"

"A. There was also a colored man, who had been in the service of Jefferson Davis.

"MR. MERRICK. How do you know that?"

"WITNESS. He told me so himself.

"Q. Did you know Beverly Tucker?"

"A. Only from having been introduced to him on that morning of the 16th of September.

"Q. Will you tell us where you saw Beverly Tucker on that day?"

"A. I met him on the tug going from the steamer *Montreal* to the steamer *Peruvian*.

"Q. Will you state whether he went on board the *Peruvian*?"

"A. He did go on the *Peruvian*, but not to cross.

"Q. I believe you stated that the prisoner went by the name of McCarty?"

"A. McCarty; yes, sir.

"Q. When did you sail?"

"A. I should think about ten in the morning; I cannot say positively. I know the steamers were in the habit of sailing between nine and ten.

"Q. When morning came, did you notice more particularly the prisoner's moustache and hair?"

"A. After I got on board the steamer I perceived that his hair had been dyed.

"Q. What did he wear, if any thing, upon his eyes?"

"A. He wore a pair of spectacles.

"Q. What did he tell you about the spectacles he wore and about his hair?"

"A. I do not remember that he said any thing about his hair. I remember his saying that he did not wear spectacles because he was short-sighted, but because they aided in disguising him a little.

"Q. Did you have any conversation with him after you got on the steamer behind the wheel-house?"

"A. I had conversations with him every day from the 16th until we arrived at Londonderry; that was about nine days.

"Q. Where did these conversations take place?"

"A. If I remember right, mostly on what is called the quarter-deck; sometimes behind the wheel-house.

"Q. Will you state what he said to you about the beginning in relation to a trip to Richmond? As I cannot give it all at once, I will ask you to begin with that.

"A. I remember his saying to me that he had been in the habit, for some time during the rebellion, of going to Richmond with dispatches, and bringing dispatches back to this city, and also to Montreal.

"Q. Did he tell you what male or female went with him?"

"WITNESS. I remember his stating that he at one time was told in Montreal that he would meet a lady in New York.

"[Counsel for the defense again asked witness to suspend to enable him to write down what he had said.]

"The Court said that counsel must take either one course or the other. They must not interrupt the narrative for this purpose, or they must allow the witness to be directed by questions after each interruption.

"Witness proceeded: That he met the woman in New York; he came on to Washington with her; from Washington he started on the way to Richmond with her and four or five others; that after a great deal of trouble they managed to cross the Potomac; that after they got south of Fredericksburg they were driven on a platform-car, drawn or pushed by negroes. As they were drawn along they saw some men coming toward them—five or six, if I recollect right. They ascertained that these men were Union prisoners, or Union soldiers escaped from southern prisons; they were, he said, nearly starved to death; that this woman who was with them said, 'Let's shoot the damned Yankee soldiers.' She had hardly said the word when they all drew their revolvers and shot them, and went right along, paying no more attention to them.

"Q. Was the name Mrs. Slater?"

"A. It sounds like it, but I would not be positive that it is. The woman's name was very conspicuous in Montreal during the trial of the St. Albans raiders.

"Q. What further did he say about the condition of these men?"

"A. I understood him to say they were in a very miserable way; that they had been obliged to hide themselves in swamps and other places, and I understood him to say they were almost dead.

"Q. Was there any thing said about money in this connection?"

"A. Yes.

"Q. What was that?"

"A. He told me he had received money in Richmond from the Secretary of State (Benjamin) several times.

"Q. Did he tell you how much?"

"A. I remember two amounts, thirty thousand dollars and seventy thousand dollars. I do not remember at what times he received them; he stated particular times. I remember these amounts."

I read to you yesterday in the *Lon* letter about "Jake having the funds." Who Jake is I do not know. I presume it is the same Jake to whom these funds went; but that I do not know.

"Q. Will you give us his conversation in reference to landing in England, as connected with our Government in any way?"

"A. I remember the last day he was on board, which was Sunday afternoon. After tea he came to me on the quarter-deck and said he wished to speak to me. I went with him behind the wheel-house. He repeated to me many things he had already said before, parts of which I have stated here, and the others I do not recollect. After talking a long time in this way, he said, pointing to the coast of Ireland, in sight of which we were then sailing, 'Here is a foreign land at last. Then,' said he, 'I hope I shall be able to return to my country in two years. I hope to God,' at the same time holding a revolver in his hand, 'I shall live to see the time when I can serve Andrew Johnson as Abraham Lincoln has been served.'

"Q. Did he say any thing about what he would do if an English officer, at the request of the United States, should take him in England?"

"A. One day, in talking of the mere possibility of his being arrested in England, he said he would shoot the first officer who would lay his hands on him. I remarked that if he did so he would be shown very little leniency in England. Said he, 'I know it, and for that very reason I would do it, because I would rather be hung by an English hangman than by a Yankee one, for I know very well that if I go back to the United States I shall swing.'

At page 351 he says:

"Q. I will call your attention to the early part of April—the month of the assassination of the President—and ask you what the prisoner told you on the subject of dispatches at that time?"

"A. All I remember about this is that he said, at the beginning of the week during which the assassination took place, that he was in Montreal; that he had arrived there within a few days from Richmond with dispatches.

"Q. Did he characterize the dispatches?"

"A. I remember that he said they were important dispatches for Montreal, which had been intrusted to him in Richmond. What they were I have no knowledge at all.

"Q. Did he say what day of the week of the assassination he was there?"

"A. He told me that he was there at the beginning of the week of the assassination.

"Q. Did he tell you what he received and from whom he received it?"

"He stated that he received a letter from John Wilkes Booth, dated "New York," ordering him immediately to Washington, as it had been necessary to change their plans and act promptly.

"Q. Did he tell you what he did?"

"A. He told me that he started immediately on the receipt of the letter.

"Q. Did he tell you any thing that he did on his way to Washington; and, if so, what?"

"A. The first place he named was Elmira, in the State of New York.

"Q. Did he state any thing that he did there?"

"A. He told me that he telegraphed to John Wilkes Booth in New York.

"Q. Did he tell you what he learned?"

"A. He told me that an answer came back that John Wilkes Booth had already started for Washington.

"Q. Did he say any thing to you in relation to his own escape?"

"A. He said that he arrived at St. Albans one morning a few days after the assassination.

"Q. What, if any thing, did he tell you occurred in St. Albans that morning, a few days after the assassination?"

"A. He said that the train was delayed"—

Just the same evidence that we have given you from these other witnesses.

"He said that the train was delayed there some time, and that he took advantage of it to go into the village to get his breakfast; that while sitting at the public table with several other persons he saw that there was a great deal of talking and excitement among those who were at the same table with him.

"Q. Did he tell you what he said?"

"A. He asked his neighbor what the talk was about. His neighbor said to him, 'Why, don't you know that Mr. Lincoln has been assassinated?' The prisoner replied, 'Oh, the story is too good to be true.'

"Q. Did he describe the man with whom he held this conversation?"

"A. I understood him to say an old man; that is all I remember.

"Q. Did he tell you what the man did?"

"A. The man whom he addressed then handed him a newspaper. He opened the paper, and said that among the names of the assassins he saw his own.

"Q. What did he say he then did?

"A. He said that it so unnerved him at the moment that he dropped the paper in his seat, and that was the last of his breakfast for that day.

"Q. Did he tell you any thing about a handkerchief as he was going out from the breakfast-room?

"A. He said he got up from the breakfast-table, walked into another room, and just as he was about passing from the room he heard a party rushing in, stating that Surratt must have passed, or must then be in St. Albans, as so and-so had found his pocket-handkerchief in the street with his name on it.

"Q. What then did he say?

"A. He said that at the moment, without thinking, he clapped his hands on a courier-bag, in the outside pocket of which he was always in the habit of carrying his pocket-handkerchief, and found out that he had really lost his pocket-handkerchief.

"Q. And then what did he tell you?

"A. He said that then he thought it was time for him to make himself scarce.

"Q. Did he tell you in what way he then made himself scarce?

"A. I understood him to say that he made for Canada as soon as possible.

"Q. Did he tell you to whose house he went?

"A. I remember that he told me that he went to one Mr. Porterfield's, in Montreal.

"Q. Did he tell you who he was?

"A. He told me Mr. Porterfield was a Confederate agent in Montreal.

"Q. What did he tell you as occurring there to himself?

"A. He said he stayed there a short time; how long I could not say; until, however, they found out that detectives were beginning to suspect that he was in that house, and it was found necessary for him to leave there.

"Q. Did he tell you how he left there?

"A. He said that one evening two carriages were driven in front of Mr. Porterfield's house, and that he and another party, dressed nearly as he was, came out at the same time, and got one into one carriage and the other in the other, and drove off, one carriage driving one way and the other in the other.

"Q. Will you tell us how he told you he was dressed, and the one who was dressed just like him?

"A. I remember his telling me that he wore at that time—I cannot tell whether he had on the same dress that night—what is known in Canada as an Oxford jacket.

"Q. Will you describe it?

"A. I believe it is what is called in this country a Garibaldi jacket.

"Q. Did he tell you how long he stayed there?

"A. I understood him to say that he stayed there some two or three weeks.

"Q. Did he tell you in whose house he stayed?

"A. He said he stayed in the house of a priest named Charles Boucher.

"Q. Did he state any circumstances connected with his leaving that house when he left, &c.?

"A. In describing the place, he said that between the bed-room and the sitting-room there was a hole cut in the partition to put a stove in: that under the stove there was a vacant space about six or eight inches high; that one day while the priest was absent he was lying on the sofa in his bed-room, when one of the female servants, desiring to know who was in the priest's house, put her head under the stove so as to see in the room. He saw her face as it came under the stove, and kind of scared her away by jumping suddenly at her.

"Q. What occurred after that?

"A. The story was immediately circulated around the village that the priest had a woman in his bed-room hiding. Then the priest told him that he could not keep him any longer; that he must find other quarters.

"Q. What then did he do?

"A. He came back to Montreal.

"Q. Did he tell you to whom he went?

"A. I understood him to say that he went to the man who introduced him to the priest.

"Q. Will you state what he related to you in relation to his seclusion there?

"A. He told me that for four months and a half or so he was sequestered in a dark room, from which he never came out except a few times, when he would go out late at night and take a walk."

I now come down to just before his arrival in Europe:

"A. His general conduct was gentle. He would, however, show signs of nervousness whenever any one came suddenly behind him. He would turn round and look about as if he expected some one to come upon him at any moment.

"Q. Will you state what occurred after?

"A. I had left the prisoner after the conversation that I related yesterday; I should say it was about half-past nine o'clock when I left him. About half-past eleven or twelve o'clock I was called out of the room of one of my brother officers by one of my stewards, who stated that a passenger wanted to see me outside. I came out, and found the prisoner standing in what is called on steamers or ships after-square. He was already dressed, ready to go ashore. He had previously told me that he had intended to come down with us to Liverpool.

"He asked me what I would advise him to do—to land in Ireland, or come down to Liverpool and land there. I told him I would give him no advice whatever; that he might just do what he pleased and land where he pleased. He then said, 'Well, I believe I will go

down to Liverpool with you.' I was a little surprised, therefore, when I came into the after-square and saw him all ready to leave. I said, 'Hallo! are you going ashore? I thought you were coming down to Liverpool.' He says, 'I have thought over the matter, and I believe it is better for me to get out here. It is now dark, and there is less chance of being seen.' Says I, 'You have been telling me a great many things about what you have done and seen, and I believe the name under which you travel is not your real name. Will you please give me your own name?' He looked about to see if there was any one near, and then whispered in my ear, 'My name is Surratt.'

"Q. How long after that did he go ashore?

"A. Within twenty or twenty-five minutes. He then asked me if he could get some liquor to drink; that the bar was closed, and he wished to have something to drink before going ashore. I told him that I would see the bar-keeper, and I had no doubt he could get some. I called the bar-keeper, and he came and opened the bar-room, and the three of us went in—the prisoner, the bar-keeper, and myself. He was nervous; he seemed to be very much excited. He called for some brandy, and the three of us each had a glass. In England and on board ship it is the habit to help any one with the liquor they may want. They never place the decanter before you and tell you to help yourself; but in this instance the bar-keeper placed the bottle on the table and told us to help ourselves. The prisoner took the bottle, and poured out a large half-tumbler full of raw brandy. In a few minutes I asked him if he would not drink with me. He said, 'Yes,' and we took another, about the same.

"Q. What next?

"A. Within a few minutes afterwards again the bar-keeper says, 'It is my turn to treat now,' and asked us to take a third glass, and we did so.

"Q. Did he take the third?

"A. He did. I saw he was becoming rather the worse for his drinking. By that time we had arrived at the place where the mails and passengers are taken off from the steamships. I saw the condition in which the prisoner was, and I told the chief officer at the navy-yard it was dark, and I was afraid that the prisoner might fall overboard. I said to the chief officer at the gangway, 'Will you mind to take this officer by the arm and lead him down?' He did so.

"Q. What did you do then with your ship?

"A. Turned down and went to Liverpool.

"Q. What induced you to make this affidavit as soon as you landed?

"A. Because I thought the prisoner was guilty of a crime, not only against society, but against civilization. I thought it was my duty as a man to go and give him up to the proper authorities."

Was it not his duty as a man? Would not you say it would be your duty, and anybody's duty, as a man?

Now, gentlemen, we have already passed him from Liverpool to Rome; from Rome, where he met his old acquaintance, where he was given up, and from where he escaped to Malta, and from Malta to Egypt, the place of his final capture. From there he was brought over the sea to this city, indicted, and brought before you. The wonder of his flight, the strangeness of his concealment, the fact that he had passed almost over the world for the purpose of escape, show that there is no hiding-place for such a crime. And now, in the providence of God, he is brought before you, and you twelve are selected to say whether it is a crime, or whether it is all right. If he is not guilty, he is innocent. If he is innocent, the things in which he was engaged are right, and you will say they are right. If you say he is innocent, then you say all right.

I am now nearly done. Before finishing I pass to the *alibi*. I read to you the law on that subject, and the counsel for the prisoner yielded to the truth of my statement of the law. The law is that where witnesses have sworn to the presence of the accused in a particular place, in order to make an *alibi* of any legal avail, it must be such an *alibi* as will show positively that there can be no doubt about its truth, because it is an easy thing to fix up; it is an easy thing to have the circumstances true and the dates different. It is the easiest defense that can be made in the world; and, if the *alibi* is true, it can always be proved without a question. The *alibi* in this case is the weakest one, I undertake to say, that was ever introduced into a court of justice for a defense. Indeed, with the reading I have had, I never saw one that approached it in its faintness, in its weakness, and in its impossibility. It is not possible for it to be true; and yet the witnesses, with one exception, may have all told what, on the whole, they thought was true. In the case of Dr. Webster, as I said before, when treating of the law, a number of the most respectable witnesses testified to an *alibi* to that degree, that many who read the evidence, and I among others, believed that Littlefield was probably the murderer instead of Webster; and yet it turned out that those witnesses were all mistaken—not mistaken in fact

that they did see him, but mistaken as to the time at which they saw him.

Now, gentlemen, we will come to the *alibi*, and we will take up the witness Carroll, who says he saw him at Elmira. I think you will remember Carroll. Surratt was in Elmira on the 13th. There is not any doubt about that; and he came in that special train of the 13th. Two witnesses whom we have produced on the stand saw him there, and one took him across the ferry at that time. All the mistake has grown out of that. Now, let us see what Mr. Carroll, their witness on this subject, says about it; and I have no disposition to find any other fault with him than that he did not seem to deal very frankly:

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

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

"Q. He came in twice?"

"A. Yes, sir."

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

"A. By our petit cash-book."

He does not pretend that he has any memory about it, as you see at once:

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

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

"Q. When did he get back?"

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

"Q. Do you fix it by that?"

"A. Yes, sir."

"Q. Between those two dates?"

"A. Yes, sir."

Mr. Carroll thinks he saw him between the 12th and 15th. I have no doubt he did. I turn now to his testimony on page 615:

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

"A. It may be."

I hope you can recall that witness's manner and his whole appearance, because it throws a little light upon the testimony in this case. The trial has been so long that you may have forgotten some of the witnesses' faces.

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

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

"A. I do not know that I remember distinctly."

And will you note here that he had never seen the man before in his life, and never saw him again until he came here.

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

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

"Q. Did you tell him the date?"

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

Which was between the 12th and 15th. That was true. There was no falsehood in that. He was there between the 12th and 15th.

"Q. Did you tell him any thing about it?"

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

"Q. What did you tell him?"

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

Sticking to the books, that it was between the 12th and 15th. That was true. He found on the cash-book that between the 12th and 15th the chief of the house was absent, and that enabled him to fix that it was on some of those days.

I now turn to page 616:

"Q. Did you tell him inaccurately?"

"A. I do not distinctly remember."

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

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

If it was on the afternoon of the 13th, he has knocked that physical impossibility all dead. That physical impossibility could only bring him there at eight o'clock at night. It is too bad to have it destroyed in that way. But I read on:

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

"A. If I told them any thing at all, I said the 13th or 14th."

That is just what he did say, and he did see him there on the 13th. Now let us go further and see what he says on page 619:

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

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

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

"A. I think I did."

"Q. Cannot you remember whether you did or not?"

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

Well, he is mistaken. He says he might have been mistaken.

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

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

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

"A. I do not think I did."

"Q. What do you say about that?"

"A. I do not remember."

That does not prove a very good *alibi* for the 14th, does it? We will come down a little further:

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

"A. I do not know."

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

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

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

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

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

"A. I do not remember that I did."

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

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

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

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

That is all the testimony that this witness gives. I have read to you fairly. He goes on:

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

"A. I think I did not."

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

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

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

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

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

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

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

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

"Q. That is the best of your recollection?"

"A. That is the best of my recollection."

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

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

"Q. Did your petty cash-book have that date?"

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

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

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

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

"A. In all probability."

That I believe is the strongest witness on the subject of the *alibi*.

I now come to the next witness, Mr. Stewart, page 603:

"Q. Do you recollect a gentleman coming in that day to speak about getting a suit of clothes there, who had on any thing peculiar in the way of dress?"

"A. On the 13th or 14th of April I do."

"Q. Which?"

"A. I cannot say which, but one or the other."

\* \* \* \* \*

"Q. How long did that person remain in the store?"

"A. I should say I saw him twice."

Very likely he did. I do not know how that was. He says he cannot say whether it was on the 13th or 14th. I now turn to his cross-examination, on page 604:

"Q. Will you tell us what day of the month it was?"

"A. It was either the 13th or the 14th."

"Q. Which?"

"A. I cannot tell which."

He says it was the 13th or 14th; he cannot tell which; and that is all he says in relation to the time. He fixes it no more definitely than that.

The next witness is Mr. Atkinson, page 610:

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

"A. I do."

# THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,  
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 103.

WASHINGTON, TUESDAY, SEPT. 24, 1867.

PRICE 10 CTS.

## TRIAL OF JOHN H. SURRETT.

Continued from No. 102.

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

"Q. State when he left?

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

"Q. The date of his return?

"A. The 15th of April, 1865."

I now read from his cross-examination, page 611:

"Q. From that [the cash-book] you know when he left and when he got back?

"A. Yes, sir.

"Q. When did he leave?

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

"Q. When did he get back?

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

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

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

"Q. Which?

"A. I could not say."

I surely cannot find fault with such witnesses as those. They did not know. Between the 12th and 15th some-time they saw this man with the peculiar dress. They cannot tell which day it was, but it was on one of the days that this man was absent in New York, between the 12th and 15th, and they swear they cannot tell you whether it was the 13th or the 14th. They saw him on the 13th. I have no censure to cast upon them, no reproach to make. I believe they testified honestly. They did not know, and they told you they did not know.

I turn now to the testimony of Cass, page 606:

"Q. How did you get the first news of the assassination?

"A. At home, in the morning paper.

"Q. What paper?

"A. The *Elmira Advertiser*.

"Q. At what time did you see the *Elmira Advertiser*?

"A. Between seven and seven and a half in the morning.

"Q. That was on Saturday morning, the 15th?

"A. I do not remember the day.

"Q. The next morning after the assassination?

"A. Yes, sir.

"Q. You think it was the 15th?

"A. Yes, sir.

"Q. That was the first you heard of it?

"A. Yes, sir.

\* \* \* \* \*

"Q. What kind of a beard had he?

"A. He had a goatee, which came from about the side of the lips round.

"Q. Pretty long?

"A. Rather short.

"Q. Had he any thing else?

"A. I think not.

"Q. You are very sure he had a goatee coming around here, under the chin?

"A. Yes, sir.

"Q. You have no doubt of that?

"A. I think not. That is my impression.

"Q. Had he a moustache, the same as he has now?

"A. No, sir.

"Q. What color was the goatee that he had here, around under the chin?

"A. Rather a dark brown.

"Q. The same color it is now?

"A. No, sir."

This was before the assassination, if it was the 13th.

"A. No, sir. My impression is that it was rather darker than it is now.

"Q. Did you think it was dyed?

"A. I did not look at him enough to be able to say.

"Q. Was it the same color then as it is now?

"A. It was darker.

"Q. Do you think it was an unnatural color?

"A. No, sir; I do not think it was an unnatural color."

Then he saw him there with his hair in the natural color when he saw him. He thinks it was on the 15th, but he says, "I do not remember the day."

I come now to Dr. Bissell; and here, gentlemen, I have to confess that we have something to meet. Up to this time on the *alibi* we have not had any thing whatever to meet; but his testimony is something that we have got to get over in some way. The counsel for the defense got over it by saying nothing about it. At one time they talked of withdrawing it, but finally they got another doctor, who had had consultations with Bissell when he was keeping his drinking-shop, who stated that one patient lived and some did not, to sustain his character, and then they did not withdraw him. The counsel showed a great deal of indignation because I asked whether that patient over whom they had had the consultation lived, and he seemed to think that it was throwing some reproach on the doctor who kept the beer-shop, or else on the other doctor, I do not know which; probably on the other doctor. This Dr. Bissell certainly says, and he says it positively, that he saw the prisoner in Elmira on the 14th. As he is the only witness who testifies with any positiveness about it, I must look at his testimony a little, because I cannot get over the fact that he tells us he saw the man there, and the prisoner is the man, and he told Mr. BRADLEY it was the moment he saw him in the prison. Now let us take up the testimony of this Dr. Bissell, my neighbor of New York, a distinguished physician. I do not wonder that my friends on the other side did not touch him much. I read from page 744:

"Q. Was there any particular reason why you observed the prisoner? State whether you were on crutches at that time?

"A. I was on crutches at that time. I stopped at a little house. I cannot recall the name. Names are the worst things for me to remember in the world. I can remember faces."

That is what he came for, not to remember any thing else, as you will see he did not remember any thing else before I get much further.

"Q. You did not stay at the Brainard House?

"A. I did not. I stopped at a little house on the street that runs from the east end of the depot, south or southwest, on the south side of the street, where I had been in the habit of stopping. It was so near morning that I went up and lay down on a lounge, in the sitting-room or parlor, until breakfast time. I eat my breakfast, and went out in quest of this man. I ascertained that he was not in Elmira. While out I went to a third party whom I had been directed to by letter from the town of Deposit, I think, to find him. After going and doing my business, I called at the Brainard House. I thought I would take a 'bus to the depot and take the train back to Owego.

"Q. State if you had any conversation with the prisoner at that time?

"A. As I went in he passed me. I noticed his dress as he passed me. I went into the reading-room or office there and sat down. He came in from the bar-room or office or reading-room to the room I was in. He passed up and down, and kept looking at me. He wanted to know if I had been to the war. I didn't give him any satisfaction. I did not have a great deal of conversation with him. I wished to avoid it myself.

"Q. Referring to your lameness, he asked if you had been to the war?"

"A. Yes, sir.

"Q. And then you had a brief conversation with him?"

"A. Yes; I had a little conversation with him. I merely spoke with him to see if my suspicions were correct; to satisfy myself; to see if he would attempt to draw me out, or any thing of the kind. I wanted to satisfy myself whether he was a spotter of the Erie Railroad Company."

This doctor tells you he was there hunting up witnesses for his case, for his lawyer and patient Mr. Wetmore, whom we afterwards had on the stand. I now read from his cross-examination, page 745:

"Q. When did you first tell these gentlemen what you knew—when did you first come here?"

"A. I came here this morning."

If he had been here a day I do not think he would have been examined.

"Q. When did you first have notice you were wanted?"

"A. Yesterday afternoon.

"Q. How did you know they knew any thing about it?"

"A. I do not know. I have asked Mr. Bradley how it was.

"Q. Did you find out?"

"A. He will not give me any satisfactory answer."

Mr. BRADLEY was very close with him.

"He said he had been looking for sometime for a man on crutches.

"Q. Then you could not find out?"

"A. I could not. I suspected."

When he came in he did not have any crutches, I believe, but when he went out he needed some very badly—he was so stiff. Finding him so positive and fixed in this matter, I very naturally asked him some questions. He came on with much parade, as you remember, as a doctor. That being the case, I thought I would find out about his patients, and he told us that Mr. Wetmore was one of them—a lawyer whom I happened to know in New York, and whom we had here on the stand, and who told you there was no truth in the statement. Dr. Bissell was his client in an Erie railroad matter, but he was not a patient of the doctor's.

I asked him:

"Q. Have you any other patient in New York?"

"A. I am not doing a large amount of practice.

"Q. What are you doing?"

"A. I do a little office practice, and I have some outside business which I am connected with now.

"Q. What do you call outside business?"

"A. Well, I am engaged, for one thing, with Andrew M. Rankin, formerly of Chambersburg.

"Q. I do not care who he is, I want to know what you are doing?"

"A. I am engaged with him in developing some patent rights which he has.

"Q. What are they—about doctors?"

"A. No.

"Q. Any thing to do with doctoring?"

"A. Yes.

I had not the remotest notion of what he was coming at.

"Q. What.

"A. They are disinfectant, and may be termed hygienic.

"Q. Do you know Aaron Stone, in New York?"

"A. No, sir.

"Q. Has it any thing to do with his disinfectant business?"

"A. No, sir.

"Q. What are you doing in that business, that outside business?"

"A. We are developing it.

"Q. What do you mean by that?"

"A. Getting it ready to get it upon the market.

"Q. Have you got it upon the market yet?"

"A. We have got one patent upon the market.

"Q. What one patent?"

"A. It is a patent chamber-pot."

I now turn to page 751, where he tells a little more about himself. Surely no man can ever complain if you only read what he says of himself:

"Q. You did not prescribe for any particular class of diseases?"

"A. No, sir.

"Q. Nor follow any peculiar business?"

"A. No, sir; I made that a secondary matter.

"Q. What a secondary matter?"

"A. The business of a physician.

"Q. What did you make your principal business?"

"A. I have been in the habit of speculating, more or less, in one thing or another—in any thing at which I could make a dollar legitimately.

"Q. Whatever you could make a dollar at legitimately you went into?"

"A. Yes, sir; it would make no difference what it was.

"Q. And this doctoring was a mere side amusement?"

"A. I merely put my name up.

"Q. When you were keeping a restaurant and drinking-place did you have your name up as a doctor?"

"A. No, sir.

"Q. Did you doctor any of your customers then?"

"A. I do not know that I did.

"Q. They did not apply to you to be doctored?"

"A. Not at all.

"Q. They applied to you for drink?"

"A. I never pretended to go behind the bar. I do not think I ever set out a glass of liquor for any one.

"Q. Did you set out any thing for them to eat?"

"A. Certainly; my men did.

"Q. Then doctoring is not exactly in your line?"

"A. Not exactly."

At page 757 he tells us a little more about himself when he went up to Elmira:

"Q. Did you take the train?"

"A. Yes, sir.

"Q. What train did you take?"

"A. The night train from New York. It is my impression that I took the train about two o'clock.

"Q. At night?"

"A. Two o'clock a. m.

"Q. How far is Owego from Elmira?"

"A. Thirty-six miles."

\* \* \* \* \*

"Q. Did you find any body up when you got there at that early hour?"

"A. Yes, sir.

"Q. Did you go to bed?"

"A. No, sir; I laid upon a lounge in the parlor, with a buffalo skin over me."

He told us the distance was thirty-six miles, and he left Owego about two o'clock a. m., and got to Elmira before daylight in the morning. We called Mr. Guppy, who ran the trains, and he told us there was not any such train at all. By turning to page 831 the counsel will find that Mr. Guppy states there was no such train, and the train that came in came in there at 6:12. There was not any truth in this story, and you remember that when I went on to examine Bissell as to where he went about the Brainard House, how it looked, and how its rooms were, he knew not one thing about it; but he told the falsehood of going to a house which was then locked and closed.

Mr. MERRICK. There is no evidence of that.

Mr. PIERREPONT. I think there is. I am sure there is.

Mr. MERRICK. I would like you to find it out.

Mr. WILSON. The question was asked but ruled out.

Mr. MERRICK. There is no evidence of that at all.

Mr. PIERREPONT. I tried to find out where he stayed.

"Q. Had they a register?"

"A. I believe they had.

"Q. Did you see it?"

"A. I am not positive, but I think they had a register.

"Q. Why did you not register your name?"

"A. When I got there the man was starting a fire in the bar-room, and I went in. I knew him."

And yet he could not give his name. He says he had been to the house three or four times, but he could not give us the house; he could not give us a room in the Brainard House, where he went and where he saw Surratt; he could not give us one physical substance that was in that house—telegraph office, billiard-table, reading-room, or any thing whatever.

"Q. Won't you tell us when the Erie train reached there that day?"

"A. I think it was a little before daylight in the morning."

We have proved by the train-master that there was no truth in that. I turn now to page 763. I asked him about this house. I tried to make him draw the rooms. He said he could not draw. He declined to do that. I then asked him:

"Q. Were you crossing the street?"

"A. I was upon the sidewalk, upon the same side as the house.

"Q. Did you go up steps to get in?"

"A. I do not know whether there is one step, two steps, or three steps.

"Q. Were there any?"

"A. I am not positive that there was a step to the house or not.

"Q. What is your best memory about it? Were there high steps or low steps, one step or two steps, or none at all?"

"A. I could not say.

"Q. Were there stone steps?"

"A. I could not say.

"Q. As you entered, was the sill of stone or wood?"

"A. I could not say, for I paid no attention to it.

"Q. Was there a platform upon the side made of wood?"

"A. I could not say.

"Q. Was there a platform there made of stone?"

"A. I could not say.  
 "Q. Did it run in right level?  
 "A. I could not say.  
 "Q. Was there a high stoop of stone?  
 "A. I could not say.  
 "Q. When you got in, what was on your right hand?  
 "A. I do not know.  
 "Q. What was on your left hand?  
 "A. I do not know.  
 "Q. What was in front?  
 "A. I do not know.  
 "Q. Was it a double house or a single one?  
 "A. I do not know.  
 "Q. But you went into a reading room and got into intimate conversation with the prisoner?  
 "A. Yes, sir; I went in and sat down in a chair.  
 "Q. Where was it, on the right or left hand?  
 "A. I cannot say whether it was upon my right or left as I entered.  
 "Q. Was it either?  
 "A. I cannot say as to that.  
 "Q. Was there a reading-room on the right hand?  
 "A. I cannot say.  
 "Q. On the left hand?  
 "A. I cannot say as to that.  
 "Q. It was the first story you went into when you went into that room?  
 "A. I think it was, but I am not positive.  
 "Q. Was it in the second?  
 "A. I think it was on the first.  
 "Q. Can you tell whether on the right hand or the left?  
 "A. I cannot.  
 "Q. Can you tell whether it was on either?  
 "A. I cannot.  
 "Q. Were there any newspapers in it?  
 "A. I do not know whether there were or not?  
 "Q. Was there a library in it?  
 "A. I do not know whether there was or not?  
 "Q. Was there a settee in it?  
 "A. I think I sat upon a settee.  
 "Q. Were there chairs in the room?  
 "A. Either settees or chairs.  
 "Q. Which?  
 "A. I cannot tell which. I paid but very little attention.  
 "Q. You know you have a very distinct memory of things. Now, as you recall that Brainard House, can you tell whether, when you went into that reading-room, Surratt was on the left hand or in front?  
 "A. No, sir; I cannot.  
 "Q. Where was the desk?  
 "A. I have no distinct recollection as to where that was.  
 "Q. Did you see a billiard-table in there?  
 "A. Possibly I might.  
 "Q. What is your best memory?  
 "A. I do not recollect of seeing one, though I might have seen half a dozen.  
 "Q. Did you see a telegraphic machine there?  
 "A. I do not know that I did. I have no recollection.  
 "Q. Was there a carpet on the reading-room?  
 "A. I do not know.  
 "Q. Was there a table in it?  
 "A. I do not know.  
 "Q. Was there a man in it?  
 "A. Yes, sir.  
 "Q. Tell us who the man was?  
 "A. That man [pointing to the prisoner] came in there, and there were three or four others.  
 "Q. Is there any doubt about that?  
 "A. No, sir; not in my mind.  
 "Q. Did he come in alone?  
 "A. He did.  
 "Q. How long had you been in when he came in?  
 "A. I saw him first upon the sidewalk going into the house.  
 "Q. How long had you been in when he came into the room?  
 "A. I had been in there, I should think, some fifteen or twenty minutes before he came into the room.  
 "Q. When he came in, was there anybody else in the reading-room beside yourself?  
 "A. I think there were some other gentlemen sitting there.  
 "Q. What were they doing?  
 "A. I cannot tell. I was paying no particular attention to them.  
 "Q. Were not they reading?  
 "A. They might have been.  
 "Q. Cannot you bring back which side it was, or any thing of the kind?  
 "A. I cannot.  
 "Q. Was the room papered?  
 "A. I cannot say.  
 "Q. Can you tell what color it was?  
 "A. I cannot. I cannot distinguish colors.  
 "Q. I cannot see, then, how your sight is so good as to remember?  
 "A. I can tell white from black; but when you come down to these fancy colors, I cannot tell any thing about them."

But he could tell a fancy tale, every word of it fancy; for I am going to show from the most positive evidence that there was not one word of truth in it. He was not in the place.

"Q. Who got up first?

"A. I got up and left, and went to Haight's Hotel."

You see you are mistaken. (To Mr. MERRICK.)

MR. MERRICK. You said Haight's Hotel was closed,

and I told you there was no such proof in the case, and there is not.

Mr. PIERREPONT. I will read on:

"Q. When you got up and left, did he get up?

"A. I do not think he did.

"Q. Did you ever see him any more?

"A. Never again until I saw him to-day.

"Q. When you got to Haight's Hotel, what did you do?

"A. I stopped there a few moments.

"Q. What did you see at Haight's Hotel?

"A. It is so long ago, I cannot say. I saw some people in and about there; who they were I do not know. I am not acquainted with many people in Elmira."

"Q. When did you see this man, who is a prisoner here, after you saw him at the time of this conversation?

"A. This morning.

"Q. You recognized him in a moment, did n't you?

"A. Yes, sir; I recognized him the moment the door was opened."

That man on crutches never had the least sort of difficulty about it.

"Q. In here?

"A. No sir.

"Q. Where was it?

"A. In the jail.

"Q. Was he dressed as he is now?

"A. He was not dressed at all then.

"Q. Was he dressed as he is now, or dressed in some different costume?

"A. He was in a different costume.

"Q. Why then do you say he was not dressed at all?

"A. If I see you with a sack or a dressing-gown on, I would not call you dressed."

I do not know why. Perhaps the doctor does.

"Q. Was he dressed in the jail in the same way that you saw him dressed at the Brainard House?

"A. Partially, but in a different colored suit.

"Q. In what respect partially?

"A. In the sack that he had on.

"Q. It was of the same cut, was it not?

"A. No, sir.

"Q. How was it partially the same?

"A. It had a belt that fastened around him; but it was of a little different style.

"Q. What was the difference?

"A. There was a difference about the neck, and there was a difference in the plaiting.

"Q. You noticed particularly about the neck?

"A. Yes, sir.

"Q. And you remember that very distinctly?

"A. Yes, sir.

"Q. Then you remember just what the plaiting was there?

"A. I remember that it was plaited, but not so distinctly that I can describe it. I know it was different from what this is.

"Q. You say that you describe this plaiting that you saw two years and more ago?

"A. No, sir; I cannot."

I do not think it required a great expert to tell what sort of a witness he was up to this point. I turn now to page 771:

"Q. State whether you recognized him at once?

"A. As quick as the door was opened I remarked to Mr. BRADLEY that he was the man; that I did not want to see any thing further of him. I described him to Mr. BRADLEY and told him that I did not want to go to the jail to see him."

Pretty quick that was.

"Q. When did you say you first got the telegram?

"A. I think it was yesterday, a little past one o'clock.

"Q. Were you greatly surprised at it?

"A. Yes, sir.

"Q. What surprised you?

"A. That I should have a telegram to come here.

"Q. Why did that surprise you?

"A. I could not imagine who had informed of what I had said regarding it.

"Q. Did n't you imagine that your evidence would be of great importance to the defense if you had seen him in Elmira on the 14th?

"A. I was not positive as to the man. I said it answered the description of the man I saw, and if I could see that man I could tell.

"Q. I ask you if you did not think it would be of great importance to the defense if you had seen him in Elmira?

"A. No; I did not think any thing material about that."

What do you think of a man talking in that style, who comes here and tells you, when this man was on trial for his life, and his counsel was attempting to prove an *alibi*, he did not think it was of the slightest consequence that he could prove that he was in Elmira on the day of the murder.

"Q. You did not think it would be?

"A. I paid no attention to it. I merely came to the conclusion that I was not coming.

"Q. What made you conclude that you were not coming?

"A. I did not want to have my name mixed up in the matter one way or the other.

He was very careful about his name.

"Q. Somebody, you say, came to see you?"

"A. Yes, sir.

"Q. How did they change your mind on this subject when you were so firm and determined not to come?"

"A. He said this: If you do not go I shall proceed to Washington immediately and lay your statement before his counsel, and the only effect will be to delay the court until a subpoena can be gotten out and served upon you here.

"Q. Who said this?"

"A. Mr. James W. McCullough.

I now turn to the testimony of Mr. Wetmore, page 909. Dr. Bissell says Mr. Wetmore was his lawyer, as he was:

"Q. How long have you known him?"

"A. Since 1863.

"Q. Has he ever been your physician?"

"A. Never.

"Q. Have you any letters or memoranda with you that you brought from New York that tend to fix dates?"

"A. I have some letters, or had some, which I handed to General Foster.

"Q. Were they letters that you wrote?"

"A. Yes, sir.

"Q. You can tell the jury whether on the 14th of April Dr. Bissell was in Elmira hunting up witnesses for this suit?"

You remember that he stated he had a suit with the Erie railroad, and he pretended he was up there hunting up witnesses for this suit.

"A. I think not.

"Q. Why?"

"A. My reason is, that on yesterday (having been subpoenaed the night before) I went to the office of Mr. Eaton, who was the counsel opposed to me in that case.

"Q. Of the Erie railroad?"

"A. Yes, sir. After some conversation Mr. Eaton presented to me these letters, which I wrote to him on the 11th, 12th, and 13th of April, 1865, and also 26th and 27th.

"Q. Have you examined them?"

"A. I have.

"Q. Do they refresh your memory with regard to any fact?"

"A. They do not exactly refresh my memory, but they confirm me in my impressions that during this time Dr. Bissell was in my office, and also of the fact that Mr. Eaton came there to see him."

They were documents that we could not put in evidence, but they were the letters that were here before him, and they were from his own lawyer. Mr. Eaton was the counsel for the Erie railroad.

"Q. What date was that?"

"A. I cannot fix the date that Mr. Eaton was there. On the 11th, 12th, and 13th of April, 1865, I wrote to Mr. Eaton, and he presented those letters to me and which confirmed me in the impression that Dr. Bissell was at that time in my office, and endeavoring to settle the Erie railroad suit.

"Q. Did you settle it?"

"A. Yes, sir."

Now let us see what he says about Dr. Bissell's character for truth:

"Q. State whether you know the doctor's character among the people for truth and veracity.

"A. I have heard the character of Dr. Bissell very much canvassed.

"Q. What did you find that to be, good or bad?"

"A. I must say that his general reputation was bad.

"Q. Was it very bad?"

"A. Yes, sir; it was."

And, as you observed, from the different places where that man had lived, there came pouring in witness after witness, whom we put upon the stand, who gave him the most blasted reputation that I ever heard given to any man in a court of justice; and voluntarily did they come. Now, in the course of the examination of Dr. Bissell this occurred, to be found on page 749:

"Mr. PIERREPONT. Won't you turn a look toward the jury?"

"Mr. BRADLEY. And let them see your face."

"Mr. PIERREPONT. The counsel is right; I want them to see his face; we both agree."

And he turned his face towards you. I think you remember his face. I think you will not readily forget it. The reason he could not give any answers to my questions on the cross-examination was that he was not in Elmira at that time. I doubt whether he had ever been in Elmira. He could not give a description of the house in which he stayed, nor could he tell the name of its keeper, or whether he entered his name on the register. I do not believe he ever saw the place. It is certain that he did not go by the train in which he swore he went. It is equally certain that he was not there for the purpose of getting witnesses in a suit

which he was then arranging to have settled, and that he was in the office of his counsel, Mr. Wetmore, with Mr. Eaton, the counsel of the Erie railroad, at the time. To my mind, nothing could be more clear than the expression of his face when he was on the stand talking. If you were as familiar with witnesses as I, you would see it as plain, and I think you did see it as plain. I was very anxious, as this record shows, that he should turn his face toward you, for I could see through his dull and horny eyes lies generating perjury in his brain as flies are generated within a rotten carcass, and then a slow stream of slimy larvæ druded from his loathsome mouth, requiring more than all his patent pots and patent disinfectants to cleanse the air of the perjured and polluting odor. There was not a word of truth in any thing that he said.

Gentlemen, I am now through. I had no expectation of keeping you so long. I did not know that what I had to say would spread over so much ground. I cannot express to you my feeling of gratitude for your kind attention. I have never before seen men listening so long and so well. I know you have been listening for the purpose of trying to get at the truth in this case. That is what I have endeavored to aid you in reaching; and, with the aid of the court and of your own consciences, I know you will reach it. This is a matter affecting us all, affecting our future, affecting the stability of this institution of the punishment of crime by the civil law in a tribunal where twelve men sit. As I have said, without it there is no liberty. You may pass into military power and have all crimes there tried, and liberty bids you farewell; it lasts but a little time. It depends on jurymen and on courts whether it shall live or die. Liberty will not live without justice. It is that which keeps it alive. With injustice it cannot live. With rapine and murder and crime unpunished, neither you nor I, nor any son or child of ours, has any protection whatever in the community. The Government is for the protection of us all. It is not for the sake of vengeance and of blood. It is for the protection of society.

I have endeavored, in bringing before you this case, to bring nothing before you that was not true, and to urge nothing upon you except those great principles which lie at the base of our free institutions, and upon the sanctity and the preservation of which it is absolutely certain our liberties depend. We have passed through a great struggle, during which rivers of blood have been shed. Have you in your rides, while this case has been going on, passed up beyond the Soldiers' Home? If you have, you have seen a little city there. The streets of it are green. They are watered by a nation's tears. Five thousand of our young men lie buried there in that city of the dead. Go to other portions of this land, and you will find three hundred and and thirty-five thousand more of our young men lying in those silent cities. Is it all for nothing? Think you from their mouldering flesh no plants will spring, no fruits will grow? And think you their spirits would not come out from their tombs if they were to know that an assassin, a plotter, an aider and an abettor in the murder of the head of the Government, was, by your verdict, to go free, and that a jury of their countrymen were to say, "It is all right?" What did they fight for? For such liberty as that? What will the entire civilized world say? What the Pope of Rome, who hastened to deliver up the fugitive that he might be brought back to the city of his crime, when he hears that an intelligent jury of his countrymen say, "That is all right." Gentlemen, what have we been taking all this trouble for if you are to say to the fugitive who was thus concealed so long, and went through so many hardships to escape from justice, "Foolish man, why flee? There is nothing wrong in what you did; it is all right; there is no guilt in any thing you have done." At such a declaration the blood in men's veins would run cold; the valves of the heart would cease to open;

the very stones of the street would cry out; and there is not an honorable rebel in the land who would not utter his curse upon such an act.

Now, gentlemen, there has been a great deal said to you about our having had blood enough. The question is whether we are to stop crime. I have no thirst for blood. I would not take the life of any fellow-creature if I could help it, unless it were in a magisterial way, to preserve the violated law and to prevent blood and sorrow and the ruin and destruction of my country, and then I would not hesitate. For that purpose, and for that purpose alone, would I do it; but not from any love of blood. You have nothing to do with that; I have nothing to do with that. That lies with the Executive. It is in the executive power to make whatever adjustment of any punishment for crime he may see fit. That is not our business. Our business only is to see whether the man charged with the crime is guilty. That is all we have to do; and it is left to the other powers to inflict the punishment or to modify it, as may seem to them right. I have only to say, that when the man is found guilty, honest men will say so. No honest men can say any thing else.

In this case I feel justified in saying that the prisoner is proved to be guilty, and in a more overwhelming manner than any case was ever proved in the history of jurisprudence. I appeal to any judge, any lawyer, any man who has ever had experience, if there ever was a case proved with such demonstrating facts as is the guilt of this prisoner. It is proven not only beyond a reasonable doubt, but entirely beyond the possibility of a doubt. Not a man can doubt it. It has been a strange case. It was a strange providence that brought the man back here to this city to be tried; and now that he is here, you, the twelve men who in the providence of God have been selected to try the case, are to say whether what he has done is right or not right; whether he is guilty or not guilty. That is for you to say, not for me. I know he is proved guilty. About that there can be no doubt. I do not believe any man has any doubt whatever on that subject.

Now, the counsel for the defense seem to throw much reproach upon the district attorney and on our side because of a remark that was made that the court would not dare to do wrong. No honest man dares to do wrong. Every honest man dares to do right. Do right, and no wrong ever follows. Do wrong, and evil and misery are always sure to follow from it.

In 1843 I was in the city of Columbus, Ohio, and a man by the name of Clarke was on trial for murder. Mr. Swayne, who is now a judge of the Supreme Court, was prosecuting the case. It is reported in the Ohio reports. The defense was insanity. A great many doctors were brought to prove that he was insane; others testified that he was not insane. The jury were an honest, conscientious jury, and they were sent out. They were out all night. In the morning, when the court convened, they had not agreed. The court was silent and still. The jurymen were in a room situated precisely as that is, [pointing to witness-room.] Soon after the court opened we heard the solemn voice of prayer. Some jurymen had doubted whether the man was not insane, and inasmuch as it was a capital offense, and they were good men and wanted to do right, they proposed that the jury should kneel down and ask the God of light and truth to enlighten their minds; and they were in earnest prayer when the court opened. A Mr. Wilcox, a devout man, who feared God, known well to one of those judges sitting by my side, (he is now gone to his home in heaven,) said to me, "That jury will soon agree." The jury arose from their bended knees; their minds were enlightened; they walked into the court-room and said, "He is guilty."

Gentlemen, if there is a man among you who has a doubt in this case, or any number of you, and you will take that test, it is all I ask. If, when you are doubting, you will go before your God on your bended knees,

asking for that light which comes alone from Heaven, to enlighten your minds to a knowledge of the truth, and will rise from your knees, I know that God will give you light, and I will say that your verdict is of God and right, whatever it shall be. Take that test, and you will have no trouble; take that test, and your consciences will be at ease. You will feel that you have done your duty to yourselves, to your country, to your holy faith, to the God before whom you and I shall soon appear, and until which you and I may never meet when we part from this place. And then, if you so feel, having done your duty to the end,

—"you may join with them  
Who see by faith the cloudy hem  
Of judgment, fringed with  
Mercy's light."

Mr. BRADLEY. I do not understand, if your honor please, that you intend to give the case to the jury tonight.

Judge FISHER. The jury requested me some days ago to give them the case as soon as possible.

Mr. BRADLEY. Exactly. We desire to make some corrections in the statement of the evidence by the gentleman who has just closed, and I do not wish to occupy the time of the court or jury unnecessarily to-day if they are disposed to take a recess. The charge which your honor will give will occupy sometime, I take it for granted, so that there would be no probability of our closing the case before six o'clock this evening, or along there.

Judge FISHER. Are there many corrections that you desire to make in the statement of the evidence by Mr. PIERREPONT?

Mr. BRADLEY. There are a number of them. We wish to digest them. Several of them I do not think it necessary to notice, and therefore I should like to have time to look at them.

Mr. CARRINGTON. I submit to your honor, with great respect, that it would be setting a very dangerous precedent, after the argument has been concluded on both sides, to allow one counsel, for the purpose of correcting the statements of another in reference to the evidence, to submit any observations to the court, especially in a case like this, where all the evidence has been reduced to writing and printed.

Mr. BRADLEY. The jury have not the printed evidence. If you let them take that, I do not care.

Mr. MERRICK. I understood your honor, in the course of Mr. PIERREPONT's address to the jury, to indicate that that course was preferable: to allow the counsel to proceed uninterrupted, and leave us to correct whatever errors he might commit at the close of his argument. Otherwise, I should have interrupted him in the course of his argument. The corrections which I propose to make are not very numerous. I shall do no more than make some corrections, and, in addition to those corrections, refer to one or two matters introduced by the counsel himself, not in the way of argument, but simply in the way of statement; and I can assure the court and counsel on the other side that, in performing what I conceive to be my duty in that regard, I shall not transcend the limits of a simple statement or enter upon any thing that could be called an argument.

Judge FISHER. The rule which I have adopted, and the practice here in this court, is, that if the counsel who has the closing of the argument shall make any mis-statement of the evidence, the counsel on the other side shall have the right, after he has got through, to rise and address the court, not the jury. No argument can be made to the jury; but he can call the attention of the court to the mis-statements that have been made, and the court will see that the statements are properly made before the jury.

Mr. MERRICK. That is all I desire.

Mr. CARRINGTON. If that is your honor's ruling, I bow with all deference; but it strikes me that it is a very dangerous precedent. You will find it will be

done in every case, and I am interested, as I have to be arguing cases here constantly.

Judge FISHER. There can be no further argument. If there is any thing Mr. PIERREPONT mis-stated in the evidence, let the attention of the court be called to it, and the court will see, by inspecting the notes of the evidence taken at the time, whether there has been that mis-statement or not, and if there has been it will be corrected by the court.

Mr. CARRINGTON. It ought to be done now.

Mr. BRADLEY. Before that is done, I desire to know whether the case is to be closed this evening or not. I understood your honor to yield to the wish of the jury about it. Of course that will control me also.

Judge FISHER. The jury requested me a week ago not to give them the case on the heel of a day, but afterwards they changed their request and asked that it might be given to them as soon as possible. I do not know what their disposition is now.

Mr. BOHRER, (a juror.) I think it had better go over under the circumstances.

Mr. BALL, (a juror.) I think we had better have the case.

Mr. CARRINGTON. The jury seem to be divided. I think we had better get a little refreshment at all events.

Judge FISHER. Well, we will let it go over until to-morrow morning.

Mr. CARRINGTON. (To the jury.) Which do you prefer, gentlemen?

Mr. BALL, (a juror.) We had better have it to-night.

Mr. CARRINGTON. Will it be convenient for your honor to take a recess until evening?

Mr. MERRICK. If the jury are to have the case to-night, let us have dinner and come back.

Judge FISHER. Oh, no; if I leave here, I shall not return this evening.

Mr. MERRICK. (To the jury.) I shall not trespass on you, gentlemen.

Judge FISHER. We will take a recess until to-morrow morning at ten o'clock.

The court accordingly took a recess until to-morrow morning at ten o'clock.

#### Fiftieth Day.

WEDNESDAY, August 7. 1867.

The court re-assembled at ten o'clock, a. m.

Mr. MERRICK. May it please your honor, the counsel for the prosecution yesterday introduced a record with regard to Sergeant Dye, and stated that if we had known of this record our remarks in reference to him would have been cruel beyond expression. At the time of those remarks we did not know of the record, for the record was not in existence. The record is a record from one of the courts of Pennsylvania, by which it appears that on the 31st of May Sergeant Dye was arrested for passing counterfeit money.

Judge FISHER. Is that record in evidence?

Mr. MERRICK. The counsel referred to it yesterday. It is not in evidence.

Judge FISHER. What you were to do this morning was, to call the attention of the court to any matters of evidence mis-stated by the counsel for the prosecution.

Mr. MERRICK. He states this, and brings this record into court himself.

Judge FISHER. It is a matter with which the jury have nothing in the world to do.

Mr. MERRICK. Then, your honor, if the jury have nothing to do with it, it is a matter of personal explanation for myself.

Judge FISHER. That is all.

Mr. MERRICK. Then I desire to make that explanation, because the attack was made upon us for having acted cruelly in regard to that matter. I will not refer

to that record further than to say, that after Sergeant Dye had been arrested and indicted, and the case was for trial, he was examined here as a witness. Subsequently to his examination here, a *nolle prosequi* was entered, and this is the record showing the *nolle prosequi*—a *nolle prosequi* entered upon the recommendation of the prosecuting witness, who states in his affidavit that he instituted the proceedings for the purpose of recovering his money, and he is willing the *nolle prosequi* should be entered if his money were paid. I presume the money was paid.

The counsel states that Susan Ann Jackson was never examined before Captain Olcott. I read from her testimony, on page 44:

"Q. Were you ever examined as a witness about this matter before?"

"A. Yes, sir; Mr. Orrut examined me—or Captain Orfutt. I am not sure about the name.

"Q. Where were you examined?"

"A. He carried me down to his office—I forget where it was—in the night.

"Q. When was that?"

"A. Monday night after the assassination happened,

"Q. They took you down to a guard-house, or some place?"

"A. They took me to the office."

Judge FISHER. That sounds as familiar to me as though I had heard it yesterday.

Mr. PIERREPONT. I read it to the jury.

Mr. MERRICK. You read part of it yesterday. That is the cross-examination.

The counsel states that it was in proof, and uncontradicted, that Mrs. Surratt engaged the room for Payne at Mrs. Murray's. The prosecution swore Mrs. Murray. Your honor will find on page 127 that Mrs. Murray states as follows:

"Q. Do you know whether any one came to your house in company with him when he first applied for board?"

"A. No one at all. It was to me he applied. I was coming down stairs when he came in, and asked me for a room. No one was with him at the time."

And she says she knows none of Mrs. Surratt's family.

The counsel states that Miss Fitzpatrick confirms Weichmann in his statement with regard to Mrs. Surratt going to the Herndon House. Miss Fitzpatrick, at page 595, denies every thing that Weichmann states in that regard, except the mere fact that they were together.

Judge FISHER. I suppose that the evidence to which the counsel for the prosecution referred in regard to the engagement of rooms at the Herndon House related to the testimony that was given about Surratt going there to make inquiry. That was given in evidence.

Mr. CARRINGTON. And Mrs. Surratt going there too.

Mr. MERRICK. The counsel stated that it was in proof, and, as I understood, uncontradicted, that Mrs. Surratt engaged the room, and Mrs. Murray, who was their witness, brought here to prove that fact, proves that Mrs. Surratt did not.

Mr. PIERREPONT. But she said it to Weichmann. That is the evidence I read.

Mr. CARRINGTON. There are several items of testimony, and it does seem to me that this illustrates how unwise this discussion is.

Mr. MERRICK. I am not arguing any thing.

Mr. CARRINGTON. We do not assert that our inferences from the evidence are correct. That is the business of the jury.

Judge FISHER. (To Mr. MERRICK.) You are not to read any thing that was read or stated to the jury. You are reading something which you want to set up in opposition to it.

Mr. MERRICK. No, sir; the counsel for the prosecution reads a piece of evidence, and says that is uncontradicted. Then I introduce the evidence of his own witness, not mine—Mrs. Murray.

Judge FISHER. You want to make an argument to show that it is contradicted, not to show that he mis-stated any thing he read from the mouth of the witness.

Mr. MERRICK. I think he did mis-state it.

Judge FISHER. He read it from the book, and it reads just as he read it.

Mr. MERRICK. But he did not read what I have read.

Judge FISHER. Of course he did not, and therefore he did not make any mis-statement in regard to it, or misrepresent that testimony.

Mr. BRADLEY. He said it was uncontradicted, and that is the point to which Mr. MERRICK calls the attention of the court.

Judge FISHER. Suppose he does say it is uncontradicted, are you to get up and make an argument to show that everything he said was not true? That would be an argument in reply or in rejoinder. There may be a correction of any thing he has improperly mis-stated or misrepresented; but you are taking up other evidence now to controvert the evidence which he read.

Mr. MERRICK. If I am transcending the rule, your honor—

Judge FISHER. That certainly is.

Mr. MERRICK. I will abide by what you say in the remarks which I shall hereafter make.

The counsel stated that Judge Olin did not correct his testimony. May I read Judge Olin's correction of his testimony?

Judge FISHER. Yes, sir.

Mr. MERRICK. I read from page 786:

"All I can say with reference to it is that, if I were called upon to testify to-day again, after some reflection on the subject, I would testify as I did a few days ago; and yet I ought to say, perhaps, that after such a lapse of time as has occurred between the transaction and the present hour, if what was shown me be a correct report of my testimony before the military commission, it is more likely to be accurate than testimony recently given by me, because all the circumstances were then fresh in my recollection, and the transaction was a recent one. After this lapse of time, it is quite possible that I may be mistaken in reference to that fact, as to whether I saw the plaster on the floor cut from the hole in the wall, or the shavings that were cut by a penknife from what was apparently a gimlet-hole through the door. That is all I can say in reference to the matter."

On page 787 he says:

"Of course you know very well that an honest man would be more likely to remember a transaction that occurred a short time before than he would after the lapse of years. That is all I can say about it."

Judge FISHER. Does he not go on afterwards to say, and yet he had a picture in his mind of the pile of dirt and chips on the floor?

Mr. MERRICK. I do not know but that he does, if he had to swear from his memory. Mr. BRADLEY points me to this passage in his testimony:

"I recollect now very distinctly the fact that the small hole bored in the door had been cleaned out by a sharp-cutting instrument; and yet, in reference to the question as to whether I saw the plaster and the chips, it is quite possible that I am mistaken as to what I testified to the other day. I would be more likely to recollect distinctly the fact so recently after the occurrence than I would be after this lapse of time."

Then Judge PIERREPONT asks him:

"What is your present belief about finding the shavings or chips?"

"A. That is my belief—that I found them."

"Q. And so with regard to the mortar?"

"A. Yes, sir."

"Mr. BRADLEY. When a thing is fresh upon the mind—"

"Judge OLIN. Of course you know very well that an honest man would be more likely to remember a transaction that occurred a short time before than he would after the lapse of years."

Judge FISHER. Yes, that is correct.

Mr. MERRICK. I do not know, after what your honor has said, that I would be right in reading some passages with regard to the *alibi* from the testimony of Atkinson and Stewart and Cass.

Mr. PIERREPONT. We have read that testimony.

Mr. CARRINGTON. That has been fully argued, I submit, on both sides.

Mr. MERRICK. I am not reading it. I am asking the court whether I shall or not.

Mr. CARRINGTON. I desire to make an objection. I feel it my duty to do so.

Judge FISHER. The counsel on either side has the right to select the parts of the evidence he may choose to comment upon, and he is not bound to read

it all or to comment upon it all. It would be a very hard rule if he were, and it would be imposing an onerous duty upon him.

Mr. CARRINGTON. It is for the jury to say whether they are correct or we.

Mr. MERRICK. You need not interrupt me. I shall deal fairly by the court. I shall consider your objection as standing. I cannot say that the counsel read that testimony incorrectly, and yet the counsel scarcely read it correctly; for he did not read enough to give the jury an understanding of what it was. One line was omitted. That was the time of day that these witnesses saw the prisoner in Elmira.

Judge FISHER. He read what he chose to read, and what he had a right to read.

Mr. MERRICK. I submit, your honor.

The counsel stated, and this is matter of personal explanation, that the Supreme Court had never decided the military commission to be an illegal convocation. He said he supposed we thought they had, but we were mistaken.

Mr. CARRINGTON. Now I submit that is a question of law. We do not say that what we said is the law; we do not say that what they said is the law; but we submit our questions of law to your honor just as we leave questions of fact to the jury.

Mr. MERRICK. But the counsel on the other side are perfectly well aware that by the decision in Milligan's case all these commissions are fully covered, and although the identical case of this commission has never been brought before the court, it stands recorded an illegal body.

Mr. PIERREPONT. That is not so.

Mr. CARRINGTON. Now your honor sees that would provoke us into another discussion.

Mr. MERRICK. That is all I have to say about it. I pass from that.

There is another matter of personal explanation. The counsel says I called for the record in the military trial. I did not. Mr. CARRINGTON, in his argument, referred to that record, and introduced in his argument matter which had not been introduced in evidence. I replied, commenting upon the record. After the argument closed, the learned counsel brought what purported to be the record in court, and threw it on my table, saying, "There it is; you may read it for yourself." The period having elapsed within which I could examine witnesses in regard to it, I did not choose to look at it, for I mistrusted whatever came from the Judge Advocate General's office, when I had no opportunity to test it.

Mr. CARRINGTON. Now, if your honor please, I think the eloquence of the gentleman has already been marred by his attack on the officers of the Government and witnesses. They have expressed their opinion very decidedly on that subject, and it ought not to be re-discussed.

Mr. MERRICK. This is merely a personal explanation.

Judge FISHER. Then you might as well make your explanation after the jury get the case and not before.

Mr. MERRICK. This goes into the printed record of this case, and I stand misrepresented, with all due respect, in that record, and I do not wish so to stand. It cannot affect the jury one way or the other. I did not look at the record. The counsel came here yesterday—

Mr. CARRINGTON. I rise, if your honor please, to a point of order. I feel it my duty to do so. It is for your honor to say whether this is proper.

Judge FISHER. Oh, let them go on.

Mr. MERRICK. Surely a gentleman can make a personal explanation. The gentleman came in yesterday and stated that his information with regard to the recommendation of Mrs. Surratt to mercy and the conversation between the President and Judge Holt had been derived from Judge Holt. As I did not look at the record, I beg to say, that it may go in this record,

that I have before me the authorized publication of the conspiracy trials, which has the sanction of Judge Holt, and which contains the sentence passed upon these prisoners, and the approval of that sentence signed by the President of the United States. The counsel stated that that approval was upon the back of the recommendation for mercy—

Mr. CARRINGTON. I claim the privilege most respectfully to defend the officers of this Government. I think they have been already sufficiently assailed, and while I do not intend to say any thing unkind or disrespectful to my friend, I will only say this, that the eloquent and learned speech which he made has been marred by his attack upon the officers of this Government without evidence to justify it. Now, sir, if this is to be renewed, I claim the privilege of defending the officers of the Government.

Mr. MERRICK. I do not mean to renew it. I merely mean to say, that in this record, published then under his authority, purporting to be a full record, there is no recommendation for mercy; and if what is said now is true, what was published then is not true.

Mr. BRADLEY. There is a single point, if your honor please, to which I wish to ask the attention of the court. Reference was made yesterday to that map as indicating a route from Montreal by Ogdensburg, through Rome, to Canandaigua. I wish your honor to state to the jury that that map is not in evidence. It is but a diagram, and no more, to be used for illustration, and that not a particle of proof has been offered to this jury in regard to the Grand Trunk railway, or any route by Ogdensburg to Rome. I stated yesterday that I had in my possession and have in court the time-tables from Rouse's Point to Ogdensburg, and from Ogdensburg to Rome, by which it will appear that a party leaving Rouse's Point could not reach Canandaigua any earlier, and must take the same cars to Canandaigua as the route by Albany. Of course it would not be competent to offer it in evidence; but I wish your honor to state that that is not evidence.

Judge FISHER. I presume the jury understand that that is simply a diagram.

Mr. BRADLEY. And there is no evidence in the case in regard to the route from Ogdensburg to Rome. If there is, I am unable to find it. The only evidence in the case is in regard to the route from Montreal by Albany to Canandaigua, and that is the only evidence in reference to the route from Montreal to Elmira.

Judge FISHER. No; there is no evidence that I heard in regard to the Grand Trunk railway.

Mr. BRADLEY. Nor the Ogdensburg road—not a particle.

Judge FISHER. I have not heard any thing of that.

Mr. BRADLEY. Nor any other road, except the one by Albany to Canandaigua, and thence to Elmira.

Judge FISHER. All these matters are matters for the jury. They are supposed to recollect evidence better than counsel.

Mr. BRADLEY. It is with that view I ask the attention of the court; I am not addressing the jury. It is with this further view: It was argued all day yesterday about the physical impossibility to get from Elmira to Washington from the 13th to the morning of the 14th. My proposition was that it was physically impossible to get from Montreal *via* Elmira on the 13th to Washington. That was my proposition, and that will be seen in the report of the case.

Judge FISHER. The jury will recollect all the evidence and all the arguments.

Mr. BRADLEY. I have no sort of objection, and I wish the counsel may understand it, that the jury shall take that map out with them for the purpose of illustration; but, at the same time, I wish their attention called to the fact that that pencil-mark put upon the map after it was exhibited to the jury was not put there with our knowledge and consent, and forms no part of the diagram.

Mr. PIERREPONT. We have not asked the map to go before the jury at all.

Judge FISHER. You say the map is not in evidence. Why ask it to go to the jury?

Mr. BRADLEY, Jr. We have no objection to its going there.

Mr. CARRINGTON. It suggests to me this proposition of law: Having fixed the prisoner here in the District of Columbia, we can indicate the shortest route from Albany to Montreal, and the jury will take notice of that geographical fact.

Judge FISHER. The jury understand all these matters.

Mr. MERRICK. We have no objection to the jury taking the map.

Judge FISHER. Gentlemen of the jury: "Whoso sheddeth man's blood, by man shall his blood be shed." So spake the Almighty to his servant Noah when the great deluge had receded, and the ark had safely rested upon the holy summit of Mount Ararat. This is God's own law, and its wisdom is acknowledged by all civilized nations. Now and then we meet with sentimental philosophers who think themselves wise above what is written, and who deem it their duty to lift up their voices in condemnation of this fiat of Jehovah; and although they have made but few converts to their pernicious doctrines, they not unfrequently succeed in creating in the minds of honest but tender-hearted people a morbid sentimentalism, which leads them too often to shut their ears to the stern voice of justice, and listen only to the gentle, kindly whisperings of mercy, forgetting that mercy to the guilty is injustice to the innocent. With such sentimentality you, gentlemen, as jurors, have nothing whatever to do. It is no matter of yours to inquire whether the prisoner at the bar is a proper subject of executive clemency, if you believe him guilty of participating in the crime with which he stands charged before you, but simply to determine the question as to his guilt or innocence.

When the dark clouds of war which for four years had lowered on our national horizon had begun to lift, and the sun of peace was about to gladden us again with its benignant rays; when the main army of rebels who followed the traitor Lee in his retreat from Richmond had been overpowered and had surrendered to the great military hero of the age, and the army of Johnson was in vain flying from impending capture; when our city was radiant with illuminations in celebration of the downfall of the stronghold of a most wicked and atrocious rebellion; when the hearts of all loyal men were leaping and dancing to the merry pæans of victory; and when the eyes of all lovers of peace throughout the land were eagerly looking to him whose great heart had never cherished a feeling of malice for even an enemy, but abounded in love and charity for all, in the hope that ere another year should have passed away the hands which had been lifted up against each other in fraternal strife would again be clasped in friendship and brotherly love, and States dis severed should be again united in harmonious relations; on the 14th day of April, 1865, the executive head of this great nation, the commander-in-chief of your army and navy, by the most foul and wicked conspiracy the record of which has ever stained the pages of history, was stricken down at the hands of the assassin John Wilkes Booth, in the metropolis of the Republic, and under the very shadow of its Capitol.

Historians and text-writers on the law may treat of the heinousness of the crime of imagining the death of a weak or a wicked king or of a wise and benignant monarch; but you know, gentlemen, as well as you know that you exist, that to murder the duly-elected President of the most powerful people on earth is not less atrocious in its character than to compass the death of a king or an emperor, albeit he may have sprung from the strong loins of the people who have made him

their representative head, and may have no royal blood coursing through his veins. You may be told that it is a crime surpassingly heinous to take or to compass the life of him who was born to inherit a throne, simply because he may be the king of an enslaved people; but that to take the life of the President of a free republic is an offense of no greater magnitude than to murder the veriest vagabond that walks your streets; but an American jury will only believe this doctrine when the people have become so demoralized and corrupt, so devoid of the love of liberty and patriotic feeling, as to prefer to have a king and ruler foisted upon them by the accident of birth or fortunate adventure, rather than have the making of their own selection of him who is to execute their laws, and for the time being to stand as the representative head of their collective sovereignty. It is a mistake to suppose that a free people in any country will ever consider it a more heinous crime to kill a king, or even to desire his death, than it is to assassinate a president. It is of no avail to tell me that to surround the life of a president of a republic with safeguards as sacred and powerful as those which in monarchies are thrown about a king, as you have been told in the argument, is a modern idea, entertained only by those whose eyes have been dazzled by visions of stars and garters, and who are desirous of changing our free institutions for a monarchical form of government. On the contrary, they only can be opposed to guarding with sacred vigilance the life of a president of a free people who are themselves prepared to submit to the rule of a tyrant or a military dictator. Why should the people be less proud—why should they be less regardful of the life of a ruler selected by themselves, from among themselves, than they would be of the life of him who claimed to rule over them of his own right? When this question can be sensibly answered, I shall be willing to admit that the life of a president is less worth the preserving than that of a tyrant king, and that to destroy the life of a president is a crime of less atrocity than to merely desire the death of a prince, but not till then; nor do I believe will you.

One of the conspirators, he who took the life of the President, Abraham Lincoln, on the 14th day of April, 1865—he who fired the fatal shot—in his flight from the scene of the murder was overtaken by the swift vengeance of the Almighty, and died at the hands of his pursuers. Others, charged as co-conspirators with him in this enormous crime, were tried two years ago by a military commission; some of them were condemned to expiate their guilt upon the gallows, and others doomed to suffer imprisonment for life on the Dry Tortugas.

You have been told, gentlemen, in the argument of this case, that those who were tried before that military commission, and hung upon its findings, were themselves the victims of a base and disgraceful conspiracy to murder. Brave, gallant, and honest soldiers of their country have been held up before you as inhuman butchers of innocent men. It has been said in support of this denunciation that the Supreme Court of the United States have, in the case of Milligan, declared that the military court which tried Herold and others for the murder of Abraham Lincoln was an illegal tribunal, organized without law, without right, and without warrant in the Constitution—a mere convocation of military men, having no right to try the cause committed to them by President Johnson; and it has been said that it was convoked, not to try, but to condemn.

In my humble judgment the Supreme Court has made no such decision. If so, why have not the prisoners now confined upon the Dry Tortugas for complicity in the greatest crime that ever disgraced the world been released from their confinement? They have sympathizing friends enough to have applied any such decision in the direction of their deliverance, and they would not have remained there a week after the decision had

been made to the effect that they were unlawfully restrained of their liberty. If I understand the decision in Milligan's case aright, it went upon the ground that the commission which tried Milligan was not organized in obedience to the act of Congress providing for the punishment of such crimes as he was charged with having committed, and the opinion of the majority went upon the additional ground that no hostile foot had ever pressed the soil of Indiana at the time when he was arraigned before a military tribunal there, and that therefore that tribunal, which condemned him for acts of a treasonable nature committed in that State, had no authority to try him, notwithstanding the whole nation was involved in the most terrible struggle for its life. The majority opinion being thus predicated upon a misapprehension of historic truth, we could not perhaps have looked for a more rightful deduction.

Unprepared, however, as all loyal men were for such an announcement, the American people would be even yet more astounded to hear it declared by any court in this country that the commander-in-chief of the army and navy, the President of the United States, has not the power, in time of war, to institute a military commission for the purpose of trying a gang of spies and traitors who have found their way within the entrenched encampments of the nation's capital, with a view to take the life of the chief of the army and navy, to assassinate all the heads of the executive departments, in the interest of the pretended government with which the Federal Government was engaged in war. They who maintain such a doctrine profess to defend it upon the ground that no such power is delegated by the Constitution, as they did who could find no warrant in that instrument to coerce seceding States into submission to the federal authority from which they had revolted. But the day I hope has passed by when honest statesmen will longer, if they ever did, regard the sovereignty of the Federal Union as possessing no other powers save those expressly enumerated in its Constitution.

The Government of the United States was doubtless created by the adoption of the Constitution; but when it had once been spoken into being, it stood upon the same level with other nations, and was clothed with all the powers incident to an independent sovereignty under the laws of nature and of nations; and among these was the power, in time of war or great public emergency, to arrest and inflict upon spies and traitors the most summary punishment, whenever and wherever the strong hand of military justice can be laid upon them. It is a power incident to the right and duty of self-preservation, and ought to be exercised just as the individual owes it to himself to strike down the assassin who is feeling for his heart-strings, without waiting to lose his own life in order that the courts of justice may at their leisure proceed to try the felon according to the formularies of the law and the constitution. The right of self-defense needs not to be inscribed upon parchment either for individuals or for sovereign States. The Almighty impressed this right and duty upon the hearts and minds and instincts of men long before He wrote the Decalogue upon the Tables of Stone. To say that this Government has not the power in time of war to exercise this great duty of self-preservation for want of warrant in the Constitution is to condemn the action of the Government in acquiring from France and Spain and Mexico and Russia territory lying far beyond the limits of the original thirteen States, simply because such power of acquisition and growth is not expressly provided for by the Constitution. Both these powers are but the incidents of sovereignty, requiring no warrant in written governmental charters; they are derived from the common law of nations and are co-existent with sovereignty.

But with this military commission, gentlemen, you have no concern at this time; whether it was a legal or illegal tribunal is not the matter upon which you are now called to decide. The oath that you have taken

requires that you shall "well and truly try, and true deliverance make, between the United States of America and John H. Surratt, the prisoner at the bar, whom you have in charge, and a true verdict give according to the evidence."

The prisoner stands before you indicted for the murder of Abraham Lincoln, on the 14th day of April, 1865, in this city. About the time and place and manner of the death of our late President no controversy has been made in the case. If there had been, your recollection of a nation in tears and of a whole civilized world in mourning would have revived your memory of the sad and terrible fact. The only question, therefore, for you to determine is, whether the prisoner at the bar participated with John Wilkes Booth and the others named in the indictment, or either or any of them, in this diabolical crime. If from all the evidence in the case your minds shall have been convinced beyond a reasonable doubt growing out of the evidence that the prisoner did co-operate with them or any of them; if the evidence shall have produced a moral conviction in your minds, that the prisoner did participate in the conspiracy to murder, or in a plot to do some unlawful act which resulted in this foul murder, no consideration as to the legality or illegality of the tribunal which tried the prisoner's mother, no feelings of sympathy for other members of the family, no consideration of his youth, or that other lives have already been forfeited for the crime, should for a single moment tempt you to step aside from the plain pathway of duty. If, however, upon a full and careful consideration of the whole testimony, uninfluenced in the slightest degree by prejudice or bias of whatever character, that moral conviction of the prisoner's guilt shall not have been impressed upon your minds, but you shall still entertain an honest and unbiased reasonable doubt, fastening itself upon your judgments, and suggesting that all the credible proofs pointing in the direction of the prisoner's guilt may be strictly true and may still be consistent with some hypothesis of innocence which you can construe from the whole credible evidence in the cause, you will give him the benefit of such doubt. It is my duty, however, gentlemen, to say to you that this doubt, to the benefit of which the prisoner is entitled, must not be a mere speculative or capricious one, prompted by passion or prejudice or pity or feeling of any kind, save the desire in your hearts to do exact and equal justice, by rendering a verdict in strict accordance with the facts. It must not be a vague suggestion, that after all the prisoner may not be guilty; it must not be the mere shadow which the angel-wing of mercy may momentarily cast upon your mental vision; but it must be such a doubt as the voice of justice shall whisper in your ears. If the testimony shall convince your understanding of the guilty participation of the prisoner with Booth or others in the crime, such conviction is the moral certainty required by the law, and it excludes the idea of reasonable doubt.

The indictment in this case charges the prisoner with being engaged in a conspiracy with John Wilkes Booth and others to effect the murder of Abraham Lincoln, and with having succeeded in the accomplishment of that atrocious crime.

It has been argued by the counsel for the prosecution that to take the life of the President of the United States is a crime so heinous in its character that each of the conspirators is responsible for the act of each of his co-conspirators committed in furtherance of the conspiracy, so long as he continues to be a member of that conspiracy; and that he can only be relieved of criminal responsibility by repenting, abandoning, and renouncing his connection with the conspiracy, and countermanding any orders he may have given in relation to it.

On the other hand, it is contended by the counsel for the defense that the indictment nowhere charges a conspiracy to kill or the killing of the President of the United States; but simply charges the killing of Abra-

ham Lincoln, the individual; that, inasmuch as there is no allegation in the indictment showing that Abraham Lincoln at the time of the murder was President of the United States, but simply avers the killing of an individual, the case is to be governed solely by the same principles of law which are applicable to ordinary murder, and cannot be regarded by you as being in any degree more heinous in its character; that even admitting that to take the life of the President of the United States is a more heinous crime than the murder of an individual in private station, yet, for the want of an allegation in the indictment of the fact of presidency, you cannot, no matter what the evidence may be as to the killing of the President and all the heads of Departments and the Vice President, in your consideration of this case and in making up your verdict, regard it as a crime standing on the same footing in its atrocity with the crime of treason or compassing the death of a king. They argue that, although by the common law of England to compass the death of a king is a crime so heinous in its character as to admit of no accessories before the fact, yet the law of murder is different in England and here, and that in case of murder he who counsels, aids, or commands another to commit murder, without being present at the scene of the crime or near enough to render material aid in its actual commission, can only be proceeded against as an accessory before the fact, and not as a principal, as in this case.

You are told that it must both be alleged in the indictment and proved by the evidence, or you cannot consider the killing of a President, or the conspiracy to murder him and all the chief officers of the Government, for the purpose of bringing anarchy and confusion on the nation, and thus to favor the cause of the rebellion.

But there are some things of which courts and juries will take judicial notice. One of the elements of the definition of murder is "the killing of a reasonable creature." It is never either alleged in the indictment or proved in the evidence that the subject of the crime is a human being. It is not necessary to do so, because it is one of those things that are presumed to be taken judicial cognizance of. It is not alleged in the present indictment that Abraham Lincoln was a reasonable creature, nor has any proof been adduced to show it; and yet we take judicial cognizance of the fact. So we may take judicial cognizance of the fact that at the time of his murder he was the President of the United States, because it is something known to every man, woman, and child in the country capable of knowing any thing; and taking such judicial cognizance of it, in my opinion, it need neither be alleged in the indictment nor proved by witnesses.

It is true, as stated by the counsel for the defense, that it has been laid down by Sir Matthew Hale, in his work entitled "Pleas of the Crown," that although treason is so heinous in its character as to admit of no accessories before the fact, but that its heinous character makes all principals who in any way contribute to its commission, yet that murder and other felonies, not being so heinous in their character, aiders and abettors are to be proceeded against only as accessories before the fact. When, however, Sir Matthew Hale comes to treat of misdemeanors, (a lower grade of crime than felonies,) he tells us that they will not admit of accessories before the fact, because of their want of character sufficiently heinous; the precise reason for which accessories are admitted in crimes amounting to felony. Later writers have generally followed the law as laid down by Lord Hale in this treatise, and many decisions have been founded upon that authority, the writers and judges seeming contented with his reasons, or indisposed to depart from the principle laid down by him; but I confess the reasons are not very satisfactory to my mind. I have never been able yet to discover any sound reason why he who originates the plan of murder, but employs another or others as his agent or agents to perpetrate the crime, is not equally guilty

with the actual perpetrator of it. If I, actuated by the malice of a depraved and wicked heart, conceive the purpose of murdering him whom I suppose to be my personal enemy, but, lacking the opportunity or the courage necessary to carry my purpose into execution, should hire another person, who willfully executes my wicked design for me, common sense and the common conscience of mankind, which, after all, seldom fail to direct us to the true principles of the law, (which has been defined to be the perfection of reason or common sense,) would seem to dictate that I cannot be less guilty than the agent whom I had employed, upon the well-known principle of law that he who does an act by another does it by himself—a principle which has been recognized by the Supreme Court of the United States in the case of *Gooding vs. The United States*, 12th Wheaton, page 460, as applicable to criminal as well as civil cases—a principle recognized in more ancient and higher authority than even the Supreme Court of the United States or Lord Hale, or any other writer upon the law to which we are accustomed to look for principles and precedents.

There are two cases which now occur to me, (probably others might be found,) reported in that book of highest authority known among Christian nations, decided by a Judge from whose decision there can be no appeal, and before whose solemn tribunal all judges and jurors will in the great day have their verdicts and judgments passed in review. Man cannot make better law than God, nor can he better expound or administer the law. One of these cases is that of Naboth and Ahab, contained in the 21st chapter of the First Book of Kings. Naboth, the Jezreelite, was the owner of a vineyard hard by the palace of Ahab, king of Samaria, which had excited the cupidity of the latter, who offered to purchase it with money or to give in exchange for it another vineyard; but Naboth was unwilling to part with it, because it was the inheritance of his fathers. This excited the wrath and displeasure of King Ahab and his Queen Jezebel, who conspired together to effect the death of Naboth, and they succeeded by having witnesses suborned to swear against him as a blasphemer, that he might be stoned to death by the elders and the nobles of his city. The plan was laid by Jezebel; the motive to the murder was Ahab's cupidity, and he lent his wife his signet ring with which to seal the letters which she sent to the elders and nobles whom she employed as the agents to consummate the wicked plot. Two sons of Belial, we are told, were the perjured witnesses who proved the blasphemy on Naboth, and this effected his death. Ahab, profiting by the crime, took possession of the vineyard of Naboth; but the word of the Lord came to Elisha, the Tishbite, saying, "Arise, go down to meet Ahab, king of Israel, which is in Samaria; behold he is in the vineyard of Naboth, whither he has gone down to possess it, and thou shalt speak unto him, saying, Thus saith the Lord, Hast thou killed, and also taken possession? In the place where dogs licked the blood of Naboth shall dogs lick thy blood, even thine. And it came to pass that dogs licked up the blood of Ahab, according to the judgment which God had decreed against him."

The other case to which I have alluded is that of David and Uriah, recorded in the 11th chapter of Second Samuel. Uriah, a loyal subject of King David, was a brave and gallant soldier in the army of Joab, which was engaged in war with the Ammonites. His wife, Bathsheba, was comely in person and very beautiful to look upon, and King David coveted her. In order to effect his wicked purpose, he sent a letter to Joab, his chief captain, even by the hand of Uriah himself, saying, "Set ye Uriah in the forefront of the hottest battle, and retire ye from him, that he may be smitten, and die." Joab obeyed the behest of his king, and Uriah, the Hittite, was slain. But the Lord sent his prophet Nathan unto King David, saying, "Thou art the man" who did this evil thing. "Thou hast killed

Uriah, the Hittite, with the sword, and hast slain him with the sword of the children of Ammon." This judgment of the Lord was not that David was accessory before the fact to this murder, but was guilty as the principal, because he procured the murder to be done. It was a judgment to the effect that he who does an act by another does it himself, whether it be a civil or a criminal act.

The counsel for the prisoner at the bar in this case contend that he was not in the city of Washington, or near enough to the scene of the murder to have taken part in it by rendering material aid to Booth, the actual assassin, who fired the fatal shot, and that the evidence adduced on the part of the Government, as well as that of the defense, shows such to have been the fact. This is what is termed in the law an *alibi*, the Latin word for elsewhere. This, gentlemen, is a line of defense always held in little favor by the courts and juries, not only because it is one which common sense teaches us may be most easily supported by perjury, but because it is one involving identity of time, as to which mistakes are very easily made, so that it is by no means difficult to support this plea frequently (and especially after the lapse of months or years) by the testimony of honest and truthful witnesses, who, on account of the great liability of the human mind, particularly when influenced by the promptings of pity or sympathy or friendship, to be mistaken as to the precise point of time, in reference either to days or hours. The past history of crime teaches us that in the days of notorious public depredaters upon society it was a very common device to gallop upon fleet horses straight across the country, and by appearing before credible witnesses shortly after the commission of a robbery or other crime to obtain the testimony of such witnesses, and thus secure an acquittal by an *alibi*. We have an instance of the honest fallibility of the human memory in respect to the identity of time, under the promptings of pity or friendship or sympathy, in the case of the *Commonwealth of Massachusetts vs. Webster*, for the killing of Dr. Parkman, some eighteen years ago, in which several witnesses of respectability swore so positively and yet so honestly to facts placing it beyond the pale of possibility that Doctor Webster could have been present at the scene of the murder, if that testimony in relation to the time had been strictly true, that the general sense of the community seemed in doubt as to whether Littlefield, an important witness for the prosecution, was not in fact the real murderer of Parkman; and yet, after the verdict of the jury had been rendered and the sentence of law pronounced against the prisoner, Webster, who knew better than any other mortal, made a full confession of his guilt. If it were true that hard riding straight across the country in olden times furnished facilities for criminals to establish the defense of an *alibi* by honest witnesses, how much greater facilities for that purpose are furnished at the present day by the power and speed of steam, by which space and time have become almost annihilated?

I have already said that this plea has always been regarded with extreme suspicion; and yet, when once clearly established to the satisfaction of the jury, it constitutes the most complete defense. But an honest and sensible jury cannot fail to regard it with suspicion, unless it shall be so clearly established as to satisfy them of the prisoner's absence from the scene of the crime. The suspicion which attaches to this plea has passed into a proverb among the people, as well as with courts and juries, and it is true that an unsuccessful attempt to establish an *alibi* is always a circumstance of great weight against the prisoner, because a resort to that kind of defense implies an admission of the truth, of the relevancy of the facts alleged against him, and the correctness of the inference drawn from them.

In this connection I may also observe, that when once a conspiracy to commit a crime shall have been proved and the connection of the party who is on his trial

for an act done in pursuance of that conspiracy with it, if the evidence shall satisfy the minds of the jury that he was present either constructively or actually, that is to say, either at the scene of the crime in person or near enough to give any the slightest support or encouragement to the actual perpetration of it, or if he be remote from the scene for the purpose of aiding it and in performance of this part of the plan assigned to him, he is equally guilty with his co-conspirators who actually perpetrate the crime.

You have been told, gentlemen, by the counsel for the defense, in a manner not very respectful, certainly by no means complimentary to the court, that you are the judges of the law as well as the facts in criminal cases, and that you have the right to disregard the instructions of the court in matters of law, and they tell you that their exposition of the law and the weight of character they possess may be more safely relied upon than the instruction which may be given you by the court. The weight of character of a prisoner's counsel would be a very variable and not unfrequently very unsafe criterion by which the jury should judge as to the law of his case. Perhaps they would have you regard the court as sitting upon the bench merely to discharge the duty of preserving order and decorum in the court-room, which probably the crier of the court or the bailiff might be disposed to regard as a usurpation of his prerogative. And yet, if the jury are to entirely disregard the judge's instructions as to the law of a case, I confess I see but little else left than that for him to perform.

It is true, gentlemen, that you have the power, and in cases where your consciences are thoroughly satisfied that the instructions of the court are dictated not by an honest desire to enlighten the jury as to the true state of the law, but by corrupt and wicked motives, you may have the right to disregard the instructions purposely intended to mislead you; but to claim that the jury are better judges of what the law may be than the court, is about as reasonable as to assert that a plain farmer or merchant may be taken fresh from his plough or counter and be more capable of navigating and manœuvring a steam-frigate in a battle or to lead your armies to certain victory than your admiral or your general-in-chief. In my opinion, you have just the same right to disregard the evidence of the witnesses who stand before you unimpeached in any matter respecting the facts involved in the cause as you have to disregard what the court may say to you under an official oath as to the law that may apply to the facts. A jury have the power, if they chose to exercise it, after having assumed the obligations of an oath, to say that they will neither believe the judge nor the witnesses, but will decide upon the law and the facts of the case according to their own caprice or the confidence which they may repose in the character of the counsel on either side; but such is not the purpose for which juries were instituted, and they have no right so to act. When the witnesses in the cause have testified before you as to the facts, it is then the office of the judge, under his official oath, to testify to you in the spirit of truth, according to the best of his knowledge and ability, as to what is the law which may be applicable to those facts; and an honest jury will disregard neither the testimony of the witnesses nor the instructions of the judge, unless they shall be clearly satisfied that corrupt motives have actuated the one or the other. They will leave the party where the law leaves him—to his legitimate redress—a writ of error to the appellate court.

Much stress has also been laid by the counsel for the defense upon a fact which they assert, that during the progress of this trial more than one hundred and fifty exceptions have been taken to the ruling of the court concerning the admissibility of evidence. If they have thought it necessary to calculate the number of these exceptions, and parade them before you with a view of having you to render a verdict according to irrelevant evidence not before you, rather than according to the

testimony which you have heard, I have no disposition to criticize their taste, but leave them to present their case in their own way. At the same time I feel it my duty to remark to you, that if counsel will be so bold as to present propositions to the court which every tyro in the profession ought to know are untenable, it does not necessarily follow that the judge must always be so weak as to sustain them. It has heretofore been supposed that exceptions to the ruling of a judge at  *nisi prius* were intended to be passed in review before the appellate tribunal. I have never before known them to be neatly calculated and presented to the jury by way of argument.

In reference to these matters, I may observe that perhaps I owed it to the dignity of the bench to have interrupted counsel in their conduct of the case in this particular; but in a cause involving the life of the prisoner upon the one hand, and the vindication of the outraged justice of the nation in mourning upon the other, I deemed it my duty to cast not an atom in the one scale or the other which might by any possibility tend to prejudice either side of the issue.

I come now to direct your attention, but in a general way only, to the evidence in the cause. It would be impossible for me to review it in detail without taxing your patience, which has already been nearly exhausted. I have already said that the counsel for the defense rely upon an *alibi* to acquit the prisoner. They also have endeavored to destroy the credibility of many of the material witnesses whose testimony has tended to connect the prisoner with the body of the crime, either by contradicting them by other witnesses on points material to the issue or by attacking their character for credibility. Whether they have succeeded in destroying the credibility of any one or more of them, it is your province alone to determine.

On the other hand, the prosecution rely for a conviction on the evidence which they have spread before you, tending to show the malice of the prisoner towards the Federal Government, and especially towards the deceased, Abraham Lincoln, for a long time prior to the murder. His frequent communications and intercourse—private, confidential, and mysterious—with Booth and the other conspirators, personally and by letters; his interest manifested in procuring quarters, as they allege he did, at the Herndon House, for Payne, who attempted to assassinate Secretary Seward; his great intimacy with the other conspirators; his procurement of arms for aiding the escape of Booth and Herold, and his concealment of them at Surrattsville, at the house of John M. Lloyd, shortly prior to the assassination of the President; his fabrication of false accounts and contradictory statements as to the object of his movements; his expressions, used to Smoot shortly before the assassination of the President, that if the Yankees knew what he was doing or was about to do they would stretch his neck for him; his fixing of the wooden bar against the door of the President's box at the theatre; his presence here in this city on the day of the murder; his being in company with Booth and McLaughlin at the barber's on the morning of that day; his appearance in front of Ford's Theatre on the night of the murder; his excited and suspicious manner while there, and his calling out the time to Booth and the other man with them two or three times shortly before the fatal shot was fired by Booth as the signal for action; his alleged activity in the management of the entire conspiracy planned for the fatal evening of the 14th of April; his flight from the city on the morning of the 15th of April, as soon as it was possible for him to leave; his swift haste to get into Canada; his abandonment of his mother and family; his concealment of himself in Canada at the house of the rebel sympathizers Boucher and LaPierre; his disguise of his person by the coloring of his hair, the changing of his dress, and the wearing of spectacles; his flight from Canada under an assumed name and disguised personal appearance; his free and voluntary confessions to Dr. McMil-

lan on board the steamer *Peruvian*; his constant apprehension of the United States detectives, even on the British steamer and on British soil; his flight from England to Rome, and entering the Papal service; his confession to St. Marie while there as to the manner of his escape from Washington immediately after the murder; his failure to prove to you where he eat and slept during the time when he left Montreal, on the 12th of April, until he returned on the 18th of the same month; his flight from Rome to Egypt—all these matters have been presented to you for your careful and candid consideration. You are to weigh them; you are to determine whether any or all of them are true, and to make up your verdict in strict accordance with the facts.

In giving these matters your attention, you will not fail to remember that flight from the scene of crime, the fabrication of false accounts and contradictory statements, and the concealment of instruments of violence, are all circumstances strongly indicative of guilt. You will further bear in mind that a confession of crime, when freely and fairly made—the body of the crime being proved—(which is in this case the fact of the murder) is one of the surest proofs of guilt, because it is the testimony of the omniscient God, speaking through the conscience of the culprit. You will not, either, forget that circumstantial evidence carries with it the highest degree of moral certainty. These are well-settled rules of law, to which it is my duty to invite your attention.

From the observations which I have addressed to you, you will infer, first, that a conspiracy formed in time of war to take the life of the President and Vice President of the Republic and the heads of the executive departments, for the purpose of aiding the enemies of the Federal Government, by throwing it into anarchy and confusion, is treason as heinous and as hurtful to the people of this country as the compassing the death of the king or queen of Great Britain is to the subjects of that realm.

Second. That every person engaged in such conspiracy, as long as he continues a member of it, is responsible not only for the act of treason, but for any murder or lesser crime which may flow from it in its prosecution.

Third. That the Government may waive the charge of treason against any or all the conspirators, and proceed against them for the smaller crime of murder, included in the greater crime of treason.

Fourth. That under an indictment for a murder resulting from the prosecution of such conspiracy, evidence of the entire scope of the conspiracy may be considered in estimating the heinous character of the offense laid in the indictment.

Fifth. That it was not necessary to aver in the indictment the fact that Abraham Lincoln, the victim of the murder, was at the time of its commission President of the United States, or to prove it, in order to allow the jury to take that fact into the account in determining the heinous character of the crime, it being a fact of which courts will take judicial cognizance.

Sixth. That he who does an act by another does it by himself, and is responsible for its consequences in criminal as well as in civil cases.

Seventh. That although an *alibi*, when clearly established, forms a complete and unanswerable defense, the mere absence from the immediate scene of a crime resulting from a conspiracy unrepented of and unabandoned by the party charged, will not avail him if he were at some other place assigned him in the performance of his part in that conspiracy.

Eighth. That this plea is, unless clearly made out, always regarded with suspicion, and a circumstance weighing against him who attempts it, because it implies an admission of the truth of the facts alleged against him, and the correctness of the inference drawn from them.

Ninth. That flight from the scene of crime, the fabrication of false accounts, the concealment of instruments

of violence, are circumstances indicating guilt for the consideration of the jury.

Tenth. That although a confession in the slightest degree tainted with the promise of favor, or by duress or fear, is not admitted as evidence against him who makes it, yet, if made freely and voluntarily, is one of the surest proofs of guilt.

As to the credibility of the witnesses, you are to be the exclusive judges. You have seen them face to face. You know whether they are confirmed or unsupported or contradicted by other witnesses of credit and other circumstances. You are to judge whether their testimony has been impeached, and are to consider every matter which will tend to shed any light upon the question as to what has been truthfully or falsely deposed by any witness.

You will therefore diligently collate and compare and carefully weigh and consider all the testimony in the cause on both sides. You will not disregard or reject the testimony of any witness unless you shall be satisfied that he has been shown to be unworthy of your credence by reason of his want of character for truth, his contradicting himself or being flatly contradicted by others of better credit, or by dishonesty of purpose manifested by his conduct and manner in testifying before you, or unless what he has told you is inconsistent with the other evidence in the cause.

In conclusion, you will take the case with the honest purpose to do justice to the United States on the one hand and the defendant on the other, bearing in mind that it is the office of the law to secure the punishment of the guilty and the protection of the innocent.

If John H. Surratt, in the honest and intelligent convictions of your judgment and consciences, is not guilty, so pronounce by your verdict, thus giving a lesson of assurance that a court of justice is the asylum of innocence. On the contrary, if guilty, pronounce him guilty, and thus by your verdict furnish a guarantee of protection to the intended victims of guilt, and a testimonial to the country and to the world that the District of Columbia, set apart by the Constitution of the United States as the theatre for the exercise of federal power, gives the judicial guarantees essential to the protection of the persons of the public servants commissioned by the people of the nation, to do their work safe and sacred from the presence of unpunished assassins within its borders.

You will take the case, gentlemen.

Mr. BRADLEY. If your honor will pardon me, before the jury retire, as I read the statute, it is not necessary to reduce our exceptions to writing before the jury retire, and it may be done afterwards. As the charge which you have just read to the jury is in writing, I do not propose to call the attention of the court to any part of it now, but with your leave will call your attention to it afterwards.

Mr. CARRINGTON. That can be done after the jury retire.

Judge FISHER. Yes, sir.

Mr. CARRINGTON handed the indictment to Mr. TODD, the foreman of the jury.

Mr. TODD. May it please your honor, the jury would like to have a copy of the record evidence.

Judge FISHER. It is not customary for a jury to take the evidence along with them.

Mr. BRADLEY. So far as the defense is concerned, we suggested yesterday that they might take it, and we are willing to let them have it now.

Mr. CARRINGTON. Your honor will observe that I must act upon general principles; but it is contrary to the practice of the court, and while I should be disposed to accommodate the jury as far as I could consistently with my sense of duty to the public, I must adhere to the rule of practice in the court.

Judge FISHER. I presume it would only delay the jury.

Mr. MERRICK. We are perfectly willing on our part that they should have it, and if the jury desire that map, I have no objection to their having that also.

Mr. CARRINGTON. It is contrary to the rule of practice, and if I depart from the rule in one case, I will have to do so in others.

Judge FISHER. You must pursue the same rule in this as in other cases.

The MARSHALL. (To Judge FISHER.) Shall the jury go to their room now?

Judge FISHER. Yes, sir. Let the bailiffs who are to accompany them first be sworn.

Robert B. Hughes and Wm. L. Ross, the bailiffs assigned to take charge of the jury, took the following oath:

You do solemnly swear that you will take this jury to some convenient room, and keep them together, apart by themselves; and you shall suffer no person to speak to them or speak to them yourselves, except to ask if they have agreed upon their verdict, without the leave of the court.

The jury then, at twenty-eight minutes to twelve o'clock, retired to the room assigned them for the purpose of deliberating upon their verdict.

Nothing being heard from the jury at ten o'clock at night, Judge FISHER left the bench, and the court took an informal recess.

#### Fifty-First Day.

THURSDAY, August 8, 1867.

A number of persons remained in the court-room all day in the expectation of a verdict. At six o'clock in the evening Judge FISHER left the court-room, leaving word that he was to be called for if necessary.

#### Fifty-Second Day.

FRIDAY, August 9, 1867.

Judge FISHER resumed his seat on the bench at 12:18, but shortly afterwards left the court-room.

At 8:30 p. m. the court-room was closed for the night.

#### Fifty-Third Day.

SATURDAY, August 10, 1867.

At half-past twelve o'clock Deputy Marshal PHILLIPS came into the court-room and stationed the officers in their usual positions. This was an indication that the jury were about to return and the court to be opened, and the crowd quickly filled up the space outside the bar. A number were admitted inside the bar. District Attorney CARRINGTON was in the court-room at the time, and Mr. BRADLEY, Jr., one of the counsel for the prisoner, came in a moment afterwards.

Mr. BRADLEY, Sr. and Mr. MERRICK subsequently entered the room, they having been sent for. A large police force was stationed in and about the court-room.

At one o'clock the prisoner was brought into the court-room and assigned the seat occupied by him during the trial beside his counsel. He came into court smiling, and seemed to be in good spirits as he chatted with his counsel.

At five minutes past one Judge FISHER resumed his seat upon the bench.

Mr. MULLOY, the crier, called the court to order, and Marshal PHILLIPS was directed to bring the jury down.

The jury was brought in at eight minutes past one, and by direction of Judge FISHER the names of the jurors were called.

Mr. MIDDLETON, the acting clerk. (Addressing the jury.) Gentlemen of the jury, have you agreed upon your verdict?

Mr. TODD. We have not been able to agree.

Judge FISHER. I received this morning the following communication from the jury:

To the Hon. GEO. P. FISHER,

Judge of the Criminal Court:

Sir: The jury in the case of the *United States vs. John H. Surratt* most respectfully state that they stand precisely now as when they first ballotted upon entering the room, nearly equally divided and they are firmly convinced that they cannot possibly make a

verdict. We deem it our duty to the court, to the country, and in view of the condition of our private affairs, and situation of our families, and in view of the fact that the health of several of our number is becoming seriously impaired under the protracted confinement, to make this statement, and to ask your honor to dismiss us at once.

Most respectfully submitted,

W. B. TODD,  
ROBT. BALL,  
J. RUSSELL BARR,  
THOS. BERRY,  
GEO. A. BOHRER,  
C. G. SCHNEIDER,

JAMES Y. DAVIS,  
COLUMBUS ALEXANDER,  
WM. MCLEAN,  
BENJ. F. MORSELL,  
B. E. GITTINGS,  
W. W. BIRTH.

Is there any thing to be said on either side why the jury should not be discharged?

Mr. BRADLEY. All we have to say on the part of the prisoner is, that he gives no consent to any discharge. If they are discharged, it is against his will and protest.

Mr. CARRINGTON. I leave the matter with the court.

Judge FISHER. Gentlemen of the jury, this is the second or third communication that I have received from you of a similar tenor. If I thought there was any possibility of your coming to an agreement as to the guilt or innocence of the prisoner at the bar, I should have no objection to keeping you for a sufficient length of time to enable you to do that; but as you have several times informed me that it is impossible you should agree, and as you now stand precisely as you did at first, you are hereby discharged.

Mr. BRADLEY. We desire to have the objection of the prisoner entered of record, if your honor please.

Judge FISHER. Yes, sir; let it be entered, of course.

The jury was then discharged and left the court-room.

#### MR. BRADLEY STRICKEN FROM THE ROLLS.

Judge FISHER. I have now a very unpleasant duty to discharge, but one which I cannot forego. On the 2d day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, JOSEPH H. BRADLEY, Esq., accosted him in a rude and insulting manner, charging the judge with having offered him a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention whatever of passing any insult, and assured Mr. BRADLEY that he entertained for him no other feelings but those of respect. Mr. BRADLEY, so far from accepting this explanation or disclaimer, thereupon threatened the judge with personal chastisement, as he understood him. No court can administer justice or live if its judges are to be threatened with personal violence on all occasions whenever the irascibility of counsel may be excited by an imaginary insult. The offense of Mr. BRADLEY is one which even his years will not palliate. It cannot be overlooked nor go unpunished as a contempt of court. It is therefore ordered that his name be stricken from the rolls of attorneys practicing in this court.

Mr. BRADLEY. Has the court adjourned yet?

Judge FISHER. No, sir.

Mr. BRADLEY. Then before it does adjourn I desire to say in the presence of this audience that the statement you have read is utterly false from beginning to end.

Judge FISHER. Crier, adjourn the court.

The CRIER. By order of this honorable court, it is now adjourned.

Mr. BRADLEY. Now I will say it—

Judge FISHER, [rising to leave the bench.] You can say what you like. If you wish to make a speech to the crowd you can do so.

Mr. BRADLEY. In the first place I say you have no right to expel me. The supreme court alone can do that.

Judge FISHER. [Leaving the room.] Very well; take an appeal; that is all.

# ALPHABETICAL LIST OF WITNESSES, Vol. IV.

The figures preceding the names indicate the numerical order in which they were examined. Eight of those whose names are not preceded by figures are Government witnesses recalled—total 98.

## ALPHABETICAL LIST OF THE DEFENDANT'S WITNESSES.

	PAGE.
52. Atkinson, F. H.	128
11. Boss, William A.	38
Bates, D. H.	39, 171, 173, 174, 174
18. Brown, S. K.	50
20. Baldwin, William O.	55
55. Barry, David	141
62. Bradley, J. H., Jr.	150
63. Bradley, J. H., Sr.	150
71. Bachus, August	166
72. Bachus, Mrs. Annie	167
74. Brogden, Henry Hall.	174, 175
75. Burke, Francis P.	174
88. Bartlett, John C.	245
87. Bissell, Augustus	230
90. Boucher, Rev. Charles	249
4. Carland, L. J.	25, 187
13. Clayton, T. G.	41
16. Calvert, Frederick	46
34. Cook, John C.	71
45. Clarvoe, John A. W.	100, 106, 207
51. Cass, John	125
53. Carroll, Joseph	129
61. Chamberlain, Frank O.	149, 169
67. Cook, Henry A.	161
76. Cameron, Stephen F.	176
7. Dixon, William	32
64. DuBarry, J. N.	157
85. DuTilly, Joseph	222
5. Eastman, J. N.	29
58. Early, Bernard J.	146
78. Eckert, General T. T.	202
38. Foy, James	75
1. Ford, John T.	12, 15, 207
2. Ford, Henry Clay	17
6. Ford, James R.	30, 39
Fitzpatrick, Honora	119
60. Failing, William	147, 155
65. Fitch, Francis E.	159
Gifford, James J.	19, 191
32. Geary, Thomas	67
56. Gwynn, Bennett F.	145
3. Hess, C. B.	23, 312
28. Henze, Bernard	62
29. Henze, Martin	63
33. Horner, W. H.	69
37. Holloran, John	88
44. Holahan, John T.	88
46. Holahan, Mrs. Eliza	101
47. Hawkins, Eliza	104
Jackson, Susan Ann.	14
54. Jenkins, Miss Olivia	137
57. Jenkins, J. Z.	146
8. Kiesecker, A.	33
15. Kembel, Charles	42, 311
9. Lamb, James	35
14. Lloyd, Joshua	41
41. Lambert, T. A.	82
42. Lambert, Mrs. F. R.	83, 87
69. Lee, Edwin G.	162
84. LaBelle, Ludger	220
22. Munson, V. B.	56
36. Middleton, Henry	72
48. McDevitt, James A.	115
59. Murphy, Edward A.	147
66. McDonough, Patrick	161
Maddox, James L.	209
77. Matthews, John	193, 200
25. Naylor, Benjamin J.	60
30. Nachman, George	65
82. Nagle, S. B.	215
Olin, Judge	167
12. Owen, S. W.	40
23. Orme, Lemuel L.	57
26. Orme, George E.	61
17. O'Beirne, James R.	50, 218
68. O'Donnell, John	162
Pumphrey, James W.	70
40. Pumphrey, Jackson	81
Rhodes, Theodore Benjamin	11
19. Raybold, T. J.	51
35. Rainey, John	72
70. Robinson, David C.	164
81. Reeves, John J.	212, 248
79. Rocafort, Rev. L.	210

## ALPHABETICAL LIST OF WITNESSES—Continued.

	PAGE.
10. Skippon, Charles M.	38, 118
50. Stewart, Charles B.	124
83. Sicotte, Louis W.	218
86. Sutton, Richard	223
89. Surratt, Isaac H.	247
73. Tinsley, J. B., Jr.	174
81. Voss, A.	67
39. Williams, T. W.	78
27. Ward, Francis A.	62
21. Wise, John H.	55
24. Watson, William J.	59
43. Williams, Margaret	86
49. Wyvill, E. H.	118
80. Walter, Rev. Jacob A.	212

### WITNESSES FOR THE PROSECUTION RECALLED.

Bates, David H.	39, 171, 173, 174, 174
Fitzpatrick, Miss Honora	119
Gifford, James J.	19, 191
Jackson, Susan Ann.	14
Maddox, James L.	209
Olin, Judge, (in explanation)	167
Pumphrey, James W.	70
Rhodes, Theodore Benjamin	11

### ALPHABETICAL LIST OF WITNESSES FOR THE PROSECUTION, IN REBUTTAL.

69. Archambault, F. X.	338
7. Bigley, Daniel R. P.	270
Biinn, C. H.	288
60. Bliss, Chester T.	320
Bowen, Eugene	303
41. Brausard, Thomas	310
Burnett, Alexis	310
71. Brayton, W. H.	339
76. Browning, J. W.	352
86. Butterfield, A. D.	356
24. Campbell, John A.	299
23. Clark, John H.	299
34. Colclacier, Joseph I.	303
47. Coomes, John W.	313
59. Coryell, Vincent M.	320
16. Crawford, James S.	294
85. Cushman, C.	355
85. Cobb, J. W.	355
Donn, Alphonso	318
4. Drohan, Morris	267
83. Dimock, G. Z.	355
DuBarry, J. R.	390
10. Erskine, John	283
67. Elmer, Wm.	338
82. Eldred, G. B.	355
14. Field, Almeron	286
77. Fithian, Mrs. M. A.	353
81. Fraser, F.	355
87. Fletcher, J. R.	356
29. Garner, Daniel	301
45. Gass, Henry	312
27. Gibson, James	301
3. Glines, Z. B.	264
13. Guppy, Joseph A.	285
74. George, John	339
88. Green, George	357
6. Hambright, George W.	269
64. Harkness, William	324, 329
63. Hatfield, A. G.	324
78. Hatfield, J. E.	353
5. Hepburn, Charles J.	267
Hess, C. V.	312
Hobart, C. T.	291
30. Ives, Charles S.	301
53. Jackson, S.	315
49. Kelleher, James	313
48. Kelly, John F.	313
21. Kelly, John L.	302
36. Kelly, John W.	300
39. Kiduff, Patrick D.	306
Kembel, Charles	311
52. Kimball, Miss Kate	3, 5
50. Kimball, Mrs. S. R.	313
Koontz, G. P.	335
33. Lloyd, William	303

ALPHABETICAL LIST OF WITNESSES—Continued.

	PAGE.
25. Lowe, John E.....	299
70. Logan, T. J.....	338
19. Mahon, Joseph L.....	297
61. Manners, William.....	320
23. Martin, Robert F.....	301
McMillan, L. J. A.....	279
22. McNamara, Michael.....	299
17. McCullough, James T.....	295
57. Merrell, Charles H.....	319
40. Mitchell, Michael.....	310
73. Morean, Morell.....	339
68. McMahan, G. W.....	338
35. Ogden, John.....	303
46. Pyewell, Robert.....	312
12. Perkins, Levi.....	284
79. Parker, W. T.....	253
80. Parker, W. T., Sr.....	353
11. Racicot, Ernest.....	284
29. Reardon, John V.....	297
56. Reefe, John.....	319
44. Reeside, Francis.....	311
62. Reeve, James J.....	320
8. Richards, A. C.....	274, 309
75. Roberts, William.....	349
37. Roberts, John E.....	303
32. Rockett, Edmund.....	302
2. Rodgers, Joseph C.....	265
38. Speight, Francis C.....	304
Stewart, Colonel J. B.....	307
1. Strayer, George W.....	263
65. Stevens, A.....	229
65. Theaker, George W.....	319
21. Titus, Frank.....	298
42. Trechett, Edmond.....	310
72. Tinker, Charles A.....	339
18. Torbett, John.....	296
58. Waldo, George F.....	310
Weichmann, L. J.....	292
15. Wells, Joseph.....	293
9. Westfall, Ezra B.....	275

ALPHABETICAL LIST OF WITNESSES—Continued.

	PAGE.
51. Wheeler, Mrs. K.....	315
66. Wetmore, C. F.....	336

THE WITNESSES RECALLED IN REBUTTAL WERE—

Binn, C. H.....	288
DuBarry, J. N.....	330
Hobart, C. T.....	291
Hess, C. V.....	312
Kemmel, Charles.....	311
Koontz, G. P.....	325
McMillan, L. J. A.....	279
Stewart, J. B.....	307
Weichmann, L. J.....	292

ALPHABETICAL LIST OF WITNESSES FOR DEFENSE IN SUR-REBUTTAL.

2. Bratton, Daniel.....	321
11. Brown, James R.....	306
13. Cantwell, J. B.....	327
3. Cosgrove, Ely.....	321
7. Drennen, Thomas.....	323
10. Ellis, Charles.....	326
17. Ford, S. B.....	323
16. Groome, J. B.....	323
8. Hogg, John R.....	323
1. Howard, George R.....	321
18. Jamar, R. D.....	329
20. Jarvis, Alva.....	358
19. Litzenberg, P.....	329
9. McCullough, Hiram.....	326
15. Miller, John M.....	327
23. Noble, C. M.....	322
4. Partridge, John.....	310
6. Purnell, William G.....	322
21. Pennell, G. B.....	360
22. Penny, Nelson T.....	361
5. Reese, R. G.....	322, 329
14. Scott, D.....	327
12. Tate, Aaron G.....	326

# INDEX TO VOLUME IV.

## TRIAL OF JOHN H. SURRETT—Continued and concluded.

### FOURTH WEEK.

	PAGE.
SATURDAY, JULY 6, 1867. 23d Day.....	1
Reporter, 69, p. 1.....	1
Case for the prosecution closed.....	1
Conversation on recalling witnesses.....	1-4
Also on striking out testimony in relation to Jacob Thompson, and to part of McMillan's testimony of confessions by Surratt, and the Duel letter...	3

### THE DEFENSE.

Opening speech of Mr. BRADLEY, Jr.....	4
--	---

### FIFTH WEEK.

MONDAY, JULY 8, 1867. 24th Day.....	11
<b>TESTIMONY IN DEFENSE.</b>	
Theodore Benjamin Rhodes, a witness for the prosecution, recalled for further cross-examination.....	11
1. John T. Ford.....	12
Susan Ann Jackson, a witness for the prosecution, recalled for further cross-examination.....	14
Reporter, 70, p. 1.....	17
2. Henry Clay Ford.....	17
James J. Gifford, a witness for the prosecution, recalled for further cross-examination.....	19
3. C. V. Hess.....	23
4. Louis J. Carland.....	25
TUESDAY, JULY 9, 1867. 25th Day.....	29
5. J. N. Eastman.....	29
6. James R. Ford.....	30
Discussion of right to interrogate a witness as to his sympathy with the rebellion.....	32
7. Wm. Dixon.....	32
Reporter, 71, p. 1.....	33
8. A. Kiesecker.....	33
9. James Lamb.....	35
Discussion of right to interrogate a witness as to his sympathy with the rebellion.....	35
10. Charles M. Skippon.....	38
11. Wm. A. Boss.....	38
Motion to recall John Lee for further cross-examination.....	38
Motion denied.....	39
James R. Ford, came back to explain.....	39
David H. Bates, a witness for the prosecution, recalled for the defense.....	39
12. Samuel W. Owen.....	40
13. T. G. Clayton.....	41
14. Joshua Lloyd.....	41
15. Charles Kembel.....	42
Proper form of impeaching a witness's character.....	42
16. Frederick Calvert.....	46
Reporter, 72, p. 1.....	49
17. James R. O'Beirne.....	50
18. Samuel K. Brown.....	50
Offer of record of Cleaver's conviction.....	50
WEDNESDAY, JULY 10, 1867. 26th Day.....	51
19. Thomas J. Raybold.....	51
20. Wm. O. Baldwin.....	55
21. John H. Wise.....	55
22. V. B. Munson.....	56
23. Lemuel L. Orme.....	57
24. Wm. J. Watson.....	59
25. Benjamin J. Naylor.....	60
26. George E. Orme.....	61
27. Francis A. Ward.....	62
28. Bernard Henze.....	62
29. Martin Henze.....	63
Reporter, 73, p. 1.....	65
30. George Nachman.....	65
31. Augustus Voss.....	67
32. Thomas Geary.....	67
33. Wm. Horner.....	69
James W. Pumphrey.....	70
34. John C. Cook.....	71
35. John Rainey.....	72
36. Henry Middleton.....	72
37. John Holloran.....	73
38. James Foy.....	75
Proposition to prove that Cleaver expected favor or reward for testifying.....	75-6-7-8
Offer of record of Cleaver's conviction.....	76-7-8

## TRIAL OF JOHN H. SURRETT—Continued.

	PAGE.
THURSDAY, JULY 11, 1867. 27th Day.....	78
39. Thomas W. Williams.....	78
Reporter, 74, p. 1.....	81
40. Jackson Pumphrey.....	81
41. Talmadge A. Lambert.....	82
42. Mrs. Fredericka R. Lambert.....	83
43. Margaret Williams.....	86
Mrs. Lambert, recalled.....	87
44. John T. Holahan.....	88
Reporter, 75, p. 1.....	97
45. John A. W. Clarvoe.....	100
46. Mrs. Eliza Holahan.....	101
47. Eliza Hawkins.....	104
FRIDAY, JULY 12, 1867. 28th Day.....	106
John A. W. Clarvoe continued.....	106
Reporter, 76, p. 1.....	113
48. James A. McDewitt.....	115
C. M. Skippon recalled.....	118
49. E. H. Wyvill.....	118
Miss Honora Fitzpatrick, a witness for the prosecution, recalled for the defense.....	119
50. Charles B. Stewart.....	124
51. John Cass.....	125
52. Frank H. Atkinson.....	128
Reporter, 77, p. 1.....	1 9
53. Joseph Carroll.....	129
SATURDAY, JULY 13, 1867. 29th Day.....	133
Joseph Carroll—continued.....	133
54. Miss Olivia Jenkins.....	137
55. David Barry.....	141
56. Bennett F. Gwynn.....	145
Reporter, 78, p. 1.....	145
57. J. Z. Jenkins.....	146
58. Bernard J. Early.....	146
59. Edward A. Murphy.....	147
60. William Failing.....	147
Admissibility of Webster-House register, Canandaigua.....	148, 150-154
61. Frank O. Chamberlain.....	149
62. Joseph H. Bradley, Jr.....	150
63. Joseph H. Bradley, Sr.....	150
<b>SIXTH WEEK.</b>	
MONDAY, JULY 15, 1867. 30th Day.....	154
Decision by the court on the admissibility of Canandaigua-Hotel register.....	154
William Failing.....	155
64. Joseph N. DuBarry.....	157
65. Francis E. Fitch.....	159
Reporter, 79, p. 1.....	161
66. Patrick McDonough.....	161
67. Henry A. Cook.....	161
68. John O'Donnell.....	162
69. Edwin G. Lee.....	162
Admissibility of General Lee's testimony; mission of Surratt to Elmira; written statement of facts offered.....	162, 163
70. David C. Robinson.....	165
Will the attachment of the court extend beyond the District of Columbia; subpoenaing by telegraph.....	165, 166
71. August Bachus.....	166
72. Mrs. Annie Bachus.....	167
Judge Olin in explanation.....	167
TUESDAY, JULY 16, 1867. 31st Day.....	168
Frank O. Chamberlain.....	169
David H. Bates, a witness for the prosecution, called for the defense.....	171
73. J. B. Tinsley, Jr.....	174
David H. Bates.....	174
74. Henry Hall Brogden.....	174
David H. Bates.....	174
75. Francis P. Burke.....	174
Harry Hall Brogden.....	175
Offer of McMillan's affidavit in Liverpool.....	175
76. Stephen F. Cameron.....	178
Reporter, No. 80, p. 1.....	177
Louis J. Carland.....	187
James J. Gifford.....	191
Reporter, 81, p. 1.....	193
77. John Matthews.....	193

TRIAL OF JOHN H. SURRETT—Continued.

	Page.
WEDNESDAY, JULY 17, 1867. 32d Day.....	195
Offer to prove contents of paper signed by alleged conspirators to kill President Lincoln.....	194-200
John Matthews.....	200
78. Thomas T. Eckert.....	202
John A. W. Clarvoe.....	207
John T. Ford.....	207
Reporter, 82, p. 1.....	209
James L. Maddox recalled as a witness for the defense.....	209
THURSDAY, JULY 18, 1867. 33d Day.....	210
79. Rev. Louis Roccoffort.....	210
80. Rev. Jacob A. Walter.....	212
81. John J. Reeves.....	212
82. Sarsfield Barry Nagle.....	215
83. Louis W. Sicotte.....	218
Colonel O'Beirne sworn as interpreter.....	218
84. Ludger LaBelle.....	220
85. Joseph DuTilly.....	222
Memorandum of Booth's arrivals at and departures from the National Hotel.....	224
FRIDAY, JULY 19, 1867. 34th Day.....	224
Time-tables of New York Central Railroad for March and April.....	224
Canandaigua-Hotel register.....	225
Motion to strike out testimony.....	226
Reporter, 83, p. 1.....	225
86. Richard Sutton.....	228
What constitutes an expert.....	229
SATURDAY, JULY 20, 1867. 35th Day.....	230
87. Augustus Bissell.....	230
Sickness of Mr. Schneider, a juror.....	233
Reporter, 84, p. 1.....	241
88. John C. Bartlett.....	245
Mr. Bradley's statement in regard to a newspaper charge of his attempting to bribe a witness.....	246
89. Isaac H. Surratt.....	247
John J. Reeves.....	248

SEVENTH WEEK.

MONDAY, JULY 22, 1867. 36th Day.....	248
90. Charles Boucher.....	249
Reporter, 85, p. 1.....	257
Testimony closed for defense.....	261
Motion to strike out testimony of the prosecution.....	261
Canandaigua-Hotel register.....	262

PROSECUTION IN REBUTTAL.

1. R. George W. Strayer.....	263
2. R. Joseph C. Rogers.....	265
3. R. Z. B. Glines.....	265
4. R. Morris Drohan.....	267
5. R. Charles J. Hopburn.....	267
6. R. George W. Hambright.....	269
7. R. David R. P. Bigley.....	270
Reporter, 86, p. 1.....	273
8. R. Almiran C. Richards.....	274
TUESDAY, JULY 23, 1867. 37th Day.....	274
Offer to put in evidence a leaf from Booth's diary [Diary. <i>The Reporter</i> , Vol. III, p. 263. Vol. IV, p. 197, 452.].....	274
9. R. Ezra B. Westfall.....	275
L. J. A. McMillan.....	279
10. R. John Erskine.....	283
11. R. Ernest Racicot.....	284
12. R. Levi A. Perkins.....	284
13. R. Joseph W. Guppy.....	285
14. R. Almeron Field.....	286
Charles H. Blinn.....	288
Reporter, 87, p. 1.....	289
Carroll T. Hobart.....	291
Louis J. Weichmann.....	292
15. R. Joseph Wells.....	293
16. R. James S. Crawford.....	294
17. R. James T. McCullough.....	295
18. R. John Torbett.....	296
19. R. Joseph L. Mahan.....	297
20. R. John V. Reardon.....	297
21. R. Frank Titus.....	298
22. R. Michael McNamara.....	299
23. R. John H. Clark.....	299
24. R. John A. Campbell.....	299
25. R. John E. Lowe.....	299
26. R. John W. Kelly.....	300
27. R. James Gibson.....	301
28. R. Robert F. Martin.....	301
29. R. Daniel Garner.....	301
30. R. Reuben S. Ives.....	301
31. R. John L. Kelly.....	302
32. R. Edmund Rockett.....	302
33. R. William Lloyd.....	303
34. R. Joseph I. Colclaciar.....	303

TRIAL OF JOHN H. SURRETT—Continued.

	Page.
35. R. John Ogden.....	303
36. R. Eugene Bowen.....	303
37. R. John E. Roberts.....	303
WEDNESDAY, JULY 24, 1867. 38th Day.....	304
38. R. Francis C. Speight.....	304
Reporter, 88, p. 1.....	305
39. R. Patrick D. Killduff.....	306
Joseph B. Stewart.....	307
Almiran C. Richards.....	309
40. R. Michael Mitchell.....	310
41. R. Thomas Brausard.....	310
42. R. Edmond Trechett.....	310
43. R. Alexis Burnett.....	310
44. R. Francis Reeside.....	311
Charles Kembel, a witness for the defense, recalled.....	311
45. R. Henry Gass.....	313
46. R. Robert Pyewell.....	312
C. V. Hess, a witness for the defense, recalled.....	312
47. R. John W. Coomes.....	313
48. R. John F. Kelly.....	313
49. R. James Kelleher.....	313
50. R. Mrs. Sarah R. Kimball.....	313
Discussion on the admissibility of testimony to sustain character that has not been impeached.....	314
51. R. Mrs. Keziah Wheeler.....	315
52. R. Miss Kece Kimball.....	315
53. R. Sam. Jackson.....	315
54. R. Alphonso Dona.....	318
55. R. George W. Theaker.....	319
56. R. John Reece.....	319
57. R. Charles H. Merrell.....	319
58. R. George F. Waldo.....	319
59. R. Vincent M. Coyel.....	320
60. R. Chester T. Bliss.....	320
61. R. William Manners.....	320
62. R. James J. Reeve.....	320
Reporter, 89, p. 1.....	321

TESTIMONY IN SUR-REBUTTAL.

1. S-R. George R. Howard.....	321
2. S-R. Daniel Bratton.....	321
3. S-R. Eli Cosgrove.....	321
4. S-R. John Partridge.....	322
5. S-R. R. G. Reese.....	322-329
6. S-R. Wm. G. Purnell.....	322
7. S-R. Thomas Drennen.....	323
8. S-R. John R. Hogg.....	323
63. R. Alfred G. Hatfield.....	324
64. R. Wm. Harkness.....	324
9. S-R. Hiram McCullough.....	326
10. S-R. Charles Ellis.....	326
11. S-R. James R. Brown.....	326
12. S-R. Aaron G. Tate.....	326
13. S-R. Joseph B. Cantwell.....	327
14. S-R. David Scott.....	327
15. S-R. John M. Miller.....	327
16. S-R. James B. Groome.....	328
17. S-R. Samuel B. Ford.....	328
18. S-R. Reuben D. Jamor.....	329
R. G. Reese, recalled.....	329
19. S-R. Perry Litzenberg.....	329

THURSDAY, JULY 25, 1867. 39th Day.....

65. R. Artemus Stevens.....	329
William Harkness, in explanation.....	329
Joseph N. DuBarry, a witness for the prosecution, recalled.....	330
R. George S. Koontz, a witness for the prosecution, recalled in rebuttal.....	335
66. R. Charles F. Wetmore.....	336
Reporter, 90, p. 1.....	337
67. R. William Elmer.....	338
68. R. George W. McMahon.....	338
69. R. Francis X. Archambault.....	338
70. R. T. J. Logan.....	338
71. R. William H. Brayton.....	339
72. R. Charles A. Tinker.....	339
73. R. Morell Morean.....	339
74. R. John George.....	339
Argument on the admissibility of testimony in contradiction of <i>alibi</i> , which is testimony-in-chief; can confirmation of the original case be given in reply.....	340
Proposition to close the case; order of the arguments, &c.....	347
75. R. William Roberts.....	349
76. R. John W. Browning.....	352
Reporter, 91, p. 1.....	353
77. R. Mrs. Martha A. Fithian.....	353
78. R. John E. Hatfield.....	353
79. R. William T. Parker.....	353
80. R. William T. Parker, Sr.....	353

FRIDAY, JULY 26, 1867. 40th Day.....

Decision of the court on the point raised yesterday on a motion to strike out testimony in rebuttal, which was not responsive to the defense, &c.....	354
81. R. Franklin Frazer.....	355
82. R. G. B. Eldred.....	355
83. R. Gordon Z. Dimock.....	355

## TRIAL OF JOHN H. SURRETT—Continued.

	PAGE.
84. R. C. Cushman.....	355
85. R. Dr. J. W. Cobb.....	355
86. R. A. D. Butterfield.....	356
87. R. J. R. Fletcher.....	356
Statutes at Large offered in evidence.....	356
General Order of the War Department respecting claims for rewards and withdrawing the offer of rewards.....	357
88. R. George Green.....	357
20. S. R. Alva Jarvis.....	358
21. S. R. G. B. Pennell.....	360
22. S. R. Nelson T. Penny.....	361
23. S. R. Dr. C. M. Noble.....	362
Argument on motion to strike out evidence.....	365
Reporter, 92, p. 1.....	369
SATURDAY, JULY 27, 1867. 41st Day.....	375
Discussion on the position of the case.....	375
Decision of the court on the motion to strike out evi- dence—signing of the exceptions.....	377
The order of the argument—the rights of counsel.....	378-380
Close of the testimony on both sides.....	381
Reporter, 93, p. 1.....	381-424
Speech to the jury of the Hon. E. C. Carrington, District Attorney, for the prosecution.....	381-424
MONDAY, JULY 29, 1867. 42d Day.....	396
Mr. Carrington's speech—continued.....	401
Reporter, 94, p. 1.....	401
TUESDAY, JULY 30, 1867. 43d Day.....	412
Mr. Carrington's speech, concluded.....	421
Mr. Pierrepont's legal positions stated.....	416
Reporter, 95, p. 1.....	416
WEDNESDAY, JULY 31, 1867. 44th Day.....	425
Reporter, 96, p. 1.....	425
Speech to the jury of R. T. Merrick, Esq., for the de- fense.....	425-455

## TRIAL OF JOHN H. SURRETT—Continued.

	PAGE.
THURSDAY, AUGUST 1, 1867. 45th Day.....	438
Mr. Merrick's speech, continued and concluded.....	441
Reporter, 97, p. 1.....	457
Reporter, 98, p. 1.....	457
FRIDAY, AUGUST 2, 1867. 46th Day.....	457
Speech of Joseph H. Bradley, Sr., Esq., to the jury, for the defense.....	457-474
SATURDAY, AUGUST 3, 1867. 47th Day.....	475
Reporter, 99, p. 1.....	475
Speech to the jury of the Hon. Edwardes Pierrepont for the prosecution.....	475-543
Reporter, 100, p. 1.....	491
MONDAY, AUGUST 5, 1867. 48th Day.....	496
Mr. Pierrepont's speech continued.....	507
Reporter, 101, p. 1.....	507
TUESDAY, AUGUST 6, 1867. 49th Day.....	515
Mr. Pierrepont's speech—continued and concluded.....	523
Reporter, 102, p. 1.....	539
Reporter, 103, p. 1.....	539
Alleged misquotation of testimony—arrangement of the mode to correct.....	544
WEDNESDAY, AUGUST 7, 1867. 50th Day.....	544
Alleged misquotation of testimony—application to cor- rect.....	544
Nol. pros. in Dye's case.....	544
Charge to the jury of Judge Fisher.....	546
The jury retire.....	552
SATURDAY, AUGUST 10, 1867. 53d Day.....	552
Jury dismissed, being unable to agree.....	552
Mr. Bradley stricken from the rolls.....	552