

TRIAL
OF
JANE M. SWETT,
OF
KENNEBUNK,
FOR HOMICIDE.

S. J. C., JAN. TERM, 1867, HON. R. P. TAPLEY, J., PRESIDING.

FOR THE STATE:

Hon. C. W. Goddard, Acting Attorney General,
I. S. Kimball, Esq., County Attorney.

COUNSEL FOR THE PRISONER:

T. H. Hubbard, Esq., Hamden Fairfield, Esq.

REPORTED FOR THE UNION AND JOURNAL BY THE EDITOR, J. E. BUTLER, ATTORNEY-AT-LAW.

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ERRATA.

It reads in Dr. Warren's testimony, on page 16, that morphine is cumulative. It should read, is not cumulative.

In Mr. Hubbard's argument, the last two lines of a quotation, at the bottom of the 35th page, should read:

"Souls to souls can never teach
What unto themselves was taught."

INTRODUCTION.

For the first time in the history of York county, its citizens, and the public generally, have before them a verbatim report of the evidence, arguments of counsel, and charge of the judge presiding, in a capital trial within the county. The late Dr. Charles M. Swett, in the adjoining town of Kennebunk, died on the 23d of September last, at his own house, under circumstances so suspicious that a coroner's jury presented the widow of Dr. Swett as the murderess of her husband. It was known that the Doctor and his wife had not lived together on good terms for several years, but when she was charged with having poisoned him, the whole community was startled and shocked.

Although indicted at the September term of the S. J. Court, Mrs. Swett's trial did not take place until the January term, at Saco. As the time for her trial drew near, the interest became more and more intense—Dr. Swett and wife having been widely known—and many were the rumors afloat as to the position the defense would take, since Mrs. Swett had from the first declared her innocence. One circumstance conspired to strengthen the extraordinary interest in the case felt by the public, and helped to give it prominence—that poison was the means of the victim's death,—a weapon against which all are so utterly defenceless.

This method of causing death has seemed always to have been a favorite one in the female mind. It was extensively used by the Greeks and Romans 200 years B. C., who, however, seemed not to have known of mineral poisons, as they used only vegetable extracts. At one time one hundred and fifty ladies of the first families of Rome were punished for dealing in secret poisons. But it was reserved for Italy to be distinguished as the seat of the greatest proficiency in the art of secret poisoning. In the XVth century, Cesare Borgia, the Italian prelate and soldier, poisoned the Turkish prince Zizim, Ferrara, the most influential dignitary in the papal court, his brother Giovanni Borgia, a cardinal, and attempted a plan to poison four of the wealthiest cardinals. By mistake he poisoned only Pope Alexander VI. In 1659, the fact that very many young married ladies became widows, excited official suspicion, and a searching inquiry revealed the secret that there existed a society of married women, banded together to get rid of their husbands whenever they became disagreeable to them, or their fancy sought new conquests. They were furnished their secret poisons by their president, an old Sicilian woman whom the diabolical Taffania had taught the art at Palermo. She was hung. Taffania was the most celebrated of all secret poisoners. She confessed that she had taken by poison the lives of upwards of 600 persons! She gave away to discontented wives her medicines in small glass vials labeled *Mana of St. Nicholas of Bari*, embellishing the label with a saintly image. And it is to be feared that the art of falsely labeling pernicious and even deadly acts and substances with saintly pretensions, did not die with her when she was strangled.

But the art was not confined to Italy. In 1670, France became greatly excited upon the discovery that it was practiced by the Marchioness de Brinvillier, a young and beautiful female, who poisoned her father and brother, and, casting aside the allurements of wealthy life, assumed the garb

of a man, and distributed food to the poor and medicines to the inmates of hospitals, whom she also nursed, solely to become proficient in the art of secretly taking life, and she abundantly succeeded. She was beheaded, and yet the practice did not cease either in high or low life. At last a special court was organized, called the *Chambre de poison*, to especially apprehend and punish poisoners. Two extensive female traffickers, were apprehended and burned alive. Without being tedious by citing further cases, a later period may be named. Taylor in his *Medical Jurisprudence* states that in this XIXth century, from Parliamentary returns it appears that in one year, in Great Britain, there were twelve hundred and thirteen trials involving murder and manslaughter either perpetrated or attempted, from poisoning and wounds alone. In two years there were five hundred and forty-one deaths from poison in England and Wales alone, and this is exclusive of attempts at poisoning not followed by death.

In these more modern days, however, this method of murder is comparatively rare; at least its developements are. And society may congratulate itself that this approach to the taking of human life is closing up by that quality within us all, which so greatly abhors the commission of a crime so revolting.

Considering the means by which the prisoner encompassed the life of her husband, it is not to be wondered that intense interest was manifested in this trial. She was not only fortunate in the unusually intelligent and upright men drawn upon the jury, but in the selection of her counsel, who were assigned her by the Court. Throughout the trial she manifested much concern, and watched the movements of her counsel closely, at times being affected to tears, and again her countenance would brighten whenever she thought she had discovered discrepancies in the testimony for the government. The arguments, both of Mr. Hubbard and Mr. Goddard, reflect great credit upon their abilities. They are phonographically reported in full, and the greatest care has been exercised to render the report of the whole trial accurate and reliable.

EDITOR.

BIDDEFORD, 1867.

INTRODUCTION

INDICTMENT AND EVIDENCE.

INDICTMENT.

STATE OF MAINE.

YORK, ss.

At the Supreme Judicial Court, begun and holden at Saco, within and for the County of York, on the first Tuesday of January, in the year of our Lord one thousand eight hundred and sixty-seven.

The Jurors for said State, upon their oaths present, that Jane M. Swett, late of Kennebunk, in the said County of York, laborer, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and sixty-six, at Kennebunk aforesaid, in the County of York, with force and arms, feloniously, willfully, and of her malice aforethought, did privately and subtilly, with a gill of whiskey mingle, put into and mix a large quantity of morphine, being a deadly poison, in the dwelling house of one Charles M. Swett, situate in Kennebunk aforesaid, the said Jane M. Swett, then and there well knowing the said morphine to be a deadly poison; and the said Jane M. Swett thereafterwards, to wit, on the same twenty-third day of September, in the year of our Lord eighteen hundred and sixty-six, put the said whiskey and caused it to be so put as aforesaid mingled and mixed with said deadly poison aforesaid, in a glass bottle of said Charles M. Swett, and privately and secretly caused said glass bottle, containing said whiskey, mingled and mixed with said deadly poison as aforesaid, in the stable of the said Charles M. Swett, there situated near the dwelling house aforesaid of the said Charles M. Swett, in the same place in said stable from whence it had on said twenty-third day of said September been taken by order of the said Jane M. Swett, for the purpose and with evil and felonious intent of the said Jane M. Swett, there and then to mingle and mix the said liquor, said bottle then and there contained, with the deadly poison aforesaid, the said Jane M. Swett then and there feloniously, willfully, and of her malice aforethought, intending to put, place and leave the said bottle then and there, containing said deadly poison, mingled and mixed as aforesaid, in said stable, so that the said Charles M. Swett might then and there drink and swallow down into his stomach a great quantity of the mingled and mixed whiskey, so prepared as aforesaid by the said Jane M. Swett, and the said Charles M. Swett thereafterwards, at said Kennebunk, to wit:

on the same twenty-third day of September, in the same year of our Lord, did then and there take, drink and swallow down into his, the said Charles M. Swett's stomach and body a great quantity of said whiskey, taking it as aforesaid from said glass bottle, with which said whiskey, the said morphine had by said Jane M. Swett been mingled and mixed as aforesaid, the said Charles M. Swett, not then and there knowing that any morphine or any poison was mingled and mixed in said whiskey in the bottle aforesaid, and the said Charles M. Swett, by means of taking, drinking and swallowing down into his stomach the said whiskey, mingled and mixed as aforesaid with morphine, then and there instantly became sick and distempered in his body, head and limbs, of the poison aforesaid, so by him taken, swallowed down and drank as aforesaid, and of the sickness aforesaid, occasioned thereby, on the same day and year aforesaid, at Kennebunk aforesaid, in the county aforesaid, the said Charles M. Swett did then and there languish, and languishing did live from the time he, said Charles M. Swett, so took, drank and swallowed down into his stomach the said morphine and mingled whiskey, and morphine being deadly poison, until fifteen minutes after the hour of twelve o'clock, noon, of the same twenty-third day of September, in the year of our Lord eighteen hundred and sixty-six, on which said day, hour and year of our Lord, at Kennebunk aforesaid, in the County aforesaid, the said Charles M. Swett, of the poison aforesaid and of the sickness and distemper occasioned by said poison, the said Charles M. Swett, then and there languishing, did die.

And so the Jurors aforesaid, upon their oaths aforesaid, do say that the said Jane M. Swett, in manner and form aforesaid, the said Charles M. Swett, feloniously and willfully, and of her malice aforethought, did then and there poison, kill and murder, against the peace of said State and contrary to the form of the statute in such case made and provided. And the Jurors aforesaid, upon their oaths aforesaid, do further present that Jane M. Swett aforesaid, in the County aforesaid, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and sixty-six, at Kennebunk aforesaid, in the County of York aforesaid, did feloniously, willfully, and of her malice aforethought, kill and murder one Charles M. Swett, late of said Kennebunk, against the peace of said State, and contrary to the form of the statute in such case made and provided.

SAMUEL K. ROBERTS, FOREMAN.

A true Bill.

INCREASE S. KIMBALL,

The prisoner having plead "not guilty" the following Jury were empannelled:

JOSEPH G. DEERING, Saco, *Foreman*, Haven A. Butler, Stephen Merrill, Richard Stimpson, Benjamin F. Day, Moses E. Clark, Brackett Hall, Gideon Waldron, Charles Bennett, Edward Wells, John Williams, B. R. Frisbee.

INCREASE S. KIMBALL, Esq., Attorney for the State for the County of York, opened the case in behalf of the Government.

MAY IT PLEASE THE COURT:

Gentlemen of the Jury.—Murder is the unlawful killing of a human being, with malice aforethought, either express or implied.

When murder is committed with express malice aforethought, or in perpetrating or attempting to perpetrate, a crime punishable by death, imprisonment for life or for an unlimited term of years, it shall be deemed murder in the first degree and punished with death.

When murder is committed otherwise than I have stated, it is pronounced by the law murder in the second degree. Such, Gentlemen, is the law of the land, and from the indictment read to you, you have already learned that it is for committing this crime of murder that the prisoner at the bar, Jane M. Swett, stands arraigned.

The facts which we expect to prove to you on the part of the State, and upon which we rely to support the indictment, are briefly these:

The Prisoner was the wife of Dr. Charles M. Swett, who died at Kennebunk on the 23d of September last. As his wife, she had for years made his home anything but a happy one, and had on many occasions attempted his life. For some reason or other she hated her husband, and frequently fastened him out of his house so that he could not gain admission when he was away attending to sick patients in the night; and then at other times she would assault him with billets of wood, claiming at these times that she desired to reform her husband and not to injure him, while on other occasions she threatened to take his life, and during the summer preceding his death, said to some of her acquaintances that she would take her husband's life before the winter was out if he didn't do as she liked; and to another person she said that when the Dr. died he would die an awful death—that she would make him die an awful death—would not live with him another winter. She had made several attempts upon his life by administering poison, put the poison in his food, and then threw away what was left after he had eaten of it. These attempts and threats upon the Dr.'s life show what is termed in law malice afore-

thought, but if by such circumstances as these we should fail to convince you that the death of Dr. Swett was premeditated by her on the 23d of September, then we say, the heedless, reckless manner in which she on that day administered the fatal dose of poison renders her guilty of murder in the first degree, because of her utter disregard of consequences, and of human life.

The facts attending the death of Dr. Swett are these: On Saturday before his death on Sunday, Dr. Swett was at and about his home most of the day, and on the evening of that day he and the prisoner had a violent quarrel. They had not slept together in the same room for sometime previous to this. On Sunday morning about 4 o'clock Dr. Swett went to his stable and soon after returns to the house again, when the prisoner supposing that he had liquor there concealed, told a little girl whom they had adopted to go to the stable and find her father's bottle if she could and bring it to her. The little girl did so, and soon after took the bottle containing about a gill of whiskey, to the prisoner, who put into it a white powder done up in a paper as physicians do up powders, and put it in the bottle, shook it up, and gave it to the little girl, telling her to put it where she took it from. Sometime afterwards Dr. Swett went to the stable and drank out of the bottle and broke and threw the bottle away. In less than half an hour after this Dr. Swett was taken violently ill, had a spasm, and soon went into an apparent sleep, from which no attempts that were made could rouse him. The prisoner tried to wake him, but could not, and she said to those who were called in by her daughter, that if the Dr. died she had killed him, for she had given him forty grains of morphine, and she should soon die too, for she had taken the same dose herself. Dr. Richards who came in about an hour after the morphine was administered, thought upon his arrival that Dr. Swett was dead drunk, and so thought Mr. Wise and others who were in attendance. It will appear in evidence, gentlemen, that the effects of morphine when taken in overdoses is similar to that of alcohol. As soon as it was known that morphine had been given, Dr. Richards proceeded to apply the proper remedies, but failed to do any good, and a few hours after Dr. Swett died.

The prisoner, while these efforts were being made to save the life of her husband, was also taken with the same symptoms, and was taken to her chamber, where she vomited up the morphine she had taken, and thus was her life saved. It will be proved to you gentlemen, that the prisoner wanted to get what property her husband had, that she did get a part of it, and then wanted to kill him. Her conduct had driven him to drink, and because he drank she would beat him when he came home, and on one occasion tried to

get to him to kill him with an axe, and was only prevented by her son-in-law.

The threats and attempts upon Dr. Swett's life so persistently made by the prisoner, are sufficient evidence of malice, which is the essential element of the crime with which she now stands charged. Frequently she had threatened his life, and frequently had she attempted it by poison, and he died in consequence of a poison administered by her. Such, gentlemen, are in brief the facts upon which the government will rest the case against the prisoner.

EVIDENCE.

SECOND DAY'S PROCEEDINGS.

SARAH J. SWETT, *sworn*.—I was 14 years old the 20th day of last September; have lived in Dr. Swett's family five or six years; was present the day he died, which was on the 23d day of September. He died 12 o'clock 15 minutes—I was present. Saw him that morning at about 8 o'clock. He was going to the stable; this was before I saw him in the sitting room, about 6 1-2 or 7 o'clock in the morning. Mother was up stairs abed. She got up that morning about 7 o'clock; told me to go out to the barn and see where he was going, as he was going to the stable. He went into the stable and was in there about five minute, then came into the sitting room and lay down upon the sofa. She told me to go out to the barn and find his bottle if I could and bring the bottle to her. I went and did as directed; found the bottle in the stable under some straw, carried it to mother. About a gill of whiskey was in the bottle; it was a pint bottle. Mother took it and looked into it and then told me to get her brown dress, lying on the bed, and then took a brown paper from it and emptied its contents into the bottle and shook the bottle. I did not see the contents of the paper. She then told me to carry the bottle to the stable and put it where I found it. I did so. She said nothing else. I came into the house and went up stairs. About half-past seven father went out to the barn, and mother told me to watch him; sent me into the clothes room to watch him. I saw him go into the horse's stable, and was there about three minutes. It was the same stable where I put the bottle. He brought the bottle out and broke it with the barn shovel, and threw it out of the window. I could not see whether there was any liquor. He came into the house, lit his pipe, sat down in the rocking chair;

sat in the kitchen about ten minutes, then went into the sitting room and lay down upon the sofa. Spoke to Laura, calling her by name, but she was unable to understand what he said. Mother came down stairs where he was and sent me after some cold water. I got some and she bathed his head with it. She tried to make him vomit by giving him some tobacco tea, what she could get into him. He did not speak. Laura was meanwhile sitting on the sofa with father. Laura told me to go after the Doctor. Went after Dr. Richards; he came about five minutes before I got back, because he rode down with Mr. Thompson. When I left to go after the Doctor no one was there excepting Laura and her husband; when I got back Geo-Wildes was present and the Dr. The Dr. I think gave father some medicine, and got a stomach pump. Mother was in the room when I got back. Do not remember whether the Doctor remained until father died, but think he did. Before I went after the Doctor, Laura and I were in the sitting room. Mother said, if father died, she had killed him, and added, "May God forgive me, for I did not intend it."

She said she only gave it to him to vomit him. They had previously had quarrels, and one was on Saturday night; do not remember cause. Wednesday previous father was in Biddeford; got home about eight o'clock. When he got back lawyer Fairfield and another man were present; believe the other man's name was Fairfield. They stopped about half an hour, talking with father in his office; they came down; wanted father to try a case the next day. Mother went to the door when they went away. Lawyer Fairfield asked mother if she thought father was fit to try a case the next day; she replied, she would make him all right. That evening, while he was in his office, she went to his trunk to get some morphine, but found none; she then went into the bedroom and got a little white paper, and took a pinch of white powder and put it in some butter, mixing it with a knife; put the butter on the table for his supper, with white bread. Father came down stairs and mother called him to supper. He used a mite of butter on his bread, and the remainder she threw away; the piece was about half as big as an egg. He was sick that night. Do not remember that she ever mixed poison in a cup and gave him. Was present when they quarreled, but do not exactly remember time—think it was about a week previous. Have heard mother threaten his life, saying she would not live with him

through the winter, for she would kill him, or do something desperate, and then kill herself. I believe she said so to Laura the Saturday previous to his death Sunday. "She would make a change some way, even if she had to go to State prison." She said she would deed me the property if I would go for her. This was in jail. I told her I should tell the truth. She replied, she wanted me to tell the truth, but wanted me to go for her as much as I could.

CROSS EXAMINED.—Father slept on sofa on Saturday forenoon; on Saturday 2 P. M., was at depot; went to village in the forenoon. This conversation with Laura was in the afternoon. I was not present; Laura told me. Have been living with Laura since father died. Saturday night I slept with mother. I got up about 7 o'clock Sunday morning. Got up about 4 o'clock and looked out of window and saw father go to the stable again, saw him go out three times before I got the bottle—mother said five times. Told mother he did not go to feed the horse because it was too early. Could see what stall he went into, from my window. I did not see him drink in the barn. I have found the bottle which he had broken and thrown away before this. Remember once, not long before his death, father came home late and he got hung by his leg in stable; mother went out and freed him. I found his pocket book. On the Sunday morning he died I was not in the room all the time after the Dr. came. Mother was taken sick during the forenoon. She was in sitting room and sat down in rocking chair, and I think said she had taken 40 grains morphine. Mr. Wilds and the Dr. were there. She fell down, was taken up and said she wanted to go up stairs; she was laid on the bed and soon she vomited a little. She sent me about 5 o'clock to get a white paper that was in her pocket: I got it and unfolded it; a white powder was in it; I threw it out of the window and handed her the folded paper. She said she had spilled it on the bed. She did not tell me to throw it out of the window. After she got well I told of it. She said if she had got that she should not have been alive now. Sunday afternoon I was at home; several persons were present. Saturday evening previous, when they quarreled, I was with them in the house. Cannot remember anything that was said between them. Mother paints pictures sometimes. Father was intoxicated when Mr. Fairfield came on Wednesday. Father called me down stairs that morning. He called me

"Paddy," "d—d old flat-foot;" (he had called mother so often—always did when he was drunk.) During the week before he died as I was combing mother's hair, father came along and patting mother's head, said, "cheer up Jenny, we will be happy, hereafter, and go to Kennebunkport to live."

A short time previous, perhaps a month, father said he was going to Alfred; he started sober; the next night about 11 o'clock the horse came home, and mother went out and said father was not there.—She came and awoke me, and wanted me to go over to Mr. Geo. Wildes'. I could not make them hear. She then came over and we then made them hear. She wished Mr. Wildes to harness the horse so she could go after him. Mr. W. said she would be killed if she went after him alone, it was so dark. Mother said perhaps he was lying beside the road with some of his limbs broken.

Mother and I went after Mr. Goodwin (Wildes did not harness the horse.) Mr. G. said he would come. When we went to the door we found it was father. He was intoxicated; hat off, and cushion in his hand.

Father was at the village on Saturday A. M., went up to the village and saw him, was in at Trot Goodwin's a drunken place; came in to tea about five o'clock. One hour after tea went to the village again; came home about 8 1-2 or 9 o'clock, and went to the village again about half past nine, and came back late; quarreled after he came home from village first time. Have heard her threaten his life many times, saying that "she meant to kill him when he died." He was usually drunk. He used to reply "he would kill her first." Have known him to clutch her throat at the wash tub. Don't know who made the tobacco tea. Father used to take morphine. Used to hide from father when he came home, afraid he would strike me. Was present when Bion E. Tripp was there. He was there a week or ten days. Mother and Laura wanted him to stop there to protect them from father. Laura and Mr. Tripp once made a bed for father in the stable when he was drunk; she said she would fix him for his case. Don't know as there was ratsbane in the office.

DIRECT EXAMINATION RESUMED—I had a conversation with counsel for prisoner alone since I was here before Grand Jury. Mother said that father got hung up in the stable; she said she helped him down. She said "she would kill him when he died," break his limbs or cripple him for life. On

Wednesday night when she prepared the bottle, she got the morphine out of his chest. After that she went to the chest and got all the morphine there was, put it in a white paper and and put the bottle back. Went up to jail and stopped two or three weeks with mother; been up once since. Mother wanted Owen and wife and self to come up. About a month ago. This time mother mentioned about the deed. she wanted me to stay without letting Mr. Hubbard or the others know that she wanted me. She wanted to whisper to me and said she would deed me the property if I would stay with her. It was the first visit when she wanted me to "go for her." She said she wanted me to go for her as much as I could. I told her I should not lie; she said she didn't want me to lie. They have quarreled ever since I have been there, about five or six years. Quarreled mostly when he was drunk, but not always. Am only an adopted daughter.

CROSS EXAMINED.—She told me he got injured in the barn, in his presence.

DR. LEMUEL RICHARDS, *sworn*.—Reside at Kennebunk. Was acquainted with Dr. Swett more or less for 7 years. Was called to go to his house on the 23d of last September, on Sabbath day, a few minutes after 9 o'clock in the forenoon. Found him in a condition comatose. His wife and daughter Laura were present. Told those present that he was drunk—that was my first impression. Mrs. Swett said she had given him morphine and had taken some herself. She said she had given the morphine to vomit him and to give him a distaste for liquor. Morphine does not produce nausea at first, it may secondary. We then attempted to use the stomach pump, and to introduce strong coffee into his stomach; did not succeed. He died at 12:15. He remained perfectly unconscious from the time I first saw him until he died. She said she gave him what morphine she could take up between thumb and finger. Such a quantity would probably have a fatal effect. I was present at a post mortem examination. Drs. Ross, Morton, Wescott and Gray, were present; autopsy 50 hours after decease. Most marked condition of the brain was engorgement of the blood vessels of the brain: such a condition of things we should expect from an over dose of morphine. Morphine is absorbed very rapidly as a general thing. A large dose of morphine in the stomach would generally be absorbed in the course of two hours for a living person with a healthy stomach. Examined pulse; beat 70 minutes. In the course of half an hour the pulse fell almost at once.

An ordinary dose of morphine is all the way from 1-8th to 2 grains. Morphine is

administered generally to allay nervous irritation and produce quiet. In large quantities morphine is a deadly poison. Ordinarily a fatal dose would be 6 grains. From what I observed before and after his death, I should say he died from an over-dose of Morphine. An over-dose of morphine would cause all the appearance I saw in the person of Mr. Swett before and after death.

CROSS EXAMINED.—Patient perspired very freely about the head. Lungs were healthy. During sickness, pallid about the face. There were dark spots on his neck after death. Condition of bowels and liver healthy. Sent stomach to Prof. Brackett. Persons may habituate themselves to take large quantities of morphine without serious injury. Morphine was indicated by sudden prostration, also very deep, heavy breathing. This would show itself in alcoholic poison, but not to so great an extent. An over dose of alcohol would produce a strong resemblance to an over-dose of morphine before death, but I think not to the extent we found in this case after death.

CYRUS R. BRACKETT, *sworn*.—Reside in Brunswick; am teacher of Chemistry and Natural History in Bowdoin College. I received a stomach on the 26th day of Sept. last, for examination, and made an examination for some four days. The result was entirely negative. I attempted to isolate the poison and failed, finding none.

I was ordered to search for morphia, and did so, and found none. Morphine is a drug, an alkali, and a deadly poison. In case of death by mineral poison, probably traces would be found:—by morphia, I should not expect to find it in a very few hours after it was administered. I did not detect alcohol in the stomach.

OWEN B. STEVENS, *sworn*.—Reside in Kennebunkport; was stopping at the house of Dr. Swett at the time of his death. Saw him early in the morning; he slept on the sofa. He got up about half past 4. He was in the sitting room when I got up, lying down on the sofa. He got up while I was building a fire. He appeared as well as usual. I first discovered something ailed him about 7 1-2 o'clock; he was on the sofa; he had been out to the barn; he came in and sat down by the stove; talked; had his reason. He sat beside me 5 or 10 minutes, smoking, and then went on to the sofa, reclining on his arm. I went in 5 or 10 minutes after, and he was then stretched out. He was not any way drunk when he went in. I did not hear him say anything, nor after. He was unconscious. Did not breathe very hard. My wife was in the bed-room: door open. I first saw Mrs. Swett in the bed-room, talking with Laura, about the time he lay down. She soon came out and went and got some water to bathe his head. She said she

thought he was dying. After bathing his head a few moments she tried to arouse him by speaking to and shaking him.

Was at the house of Dr. Swett part of the week previous to his disease. He was not then often under the influence of liquor so that he could not attend to his business; Sat. P. M. he was able to attend to his business. At no time during the two weeks previous was he unable to attend to business. I saw morphine in Mrs. Swett's possession previous to Sunday Sat. A. M. I went to the Port. Sat. P. M. I went to the house of Dr. Swett; Charles Linscott went with me, went up to the village to get some morphine for his father. When we came back, Mrs. Swett wanted me to call him in. He came in; she said she wanted to compare some morphine with his; she compared it. Hers was in a brown paper, very near a tea spoonful. I saw the morphine of both. She put hers in her pocket. About the 7th or 8th of August last, she went up into his office in the house. He said in her presence that he was posting his books. He told her to go out of the office or he should put her out. She took up a big oak ruler lying on the table and said she would not go out. I heard her strike him with the ruler and went up stairs. Saw her strike him twice over the head drawing blood. He retreated into bedroom and she followed with the ruler in her hand. He shoved her on the bed. He struck her in the side once. I parted them then. He then went into his office. She went down stairs and got an axe. He locked the door. She went up stairs and said she'd kill him with the axe. I took the axe away from her. He opened the door and she went into the office. She told him to open the door. She then took up a big iron mortar pestle and said she'd kill him with that and advanced towards him. I took that away from her. She then went into the bedroom and lay down. Do not remember any other circumstance, in particular, like this. They led an unhappy life and did not sleep together. Was frequently at his house the previous six months. Do not think that I saw him in that time so intoxicated that he could not attend to his business. Saw no acts of violence towards her save this one. She used to "jaw" him and would do this when he was perfectly sober.

Cross examined.—Married a daughter of Dr. Swett in July last. Kept house soon after marriage. Lived in Dr.'s family at first; lived there perhaps 2½ months. Of that time I was there perhaps half the time. Am carpenter. Worked in Portland when away two weeks. Was at home once while

in P. Stopped at home a week then went back to P. When I came back none but family were there.

After I got through at Portland, I worked at Portland and stayed with my wife perhaps half the time; was at Portland the week previous to the 23d. Saturday got to Dr.'s house about 4 o'clock P. M. Have not seen him often in drink; three months of the six months previous I was in Portland; for six months previous have been on good terms with Mrs. Swett; she objected to my staying at the house and opposed my marrying the daughter. Slept in the bed-room adjoining the sitting-room the night previous. He slept on sofa; went to stable about half past four; second time between that and seven; third time at seven o'clock. When he came in the last time I was building the fire; sitting down facing him as he came in the entry between the two rooms; sat while he was in kitchen; think no one beside my wife was present. Mrs. Swett came into bed-room while I was there. He was sick when I came out of bed-room; first signs I saw of his sickness Mrs. Swett was bathing his head; Sarah got the water. I was standing in bed-room door; went down to Landing about nine or half past nine; about a mile; rode. Went for stomach pump and got it; it was out of order. I think Dr. Richards went after another one. Don't remember how long he smoked. Mr. George Wise came in about eight or half past eight o'clock; Mrs. Swett called him in. Don't remember that Laura said to mother at Alfred, that she should have felt differently towards her, if she had given up the property to her. The examination of morphine was on Saturday P. M. She put the paper in her pocket. I told Mrs. Swett that Linscott had been after morphine. Wife was sick when I was there; Dr. Pray came to see her once. I am 19 years old last July.

GEORGE WISE sworn.—Was acquainted with Dr. and Mrs. Swett; live in Kennebunk, next house to Dr. Swett's. Was at the house the day he died; went in at the request of Mrs. Swett. Dr. Swett was inclining against Stevens' breast; Mrs. Swett accompanied me in. When Mrs. Swett called me in she said she wanted me to go into their house, for the Dr. was dying. At first I objected. Capt. Moody went in with us. I asked her why she thought he was dying; she said he appeared different than he ever appeared before. I told her I thought he was drunk. She said she was sure he was dying, and insisted that he was, making some moaning. On my advising her to be quiet, she said that if he

died so, she would not want to live any longer. Again I requested her to be quiet. She said she should soon be quiet, for she had taken 20 grains of morphine. I advised laying him on the sofa on a pillow; and we so laid him. I went home, closing blinds as I went home. In about half an hour Sarah came and wanted me to go over again, for Mrs. Swett was in a spasm. When I went in, Mrs. Swett was up stairs, and I heard some one vomiting. (I think I had been in once before this, besides the first, with Dr. Richards. Mrs. Swett told me then she had taken 40 grains of morphine. Dr. Richards recommended strong coffee. If they had not coffee, tea might be made; Laura made it;) retching very violently. Went home and went to church. On getting home I went in about twelve o'clock. Stayed till Mr. Swett died, which was at 12: 15. I laid out the body; did not hear Mrs. Swett say she had given him morphine. Have frequently heard quarrelling between Dr. Swett and wife; have heard it on my own premises; heard it at their door-yard, in the house as I passed the street. I never saw an assault by either party. This was within a year of his death. I heard her say he should not come into the house. She showed me a deed from him to her in the latter part of the summer; read the deed. Deed of house and half of lot to Laura. She wanted me to buy the house to get away; didn't want it. She would make such a price that I could make money on it. She wanted me to intercede with Mr. Dimon Hubbard to buy it. He was in California. Her price was \$800. She said she had sent to the Register of Deeds for a copy of the deed. He had sent the original deed and answered her inquiry, that the title was good. If she could not sell at private sale, she should sell at auction. A few days after I saw Mr. Edmund Warren talking with her, consulting him in regard to selling it at auction. Reason of sale, that she wanted to get away. Quarrelled all along the summer.

Cross examined.—After the subsiding of these quarrels they would ride out together. I advised both to procure a divorce. Have heard her tell him he should not come into the house if he came home drunk. Have seen Dr. Swett drunk during the summer several times. Heard her last fall tell Mr. Hutchings that Swett was a very bad man. I think she said she had intercepted letters from Hutchings's wife to Swett. This was three or four weeks before his death.

RUTH M. CLOUGH, sworn.—Reside in Kennebunkport. Acquainted with Dr. Swett and family 17 years. Family physi-

cian 2 or 3 years before. Worked and visited frequently at Dr. Swett's house. One year ago last January visited there last. Remember about a bottle being thrown at the Doctor. Saw Dr. on ground, and bottle, black glass, D. P. B., broken in pieces. Mrs. S. went to chaise when Dr. came into yard. Laura was at the door. I was in the house. I heard Laura say, you've killed him, and I saw him on the ground insensible. This was all talked over in the house next day. Laid there about 5 minutes; went into house. He came in in about 15 minutes; took care of horse first. Swelling on his forehead. Laura bathed it in salt and water. He had severe headache next day. Dr. told Laura the bottle contained medicine for Laura, in Mrs. S.'s presence next day. Saw Mrs. Swett fasten Dr. out of doors once or twice in evening. Threw coffee or tea from cup in his face at table. Don't know what the quarrel was about. This occurred in June. At time of last visit had conversation with Mrs. Swett. She said the Dr. drank badly. Mrs. Swett was afraid the Dr. would spend all the property. Asked me what she (Mrs. S.) should do. Said she couldn't live in the way she had been living some time past. If he didn't reform she should take his life. I staid five days this time. Saw her scratch him in his face—brought blood. Dr. came home intoxicated; she provoked him; he attempted to put her out of room; she scratched him. Did not see him so much intoxicated as not to be able to attend to business. This was one year ago last June. I don't think the Dr. commenced on Mrs. Swett. I never knew the Dr. to commence an attack on Mrs. Swett. Mrs. Swett did not make any effort to revive the Dr. when unconscious on the ground. Told Mrs. Swett the bottle contained bitters next day. Dr. Swett did not do any thing after the tea was thrown in his face; finished his meal. Mrs. Swett told me she did not love him when she married him—within 5 years. Said so frequently. Married him because he wanted her, and her mother desired it. She said there was a young man she liked better. She gave the name.

Cross-examined.—I said the next day to Mrs. Swett; "It is a wonder the bottle hadn't killed him." She said, "It was a wonder it hadn't." This was in the forenoon. The Dr. and Laura had been down to the Port at meeting. Conversation about half an hour long. Laura did not come till night. Don't know if Dr. came home at noon or not. Did not see Laura help revive the Dr. Did not help revive him myself. Mrs. Swett was standing beside the

chaise when I first saw her. Have seen the Dr. at my house. Dr. and wife visited. Dr. was family physician. Know where Dr. Swett's office in Kennebunkport is. Had office, I think, more than year. Had been in family two weeks when bottle was thrown. It was a year ago last June. Have ridden with Dr. on business. I was at Dr's house the winter before June. Went in December and came away in March. Don't know that Dr. was sick. Mrs. Swett complained of spinal difficulty and liver complaint.

Direct resumed.—On the day the bottle was thrown, I came from Biddeford with Dr. Swett; carried hat home for Mrs. Swett; got home about sunset. I put the bonnet in the chaise; she said "He has come home drunk again." The wound was just above the temple; took the pieces of bottle up the next day; Mrs. Swett said she threw the bottle without thinking. It was a wonder it did not kill him, and if it had she would not have cared she was so aggravated because he came home intoxicated. She said she fastened him out of doors because he had been drinking.

REBECCA NEWBIGIN Sworn. Reside in Kennebunkport; was some acquainted with Dr. Swett; about six or eight years; he visited my house about a fortnight before he died. They did not come or leave together; she came about half past five P. M. Left after nine. While she was there she said "If Dr. S. commenced drinking again she should certainly poison him. He had been without drinking about a fortnight. She would rather follow him to the grave that night than to go home with him. When he does die, he will die an awful death." Dr. Swett sent word for her to meet him at Mr. Laques' store.

Cross examined.—I made no reply to her remarks. I asked her if she loved the Dr. She said, of course, but hated his actions. About 9 o'clock Laura and her husband came to go home with her. I lived where I could see the door of the Dr.'s office. I saw Mrs. Clough go to the office; she did not go in, for the door was locked. Have seen Dr. Swett drunk; once at my own house. In March I was living in Mr. Moody's house. My maiden name was Jackson. Once when he was the worse for liquor he made insulting proposals to me, and I told Mrs. Swett. He after that came to my house to get something to eat when he was hungry. That was when he had an office at the Port.

S. V. LORING sworn.—Reside at Saco. Am Counsellor and Att'y at Law. Have

been professionally consulted by Mrs. Swett. [Here the Court ruled that the witness should not be allowed to testify professional consultations.]

LAURA J. STEVENS sworn. Am daughter of the prisoner at the bar. First time I saw father on the morning of his death, he was lying on the sofa. Was in adjoining bed-room in bed. My attention was attracted to him by his calling my name. He said something else that I could not understand. Had previously seen mother, who came in my bed-room a few minutes before this. When she came in she said father had been drinking.

Mother was just going out when he spoke; she went to kitchen. I dressed and came out. Mother and husband were in the room. I went to father; took hold of his hand and saw that it was purple, and told mother I believed he was dying. He was then unconscious. Mother bathed his head in cold water soon after that. I asked her what she had given him that he went to sleep so quick and she made no reply. She then went after Mr. Wise; came back into the room and immediately after went up stairs. When she came down she said if he died she had killed him. "God forgive me I did not intend it." She said she had given him morphine and taken a dose herself, and if he died she should die too. I then sent Sarah for a Dr. Soon afterwards Dr. came and ordered me to make some coffee for him. He sent my husband to Landing for a stomach pump. I waited on him. Before I made the coffee the Dr. and husband assisted mother up stairs. She had fallen upon the floor or chair. Dr. Richards was unable to fix his stomach pump and went to village for another but did not get one. We did all we could for him before he died. Ma did not come down stairs before he died. She went up stairs immediately after the Dr. came. Heard her vomiting up stairs. Sat. night before he died Sunday I saw mother in possession of morphine. She was in sitting room. She compared it with Linscott's. Never saw her have any at any other time. Sunday A. M., saw a cup on shelf in kitchen; it was on the highest shelf. Took cup down; white sugar was in it, and according to taste there was something else, tasted bitter. I saw nothing besides sugar. Never put the cup there nor before saw its contents. I afterwards took down the cup and shew it to Dr. Richards. He tasted it. I got him a piece of paper and he put part of the contents in it. The remainder I put in stove. I had no previous knowledge that the cup was there. Was present at the af-

fair of the bottle. When father came home I went out to chaise first. He was out of the chaise standing on the ground. Was well at that time. Mother came out behind me; Went to chaise-box and took out a bottle of Drake's bitters; looked at it and threw it at him. He was one side of the chaise and she on the other. He had just dropped the chaise arms. It struck him above the temple breaking the bottle and knocking him back senseless. Mother said nothing and left for the house. I went to him and lifted up his head and remarked that I thought he was dead. Several times I spoke to him. At first he made no reply. For a while he could not collect himself. He went on to unharness his horse. The wound was badly swollen. He did not have his senses that night. Mother did nothing, made no inquiries nor came to see him that night.

About midnight I informed him of the cause of wound, when I went down stairs to bathe his head. Previous to death he had not slept with mother. Once before that first night he went to her room but could not get in, and came back. No trouble that week *more than usual*. Some time last summer I heard her strike father up stairs. I went up and she struck him twice with a ruler. The blows drew blood on his forehead. The blows took away his senses. She then retreated to her bedroom; he followed and struck her in the side with his hand. Owen parted them. He fastened his office door. She went after an axe, and said she would kill him if she could get at him. She told him to open the door, and he did so. She caught up a mortar pestle and went towards him; Owen took it away from her. Last winter father fastened himself into his room. There were three doors in the room; up stairs. There was an entry between his room and mine. Sarah slept with me. Mrs. S. slept down stairs in the bed-room; his room was over the kitchen, and hers off the sitting-room; my room was over the sink-room. My father slept alone. On the day previous he had been to the Port. Returned home just at dark; came home alone; had been drinking some. He retired at 8 or 9. Mother and I were up. I knew at the time that he fastened the doors, for I got him a rope at his request. I saw him fasten the other two doors; door leading down front stairs saw him fasten; the other door he put his knife over latch; this door leads into an adjoining room to mine; I heard him fasten the door with rope. This was before I went to bed. I lay down on the outside of my bed; soon after undressed and got into bed. Think Sarah was not asleep. Moth-

er went down stairs into sitting room meanwhile. Household was Sarah, myself, father and mother. Next thing I heard was mother cutting at the rope in the room; I think I had been asleep; I got up; followed her into his room. When I first saw her she was just going into his room, and asked her what she was in there for; she said she wanted to see his pocket-book to get what money he had. She looked in his pocket-book and then went down stairs; father was asleep, he breathed naturally. I then went to my room, partly undressed and lay on outside of bed. Mother had a light. Lit mine afterwards. I fell asleep; do not know how long I slept when I was awakened by a groan from his room; I went in. When I opened the door the smell of ether met me; odor considerable powerful. Mother had just stepped down front stairs. She had a bottle half full of ether. Had cloth and lamp in one hand and bottle in the other. (Size bottle shown by witness.) Called. She wanted to know what I wanted. I asked her what she was in there with ether for? She said she had none; but letting go the door I saw her slip the bottle into her pocket. She told me to go back to bed. Did so. She went down stairs. Father asked me what was the matter, before she opened the door. My mother did not tell me, to my remembrance, about giving him morphine. I have heard mother say she would not live with him this winter unless he left off drinking; said she'd do something desperate. I told her she'd better not threaten. She said she did not care—she'd do something desperate, if she had to die in States prison. She said she'd be willing to die there if she killed him first. This was about a year ago.

At Alfred she spoke about my being a witness against her. She said I needn't tell every instance against her. Told her that I should tell the truth about it and answer the questions asked me. Father and mother did not sleep together as a customary thing for a year or two before he died. Within a year mother has said she did not love father.

Cross-examined.—I am the wife of Owen Stevens. Married the 3d day of July last. Father was intoxicated the next day. Had been drinking; was intoxicated on my marriage day. I went to Portland next day. Wednesday, and came home Saturday. Bion Tripp was there when I got home Saturday. Don't recollect where I went on Sunday. (Looks at small diary.) Staid at home. Father had been drinking; same next day, and through the week till Saturday. Wednesday before he died had been

drinking; Tuesday before sober; Thursday intoxicated; had been drinking Friday. I let him into the house Friday night. When he came home Saturday night he came into my room and talked with me (Looking at diary.) Since my marriage he had been drunk 30 times to my knowledge. I was away from home about a week after marriage. Recollect going down and hanging a lantern on building at landing, to light father when coming home—half mile off; went out after nine o'clock. Know father took morphine when sick; took it so that he would be sleepy; don't know quantity. I cannot fix time of bottle affair by my diary or conversation with mother. Father said he would set the barn on fire; c n't find time in my diary.

Mother, Mr. Tripp and I went to the beach on Sunday afternoon. I think father was at home all day Tuesday. Wednesday and Thursday went to the Port. Sunday, 15th, went to meeting—father, mother and I went. Mr. Stevens went home, I think. Saw one time an advertisement, "Stop, Drunkard," in paper. Mother asked me to write to the man; I did. 12th July. Mr. Tripp was at the house. Mother has always been out of health. Father has given me morphine to quiet me; took them so long as I was sick. I think I took all the powders given me. Have gone to dances in Biddeford with father; sometimes got home at 5 o'clock next day; sometimes stopped over till next day. Mother seldom went; found father at saloon with a lady. He left when I saw him, and I after saw him in another saloon with same lady. This was about 2 years ago. I told mother I should have felt better if she'd left all the things in my care. She locked up part of the house after the death of father. On the morning of father's death I don't know at what hour I saw him. Noticed him first when he called me. Don't know when Owen came in. Mother went out before Owen did.

First thing mother did was to shake father, and asked him, "Charles, what's the matter with you?" After Dr. Richards came, mother sat down and fell on to the floor. Mr. Wise came in. Dr., mother and Wise were in sitting-room together. Owen was gone after stomach pump about 10 or 15 minutes, perhaps 20. Mother bathed his head first; we made coffee second. Between 9 and 10, after Dr. came, coffee was made. Dr. tried to introduce it into the stomach; could not use it. Went up to village for another; couldn't get it.

Next tried to fix his stomach pump again. I believe he got some coffee into him once. Nothing else was done for father's recov-

ery. An hour or more before he died they attempted to use stomach pump. Don't know that any tobacco tea was given him or made. Think I should have known if any were made. Mrs. Sweet told me after he died that her object in giving him the morphine was to make him sick of liquor—to vomit him. Don't know when she said this. She said it before his death. Don't know of her giving it to him at any other time than as stated above. Father kept drugs in house and office. Kept arsenic marked "Rat's bane" in his office open on shelf. Mother opposed my marriage with my husband, and was some opposed to his staying there after marriage. From Jan. 1866 to 3rd of July, father was drunk [consulting her diary] 89 or 81 times. Quarreled, Jan. 8th, (Memo.—"In the evening hemmed my new handkerchief. Fought to keep peace between them. Have I got to live so as long as my life shall last?") Jan. 11th, (Memo.—"got supper for pa at 9 o'clock. No rest for my weary soul—naught but dark despair.")

He had been drinking on both occasions. Quarrel about his drinking. Jan. 12th and 13th, (Memo.—"Lit a fire up stairs and got father's supper. Weary of life!" "O the suffering I pass through none but God knows.") Jan. 18th, evening, (Memo.—"In the evening Pa was sick, sat up till 12; thought he would die. 'God bless you my dear daughter. If I die to night, Oh the feelings of my poor heart!'" On the last day they did not quarrel. Quarrels were most every time he came home intoxicated. She called him names, wicked words, and he replied in the same manner. She always called him names. When I got home on the 8th of January they were quarrelling.

They have quarrelled when he was not in liquor. On the morning of my marriage father went to Port. At the ceremony of marriage father had been drinking. I have more than once been for father at his office at the Port when he was intoxicated. Once Mr. Tripp came after me, sent by mother. July 14th I came with mother after wedding bonnet; father was intoxicated on that day. Have hid his wig. Mother advised with Dr. Gray about father's drinking. He advised vomiting him with epecac. Never heard father complain of heart disease. Remember father and mother came to Port and his face was bruised.

Direct.—Father's age was 48; mother's is 59 or 51 years. When I said the number of days father had been drinking, I meant that I perceived that he had, but each time he was able to attend to his business. At the time of the ether affair, I heard mother

go to father's medicine chest, in the evening after I retired, before I saw him in his room. At the instant I opened the door, mother was reclining over the bed holding a cloth to father's nose.

Cross-examined.—I approached the bed from the foot. She got out of the room as soon as she could get out. This was about a year before he died. Father, mother and I went to see a Mr. Chadbourne about father's drinking. Remember once that I had a difficulty with father when he was intoxicated. He made insulting proposals. It was immediately after the blows given upon the head with a ruler.

DEFENCE.

OPENING BY H. FAIRFIELD, Esq.

You have heard the opening of this case on the part of the Government and the evidence they have introduced to support their position, which position is that Jane M. Swett with malice aforethought killed Charles M. Swett.

Our reply to that is that Jane M. Swett did not with malice aforethought kill Charles M. Swett—that his death was not in any way the result of morphine administered by her or any one else. We do not deny but that she gave him morphine by the hand of Sarah on the morning of 23d of September, but we do emphatically deny that his death was the result of that act.

As you have already seen that rum was the cause of all the quarrels between Mrs. Swett and the Doctor, so we shall show and satisfy you that rum was the cause of his death. Under this point we shall introduce evidence of a medical nature, the details of which it is not now necessary for me to give, but it is sufficient to say that it will be conclusively shown that his death was the result of alcohol; a case of alcoholic poisoning, and that morphine was not the cause and did not even contribute to the result.

But we shall go further than this. Mrs. Swett administered morphine to her husband and about five hours after he died. These are two entirely independent facts, having no connection whatever. But if the death was the result of her act, what then is our position in defence? Before stating that, it will be necessary for me to explain to you more fully than has been done by the County Attorney the law in regard to homicide. The government asserts that the prisoner is guilty of murder in the first degree, if so, her punishment then according to the statutes will be death. And with that position in view I need not remind you of what vital importance it is to her and to yourselves, that you have and keep in your minds during the progress of the trial, the true principles of law as applicable, so that you may see the bearing of the evidence as it is introduced.

Homicide may be divided into three degrees; Murder, Manslaughter, and Excusable homicide; the last including justifiable homicide.

Murder is the unlawful killing of a human being with malice aforethought. Malice, as used here in its legal sense, is not the same word as used in common conversation. The malice essential to murder, says Blackstone, is not so properly spite or malevolence against

the individual in particular, as an evil design in general, the dictate of a wicked, depraved and malignant heart. Or as Wharton says the legal meaning of malice aforethought, is when the act is done under such cruel circumstances as are the ordinary indications of a wicked, depraved and malignant spirit—as when the punishment inflicted by a party is outrageous in its nature and continuance and beyond all proportion to the offence, so that it is rather to be attributed to diabolical malignity and brutality than to human infirmity.

This malice is the essence of the crime of murder—there cannot be murder without it. No man can commit murder without a diabolical, malignant and brutal heart.

Malice aforethought may be either express or implied. Express malice aforethought is where the act is committed with a sedate and deliberate mind, and that formed design and inward intention are evidenced by the external circumstances—for instance by such circumstances as are lying in wait to kill another—one purchasing a pistol and expressing an intention of killing an individual.

Implied malice is when the external circumstances do not prove such a formed design and inward intention, but yet are such as would lead you to presume that such an intention existed.

Killing with malice aforethought expressed is murder in the first degree, and is punished by death. Killing with malice aforethought implied is murder in the second degree and punished by imprisonment for life.

It will be evidenced to you that Mrs. Swett did not have such a malice as the authorities I have quoted say is essential to murder; more than that, she did not feel even spite against him, still more than that, there was not only an absence of spite but the presence of a strong love, showing itself in kind acts and considerate attention. There being then no malice either express or implied her act cannot be murder in the first nor in the second degree.

The next division of homicide is manslaughter, which is the unlawful killing of a human being without any malice express or implied, but while in the commission of some unlawful act. The malice essential to murder is wanting in manslaughter. For instance, if in a sudden mutual quarrel, where the circumstances do not indicate malice, one should kill the other—the crime would be manslaughter. You will observe that the party causing the death must be in the commission of some unlawful act. Giving morphine is not of itself unlawful. Whether or not it is unlawful depends upon the quantity, the knowledge of its effects, and the intent with which it is administered. If the amount be not an overdose, and there no knowledge that the effect would be fatal and the intent being to benefit and not to harm, the act can not be unlawful—or if the amount be an overdose and there be no knowledge that the effect would be fatal and there be no intent to harm it cannot be unlawful.

The evidence we shall offer under this head will be as follows:

Dr. Swett was in early life an operative in a factory. He experienced religion, as the term goes, and entered upon the duties of a Free-will Baptist minister, but his habits were such as obliged him to give up that position. He then moved to Kennebunk and commenced the practice of medicine, without any previous study, and only such experience as he had gained from being with his father, who was a horse doctor. His intemperate habits grew upon him, till in the later years of his life he came home frequently intoxicated, greatly disturbing the peace of his family, which family but for his vicious habits would have been to-day so far as he is concerned happy and unbroken. Intemperance led him into other vices, in consequence of which he

came home to his wife with a disease, which will sufficiently explain the reason she would not sleep with him. He also became addicted to the habit of taking morphine in large quantities. A year ago the coming spring, through the influence of his wife, he joined the Good Templars, a temperance society at Kennebunkport. He attempted to reform. The accustomed stimulating effects of liquor being thus taken from the brain he was in great danger of delirium tremens, and was obliged to take morphine in larger doses than ever, taking so much sometimes as to produce intoxication. All this was known by his wife and it also came to her knowledge that whenever he took morphine soon before or after drinking liquor, he was sick and vomited. She then for the first time conceived the idea of giving him morphine when he was drunk, (for he did not keep his pledge,) for the purpose of causing him to throw up the liquor from his stomach, and thus sober him. She did afterwards give it to him when intoxicated, with the same design and met with the desired result. This was without his knowledge, but upon her telling him the next day what she did, he replied to her, "it was the best thing you could have done to get the d-d stuff out of me." She again gave it to him with the same purpose and result. And upon the 23d of Sept. last, she again administered morphine with the same intent, and no other, and expected again to meet with the same result. We shall also show that there is no drug so completely under the influence of habit as morphine—that those accustomed to the use of it can eat with impunity sufficient to kill from fifty to one hundred men. That what would be an overdose for one not accustomed to it, would not be to one who was accustomed to its use. The evidence as to the amount will be that she gave him Sept. 23 no more than she had given him before, and no more than she had seen him eat voluntarily. Then the amount given him Sunday morning not being an overdose, she having no knowledge that it would prove fatal, and her knowledge of its effects not being such as would lead her to suppose it would prove fatal, and her intent being to benefit and not to injure him—her act of administering it could not have been unlawful, and she is not guilty of manslaughter, for you will remember that to constitute manslaughter, death must result collaterally to an unlawful act.

The third division of homicide is excusable homicide. To illustrate it is excusable homicide. When an officer executes a criminal in strict conformity to a sentence or when he kills another resisting or obstructing him in the performance of his duties, or where one kills another to prevent the commission of an atrocious crime, or where one kills another in self defence, or where one in the commission of a legal act, without any intent of harm, accidentally kills another. To illustrate this last, where one hunting accidentally shoots another concealed, or when a parent administering a reasonable punishment to his child, accidentally kills it, or where one administering medicine as medicine death accidentally results. Then having shown you that she was in the commission of a legal act in giving him the morphine, that she had no intent of harm and death accidentally resulted. Your decision must be that her act was excusable homicide, and your verdict must be not guilty. This is upon the supposition that the evidence does not satisfy you, that his death resulted from his use of liquor; would have you keep in mind the following: One of the salutary rules by which evidence should be received and weighed is this. "It is essential that all of the facts should be consistent with the hypothesis of the Government." Another rule is "the circumstances should to a moral certainty actually exclude every hypothesis but the one proposed to be proved."

DR. FRANCIS G. WARREN, sworn. Reside in Biddeford. Practiced 19 years. In 1861 was Assistant Surgeon in the 5th Maine regiment; was subsequently promoted to be Surgeon. Have seen cases of alcoholic poison, also opium or morphine. Morphine is the active property of opium. American physicians use sulphate of morphia, Europeans use acetate. Morphine is used for a sedative effect. Its effects are not uniform. In many cases will produce obstinate wakefulness. Age, sex, and other things influence effects of opium. In my opinion, from habit, more morphine can be taken than any other drug. Have known, in this vicinity, 2 grains of opium to be given every hour, for hours. Morphine is cumulative medicine—left in the system, not carried off. Alcohol ranks with narcotic poisons. Alcohol poisons quite frequently. There may be cumulative force in alcohol. Morphine in some individuals produces nausea. Cannot tell how much opium would kill—large quantities, if accustomed to take opium, can be borne.

Morphine is more likely to produce nausea if one is intoxicated. If morphine is diluted it absorbs quicker as a general thing.

Anti-mortem symptoms—Alcoholic poison, confusion, vertigo, followed by deep sleep. Pulse in alcoholic might be quick first, slower and fuller afterwards; curious anomalies in alcoholic poison. Pupil of the eye may be contracted or dilated; have seen both.

Post-mortem—Brain congested, especially low portion, cerebellum, bloody serum at base of brain. Acute poison may find stomach healthy, extravasation of blood at base of brain. Anti-mortem symptoms of morphine—dizziness, vertigo, stupor, supervened by coma, impossible to arouse at last stage. Pulse at first quick, but very irregular, sweating very copious. Perspiration in alcohol, at head and face copious. Post-mortem, morphine, vessels of brain congested, no bloody serum, a congested state of lung. Difficult to tell difference between symptoms acute and morphine before death. Should judge by smell of patient if called.

The following are written questions by the counsel and the witness' answers to the same:

Question first.—If, upon visiting a patient, you learn the following facts—that the patient is a man of established intemperate habits; that he has been drinking to excess during the week previous to your visit; that he has taken into his stomach, within from three to five hours before your visit, three gills of whiskey or other spirituous liquors; that he is at the time of your visit and has been for an hour or two previous in a comatose condition; that when you first see him his pulse counts about 70 per minute, and falls off or breaks down to a very feeble pulse in a half hour afterwards—that his breath is heavy and stertorous, and contin-

ues so till death—that there is copious perspiration about the head—that the patient continues comatos for about 3 hours; from the facts as stated, what would be the cause of his death?

Answer. Alcoholic poison.

Ques. 2. In addition to the facts enumerated in first question, if you find upon post mortem examination of the same patient, the brain congested, blood vessels engorged, a bloody serum at the base of brain, and lungs were healthy, what would the facts show as the cause of his death?

Ans. I should call it alcoholic poison.

Ques. 3. If in addition to the facts stated in questions 1 and 2 you further learn that the patient within from 3 to 5 hours to your visiting him, had taken a usual dose of morphine, what in that case would you say to be the cause of his death?

Ans. Alcoholic poison.

Ques. 4. If in addition to the particulars you further learn that the patient within from 3 to 5 hours previous had taken morphine within without your learning what quantity, what in that case?

Ans. Alcoholic poison.

Cross Ex. Don't devote much time to practice of medicine for last 18 months. Rest of the time to dealing drugs and medicines. Sell alcohol in the form of whiskey, gin, &c., at retail. Have not seen a case of alcoholic poison for two years. My main business is not the sale of alcoholic liquors. Proposed several questions to Mr. Fairfield in the presence of the Court. I proposed the question to ask if the lungs were in a healthy condition: next in regard to condition of the brain at autopsy; next, to know whether sweating was copious in general; next, condition of pulse. Said nothing about "anti or ante mortum." Assisted counsel for only a few moments. Questions not mine. Did not dictate those questions. Never suggested anything like them.

Alcoholic poison requires to be exhibited in large quantities in general. A small quantity of morphine is fatal to a person of susceptibility. A much greater quantity of alcohol is necessary to poison than morphine. Never knew a case of alcoholic poisoning when prominent symptoms, tottering gait and vertigo were not present. Excitement is present generally before stupor in alcoholic poison. Can detect alcohol in breath. As long as the symptoms last, the alcohol will continue to pass off by lungs. In death by alcohol the odor can be easily distinguished by breath. If not, the presumption is not done from alcohol. Ordinary men would be killed by 3 grs. of morphine. Should not want to give 1 gr. under ordinary circumstances. 20 grs. would be fatal. Large doses of poison may be expelled from the stomach by the overdose.

Is not alcohol one of these poison which when in the form of liquor requires to be

exhibited in large quantities, and is not morphine one of which a very small quantity is fatal? Yes.

Did you ever know a case of poisoning by alcohol when there was no "inability to stand or walk tottering gait and vertigo" before unconsciousness? No.

Does not alcohol when "deluted" as in spiritous liquors, "generally produce excitement before stupor"? Generally.

In alcoholic poison, cannot alcohol be easily detected by the odor of the breath, and as long as the symptoms in such case last will not the alcohol pass off by the lungs? Yes.

If there is no perceptible odor of any alcoholic liquid, is not the presumption that the symptoms are not due to intoxication? Yes.

When the alcoholic odor is perceptible, may the symptoms not still be combined with the effects of morphine? Yes.

In such case can they be cleared up otherwise than by a history of the case? Yes, by chemical analysis.

In poisoning by morphine do not the symptoms come on more gradual than by alcohol? In form of spiritous liquors are they not marked by stupor, passing into complete lethargy? Yes.

When poisoned by alcohol is there not either very great excitement some time before the stupor? Does not this stupor come on suddenly, and is not the patient in a state of deep *comer* a few minutes after taking it? Yes.

In poisoning by morphine is not the face pallid; is it not more commonly flushed and the pupils greatly contracted?

In poison by alcohol does not the patient frequently recover his senses, yet die subsequently? Yes.

Will not the odor of the breath lead to a diagnosis? Yes.

In chronic poison, by a person taking alcoholic liquor for a long period, is there not irritation of stomach and intestines, vomiting, scirrhus of the stomach? Yes.

Pyrosis? Yes.

Are not dropsy, diabetes, parylsis, delirium-tremens, and insanity symptoms—and in such case after death are not morbid changes discernible in various organs? Yes.

Is not the liver especially affected, and are not the kidneys in a state of granular? Yes.

Is not the liver commonly enlarged and of a lighter color than natural? Yes.

Is not such a condition of the liver known as the mulney or drunkard's liver? Yes.

DIRECT RESUMED. Pulse 70, normal; if it had been opium, been irregular. Perspiration about the head indicates alcohol. In opium, all over the body. Autopsy in alcohol not the same as in opium.

DR. ALLEN, sworn. Reside in Saco. Practiced medicine for 20 years. Have seen some cases of poisoning of alcoholic poison. Symptoms, accelerated pulse, stupor, depress-

ing of the brain, and the pulse become slow and feeble. Usually find profuse local perspiration, this not always, perspiration about the head and face. After coma ensues stupor continues till death. The ordinary symptoms of opium before death are very similar to alcoholic poison. Perspiration in opium is more profuse and general than alcoholic poison; pulse quick in either case, but I would look for opiates acting spasmodically and consequently pulse irregular. Alcoholic poisons pulse would be accelerated. In post mortem examination for alcoholic poison the brain would be congested. If bloody serum were found at base of brain it would generally indicate poisoning. Lungs in opium poison more or less congested. In cases of acute poisoning by alcohol, lungs generally normal. Have examined five cases of alcoholic poison.

Should not expect to find the lungs congested or bloody serum at the base of the brain in morphine poison. In alcoholic poison the perspiration is more general. In acute poison the symptoms are found in the brain; in chronic the viscera is affected.—Alcoholic poison affects cerebellum more than cerebrum.

Patients will bear almost any amount of morphine. Administration of morphine is as common as almost any medicine.

[The former series of questions submitted by counsel for the defence to Dr. Warren, were submitted to this witness, with the same answers substantially.]

Cross Ex'n.

[The Government submitted the same series of questions as they submitted to Dr. Warren, and were answered by this witness with substantially the same answers.]

DR. ORRIN ROSS, sworn. Practiced about 27 years. Was present at post mortem examination of Dr. Swett. Face placid, eyes closed, little coloration on forehead, muscles were rigid, appeared to be well developed, sound man. Removed top of skull, examined brain, external vessels were turgid, congested. Looked lower portions of brain. Found quantity serous fluid near base of brain. Examined left ventricle, congested. At base of brain 2 or 3 ounces of bloody serum. Lungs appeared to be healthy. Saw no congestion of lungs. Stomach was not disturbed any more than to collect and send away. Don't know that viscera were changed in appearance. Kidneys appeared healthy. Alcohol and Morphine poisons alike, some difference as to pulse. Difference at base of brain. Should not ordinarily consider morphine poison, serious effusion at base of brain. Should consider perspiration general. In alcohol perspiration about the head more particularly. In morphine poison should expect to find lungs somewhat congested. In alcoholic poison should expect to find black blood in lungs. This I consider different from congestion.

Cross Ex. No cases from alcoholic poison. Have had one or two cases supposed morphine poison, not such. Long use of alcoholic poison would probably weaken vessels. Did not smell alcoholic in body nor stomach. Was made air tight and sent to Brunswick. Fifty hours after death alcohol would perhaps somewhat evaporate. Alcohol taken 5 or 6 hours before death the evaporation might be detected by breath.

HERCULES H. CHADBURN, sworn. Lived in Kennebunkport more than 12 years.—Have seen Dr. Swett occasionally. Have known of his drinking from June last up to time of death. Both belonged to Good Templars. Report came to Lodge of his breaking the pledge. Was one of the committee to see the Dr. about drinking. Dr. said he had fallen, had drunk, had become intoxicated, people said he was drunk when not. He had been taking morphine for some time. He said when I have spasms of delirium tremens I take morphine to allay spasms.—Talked again. Reports that he had again fallen. Chaise drove up to door of shop, saw in it Dr. Swett and wife and daughter. Dr. said, Chadbourne, I've fallen again, I hope you will do all you can to save me. The Dr.'s wife said, "Do, do all you can to save him—others have fallen too." Dr. Swett after this, appeared in Lodge and got up before the Lodge and said he had drunk, fallen, had drunk morphine, spoke of effect of morphine, morphine exhilarated at first and operated like liquor. He said he would actually stagger when under the influence of morphine as if it was liquor. When the Dr. called with his wife and daughter they appeared very pleasant and agreeable. Don't remember anything more was said.

ROBERT W. GAGE, sworn. Live in Kennebunk lower village, office in Kennebunkport. Practiced about seven years.

[The Government submitted the same series of questions as they submitted to Dr. Warren, and were answered by this witness with substantially the same answers.]

Difference between acute and chronic poison. Alcohol in my opinion would act more promptly than morphine. Knew about Dr. Swett drinking for six months before he died. Have seen Dr. Swett often when intoxicated. Dr. Swett told me one day he had taken morphine. Morphine with liquor will perhaps, usually does, produce nausea. [Examined small bottle of morphine, poured some of it out on paper.]

Cross Ex. Think 10grs would kill. Have had one case of alcoholic poison causing death. Alcohol weakens the lungs. Information would influence my decision of any case.

NATH'L F. LORD, sworn. Live in Saco. On Friday before Dr. Swett died I saw him; had been drinking, I thought. About 11 o'clock he drove into my stable and put his horse up. Did not see him again till 5

o'clock P. M. Had forgotten where he put his horse up. Had been looking for him—staggered. I harnessed his horse and Dr. went away.

BION E. TRIPP, sworn. Live at Conway. Lived at North Berwick last September.—Had been with Dr. Swett frequently. Last July, Saturday after the 4th—I stopped a week or 10 days. Saw Dr. frequently while there. Stopped at request of Mrs. Swett and Laura. Remember one day when I came back from village Dr. was sitting in chaise, and talking indecently. Did not see Mrs. Swett; she was in the house. Dr. was intoxicated. Language was very profane and indecent at that time. Mrs. Swett did not come out. Laura was crying near her father. Have known of Dr. S. taking injection in office, year ago last winter, being troubled with venereal diseases, he said. When in chaise he vomited. When in office he told me when he had been drinking he took morphine to throw it up. He was speaking of his vomiting at chaise, when Mrs. Swett said it was owing to morphine she put in his tea. He said she'd done it just right. Have seen Dr. Swett take morphine at office and house, perhaps half a dozen times.

CROSS EX'N. Born in Alfred. Lived about one year. Stayed at Kennebunkport about 20 years. Am 30 years old; blacksmith. Have been married 8 or 10 years. Have been divorced. Lived with first wife 7 or 8 years. Was in trade in Kennebunkport; sold rum a short time, a month or so, with confectionery, &c. Dr. told me about vomiting at the chaise, in house next day. I was Town Agent at that time; sold when not Town Agent. Did not sell after closing store as Town Agent. Don't know where or how much the Dr. drank. Mrs. Swett was present when Dr. said she'd done just right. Said powder of morphine would always nauseate him when liquor was in him. I now live with second wife. Married at Conway. Don't know about Dr.'s justifying his wife at any other time. Have got morphine for Dr. myself, about 1-3 of a teaspoonful.—Mentioned about Dr.'s taking morphine, in Kennebunkport, I think the same week. Came from Conway on purpose to attend this trial.

DIRECT RESUMED. Showed Jury and Court the amount of morphine taken by Dr., on point of knife.

MRS. MARY A. PENNELL. Reside in Portland; half-sister to Mrs. Swett. Was at Dr. Swett's soon after funeral. Recollect seeing doors of house broken. Laura pointed to doors that had been broken by her father. She said he was so crazy when intoxicated that he broke the doors. She spoke of morphine given to Dr. by her mother, to sicken and vomit him.

JAMES CHADBOURNE, sworn. Lived in Biddeford last September. Saw Dr. Swett Friday before he died Sunday. Saw him

near Thayer Moulton's store, Biddeford. He was drunk. I talked with him. He went across street up a pair of stairs. Have been at Dr.'s house. Dined there 2 years ago last November.

A. W. MENDON, sworn. Lived in Kennebunk. Knew Dr. Swett. Remember he came to my house without his wig one morning, within a year I think.

A. W. MENDUM, sworn.—Kept P. O., five years. Saw Mr. Swett nearly every day; he was able to attend to his business. Saturday previous he was sober enough to do business; never saw him incapacitated to do business.

W. A. HALL, sworn.—Reside in Kennebunk, kept public house; have known Dr. Swett; he has been to my house five or six times; generally intoxicated; stopped once through the night; I assisted him up stairs; he was intoxicated.

JANE M. SWETT, prisoner, sworn.—Widow of Charles M. Swett, age 50 years next April. Married in 1835 or 1836. He was in the habit of taking morphine during his latter days. For two years previous I have administered morphine; once I put some in his butter, once in his tea, once in a bottle. Put some in his tea July last; Bion E. Tripp was there. Put morphine in his bottle Sunday morning previous to his death; amount, about what I could take between my thumb and finger. When he had been drinking hard was when I gave him morphine; the effect of which usually caused him to vomit his liquor; have talked with him about the use of morphine, whenever I gave it to him; when I put it in his tea, I told him the next day. He said he was glad I did, to get the d—d stuff out of him; always told him; he never disapproved of it. At no time have I ever administered ether to him. During the latter portion of his life we never slept together—he had a disease which made it impossible; no other reason. In giving morphine my intention was to vomit him; no other intention. That intention applies in every instance. I never had any intention of taking his life by poisoning or by any other means.

CROSS EXAMINED.—Don't remember that I ever threw a stick of wood at my husband. I do not know that I ever knocked him senseless with a bottle. I did throw one; did not intend to hit him. I do not know whether it did hit him; did not see him fall; it was so dark I did not see him. I thought there was whiskey in the bottle, labeled Plantation Bitters. Light enough to read the label; although I read it, I still thought it was whiskey. It belonged to the Doctor. Laura told

me that I had hit him. When informed I had not gone into the house; Laura was nearer to him than I; the door was on my side of the chaise. They could see him better than I. He was back of the chaise. Thought I hit the wheel; asked Laura if I had hit him; she said yes. She might have said I had killed him. I went to the Dr.; he jumped up and came towards me, Laura stood before him.

Think Mrs. Clough was in the door. I told Laura I did not mean to hit him. He made for me and I went into the house. He was not unconscious. He caught me as I stepped on the door step; pulled my hair; I screamed. He then took care of the horse. When he came into the house I was sitting on the sofa by Mrs. Clough; doing nothing; light lit. Think Dr. came in with the lantern. Think Sarah gave him the lantern. This was at early candle lighting; most dark when he came home. Threw the bottle immediately. Never threatened to set the house on fire. Never threatened his life, "not knowingly,"—might when crazy. Never claimed to be insane. I know I never threatened his life. Never put morphine on his beefsteak, nor on his eggs. Have administered morphine at his request. Always told him, except the time of his death. Always told him after morphine was administered. Except the three times mentioned, I never gave him morphine telling him beforehand. On recollection, think I have, sometime within a year. When I put morphine in tea, cannot say whether Mr. Tripp was present, but think he was in dining room, called kitchen. Stood at the table. Don't know certain whether Dr. was in the room or not. Mr. Tripp sat on lounge. (At this point Mr. Tripp was excluded from the Court room.) Think he came there the day before. Did not tell Mr. Tripp at that time about morphine; told him next day in the forenoon. He and the Dr. were talking about it. Dr. thought it was something that made him vomit, that afternoon, when he got ready to go away. Saw him vomit in the chaise. He thought it was owing to liquor, and I told him then, "Charley, I made you vomit; it was not what you drank." He vomited often, but do not know that drinking alone made him vomit. Administered morphine in tea in latter part of July. Think it was middle of the week. Family was at table. Laura was there: her husband was at Portland. It was at dinner. Vomited in two hours. When he came in to dinner, think he had been to the village. He asked what I gave him and I told him. He said 'twas the best thing I

could do. Do not know that he ever asked me how much morphine I gave him. I put two powders together that he dealt out for Laura, on this occasion. He appeared sober when I told him. Besides us three, no one was present. I was standing before him when I told him; he was sitting on lounge. In the butter I put one of Laura's powders. He did not know when I put it in. Do not recollect when I told him, think 'twas the next day. He could walk, and could have understood had I told him of giving morphine. Did not want him to know, for fear he would not take it. Think it was in August. Think Sarah said he was sick. Told him the next morning; he made no reply. Got the paper of powder out of the clock. Put some of the papers in my pocket. The tea portion I took from my pocket. Put it in pocket in morning before breakfast. Two powders were mixed together. Do not know that any one saw me take the powders from the clock and put in my pocket. He came home from the village that morning before his breakfast; went to village very early. During the forenoon he was at home, and then went to the village. He was most drunk. He came home intoxicated about 7 o'clock. I waited upon him at breakfast. He had tea. I took the papers from clock while he was at the village, soon after I got up. He came home after that in about an hour. Saw him start for the village. Did not appear intoxicated. Generally went to village in the morning. My object in taking the powders from the clock was to give them to him the first chance I had. Had no chance at breakfast. Had not then fully made up my mind. Thought if he commenced drinking as he had been drinking, I would get them into him if I could. I don't know as I made up my mind to administer the final dose in bottle. No particular time when I made up my mind.

Did not set Sarah to watch him on day of his death. First conversed with Sarah that morning between 4 and 5, when she said he was going to the barn. Did not send her after his bottle. She brought his bottle to me without my asking for it. I rose up in bed and took it. Took morphine on the morning of husband's death; got it out of clock. I put it there. Put it there Saturday, calculating to put it back into his trunk. Took it out of his trunk Saturday. Sarah was present when I took it from his trunk. Took it out of bottle. Took morphine only once. Sent Sarah after some after I was arrested. Did not get it. Did not know at the time why. Stated that I had taken some, but do not think I said how many grains.—Never said that I had given morphine to him. Said I had put it in a bottle. Object in giving it to him was to nauseate him. Sent bottle back by Sarah to where she found it. Have had access to his medicine chest for 20 odd years. He preached about a

year and a half or two years after I married him.

Think I threw a cup of tea in his face, perhaps several times; once because he called my mother a bad name. He occasionally threw at me. Threw two cups at me at the table the day before his death.—Think one hit me and one did not; it was a slight hit. This was, I think, Friday.—(Witness doubtful.) Owen and Laura were there. Believe it was at dinner time. He was calling names.

I had no thought of giving the morphine that morning until Sarah brought the bottle to me. Morphine was in my dress. Was worried about the property, and frequently had conversation with him. Do not remember the alleged conversation with Mrs. Clough. He gave me deed because he did not desire to spend all his property. Never told Mrs. Clough or any one else that I would take his life. I think I told Mrs. Clough in presence of him that I did not love him, but it was in fun. Had frequently told him so. Have wished him dead when he acted bad, when he wished me so. At the time he threw cups, which was a slight affair, did not wish him dead. Had no evil intentions when I threw the bottle. Wished him dead before his death at the time of the trouble in the office. Do not remember ever so wishing subsequently. It was not a ruler I had, it was a piece of moulding that came from window. I know I struck him on the head. Did not see blood. Saw mark on forehead next day. When I struck him he was pulling my hair so I could not tell where I struck him. I had things in the office. I went after some snuff. My object in getting the axe was to pry open the door. Snuff to kill red ants. Do not know whether I had the pestle or not. Wished him dead sometime after. When talking to him was talking to him generally. Did not speak the truth when I wished him dead. I replied to a similar wish from him. Had no other serious difficulties between this affair and his death. Laura and her husband were present at the affair of the ruler. He let go of me once of his own accord. Do not remember that they parted us.

Know nothing of Bion E. Tripp. Have heard his reputation for truth spoken evil of, and vice versa. Told Dr. Richards that I had morphine in a bottle; don't recollect if I said the amount. It was exciting times.—My motive in taking morphine myself was not to produce nausea: my husband kept ipecac. Think I did not tell Wise I gave morphine.

Have broken into Dr.'s room at Port with axe. Have taken Dr.'s horse and carriage when down to Port and left the Dr. Think Dr. Gray brought him home. Don't remember that Dr. assaulted me when he came home. Have given Dr. Morphine powders

about a dozen times in 3 years. Never gave it to him but once in bottle. Twice I think in tea. I did not abuse him or he me always when drunk. I don't think I ever gave the Dr. morphine without his knowledge but 5 powders; twice in tea—doubled 2 powders. Dr. used to prescribe for me. Dr. prescribed a few days before his death for me. Dr. gave me morphine several times. Know morphine pretty well; was a common medicine in family. Dr. did not give me morphine without my knowledge. Dr. gave medicine one time. Head ached and lost my senses. Asked Dr. what he gave me—replied "Peppermint and Soda." Think Dr. attempted my life when my little boy was born. Long after this, when drunk, he said he put a bottle of chloroform to my nose. Was four ounces of chloroform in a bottle. Had used a little before from this bottle. Dr. said it was to dull pain. Sometimes I have thought he might have given me chloroform; But do not know that he intended to take my life.

On the morning of husband's death, don't know that I informed that I had killed him. Did not quarrel Saturday night previous to his death. Wednesday night previous, don't remember that I hunted for morphine in his trunk. Never mixed poison in a cup for him, nor in a cup at all. Don't know how the sugar came in cup on shelf; I often put the sugar in a cup when the Dr. eat alone. Don't know that I put sugar in that cup; know that several cups had sugar in them, so that two or three cups had sugar in them at one time. I never put morphine or any other bitter substance together in sugar.—Don't know that I ever threatened his life to Sarah—perhaps so, in case of temper. Don't know that I ever told Sarah how much morphine I had taken. Don't recollect of saying to Sarah that if she had not spilled the morphine I should have been dead. Never threatened to kill him with an axe. Threatened to stave the door in. Told Mr. Hutchings that the Doctor was a very bad man.—Accused him of undue intimacy with Hutchings' wife—was in earnest. Not a great while before his death, some few weeks. Accused Dr. when I found a letter in his pocket, that morning. It was from Mary Ann Hutchings. Talked with him before this about this intimacy, and after. Did not wish him dead on this occasion. Did not know morphine was a deadly poison. Took it that morning so that I should not see the Dr. die. Thought I had nothing to live for. Never knew morphine would kill any one. Thought it would put me to sleep. Several times fastened me out of doors; think I fastened him out of doors last winter; don't know how many times. Don't know that I ever said I didn't care if I had killed him with bottle. Never told Mrs. Newbegin that I would poison him if he drank again. Tried to tare his wig to pieces—was in anger. Never told Sarah

that I would die in States Prison if I killed him first.

DIRECT RESUMED.—At the time alluded to I said if he continued to carry on and carouse nights as he had done, I would as lief live in State Prison. He once got hung up in the stable a short time before he died. Found him hung up by one leg, in the crib. Supposed he pitched head downwards in to the crib. I got up in crib and lifted him down. He did not know anything for some time. I helped him into the house, shortly after he came to himself, and sat by him.—Only a short time before he died he was at Biddeford, horse came home at 11 o'clock at night without him. Told Sarah to go out and find him. Sent her to Mr. Wise to harness the horse in the chaise so I could go back and find him. Mr. Wise advised not to go. I told him I must, as he may be suffering. Soon Dr. came. When I broke into the office at Kennebunkport, I took a broom and a lamp I think. He has fastened me out of doors and driven me out many times.

CROSS EX'N RESUMED.—Broke into the office after a letter I was in search off; did not get it. This was perhaps a year ago. Date difficulties back little better than a year. Before that most of the time lived pleasantly. Date difficulties with woman 30 years back. These not as serious as drunkenness. The letter in his office that I was after was from a woman.

DR. CHARLES MURCH sworn.—Reside in Saco. Practice medicine. Lived in Saco 10 years. Knew Mr. Swett. Have known him 10 years. (The court ruled as in the case of Mr. Loring.)

Defence rested here.

DR. RICHARDS recalled.—Noticed perspiration on his hands. Pulse seemed as I should expect from morphine. Pulse about 70. In 30 minutes they fell off very rapidly. Did not discover the smell of alcohol in his breath. I was in a position to give me an opportunity to smell his breath when I tried to introduce stomach pumps.

The smell of alcohol would be perceived from breath and perspiration. It can be detected in the brain after death. There was no smell of alcohol in the stomach after death. Pupils of the eyes were contracted when I first saw him.

DR. WM. WESCOTT sworn.—Reside in Kennebunkport. Acquainted with Dr. Swett. Was present and assisted at his autopsy (symptoms given between alcoholic and opiate poisoning. Not differing from that given by other experts.) In morphine poisoning the

pupil would be contracted. This is an important diagnostic sign in contrast from alcoholic poisoning, always in latter case the pupil would be enlarged. Cases of acute alcoholic poisoning are extremely rare.

DR. KIMBALL sworn.—Reside in Saco; am a physician; practiced 20 years; age 47 yrs. Small experience as surgeon in U. S. army. Have had some experience in poisoning of morphine. Four grains of opium equal to one of morphine. Would administer 1-6 to 1-4 of a grain of morphine. Large quantities of morphine may be taken by a person habituated to it. Some might perhaps take 2 grs. Perhaps one grain every hour for five or six hours would not produce death. My opinion is that we have more acute cases of poisoning by ice water in summer than by alcoholic poisoning.

WM. P. STONE sworn.—Reside in Kennebunkport. Lived there 17 years; master mariner. Some acquainted with Bion E. Tripp; known him for about 4 to 5 years; his reputation for truth and veracity is not good.

WM. F. MOODY sworn.—Lived in Kennebunkport 42 years; trader. Am acquainted with Bion E. Tripp. Known him for 20 yrs. His general reputation for truth and veracity is bad.

SYLVESTER BROWN sworn.—Reside in Kennebunkport Village. Lived there 20 years; ship master. Acquainted with Bion E. Tripp, slightly. His general reputation for truth and veracity is not very good.

SILAS PERKINS sworn.—Reside in Kennebunkport. Lived there 64 years. Acquainted with Bion E. Tripp. Known him for 20 years. His general reputation for truth and veracity is bad—but that depends upon what he is talking about.

S. H. GOULD sworn.—Reside in Kennebunkport. Lived there 20 years; merchant. Acquainted with Bion B. Tripp ever since he was a boy. Reputation for truth and veracity is not good.

ISRAEL CREDIFORD, sworn.—Lived in Kennebunkport the last 25 years. Follow the sea. Acquainted with Bion E. Tripp for 15 years. Have known him too long. His reputation is of the blackest die.

CROSS EX.—Have had a lawsuit with him.

CHARLES TRIPP, sworn.—Reside in Kennebunk. Acquainted with Bion E. Tripp. Character for truth and veracity is bad.

JOHN B. MALING, sworn.—Reside in Kennebunkport. Acquainted with Bion E. Tripp. His character for truth and veracity is bad.

Evidence all in.

CLOSING ARGUMENT FOR THE PRISONER,

By T. H. Hubbard, Esq., Senior Counsel.

MAY IT PLEASE YOUR HONOR, AND YOU GENTLEMEN OF THE JURY:

From the day on which you took your places upon that panel, in that carefully guarded manner, each step taken as this trial has progressed, the crowded state of this court room, and the care which has been manifested by the counsel on the one side and the other, in giving you the evidence upon which you are to base your judgements, cannot have failed to impress you with the importance of the issue which you are to decide.

When we hear the announcement made, that one with whom we have been accustomed to associate has fallen by the merciless hand of the murderer, all the feelings of indignation and resentment within us are stirred and fanned into a fervid flame; and all eyes are turned upon the accused, all his acts and every word are heralded from place to place, passing from lip to lip, and all ears are open to catch every sound. Not a murmur or rumor stirs the air but it is treasured up, so intense is the anxiety of all hearts to fix the slightest circumstance as additional proof of guilt, in order that the offender may be brought to justice.

It is in a measure due to this public vigilance that crime is so speedily detected and punished, and when a person is charged with an odious crime, it is but fair to presume that when put upon his trial, all his acts and all circumstances that tend to establish guilt will be put in evidence, as has been done in this case. But it sometimes happens that the intense feeling that pervades the public heart will become prejudiced before the actual circumstances have been brought to light; and it often happens in this way that the rights of persons accused of crimes are injured, and an innocent individual made to suffer by popular clamor, kindled upon a partial statement of the circumstances only, to the extent of being presumed guilty until innocence is proved, instead of innocent until guilt is proved. It only remains for the courts administering even handed justice to

give to the accused the opportunity to meet his accusers and clear away all doubts, or if doubts there be, he is to have the benefit of them before he is to be declared guilty or not guilty.

When this unfortunate woman now before you, under peculiar and distressing circumstances, weighed down with sorrows and burdens that have not fallen upon her singly, declared in your presence the other day that she was not guilty of the charge presented against her in this indictment, American law shielded her as with a wall of iron with a *presumption of innocence* until *proved* guilty, and when she was subjected to a vigorous cross examination by the learned and distinguished gentleman who has been brought here to conduct this case in behalf of the Government, such an examination as few have ever been called to undergo, that presumption was strengthened, if possible, by the honesty of her answers.

You, gentlemen, should bear constantly in mind, as, step by step, you proceed to examine each act and circumstance placed before you, that the presumption of innocence cannot be overcome by clamor, idle rumor, or even probabilities.

Gentlemen of the jury—the prisoner at the bar is entitled to the simple justice and full protection of American law, stripped of none of the pure ermine with which its universal justice surrounds all others, and this is all that we can ask, and this the law guarantees to us.

What is the crime with which she stands charged? The indictment and counsel for the government declare it to be murder, murder of one whom, thirty years ago or more, she took to be her guardian and protector, the sharer of all her joys and of all her woes. That they may have lived unhappily together a portion of these years is not our province to assert or deny.

It may perhaps become necessary before clos-

ing the remarks I may make, to ask you to say whether or no, you are to strip from the prisoner that consideration for the infirmities of human nature that the law always gives to the unfortunate; for the law makes one kind of killing, i. e. that done in madness, heat of passion, manslaughter, and not murder.

In opening the defence in this case my colleague told you that homicide was divided into three classes, murder, manslaughter, and excusable homicide; the latter including justifiable homicide. What is murder? The definition you have heard, both from the prosecuting officer and my associate in the opening arguments of each.

The unlawful killing of a human being with malice aforethought, then, is the charge we have to meet, and to that charge the prisoner has answered not guilty, and we say to you and to the world, that while we admit the life and death of Dr. Swett, we deny that there is sufficient evidence here to prove beyond all reasonable doubt, that he was *murdered*; on the contrary, we claim the evidence fails to place beyond reasonable doubt, the *cause* of his death.

From the beginning of this trial down to this hour, from the time when Dr. Richards was called to save, if he could, a dying man, to the death a few hours after, and from that time to this, there hangs over that death a doubt as to its cause, as to whether Dr. Swett died from the effects of morphine administered by his wife, or whether he died from the effects of alcohol voluntarily taken by himself.

What do we learn from the first medical witness called by the government, under the examination of the learned prosecuting officer, whose name has figured in the volumes of our State Reports as the conductor, on the part of State, of one of the first, in point of magnitude, capital trials ever had in our courts, whose experience and eminent abilities the prosecution deemed so necessary to bring out every fact that tends to fasten guilt upon the prisoner, that they have brought him hither, and added the weight of his large experience to the experience and great abilities of the County Attorney?

Dr. Richards is called by the government as an expert, and what does he say, when asked by the Acting Attorney General, what, in his opinion, caused the death of Dr. Swett? That there may be no mistake, I will read Dr. Richards' answer to that question. Recollect that Dr. Richards saw Dr. Swett die, and knows

what were the symptoms. Now mark his answer: "Had I have been called to a man whom we knew to have no intemperate habits; and the same symptoms appearing as in Dr. Swett's case, I should have given it as my opinion that the man died from an overdose of morphine; but this man was known to be in the habit of using intoxicating liquors to excess, and how much that had to do with his death, I cannot say."

There is Dr. Richards answer to the question by the government, as to what was the cause of Dr. Swett's death, and does not that leave the matter at least in some doubt? Why, gentlemen, this answer is not the resort of the prisoner seeking the technicalities of law or science to confuse the minds of reasonable men, and thus induce a verdict of not guilty. When the question was asked, we objected to it, and the Court directed it to be answered, our objection to the contrary being noted; but Dr. Richards does not stop here. I will again read from his testimony. In answer to my question upon cross examination, he said: "If I was called to a man having all the symptoms of Dr. Swett, and should smell alcohol in his breath, and know nothing of his previous habits, and the man should die as died Dr. Swett, I should say he died from the effects of alcohol." This, gentlemen, is the testimony of a government witness, from a man skilled in medical science, a physician who, in the lifetime of Dr. Swett, knew him well, knew his habits, and declares to you that had he smelled alcohol in the breath, he should have judged that Dr. Swett died from its effects.

But he says he did not smell alcohol, although he was in a position to have smelled it, if any had been taken. Now look at this a little. If morphine caused his death, when was it administered, and *how* was it administered? The government say on that quiet Sabbath morning of Dr. Swett's death, the prisoner gave him an overdose of morphine in his whiskey. The theory of the Government is, that the morphine placed by the prisoner in that gill of whiskey, was the morphine that caused the death, and I ask you, as men of intelligence, how you are to believe he took that morphine without taking the alcohol with which it was mingled? If you can believe so, then perhaps you can find the solution of Dr. Richards' doubts. The little girl says there was a gill in the bottle, and that he broke and threw the bottle away. In the early morning—when all was still and the household was in repose, we find him stealing thief-like to that stable, and why? The day before he had

been sober, in the morning he went to the village, where Sarah saw him in one of those shops of corruption that breed almost every crime known to American law. He was there again in the evening, remaining till late, when he returned to his family, and was admitted into the house by Laura. What was he there doing? Is it not fair to presume that he was following in the line of that well beaten path, drinking intoxicating liquors, and that his last act before leaving must have been to take the "drunkard's night cap." When was that bottle of whiskey placed in that stable? Had it been there Saturday, think you—knowing his passion for liquor—that he would have remained around the house any considerable portion of that day without visiting that stable, lessening at each visit the amount in that bottle until it was all gone? No, gentlemen, that bottle was placed in that stable Saturday evening, and when placed there was full, for his visit to the village had satisfied him for that night. We find him on Sunday morning stealing to the stable, three times according to the testimony of Stevens, the son-in-law. Now, what did he go there for? Is it not clear, from the Government's own showing, that he went to the stable after the bottle? Is the conclusion erroneous that he drank the contents of that bottle on that morning?

"—One master passion in the breast,
Like Aaron's serpent swallows up the rest."

You are bound to believe the government evidence that the symptoms of Dr. Swett were the symptoms always seen in a case of poisoning by alcohol. What does Dr. Richards say—"All the symptoms of Dr. Swett from the time I was first called, up to his death, were those of alcoholic poisoning." Well, now, when he does not smell alcohol in the breath, and receives information which forces the conclusion upon him that his dying patient has taken intoxicating liquors in an unknown quantity, he testified that he would have thought that the man died from the effects of alcohol. Dr. Richards said in answer to questions upon his direct examination the other day, that his first impression when called to Dr. Swett was that he was under the influence of alcohol—"dead drunk." Whence came that impression? Clearly from his own knowledge of the habits of the man and from his symptoms; nor did Dr. Richards change that opinion until told by the prisoner at the bar that morphine had been administered. Does he disclose anything else, any other reason for his change of opinion? Gentlemen,

he concluded finally that it was morphine that killed Dr. Swett, simply because he had good reason to suppose morphine had been given him, and because a smaller dose of morphine will kill than of alcohol, nor could he perceive any difference in symptoms on *post mortem* appearances or such a difference as would satisfy him entirely, which it was that caused the death; but his knowledge of morphine told him that it required a smaller dose of morphine to kill, than of alcohol, and he says he was told forty grains had been given—forty grains of morphine in a gill of whisky! Gentlemen, the idea is preposterous, and yet, on that morning of intense excitement, I have no doubt that the fact that Dr. Richards was led to believe a very large dose of morphine had been given, was the only fact that led to his change of opinion. The fairness and soundness of Dr. Richards as a witness I do not for one moment question, but I cannot resist, and think you cannot resist the conclusion, that his mind in this case was on the morning of Dr. Swett's death, somewhat biased by what he was led to believe as to the dose of morphine given, and yet he tells you that he then and there disputed the statement that forty grains had been given. I do not mean to charge so excellent a man and physician as Dr. Richards, with such a prejudice as would lead him to willingly injure the prisoner, but I do mean to say, that his opinion that morphine caused the death of Dr. Swett, was based upon what was on that morning told him, and not upon any discovery he made upon his examination of his patient; but Dr. Richards also says that he cannot now tell any more than at that time, to what extent the alcohol accelerated death. He says distinctly that the intemperate habits of the man left the question of the cause of his death an open one, for he says, "how much his intemperate habits had to do with his death, I cannot say." Now this is important evidence, gentlemen. It comes in no questionable shape, or in mistakable terms, and can you reject it? Would you dare do so with the oath upon you to judge according to the law and evidence given you? But Dr. Richards is not the only witness on this point. You will recollect that we asked the medical gentlemen called as witnesses, certain hypothetical questions, and the honorable attorney general in turn, with his ever ready acumen, propounded a series of questions such as only those skilled in such cases could frame; but remember, and mark it, too, that those same hypothetical questions which we put, were not put to a

single medical witness called by the government, although you saw that when Dr. Kimball was upon the stand, our written questions were in the hands of the prosecuting officer. If the answers which we received in reply to those questions were not true or tenable, then tell me why, in the case of life and death, he did not put those hypothetical questions to his medical witnesses and show you by their evidence, if he could, that the answers we obtained were not true?

Gentlemen, this is no question of probabilities. You are not to go to your room and weigh the probabilities about the matter. It is not your duty to say whether it is more probable that Dr. Swett died from the effects of morphine than from the effects of alcohol, for the government must convince you beyond all reasonable doubt that the death was caused by morphine, and that it was administered by the prisoner, and if they fail to do so, we are not called upon to produce proof in order to be entitled to the benefit of the doubt. The hypothetical questions which we put to the medical witnesses called by us, assume a state of facts which we contend are precisely the facts in this case, and the failure of the counsel for the State to put these questions to the other medical witnesses called, affords conclusive proof to the point that the answers we obtained were entirely correct. Rest assured if they were not correct, the skill of the learned gentleman conducting the prosecution, would have found it out, and the error would have been shown to you; therefore, I assume what I think is clearly established, that those answers are correct, and that the facts assumed in those questions are precisely the facts as proved in the case on trial. If those two propositions are true, then has not the medical evidence in this case thrown around the death of Dr. Swett a reasonable doubt as to its cause? I wish now to call your attention particularly to these questions and the fact that in answering them, all the medical witnesses agree, and with the permission of his Honor I will read the first question.

"If, upon visiting a patient, you learn the following facts, that the patient is a man of established intemperate habits, that he has been drinking to excess the week previous to your visit, that he has taken into his stomach within from three to five hours of your visit, three gills of whiskey or other spirituous liquors, that he is at the time of your visit and has been for an hour or two previous in a comatose condition, that when you first see him his pulse counts about 70 per minute, and falls off or breaks down to a very feeble pulse in half an hour afterwards, that the breathing is heavy and

sterterous, and continued so till death, that there is a copious perspiration about the head, that the patient continued comatose for about three hours, when he dies; from the facts as stated what would be the cause of his death?

This question was answered by Doctors Allen, Warren, Gray, and Ross, and each of them said that upon such a statement of facts they should conclude it was a case of alcoholic poisoning. None of the medical gentlemen called by the Government have ventured a different opinion. Are the facts assumed then, like the facts proved in this case?

Have we proved that Doctor Swett was a man of intemperate habits? Is it doubtful? That circumstance is worth something in this case, it is of value in assisting you in determining the guilt or innocence of the prisoner at the bar—now almost upon the verge of the grave. Why the answers of the daughter and son-in-law that he was not drunk? Why did Ruth Clough say that he never was so drunk that he could not attend to his business? Laura says that to her knowledge he was drunk one hundred and eleven times out of the two hundred and sixty-five days previous to his death. But she afterwards explains it by saying that on these days "he had been drinking some." What does she mean by saying that he had been drinking "some"? Mr. Lord testifies that on Friday before his death, Dr. Swett was in Saco, came to his stable about eleven o'clock and put up his horse, and that afterwards on the same day, he was so drunk, his reason so dethroned, that he was traversing the streets of Saco in search of his horse, having forgotten where he left him. Such was his condition on Friday. Yet Laura tells you that on that day he had been drinking "some"! He was frequently seen by disinterested strangers who testify to his drunken condition. Woodbury Hall keeps a hotel in Kennebunk and says, "Dr. Swett has staid with me all night and he was so drunk that I had to assist him to his chamber," and yet Laura says he drank "some," and "never was so drunk that he could not attend to his business"! Could he have "attended to his business" at the time he was drunk, sitting in his chaise at his own door, vomiting, or could he "attend to his business" at the time Laura says he made the "insulting proposals" to her?

This man was intemperate to excess. We find that he was drunk on Monday, Tuesday, Wednesday, Thursday, and Friday before his death, and the circumstances warrant us in believing that he was drinking on Saturday evening and on Sunday morning.

The first facts assumed in our question there can be no doubt have been fully proved to be the facts in this case, and the remaining facts assumed are precisely the facts stated by Dr. Richards, as existing in the case of Dr. Swett at the time of his death. It may be said that the evidence in this case does not warrant the belief that within from three to five hours of his death, Dr. Swett "took into his stomach three gills of whiskey." How can you come to any other conclusion than that he had at least drank three gills on the morning of his death? By what process of reasoning do you or can you conclude that he went to the village the night before and got just a gill of whiskey, the amount that was in the bottle when the morphine was mingled with it? That bottle was full on Saturday night, and was placed in the stable after he returned from the village, and the contents were drank by him, on the morning of his death, when he made those visits to the stable spoken of by Sarah. If we have established that fact, then we have in this case all the facts assumed in the question, and the answer of all the medical experts is, that such a statement of facts would lead them to believe that the death was occasioned by alcohol. Dr. Richards testifies that Dr. Swett was in a comatose condition when he arrived and that he had been so for an hour or two previous, and here we have another of the facts assumed in the question. "When I first saw him" says Dr. Richards, "he was in a comatose condition, had been so for an hour or two, pulse were seventy, and in half an hour fell off and became very feeble, his breathing was heavy and stertorous, and continued so till death, and there was a copious perspiration about the head. He died at quarter past twelve. I first saw him about quarter past nine."

Are not these facts all assumed in the hypothetical question? If the facts assumed in this question are the facts in this case, then why have not the answers given to it by the medical witnesses to whom they were asked, surrounded the cause of the death of Dr. Swett with some doubt? In addition to this, we have other evidence tending to prove that he died from the effect of alcohol. We find him broken in business, his reputation and character gone, his pride vanished, committing acts of violence, shamelessly exposing himself to the gaze of his fellow men in a state of beastly intoxication, staggering at midday through the public streets, associating with drunken, brawling men, vicious and lewd women; going from them to his home at dead of night, and abusing his family. I dislike to say these

things. I dislike to say anything against the dead, but when it becomes necessary to do so to protect the innocent, I cannot shrink from placing before the world some of the sins and crimes of the departed, however disagreeable it may be. Such I believe to be the duty I this day have to yonder prisoner, and I shall try to perform it, however painful. Those facts that bear upon the character and habits of Dr. Swett, are lights upon the question of his death that we cannot, in justice to the living, have extinguished or hidden in oblivion; for they serve to illumine what might otherwise appear dark and doubtful, but we are confined to those habits only for a solution of the cause of his death.

After his death, I think fifty hours after, Dr. Richards with other medical gentlemen made an autopsy upon the body of Dr. Swett, and upon this point we asked our second hypothetical question, which I will read.

Question 2: "In addition to the facts enumerated in the first question, if you find upon *post mortem* examination of the same patient, the brain congested, blood vessels engorged, a bloody serum at the base of the brain, and lungs healthy, what would the facts show as the cause of his death?"

To this they all gave the same answer, and tell you that these facts with the facts stated in the first question would convince them it was a case of alcoholic poisoning. The *post mortem* appearances assumed in this question are precisely the *post mortem* appearances testified to in this case by Dr. Richards, but we did not stop here, our third question with the two I have read, cover all the facts as proved in this case.

Question 3: "If in addition to the facts stated in questions 1 and 2, you further learn that the patient within from three to five hours of your visit had taken a usual dose of morphine, what in that case would you say to be the cause of his death?"

To this question we get the same answer—"alcoholic poisoning."

Question 4 reads: "If in addition to the facts stated in questions 1 or 2, you further learn that the patient within from three to five hours of your visit, had taken morphine without your learning in what quantity, what, in that case, should you say was the cause of his death?"

The same answer was given to this question as to the three first, because there is nothing stated in the symptoms or *post mortem* appearances that indicated an *overdose* or *fatal* dose of morphine. Each witness assigns the reasons for the answers given, but I will not attempt to detail them. You heard the medical witnesses state them much better than I can, and I will only call your attention to some of them; but

first, let us compare the facts assumed in these questions, with the facts proved in this case.

The Government take issue with us upon the quantity of morphine administered. Some of the witnesses have said that the prisoner said she gave 40 grains, and others say 20 grains. It is absurd to suppose that this woman put 40 or even 20 grains of morphine into that bottle containing a gill of whiskey. What does she know about grains? What do you, gentlemen, know about a grain of morphine? Did any of you ever see a grain of morphine weighed out, until you saw it done here in presence of the Court, by Dr. Warren? Was or was not her idea of a grain, an atom, a grain of sand? Dr. Richards, however, testifies to the *amount* she gave, not indeed in grains, but by measure; he says she told him, she put in the bottle what she could take up between her thumb and finger, and your foreman took a pinch the other day and the experiment proved that he could not take up between his thumb and finger one grain, which would not be an overdose for one accustomed to taking morphine, and yet not so much as your foreman took up, could this woman take up. This evidence coming from Dr. Richards is the only evidence in this case which fixes the measure of the morphine given, and it comes from the Government, they put the evidence in, and I say they are bound by it, and it proves, that not an overdose had been administered, but a "usual dose;" for Dr. Swett made an habitual use of morphine, and it is a common remedy to ward off delirium tremens. Dr. Swett used it for that purpose, and to such an extent that he had contracted the habit of taking it.

What does Mr. Chadbourne testify upon this point? He says that Dr. Swett declared in the lodge of Good Templars, "that folks thought he had been drinking, when, in fact, he was under the influence of morphine, which he had taken to ward off the delirium tremens." If Dr. Swett was in the habit of taking morphine, then I assume that one grain to him would not be an overdose, and there is no proof here that over one grain was administered. The effects of no drug are more under the influence of habit than morphine.

The evidence that Dr. Swett took the morphine placed in the whiskey bottle is purely circumstantial; but if he did take it, he also took the whiskey, and the circumstances prove as clearly as they prove anything, that he had taken whiskey several times that morning. His frequent visits to the stable, his habits, and his abusive and indecent language to Sarah prove

it as fully as they prove that he took the morphine. The Government undertake to convince you that he took the morphine by proving that shortly after the last visit to the stable, he became seized of all the symptoms of a case of morphine poisoning; but we answer that while those symptoms resemble a case of morphine poisoning, they more closely resemble a case of alcoholic poisoning, and that he had taken more alcohol than the gill in which the morphine was placed, and of the quantity of morphine placed there I will speak by and by. From the fact that Dr. Swett went to the stable where the bottle containing the whiskey and morphine was placed, broke and threw the bottle away, and was shortly after seized with the symptoms testified to by Dr. Richards, the government will urge that you may presume that he took the morphine. They do not undertake to show in any other way that the morphine was taken. Now, gentlemen, a presumption of any fact, is an inference of that fact from other facts that are known; and I ask you, if the presumption is not fairly drawn from all the facts proved and admitted, that Dr. Swett's purpose in visiting the stable at the time he broke and threw away the bottle was to get the whiskey? He did not go there after the morphine, for the Government say that he did not know it was there. If the last time he went was to get the whiskey, is not the inference a fair one, that he also went for the same purpose the two first times? It seems to me that upon this point you cannot have any doubt, and if you have not, then you will readily conclude that at his first visit to the stable, the bottle was full, and that he had taken a quantity of alcohol sufficient to produce death, and the symptoms on *post mortem* appearances testified to, for we have shown you that a much less quantity will cause death.

Before examining further the medical evidence, I desire to call your attention to a single fact, and that is, the effects of alcoholic beverages upon the system. I read from Wharton's Medical Jurisprudence, page 501,

"The pernicious effects upon the system of the abuse of alcoholic liquors are too well known to need any mention here. Death from the rapid saturation of the system with alcohol is by no means rare. Orfila mentions an instance in which a man died immediately from the effects of a large dose of brandy. Dr. Rosch relates that cases in which adults died from the immediate effects of excessive drinking in a few hours. Taylor says that a man died in half a hour after swallowing a bottle of gin for a wager."

This is authority upon this matter. But, gentlemen, your own observations have proved to you that the strongest constitution must break down under an excessive use of alcoholic

stimulants. Tell me why are so many graves filled prematurely, so many lives shortened and homes desolated? Alcoholic liquor used in excess, predisposes the human system to many diseases, among which are apoplexy, and diseases of the brain.

The medical witnesses tell you that they would not expect death from an ordinary dose of alcohol, or even three gills taken under favorable circumstances; but they also tell you there are conditions of the system when such a dose would prove fatal. You have seen its effects and know something of its destructive features.

I think the fact has been fully established, that the symptoms of alcoholic and morphine poisoning are very similar, but as a general rule there are some distinctive features, both in the symptoms and *post mortem* appearances. As a general rule, the medical witnesses tell you, that in cases of poisoning by morphine, the lungs are congested and when in such cases they are not congested, it is the exception and not the rule. In cases of alcoholic poisoning the lungs are not congested, in this case the lungs were not congested; which is one fact in favor of our theory of a poisoning by alcohol. Now are you to take the exception to the rule rather than the rule in a case like this of life and death?

When you retire to your room with the life of the prisoner in your hands, are you to say she is guilty, simply because she so placed a quantity of morphine that Dr. Swett might have taken it? And will you say further that this case, so far as the *post* and *ante mortem* appearances are concerned, is an exception to the general rule, rather than let the exception weigh in our favor, as it most assuredly does? Gentlemen, do not such a cruel thing. We cannot believe that you will. The law that protects you would not justify you in arriving to such a conclusion. Better that there were no law at all than not have it applied to all, not have it give the same equal protection to all. Rather let its ample protection fall upon all, giving full protection to every being, however humble, than to degrade by trampling it beneath your feet.

Let me now read you some authorities upon this medical point, which I think fully sustains the testimony of the medical witnesses; and first from WOOD'S THERAPEUTICS, vol. 1, page 728. "The morbid appearances after death from laudanum are, as a general rule, congestion of the brain with more or less serous effusion and congestion of the lungs," I may remark here, that laudanum has the same effect as morphine,

both being opium preparations. By serous effusion is meant a watery effusion, an effusion of the watery part of the blood. I now read from WHARTON'S MEDICAL JURISPRUDENCE, p. 698. "In opium poisoning, as a general rule, the vessels of the brain will be found turgescant and the lungs congested." Here we have the authority of medical books in addition to the testimony of medical men, who have testified from their knowledge founded upon their own observations and experience.

Let us pass to another point. In cases of alcoholic poisoning, bloody "serum" is found at the base of the brain. Now what were the facts disclosed in the *post mortem* of Dr. Swett? All agree that "bloody serum" was found at the base of the brain. The medical witnesses give this as one of the reasons for their belief that this is a case of alcoholic poisoning. Let me again read you from an acknowledged authority, WHARTON'S MEDICAL JURISPRUDENCE, Sec. 737. "In alcoholic poisoning the vessels of the brain are congested, and numerous bloody points are seen on cutting into its substance; there is also not unfrequently an effusion of bloody serum under the membranes."

TAYLOR ON POISONS, p. 585, is to the same point. There is no authority showing the rule, not even the exception is stated, that in a case of morphine poisoning "an effusion of bloody serum" is found upon the brain. Morphine effects the cerebrum more than the cerebellum, while the alcohol more effects the cerebellum than the cerebrum, as in this case. There are no exceptions to this rule.

In cases of poisoning by morphine there is a copious perspiration over the whole body, while in alcoholic poisoning the perspiration is more confined to the head. I will read to you from TAYLOR ON POISONS p. 492. "In morphine poisoning there is copious perspiration."

WHARTON'S MEDICAL JURISPRUDENCE, p. 477.

"Copious perspiration is a singular and not unfrequent symptom. It is mentioned by Christison, who says, that in one case 'the sheets were completely soaked to a considerable distance around the body,' and Dr. Moreland observed it in an equal degree, in a case he has reported."

Still further upon this point, I will read from the first volume of WOOD'S THERAPEUTICS p. 725.

"The diaphoretic effects of opium are well known. I seldom, however, witness this effect when the patient is walking about. When he is warmly covered in bed, it is extremely common; and sometimes the discharge is profuse."

The evidence in this case confines the perspiration to the head. There is not a particle of evidence to show that there was a "profuse perspiration" over the whole body; and if such

was the fact, would not the Government have shown it? Why have they failed to produce such evidence? Can you assign any other reason than the fact that they *could not*?

But it is said that in cases of poisoning by alcohol, there is a period of excitement before the perspiration. It is not shown in this case that there was no excitement, on the contrary, the conduct of Dr. Swett rather indicates that there was great excitement. But suppose there was not, let me read you an authority upon this point. WHARTON'S MEDICAL JURISPRUDENCE, p. 501:

"In general, the state of stupor is preceded by a short period of great excitement, but in some cases this preliminary stage is *very short or entirely absent*. The difference probably depends upon the strength and quantity of the spirit, and the age of the person."

TAYLOR ON POISONS, p. 585.

"In poisoning by alcohol there is either very great excitement sometime before the stupor, which comes on suddenly, or the individual is found in a state of deep coma a few minutes after having taken the poison."

The countenance in a case of alcoholic poisoning may be either suffused or palid, and the same is true of morphine. I have now stated some of the reasons assigned by the medical witnesses for their answers to our hypothetical questions. I will not weary you by further details of their evidence. If the case stated in the questions is the case at the bar, you will then have the opinions of those skilled in the science of medical jurisprudence to guide you. But before leaving this branch of the case, there is another point to which I desire to all your attention, and that is: That morphine produces different effects upon different individuals in ordinary doses. In some it produces quiet and sleep, in others, obstinate wakefulness, and in others, nausea. All the medical witnesses agree upon that matter.

It is evident, then, that morphine will produce the effects that the prisoner desired it to produce upon her husband.

The medical witnesses corroborate her still further upon this point, for they say that when morphine and alcohol are taken together, vomiting will follow. Why, gentlemen, the prisoner had been told by her husband that upon him it would produce that effect. She knew it, too, by observation, by the results always produced when she administered it to him. But in this connection, gentlemen, there is another circumstance that throws volumes of light upon the intentions of the prisoner in giving her husband morphine, and it is a circumstance proved by Sarah, the first witness called on the part of the Government. She says, that on Wednesday previous to her father's death, Mr.

Fairfield called to get him to try a case the next day. The Dr. being drunk, Mr. Fairfield, she says, asked the prisoner if she thought he would be in a condition to try the case next day. Mark her reply. "I will make him all right to-night." How, gentlemen, would she make him all right? That evening she put morphine in his butter, and Sarah says he was sick after it. Can you doubt as to what were her intentions on that occasion? Does or does not this lift the curtain of doubt? I ask you if that circumstance, three days before her husband breathed his last breath is not enough of itself to satisfy you that this woman, be she what she may, however much she may have erred, however much she may have misdirected her efforts at reform, intended to do him good instead of harm?

I will go further and say that this circumstance is almost conclusive that she had a like object in giving morphine on the morning that her husband died.

There is no necessity of impeaching witnesses here. We will not take evidence from Kennebunk or Kennebunkport put in here by the prisoner upon this point, for this is government testimony, and they will not, I hope, attempt to impeach their own witness.

The fact testified to by Sarah, about the butter, clearly shows this woman's intentions. She declares from the beginning that her only intention was to vomit, and give him a distaste for liquor, and she persistently declares it. Will the Government longer take the position that morphine will not produce the result Mrs. Swett expected? If they do, I point them to the testimony of the little girl Sarah.

Did it fail to produce that result at that time?

Sarah says that it did not.

All the talk about five grains being always sure to produce fatal results, and all the hypothetical questions put by the Government, have no bearing upon this point, and were put merely to confuse and blind you, and to take your attention from the facts proved by their own witness, which all their ingenuity cannot wipe out or wash away.

Now, gentlemen, in leaving this branch of the case and advancing to our second position, I will simply remind you, that it is not incumbent upon us to prove beyond a reasonable doubt, that the man died from the effects of alcohol. It is enough for us to convince you, that there is a reasonable doubt as to whether he died from the effects of alcohol or morphine. The moment the evidence leads to that doubt,

that moment the prisoner is entitled to the benefit of that doubt, and your verdict should be an acquittal.

It is incumbent on the Government to prove to you beyond a reasonable doubt, that he died from morphine, and not naturally, or from alcohol, and if we have thrown a doubt upon the matter, the prisoner is entitled to its full benefit.

The evidence to warrant conviction, must satisfy you that there is no rational mode of accounting for the circumstances, but upon the supposition that the prisoner is guilty. Circumstantial evidence to authorize a verdict of guilty, should be of such a nature as to produce in your minds a rational conviction of guilt, which must be the only rational conviction which the circumstances admit of. All the circumstances proved in this case point to one or two causes that might have produced the death of Dr. Swett, and the evidence cannot fail to have satisfied you, that he might have taken of both in an unknown quantity. Which, if either, killed him? The preponderance of evidence certainly favors our theory, that it was alcohol. Yet if you have any reasonable doubt about it, the prisoner is entitled to the benefit of that doubt. If the circumstances proved are explainable upon the hypothesis, that morphine did not cause the death, or that alcohol did, then the Government have failed to prove beyond all reasonable doubt, that Dr. Swett was murdered.

The rule of law for your guide in such cases as this is laid down in the 4th vol. of PARKER'S CRIMINAL REPORTS, p. 380, in the case of *Brown v. People*, in the following language:

"Where a criminal charge rests upon circumstantial evidence, and where upon any hypothesis, however unreasonable even, consistent with the circumstances proved, the accused may be innocent, there should be an acquittal."

It may be as well, however, to take the law upon this point as laid down by the courts of our own State, and no case can be more satisfactory to the learned prosecuting officers, than the case so often quoted here during this trial, the case of *State v. Knight*, 43d Maine Reports, p. 15, instruction 5:

"That it is when no other hypothesis will explain all the conditions of the case and account for all the facts, that it can be safely and justly concluded that it (the death) has been caused by intentional injury."

The law will be given you by the Court, and as I believe in substance as I have read it. With these facts and principles of law to guide you, I feel that I could with safety leave the case here, and nothing but a desire to fully perform the duty I owe as one of the counsel for the prisoner induces me to take your time with any

further discussion of the evidence. I know that the effort made against her is directed by genius, and has its origin in hatred, and with this knowledge, I feel that I shall not have performed my duty until I have given you our entire defense.

The Court will instruct you, that the Government must so sustain their position that Dr. Swett died from the effects of morphine, as to fully exclude, beyond all reasonable doubt, our position, that the cause of his death was alcohol. The evidence is now familiar to you, and as reasonable and intelligent men, you are to say whether they have done so, and I trust that no part of the evidence will be forgotten or overlooked. The prisoner is to be judged according to the law and all the evidence in the case, and not a part of it only. It is no new position that we take, or defense that we offer. Alcohol kills its thousands, and enough, full enough has been shown here in evidence to convince even the unwilling, that for it, Dr. Swett had a most terrible passion, and

"The ruling passion, be it what it will,
The ruling passion conquers reason still."

Passing now to the second branch of the case, we say, that if the prisoner did administer morphine, and if the amount so administered did cause the death of Dr. Swett, the prisoner is not guilty of murder, because malice, either express or implied, is wanting, and malice is an essential element in murder. It may be urged that where one kills another, he is presumed to intend the act, and from it malice may be inferred. I make no issue, gentlemen, upon this as a rule of law, yet it is a rule that has its limitations and exceptions. If the prisoner had given to her husband a deadly poison, one that could be administered only to kill, then the presumption of a wicked intent would be very strong, but here the poison alleged to have been given, is a medicine, so taken and used everywhere. But it is urged that an overdose was given, and purposely given to produce the death that followed. The counsel for the State, however, do not quite dare to risk their case upon the presumption of malice from the act as they have proved it. Why seek to emblaze every error and magnify every mistake, if from the act of administering morphine, malice could be inferred? They felt the need of something more than this, and they sought, but what have they found? Admit, now, that the morphine was given, but bearing in mind the presumption of innocent intent until the contrary is proved, let us see what the evidence reveals.

The Government have undertaken to con-

vince you that there is malice here, by putting in evidence which they are pleased to term antecedent threats, and menaces of the prisoner, and the able County Attorney in opening the case for the State told you of this prisoner's many and unholy sins, volumes of guilt that incense repentance could hardly blot out, painted her

"A soul of fire; a child of the Sun
With whom revenge is virtue."

And it is to sustain this theory and convince you of a hatred by the prisoner for the deceased, that the curtain has been lifted from the private lives of the prisoner and her husband. They contend, that from the first, the deceased and the prisoner were an ill assorted and unhappy couple, that she was unkind, even cruel to him, but, gentlemen, through all these years that they say she was so cruel to him, she was his wife, and in that word is spoken volumes.

More than thirty years ago, in the bloom of youth, radiant with hope, and a heart swelling with youth's affectionate sympathies and friendships, she married him, and we are bound to believe, with the full determination of being unto him a chaste and loving wife, and he to her a faithful and loving husband, and no witness has said, and no circumstance has indicated, that from that day to this, she has ever sought for pleasure or happiness beyond the sphere of her own home.

Thus together, hand in hand and heart beating responsive to heart, in the simplicity of a rural home, they commenced their married life, and in the years that followed, in sympathy with each other, they saw loved fruits of their union cold and silent in death, and followed them to that last dark resting place, the grave.

Together they toiled, sometimes in affliction with sad and aching hearts—sometimes in pleasure and happiness, and sometimes ruffled with discord, until, as they approached the "sere and yellow leaf of life," his folly led to recklessness and such a blind mad intemperance that it filled the wife with frenzy, and thus was their happiness interrupted, but affection was not banished, only lost sight of for the moment. I do not doubt or deny that at times both were moved by intense anger to say and do things which both repented afterwards. Human nature is frail. There is scarcely a family within your knowledge or the knowledge of any one, where the waters are always smooth—where the sun always mildly shine. Often circumstances will arise to provoke passion and unkind words will be spoken; but like the life of the one who utters them, they are fleeting and

transitory and soon pass away and are forgotten. The great lesson that the best of all laws teaches us, is that of charity—and I invoke it to-day, not only for the frailties of the prisoner, but also for the faults of him who now

"Sleeps his last sleep,"
in the shadow of that home he might once have made happy.

Gentlemen, why were all these storms—why these exhibitions of "madness wild"—why hard words and cruel acts and domestic violence? How often the accused should be the accuser. I do not wish to assail the dead, but I cannot avoid what the Government has made my duty. Could I do justice to the cause of this unhappy prisoner by drawing a veil over the past of her dead husband, how gladly would I do so—but, Mr. Foreman, we cannot forget that while the form of Dr. Swett lies cold and silent in his grave, yet living and acting here in your presence to-day are his acts. We cannot put them out of sight, for in this sad drama they are the moving spirit. Every part of the prisoner's conduct has been examined—all her motives scrutinized, and all her acts brought to the test of an open day investigation. You have seen how her faults have been described—

"Set in a note book,
Learned and conned by rote,"

if possible to be converted into weapons in the hands of the strong arm that is arrayed against her. But, gentlemen, the prisoner, although frail and erring, has not shrunk from the test, and she now challenges all her acts for a motive to the awful crime with which she stands charged.

In opening the case for the Government, the County Attorney told you that the prisoner, for some reason or other, hated her husband, and wanted to kill him; but the evidence has clearly established the fact, that, however misguided this poor broken woman may have been, her aim was *not* her husband's ruin. If she hated him, and wished to kill him, why attempt to restrain him from vice? Why not have encouraged and smiled upon his vice? Why, if she hated him, did she attempt in so many ways, and if you please, in so desperate a way, to restrain him from drunkenness? Why say to Hercules H. Chadbourne, one of the Good Templars, "Save, do, do save him, if you can. Others have fallen as well as he." Ah, Mr. Foreman, the evidence does not sustain the idea that she hated him. She may have exhibited more of the frailties of human nature than you, or others, but for this you are not to convict her; she is not upon trial for futile attempts or

threats. The evidence tending to show threats and menaces is introduced here to convince you that she had an evil heart, desired to take the life of her husband, and in pursuance of that design, put morphine into his bottle that he might take it and die. Was it a secret design? Did she stealthily administer poison? Look to the facts. It was administered openly in her own room, and in presence of a member of the family. Sarah brings the bottle to her room, and in her presence the prisoner "empties into it a small white powder from a paper," hands the bottle back to the little girl, who carried it again to the stable. When, in a few hours after, the prisoner saw the form of her husband upon the sofa, did she seek to cover up or conceal what she had done? In her intense anxiety for his recovery, she exclaimed: "If he dies, I have killed him. May God forgive me, for I did not intend it." Does this look like concealment? Experience teaches us that criminals do not publish their designs, nor are they free to confess them; but they bend all their energies to cover up their evil deeds.

"Wickedness chooses darkness rather than light." This is an important fact, gentlemen; one that you will not overlook. With what she may have said or done on previous occasions, when in passion, you have nothing to do any further than to say how much light those acts or sayings shed upon the act of Sept. 23d. Your business is with the act on that day. What were the circumstances attending the act on that day? There had been no quarrel on that or the previous day or evening.

However excited might have been her feelings at other times, the evidence is, that all was quiet and peace on this occasion. When informed by Sarah, before she had arisen from her bed, that he was going to the stable, drunk, she had Sarah, upon his return to the house, go out and get the bottle, into which she put the morphine; and ringing out clear above all suspicion, to be remembered as long as this case shall be known, is her declaration to Dr. Richards, in presence of Laura and Owen, "God knows I did not intend it." We do not, gentlemen, know all that was said on that morning of Dr. Swett's death. No witness has undertaken to give, in detail, all that transpired. The prisoner testifies to language used that others do not recollect; and in this circumstance you cannot find anything strange. It was a time that tended to bewilder and excite the minds of all. Sorrow and anxiety filled all hearts, and all efforts were directed to the recovery of the patient. Let us now examine more in detail

the evidence of each witness called by the Government, and see what it establishes. The first witness called was Sarah, a little girl 14 years old. That she intended to tell the truth, I do not doubt, but you will, I think, agree with me, that the testimony of such a child should be received with some caution, especially where such a witness has been under the training and influence of a party interested. Sarah tells you that the prisoner "threatened something desperate." Now that is the very echo of Laura's words; Laura says she threatened something desperate. What was it that was threatened? Sarah fails to tell you, and finally admits that Laura told her that the prisoner threatened something desperate. She had heard Laura and Owen talk the matter over so much, that she states for truth what they have said, and is biased by their views. Does not her testimony about the threat exhibit the influence of her association with Laura and Owen? She at first remembers only what goes to show an unkind disposition on the part of this unfortunate woman towards her husband, until she is compelled by a cross examination to testify to more than Laura and Owen had instructed her to.

Sarah says, that on the morning of the death, Laura heard her father speak to her, but that Laura did not understand what he said. How does Sarah know that circumstance? Is it not clear that all she knew about that, was what she heard Laura say about it, for she, herself, was in another apartment of the house, away from both Laura and her father. When she testifies to what she saw and knew, her testimony is entirely different, her bearing is entirely different. I ask you, gentlemen, if this does not bear upon its face the ear marks of Laura's influence? In my mind it characterizes the whole of the little girl's testimony. She undertakes to tell you of the conversation with her mother at Alfred, when she says her mother asked her to "go for her." "She said she wanted me to go for her as much as I could." Says Sarah: "I told her I should not lie, and she said she did not want me to lie." This is Sarah's language, and she says her mother said she did not want her to lie. Now suppose this is entirely true, what does it prove? Does it show that the prisoner wanted to put that witness upon the stand with a lie in her mouth? The State may be able to crush almost any person accused of crime, if the jury are to be governed by such testimony of parts of conversation. But you are to take the whole evidence and not a part of it. I ask you, when you go to your rooms, to weigh all of this evidence,

and take all of the circumstances into consideration, proceed deliberately, as one should do, knowing that the life of an individual depends upon the result of your conclusions. But Sarah did not state all that conversation with her mother at Alfred, for when recalled she said: "Mother whispered to me that if I would stay with her, she would deed me the property." This plainly shows that she was not put upon the stand expected to tell the whole truth, but only to criminate the prisoner.

It is a matter of but little importance, this Alfred conversation, except by way of showing that Sarah got things somewhat mixed. The prisoner wished Sarah to stay with her, because she felt the need of companionship. Cast into prison charged with a most terrible crime, with no one to speak to save either those guilty or accused of crime, was it unreasonable in the prisoner to desire that little girl to be near her? She did not ask her to share her confinement, but to stay near her, and be with her a portion of the time. The little girl, Sarah, was not her own daughter, but an adopted daughter for whom the prisoner had done much, and now, when sick and in prison, is it strange that she should desire the company of the little girl for whom she had done so much? "Deed me the property." Again the echo of Laura's words. Sarah has heard that song so much about the "deed of property," that she thinks her mother told her so. She says this conversation took place in her mother's cell at Alfred, in the presence of three other persons. Is she corroborated in that, is there any evidence put in here to establish the testimony of Sarah upon this point? I do not doubt the little girl's intentions, but she has heard the story repeated by Laura and Owen so much that her mind has been so filled to overflowing about these things, and about the "deed of property," that she believes it as a fact. What inducement could the prisoner have to promise Sarah a "deed of the property" if she would go for her? What did she mean by it? At that time you will recollect what the prisoner knew, that Sarah had testified to all she knew, before the Coroner's Jury and before the Grand Jury. Now what change in her testimony did the prisoner expect to make, if any? Is there anything here to show any desire of a change in Sarah's story? Sarah says "she said she did not want me to lie."

AFTERNOON SESSION.

I was speaking, gentlemen, when the Court adjourned, of Sarah's story about the conversation with her mother at Alfred. That sto-

ry was drawn from the witness to show an intent upon the part of the prisoner to control the testimony of the little girl in her favor, and you will recollect that I called your attention to the fact that Sarah did not at first tell all of the conversation had at that time. On cross examination Sarah says, she wanted her to stay with her, and that if she would, she would deed her the property. I asked her if that was the only time her mother said anything to her about deeding the property, and she said, yes, and in that answer, gentlemen, you have the key to the whole matter. Sarah testifies that both her mother and Laura wanted Mr. Tripp to stay with them at the time he was there, of which I will speak by and by. What for, gentlemen? Why did the prisoner and Laura want Mr. Tripp to stay there? I find the answer to this question in Sarah's statement, that when her father came home drunk, she ran and hid, was afraid of him, afraid he would strike her. If Dr. Swett's conduct was such as to inspire that little girl with fear, is there any wonder that her mother and Laura wanted Mr. Tripp to stay with them? The Government would have you understand that Dr. Swett feared the prisoner, but does not the facts clearly show that not only the prisoner, but the entire family stood in fear of him? Sarah testifies that she saw Dr. Swett choke the prisoner at the wash tub, and yet Laura would have you believe that her mother was always the aggressor. Do you believe it, gentlemen? The little girl stood in such fear of him, that when he came home, she ran and hid, and he must have had a heart of stone to entertain spite or malice against her. If his conduct so affected the little girl, into whose heart malice had never entered, to whom revenge was a stranger, how must the wife have been affected? Has the Government satisfied you by Sarah's testimony that the prisoner is the chiefest sinner among ten thousand? Does not her testimony throw some light upon the manner in which they lived? Here are two witnesses, living in the same house and breathing the same air, compare their testimony. Laura would have you believe that her father was always peaceable, and that her mother only disturbed the household. Does not the testimony of Sarah stamp that of Laura as biased and prejudiced?

But there is another circumstance partially alluded to before. Sarah says that one day when her mother was at the wash tub, her father came in, and in anger clutched her by the throat. Pray, who was the aggressor then? This evidence comes from a government witness

and rises high above the mere negative testimony of Laura. I will not say that the prisoner did right, but her exhibitions of anger should be viewed with charitable eyes, because of the great provocation. Had she, in one of those moments of anger, killed her husband, the crime would have been manslaughter and not murder, such is the consideration of the law for nature's infirmities. Laura admits of no acts of kindness on the part of her mother. Sarah says, that a little while before her father's death, his horse came home without him, and that the prisoner called her up to go with her and get some of the neighbors to go after him, and is this evidence of hate? Why this watching far into the night, this anxious waiting for his return? Why not have left him to perish by the roadside? Evidence of spite, of hate! With all her faults, this is evidence of affection, and shows how true were her words to Mrs. Newbegin, "I love him, but hate his acts." Had she been a woman as spotless as the angels, how could she do otherwise than hate his faults? Where in this broad land, where feelings, sensibilities, hearts and reason rule minds, where will you find the chaste woman who would not hate his acts? It is urged that those intemperate speeches of the prisoner indicate a hatred of her husband; and they contend this is sufficient proof of malice in the heart of the prisoner on the 23d of Sept., when she put the morphine in the whiskey; for, gentlemen, the Government must fully satisfy you, *that the motive of the prisoner in putting that morphine in the bottle of whiskey, was unlawful, bad and wicked.* If they have done this, then I admit, they have proved legal malice, *but anger coupled with threats, even, on previous occasions, if the anger passed away, does not afford sufficient evidence of malice, hate or any wicked purpose on the morning of Dr. Swett's death.* Is it not in accordance with human nature and human frailty, that in moments of anger, words will be spoken which are immediately regretted, and threats sometimes indulged in which passes with the anger away like a cloud, and all is calm and quiet again? And frequently expressions of regret are made, and there is no evidence to show that such was not the fact in this case; on the contrary, we may safely presume there were such expressions often made on both sides. Such a conclusion flows easily and naturally from all the circumstances proved, and you should not fail to take it into consideration. That single circumstance related by the girl,

Sarah, as to her mother's efforts to get the neighbors to go after her father, warrants such a conclusion, and fully contradicts the innuendoes of Laura, and the State's counsel that the prisoner hated and desired to kill her husband.

But there is another circumstance testified to by Sarah, from which it takes no extraordinary amount of intelligence to learn something of the feelings with which the prisoner regarded her husband. About three weeks before his death, Dr. Swett returned home late one night from Biddeford, went into the stable to put up his horse; and being intoxicated, fell headlong, while attempting to feed him from the hayloft, into the crib of the horse stall in such a position that had he not been forthwith rescued, he must have died there; and in this condition he was found by the prisoner, who saved and cared for him. Did this fact strike you gentlemen, as evidence of hate? Does it show that the prisoner is the hard hearted, cruel woman the Government would have you believe her to be? Does it not rather evince kindness and affection, and interest to save the life of her husband, instead of a desire to destroy it? This act upon the part of the prisoner is fully proved. It is testified to by the prisoner, and Sarah says, that the prisoner and Dr. Swett talked it over in her presence the next day, that she found in the stall her father's pocket book, which he lost when he fell. Three weeks before his death subsequent to all these cruel acts and threats spoken of by Laura, Owen, Miss Clough and Mrs. Newbegin, we find that the prisoner instead of seeking to destroy the life of her husband, saved it; and yet it is asserted that three weeks after, the prisoner, her heart filled with the hate of years, and a design to kill her husband, administered to him a deadly dose of morphine. Why, gentlemen, what occurred on the day before Dr. Swett's death? Sarah testifies that while she was combing the prisoner's hair, Dr. Swett, after a week of brawls and drunkenness, came into the room and passing to the sofa where the prisoner sat, oppressed with all her troubles, and borne down with griefs, placed his hands upon her head, and said: "Cheer up, Jenny, we will go to the Port and live, and be happy, yet." What think you were the feelings of Dr. Swett at that moment? Who knew better than he what troubles oppressed her heart? Who knew better than he what had passed between them during their married life?

"Thought is deeper than all speech,
Feeling deeper than all thought,
Souls to souls can never teach
What ~~and~~ themselves ~~were~~ taught."

into Mrs

On the 6th of April last, Dr. Swett conveyed to the prisoner the greater part of his property. Did he believe she hated him at that time? Did he then imagine that she desired his death? Ah, gentlemen, he knew better. The silent monitor within told him he had done and was still doing wrong, and that his wife was right in endeavoring to reform him. Sounding in our ears to-day are those never-to-be-forgotten words uttered the day before his death: "Cheer up Jenny, we will be happy yet"—showing that the feeling with which he regarded her on the 6th of April when he gave his property, governed him up to the time of his death; and yet he knew the nature and full extent of all their quarrels. And she too, what was her occupation on that Saturday before his death on Sunday. The government would have you believe that on that day her heart was filled with hate, and that she had resolved upon his death. And yet on that day she was engaged in preparing for him the comforts of life—repairing his clothing as though he were to live for years. It may be said that these are slight circumstances, but by such circumstances we shall arrive at the actual feelings of the prisoner towards her husband.

Sarah says there were quarrels and we do not deny them, but we ask you to give such weight to her shadowy statements concerning them as her testimony is entitled to. To those facts within her knowledge, she testifies clearly and distinctly, but when speaking of some of the quarrels she seems to have been governed by Laura's version of them, and even admitted that her knowledge was partially derived from Laura. In making up your minds as to the intent with which the prisoner administered the morphine, there is one circumstance that lets in a flood of light, which you will not fail to remember.

Mr. Fairfield called at Dr. Swett's house on the Wednesday before Dr. Swett's death to get him to try a case for him. Dr. Swett was drunk, and Mr. Fairfield asked the prisoner if he would be all right to try the case the next day. What was the prisoner's reply? "I will make him all right." How make him right? That night she put some morphine in his butter, and Sarah says he was sick after it and vomited. The prisoner had told Fairfield she would make him all right to try the case, and she says that her purpose in giving him morphine was to give him a distaste for liquor. She gave morphine on this occasion—and is not the conclusion an irresistible one that her intention on this Wednesday evening was to get him in

such a condition that he could attend to his business the next day? If she gave it to him to benefit him on Wednesday, did she not have a like intent on Sunday? The Government says that what she gave him on Sunday killed him, and therefore you must presume that she intended his death! Suppose the amount she gave on Wednesday had killed him, would you say she intended his death on that occasion when her purpose was so clearly apparent to benefit him? What facts are there to lead you to believe that she had a different intent on Sunday? The circumstances were the same. He was drunk on Wednesday, and was drinking and drunk on Sunday. If the morphine given on Sunday was given with an intent to benefit him, even if it caused his death, the prisoner would not be guilty of murder, for where the intent is good there can be no malice.

Leaving Sarah's testimony, let us now examine the more important part of Laura's. During the examination of the daughter Laura, you will remember that a memorandum book was produced, and from one lid of that book to the other, with one exception, we fail to find one word noted as to any bad acts on the part of the mother up to the death of the father—all notes upon family troubles being with reference to the bad conduct of the father. You will also remember that "sad memorandum" of "secret sorrow," showing the state of mind Laura was in when she made it. Why, gentleman, was all this grief on the part of the daughter? We of the defence had no disposition to press her upon this point, but lest it should, as was attempted, mislead you, we felt obliged to go deeper into that matter and prove to you by the witness herself, that it was not the conduct of the prisoner that weighed so heavily upon the daughter's mind, and we asked her the question—"Did your father ever make insulting proposals to you?" What was her answer? "Yes he did—but it was when he was in liquor?" How quick the gentleman from abroad—the acting Attorney General, asked her—"if it was not immediately after her mother struck him over the head with the ruler," giving you to understand, gentleman, that the blow upon the head with the ruler so dethroned the man's reason as to lead him to make proposals to his own daughter of the most revolting character. But you will not be so easily misled. What was the experience of Mrs. Newbegin long before the alleged ruler affair. She says Dr. Swett made like proposals to her. Did the ingenuity of my learned brother find the ruler as an apology in the lat-

ter case? Ah, Mr. Foreman, it was not the "ruler," but his "unruly passions" that so degraded him. The idea that it was the ruler that made him so debased, is contradicted by the whole tenor of his life. What was Laura's own experience long before this in Bedford? Leaving his wife at home alone, at a time when he should have laid aside the young man within him — when he should have done with passion — we find him visiting the low dances and saloons of the city; and his own daughter discovered him there with a woman, and implored him to leave, which he did, and immediately went to another saloon with the same woman where the daughter again found him. Did she then not know his character? Who was this woman that Laura saw with him? Laura says the same woman called to see the body of her father after he was dead, and wanted of her his picture; but we are still in the dark as to her name. In these circumstances, gentlemen, you will find a solution of Dr. Swett's character. Do you wonder then at the grief of that daughter — do you wonder at the memorandum of "secret sorrow"? Laura was his favorite — and although she had certain sympathies running in the same channel with those of her father, yet she could not brook all his acts — she could attend the dances with him, and ride ten miles with him home to the wife and mother at five o'clock on cold winter mornings after the dances had broken up, but she could not yield to all his demands. Will Government charge the prisoner as being the cause of the sad experience of the daughter? We failed to find Laura in tears except on one occasion, and that was when her father was sitting at his own door in his chaise, drunk and vomiting and using indecent and profane language to her — and then, her cheeks suffused with tears, we find her expostulating with him.

Now turn and say if you can that it was the prisoner's conduct that occasioned the grief of the daughter. If the daughter experienced such grief at the conduct of her father, tell me what must have been the feelings of the mother? He was her husband and she had a right to expect from him and to receive from him those attentions that he bestowed upon others. He it was who had promised to love and cherish her through evil as well as good report. Now, gentlemen, is there not abundant evidence showing that she had anxiety — and does or does not the evidence lead to the legitimate conclusion, not forced but naturally drawn from the circumstances, that the prisoner anxiously and prayerfully desired his reform? Granted that

she had no patience when she saw him coming home drunk from his lewd and brawling revels, and fastened the door against him, does it not show that fearing and dreading his approach, she shut him out till he should "sober off," and in that way avoid these disturbances. Is it not clear that he was a man to fear at such times? That little girl, Sarah, was so afraid of him that she would secrete herself. Laura testifies that about a year ago, her mother made an attempt upon her father's life by administering ether, and I submit, gentlemen, that the story Laura tells about this matter is not only a very remarkable one but a highly improbable one, and which is in no way corroborated by any other witness or circumstances. Laura says she kept a memorandum of such events as she deemed worthy of note, but we find that she made no memorandum of this ether event, and she says nothing was said of it afterwards, so that we must believe that she allowed her mother to make an attack upon her father's life, without giving to him any warning, or without administering to her mother any rebuke. Her story is upon its face too absurd to occupy much of your time in its discussion, but it characterizes the entire testimony of Laura as partial and one-sided. As she first told the story, her mother was just leaving the room of her father as she entered — that she heard her father groan, and went at once to his room — saw her mother leaving it with a light and cloth in one hand, and a bottle half filled with ether in the other — that she asked her mother what she was doing in there with ether, and that she replied she had none. She says, also, that her father asked her what was the matter, while she stood talking with her mother. Such was Laura's first version of the matter, and you will recollect that the Court adjourned till morning while she was upon the witness stand. When called on the stand next morning Laura says that when she first entered the room, her mother was reclining over the bed where her father was sleeping, and was holding to his nose a cloth — that the smell of ether met her — that the smell of ether was quite powerful, — and yet she says she gave no alarm. Remarkable story! — but more extraordinary still, she seeks to reconcile the discrepancies in her statements by saying that she saw her mother reclining over her father with a cloth, upon a second visit to the room. The "cutting of the rope" with which the door was fastened, and her father's "groan," she says, called her to the room the first time. *What called her there the second time? Why did she make no alarm?*

Did Laura Stevens believe at that time, gentlemen, or does she now believe, that her mother made any attempt upon her father's life by administering ether? Extraordinary that she should not at the time deem it an event worth noting in her memorandum-book, and still more extraordinary, that she should have given her father no warning that his life was in danger, nor in any other way reveal this strange story, if true, until she came here to convict, if she could, the prisoner, her mother, revealing to us all a most unnatural spectacle!

On the morning that Laura was recalled upon the stand, she testified that she heard her mother down stairs searching her father's medicine chest on the night of the ether affair. How does she know what the prisoner was doing? She says she did not see her, nor hear her say that she had searched or was searching the medicine chest. Now how did she know that such was the fact? She did not know it, gentlemen; she suspected that that was what the prisoner was doing, and so she states what she suspected, for facts. She states particularly that her father, on that night, fastened himself into his room, for she got the rope. Why did Dr. Swett fasten himself in his room, and why did Laura help him—why not let us know all about that affair? The government knew all about it when Laura was upon the witness stand, and why not let her tell us all the whole story, and let you understand the merits of that affair? But suppose that Laura's ether story is true,—what then? It does not prove legal malice on the 23d of Sept. last. We have shown acts of kindness and affection on the part of the prisoner, long since that alleged ether affair, and these acts of kindness and affection effectually rebut any presumptions arising out of Laura's ether invention. Now, gentlemen, I propose to leave that ether story right here.

The next reason assigned by Laura as evidence of hatred by her mother for her father, is the axe story. Both Laura and her husband testify to hearing the prisoner strike her father in his office up stairs, and they both tell you that they did not see the blow, or the parties, for they were down stairs. How did they know it was the prisoner who struck the blow? They tell you that she struck the blow with a ruler,—how did they know that? Let us be guided by reason, in this matter. The prisoner says, that she went up into her husband's office to get some snuff to kill some red ants that infested the cupboard—that as she entered his office, her husband caught her by the

throat, and, to free herself, she struck him with a piece of moulding that lay near by upon the window. Now how did Laura and her husband know that she struck the blow? Both of them admit on cross-examination that after they went up stairs, Dr. Swett became, if he had not already been, the aggressor; for they say he followed her to another room and struck her. What! gentlemen,—this good man, as Laura claims, follow his sick wife from one room to another and strike her? Yes, Laura says he did so, and Laura says, too, that her mother is, and has for some years been, a woman of feeble health. I do not say that the prisoner did right on that occasion—most likely she did quite wrong,—and she admits herself that in moments of temper, she has said and done many wrong things. On such occasions, she admits she wished him dead, not, gentlemen, that she desired his death, but that she has said that she wished him dead, and that she made such wishes in reply to similar expressions from him to her.

Laura says that after her mother came down stairs at the time of the ruler affair, her father fastened himself into his office, and her mother got the axe and attempted to open the door with it. I do not, cannot justify the prisoner's conduct on that occasion, but while I cannot feel to justify her, I do not forget that she is a woman. It would have been better for her to have said nothing, for hard words accomplish no good. Laura says that the prisoner threatened to kill her father with the axe if she got into his room. Suppose in that moment of insane anger she had killed him? You would not convict her of murder, the crime would be manslaughter. But she did get into his office, and she did not make any attempt to carry such a threat into execution, and thus we dispose of Laura's second mountain. We have found that after this axe affair, the prisoner saved her husband's life, and that of itself would rebut the idea of malice afterward.

Next in order comes the bottle story. Laura says, that she saw her mother throw the bottle, saw it strike her father, and that it knocked him down, and he was insensible some five minutes; after which he got up, unharnessed, and took care of his horse, went into the house, was again taken insensible, remained so all night, that the next day her father went to church all day. I have stated it just as Laura gave her account of that affair. Now, gentlemen, I grant the throwing of the bottle, but I cannot quite believe the other part of her remarkable account of the matter. It is the first

time in my life that I ever heard of insensible fits of such an extraordinary character. "Knocked senseless!" mark it, gentlemen, "did not have his reason that night!" and "went to church all the next day!" Another peculiarity of his insensibility as stated by Laura is in the fact that he at first "remained insensible about five minutes," then "got up, unharnessed and took care of his horse;" after which he was "insensible all night!" What a wonderful interposition of Providence it was that gave him reason after five minutes insensibility, long enough to unharness his horse, and then his prostration continued all night.

Gentlemen, what are the facts about the throwing of that bottle? Dr. Swett had been that day to Biddeford, and returned home just as dark. The prisoner, his wife, went to his chaise to find some articles for which she had sent by him to Biddeford. Ruth Clough was there, come from Biddeford with Dr. Swett, and she, too, saw the whole affair. In searching for her things on one side of the chaise, while Dr. Swett was unharnessing his horse upon the other side, she came across the bottle which contained the cause of all her woes, which finally laid him low, made her a widow, and his child fatherless. The sight of the bottle maddened her, and before she knew it, quick as lightning, went the thought to the brain and the bottle from her hands. She did not consider the consequence, or what harm it might do; her object being to destroy the bottle and its contents. Why, gentlemen, public opinion has applauded those women who banded themselves together, and visited the rum shops, destroying all the liquors they could find. The prisoner knew this as did everybody else, and think you she was not influenced by it? She sought to destroy a bottle of liquor, and because she did so, that circumstance is arrayed against her here, as evidence to show that she wanted to kill her husband. Do you wonder that she was excited when she found that bottle? Rum had made a hell of her home, and is it a matter of surprise that at the sight of it in his chaise she should be maddened? Ruth Clough testifies that the prisoner said to her the next morning after the throwing of the bottle, that she did not intend to hurt her husband, but finding the bottle there, it maddened her and she did not know at the time what she was doing. Go to those gentlemen of the press, and to those societies that have encouraged by their approval the public destruction of liquors by those women who had husbands that drank, and hold them responsible for the prisoner's conduct on

this occasion, for by such influences, acts of this sort are encouraged. The prisoner used harsh measures in her efforts to reform her husband, but the public have approved of just such measures in others, why, then, seek to make this case an exception? The prisoner felt justified in destroying every particle of liquor she could find, not from a wicked motive, but to keep it from her husband.

Laura testifies that out of the 265 days previous to his death, her father was drunk 111 days, and the counsel for the State endeavor to blunt the keen edge of that circumstance by getting Laura to explain it by saying that on those days her father had been drinking "some." If he had been drinking "some," and by "some" she meant but little, why does she not note the fact in her memorandum book? When these memorandums were made, she had no motive to cover up these faults, but now her anxiety to convict her mother is so great, that she is willing to say that her own record of events is to some extent incorrect; that when she noted down her father as being drunk, she didn't mean that he was drunk, but only meant that he had drank "some." Poor Laura! Not content to let this issue rest upon its merits, she attempts to varnish her story with such varnish as will reflect the most strongly against her mother. Was ever such a spectacle witnessed before? Did you ever before hear of a daughter who had become so heartless, so fiendish as to seek the conviction of her own mother of the crime of murder? Let us not forget that for Laura, too, we must have charity. Deal gently with her, for her own conscience must ere long be to her all the punishment mortals deserve.

But Laura does tell of one transaction that makes in her mother's favor. That she did not intend to tell it is apparent, because she does not do it until compelled to do so on cross examination. In answer to our question, she says, that on one occasion last August, her mother found in a newspaper an advertisement headed, "stop, drunkard," and at the earnest solicitation of her mother, she wrote to the author for the remedy he advertised as a cure for the appetite for liquors. Who was interested in the well-being of that man on that occasion? By whose direction was his redemption undertaken at that time? Gentlemen, had the prisoner desired to kill her husband, had her heart been malignant, and had she felt the legal malice that these gentlemen for the State, with their bland smiles and provoking insinuations would have you believe she felt, why did she make an effort to do him good, to make a tem-

perate man of him? Oh, gentlemen! blazing full upon the memory of Laura, to-day, are those words, "Stop drunkard," and the effort her mother then made to save the deceased, yet hard, unyielding, cruel and revengeful Laura comes here to make you believe that that mother hated her father. Clad in mourning for her dead father, upon the witness stand to convict her mother of murder, Laura could smile, and day after day, while this trial has progressed, with her companions who were witnesses, also, she could sit here and under your very eyes make light of the grief of this poor woman who is her mother. Will you ever forget, gentlemen, the sensation created in this crowded court room, when Mrs. Newbegin was upon the stand, and in answer to some question put by the counsel, she exchanged glances with Laura, and both of them commenced laughing as though they were witnessing a comedy? Words cannot paint the scene, human language is too frail to describe it.

Laura says that she found a cup of sugar upon a high shelf in the cupboard, that upon taking it down and tasting it, she found instead of being sweet, it was bitter, that she gave a part of it to Dr. Richards, and put the rest in the stove, and there, gentlemen, ends the chapter about this cup of sugar. That circumstance was paraded here by the counsel as though it was something wonderful, and by insinuation that they mean to say to you, that that cup of sugar also contained poison, and was prepared by the prisoner for Dr. Swett. Laura gave a part of it to Dr. Richards, what for, gentlemen? She evidently means for you to understand that she suspected the cup of sugar contained poison and that she gave it to Dr. Richards to test. This occurred after Dr. Richards' death. Now why was Dr. Richards not called to testify upon this point? Why, when he was upon the witness stand, when the State's counsel knew all of Laura's story, why did they keep silent as to the cup of sugar? Dr. Richards could have told you whether it contained poison or not, and the Government knew what he would say about it, now why not have let it come out? The Attorney General was exceedingly careful to parade that circumstance as a monster attempt at poisoning, yet he does not or dares not interrogate Dr. Richards upon the matter, although the evidence shows that he of all others knew all about it. Gentlemen, the manner in which that cup of sugar story is put in here is conclusive to the point, that the State is not seeking justice here, but that they are seeking to convict the prisoner, whether guilty or

not guilty. What has that cup of sugar to do with this case? How has it been connected with the prisoner? There is no evidence here to show who prepared it, how it was prepared, or for what purpose it was prepared, and the fact that Dr. Richards was not asked about it, clearly shows that it did not contain poison, for the State's counsel prefers to leave that circumstance as Laura left it, hoping you will see in it something wrong. Although it was in their power to make this matter clear, they prefer to let it go as something mysterious and dark. Gentlemen, by that circumstance learn the whole character of this case on the part of the State.

Laura says there were threats. Does she detail to you the circumstances attending them? The prisoner when put upon the witness stand admits threats, but she tells you the circumstances under which they were made,—that he threatened, and she threatened, and that neither had any design to carry the threats into execution. The prisoner, when allowed by the State's Attorney, tells you all the circumstances without any reservation. But she cannot state the exact dates and words, but she can and does state the substance of them. Why, gentlemen, you cannot repeat the very words of his Honor this morning, and do you expect more of the prisoner than of yourselves? When circumstances are introduced as proofs, it is important that all relating to the circumstances should be given with them. All circumstances that tend to fasten blame upon her mother, Laura exaggerates, but such circumstances as tend to cast the blame upon her father she keeps back until she is compelled to divulge them. Aside from the fact that Laura has a great deal of her father's disposition and many of his characteristics, the only fact brought out in evidence which tends to throw any light upon the extraordinary conduct of Laura, is in her statement to her mother in the jail at Alfred about the property. You will recollect, gentlemen, that she was quite unwilling to admit that conversation, but knowing that it occurred in my presence, she finally did admit that she said to her mother at Alfred, that she and Owen should have felt very different towards her, if she had given to Owen and herself the care of the property: Yes, gentlemen, if the prisoner had given to Owen Stevens and Laura, her property and the settling of her husband's estate, the trial of Jane M. Swett for homicide would have been a short one. The "property" bias would have had a wonderful effect in the prisoner's favor

but the prisoner proposed to confide her interests to the care of some of the good citizens of Kennebunk, in whose integrity she could put confidence, and the result is a strong "property" bias on the part of Laura against her mother; and now comes up again the insinuation that the prisoner promised her property to Sarah if she would "go for her." I have already discussed that matter, but in this conversation, I desire to call your attention to the manifest inconsistency the government would have you believe. The prisoner, they insinuate, would give her property to Sarah, if she would do for her, what Laura had so pointedly offered to do for herself and husband for the same consideration. Laura an impartial witness, gentlemen! if so, why did she neglect to state to you upon the stand what she told Mrs. Pennel about her father's breaking the doors of the house when he was drunk? You saw Mrs. Pennel upon the stand and heard her testimony. Yet Laura is not called to contradict her. What is Mrs. Pennel's testimony? She says she was at the house shortly after the funeral of Dr. Swett, and while seated in the sitting room with Laura, "she pointed out three doors that had been broken by her father during his drunken fits." Mrs. Pennel also says, that Laura spoke at this time of her mother having given her father morphine powders to sicken and vomit him when drunk. Laura is not called to contradict Mrs. Pennel, and yet the testimony of Mrs. Pennel flatly contradicts Laura's assertion that she knew nothing of the giving of morphine powders to her father by her mother. Here I will leave the testimony of Laura. She may feel ease at her heart now, but in the future, when the excitement of this hour shall have passed away, then will she feel the need of something more than mortal aid to purge her of her guilt.

Ruth M. Clough was supposed by Laura and her friends to be somewhat familiar with the tastes, habits, and prominent characteristics of Dr. Swett and his wife, and so she is called here as a witness. Her evidence fully meets the Government's high expectations as she delivered it upon her examination in chief; but when we tested Miss Clough's interest, accuracy, and bias in the matter, the smiles of my learned brother vanished, and he felt, as did Miss Clough, that one link in the chain of evidence was broken. I find no fault with the Miss Clough. Considering her strong friendship for Dr. Swett, and hatred of his wife, Miss Clough testifies as fairly as could be expected. Her account of the throwing of the bottle dif-

fers a little from that of Laura, but she remembers that the prisoner, the next day, disclaimed any intention to harm her husband when she threw the bottle. Ruth remembers also to have seen the prisoner scratch her husband till the blood came, but she says on cross examination that Dr. Swett had the prisoner by the hair,—a mutual quarrel—disgraceful, to be sure, but no more evidence against the prisoner than against the deceased. Miss Clough goes into all the details, or pretends to, of a conversation which she had last spring with the prisoner, in reference to Dr. Swett's property. She says that the prisoner said to her, that the Dr. drank so badly that she was afraid he would spend all his property; and says Ruth Clough, "Mrs. Swett wanted to know of me what she should do; said she could not live as she had been living." The cups of tea thrown at the table is also related by this witness, although she does not tell us whether it was Dr. Swett or his wife that began the contest. How true is it, gentlemen, that some women, like very many men, overlook in men what they will condemn and not forgive in women. When once woman commits an error, the iron heel of man is upon her, and all her efforts to rise again are but failures, while the same errors in men are overlooked, forgiven, and he is courted, flattered, and received in the best society as though he were perfect. I do not justify any of these exhibitions of anger testified to, by Ruth Clough, but I plead, in extenuation, the infirmities of human nature; not, indeed, to the extent of holding either party blameless, but to the extent of rebutting the idea of such exhibitions being sufficient for you to presume an abiding legal malice in the heart of the prisoner. Her acts of kindness to her husband that stand out here in bold relief, clearly prove and rebut such a presumption. There is no evidence here, showing such a desire on the part of Dr. Swett for the welfare of his wife as that so often manifested by her for him. She wished him to reform—to restore him to good standing in the Lodge of Good Templars; but he at no time expressed so much interest in her. True, on one occasion, he was melted by her sorrows to pity, and said to her, "cheer up, Jenny, we will be happy yet." Why should Dr. Swett use these words, "cheer up Jenny," if he felt that she was, as the government declares, the author of his degradation? Ruth Clough says that the prisoner on one occasion told her that before she married Dr. Swett, she loved someone else—as if there were no such thing as a

school girl fancy or affection. Suppose she did once love somebody else, is that proof that she never loved her husband? The history of their married life betrays many evidences of affection that even the witness Clough cannot rebut. At the time of their marriage, Dr. S. was a young man, without a fortune or standing. She did not, then, marry him for wealth or position. Why, unless prompted by affection, did she marry him? Ruth Clough I think fails to answer this inquiry, and we will look further and see if Mrs. Newbegin satisfies you upon this point. Mrs. Newbegin states that the prisoner told her, she was going to poison her husband, and yet Mrs. Newbegin, the fast friend of Dr. Swett, receives him into her house daily, and failed to let him know that his life was in danger. Did Mrs. Newbegin believe that Mrs. Swett intended to poison her husband? If she did believe it, if she did fear that the prisoner would attempt such a deed, why did she not inform her friend and almost daily visitor that he might be on his guard? The fact that she did not do so, is conclusive evidence that if such language was used by the prisoner, Mrs. Newbegin did not believe it to be serious or intended, and so passed it by as idle and not worthy of mention. I doubt very much if the language testified to by Mrs. Newbegin was ever used, but if it was, I regard it now in the same light that Mrs. Newbegin then regarded it as the proof clearly indicates. What would you do, if your friend's life, Mr. Foreman, was in your belief in danger? Would you not feel it your duty to go at once and apprise him of the fact? When we asked Mrs. Newbegin what her reply was when the prisoner said she would poison her husband, she said she made no reply. What! hear her friend's life threatened and make no reply, utter no word of expostulation! What a malignant heart Mrs. Newbegin must have, if she believed that Dr. Swett's life was in danger, to utter no word of warning. If what Mrs. Newbegin would have you believe, is true, gentlemen, she should be forthwith indicted as an accessory before the fact. She had every opportunity to apprise Dr. Swett of this danger; saw him daily; he came often, and I am thinking too often to her house; his office was only across the way, and yet she says she never told him. Mrs. Newbegin was upon the witness stand two and a half hours, and she was careful not to mention any circumstance in favor of the prisoner, unless driven to do so by our cross examination. On cross examination she does say to you, that at the time the pris-

oner threatened to poison her husband, she asked her if she didn't love him, and the prisoner answered: "Of course I love him, but I hate his actions." Now, gentlemen, I believe that to be the actual state of affairs. She loved him but hated his actions; and who wouldn't hate his degrading habits?

How often, gentlemen, we hear the expression made use of, "I hate that man", when it is only meant that his acts are hated; and how often do we hear a person impelled by passion utter the words "I hate you", which, when the storm of passion is over, are regretted. I have no doubt that this prisoner on many occasions has said that rather than see her husband continue in his course of degradation, she would choose to follow him to his grave, and she may, too, have often, in anger, used the words, "I hate him", but her acts contradict them. Without acts of kindness, even, this sort of evidence is far too shadowy for you to find upon it that the prisoner's heart was filled with malice. At first, it may seem to you strong, but when you examine its entire structure, each mortise and tenon, you will find it lacking symmetry of form as well as all other elements necessary to a perfect structure. Mrs. Newbegin, for instance, testifies that Dr. Swett made insulting proposals to her, yet, she says, she remained his friend, and often received him to her house when she was alone. She would have you believe that the prisoner was jealous of her husband without cause, and yet she shows, that instead of seeking to allay, she sought by every means in her power to aggravate the wife against her husband, and she also makes certain the bad character of Dr. Swett—at the same time we find her his associate and confidant. If such a state of facts as Mrs. Newbegin testifies to does not leave her in the position of a partial and strongly prejudiced, as well as an unprincipled witness,—then human reasoning can accomplish nothing, and the tests of experience and truth are of no value.

Owen B. Stevens, the husband of Laura, and son-in-law of the prisoner, who objected strongly to his marriage with her daughter, a young man who has no visible means of support, and doing nothing, or at times only, is put upon the witness stand to swear the prisoner guilty. That he was eager to say all and do all that appeared, in his judgment, to injure the cause of the prisoner, was made clear by his appearance when upon the stand. He testifies that the prisoner objected to his

marriage, and after he was married see objected to his living upon her. Owen wanted to live easy, and so, he says, he spent about half of his time with his wife at her mother's, but that at no time did he ever see Dr. Swett so drunk that he could not attend to his business. He was at Dr. Swett's, the week previous to his death, and he was there on that Friday when Dr. Swett came home from Saco, where Mr. Lord and others saw him in the day, so drunk that he did not know where he had left his horse. You will recollect, also, the account Owen gives of the occurrences of that Saturday morning of Dr. Swett's death. He says that the first he knew of Dr. Swett's being sick, was when he saw the prisoner bathing his head, and he says she said she had given him some morphine—as much as she could hold between her thumb and finger. Here, too, the government proves by measure, as accurately as can be proved, the amount of morphine put in the whisky bottle; but of that, I will speak, by-and-by. Owen corroborates the story of his wife, with reference to the striking with the ruler, yet he says he did not see who struck the blow, and he and his wife were in the kitchen, with a long entry, a flight of stairs with hall up stairs, and three doors between the office where Dr. Swett and the prisoner were and the kitchen. He says the blow was struck with a long, heavy oak ruler, while the prisoner testifies, that to release herself from the savage attack of her husband, she struck him with a piece of light moulding that lay upon the window. Now which do you believe? Owen saw nothing of the blow, or what it was struck with, but heard it, and conjectured the rest. Sarah saw Dr. Swett the aggressor, at the washtub, when Dr. Swett "clutched her by the throat", and is it improbable that he also made a like attack, as she declares, in the office? But, gentlemen, if you take that story of Owen as true, then it does not amount to the required proof to show malice, for after that occurred we have proved acts of kindness and affection, and that the prisoner saved her husband's life, desired his welfare and not his injury.

An attempt has been made to make you believe that a teaspoonful of morphine was put by Mrs. Swett, in the whisky, and from such a monstrous overdose, the government say that you must presume malice. We deny, gentlemen, that any such amount was placed in the whisky, and I ask you to bestow careful attention to the proof upon this point. Owen says

that Charles Linscott went to the village and got some morphine; that when he came back, the prisoner wanted him to get Linscott's morphine, that she might compare with it some that she had,—that he did so,—and that the prisoner "had nearly a teaspoonful done up in a *"brown paper."* Sarah says the morphine the prisoner put in the whisky was in a *"brown paper."* The government thus attempts to show that the amount of morphine compared on Saturday with Linscott's, was the amount put in the whisky. Owen says it was *"brown paper"*, yet he cannot recollect how much, or about how much, morphine Linscott had, or what kind of paper it was done up in. He says that the prisoner and Linscott each held up to him their papers of morphine,—that he examined and tasted of both but recollects accurately as to amount and color of paper in the hands of Mrs. Swett, and nothing as to amount or color of paper in the hands of Linscott. If Sarah had said that the morphine put in the whisky was from a *white paper*, then, gentlemen, Owen B. Stevens would have said the morphine compared with Linscott was in a *white paper*. But, gentlemen, a circumstance, testified to by Sarah, effectually rebuts the idea that a teaspoonful of morphine, or anything like it, was put in the whisky, for Sarah says, that "she took from a brown paper, done up as physician's drop powders, a *small, white powder*, and poured it into the bottle." Such was Sarah's answer to a question by the County Attorney, and Sarah's statement of the matter is entirely inconsistent with this attempted effort of Owen to prove the amount to have been near a teaspoonful.

Owen says she used to "jaw him," but he fails to recollect when or any of the words used. We objected to the manner in which the witness gave his evidence, but spite of counsel or court he would push forward his objectionable answers. He says that on Sunday morning, when Dr. Swett came into the house the last time from the stable, "he set down by the stove, lighted his pipe and smoked a little while; and then he got up and went into the other room and laid down upon the sofa." The County Attorney then asked the witness if he perceived any thing unusual in the appearance of Dr. Swett, at the time, to which Owen said "No." On cross examination it came out that the entrance to the room where Dr. Swett "laid down" had a passage way running between it and the kitchen, consequently, our theory being that Dr. Swett was quite drunk

when he came in from the stable, I interrogated Owen a little further upon this point, and I desire you to note his answers.

"My back was to the door of the room where Dr. Swett went to lay down."

"Dr. Swett sat opposite me by the stove; we were facing each other."

"I did not get up when he left the room."

"I did not change my position or turn my head when he left the room."

"The first I knew that anything ailed him, was when I saw Mrs. Swett bathing his head up on the sofa."

"He sat by the stove smoking about five minutes."

"Nothing ailed him when he left the room, he was not drunk, did not stagger."

"I noticed particularly that he did not stagger."

"I watched him as he got up out of his chair, and followed him with my eyes until he passed out of the kitchen into the sitting room. Saw him pass through the passage and into the sitting room."

"It was the sitting room where Dr. Swett laid down."

Gentlemen, I have read to you these answers just as Owen Stevens gave them as you will recollect. One of your number has minutes of the testimony and you can refer to them. Now examine these answers and tell me if they indicate a freedom on the part of the witness from bias. How could Owen see the form of Dr. Swett out of the kitchen, through the passage and into the sitting-room behind him, if he did not turn his head? Why did Owen watch so closely to see whether Dr. Swett staggered or not? What was it that so closely attracted the attention of Owen to Dr. Swett? Owen was so anxious to give us no strength as to Dr. Swett's drunkenness, that he would have us believe that he particularly noticed the Dr. on that Sunday morning; watching him as he passed out of one room through the passage into another room, to the entrance of which his back was turned—Dr. Swett having to pass by his side and out of the kitchen to the passage and through that into the sitting-room, while the witness sat at the stove, his face in an opposite direction; and yet Owen saw and watched him out of one room through the passage into the other notwithstanding he testifies that he didn't change his position or turn his head.

This fact, gentlemen, is important only as serving to show the character of the witness and his testimony. Had he have said that he saw nothing in Dr. Swett's appearance indicating that he was in liquor, you might have believed him; but when he undertakes to make certain that Dr. Swett was not in liquor, we then wanted to know his means of knowledge, and why he should so carefully watch the footsteps

of Dr. Swett from one room to the other, if he noticed "nothing unusual in his appearance."

This evidence fully expresses Owen's disposition to go beyond the facts to strengthen a case against the prisoner, and "*falsus in uno—falsus in omnibus*,"—false in one thing—false in all.

Mr. George Wise, who for some years lived nearest neighbor to Dr. Swett, was called by the Government, and he testifies that, although he lived so near, he never heard any threats or saw any blows between Dr. Swett and his wife, and Mr. Wise could stand in his door-way and converse with Dr. Swett standing in his door-way. One point worthy of notice of an affirmative character in the testimony of Mr. Wise, was the fact in relation to the deed. He says Mrs. Swett wanted to sell the property, and asked him if her deed was good. Suppose she did want to sell it. She certainly made no effort or there is no evidence of any, to sell it under its value, and if she could have sold it for its value, would she not have been justified? But who knows what directions Dr. Swett had given about her selling the property? Shortly before his death, the Government proves that he said to her "Cheer up, Jenny, we will go to the Port and live and be happy, yet." Is it not probable that they had talked of going to the Port to live, before this, and if they thought of going to the Port to live, of course the house at the village must be sold.

Mr. Wise says, that he has heard Dr. Swett and his wife quarrel, and then after the quarrel has seen them ride out together as pleasantly as other people, and he says too, that he has advised Mrs. Swett to get divorced from her husband, as she complained so bitterly of his conduct, also that he has given the same advice to Dr. Swett, but neither desired a divorce. Neither Dr. Swett nor his wife wanted legal separation.

Gentlemen, how utterly inconsistent this fact testified to by Mr. Wise is with the theory of the prosecution, that the prisoner hated her husband and wanted to kill him! If she hated him why not get divorced? She had the property in her hands, and certainly, evidence of his misconduct sufficient to warrant her a divorce had she have asked it! If on the other hand, Dr. Swett felt that she hated him, and disregarded his happiness and life, why did he not seek the remedy suggested by his neighbor Wise? These facts show conclusively that neither desired separation, and the Government's theory of hate should fail, if we shew no other circumstances than those testified to by Mr. Wise, who comes here an important and

honest witness. He tells you, gentlemen, that Dr. Swett and his wife had quarrels, but he never saw blows or heard threats. It was for Laura, the daughter, Stevens, the son-in-law, Ruth Clough, who took such comfort in riding with Dr. Swett "on business," and Mrs. Newbegin, who esteemed Dr. Swett such a warm friend, that she was in the habit of receiving him into her house when she was alone, notwithstanding he on one occasion made improper proposals to her, to detail in the strongest language the blows and threats, and not George Wise, who, at the time of Dr. Swett's death, had for years been his nearest neighbor.

I have thus considered this branch of the testimony on the part of the State, and what remains of it. By their non-showing the Government are not entitled to a verdict of murder. One fact the evidence put in by the State clearly establishes and that is, that the prisoner's conduct was dependent upon that of her husband. No quarrels or battles are shown to have taken place only on occasions when he was drunk. Dr. Swett knew the infirmities of his wife, her prejudices, weaknesses and hopes; yet instead of care, kindness and soothing attention, aggravated them all. That the prisoner had mental and physical troubles cannot be denied, and who is to say to what extent just such mental troubles as hers would have carried any of us? Some of you gentlemen who are husbands and fathers, take this question to your own hearts. Now all is serene in your domestic sky, but let storms arise, black clouds enshroud you with darkness, and how would you act? It is easy to follow the path of duty when there are no breakers beating around it, but when nature's frailties are assailed on all sides, then to stand up and push on without mistake or shadow of turning, requires the full play of all the energies that God has given us. The prisoner has her frailties. Years of her life have been embittered by mental and physical suffering, and the case that the State presents by its evidence against her, shows that she had not the strength to meet, as perhaps some of you could meet, the disappointments to which she was subjected. Yet, gentlemen, had she been unprincipled, governed simply by a cold policy, instead of yielding to impulses, no matter for the occurrences of Sept. 23, she would never have been placed upon her trial under a charge of murder; but unfortunately for her, perhaps, she is of a different constitution; she could not bear to see her husband sinking day after day, lower in iniquity, and while she was impelled by her impulses and strong resentment

to bursts of passion that we cannot justify, we must not forget that those same storms of passion all passed away, and were followed by acts of kindness; and what is quite as important, we should also remember that all her efforts, misguided though they were, were made to keep him from evil. I need not again call your attention to the evidence showing her intention in administering the morphine. It seems to me, that you must conclude her intention was to benefit, and if such was the fact, or if she had no intention to injure him at that time, then the State has not made out a case of murder. But failing to convince you that this is a case of murder, the Government may claim of you the compromise verdict of manslaughter, and this brings me to our third position. Manslaughter is the unlawful or felonious killing of another, without any malice, either expressed or implied, and differs from murder in this, that, though the act which occasions the death be unlawful or likely to be attended with bodily mischief, yet the malice, which is the very essence of murder, is wanting. In WHARTON'S AMERICAN LAW OF HOMICIDE, p. 35 and 36 I find the law to be laid down very clearly, and if his Honor please, I will read it:

"Manslaughter at common law is of two kinds: 1st. Voluntary manslaughter, which is the unlawful killing of another, without malice, in sudden quarrel or in heat of passion."

"2d. Involuntary manslaughter, where a man doing an unlawful act, not amounting to felony, by accident kills another. It differs from homicide excusable by misadventure in this: That misadventure always happens in the prosecution of a lawful act, but involuntary manslaughter in the prosecution of an unlawful act."

Failing to establish legal malice, the State may claim that the evidence in this case warrants you in finding the prisoner guilty of manslaughter, which I think the Court will instruct you has been properly defined.

In answer to this proposition, we say, that the prisoner having no intent to kill but to benefit, and there being no heedless disregard of life manifested in the manner in which she performed it, her act was legal, for neither the act nor the manner of its performance were unlawful, and if death results from it, it is excusable homicide by misadventure. It may be said that the prisoner had no right to give the morphine to her husband, but I hardly think my learned brother will urge such a position. If the prisoner administered the morphine as a medicine, for the purpose of benefiting her husband, she cannot be convicted because it has a different effect. In the performance of her act, we claim that the evidence shows she was guided by her experience. Dr. Swett was in the habit of taking morphine, and it has been

established that one who is in the habit of taking morphine can bear a much larger dose than one who is not addicted to the habit. The prisoner had given morphine before for the same purpose that she alleges she gave it on the 23d of Sept., and it had an effect on the former occasions of producing the result she desired it should on the last occasion. We called as a witness, Bion E. Tripp, and the State called certain citizens of Kennebunkport, to impeach his testimony.—Why? What is his testimony? What is there in it so damaging to the theory of the government, that they deem it so important to impeach him and thus destroy the effect of his evidence? There must be something in the testimony of Bion E. Tripp that rebuts the whole theory of the State, else this attempt at an impeachment by witnesses would not have been made, and before I get through I will endeavor to show you what it is; but I believe, and think you believe, that the prisoner needed not even any other evidence than that put in by the State. Upon the case as made out by the government, I believe she might have rested with entire safety; but, gentlemen, she is on trial for her life and she felt the necessity of placing before you all the facts she could. She was herself in prison, with no one outside of her prison walls to assist her in preparing her case, except her counsel, and where were they, and where was she, to look for evidence of Dr. Swett's acts and character except among his associates and personal friends. In doing so, she has done no more than the State has done, for have they not brought in here, against the prisoner, Dr. Swett's female confidants and friends? Suppose Bion E. Tripp is a bad man, it is not the prisoner's fault—she must take for witnesses from among Dr. Swett's associates and friends, be they good or bad, for among them only could she expect to find the evidence of his acts, and so Bion E. Tripp was summoned here. Tripp, at her request, and the request of her daughter also, and because he was Dr. Swett's friend and had an influence over him, had been at their house and stood between them and the savage acts of a drunken husband and father, and why should we not call him here and show what he knew about this matter, if anything. If Bion E. Tripp had testified strongly against the prisoner, we should have heard nothing of this attempt at impeachment, but his testimony, like the testimony of George Wise, doesn't come up to the government's idea of things, and so they summon Tripp's enemies here to say his reputation for truth and veracity is bad. Suppose it is bad. If his story here is true, then, let his reputation be what it may, you should believe him. If a notorious liar should come in and tell you the sun is shining, and upon looking, you should see that he spoke the truth, you would believe him, notwithstanding his reputation. So with Bion E. Tripp.—If his story is reasonable and is corroborated, then, I say, it should be believed, and in view of this, I shall not consider, for one moment, either the character of any of the witnesses called here to impeach him, or the manner of impeachment.

Is Tripp's story a probable one, and is it corroborated? He tells you of Dr. Swett's sitting at his door and vomiting in the chaise, after having taken the morphine the prisoner had prepared for the very purpose of making him sick. Is that improbable—is it corroborated? Sarah and Laura both admit the "sitting and vomiting in the chaise", and they do not contradict the other part of the story. Now, are there any circumstances tending to corroborate Tripp upon this point? Why, there is the fact that Sarah testifies to the administering of morphine in the bottle at the time Mr. Fairfield called to get Dr. Swett to try a case, which conclusively shows that Tripp's story is not at all improbable, but, on the contrary, highly probable. The fact that she put morphine in the bottle to make him sick, and give him, as the prisoner says a "distaste for liquor," and the fact that he was sick after it, renders Tripp's story probable, so that we have one circumstance in its favor. Another circumstance in favor of Tripp's story, is in the fact that neither Sarah or Laura are called to contradict it, though they were both present here and heard him tell it. By attempting to impeach him, the the government would have you believe that Bion E. Tripp made up this story, and comes in here to commit perjury. When did he make it up—who assisted him? The prisoner could not, for she was in the prison, and has had no conference with him. If he made up this story, would he have admitted that Sarah or Laura were present, knowing that if untrue, they would contradict him? Why are the government so anxious to have you disbelieve Tripp? In this circumstance, testified to by Tripp, we find that, as the prisoner says, Dr. Swett did know and did approve of the administering of morphine, and that is what the government don't want you to believe, gentlemen. Why should she conceal from her husband the fact that she was giving him morphine? It was a drug that he was in the habit of taking, and why should she conceal from him the fact that she gave it to him? She says she did not, but always told him of it afterwards, and what possible reason could she have for not doing so? Tripp testifies to another fact that the counsel for the State affected much surprise at, and that was the fact that Dr. Swett was diseased; the prisoner and her husband did not occupy the same room and the same bed, and so the State put that fact in proof to show that the bad feeling between them had been carried to its greatest extent. To show that it was not the prisoner's fault that this was so, we thought it best to prove to you

the real reason why the prisoner would not share the bed of her husband. And when we proved it by Tripp, the prosecuting counsel affected much surprise, and almost lift up their hands in holy horror at the idea that any one could say that Dr. Swett had an odious disease. Now is Tripp corroborated in this story also? What in the life and character of Dr. Swett do you find inconsistent with this story? Do you find his associations with lewd women inconsistent with it; and do you find his freedom to Mrs. Newbegin inconsistent with it? We called Dr. March as a witness to prove that Tripp told the truth about this matter; but when we asked Dr. March the question, he declined to answer, and the Court sustained him. Yet it is a circumstance, gentlemen, for if Dr. Swett had not had the medical treatment of Dr. March, why should he decline to answer on the ground that what passed between him and Dr. Swett was a privileged communication? What! improbable, that a man whose choicest companions were lewd women,—whose base passions carried him so far as to make baser proposals to his own daughter—improbable that he should be afflicted as Tripp testifies that he was? The prisoner knew the fact, and when it was necessary to prove it, where else should she look for that proof but among Dr. Swett's personal friends and confidants, where she did look for it and where she found it. Tripp testifies to the fact that Dr. Swett was in the habit of taking morphine, and from the manner in which he was cross-examined as to this point, I think it is plain that the intention was to ask you to disbelieve him; but when Hercules H. Chadbourne is called and corroborates him, I suppose the counsel will say that you may believe Mr. Chadbourne. Dr. Swett openly avowed his habit of taking morphine, yet Laura says she never knew of his doing it. Do you believe her, gentlemen?

Tripp says he was Town Agent for the sale of liquors in Kennebunkport, and in this statement he is corroborated by one of the witnesses put upon the stand to impeach him. So it seems he was deemed worthy by the good citizens of Kennebunkport to be their Agent for the sale of intoxicating liquors, notwithstanding some half dozen come here and say his reputation for truth and veracity is bad, and what, in effect, do they say when they say his reputation for truth is bad? do they say you must not believe him at all? no gentlemen, the effect of this evidence is simply to put you on your guard. It virtually says to you, examine with caution this man's testimony, and believe it not, if it is contradicted or is improbable. Who, then, has contradicted Tripp's testimony? No one,—neither is it improbable, but is, in all its essential features, corroborated by other facts and circumstances. Nothing in the character or habits of Dr. Swett renders any part of Tripp's story an improbable one,—on the contrary, all the latter part of Dr. Swett's life corroborates it. If, however, you have doubts about it, those doubts should weigh in the prisoner's favor. The administering of morphine, gentlemen, is not

per se unlawful. It is a medicine, and in the family of Dr. Swett was a common medicine; the whole family used it, more or less. Dr. Swett, as a physician, recommended its use, and himself prepared it in powders for use in his own family; and can it be said that it was unlawful for the wife to administer to her husband a medicine that she thought would do him good? Suppose it had been ipecac instead of morphine and the result had been the same, would you say that the prisoner was guilty? And yet the principle is the same. In administering the morphine, the prisoner was guided by a simple, plain rule, and that was her experience. She had seen her husband administer it—had administered it many times herself, and by that experience she was guided.

In the case of *Commonwealth v. Thompson*, 6 Mass Reports, the prisoner was indicted for the murder of a man by giving him a poison called *lobelia*, of which he died the next day after the dose was given. On the trial, it appeared in evidence, that the prisoner, Thompson, a few months previous, announced himself in the town of Beverly where the deceased then lived, as a physician, and able to cure all sorts of fevers, of whatever name or nature, and declared that people had been much humbugged by other physicians. It also came out in evidence that Thompson was not a regular practitioner of medicine. The other facts in that case, together with the opinion of the learned Judges presiding, I will read from WHARTON'S AMERICAN CRIMINAL LAW, page 141:

"That the deceased lost his life by the unskillful treatment of the prisoner, did not seem to admit of a reasonable doubt; but of this point, the jury were to judge. Before the Monday evening preceding the death of Lovitt, he had by profuse sweats and by often repeated doses of the emetic powder been reduced very low. In this state, on that evening, other doses of this *Indian Tobacco* were administered. When the second portion did not operate, probably because the tone of his stomach was destroyed, the repetition of them, that they might act as a cathartic, was followed by convulsive fits, loss of reason, and death. But whether this treatment, by which the deceased lost his life, is, or is not, a felonious homicide, was the great question before the jury. To constitute the crime of murder, with which the prisoner is charged, the killing must have been with malice express or implied. There was no evidence to induce a belief that the prisoner, by this treatment, intended to kill or injure the deceased, and the ground of *express* malice must fail. It has been said, that implied malice may be inferred from the rash and presumptuous conduct of the prisoner, in administering such violent medicines. Before implied malice can be inferred, the jury must be satisfied, that the prisoner, by his treatment of his patient, was willfully regardless of his social duty, being determined on mischief. But there is no part of the evidence which proves that the prisoner by his practice, intended any harm to the deceased. On the contrary, it appears that his intention was to cure him. The jury would consider whether the charge of murder was, on these principles, satisfactorily supported. But though innocent of the crime of murder, the prisoner may, on this indictment, be convicted of manslaughter, if the evidence be sufficient. And the Solicitor General strongly urged, that the prisoner was guilty of manslaughter, because he rashly and presumptuously administered to the deceased, a deleterious medicine, which in his hands, by reason of his gross ignorance, became a deadly poison. The prisoner's ignorance in this case is very apparent. On any other ground consistent with his innocence, it is not easy to conceive, that on the Monday evening before the death, when the second dose of his very powerful emetic had failed to operate, through the extreme weakness of the deceased, he could expect a repetition, if these fatal poisons could prove a cathartic, and relieve the patient, or that he could

make convulsive fits, symptomatic of approaching death, for a hypochondriac affection. But in considering this point, the Court were all of opinion, notwithstanding this ignorance, that if the prisoner acted with an honest intention and expectation of curing the deceased by this treatment, although death, unexpected by him, was the consequence he was not guilty of manslaughter. To constitute manslaughter, the killing must have been the consequence of some unlawful act. Now there is no law which prohibits any man from prescribing for a sick person, with his consent, if he honestly intends to cure him, by his prescription. And it is not felony, if, through his ignorance of the quality of the medicine prescribed, or of the nature of the disease, or of both, the patient, contrary to his expectation should die. The death of a man killed by following a medical prescription, cannot be adjudged felony in the party prescribing, unless he, however ignorant of medical science in general, had so much knowledge, or probable information of the fatal tendency of the prescription, that it may be reasonably presumed by the jury, to be the effect of obstinate, willful rashness, at the least, and not of an honest intention and expectation to cure. In the present case, there is no evidence that the prisoner, either from his own experience or from the information of others, had any knowledge of the fatal effects of the *Indian Tobacco*, when injudiciously administered; but the only testimony produced to this point, proved that the prisoner found a cure from the medicine. The law thus stated, was conformable, not only to the general principles which governed in charges of felonious homicide, but also to the opinion of the learned and excellent Lord Chief Justice Hale. He expressly states, that if a physician, whether licenced or not, gives a person a portion, without any intent of doing him bodily hurt, but with intent to cure, or prevent a disease, and contrary to his expectation, it kills him, he is not guilty of murder or manslaughter. If in this case it appeared in evidence, as was stated by the Solicitor General, that the prisoner had previously by administering this *Indian Tobacco*, experienced its injurious effects, in the death or bodily hurt of his patients, and that he afterwards administered it in the same form to the deceased, and he was killed by it, the Court would have left it to the serious consideration of the jury, whether they would presume that the prisoner administered it from an honest intention to cure, or from obstinate rashness, and foolhardy presumption, although he might not have intended any bodily harm to his patient. If the jury should have been of this latter opinion, it would have been reasonable to convict the prisoner of manslaughter, at least. For it would not have been lawful for him again to administer a medicine, of which he had such fatal experience."

In this case, gentlemen, you will see that the Court regarded the experience of the prisoner with the poison used, as one of the most important points to be settled; and as his experience had been a cure with his medicine, it was probable that he expected the same result in that case. Now this is our case. The prisoner was guided by her experience. She had succeeded on former occasions, and she expected to on this occasion. Her motive was to benefit, and not to injure. The amount of morphine which she gave, has been testified to by the prisoner; but let us take the government's own showing. The amount of morphine administered is one thing, and the amount the government says was administered is quite another thing. Owen says that on the Saturday previous to Dr. Swett's death, the prisoner had in a brown paper nearly a teaspoonful of morphine. Now of that amount Sarah says she spilled some, (how much we do not know), a certain quantity is alleged to have been put in the sugar, and Mrs. Swett herself took so much of it, that the enormous dose was rejected by the stomach, and the balance was put in the whisky, and it is in that way that the government disposes of the morphine compared with Linseott's, which Owen says was in

a brown paper. Now, if we adopt the idea, that it was from that brown paper that the prisoner took the morphine mingled with the whisky, how far out of the way will that show the prisoner's statement to Dr. Richards, of the "pinch?" Surely, the government will not deny that the prisoner took some of it and that Sarah threw some of it away. The prisoner, however, explains this matter, and tells you what became of the morphine compared with Linseott's, and where she got the morphine she put into the whisky.

[Here we failed to get several sentences.—Reporter.]

The prisoner was called upon the witness stand, and, gentlemen, will you ever forget that awful, but, perhaps, very proper test to which she was subjected by the Court? With every act of her life, that could be made to bear against her, paraded before you in her presence.—her daughter arrayed against her,—charged with the murder of her husband,—on trial for her life,—crowded and pressed by counsel for the State—she was required to do what no other witness had done. I do not complain because the court directed the witness stand to be placed facing the vast crowd in attendance here—I only allude to it to remind you that under such circumstances—so peculiarly distressing to the stoutest heart—it is almost a wonder that the prisoner passed through such an ordeal unharmed; for no matter how innocent and above suspicion, or reproach even, one might be,—such a test under such circumstances would have a strong tendency to embarrass. Counsel on cross-examination was willing to receive half of an answer, so that it made against the prisoner, but unwilling to let her give you her history of this transaction in her own language. Knowing that she would be subjected to a most severe and searching cross-examination, it was deemed advisable by myself and associate, to cut short the examination in chief, as much as we could; hence many matters of a trivial nature were passed over, that we might have interrogated her about, but, gentlemen, we deemed it unnecessary. That the prisoner intended to tell the truth, was manifest throughout her tedious examination. She was asked with reference to the character of Bion E. Tripp for truth and veracity, and although it touched a strong witness in her behalf, yet she frankly told you that she had heard people talk both ways. She does not seek to avoid the matter, but tells you all that she is required or permitted to tell, whether it was for or against herself. "Did you ever throw a stick of wood at your husband's head?" and questions of like character were among the first that my learned friend thought proper to ask her, to which she answered, "No." Why, if such had been the fact, did they not prove it? Why, if such was not the fact, did they ask such a question? That it was not so is clear from the fact that there is no proof of any such occurrence, and the only reason why such questions were put to the prisoner, was simply to embarrass her and mislead you. As I have already taken up more of your time than I intended, I will not examine in detail the prisoner's testimony, but leave that for

the gentleman who is to close this case, on the part of the State, and who will take up and enlarge upon any seeming errors this poor broken woman may have made, in her haste to comply with his repeated request to make answer without delay. By taking detached portions of her testimony, the gentleman may be able to talk of discrepancies, but if you will take all of the prisoner's testimony, and not a part of it only, I think you will wonder that under the circumstances, she did not become so embarrassed as to be more confused than she was. I wish now to read you one more authority upon this question of manslaughter:

WHARTON'S AMERICAN LAW OF HOMICIDE, pp 127-8. "The tenderest of mothers might administer laudanum to her infant incautiously, in order to be enabled to attend to some pressing call of her household affairs, which admitted of no delay; or a gay and thoughtless matron, devoted to the pursuits of pleasure, though not devoid of natural affection for her infant, might give a similar dose, in order to have an opportunity to attend the theatre or ball-room for a time. And although in both the latter cases, the motive, as far as respects the actors, is different, and one less offensive to morals and propriety than the other, yet the purpose or intention with reference to the effect to be produced upon the child is the same in kind at least, that is—to produce unnecessary sleep. And yet, perhaps no one would contend that had death ensued, in either case, the mother could have been guilty of either murder or man-slaughter."

Apply these principles to this case, gentlemen. What was the prisoner's intent in mingling the morphine with the whisky? If she intended the death of her husband, then she is guilty of murder, but if she intended to produce sleep simply, or nausea, as she declares, for the purpose of keeping him from another day of drunkenness—then she is not guilty of either murder or manslaughter. The prisoner had a motive in placing the morphine in the whisky. It was not a thoughtless or heedless act, for the prisoner had a purpose in view in thus mingling that morphine with Dr Swett's whisky. Now what was that purpose? If it was to benefit Dr. Swett, then, although death resulted from it, she is not guilty of either murder or manslaughter. Ringing in our ears to-day, clear and distinct, is that last answer of the prisoner to us, before she left the witness stand,—“I never intended to take the life of my husband, so help me God!” With all the obligations and solemnities of an oath resting upon her, she appeals directly to her Maker and declares her innocence. Frail, erring and misguided as she has been, she fears not to face her accusers and appeal to her God when she declares, that of this offense she is innocent. The evidence tending to show her intention, I have called your attention to. She declared at the first, and has ever declared that her intention was to make her husband sick, and in that way destroy, for a time at least, his appetite for liquor. She says that Dr Gray advised her to this course and she had adopted it with success on former occasions, as has been clearly proved, and why should you decline to believe that such was her purpose the last time. To rebut the Government's reasoning from those acts impelled by momentary fits of anger, we have the many acts of kindness on the part of the prisoner—and all

the efforts she has made to save not only the life, but the character of her husband. His conduct, too, is in evidence, and many a wife has been driven to the verge of despair, by just such conduct as his, and, made to burn with shame, wounded and heart-broken, have at last gone to their graves, victims of a husband's cruelty. Open the doors of mad-houses, or insane asylums, and see there the wrecks of humanity,—made so by just such conduct as Dr. Swett's,—and then tell me if you wonder that the prisoner was affected by it. Could the graves open and yield up their dead, what think you would be the verdict of Dr. Swett? Would he say that the woman who sits here, charged with his murder, is guilty? No, gentlemen; not thus would Dr. Swett bid farewell to her whom he had once loved, and who, by his reckless conduct, was driven to fits of phrenzy, and such acts as are now sought to be tortured into proofs of hatred,—not thus would he pronounce against one who had suffered for him as she has suffered,—hoped as she has hoped. If, to day Dr. Swett could speak to us from the blue sky above, what a thrill of joy would go to the heart of this poor woman, the prisoner, as he would declare to you, that notwithstanding hard words, and, sometimes, unkind acts, she loved him, and desired, above all other objects, to effect his reform, and thus make her, and his home, again happy, again filled with the sunshine of sweet words and united efforts. Dr. Swett does speak to you by his acts, and by them alone. Through all these years of his unfaithfulness, he trusted her, and trusted her, too, as he trusted none other—I would that I could say, he constantly loved her, also,—but I can say that he knew she loved him,—else why did he live with her,—why give her his property,—why use these words, “Cheer up, Jenny, we will be happy yet,”—words uttered the day before his death? It was intimated that the prisoner's attempt to take her own life, after the death of her husband, is one circumstance tending to shew her guilt, or at least her knowledge of the deadly effects of morphine. Did she know at the time she administered it, that the morphine she gave her husband was in a deadly dose? Dr. Richards told her when her husband lay there upon the sofa in her presence, dying, that the morphine she had given was killing him, and then she was overwhelmed with grief, and, as she said at the time, wanted to die too; and so she took morphine, but in a much larger quantity than she gave her husband, as is shown by the opinion of Dr. Richards, that the quantity was so large, her stomach at once rejected it or a portion of it. She declared upon the witness stand, that she hardly knew what she did intend when she took that dose of morphine—thought she wanted to die if he did—did not want to see him die—wanted to sleep; and my learned brother may here find what he may imagine is an inconsistency; but, gentlemen, do you believe that the prisoner had any well defined purpose in view, when she took that morphine? Was it, or not, a phrensiad act, and for the moment, did, or did not, phrensy rise up by the side of reason and dethrone

it? Had the prisoner intended her husband's death, she would have prepared for it; but this act of hers shows how utterly unprepared she was for such an event, and proves, too, that she did not intend such a result; for, when led to believe, by Dr. Richards, that the morphine she had given was killing him, she herself took a larger and deadlier dose, and then, with death staring her in the face, she declared, and called upon her God, into whose presence she believed she was about to go, to witness that she did not intend to kill her husband. That declaration of the prisoner, that she did not intend to kill her husband,—made when she had reason to believe that she would die herself within the hour, and meet in the spirit world, face to face, her husband, in the awful presence of her Maker—I cannot treat as false. Believe all else against her, you will,—can you believe that she would rush into eternity with a lie upon her lips? No, gentlemen, no! she did not dare then to tell a lie! She told the truth, and was not afraid to die, calling upon that God who was to judge her to witness that what she uttered was true. She did not intend his death. For it she had made no preparation, and when it came, was unprepared for its announcement, and was overwhelmed with grief at its approach. The alleged cause of the death, she administered in the presence of a member of the family, and for no other purpose than that declared by her to Dr. Richards. Her defence is now before you. If the evidence satisfies you beyond all reasonable doubt, that morphine administered by the prison-

er caused the death of Dr. Swett, then will come the question of her motive in administering it. If it was given to benefit him, and she believed that it would do so and not harm him, then neither her act or manner of administering were unlawful, and this is a case of homicide, excusable by misadventure.

I now take my leave of this case, feeling confident that you will perform your duties, unbiased by prejudice or favor. The prisoner stands here, with the crushing influence of eloquence and power against her, but shielded with the consciousness of her innocence. She does not fear an appeal to your prejudices against her mistakes and errors, or to your sympathies for one who is beyond the reach of human thought or action. We may drop the tear of pity for the dead,—but if sympathy must be excited, what object more worthy of it, than this bowed and afflicted woman, whose wrongs you cannot redress. Every pulsation of her heart, each silent tear, is a monument to griefs we cannot heal; but by the evidence and law in her cause, now in your hands, you can declare her innocence of the crime with which she stands charged, and thus not add a grief to the many that already weigh her down. Hopefully, prayerfully, and confidently, she submits her cause to you, and waits for the hour of her deliverance.

[Mr. Hubbard closed his argument with some comments upon passages of scripture, cited by counsel for State, minutes of which, we failed to take, and are unable to repeat in full.—Reporter.]

CLOSING ARGUMENT FOR THE GOVERNMENT,

By Hon. C. W. GODDARD.

4.30 P. M., Saturday, February 9th.

May it please your Honors, and you, Mr. Foreman, and gentlemen of the Jury:

Since the law requires the attendance of the Attorney General, when practicable, at all capital trials, it is my first duty to explain his absence on this occasion. The Legislature now in session has recently, as you are aware, elected the Honorable Mr. Frye, one of their own number, Attorney General, who has not yet resigned his seat to enter upon his new duties, while his predecessor, the Honorable Mr. Peters, has been chosen a member of the 49th Congress now about to assemble. Both these gentlemen are, also, at this moment engaged in the trial of important civil causes in their respective counties. Hence it is impracticable for either of them to attend this Court, and at their request and that of the County Attorney, and with his valuable assistance, I have had the honor, by appointment of the Court, inadequately to represent the State during this very important trial. I am sorry that the State has thus been deprived of the ability and eloquence of its chosen representative, and I equally regret my own total want of preparation, a deficiency sufficiently apparent to you, but which the circumstances rendered unavoidable.

Gentlemen, permit me to say that the duty of a public prosecutor is essentially judicial.—not that he is always able to forget the zeal of the advocate amid the excitement of a capital trial, when arguing with his wary opponents some new question of law to the Court, or while presenting the general cause to the jury; but after all, I submit that his true aim and controlling purpose should still be only the development of truth. While, therefore, the prisoner's counsel may feel justified in availing themselves of any honorable means to obtain a verdict of acquittal, the Attorney for the State cannot conscientiously ask you to go a step farther in the Government's behalf than the convictions of his own reason have forced his own mind.

And, under a sense of the responsibility now resting on me, I wish to say that I stand here to aid you, so far as I am able, in arriving at the truth, and not to press the prosecution any farther than the interests of justice absolutely

demand. This is all that the people of Maine desire of their Attorney, and certainly it is all that any fair-minded public prosecutor would consent to do.

Nay, even more. It is believed that in a capital case the Government of a Republican state can well afford to be generous. And we appeal to you, to the Court, to the learned counsel for the prisoner, even, if in the progress of this case the Government has not gone to the extreme verge of generosity, has not allowed a latitude on the part of the defense in the admission of testimony unparalleled in this or any other American Court.

Gentlemen, in the spirit of impartial justice, let us now approach the examination of the testimony, that, applying to it the law of the land, you may be able on your oaths to determine the guilt or innocence of the prisoner at the bar.

This trial has occupied an entire week, and yet the wide area of inquiry resolves itself into two simple propositions.

First—Was Charles M. Swett poisoned at Kennebunk, on the 23d of September last, by morphine secretly administered by his wife's direction? Or, more briefly,—Did morphine kill him? And second—Did the prisoner at the time mean to kill him?

In order properly to weigh the evidence, it is important, indeed essential, to consider these two great questions separately, because, unless you are satisfied in regard to the first, you will have no occasion to ask the second. For if the poison which the prisoner administered to her husband did not in fact cause his death, her intentions in administering it become immaterial for the purposes of this trial.

Returning, therefore, to our first question, we ask, Did the morphine kill Dr. Swett?

Give your attention for a moment, gentlemen, to the facts which surrounded the Doctor on the morning of his death, according to the testimony of his son-in-law and his adopted daughter. As late as 7½ on the morning of September 23, we find Dr. Swett in his usual good health, and in the language of Mr. Stevens, "in no wise drunk." Sober, and in

perfect apparent health, he comes in from the stable, seats himself in a chair near the stove and opposite to Stevens, converses with him five or ten minutes, smoking his pipe, and exhibiting no symptom of intoxication or disease; then quietly rising, walks with erect form and firm step, his pipe still in his mouth, to the adjoining room, and lies down upon the sofa where he had slept the previous night.

Such—it is in undisputed proof—was the appearance of Charles M. Swett at about 7½ on the morning of his death, and from ten to fifteen minutes after he had swallowed the fatal draught.

Yet this robust, powerful man, in the prime and vigor of manhood, in full health, and in spite of all his intemperance enjoying a perfect soundness of body, such as few men of half his years can boast, falls instantly into a lethargy. This strong man of 48, whose reckless life had, according to the prisoner's own witnesses, left no trace on his stalwart frame, whose lungs, stomach, intestines, and kidneys were found in perfect health, not an organ of his body diseased, and according to the testimony of Dr. Richards, well covered with fat, just that liberal amount of flesh which indicates high health, passes in the twinkling of an eye and without a single premonitory symptom, into a sleep so heavy that no human force could wake him, and in a few hours into a slumber from which only the Archangel's trump shall arouse him.

Now, gentlemen, I ask what caused this man's death? The defence concede that he died by violence and by poison and well they may — But then they ask you to believe and on your oaths to say, that this man who, they have been trying to prove, had habitually indulged in the inordinate use of alcoholic stimulants for nearly half his life, and who, though thus abusing and degrading his moral nature, had thereby habituated his physical system to the effects of alcohol without any sensible injury to it, a sounder, tougher and hardier man, according to the testimony of one of their own witnesses who assisted at the post-mortem examination, a hardier man, doubtless, than either of you—this man, forsooth, was poisoned by less than a pint of whiskey! This man of ten thousand drinks, to whom rum had become, as it were, water, must have been instantly poisoned, say they, by a quantity of whiskey, which they have not shown to exceed *half a pint*, and that drank at not less than three different times during a period of at least three hours! Yes, we are gravely asked to shut our

eyes to facts as patent as the noonday sun, and to believe such egregious absurdity upon the authority of medical men.

Ordinarily, the law excludes the *opinions* of witnesses, however intelligent, because it is for the jury to form opinions upon the facts testified to, and to embody their own opinions and not echo those of witnesses in their verdict. But, in an evil hour, I have sometimes thought, an exception was allowed, and experts, that is, persons who profess to possess extraordinary knowledge, were permitted to give their opinions on certain subjects. This, you perceive, opens a door to abuse and danger, and I believe I speak advisedly when I say that these have never been more conspicuous than in some cases of medical experts. I have no hesitation in going farther and saying that such testimony is received by the profession and by jurors with decreasing confidence. Judge for yourselves, gentlemen, whether the testimony adduced in your hearing confirms this observation. Now, in regard to such sort of evidence, it would seem that the only safe rule is this: Just so far as it coincides with common sense, accept it; but when anybody in either of the professions which have from time immemorial monopolized the title of learned, undertakes to impose on your minds arrant nonsense in the shape of an opinion, whether under oath or not, the safest thing for you is to reject it. I yield to no man in respect for the noble profession of medicine; its true members deserve the gratitude of the human family. I think, in view of their incalculable services to mankind, that we must concede to the doctor a higher rank than the lawyer. The faithful and wise physician, who by his unwearied devotion and almost divine skill snatches our wife or child from the jaws of death, achieves in our hearts a triumph before which the highest efforts of the forum fade and are forgotten.

But it is quite apparent that the witness-stand is not the forte of some physicians, and I apprehend that the profession have been of less service in courts than in the sick-room or on the battle-field. Medical gentlemen have testified in your hearing, whose words though few were weighty and wise, whose testimony carried conviction to every candid mind, for they were able to give a sensible reason for every opinion they expressed.

But when a physician seats himself at the table of counsel during the trial of a capital cause and publicly participates in the cross-examination of the main medical witness for the government, repeatedly framing and com-

municating to counsel medical questions, and persisting in this course for half a day at a time, and then appears upon the stand to swear his opinions as facts upon the jury, volunteering his protestations of entire disinterestedness, we regard such practice without approval.

And when such a witness glibly and rapidly answers long carefully written medical questions almost before his counsel has had time to read them through, I must be pardoned for suspecting him to have had something to do with their authorship, even tho' he may be disposed to deny it.

And when, on cross examination, this swift witness undertakes to tell me that "Pyrosis" is one of the symptoms of alcoholic poison, and afterwards has to confess that he does not know the meaning of the word, I set him down as an unsafe man for a witness, by reason both of his prejudice and his ignorance, to say nothing of his judgment and good taste, whatever may be his qualifications as a medical practitioner.

I cannot understand how men professing to be experts can come before a court and jury in a cause where human life is at hazard, and trifle with their consciences and their oaths by such reckless use of terms borrowed from foreign and dead languages, of whose meaning, by their own confession, they are grossly ignorant.

Employ such persons, if you please, as physicians, but beware of them as witnesses, if you are in search of knowledge or truth.

"A little learning is a dangerous thing;
Drink deep, or taste not the Pierian spring;
There shallow draughts intoxicate the brain,
And drinking largely sobers us again."

But, gentlemen, not to weary you with a repetition of any of the medical testimony, I ask if the utmost which any of the witnesses for the defence has dared to say, amounts to any more than this, that it would be possible for the quantity of whiskey assumed by them to have been drunk by Dr Swett to kill him? This, it is evident, is the whole force of the hypothetical questions so ingeniously framed by the astute counsel, or his medical adviser; for neither of them applies to the case at bar; because neither of them assumes the main fact on which we rely—the true quantity of morphine administered, as we shall abundantly show you.

I admit that either by accident or design the prisoner selected a drug to mingle with her husband's whiskey, whose effects, both before and after death, are marvellously similar to those rare cases of death by alcoholic poison,

rarer, it is admitted, than by ice-water, which, you will bear in mind, is also a poison. Now, such being the general similarity of symptoms, it is quite natural for a physician suddenly called to visit an intemperate patient in a state of lethargy, to imagine him dead drunk, to take it for granted, until informed that he was under the deadly influence of a far more powerful and fatal drug. So, after a post-mortem examination of such a man, the same mistake might naturally be made. And so again hypothetical questions may by medical skill be ingeniously framed to convey the same impression, and all for the simple reason that the human mind inevitably seeks for some explanation of any unusual phenomenon. An intemperate man falls in the street; you attribute the accident to drunkenness; he dies, and the physician assigns the same cause. The man of strict temperance, in a hot day and while in a profuse perspiration, drinks a large goblet of ice-water; if he drops down lifeless you attribute his death to the ice water, a death by poisoning, remember. But when it is proved that enough morphine had been mixed with that water to poison ten men, will any sane man hesitate whether to assign the work of death to the damnable drug or to the cooling beverage?

Gentlemen, we are not here to trifle. If we were, we might suggest a doubt whether Dr. Swett might not have died of apoplexy, for the symptoms of apoplexy too are precisely like those of morphine or alcohol; indeed, these poisons produce death by apoplexy.—Indeed, during this very trial, a very worthy citizen of an adjoining town has fallen dead of apoplexy in the Railroad Station in Portland; and why after all might not the Doctor have had just such an attack on the morning of his death, even if he had never swallowed the whiskey or the morphine?

Chief Justice Gibson, of Pennsylvania, in the case of Commonwealth vs. Harman, says: "In cases of death from concussion of the brain, strong doubts have been raised by physicians, founded on appearances verified by post mortem examination, whether an *accommodating apoplexy* had not stepped in at the nick of time to prevent the prisoner from killing him, after the skull had been broken in pieces."

You see, therefore, gentlemen, if you are disposed to give free rein to fancy, into what preposterous vagaries your imaginations may be drawn. Like the jury of slaveholders in "the good old days before the war," you may

acquitted, because tho' the accused planter was seen to fire directly at the slave, and the slave instantly fell dead pierced through the heart by some missile, still no bullet was found in the negro's body nor was any seen to issue from the planter's gun!

Leaving these absurdities, let me invite your attention to solemn and undisputed facts, established by abundant and uncontroverted testimony, consistent, credible and conclusive.

What was the quantity of morphine which the prisoner at the bar poured from the brown paper into the bottle on the morning of her husband's death? Observe that *the fact is admitted*. The prisoner confesses that she poured morphine into that bottle; she *has* said that she poured a pinch, 20 grains, 40 grains. I think we shall have no trouble in fixing the true quantity. Both Mr. Stevens and his wife tell you that on the very afternoon before the death, the prisoner asked him to call in Linscott to compare her morphine with his; "*hers* was in a *brown* paper; very near a teaspoonful; she put it in her dress pocket." The next morning you find the same brown paper making its appearance from that dress pocket, and Sarah saw the prisoner pour its contents into the bottle.

Now have you any reasonable doubt that the morphine which was poured into the bottle was the same which the prisoner compared so carefully with Linscott's the night before? Have you any doubt about the quantity? If there were a shadow of doubt of either, do you suppose the vigilant counsel would not have raised the doubt by calling Linscott to the stand? Then you find nearly a teaspoonful of morphine administered to the Doctor in the bottle just before his last fatal sleep, that short prelude to the sleep of death.

Mr. Foreman, you have not only been asked to witness several experiments with morphine, but to make some yourself; allow me to try one too.

[Addressing the Court.]

Will his Honor hand me the paper of morphine weighed out by one of the medical witnesses for the defence?

Gentlemen, I now pour the entire contents of this paper, which has been proved before your eyes to be ten full grains, into this common teaspoon, and you perceive it is not even full. Here, then, is the quantity Stevens saw the prisoner comparing in the brown paper the afternoon before her husband's death.

The prisoner's counsel have given you their theories, some of their medical witnesses theirs,

and I now give you mine. That the prisoner poured about ten grains of morphine into her husband's whiskey bottle the morning of his death, and that Dr. Swett, being an intemperate man, drank the small quantity of whiskey with which the morphine had been mixed; and finally, that the ten grains of this deadly poison killed him. I believe it, because less than half, nay one-fifth or one-tenth, would have been a fatal dose, while in my opinion the quantity of whiskey which it is proved he drank, cannot be satisfactorily shown to have ever killed any man.

According to Dr. Kimball, whose high reputation is fully sustained by his candor and intelligent bearing upon the stand, a whole pint of whiskey would hardly occasion a single death out of an ordinary regiment, while you will not forget the emphasis with which he stated the number of fatal results he should expect from the administration of even five grains of morphine at one time to each of a regiment—one thousand.

But no testimony can daunt the courage of the prisoner's counsel. With admirable ingenuity it is suggested that the deceased was an opium eater, a confirmed morphine-taker, and therefore could not easily be poisoned by that drug. Possibly some of you have been in the East and seen the victims of that terrible vice in countries where opium eating is fully as common and far more pernicious than ordinary intemperance here. For the information of those who have had no personal observation of the visible effects of such a practice, permit me to read from Wharton & Stille's Medical Jurisprudence, section 697:

"As the habit grows upon its unhappy victim, the first evils experienced are disturbed sleep, watchfulness, giddiness, sometimes headache, capricious appetite, a white tongue, frequently costiveness, indescribable oppression in the chest, and haziness of the eyes. Afterwards a copious secretion of mucus takes place from the eyes and often from the nose also; digestion becomes much impaired and micturition difficult; a mucus discharge begins to flow from the organs of generation; the *sexual organs*, at first preternaturally excitable, *begin gradually to lose their tone*; the *body wastes*, the muscles lose their torosity, and the bones are affected with dull, gnawing pains for some hours in the forenoon.

By and by the figure stoops, and a peculiar shuffling gait is acquired, by which alone a practiced eye may recognize an old opium debauchee. At the same time, the eye-brow droops, the lower eyelid becomes dark, the eye itself seems to sink and grow dim, and the whole expression is that of premature old age. *In both sexes the procreative power is greatly lessened.* The influence of the habit on the *generative functions* is indeed so decided that were it not for fresh arrivals from China and other parts of the East, the population of Singapore would very soon be seriously diminished."

Gentlemen, do you here recognize a single lineament of the portrait of Dr. Swett? Do the *latter symptoms*, especially, correspond to the delineation of his later years by his wife and

her witnesses? Was he not their diametrical opposite in every particular? A man, we are told, of insatiable passions and appetites, whose intestines seemed to be fire-proof, his belly, like that of the great image of Nebuchadnezzar's vision, of brass, and his lungs of leather, whose brain could bear anything—except that dose of morphine. Ah, Mr. Foreman, the Doctor was a hard man, physically, and I fear a harder man, morally, but he lived to find two agents harder than he—his wife and her brown paper of morphine. Yankee common sense discovered long before our day, that it was a poor rule that would not work both ways. Yet the prisoner's counsel and certain medical gentlemen, respectfully invite you to believe that the more whiskey Dr. Swett drank, the more sensitive he became to its poisonous influences, while on the other hand he had eaten morphine until he could swallow with impunity enough to kill ten men. That is, if I understand their philosophy, that the more morphine he took the better he could bear it, but the more spirits he drank the more they affected him! What do you think of a case whose defence requires of counsel such desperate intellectual gymnastics?

[Here the Court, at 20 minutes before 6, adjourned to Monday, A. M., Feb. 11.]

MONDAY, Feb. 11.

[Court having come in, Mr. Goddard resumed his argument at 10 minutes past 10, as follows:]

I consider myself fortunate, gentlemen, to meet you all in health after your protracted confinement, and I especially congratulate our aged and invalid friend, whose failing health at the early part of your patient investigations excited our alarm and awoke our sympathy.—During the closing hour of Saturday it became my duty to call your attention to some of the reasons which must, as it seems to me, satisfy you beyond any reasonable doubt, that Dr. Swett was poisoned by his wife's morphine.—The vigor and soundness of the Doctor's constitution at the time of his decease, as proved by Dr. Richards, his attendant, and by Richards, Ross and Wescott at the post-mortem examination, his perfect health and strength on the fatal morning, as established by the evidence of his daughter her husband and Sarah, and the suddenness and extraordinary character of the symptoms which followed the deadly dose, the fearful power of the narcotic in the concentrated form of morphine, and its rapid and terrible effects, as shown by all the medical witnesses, were referred to, and the quantity administered fixed at not less than ten grains by the testimony of Mr. Stevens, his wife and Sarah. The prisoner was shown in possession

of nearly a teaspoonful of this very poison as late as the afternoon before her husband's death, carefully comparing and testing it, wrapping it in a brown paper and depositing it in her dress pocket; and on the fatal morning calling for the dress, taking out the brown paper and pouring all its contents into the Doctor's bottle, shaking it up and directing Sarah to replace it where she found it in the barn. And your own eyes bear me witness what the quantity of morphine was, which, thoroughly mixed with the remaining gill of whiskey, was drunk, and all drunk, by her unfortunate victim.

You were reminded that he had gradually habituated himself to the daily use of ardent spirits in large quantities, so that notwithstanding his intemperate habits he was seldom drunk—never dead drunk, and his internal organs and viscera perfectly healthy. And thus we established the proposition that he died from an overdose of morphine administered by the prisoner, and from no other cause. Need we add anything this morning on that point? I fear, gentlemen, that you may justly complain that I underrate your intelligence by dwelling longer on so simple and obvious a truth, and yet the coolness and assurance with which counsel have urged the possibility of a doubt on this point, tempts me to say more, tho' at the risk of wearying your patience. You remember that all the physicians agree that in spite of the admitted general similarity of the symptoms of poisoning by morphine and by alcohol, there are a few pretty marked differences. Perhaps the most prominent and surest of them is the presence or absence of the alcoholic smell. It is, I believe, conceded that in case of acute poisoning by alcoholic liquor, the odor is invariably present during life, and ordinarily upon dissection; whereas no odor would be perceptible in either case if death is occasioned by morphine, an inodorous substance.

Now neither Mr. Wise, Mr. Stevens, Laura nor Sarah, tho' present during the Doctor's last hours, perceived the odor of alcohol; nay, Dr. Richards informs us that, tho' he stood directly over him in the most favorable attitude, repeatedly and continually, he could not perceive it. Neither Richards, Ross nor Wescott could smell it at the autopsy, nor could that distinguished and learned chemist, Prof. Brackett, detect any trace of it on opening and testing the stomach which the physicians so carefully sealed up and sent him. Judge you if a quantity of alcohol sufficient to produce death, on such a system as Dr. Swett's, could have

been in his stomach without affording at any time any evidence of its presence. The ingenious snare designed by the author of those long-drawn hypothetical questions, will entrap nobody, certainly not you, gentlemen, for not a single circumstance or symptom connects alcohol with the Doctor's death,—not one. The counsel gravely asks you why we did not have our sheet of hypothetical questions too. Gentlemen, I am not so old yet as I hope to be, by a number of years, but I have lived altogether too long to leave the substance for the shadow and grope about in darkness and conjecture when my feet might rest on the immovable rock of truth. Content with sober reality and incontrovertible fact, the Government leaves hypotheses to those who need them. The medical witnesses for the defence frankly confess that *they* cannot account for the absence of alcoholic odor upon the theory of defence. If *they* cannot, can *you*? Observe that all admit that ten grains, five grains, two grains, *even one grain is a fatal dose*,—of course if retained in the stomach, for almost any conceivable quantity of poison not corrosive, may fail to kill, if promptly, as will sometimes happen, expelled from the system. The desperate efforts of counsel to divert your minds from the fatal effect of testimony by a last resort to hypotheses and invention, reminds me forcibly of the weighty caution of Judge Rice, for many years one of the brightest ornaments of our Supreme bench, in his charge to the jury on the trial of Knight in 1857.

"Gentlemen, you are to try this case by the evidence *in* the case, and not by that which is *out* of it. You are to determine whether the evidence adduced produces reasonable satisfaction to your minds. If it is sufficient, you are not to *say* we will not find a verdict because other evidence has not been produced."—(43 Maine Reports, page 53.)

Impossibilities are expected of no man; the law requires none of the public prosecutor.—By *positive* evidence we must satisfy your minds of the truth of the essential allegations of the indictment, and if this is fairly done, the prisoner cannot escape by *negative* evidence, though of formidable bulk and ingenious manufacture. And this brings me to an important distinction, which law and good sense alike recognize, for its foundation lies deep in the nature of things; the distinction between positive and negative testimony.

You, Mr. Foreman, see the County Attorney address a remark to one of the prisoner's counsel, and on retiring to your room accidentally mention the circumstance to your fellow; but he happened not to observe it, nor his neighbor, nor indeed, as you find somewhat to your

surprise, did more than one or two others of the whole panel, their attention having been occupied by the argument. Now, in one view of testimony, the case stands nine or ten to two or three against you,—that is to say, ten of the jury would swear that they did not observe the act of the Attorney, while only yourself and one other of the panel could testify that he performed it. Hence it might be argued to a superficial mind that the fact was disproved by a preponderance of evidence of ten to two. And yet the fact is proved sufficiently established, for your testimony, even though unsupported at all, is of a *positive* nature and must be believed by all who are aware of your integrity and intelligence, while that of your fellows is merely *negative*, and in no way conflicts either with their intelligence and truthfulness, or with the absolute correctness of your evidence. No candid mind would fail to arrive at a correct conclusion upon such testimony, namely, that you must have seen what you positively state, while the other jurors, though equally well situated to observe the circumstance, failed from want of attention thereto to notice and remember it. Because, the circumstance *must* have occurred in order that *one* man should see it, while it *may* have occurred and yet *eleven* other men may have *failed* to observe it. Now, gentlemen, take notice that the testimony of the prisoner's witnesses thus far is substantially negative, especially that of the physicians, while our testimony is strictly positive and cannot be explained away. Thus we have proved the quantity of morphine actually administered, its inevitably fatal effect in such doses, and that all its symptoms were precisely those that affected and destroyed the Doctor. This being done, it becomes immaterial to inquire whether a man might not swallow enough alcohol possibly to produce symptoms somewhat similar. For the requisite quantity of a deadly drug is proved, while the amount of alcohol present is not only comparatively small, but some of the symptoms, such as the absence of alcoholic odor, negative the possibility of its presence in a fatal quantity.

You have been told and well told by the prisoner's counsel, that we must prove our first proposition beyond a reasonable doubt, but it is essential that you understand clearly what this amount of certainty is. And in this connection I refer you to the high authority of Chief Justice Shaw, of Massachusetts, who, in his charge to the jury in the great case of Prof. Webster of Harvard College, uses this language:

"Then, what is reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt; because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of jurors in that condition that they cannot say they feel any abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound conscientiously to act upon it. This we take to be proof beyond reasonable doubt; because if the law should go further than this, and require absolute certainty, as it mostly depends upon considerations of a moral nature, it would exclude circumstantial evidence altogether."

Gentlemen, I remember the story of a suspicious lad who resolved to believe nothing that was taught him unless its truth could first be demonstrated beyond all possible doubt.—And to be thorough, he determined to begin at the beginning, and took his stand on the letter A, refusing to pronounce it until its identity had been established. His teacher said everybody had called it A since she first learned her letters from an English schoolmaster in Boston. This, however, did not satisfy the inquiring mind of the youth, who demanded how the schoolmaster found out. "From an old teacher in England," said the schoolmistress, "who had been instructor of the royal family in the palace, and who said it was always called A in England." "Well," said the boy, "how do you know but that he lied?"

Pardon me, gentlemen for this illustration of the endless absurdity into which you may be led if you allow yourselves to demand a higher degree of conviction than moral certainty. For every man is liable to mistake and prejudice, and many men to falsehood. If, therefore, jurors were to require mathematical demonstration of moral truth or of any truth, no criminal could be convicted and no crime punished, because it is possible that the witnesses by whom it is proved may have intentionally or unintentionally testified falsely. But if you are willing to rely, as your oaths require, upon a moral certainty, if you will be satisfied with that reasonable satisfaction which the law contemplates, that moral conviction by which we live and upon which we accept the great truths of divine revelation, in whose faith we

are willing to die, then we feel sure that we have unerringly traced the death of Dr. Swett to an overdose of morphine, and to morphine alone.

In what has just been said, we are supported by the high authority of the late Professor Greenleaf, in the third volume of his treatise on the Law of Evidence, section 135:

"In the case of death by poisoning, it is not necessary to prove the particular substance or kind of poison used, nor to give direct and positive proof of what is the quantity which would destroy life; nor is it necessary to prove that such a quantity was found in the body of the deceased. It is sufficient if the jury are satisfied from all the circumstances, and beyond reasonable doubt, that the death was caused by poison administered by the prisoner.

Upon the latter point, the material questions are, whether the prisoner had any motive to poison the deceased,—whether she had the opportunity of administering poison,—and whether she had poison in her possession, and power to administer " * * * "But it is not necessary to prove that the poison was administered by the prisoner's own hand; for if, with intent to destroy the deceased, she prepares poison and lays it in his way, and he accordingly takes it and dies, or, if she gives it to an innocent third person, to be administered to the deceased as a medicine, which is done and it kills him, this evidence will support a charge against the prisoner as the murderer."

How remarkable the application of the language of this great jurist, whose authority is acknowledged alike in the United States and England, to the evidence in this case. And his suggestions and cautions in regard to medical testimony are equally adapted to the case at bar. He goes on to say:

"The observations of Mr. Loft, on the testimony of men of science, are worthy of profound attention.

In general, it may be taken, that when the testimonies of professional men of just estimation are affirmative they may be safely credited; but when negative, they do not amount to a disproof of a charge otherwise established by various and independent circumstances.

Thus, on the view of a body after death, on suspicion of poison, a physician may see cause for not positively pronouncing that the party died by poison; yet if the party charged be interested in the death, if she appears to have made preparations of poison without any probably just motive, and that secretly; if it be in evidence that she has in other instances brought the life of the deceased into hazard; if she has discovered an expectation of the fatal event; if that event has taken place suddenly, and suddenly and without previous circumstances of ill-health; if she has endeavored to stifle inquiry by precipitately burying the body, and afterwards, on inspection, signs agreeing with poison are observed, though such as medical men will not positively affirm could not have been owing to any other cause, the accumulative strength of circumstantial evidence may be such as to warrant a conviction, since more cannot be required than that the charge should be rendered highly credible from a variety of detached points of proof, and that supposing poison to have been employed, stronger demonstration could not reasonably have been expected to have been, under all the circumstances, producible."

And while I am citing authorities, I may as well read what that standard English writer on criminal law, Mr. Archbold, says of medical

Hence, you perceive that human life may be unlawfully taken under circumstances and with motives varying widely, so that the crime may be murder in the first degree, murder in the second degree, or manslaughter.

We have already seen that it is incumbent on the government to establish the unlawful killing, beyond a reasonable doubt. The prisoner is presumed innocent until found guilty—of an unlawful killing.

But, when this has once been proved, in the absence of anything in the circumstances to explain or qualify the act, the law presumes it to have been done with murderous intent. And it is for the prisoner to satisfy you to the contrary by a preponderance of evidence. The burden thenceforward is on her, and not on the government, and it is not sufficient for her to suggest doubts, she must clear them, if she would reduce her offence below the grade of murder in the first degree.

Perhaps the law is nowhere laid down on this point with greater clearness, precision and force than in the masterly charge of Judge Rice, already referred to. I read from Maine Reports, Vol. 43, page 34 :

"The term *malice* is intended to denote an action flowing from a wicked and corrupt motive. A thing done, *malo animo*, where the fact has been attended with such circumstances as carry in them plain indications of a heart regardless of social duty, and fatally bent on mischief. Malice, in its legal sense, differs from the sense in which the word is used in common conversation. Although in law, as in common speech, the term includes acts done from ill will, hatred, malevolence, and a desire for revenge, it also includes all wrongful and wicked acts intentionally and deliberately done without just and legal cause or excuse.

Thus, in a trial for murder, which is always charged as having been committed with "malice aforethought," it is not necessary to prove that the accused was influenced by feelings of particular or special ill-will to the deceased. If it be proved that the act of killing was intentional, the result of deliberation, of a design to kill, without justifiable cause, it will involve legal malice. Men, when in possession of their reasoning faculties, are supposed to intend the results which ordinarily and naturally flow from their acts. When therefore, a person deliberately performs an unlawful act, the ordinary and natural result of which is the destruction of human life, or the doing of great bodily harm, the law presumes such an act to be done *maliciously*, if life is thereby destroyed."

And this malice may be *express* or *implied*.

"*Express malice* exists where one with a sedate, deliberate mind, and a formed design, doth kill another; which formed design is evidenced by external circumstances discovering the *inward intention*, as by lying in wait, antecedent menaces, former grudges, and concerted schemes to take life. *Implied malice* is an inference of law from the facts found by a jury. It exists where one attempts to kill or maim one person, and in the attempt kills another, against whom no injury was intended, or in general, in any deliberate attempt to commit a felonious act, and death is occasioned in the execution of such attempt, although the original intention may not have been to take life. When the killing is unlawful, and neither express nor im-

plied malice exists, the crime is reduced from murder to manslaughter. But in all cases where the unlawful killing is proved, and there is nothing in the circumstances of the case as proved, to explain, justify or excuse the act, the law presumes it to have been done maliciously; and if the accused would reduce the crime below the degree of murder, the burden is upon him to rebut the inference of malice which the law raises from the act of killing, by evidence in defence."

Exceptions were taken to these instructions by Mr. Clifford, counsel for the prisoner, now Judge of the Supreme Court of the U. S., and argued to the full Court, with even more than his usual force and learning. But the doctrine laid down by Judge Rice was sustained by all the Judges in an opinion delivered by Chief Justice Tenney :

"The doctrine enunciated in these instructions" (says the late Chief Justice,) "has been much examined by courts of the highest standing, and jurists of great respectability, within a few of the last years. Uncommon learning, research, and power of ratiocination have been exhibited in support of the principle; and those who have denied its soundness have maintained the denial in arguments of distinguished ability and force. An attempt to discuss the question again cannot be expected to throw much additional light upon it. The instruction is a doctrine of the English common law of Massachusetts, as recognized in the case of *Com. v. Knapp*, 9 Pick., 496; *Com. v. Knapp*, 10 Pick., 484; *Com. v. York*, 9 Met., 93; *Com. v. Webster*, 5 Cush., 82. It is not known to have been denied by courts of this State, but it has been expressly admitted, and the jury instructed accordingly by this court sitting as a full court in *State v. Sager*, in the county of Kennebec, in 1834, in *State v. Varney*, in the county of Penobscot, in 1845, and in *State v. Cripps*, in the county of Sagadahoc, in 1855, none of which are reported in the Maine Reports, but distinctly recollected.

The instruction given, having the weight of authority in its support, and not having been satisfactorily shown to be erroneous, is sustained." (Page 37.)

In view of the law, we again ask you, "Did the prisoner at the bar design to kill her husband, when she poisoned him?" It has been said that we regard the duty of a public prosecutor as mainly judicial, and we can say that we set no mousetraps to ensnare innocent women, nor shall this prisoner be waylaid by any legal subtilty with our consent.

We are aware that a verdict of manslaughter may perhaps be warranted in law by proof of death occasioned by the unauthorized administration of medicine, although given without a criminal intent, but we trust you will give no such verdict upon such evidence here. I do not know, gentlemen, that I have any legal power to limit the rights of the State, since I am not the regularly elected Attorney, but I sincerely hope that if the prisoner satisfies you that she did not design to murder her husband, when she dealt out for him that fatal dose, you will give her a full acquittal, without splitting hairs on minor points. But, if she has failed to satisfy you that she had any other than a

diabolical and murderous intent, I trust you will do your duty like men, and convict her of murder, and that in the first degree.

I now propose to examine the evidence, so far as time and your patience will allow, with a view to determine the prisoner's motive, and in the discharge of this duty, the government will be allowed a degree of liberty with the character and feelings of the living prisoner, equal to that indulged in by her counsel, with the memory of her deceased victim.

In passing, it is proper to ask whether she had any legal or moral right to administer morphine or any other medicine to Dr. Swett. Aside from her own testimony, which we will consider hereafter, is there any evidence that he ever took morphine, except when sick? I am well aware that by the extreme courtesy of the State, inadmissible testimony has been offered by her counsel, without objection, to a degree, as is believed, unheard of in an American court. Thus Mr. Chadbourne was allowed to testify what Dr. Swett told about his habits when on the confessional before the Good Templars. Knowing, as he did, that many of the symptoms of intoxication by opium resemble those of ordinary drunkenness, the doctor seeks to palliate his guilt, and break, as it were, the force of his fall from grace, by pretending that he practiced opium-eating, confident that his kind-hearted neighbors would regard that a more trivial offence than drunkenness, wherein, I take the liberty of remarking, that, in my judgment, they made a great mistake.

However that may be, such was manifestly Swett's motive, his story being framed solely with a view to regain his lost membership. Now where is the evidence that there was one word of truth in his confession? Which of you would have believed it at the time, and which of you believes it now? So we say there is no reason to believe that he was in the habit of eating morphine himself, much less of authorizing others to administer it to him, and least of all his wife. But we go further, and assert that there is no evidence that he ever knew that his wife ever dared to administer morphine to him, save the testimony of the prisoner herself, and the late town-agent of Kennebunkport, whom we shall have occasion to notice hereafter.

We submit, therefore, that the evidence is conclusive that he never authorised her to administer morphine to him under any circumstances, and that he never knew she had done so. Look, for a moment, at probabilities.

Here is a woman of ungovernable temper and fiendish passions, violent, abusive, outrageous, easily moved to anger and desperate deeds, living with her husband on terms disgraceful to a civilized and christian community, breaking, axe in hand, into his office at the port, driving off with his sleigh when most he needed to ride, assaulting him with rule, axe and iron pestle, fastening him out from his own house in the dead of winter. A woman notorious and shameless, and when enraged, a fury, threatening her husband's life, jealous and vowing vengeance.

And is it seriously argued that a physician perfectly familiar with the deadly power of a single grain of that concentrated poison, in possession of his reason, would authorize such a wife to trifle with his life by the use of such a weapon?

No sane man can be made to believe so arrant an absurdity. The woman whose delicate fingers can select and compare poisons, and can also grasp the axe, the bottle and the pestle, cannot be permitted to plead at this bar the consent and authority of her husband in excuse for

"—the deep damnation of his taking off."

Such wives are not ordinarily selected by physicians for any such purposes.

Gentlemen, I think you will come to the conclusion that Dr. Swett was poisoned without his authority or consent.

We have seen that while the law presumes every person innocent until proved guilty, it also presumes that every sane person contemplates and intends the natural and necessary consequences of her unlawful act, so that when the unlawful killing is once proved, and there is nothing in the circumstances, as proved, to palliate or explain the homicide, the law presumes murder, and leaves the burden on the prisoner to reduce the crime to manslaughter, by a preponderance of evidence in defence. Has this prisoner done it?

On the contrary, has she not, by her own testimony, as well as that of almost every unprofessional witness called by her counsel, shown a state of feeling and conduct on her part towards the prisoner, such as to force a diametrically opposite conclusion on your minds?

The prisoner at the bar and the unhappy victim of her vengeance had led a life of uninterrupted quarrels, and violence, originating, I am sorry to say, with her, whose sex ought to make her blush to relate them. The

very existence, for so many years, of so depraved and wicked a family, in the midst of a Christian village in this venerable parent county is a disgrace to the civilization of the age, and may well alarm every thoughtful man who reads the annals of this crime.

"Can such things be,
And overcome us like a summer cloud,
Without our special wonder?"

Wonder, gentlemen, that such a horrid domestic life did not sooner terminate in murder, for sin, like theirs, "when it is finished, bringeth forth death."

The eloquent and astute counsel have shown no mercy to the memory of the most unfortunate victim of this tragedy, but under the instructions of the prisoner have remorselessly "dragged all his frailties from their dread abode" and exposed them to the gaze of the world during this trial. But does the prisoner indulge the vain hope that by blackening the character and blasting the memory of the father of her children, she is opening the door for her own escape from the just penalty of her fearful crime? Let her beware how she

"—lays that flattering unction to her soul," for she has furnished you with the obvious motive for the deadly deed. Unhappy man! Whatever may have been the errors of his later years, he seems to have started in life with high hopes and a holy purpose. At the time of his ill-starred marriage which was to

"Bring death into" his house "and all his woe," he had entered upon the gospel ministry, to preach peace on earth and good will to men. But in the mysterious Providence of God, the lines had not "fallen to him in pleasant places." His worst earthly calamity was visited on him in the form of a bad wife, and so his life became worse than a failure. Compelled by her parents to marry a man whom, according to her own confession, she never loved, giving him grudgingly her hand, while her heart had long been another's, what hope was there on earth for her husband? Soon, his noble aspirations are cooled, his native impulses degraded, and he falls from his high calling, first into drunkenness and finally, as his wife tells you, into gross licentiousness.

In a word, he traveled the downward road just as might have been expected of most men in his situation.

Of course his wife, who never loved him, and made no secret of it, "joking him," as she says, about the fact, soon came to hate him; she used to "jaw him when he was sober," her son-in-law tells you, and, quite naturally, she

beat and abused him when he was otherwise; but one element was wanting to complete the pandemonium of the Doctor's home, and that too soon came to his wife in the shape of jealousy,—perhaps the strongest and most fiendish passion of the female breast. Then the prisoner threatened and deliberately planned the death of her husband, adding another proof that

"Heaven has no rage like love to hatred turned,
Nor Hell a fury like a woman scorned."

[Here at 12 noon the court adjourned. At twenty minutes past 2 P. M., Mr. Goddard resumed his argument for the State, as follows:]

The prisoner at the bar first hated her husband without a cause, but she finally found a cause, for such is the infirmity of our nature, that a wife, who, recreant to her first duty, cultivates hatred instead of love, rarely fails in the end to find abundant occasion. Yet I find evidence that he loved her ardently in the beginning and that the old love never entirely died out. Although he forsook his high calling, lost his self-respect, became intemperate and vicious, though under fearful provocation he sometimes, in his intoxication, forgot to practice the precepts he had preached—"resist not evil,"—yet we learn that he "never began a quarrel, even when in liquor."

Scolded constantly when sober, and assaulted with oak rule, axe and pestle when drunk, left to stagger home four miles through the snow while his wife drove off with his horse, fastened out of his own house by his own wife in the dead of winter and of night, when most needing shelter,—he probably had ample experience of at least one passage of the inspired word which he had in better days expounded:

"A continual dropping in a very rainy day
and a contentious woman are alike."

Mr. Foreman, I ask you and every man within the sound of my voice, how many of you are able to say that you would have been better, even, than Dr. Swett, if you had been cursed with such a wife? It is quite natural for all of us, in view of our happier experience, to ask, like the ancient Syrian, "Is thy servant a dog, that he should do this thing?" but some of us, perhaps, under the fiery trial through which the doctor was called to pass, might in the end imitate the conduct as well as the confidence of Hazael.

Yet, after all, the wretched man found it in his heart to say, only a few days before his death, "cheer up, Jenny, we will have no more of this, we will move to Kennebunkport and be happy."

I suspect that the prisoner labors under the delusion that her husband's errors may justify or excuse her for taking his life, or, at least to some extent, palliate the offense. Far different, however, is the law. For, although provocation may lessen the guilt of sudden acts of passion or mitigate the punishment of comparatively trifling misdemeanors, the law, in its utmost charity, admits no palliation for deliberate murder; and the public security strongly demands that you, upon your oaths, enforce the law in this particular, to the letter. I insist, therefore, that the doctor's depravity, however great, can only supply a motive for his wife's guilt and thus render her crime more probable, without, in the slightest degree, diminishing its extent.

On the contrary, it may well be urged that it but enhances the guilt of her who took upon herself the awful responsibility of sending such a soul, so unprepared, uncalled, into the immediate presence of his Judge,

"Cut off even in the blossom of his sins,
Unhousel'd, disappointed, unanel'd,
No reckoning made, but sent to his account,
With all his imperfections on his head."

Who can measure the grace of God, or who venture to fathom the Divine purpose? Who of us can say what might have been the last days of Charles M. Swett, had she who should have been bound to him "in double trust" permitted him to live out his allotted time, or even given him that single year which the law in its mercy secures to her, even after sentence of death, but which she denied to her husband.

Worse and older offenders than Dr. Swett have reformed and done honor to the race, and none but the Omniscient can safely affirm that such might not have been his experience, but for that poisoned draught. But in a moment, without an instant's warning, in the twinkling of an eye, she takes her husband,

—grossly, full of wine.
With all his crimes broad blown as flush as May,
And how his audit stands, who knows save Heaven?
But in our circumstance and cast of thought,
'Tis heavy with him."

She wished him dead, we are told by several witnesses. Ah, gentlemen, that wish proved parent to the thought and to the deed. If she wished him dead, and told others so, does it "need a ghost come from the dead" to tell us what her motive was when she prepared the dose that killed him? And yet, almost every witness, except the medical gentlemen, testifies to her repeated threats against her husband's life. Nay, they are reiterated until her counsel fairly take advantage of the circumstance to deny that she could have really been

serious in them. And yet all experience shows that she who threatens is dangerous. Vainly may ingenious counsel reason that no wise woman designing to murder her husband would proclaim, to him or to others, her wicked purpose; still all law and all history show that such is the ordinary conduct of the murderer. Hence the careful provisions for the apprehension and confinement of all those who threaten the lives or property of others.

Nor is the explanation difficult. For no murderess is wise or reasonable, since if she were she would not murder. By the immutable law of God, crime and folly are joined together, and well has Solomon called the bad man a fool. God never made this world for murderers; His law and His being stand in eternal antagonism to that crime, and to all crime. And those who murder, by the very act, lose the balance which the Creator gives to every honest mind; otherwise crime would stalk undetected and defy human control. To this great law there seems to be no exception; hence the Harvard Professor, with all his learning, found that after his great crime he was but a common murderer; all his arts availed him nothing, and he was detected, convicted, and "died as the fool dieth."

She not only threatened her husband's life, but she said she feared he would spend his property. Hence her impatience first to get all of it she could into her own hands, and then to get rid of him. And yet you must, I think, have been struck with the fact that with all his errors and misfortunes, Dr. Swett seems to have provided handsomely, abundantly for his family. Is it not a little remarkable that a man so corrupt and worthless as she represents him to have been for so long a period, should have brought up and maintained his wife and a family in these expensive days, without aid, by his own unassisted, professional labors? May we not be justified in suspecting that a man, who, under all his disadvantages, could so liberally maintain his family as to afford his wife leisure for painting, may not have been quite fairly delineated to us by the prisoner and her counsel?

Be that as it may, it is in evidence and undisputed, that her anxiety lest he should spend his own property induced her to lay a plan for getting most of it into her possession, not long before his death. In April last, she succeeded in persuading him to convey to her by deed his house and half the lot, the remainder of the land being deeded to their only surviving daughter. Here was an act of kindness

and consideration on his part, which, I am sorry to be obliged to say, nothing in his wife's conduct deserved, and for which she was soon to repay him by taking his life. Pardon me for dwelling a moment on these redeeming traits in the character of that wretched man, for there is no other oasis in the dreary desert of their domestic life. We have her unsupported testimony that she once helped him down in the barn, and it seems that on one occasion she talked of going after him when she supposed he was lying mangled or dead by the roadside; and I believe these are the two solitary kind acts of this woman, that have been brought to our knowledge, during a married life of some thirty years. Even before she had secured the most of his property, the demon of jealousy roused the murderous spirit in her breast and transformed her into a fury. "Breathing out threatenings and slaughter" against her victim, she travels four miles to break open his office door at the Port with an axe, but fails to find the letter which she imagined had been written to her husband by some woman. She returns to meditate a dark and well planned plot for his assassination. See her stealthily creeping to his chamber, cutting the strong cords with which the mysterious instinct of self-preservation had warned him to fasten his door, stealing with noiseless footstep to his bedside, with a bottle of ether in one hand and a handkerchief in the other, and bending over her husband apply the deadly vapor to his nostrils as he lay with all his senses locked in the heavy sleep of partial intoxication. Imagine, gentlemen, if you can, the horror of the scene which met the gaze of that only daughter. Great God, are we living in Christian New England, and in the afternoon of the nineteenth century, or in pagan Rome or the last and worst days of the Byzantine Empire! And yet counsel have the assurance to suggest that this midnight scene, which makes one's flesh creep to think of, is the invention of this prisoner's daughter. Fearful emergency to require so horrible an explanation! You have seen this young lady, the last of nine children, upon the stand; you have heard the testimony elicited from her on cross-examination by the prisoner's counsel, and you have listened to the over-flowings of her sad heart, as she committed them from day to day to that private journal, which seemed to be the only friend to whom she could confide her sorrow, except her lover and her God. I thank the counsel for putting, as it were, her very soul into this case, by introducing her journal, for

I confess my surprise and gratification at the delicacy, refinement and pathos of those private memoranda, although evidently designed for no human eye. Think of the frightful domestic influences that have environed that young life from her cradle till her marriage last July, and explain, if you can, how so beautiful, graceful and altogether lovely a plant could have taken root and blossomed in such a soil and atmosphere, into such a fair, consummate flower. Must the prisoner, in her despair, vainly strive to tarnish the reputation of her only daughter by insinuating, through her counsel, that she has conspired against her mother's life by such perjury?

The only motive assigned utterly fails, for the prisoner still has all her property in her own power, is now at full liberty to dispose of it at her own pleasure; she may expend it all in her own defence, or give it to whom she will, even after conviction. I take the responsibility of declaring that there is no excuse for this most unworthy and unmotherly assault upon the truthfulness of her daughter, who has reluctantly appeared against the prisoner upon this trial, in obedience to the stern requirements of law.

Counsel suggest that when on the stand in the morning, she added some details to her testimony of the afternoon previous; and hence they argue against the reliability of her statement. You, however, I doubt not, will see in this evidence that she came before you untrained and gave her testimony just as you would naturally expect a modest young lady to do under such an awful pressure as memory must leave on her mind.

There have been those who have imagined in the trifling variations of the four gospels, evidence of their falsehood; but the greatest and best men of the last eighteen centuries have found in these very differences, additional proof of the conscientious truthfulness of the evangelists. And you, I am confident will find your belief in the correctness of this young lady's evidence heightened by the effort of the prisoner to destroy it, just as every attack of the infidel has only added new strength to our conviction of the truth of the Divine record.

I am again reminded by her journal, of her strong affection and pity for her erring but yet beloved father. "Secret sorrow" was the appropriate entry for July 12, and might well have been for every other day of her most unhappy life.

"Jany. 8.—Fought between them to keep peace. Have I always to live so while life shall last?"

"Jan. 11.—Got supper for pa at 9; no peace for my weary soul yet—naught but dark despair."—"Jan. 12—Weary of life." "Jan. 13.—Got his supper at 9. Oh, the misery and sorrow that I pass through, no one but God knows."

How is it that this miserable man, the source of so much misery to his daughter, has any hold on her love? I think the next entry explains:

"Jan. 18.—In the evening, pa was sick; sat up till 12. I thought he would die. 'God bless you, my dear daughter, if I die to-night.' Oh, the feelings of my poor heart!"

Here again we have a glimpse of that golden thread of love and kindness which seems to have gleamed at intervals through his whole life, never quite lost amid the foul corruption of his baser nature; but which appears to have been wanting in the life and conduct of the prisoner. Oh, that the fell purpose of her heart might have been stayed and her misguided husband been allowed space for the repentance for which such passages as these lead me to believe there might yet have been hope!

Sarah says the prisoner threatened him often, and swore she would kill him when he died.—Ruth Clough confirms her by testimony substantially similar. Rebecca Newbegin, that she predicted "he would die an awful death;" and she has proved herself a true prophetess. Sarah, Mr. Stevens and Laura testify to her outrageous and repeated assaults, and to more than one secret dose of morphine. Mr. Wise, their nearest neighbor, testifies to an almost uninterrupted quarrel. Allow me at this point to refer you to the well-settled law in just such cases as these. I take the liberty to read again from Archbold's Criminal Practice and Pleading, Vol. 1, page 950, his weighty observations upon the "Moral Circumstances" attending cases of suspected poisoning, which he seems to consider of more importance than either the symptoms observed by the physicians or the ordinary discoveries of post-mortem examinations:

"The first circumstance relates to suspicious conduct on the part of the prisoner before the event,—such as dabbled with poisons, conversing about them, and showing a knowledge of their properties.

Another circumstance relates to the purchase or possession of poisons, at or about the time of the alleged crime, and the pretence under which it was purchased, and whether the pretence turned out to be true or false.

The circumstances attending the administration of the poison, either in food, drink or medicine.

The great object is, to ascertain the fact and the intent of the person who is proved to have administered the poison. This will depend for its proof much upon the quantity given, and the circumstances under which it was administered."

And, finally:

"The fact that a motive or inducement exists on

the prisoner's part, such as her having had difficulties with the deceased, or a hatred of him, succeeding to property on his death, or being relieved of a burden by it, and other particulars of that character."

Gentlemen, do you fail to see the living illustration, the embodiment of these principles, the original of this portrait on that platform before you?

"Before the event" how "suspicious was her conduct;" has she not "dabbled with poisons," "conversed about them," "shown a knowledge of their properties," and "had them in her possession at or about the time of the crime?" Have we not "proof of the quantity given, and the circumstances under which it was administered?" And had she not had perpetual "difficulties with the deceased;" has she not repeatedly and openly avowed her intense "hatred of him," and after getting most of his property into her possession, was not his existence a "burden to be relieved of"? Is there a single important feature wanting to the ghastly picture of the murderess as painted by this great English author?

Such, gentlemen, is the true character and conduct of the prisoner as given by the main government witnesses, and by no means uncorroborated in many points by the witnesses in defence,—nay, to some extent by the prisoner herself.

To her evidence it becomes my duty now to refer. Aside from the prisoner's own statement, the testimony in this case on both sides has come from witnesses apparently respectable, with one notorious exception. And this is rather an unusual circumstance in a capital case, where frequently the appearance of some of the main witnesses on both sides partakes too much of the criminality of the deed which forms the subject-matter of the trial.

Gentlemen, you have seen upon the witness stand "the late town agent of the town of Kennebunkport," as the prisoner's counsel are pleased to style him. They have seen fit to rest the most important, the all-important part of their defence on that man's testimony. Doubtless the necessities of the prisoner required it, and yet what was it but a practical contempt, if not technically, of court, of that justice, truth and decency on which courts depend? I never saw the man before he appeared upon the stand, and never heard of him; perhaps some of you may have. But that is of small consequence, for such men carry their credentials in their face. Their vile appetites and beastly passions early leave their unmistakable

impress, in characters known and read of all men. They wear the mark of the beast legibly written in their foreheads. This variety-store-keeper *forgot* to mention that rum was one of the articles in which he trafficked, both while he was the agent of Kennebunkport for the sale of intoxicating liquors for medical and mechanical purposes, and after he had been expelled from that office and stolen the town liquors. Yet this is the only person on earth whom the prisoner could induce to corroborate her statement that Dr. Swett ever was informed by her that she had administered morphine to him, and had acquiesced in her acts. "You did just right, Sarah," says Dr. Swett, according to this veracious Tripp, "it was just the thing to get the damned stuff out of me." Do you believe that the Doctor ever uttered those words, or that this infamous witness at the very time of which he undertakes to testify, was conniving at one of the prisoner's attempts to poison her husband?

According to his own story, the ex-town agent stands on the verge of the crime of attempting a murder, by being accessory thereto before the fact; he stands on the verge of that crime, if not within it. But, that the wayfaring man, though a fool, need not err in regard to this man, eight or ten of the best citizens of Kennebunkport have with one voice pronounced him a liar, without a redeeming word; and she who called him here to defend her, has not dared to call a single witness in his defence. On the contrary, did you notice that in spite of her own fearful situation, and in view of the departure of her only hope of escape, the prisoner herself, in answer to my question, admitted that the character and reputation of this her all-important witness was "*not very good*"!

Manifold as were the disguises which her guilt forced her to assume, frequent as were the falsehoods which despair led her to invent, conscience, never wholly silent in the worst, forced that truth from her unwilling lips. A woman, gentlemen, may be bad enough to poison her husband, and yet not be so utterly abandoned as to dare to indorse the character of Bion E. Tripp, even to save her life.

You heard his vile story about the Doctor's confession of a foul disease, and the miserable lie that the deceased, in his presence, performed a surgical operation on himself for its cure. Beyond all question the truth was that this infamous Tripp, whose wife had obtained a divorce from him for his adultery, was the diseased man, the real patient, who now seeks to

reward his benefactor for saving his life, by this loathsome attempt to blacken his memory. But as this perjured villain has at last had the decency to leave his country for his country's good, and has freed the State from his polluting presence, let us leave this revolting subject, hoping that he may have learned in this court house a lesson which will keep him hereafter beyond our borders, and that if he ever shows himself again in a court of justice he may feel what the indignant poet prayed for—

"A whip in every honest hand,
To lash the rascal, naked, round the land."

By the common law of England, from time immemorial, the prisoner was excluded from the witness stand. His oath was neither required nor permitted at the moment when it was most needed. But in this State wiser counsels have at length prevailed, and every prisoner is now at liberty to testify upon his trial, although the Constitution of the nation and of the State forbid the prosecuting officer to call him. But, if he chooses to offer himself as a witness in his own behalf, he must submit his testimony to the searching test of a cross examination by the government, and take the consequences. We regard the change as just, humane and wise, because we believe its tendency is toward the greater protection of the innocent and the surer conviction of the guilty. Of this dangerous privilege the prisoner at the bar has seen fit to avail herself, and has deliberately proffered her own testimony upon her trial under the sanction of the oath of God, and it becomes my duty to recall your attention to that testimony, and to her appearance on that solemn occasion. After the government evidence was all in, she was examined in chief, cross-examined, and re-examined by her counsel, and thus afforded a triple opportunity to answer, explain or contradict the evidence which for days had been accumulating against her.

No objection was interposed to any question of her counsel, or to any voluntary statement of the prisoner. Free from all outward restraint, unfettered except by her conscience and her memory, she invoked that statute which has so often proved a shield to the innocent, but to the guilty like the flaming sword of the cherubim at the Eastern gate of Paradise, which turned every way against the transgressors. You saw the prisoner on the stand, and heard her testimony. Did she vindicate her innocence by truth, and confute her accusers by the frankness, completeness and consistency of her answers? Did her direct statement

tend to diminish the awful weight of the government testimony, and did the cross-examination elicit a single answer that did not augment the intolerable burden? Did she not, in every word, exhibit fresh evidence that "the way of transgressors is hard?"

It was so dark, she says, when her husband rode up and alighted from his chaise, that she could not discern his form as he moved about unharnessing his horse, and yet it was light enough for her to read the label on the bottle of Plantation Bitters with which she felled him senseless to the earth. She only sought to break the bottle by throwing it against the wheel, but she selected the wheel most distant from her, when she might, without throwing it at all, have dashed it against the one within her reach. The axe was lifted, not to brain her husband, but "to stave in his office door in order to get snuff to kill red ants in the cupboard." The heavy, oaken rule becomes a light piece of moulding, and the successive blows on the Doctor's head, which aroused Mr. Stevens and his wife, were only moderate correction. The wife of a country physician for a quarter of a century, familiar with his drugs, she had never suspected that morphine was poisonous, nor even soporific;—she supposed its only effect was to nauseate. Yet she takes a heavy dose on the morning of his death "because she felt she had no longer anything to live for."

"Oh, what a tangled web we weave,
When first we practice to deceive."

Convicted out of her own mouth she finds too late that her attempt to explain her guilty deeds upon the stand, is a vain effort to

"O'ercross a current roaring loud,
On the unsteadfast footing of a spear."

Gentlemen, if the prisoner really wished to nauseate her husband and nothing more, why did she not give him ipecac, a dose which Dr. Gray had prescribed, whose properties she perfectly understood, as she admits,—a safe, familiar emetic, within her reach in her husband's office?

But some superficial mind may ask, if the prisoner compassed his death by poison, why did she so soon after try to poison herself? Why not rather exult at her certain and speedy deliverance from an odious burden? Whoever questions thus knows little of the human heart and its mysterious inconsistencies.

The prisoner is not an incarnate fiend, although you may be obliged to find that she is a murderess. Judas, even, went out and hanged himself, when horror-stricken at his awful

guilt, he first realized that his purpose was accomplished. Cain, the first murderer, found his punishment was greater than he could bear. And is it strange that a woman whose repeated abortive experiments with cup and handkerchief may have led her to fancy that her husband bore a charmed life, when at last confronted with the appalling fact that he whom in youth she had promised at God's altar to love, honor and obey, is lying in the lethargy of impending dissolution, poisoned by her hand, is it strange, I ask, that self-affrighted, she should tremble at her sin, that the woman and the wife would fain restore the life she had so remorselessly taken? It is doubtful if the murderer ever lived who did not recoil from the ghastly sight of his first deed of blood, who would not have recalled his first murderous act. No one, says the Latin proverb, ever becomes a monster at once. Unhappy woman! Doubtless when in remorse and despair she attempted the added crime of suicide, she realized in the bitterness of her soul that to the guilty conscience,

"The keen vibration of bright truth is hell."

It has been observed that the prisoner, availing herself of her legal privilege, had the opportunity to review the government testimony, and to explain every inculpatory or even suspicious circumstance by the aid of her able and ingenious counsel. She has done no such thing, but has contented herself with a naked general denial of all the evidence which criminales her, opposing her bare uncorroborated oath to nearly every government witness. How is this to be explained upon the hypothesis of her innocence?

Surely it cannot be pretended that the evidence against her is such that she can afford to treat it with contempt. She must have understood how essential some rational explanation of it was to her acquittal, and her counsel knew full well how eagerly you hung upon her words, hoping to hear it from the lips of her, who alone could, if she would, have explained every circumstance.

Why then, we repeat, has she withheld the explanation of a single circumstance, and by all her testimony added nothing to her original plea of "not guilty"? Gentlemen, there can be but one answer: she knew that the evidence of the government was true, she was conscious of her own guilt, and she had no explanation to give. Indeed, when on cross-examination, explanations were repeatedly demanded by the government, her attempts, as

we have seen, only redounded to her confusion and condemnation.

"When men are found to keep silence when they are surrounded with circumstances of suspicion which require explanation, or give false explanations, or attempt to induce others to relieve them by falsehood and forging, *inferences necessarily arise prejudicial to them*; and when such moral coincidences are connected with physical circumstances, they frequently give a conclusive and inculpatory character to circumstances which otherwise might be inconclusive or slightly inculpatory.—[*Charge of Judge Rice, State v. Knight, 43 Maine, 87.*]

It is true that no one is perfect, and perhaps few would wish to lay bare on ordinary occasions all their secret acts and motives; but what woman, conscious of innocence and an honest heart, unjustly suspected of the murder of her husband, and on trial for her life, would not seize the golden privilege of testifying to offer every possible explanation of her conduct, utterly regardless of the exposure of minor faults?

It is unprofitable to pursue the painful theme, and I turn from the testimony of the prisoner with the conviction that if doubts of her guilt had lingered in any of your minds, she has dissipated them; out of her own mouth she is condemned.

I have now, gentlemen, called your attention to the more important points in the evidence upon which you will be called to pass your verdict. We have seen that the time and manner of the decease of Dr. Swett are admitted as alleged in the indictment. That his death by acute poison is conceded. That whiskey and morphine were the only poisonous substances exhibited to him. That the quantity of whiskey is uncertain, but in any event totally inadequate to produce his death by acute poisoning. That several of the symptoms of acute poisoning by alcohol were wanting, such as the alcoholic odor both before and after death and on dissection. That the administration of morphine in the whiskey just previous to his death by the prisoner is admitted. That the quantity is proved to have been about ten grains. That one grain is ordinarily a deadly dose, and ten infallibly fatal. That an overdose of morphine is capable of producing all the symptoms observed in the case. That, therefore, the death of Dr. Swett by an overdose of morphine administered on the same morning by his wife, is proved beyond all reasonable doubt. That the poison was given him secretly, and without his knowledge or consent. That such an act of the prisoner was unlawful. That the unlawful homicide being thus proved, the law presumes it to be murder. That the prisoner must overcome this

presumption by evidence in defence, if she would reduce the defence below murder in the first degree. That she has not done so. That, on the contrary, she has herself proved that she had long lived unhappily with her husband. That it is in evidence that they had frequent and violent quarrels. That she had assaulted him with dangerous weapons, and severely injured him. That she was jealous of him. That she had frequently threatened to murder him. That she had repeatedly tried to poison him, both by morphine and ether. That she had recently obtained from him a deed of a large part of his property without consideration; and she has failed to explain any of these facts upon the stand. That on cross-examination she made answers inconsistent, contradictory and manifestly false. That her general denial of the charges and testimony against her is confirmed by only one witness, who has been impeached and rendered infamous by his own admissions, by ample testimony, and even by the acknowledgment of the prisoner herself. Hence the prisoner's guilt is manifest.

It therefore becomes my duty, in behalf of the State, to charge the prisoner at the bar, with the deliberate, wilful murder of her husband, at his house in Kennebunkport, on the 23d of September last, by poison, and to ask of you, upon the law and the evidence before you, a verdict of guilty of murder in the first degree.

The counsel for the defence have, in the discharge of their duty to their client, referred you to several cases of erroneous convictions in the past, and cautioned you against the danger in this case. This is well; but it is proper for you to notice that such cases have differed very materially from the present. In the first place, what is called the *corpus delicti* was, in some of them, not sufficiently proved, that is to say, the death of the supposed deceased was not made absolutely certain, as appeared by his subsequent appearance alive. Again, in others, there was not sufficient care to identify the accused as the guilty party, as proved by the final confession of the real criminal. Here, on the contrary, the death, and that by violence, is conceded, and the secret administration of the deadly drug by the prisoner. You will also bear in mind that the rule of law is the same in all criminal prosecutions,—that the same certainty is required to convict of murder as of larceny or assault and battery, and no greater. For, unless your minds are satisfied, you cannot convict of the smallest

offence known to the criminal code without a violation of your oaths, and, if satisfied of guilt, you cannot avoid a verdict of guilty, even of capital crime.

It has been well said by a great writer upon the common law that the main design of the British Constitution was to get twelve honest, intelligent, impartial men into a jury box, and it is certainly not less true in this free republic where government is of the people, by the people, and for the whole people.

It would be unbecoming for me to remind you of the importance and solemnity of your duty, for it is evident that you are powerfully conscious of it. The counsel for the defence, and for the State have now performed their parts in this trial, and it only remains for you impartially and firmly to perform yours upon the basis of pure justice, unswayed by sympathy or prejudice, without regard to the age or sex of the deceased or the prisoner.

Beware, gentlemen, of the monstrous fallacy with which legal subtilty has sometimes deluded jurors to the shipwreck of the rights of society and the violation of their oaths. "You may disbelieve as jurors though you believe as men." A more dangerous and fatal error never crept into the temple of justice. Remember also that,

"To acquit upon light, trivial and fanciful suppositions and remote conjecture, is a virtual violation of the juror's oath, and an offence of great magnitude against the interests of society, directly tending to the disregard of a judicial oath, the hindrance and disarrangement of justice and the encouragement of malefactors."—*Starkie on Evidence, Vol. 1, p. 614.*

Precisely similar is that great maxim of the civil law, enunciated at Constantinople, more than fifteen centuries ago, by the Roman jurist, "The judge is condemned when the guilty is acquitted." Hence, the jury that refuses to convict a prisoner upon sufficient proof, actually convicts itself. I am aware that in this country and in these latter days, sympathy for the criminal, as a criminal, and especially for the female culprit, as a woman, has become so common that some, perhaps many, criminals calculate upon it as an important element in the trial of high crimes.

Nothing can be more improper than for a jury to yield to such suggestions. In my view, crime is crime, and murder is murder, whether committed by the brutal pirate on the high seas, by the learned Professor in his laboratory, or by the delicate woman in her home. Unhappily for the credit of human nature, neither age, sex, nor condition has escaped participation in the blackest of crimes. And cer-

tainly no crime in the dark catalogue of human guilt can plead less sympathy than poison. The stone, the club, the knife, the axe, the dagger, the sword, the pistol, may be seized in the frenzy of ungovernable passion and do their deadly work in that brief madness which violent anger has been well said to bring, before reason has had time to reassert its supremacy, or the fiery blood a single moment to cool. But the woman who selects, compares, and long afterwards mingles the secret poison in her husband's cup, and clandestinely lays it in his way through the unsuspecting agency of their adopted child, can plead no extenuation of her awful crime. For

"Killing by poison is proof of *express malice*." [*Wharton's American Criminal Law, Vol. 1, § 1103.*]

I must go one step farther. The experience of all ages and nations proves that poison has been the special favorite of the murderess. The feminine nature instinctively shrinks from ghastly sights, hideous sounds, the physical contact with death, and above all, personal resistance and danger.

Now the secrecy and silence in which the victim's life may be taken by poison without any overt act of violence or even the personal presence of his enemy, the absence of blood and noise and conflict, the apparent difficulty of detection and consequent probability of escape, all captivate the depraved female imagination, and appeal powerfully to feminine timidity.

I am not prepared to condemn the law of our State, for I am not disposed to arrogate to myself higher wisdom or deeper compassion than the Divine Author of the primeval statute—"Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man." Nor is it perceived how the prisoner, if guilty, can justly complain that

"—evenhanded justice
Commends the ingredients of her poisoned chalice
To her own lips."

With the law, however, and its final execution, you have nothing to do; pardon, reprieve, commutation, or the infliction of the extreme penalty of violated justice, all rest with another and a higher branch of the government. You are only to determine, upon your oaths, in view of the law and the evidence given you on this trial, the single question of the guilt or innocence of the prisoner at the bar.

The peerless dramatist of England has said that

"Mercy murders, pardoning those who kill."
And a greater than Shakspeare has declared under the sanction of inspiration, that

"He that justifieth the wicked and he that condemneth the just, even they both, are abomination to the Lord."

Gentlemen of the jury, in behalf of the State, we now commit this important case to your wisdom, firmness and impartiality, thanking you for your patience and attention, and bespeaking your careful, anxious consideration to the end.

If under the direction of the Court, you are left in doubt of the prisoner's guilt, she is en-

titled to acquittal as a matter of right, but if otherwise, the people of Maine demand of you a verdict of guilty, and we trust you will have the courage and manliness to render it.

[At the conclusion of Mr. Goddard's argument, the Court, at 20 minutes past 4, adjourned.]

[TUESDAY, Feb. 12. Court having come in at 30 minutes past 9, Mr. Hubbard, in behalf of the prisoner, and Mr. Goddard, for the State, asked the presiding Judge for certain instructions to the Jury, which were given; and as they appear sufficiently in the charge, we omit them here.—Reporter.]

CHARGE OF JUDGE TAPLEY.

Gentlemen of the Jury:

The prisoner at the bar stands charged with the wilful and deliberate murder of her husband, on the 23d of September, 1896, at her own house in Kennebunk, in this county. It is charged that this murder was accomplished by the use of a deadly poison known by the name of morphine, and that it was administered to him in a quantity of liquor.

The charge is simple, plain, specific and unambiguous, and it now becomes my duty to present to you such rules of law as may be necessary of application in the performance of the duties devolving upon you, and to call your attention to the material propositions of law and fact which have so ably been advanced upon the one side and the other; and I propose to do it in a brief and as explicit and concise manner as I am able to do under the circumstances, foregoing all comments upon the general and peculiar characteristics of the case—they are apparent to you, and a wide range of discussion has taken place concerning them in your hearing.

I shall in the first place invite your attention to some general propositions of law applicable alike to all criminal causes:

I. In criminal causes the government must sustain all the material and essential allegations of the charge by evidence that shall leave no *reasonable doubt* resting upon the mind of the juror, of their truth. They must prove everything necessary to be proved, beyond a *reasonable doubt*. The rule which prevails in civil causes, that the issue may be determined by a mere preponderance of evidence, is regarded as unsafe in those cases where the life or the liberty of the citizen is involved. A higher degree of proof is required—a degree that shall afford a satisfaction of the truth of the propositions, and a satisfaction in no manner clouded with reasonable doubts. If a reasonable doubt exists the prisoner is entitled to the benefit of it, although the juror may have strong impressions amounting almost to conviction of the guilt of the accused.

To justify a juror in withholding his verdict, however, upon the ground of doubts concerning the proof, the doubts upon which he relies must be of a reasonable character, actually resting upon his mind. They must not be mere imaginary possibilities, having no foundation in reason or in the evidence, but such

doubts as leave the mind of the juror uncertain and unsatisfied, acting as a reasonable, intelligent, impartial and unbiassed individual.

Upon this point I will call your attention to the statement of the law in the case of *Commonwealth vs. Webster*, as given by Chief Justice Shaw. He thus defines a reasonable doubt:

"It is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty, of the charge. The burden of proof is upon the prosecutor. All the presumptions of law, independent of evidence, are in favor of innocence; and every person is presumed to be innocent until he is proved to be guilty. If upon that proof there is a reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability though a strong one, arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond a reasonable doubt; because, if the law, which mostly depends upon considerations of a moral nature, should go further than this and require absolute certainty, it would exclude circumstantial evidence altogether."

II. As a part of this rule, imposing this burden on the government, the law also presumes the prisoner innocent until she is proved to be guilty. The presentation of the indictment, although found by the Grand Jury, does not change this status. She has pleaded she is not guilty, and the law *presumes* she is not guilty, until the evidence has repelled that presumption, and established in its stead the satisfactory evidence required of her guilt. Throughout the trial, and upon every point in it necessary for the government to prove, this presumption attends her. Although this is a proposition which commends itself to the judgment of every individual, and one frequently quoted and universally known, it nevertheless requires some little effort of the mind to accord to the prisoner the full benefit of its just provisions.

The prisoner is brought into court in charge of a careful, vigilant officer; placed in a seat appointed for prisoners; the charge in specific detail is read with solemnity and formality, as an indictment found against her by the grand jury of the county, and she is called upon to plead to it; all this formal, and indeed neces-

sary proceeding, is calculated to impress the mind, and often leads rather to the impression the prisoner is guilty than that he is innocent, and by a close, careful scrutiny of ourselves, we may find following these ceremonies the proposition almost reversed. Against this we should carefully guard ourselves. We should see to it that we do not look to the prisoner to establish her innocence, but to government to establish her guilt.

III. In the trial of all causes, civil and criminal, the jury are the sole and exclusive judges of the facts proved. They must determine what is proved and what is not proved. They must determine the weight of the evidence, and the credibility of the witnesses. With them rests the responsibility of a correct determination of the issues raised by the evidence introduced in the case. They must determine this from the evidence *in* the case and not upon that *out* of it, and carefully distinguish between what is proved and what was alleged would be proved, or what is said could be proved.

Upon the court devolves the duty of declaring the law applicable to the facts proved. It is the duty of the jury to take the law from the court. It cannot be, and is not, expected that they will be so versed in the rules of law applicable to the subject under consideration as to be able to determine between conflicting claims of counsel, and they not only find it a duty but a privilege to receive it from the court. If the court should err in giving the law in this case, to the detriment of the prisoner, she can have it reviewed by the full court sitting for that purpose, and if erroneously given, a new trial will be granted.

If you assume to determine the law, and erroneously determine it, there is no remedy beyond, and irreparable mischief may be done. It therefore becomes highly important that each keep within their own sphere of action.

IV. It has been said on the one hand that the life and interests of this prisoner have been committed to your hands; and on the other that you are the guardians and protectors of society.

The life, liberty, and interests of the prisoner are not committed to your hands; with them, as such, you have nothing to do. You are simply to find whether, upon the evidence adduced, the prisoner is or is not guilty; what may be for her interest, whether or not she shall go at large or be imprisoned, are not inquiries for you. Your duty is plain, simple

and unmistakable—simply to discover what is proved, regardless of consequences. Whether society may or may not be safe upon this or that verdict, is no duty of yours to inquire, and should not influence you in your considerations; but to plainly and simply to inquire, is the prisoner guilty or not guilty upon the evidence which has been adduced. If she is guilty, she herself has imposed the restraint upon her liberty—she herself has forfeited her own life. The fault is hers and not yours. There are no complications about your duties; they cannot be well mistaken. You are not to be embarrassed by sympathy or biased by prejudice, but without fear, favor or affection, you are to declare upon your oaths, upon the evidence here adduced, the guilt or innocence of this party. You are to do it as *men*; men acting with intelligence and moral courage, unmoved by the desires of the prisoner on the one hand, or the prosecutors on the other; neither subject to, nor fearing the criticisms of any. You have imposed upon you the duties of jurors, acting under the oath of God, and to Him and your own consciences you must answer for the performance of those duties.

^a He knows the secret thought—

^b He alone decidedly can try us—

He knows each chord—its various tone;

Each spring—its various bias.^c

With these general observations of matters applicable to all criminal causes, I invite your attention to a consideration of such matters of law as particularly apply to this case.

I. Homicide is the killing of one human being by another. More words are not necessary to define it or make it intelligible. It may be justifiable, it may be excusable, or it may be unjustifiable.

1st. It is *justifiable* when done in the execution of a lawful command by a court or commander having lawful authority to give it.

2d. It is *excusable* when death results unintentionally from the proper and legal performance of a legal act, when it is purely accidental and resulting from a lawful act, performed in a lawful manner. Being merely unintentional does not always excuse, for if death results from the commission of an unlawful act, the party producing it is held responsible, although he did not intend killing. As, if a person designing to kill you, Mr. Foreman, miss his mark and kill your fellow; this is not excusable, although unintentional and purely accidental so far as killing your fellow was concerned. Being engaged in the unlawful

act of attempting your life, he is held responsible for what he does upon whomsoever his acts may fall.

3d. It is unjustifiable when unlawfully done, and when no justification or excuse can be given for doing it, and when it occurs in the prosecution of an unlawful act.

This unlawful killing comprises two crimes known to the law—murder and manslaughter.

I. Murder is defined by our statute to be the “unlawful killing of a human being with malice aforethought, either express or implied.”

The killing of a human being may be lawful or unlawful. It is lawful when necessarily done in execution or in furtherance of justice; or when done upon an enemy in lawful war, or when necessary for the prevention of atrocious crimes, such as murder, robbery, housebreaking in the night time, and the like. It is unlawful when done without justifiable cause or reasonable legal excuse.

II. To constitute murder, the act must be done with *malice aforethought*, either express or implied. The term *malice* is intended to denote an action flowing from a wicked and corrupt motive. In its legal sense it differs from the sense in which the word is used in common conversation. Although in law as in common speech, the term includes acts done from ill-will, hatred, malevolence, and a desire for revenge, it also includes all wrongful and wicked acts intentionally and deliberately done without just and legal cause or excuse.

III. This malice may be either an *express* malice or an *implied* malice.

Express malice exists where one with a sedate, deliberate mind, and a formed design, doth kill another; which formed design is evidenced by external circumstances discovering the *inward intention*, as by lying in wait, antecedent menaces, former grudges, and concerted schemes to take life.

This malice may be *expressed* by these acts and external circumstances, as well as by words. The law does not require an expression by and with the lips, or in words, but recognizes other expressions, which really and truly discover the inward intention although unspoken.

Implied malice is an inference of law from the fact found; as in the case I before supposed where one designing to kill the Foreman unintentionally kills another. And it arises where one takes life in any deliberate attempt to commit a felonious act, although the original intention may not have been to take life.

IV. Murder is divided into two degrees—

first and second. Murder in the *first* degree is where it is committed with *express malice* aforethought. That is where the malice has been expressed, in either of the modes we have before considered; and it is also murder in the *first* degree, when it is committed in perpetrating or attempting to perpetrate a crime punishable by death, imprisonment for life, or for an unlimited term of years, as in the case we have already considered of the attempt to kill one man and in so doing killing another.

Murder in the *second* degree is when murder is committed in any other mode than that which I have described as of the first degree.

You will perceive that murder in the first degree embraces all cases of *express malice* aforethought, and some cases where the malice is an inference of law; so that murder in the *second* degree is always accompanied by *implied malice* and never by *express malice*. The degree of murder, as before remarked, embraces murder not embraced in the first degree. You will notice the general definition of murder, which is the “unlawful killing of a human being with malice aforethought, express or implied,” and should you find the facts in this prove a murder, you will inquire if it comes within the rules required to constitute it murder in the *first* degree; if not, it will be murder in the *second* degree. Sometimes it happens there is an *unlawful* killing where there is no malice, either express or implied. In such cases, the act being unlawful, it is a criminal offence, and is denominated *manslaughter*. The marked distinction between murder and manslaughter is the absence or presence of malice, express or implied. The killing in both cases must be unlawful to constitute the offence. To constitute murder, there must be malice with the unlawful killing. In manslaughter, it is an unlawful killing without malice. Our statute has also added to this list the unlawful killing of a human being in the heat of passion or on sudden provocation, without express or implied malice aforethought.

I have thus passed over, succinctly and distinctly as I can, the leading features and definitions of those crimes arising from homicide. I am aware that, however carefully and distinctly stated, it will be difficult for you to remember all of them from once stating, but other specific instructions to be given you will supply any defect of memory or understanding you may have so far as they may apply to this case. With these views of the law, you will turn your attention to the facts proved in the case.

I. It is necessary the government should prove the death of Charles M. Swett.

This fact is testified to by a number of witnesses, and it is not denied that he died on the 23d day of September, 1866, at the prisoner's house, occupied by him and her and their family, in Kennebunk, in this county.

II. The next important inquiry arises in relation to the cause of his death.

Upon this point you have two kinds of evidence: one consists of *facts*, appearing and existing, before, at the time, and after his death, and the other consists of the opinions of the medical men upon various subjects, and hypothetical questions propounded to them. Ordinarily, witnesses are not allowed to give opinions. To this rule, however, there are some exceptions. Persons by education and observation may acquire a knowledge of certain matters, not possessed by men generally, and may under certain circumstances be allowed to give an opinion upon such matters. They are denominated in law, experts. In the case now under examination, medical men have been examined as such.

Evidence of this kind in such cases as the one you are now considering, has frequently been resorted to when the facts appearing to human observation and occurring at or near the death of the party are insufficient to satisfy the mind of the cause of death. The other facts proved leaving the mind in doubt as to the cause, whether of kind, or sufficient force, courts are sometimes compelled to resort to this kind of evidence.

In this case two causes have been suggested to account for the death of Dr. Swett. The government and the prisoner each present different theories in relation to the immediate cause of death.

The government allege the cause to be the administration of a quantity of morphine in a quantity of alcoholic liquor.

The defence, not denying there was morphine thus administered in some quantity, allege it was the alcoholic liquor which produced the death. Each of these substances it is admitted had been taken into the system a short time before his death.

In determining the question which of these caused the death, you may consider the *character* of each, the *amount* of each taken, and the *time* which elapsed after the taking before the fatal symptoms were manifest. It is conceded these substances are both of them in some measure poisonous; one requiring much

more in quantity and volume than the other, to produce fatal results.

How much alcohol is required ordinarily to produce fatal results, we have not stated clearly according to my recollection, perhaps from the great variety of proof or strength in which it is usually found, and perhaps from its varied and different influences upon different persons. The amount of morphine which will ordinarily produce fatal results is more definitely stated; being administered as a medicine and only in very small quantities, it is much easier to ascertain and define the ordinary limits of safety in its administration. It is also, however, in proof that even this drug may be received into the system in larger quantities by persons accustomed to use it than by those unaccustomed to its use. That the amount safely to be taken is varied by the habits of the person to whom administered, in the previous use of it.

It would be well to look at the evidence and ascertain if you can the amount of each of these substances taken into the system near the time of his death.

It is quite apparent that for a year or more, the deceased had used intoxicating liquors to excess. To what excess or extent is somewhat controverted. The government say, never so to incapacitate him from business. The defense on the other hand say, that it *was* carried to that extent, and that he sometimes needed the assistance of others. There is some testimony in this case of that character, coming from Mr. Hall, which you will recollect. The government, however, say that these habits had not sensibly injured the man, and that the post mortem examination proves his system had withstood the effect of such habits unharmed.

The defense, however, say that his death did not result from the effects of these more early practices, but the effect was that of more recent origin, and constitutes a case of *acute poisoning*, by alcohol.

The amount taken immediately before his death must in some measure be gleaned from circumstances. There is evidence tending to show that he went to the village on Saturday evening. That he came home some time in the same evening, and lay upon the sofa that night. What he brought home no one I think testifies, but early in the morning his adopted daughter Sarah says she saw him going to the stable. She thinks he went to the stable, from about half past 4 in the morning to about half past 7, three times. That by the prisoner's direc-

tion, she went to the stable and found in the stall a pint bottle, in which there remained about a gill of whisky. This she brought in, and the prisoner turned something into it and directed her to carry it back where she found it and watch the deceased. She says she did, and saw the deceased go into the stall and remain awhile, and then come out and break the bottle and throw it away. If the bottle was full in the morning, the quantity taken during the three hours was one pint from that bottle. Whether it was or was not full, does not certainly appear. The government say that if it was filled at the village the night before, it is not unlikely but probable he took some of it before lying down, and assert there is no proof he had it full, or indeed purchased any Saturday night. The defence, however, say the circumstances are sufficient to warrant you in concluding he went to the village for the purpose, and that when seen by Sarah in the morning to go to the stable, it was for the purpose of drinking from the bottle.

From the evidence upon the subject, consisting of facts testified to, and circumstances made apparent to you, you will determine how much of this substance he took into his system Sunday morning, and even during the week previous.

That morphine in some quantity was taken into the system at the same time the last draught of whisky was taken, is not contested by the defence, but they say it was not the cause of his death. The government say it was the cause of his death, and as one evidence of it, they call your attention to the short space of time which elapsed between taking it and the appearance of fatal symptoms. Upon this question of time you have the testimony of Sarah and of Owen B. Stevens.

SARAH says she watched him; he went into the stable and remained about three minutes; then came out and broke the bottle; then came into the house and staid about ten minutes; then went into the sitting-room, and immediately after went into an insensible condition from which he did not recover.

OWEN B. STEVENS says, when he came in, the Doctor sat by him 5 or 10 minutes and then went into the sitting-room, and soon after went into an insensible state; that he could walk well and talk when he sat by him.

These witnesses, it is contended, fix the time as some 10 or 15 minutes from the time of taking the morphine to the time of falling into the insensible state, from which it is argued that it

is apparent it was the morphine which produced it.

For the defence it may, however, be said it is the same length of time between the last draught of liquor and the insensible state, and that it argues as much for them as for the government. For the government, however, it is said that no such manifestations followed any of the previous draughts as immediately followed taking into the system the morphine. For the defence, it may, however, be suggested that it was not either of the draughts of liquor which caused the death, but all combined with the last draught. The government say also that the amount taken is proof almost, if not quite, conclusive of the agent which produced death, and they say the evidence shows that at least ten grains of morphine were taken.

OWEN B. STEVENS says, that upon Saturday afternoon, near night, the prisoner compared a quantity of morphine with some held by one Linscott; that it was in a brown paper; that there was near a teaspoonful; that she folded it up and put it in her pocket.

LAURA J. STEVENS says, she saw her mother comparing the morphine with Linscott.

SARAH J. LEVETT says that she carried the bottle to prisoner in the morning, the prisoner being in bed, not having arisen; that the prisoner told her to get for her (the prisoner's) morning dress then lying on the bed—that she got it for her, and the prisoner took from a brown paper and poured all there was in it into the bottle. From this evidence the government argue and claim it is proved, that the brown paper which Sarah says she took from her pocket and poured its contents into the bottle, is the same brown paper Owen and Laura saw her have the night before when comparing with Linscott, and which they say she put in her pocket, where Sarah says she took it from to pour into the bottle, and they say there is no evidence contradicting this except the statement of the prisoner.

The prisoner says in relation to this matter, that she put morphine in the bottle on the Sunday morning of his death; that she can't precisely tell the amount; that she had it in a paper; that she fixed the amount between her thumb and fingers;—Does she mean to say that she only gave what she could take between her thumb and finger? That, perhaps, may be a fair deduction from her testimony.

How then do you find the fact,—was it the amount seen by Owen and Laura, when comparing with that held by Linscott, (I say seen by Owen and Laura, for I do not understand

the prisoner denies that she did compare some amount,) and in a *brown paper*, or was it another amount fixed as she says between her thumb and finger?

SARAH says it was in a *brown paper* in her dress pocket, then lying on the bed, and that was all poured into the bottle.

The prisoner says she had it in a *paper*; she thinks in a morning dress hanging up. She does not say the color of the paper, nor does she say whether or not she poured it all into the bottle.

Were these witnesses equally disinterested, what conflict do you find in their testimony, and which do you believe, if there is any substantial conflict? The prisoner says she fixed the amount between her thumb and finger. If so, is it possible it was the same amount as seen in the *brown paper*? She says she put the *brown paper* into the clock for the purpose of carrying it back to the Doctor's medicine chest. Where did this amount fixed between her thumb and finger come from? When was it thus fixed? In the morning before Sarah brought the bottle to her and before she had arisen for the day? Was it thus fixed Saturday night before she retired? Does she not say she did not entertain the idea of administering it until Sarah brought the bottle to her? These are questions that may be asked and answered in determining where the truth lies.

These amounts stated by the witnesses are not given by weight. Owen says there was near a teaspoonful in the *brown paper*, and the prisoner says she gave an amount fixed between her thumb and finger. There has been weighed in your presence two different amounts. One was an amount taken up by the Foreman between his thumb and finger, which weighed one grain, the other was ten grains weighed in one parcel. From this you have a standard by which to estimate the several amounts stated by the prisoner and the witnesses. The ten grains have been exhibited to you in a teaspoon, and you will judge from the appearance of it there, whether there was or not at least ten grains in the *brown paper*, if the testimony of Owen B. Stevens is to be credited as to the amount.

If she put into the bottle the amount Owen says she had in the paper, and the deceased drank and retained it in his system, have you any reasonable doubt about what caused his death? If it was simply an amount that could be taken between her thumb and finger, have you any doubt about it? You will, therefore, perceive the great importance of determining

which of these two amounts were taken, if either of them.

Upon the question of what caused the death of Charles M. Swett and bearing more or less upon it, you have the testimony of the physicians and surgeons. If the surrounding facts which we have been considering leave your minds in doubt about the cause of his death, you can resort to the medical testimony for aid, if it will afford you any; and if, indeed, these surrounding facts have satisfied you of the cause, you can look to the medical evidence to see if it does not shake your confidence in your opinions thus formed and raise in your minds a reasonable doubt about the cause, for it is upon all the evidence in the case you must arrive at your conclusions.

It is proper I should make a passing remark in relation to the testimony of the medical witnesses upon the hypothetical questions propounded. They are not allowed to give their opinions upon the case being tried, for that would require a determination of the question, what is proved, which is solely a question for you; therefore it is that certain supposed or hypothetical cases are presented to them to answer, and sometimes they are found answering questions bearing very little similarity to the facts proved in the case under consideration.

You have heard the inquiries put in this case and the answers given, with comments of counsel upon it. The first two questions proceeded upon symptoms enumerated, and the presence of alcohol in the system without any mention of morphine. The third question, in addition to those symptoms, supposes the administration of the *usual* dose of morphine, and the fourth a quantity unknown; whether more or less than the *usual* quantity is not suggested. Upon these symptoms and statements the physicians have given their opinion. If these same symptoms had been accompanied with the statement that ten grains of morphine had been taken, it does not now appear what their answer would have been. The value of opinions thus given, you will perceive, must depend in a great measure upon the similarity of the supposed case and the case on trial.

From the whole evidence in the case, when carefully considered and weighed, if you are not satisfied beyond a reasonable doubt that Charles M. Swett died from the effects of morphine, that is an end to the case, and your verdict must be for the prisoner. If, however, you are so satisfied, it will be necessary for you to proceed farther and inquire if the mor-

phine which did produce the death was administered by the prisoner. Upon this point you will judge if the conflict of evidence has not been rather upon the *amount* given than by *whom* given. Is it denied by the prisoner that she gave morphine in the whiskey, and is there any evidence in the case that any other person gave any, or that the deceased took any other?

Was it a deadly poison? Have you, from the evidence in this case, any doubt upon that? Is there any conflict of opinion or evidence upon that matter? If it was a deadly poison, did the prisoner know its deadly and dangerous qualities, when administered in the quantity actually given? She says she did not. She asserts that she did not know it would kill. If this be true, it is all she can say about it. She cannot multiply words in the matter. She can only say whether she did or did not know its dangerous qualities. The government, on the other hand, say she did. They say to you that the evidence shows she was well acquainted with the drug; that she was a physician's wife, and had been for many years, and having, according to her own statement, full access to his medicine chest. That she anticipated its *fatal* results when she herself took it upon the morning of his death. That her answers to the inquiries put her, as to why she took it, must satisfy you she knew its ordinary operations. They say she knew the usual dose by the amount the deceased had prepared for his daughter. That according to her own testimony, when giving it before to the deceased, for whatever purpose, she only gave two of Laura's powders; and that the amount she now says she gave on Sabbath morning indicates a knowledge that she knew its character, and the amount beyond which it was not safe to go. Nevertheless, gentlemen, she says she did not know it would kill. Did she or not? You must determine. You must do it from all the evidence in the case.

Did she administer it to him with his knowledge and consent, or without it. You have heard her testimony upon this point, and that of Sarah. You will judge upon this point.

Did she give it to him for the purpose of producing death? She says she did not. At this juncture of the investigation I must call your attention to certain well defined and settled principles of law applicable to this class of cases. Every sane person is presumed to contemplate the natural and probable consequences of his own acts; therefore the intent to murder is inferred from the deliberate use of a deadly weapon or article.

If the prisoner knowingly, deliberately and unlawfully gave Charles M. Swett a fatal dose of deadly poison, and he died from its effects, the law presumes it was done maliciously, if there is nothing in the circumstances of the case as proved to explain, qualify or palliate the act; and if she would reduce the crime below the degree of murder, the burden is upon her to rebut the inference of malice which the law raises from the unlawful act of killing, by evidence in defence, if it does not appear otherwise.

She says she did not give it to him for the purpose of killing him—that she gave it to him to produce nausea and sicken him of the use of intoxicating liquors. The government say there is no truth in this assertion; that there is no proof of it outside her own testimony; that it is inconsistent with her own practices, and contrary to the known and usual results of the drug; that she had access to her husband's medicine chest, where he kept drugs used solely for such purposes, and that, according to her own testimony, she knew he kept such. That these things and many others serve to show that her story is without truth as to the purpose she had in view.

She on the other hand says that, notwithstanding these indications, she gave it for those purposes, and that it does appear by the testimony of Sarah that it was given in the butter because of the desire of Mr. Fairfield for his services the next day. That it also appears by the testimony of Mr. Tripp that she informed him of the administration of it in his tea once, and he commended her for it. There are many circumstances in the case bearing upon this matter, which you will bear in mind and see if her story be true in this particular. If so, the counsel for the government says he does not claim your verdict, and does not think the interests of community would require it at your hands, although irregularly and improvidently given. If this was not the purpose, still the question recurs, For what did she give it?

The government say the amount given, she knowing its character, is almost conclusive and incontestible evidence of the purpose. That, according to the testimony of Dr. Kimball, the usual dose is from one-sixth to one-quarter of a grain, and that, by the measure and weight of the amount given in this case, at least ten grains were put into the bottle, being at least forty times the usual dose. That taking her own story to be true in relation to the amount put in the bottle, she must have known the consequences of so largely increasing the dose.

That the giving of nearly a teaspoonful of morphine is proof of the highest character of her intention to produce death. If she knew its character, and the testimony of the physicians can be relied upon as to the amount which will ordinarily produce death, you will readily conceive the force of the argument. If, however, she did not know its dangerous character, the whole argument upon this point fails.

I have thus passed over some of the prominent points of the evidence and propositions made upon the one side and the other. A very great latitude of inquiry has been allowed, and consequently much introduced into the case which might serve to cloud the material inquiries.

The whole case is now before you. Keeping in mind the presumptions of innocence, which attend the prisoner, and the weight of evidence required of the government, you must say, upon your oaths, whether the prisoner is or is not guilty, regardless of the punishment which may or may not follow. You look to the evidence, and not to the prisoner or society to determine this issue; and again I remind you that you are the sole judges of the fact, and upon you rests the responsibility of its determination. The court has neither the right nor the disposition to determine it; and if you should infer any opinion by the mode of examination which has been carried on in presenting the case to you, upon any point, you must act upon your own judgment in relation to it. You cannot thus shift the responsibility; and when you have come to a conclusion you will be able to answer whether the prisoner at the bar is guilty or not guilty. If guilty, whether it be of murder in the first degree, or murder in the second degree, or man-slaughter.

[Since printing our memorandum on page 69, we have succeeded in procuring the instructions requested by the counsel for the State and the counsel for the prisoner, as follows:]

Instructions Asked for by Mr. Goddard.

That every sane person is conclusively presumed to contemplate the natural and probable consequences of her own acts.

That, therefore, the intent to murder is conclusively inferred from the deliberate use of a deadly weapon.

That implied malice is an inference of law upon the facts found by a jury; that it exists where one attempts to kill or maim one person, and in the attempt kills another, against whom no injury was intended, or in general, in any deliberate attempt to commit a felonious act

and death is occasioned in the execution of such attempt, although the original intention may not have been to take life.

That express malice exists where one with a sedate, deliberate mind, and formed design, doth kill another.

That the formed design is evidenced by external circumstances discovering the inward intention, as by lying in wait, antecedent menaces, former grudges, and concerted schemes to take life.

That killing by poison is proof of express malice aforethought.

That premeditation, in the eye of the law, has no defined limits, and if a design be but the conception of a moment, it is as deliberate, so far as judicial examination is concerned, as if it were the plan of years.

That when the killing is unlawful, and neither express nor implied malice exists, the crime is reduced from murder to manslaughter.

That in all cases where the unlawful killing is proved, and there is nothing in the circumstances of the case, as proven, to explain, justify or excuse the act, the law presumes it to have been done maliciously, and

That if the accused would reduce the crime below the degree of murder, the burden is upon her to rebut the inference of malice which the law raises from the act of killing, by evidence in defence.

Instructions asked for by Mr. Hubbard.

That the *corpus delicti* is made up of two things: First, The fact that a human being has been killed; and secondly, The existence of criminal and human agency as to the cause of death.

On the trial of a party indicted for murder, the law presumes the entire innocence of the prisoner; and the State, before it has a right to ask for a conviction, is bound, not only to prove the alleged murder, but is required also to establish by evidence the guilt of the prisoner beyond a reasonable doubt.

To justify a conviction, the facts and circumstances must be such as to fully exclude every other hypothesis than that of the guilt of the accused.

It is a rule of criminal law, that the guilt of the accused must be fully proved. That neither a preponderance of evidence, nor any weight of preponderant evidence, is sufficient for the purpose, unless it generate full belief of the fact to the exclusion of all reasonable doubt; and in doubtful cases, the legal presumption in favor of innocence is always suf-

ficient to turn the scale in favor of the accused.

That where a chain of circumstances is relied upon to establish the guilt of the accused, and the jurors have a reasonable doubt in regard to any one of them,—that one ought not to have any influence against the accused; and in such case, the law requires the State to prove every single circumstance which is essential to the conclusion of guilt, in the same manner, and to the same extent, as if the whole case rested upon it.

That to authorize a conviction of the prisoner for manslaughter, the evidence must fully satisfy the jury beyond a reasonable doubt, that Dr. Swett died from the effects of morphine unlawfully administered by her.

That the giving of morphine is not, *per se*, unlawful, and is only rendered unlawful by the intent with which it is given.

[Judge Tapley concluded his charge to the jury at 12 M., and the jury immediately retired to their room, in charge of officers Tarbox and Mitchell. At 10 o'clock in the evening they came in and asked for further instructions, not having yet agreed upon a verdict. The Court briefly instructed them upon the legal points about which they were in doubt, when they again retired, and at 10 o'clock came in with a verdict of guilty of manslaughter—having been out ten hours and a half.

The prisoner's counsel immediately gave notice that he should file a motion for a new trial, and the prisoner was returned to the jail in Saco.]

Motion for a New Trial Withdrawn, and the Prisoner Sentenced.

[Saturday, March 9. At half past 10, A. M., the County Attorney being present, the prisoner, on motion of Mr. Goddard, was brought in for sentence.

Mr. Hubbard, in her behalf, then addressed the Court as follows:]

May it please Your Honor:

On the day following the rendering of the verdict of manslaughter against the prisoner, I filed with the Clerk a motion for a new trial, upon grounds which are fully set out in the motion; but after a full consideration and discussion of the matter with my brother Fairfield, I have thought it for the best interest of the prisoner to withdraw that motion, and, by your Honor's leave, will now do so; but so entirely convinced am I, that the prisoner should not have been convicted at all, that I feel it my duty, and crave your Honor's permission, to state in her behalf some of the reasons why we think that the mildest sentence allowed by law should be imposed.

Section 5, of Chapter 118 of the Revised Statutes, reads:

"Whoever unlawfully kills a human being in the heat of passion, on sudden provocation, without express or implied malice aforethought, or com-

mits manslaughter as defined by the common law, shall be punished by imprisonment not more than ten years, or by fine not exceeding one thousand dollars."

The prisoner, indicted and tried for murder in the first degree, now stands convicted of manslaughter. The homicide was by the means of a poison, and was not administered in sudden heat of passion. It is not, and has not, and will not be for one moment urged, that any of the evidence in the case could possibly authorize a conviction under the first clause of the Statute I have read, therefore I assume, that the jury found the prisoner guilty of "manslaughter, as defined by the common law," and it is to that definition that I wish to call your Honor's attention:

"Manslaughter at common law is of two kinds: 1st, Voluntary Manslaughter, which is the unlawful killing of another, without malice, on sudden quarrel or in heat of passion. So also, if a man be greatly provoked by any gross indignity, and immediately kills his aggressor, it is voluntary manslaughter, and not excusable homicide, not being *ex defensione*; neither is it murder for there is no previous malice. In these, and such like cases, the law, kindly appreciating the infirmities of human nature, extenuates the offense committed, and mercifully hesitates to put on the same footing of guilt, the cool, deliberate act, and the result of hasty passion."

The poison used in this case is a well known and universal medical agent. The prisoner was the wife of a physician who made a common use of the drug for medicinal purposes, and the evidence is conclusive to the point, that on one occasion, at least, the prisoner administered this drug to her husband with a good motive. On the morning that the fatal dose was administered, the prisoner was in no passion, but coolly and deliberately mingled the morphine with her husband's whisky, that he might take it and be affected by it. How did she desire him to be affected by it? Clearly, the jury have found, that she desired to do him, at least, no harm,—otherwise the verdict would have been murder in the first degree. After she had mingled the morphine with the whisky, the prisoner gave it to the little girl, Sarah, and told her to place the bottle again in the stable, which she did, and some time after, Dr. Swett went to the stable and drank it. If it were possible for the jury to have found that the prisoner was in "sudden heat of passion," at the time she placed the morphine in the whisky, it is certain that "cooling time" intervened, and in that case, the verdict would have been murder. Our Statute, unlike the Statutes of some of the other States, does not make different degrees of manslaughter, but it clearly invests the Court with the power to declare the degree of guilt of the prisoner con-

victed, because it gives ample discretion to the Court in regard to the punishment to be inflicted, and it invests the Court with this discretion, for the very purpose of guarding against undue severity. The penalty consequent upon a conviction for manslaughter may be imprisonment for ten years, but if the circumstances are such as to call on the Court for lenity, the punishment may be merely nominal, not extending beyond a few hours or a few days' imprisonment even, and we believe that this is a case that calls most loudly upon the Court for that clemency which the Statute authorizes.

Although our Statute does not make, in terms, different degrees of manslaughter, it unequivocally recognizes the different degrees, in the fact that it invests in the Court, the power to graduate the punishment.

The conviction of this prisoner, of manslaughter, could not have been based upon the common law definition of *voluntary* manslaughter, which corresponds with the wording of the first three lines of our Statute. In the common law definition of *involuntary* manslaughter, perhaps we can find the key to those facts upon which the jury based their verdict of manslaughter. I will read from WHARTON'S AMERICAN LAW OF HOMICIDE, page 35:

"Involuntary manslaughter is where one doing an unlawful act, not amounting to felony, by accident kills another. It differs from homicide excusable by misadventure, in this: that misadventure always happens in the prosecution of a lawful act, but this species of manslaughter in the prosecution of an unlawful one. Where a person does an act lawful in itself, but in an unlawful manner, this excepts the killing from homicide *per infortunium* and makes it involuntary manslaughter."

We have taken the ground, that the administering of morphine is not, *per se*, unlawful, no more than is the giving or administering of laudanum, and upon this point, I cite WHARTON'S AMERICAN LAW OF HOMICIDE, page 124, which reads,

"Thus, on an indictment for the murder of an infant, by the administration of laudanum, when the Judge below charged the jury, that if Ann, a slave, without authority, administered laudanum to the infant, with the intent to produce unnecessary sleep, and, contrary to her expectations, it caused death, she would be guilty of murder. The Supreme Court held this charge to be erroneous, ruling that the administering of laudanum was not, *per se*, unlawful, and that as the charge excluded from the jury the consideration of the fact, whether the defendant intended serious mischief to the infant or not, and whether the offense amounted to murder or manslaughter, a new trial should be awarded."

The administering of morphine by the prisoner, in this case, was not *per se*, unlawful, and was made unlawful, only by the intent, or the manner of administering it. A familiar

illustration of this rule is laid down in the books, in language like this:

"Where a man lays poison to kill rats, and another man takes it, and it kills him.—If the poison were laid in such a manner or place as to be mistaken for food, it is, perhaps, manslaughter; if otherwise, misadventure."

But as in criminal law, all acts, strictly speaking, must be referred to the intent, the degree of guilt in the case put, of laying the poison for rats, must be very slight.

The jury have found that the prisoner intended her husband no harm, and I submit that they found further, that the prisoner intended to benefit her husband, and only returned a verdict for manslaughter, because the State's counsel convinced them, that the amount of morphine administered was so large as to render the prisoner guilty of an *incautious* administering, and I think I am corroborated in this view, by the fact that eleven of the jurors, who returned the verdict, have joined in a written request to your Honor, for a light sentence to the prisoner.

The evidence in this case, under the statutory provisions of New York, if it could authorize a verdict of manslaughter at all, it would be of the 4th degree, and could not be punished by imprisonment exceeding two years, and might be for one day. I mention this merely because it reflects in statute provisions something of my own ideas of the different degrees of guilt and proportionate punishment upon a conviction of manslaughter. The evidence in this case, it seems to me, did not even warrant the jury in finding any guilt at all; but I submit that their verdict must have been based upon finding that the prisoner, with good intent, did incautiously administer morphine, which caused the death,—and the degree of guilt is so slight, that the case, in the consideration of the jury, approached very near to a case of homicide excusable by misadventure. The verdict and the statute now vests in your Honor, the power to declare the degree of guilt, and knowing that it is always the desire of Courts to regard, in such cases as this, the reasoning of an intelligent jury, I have thus ventured these suggestions of my own interpretation of the law and facts upon which the jury based their verdict. Aside from this, it may not be improper for me to remind your Honor that the evidence is conclusive to the point, that the prisoner is a woman who is, and for years has been, in ill health.

Since the verdict has been rendered, my convictions are so strong that this prisoner is improperly convicted, that I have sometimes

feared we in her defense have not presented her cause with that ability and clearness, needed to ensure to her entire justice, and if your Honor has perceived any error upon our part in the management of the case, I trust that it may now prove an additional reason for a light sentence. We have tried to do our duty, and now, thanking your Honor for so kindly giving us this liberty, we submit the prisoner's cause for your better and impartial judgment.

[At the conclusion of Mr. Hubbard's remarks, Mr. Goddard, in behalf of the State, said:]

At the request of the Honorable Attorney General, and of the County Attorney, I ask your Honor's leave to be heard very briefly in reply to the ingenious suggestions which have just been so forcibly urged by the prisoner's counsel in mitigation of sentence.

The jury, after a protracted, thorough and impartial trial, found the prisoner guilty of manslaughter. Their verdict was not rendered hastily, but after ten and one-half hours' deliberation. They did not see fit to accompany it with any recommendation of mercy. In my judgment none was warranted. But in his remarks this morning, the prisoner's counsel has referred to a paper signed by a part of the panel and communicated to your Honor at some period since the discharge and separation of the jury, in the nature of a recommendation to mercy.

We had never been informed of its contents; indeed, its existence was first made known to us by the remarks just addressed to the Court by the prisoner's counsel. It is submitted that the State cannot be expected to attach much weight to such a paper divulged to us under such circumstances. We merely observe that it cannot be regarded as the jury's recommendation since it is not concurred in by all the jury, and because it was not presented until long after their dismissal and dispersion. That any recommendation purporting to emanate from a body of men who have once upon oath, and after patient investigation, unanimously concurred in a decision affecting the liberty and character of a fellow being, is seriously weakened by the non-concurrence and opposition of a portion of that body, is obvious and need not be enlarged upon.

The damaging effect of their dispersion between the verdict of the whole and the recommendation of a part, is, however, although less patent, even more fatal. During an ordinary civil trial, jurors are cautioned against conversing with strangers or allowing strangers to converse in their hearing upon the subject

matter of the trial, while in capital cases the law undertakes to render outside influence impossible by jealously confiding the jury in a body to the charge of a sworn officer, from the beginning of the trial to their final discharge, in order that the verdict may rest solely upon the law and the evidence wholly uninfluenced by outward pressure. Is the legal or moral right of such a verdict to be impaired by the recommendation of some of the jurors after full liberty has been afforded the prisoner's agents to bring all the influences in their power on each separate individual of the panel in the absence and without the knowledge of the representatives of the State? It is believed that such a practice will not be encouraged by this Honorable Court.

This is all that I have to say in reference to the paper on which the learned counsel seems so largely to depend.

As to the verdict, the prisoner may consider herself remarkably fortunate, for the evidence, in the opinion of the attorneys for the State, warranted a conviction of murder in the first degree. In the suggestions by the prisoner's counsel that the defence was inadequately conducted, the Court will only find evidence that their modesty is equal to their ability. It is further suggested that the jury must have found the prisoner guilty only of "homicide by misadventure," that is, that she unintentionally killed her husband by the unauthorized and therefore unlawful use of morphine as a medicine. Else, it is urged in her behalf, she should have been convicted of murder.

While it is admitted that such might, and indeed ought, to have been the verdict, we take issue with her counsel as to the probable reasons that induced the jury to reduce the crime to manslaughter.

First, we submit that neither her counsel nor the State's asked for or even suggested such a verdict on any such grounds. On the contrary, I remember that it was distinctly said in the closing argument for the State, that if the jury believed the prisoner did not design the death of her husband, the State did not ask for a verdict of manslaughter, even though the administration of the morphine might have been unlawful.

It is believed that the unexpected mildness of the verdict may be satisfactorily accounted for on principles far different from those imagined by the defence. We attribute it mainly to her sex and to the wretched character which she has established for her deceased husband. The privilege of sex, though unknown to the

law or to justice, has in this country and age been nearly as potent as that of clergy in mediæval times, and has in fact shielded almost every woman tried in the land from capital conviction and execution, however manifest and aggravated in many cases their guilt has been. To misplaced sympathy for this prisoner as a woman, and simply because she is a woman, it is believed she is largely indebted for her escape from the gallows. It must also be conceded that she succeeded in blackening the memory of her husband quite effectually. Doubtless his life was bad enough, as might be expected from the husband of such a wife, but I fear even the little good that was his due has been denied him by the defence. Now, though the jury were duly cautioned that his misconduct was in law no excuse for her, but on the contrary only enhanced the probability of her guilt since it supplied a motive for the murder, yet the natural and almost necessary effect must have been to palliate her crime and add to the undeserved sympathy which her sex had awakened. I say such an effect is natural and almost necessary, because death being the severest punishment which modern humanity permits for the most aggravated offence, there is an inevitable tendency to restrict it to cases where no palliation can be offered, no mitigation suggested.

To illustrate by a familiar and melancholy example. The assassins of our lamented President were simply executed; the law "had no more that it could do." Suppose, now, that some brave defender of his country, fresh from the horrors of Anderson or Libby prison, an eye-witness of the starvation that freed its 62,000 victims, under the orders of Jefferson Davis, had, after the surrender of Lee and the end of the rebellion, so far mistaken his duty as to insinuate himself into Fortress Monroe and assassinate that traitor and enemy of his country and civilization, would it, I ask, have been easy to obtain from any Northern jury a verdict of murder in the first degree? Would it have been *possible*, if the law or the evidence could have been tortured into manslaughter?

The fact is, that juries *will* discriminate between the murder of a worthy and valuable citizen and that of a worthless or worse than worthless character, and since the law permits no addition to the death penalty, the distinction, if made at all, must be by reducing the offence, as in the present case. Can any one seriously doubt that if the prisoner had been a man, and the victim a woman of good character, the verdict would have been murder in the

first degree, and that without hesitation or delay?

Hence the government perceives nothing in the verdict or in the evidence to warrant the assumption of the prisoner's counsel. On the contrary the case is regarded as a highly aggravated one, deserving the severest punishment.

Murder by poison necessarily involves such deep depravity, secrecy, deliberation, such a settled purpose and a mind so "fatally bent on mischief," so black a heart, that it has been comparatively rare in this country and in England. From its peculiar baseness, its special turpitude, the honest instincts of the free born Anglo-Saxon revolt. But with the enslaved, timorous, treacherous nations of Southern Europe, and especially in Asia, it has from time immemorial been the favorite instrument of jealousy, of vengeance and of fear. In ancient Greece, in the worst and last days of Imperial Rome, and in the worse and darker ages of the Byzantine empire, in the Italian kingdoms that in the middle ages arose upon the ruins of the Roman empire, as in the modern Mohammedan empires of the East, poison has numbered uncounted millions among its victims. And it is a melancholy but a most significant fact that in all these countries and in all ages, the cup has been the peculiar weapon of the murderer. Such is the testimony of the Roman satirist, such the uniform language of the historians of mediæval Italy, such the observation of the modern Oriental traveller. This crime must not be permitted to gain a lodgment in our State; its first manifestations should be branded with the sternest judicial rebuke and visited with the severest penalty known to the law. No mercy should be shown to the poisoner, whether male or female, for the crime admits of no extenuation, and the intended victim seldom has any opportunity for defence or escape.

Of this awful crime the prisoner has been found guilty, and the verdict is sustained by the almost unanimous popular voice. I should be conscious of a dereliction from duty if I did not, in behalf of the State, urge the infliction of the extreme penalty which the law allows upon conviction of manslaughter.

After some comments upon the remarks of counsel, Judge Tapley proceeded to give the

SENTENCE.

After a somewhat protracted and patient hearing of all the evidence in the case, the jury have found you are guilty of the crime of manslaughter, committed upon the person of your

own husband. It is a conclusion well warranted by the evidence in the case, and in consonance with my own views of its legitimate effect. The extreme penalty of the law for this offence, is imprisonment in the State Prison for the term of ten years or a fine of one thousand dollars.

A careful scrutiny of the testimony and the circumstances attending the commission of the offence, has impressed upon my mind some considerations which lead me to impose a punishment less than the highest imposed by law. It is not necessary that I should recall to your mind that evidence, or those circumstances which have led me to the conclusion to which I have arrived. I cannot perceive that a recapitulation of it would be of any benefit to any

party interested or concerned. Considering all the facts and circumstances shown to have existed, I must impose an imprisonment in the State Prison for the term of six years.

Mr. Clerk, you will pronounce the sentence of the Court.

CLERK—Jane M. Swett, rise up and hearken to your sentence as the Court have awarded it.

The Court having considered the offence with which you stand convicted, order that you be punished by imprisonment and confinement to hard labor for the term of six years, and that this sentence be executed upon you in and within the precincts of our State Prison, situate at Thomaston, in our county of Knox, and that you stand committed until you be hence removed in execution of this sentence.

It is not necessary that I should recall to your mind that evidence, or those circumstances which have led me to the conclusion to which I have arrived. I cannot perceive that a recapitulation of it would be of any benefit to any party interested or concerned. Considering all the facts and circumstances shown to have existed, I must impose an imprisonment in the State Prison for the term of six years. Mr. Clerk, you will pronounce the sentence of the Court. The Court having considered the offence with which you stand convicted, order that you be punished by imprisonment and confinement to hard labor for the term of six years, and that this sentence be executed upon you in and within the precincts of our State Prison, situate at Thomaston, in our county of Knox, and that you stand committed until you be hence removed in execution of this sentence.

Of the awful crime the prisoner has been found guilty, and the verdict is sustained by the almost unanimous popular voice. I should be anxious of a resolution from day to day, not in behalf of the State, upon the legislation of the extreme penalty which the law allows upon conviction of manslaughter.

After a somewhat protracted and patient hearing of all the evidence in the case, the jury have found the prisoner guilty of the crime of manslaughter, committed upon the person of your

party interested or concerned. Considering all the facts and circumstances shown to have existed, I must impose an imprisonment in the State Prison for the term of six years. Mr. Clerk, you will pronounce the sentence of the Court. The Court having considered the offence with which you stand convicted, order that you be punished by imprisonment and confinement to hard labor for the term of six years, and that this sentence be executed upon you in and within the precincts of our State Prison, situate at Thomaston, in our county of Knox, and that you stand committed until you be hence removed in execution of this sentence.

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